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Tuesday
June 30, 1987

Briefings on How To Use the Federal Register—
For information on briefings in Chicago, IL, and Boston, MA, see announcement on the inside cover of this issue.

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How To Cite This Publication: Use the volume number and the page number. Example: 52 FR 12345.

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 2 1/2 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.

CHICAGO, IL

WHEN: July 8, at 9 a.m.
WHERE: Room 204A,
Everett McKinley Dirksen Federal Building,
219 S. Dearborn Street,
Chicago, IL.
RESERVATIONS: Call the Chicago Federal Information Center, 312–353–0339.

BOSTON, MA

WHEN: July 15, at 9 a.m.
WHERE: Main Auditorium, Federal Building,
10 Causeway Street,
Boston, MA.
RESERVATIONS: Call the Boston Federal Information Center, 617–565–8129

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Presidential Documents

Title 3—

The President

Proclamation 5673 of June 26, 1987

National Outward Bound Week, 1987

By the President of the United States of America

A Proclamation

A quarter-century ago, in Colorado, Outward Bound began to provide rigorous outdoor recreational programs to young people to improve their self-confidence, sense of social responsibility, physical fitness, and outdoor skills. Since then, across our land, more than 150,000 people of all backgrounds, ages, and abilities have tackled the challenges offered by Outward Bound, and many similar experience-based programs have come into being.

Every American can rightly celebrate the anniversary of this remarkable nonprofit organization, because it fosters love for the wilderness and strengthens our Nation by stressing the perseverance, teamwork, leadership, and goal-setting we all need to overcome obstacles and adversity and to discover our potential for achievement.

In recognition of Outward Bound's significant role in recreation, conservation, and youth development, the Congress, by House Joint Resolution 284, has designated the week beginning June 21, 1987, as "National Outward Bound Week" and authorized and requested the President to issue a proclamation in its observance.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning June 21, 1987, as National Outward Bound Week. I call upon the people of the United States to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of June, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 87-14999
Filed 6-29-87; 10:39 am]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Amdt. No. 2, Docket No. 4087S]

General Administrative Regulations; Appeal Procedure

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends Subpart J to Part 400 in Chapter IV of Title 7 of the Code of Federal Regulations (CFR), known as 7 CFR Part 400—General Administrative Regulations—Subpart J, Appeal Procedure. The intended effect of this rule is to prescribe procedures under which a person who has been determined by FCIC as being ineligible for crop insurance, or whose contract is determined by FCIC to be ineligible for reinsurance, may request review of the determination of ineligibility made by FCIC. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: July 30, 1987.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1990.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or then ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450. This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

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

Background

The Appeal Regulations provide administrative procedures under which any person or organization may request and obtain review and appeal of determinations made by FCIC. The regulations, found at 7 CFR Part 400, Subpart J, and published in the **Federal Register** on Wednesday, February 12, 1986 at 51 FR 5147, set forth the levels of appeal and prescribe the manner and format of such procedure.

It is the intention of the Corporation to compile a list of those persons who have been found ineligible for participation in the crop insurance program because of non-payment of premium, fraud or other violation of program regulations. No person would be included on this list until they have been given the opportunity to appeal this determination in accordance with the appeal regulations of the Corporation. Presently, all insureds are given the opportunity to appeal determinations by the Corporation which may result in inclusion on this list or to defend their actions in litigation.

The Corporation now also intends to include persons who have been found to have committed similar actions when insured under crop insurance policies issued by Multi-Peril Crop Insurance (MPCI) companies and reinsured by the Corporation. It is the intention of the Corporation to distribute this ineligible list to the MPCI companies and refuse to reinsure any crop insurance policies sold to any person who is identified on this list.

Further, it is the intention of the Corporation to require that the MPCI companies require any applicant for multi-peril crop insurance to state whether a multi-peril crop insurance policy has been terminated by the Corporation or any MPCI company and the basis for that termination. Any false answer to that question would be a basis for termination of a policy after acceptance of the application if the person is later identified as being on the ineligible list.

In order to assure that only those persons are placed on the ineligible list who have violated material provisions of their crop insurance contracts, the Corporation proposes to open the appeal procedure to those persons who are terminated by MPCI companies because of those reasons which would cause placement on the ineligible list if those individuals had been terminated by the Corporation. The appeal would be solely for the purpose of determining whether the individual should be placed on the ineligible list by the Corporation.

The MPCI companies would be required to advise the Corporation of all contract terminations and the reasons for those terminations.Those persons who have been terminated for reasons which would give rise to placement on the ineligible list will be notified of the Corporation's proposal to place their names on the ineligible list and the reason for that proposal. They would be given the opportunity to appeal that determination in accordance with this subpart.

No person would be included on this list until they have been given the opportunity to appeal this determination in accordance with the appeal regulations of the Corporation. Presently, all insureds are given the opportunity to appeal determinations by

the Corporation which may result in inclusion on this list or to defend their actions in litigation.

The Corporation has established a system of records under the terms of the Privacy Act for the maintenance of the ineligible list, as published by notice in the **Federal Register** on Friday, February 27, 1987, at 52 FR 6030.

In reviewing the final rule prior to issuance, it was determined that the amendatory language reading * * * "the present or previous Corporation or reinsured crop insurance contract" * * *, should be amended to read "The present or previous Federal Crop Insurance contract or reinsured crop insurance contract."

This is intended to make clear that the provisions in this subsection apply to all contracts issued by FCIC, or reinsured by FCIC, for the previous crop year or the present crop year.

The information collection control numbers assigned by Office of Management and Budget (OMB) are found at Subpart H to 7 CFR Part 400.

On Wednesday, November 19, 1986, FCIC published a notice of proposed rulemaking in the **Federal Register** at 51 FR 41800, proposing to amend 7 CFR Part 400, Subpart J, Appeal Procedure to prescribe procedures under which a person who has been determined by FCIC as being ineligible for crop insurance, or whose contract is determined by FCIC to be ineligible for reinsurance, may request review of the determination of ineligibility made by FCIC.

The public was invited to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, the proposed rule published at 51 FR 41800 is adopted as final.

List of Subjects in 7 CFR Part 400

Crop insurance, Administrative regulations—Review and appeal procedure.

Final Rule

PART 400—[AMENDED]

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends 7 CFR Part 400, Subpart J—General Administrative Regulations; Appeal Procedure, in the following instances:

1. The authority citation for 7 CFR Part 400, Subpart J, continues to read as follows:

Authority: Pub.L. 75–430, 52 Stat. 72 et seq., as amended, (7 U.S.C. 1501 et seq.).

2. 7 CFR 400.92 is amended by adding paragraph (g) to read as follows:

§ 400.92 Rights of appeal.

* * * * *

(g) Any person who has been notified by the Corporation that, because of actions of the person concerning the present or previous Federal Crop Insurance contract, or reinsured crop insurance contract, such person is ineligible to purchase crop insurance from the Corporation and that the Corporation will not reinsure any crop insurance contract issued to such person by a private insurance company.

Done in Washington, DC, on June 9, 1987.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 87–14796 Filed 6–29–87; 8:45 am]

BILLING CODE 3410–08–M

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7 CFR Parts 418, 419, 420, 421, 424, 427, 432, and 448

[Amdt. No. 1; Docket No. 4362S]

Prevented Planting Endorsement to Barley, Corn, Cotton, ELS Cotton, Grain Sorghum, Oat, Rice, and Wheat Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Barley, Corn, Cotton, ELS Cotton, Grain Sorghum, Oat, Rice, and Wheat Crop Insurance Regulations (7 CFR Parts 419, 432, 421, 448, 420, 427, 424, and 418, respectively), effective for the 1988 crop year only. The intended effect of this rule is to: (1) Provide for use of the sales closing date of the qualifying crop insurance policy as a specific point of reference to determine the endorsement reporting date; (2) clarify that set off may be used to pay premium; (3) require the insured to report total production from all units of the qualifying crop policy; (4) include the insured's share of the production guarantee in the determination of indemnity; (5) clarify that the endorsement is on an annual basis and define requirements to stay insured from year to year; (6) add definitions of "ASCS" and "Farm"; and (7) redefine "Prevented planting date", "Unit", and "Yield Guarantee". The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: June 30, 1987.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for the regulations affected by this action remain unchanged and are made part of each regulation affected by this rule.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

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

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

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

Other than minor changes in language and format, the principal changes in the prevented planting endorsement are:

1. *Section 2.*—Clarify that any acreage intended for planting must be insured under the qualifying crop insurance policy before insurance will attach under this endorsement. This change is made to prevent attachment of insurance under the endorsement to acreage which is otherwise uninsurable

under the qualifying crop insurance policy.

2. *Section 3.*—Add a provision requiring that at the time the insured must report the acreage under the prevented planting endorsement, it also must be reported by the intended type and practice. Since the indemnity under the endorsement is directly related to the guarantee for the qualifying crop and that guarantee is established by type and practice it is necessary to state the basis for determining the guarantee for the endorsement in a similar manner.

Change the date of reporting acreage from the reporting date established by the actuarial table to not later than the sales closing date for the applicable qualifying crop.

3. *Section 6.*—Add a section specifically allowing set off for payment of premium. Although this is allowed under provisions of the qualifying crop policy, it is repeated in the endorsement to clarify the Corporation's intent in this regard.

4. *Section 9.*—Eliminate the requirement for an insured to report to FCIC the total production from the units established under the provisions of the qualifying crop policy. Such information was required to calculate the amount of indemnity.

Remove the reference to acreage intended for planting from which a forage crop is harvested. The Corporation will no longer insure any acreage planted to a perennial crop. (See: Subsection 11.b (1).)

5. *Section 10.*—Revise the time, report, and notice provisions to more clearly explain what the insured must do to be eligible and to stay insured from year to year.

Remove the contract change date requirement as being duplicative of the qualifying crop policies.

6. *Section 11.*—Add a definition for "ASCS".

Add a definition for "farm" as meaning the land which is designated by the Agricultural Stabilization and Conservation Service (ASCS) under a single farm serial number and to clarify that an applicant for the prevented planting endorsement must comply with ASCS qualifying programs.

Redefine: "Prevented planting date" to establish when insurance will end for areas where there are no spring-planted crops; "Unit" to remove the reference to reporting and correcting units; and

"Yield Guarantee" to clarify that the coverage level applicable under the qualifying crop contract is used to determine the liability for that crop under the Prevented Planting Endorsement.

On Tuesday, April 7, 1987, FCIC published a notice of proposed rulemaking in **Federal Register** at 52 FR 11078, to amend the Barley, Corn, Cotton, ELS Cotton, Grain Sorghum, Oat, Rice, and Wheat Crop Insurance Regulations (7 CFR Parts 419, 432, 421, 448, 420, 427, 424, and 418, respectively).

FCIC solicited written public comment on this proposed rule for 30 days after publication in the **Federal Register**, but none were received. Therefore, the rule, as published at 52 FR 11078, is adopted as final.

In order to make this prevented planting endorsement accessible to all producers, it is found necessary that these provisions be made available as soon as possible. Therefore, good cause is shown for making this rule effective in less than 30 days after publication in the **Federal Register.**

List of Subjects in 7 CFR Parts 418, 419, 420, 421, 424, 427, 432, and 448

Crop insurance, Wheat, Barley, Grain Sorghum, Cotton, Rice, Oat, Corn, and ELS Cotton, respectively.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C 1501 *et. seq.*), the Federal Crop Insurance Corporation hereby amends the Barley, Corn, Cotton, ELS Cotton, Grain Sorghum, Oat, Rice, and Wheat Crop Insurance Regulations (7 CFR Parts 419, 432, 421, 448, 420, 427, 424, and 448, respectively), effective for the 1988 and succeeding crop years, in the following instances:

PARTS 418, 419, 420, 421, 424, 427, 432, and 448—[AMENDED]

1. The Authority citation for 7 CFR Parts 418, 419, 420, 421, 424, 427, 432, and 448, continues to read as follows:

Authority: Secs. 506, 516, Pub L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Parts 418, 420, 421, 424, 427, 432, and 448 are amended by revising §§ 418.8, 420.8, 421.8, 424.8, 427.8, 432.8 and 448.8 in their entirety and 7 CFR Part 419 is amended by revising § 419.9 in its entirety to read as follows:

§ _____ Prevented planting endorsement.

(a) A prevented planting crop insurance endorsement on the qualifying crop will be available to all insureds having a qualifying crop insurance contract under the provisions of this Part and who participate in the ASCS Acreage Reduction Program or Set-aside Program. This endorsement is not continuous. Application must be made annually for the prevented planting endorsement not later than the sales closing date established by the actuarial table for the applicable crop.

(b) The provisions of the Prevented Planting Crop Insurance Endorsement for the 1988 and succeeding crop years are as follows:

Federal Crop Insurance Corporation Prevented Planting Crop Insurance Endorsement

(This is an annual election to be made by the insured before the date specified in Section 10.)

AGREEMENT TO INSURE: We will provide the insurance described in this endorsement in return for the premium and your compliance with all applicable provisions.

Prevented Planting

1. Applicable provisions.

All provisions of the qualifying crop insurance contract and the prevented planting crop insurance application not in conflict with this endorsement are applicable.

2. Causes of loss.

a. This insurance is against your being unavoidably prevented from planting insurable acreage to the qualifying crop or any other non-conserving crop during the insurance period. (You are required to plant to another non-conserving crop during the insurance period after you know or should have known that it is no longer feasible to plant the qualifying crop and you are not prevented from planting the other non-conserving crop by an insurable cause.) You must be prevented from planting by drought, flood, or other natural disaster which occurs within the insurance period. Limitations, exceptions, or exclusions on the causes insured against may be contained in the actuarial table.

b. We will not insure against any prevention of planting:

(1) If your failure to plant was due to a cause other than those listed in subsection 2.a.; or

(2) If most producers in the surrounding area in similar circumstances were able to plant the qualifying crop or any other non-conserving crop.

3. Acreage and share insured.

a. The acreage insured for each crop year will be the cultivated acreage in the county intended to be planted for harvest to the qualifying crop, in which you have a share, as reported by you or as determined by us, whichever we elect, and for which a premium rate is provided by the actuarial table.

b. The insured share is your share as landlord, owner-operator, or tenant in the qualifying crop if the crop has been planted at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share on the prevented planting date.

c. Unless otherwise specified by the actuarial table, we will not insure any acreage unless you have a valid crop insurance contract for the current crop year on the qualifying crop and the acreage is insurable under that contract.

d. You must participate in the ASCS acreage reduction or set-aside program for the qualifying crop in the applicable crop year on at least one farm which is part of the insured unit under this endorsement.

4. Report of acreage and share.

You must report on our form:

a. All the cultivated acreage intended for planting to the qualifying crop in the country in which you have a share;

b. The intended type and practice; and

c. Your share at the time of reporting.

You must designate separately any cultivated acreage that is intended for planting to the qualifying crop that is not insurable. This report must be submitted not later than the sales closing date for the qualifying crop. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine the insured acreage and share or we may deny liability on the unit. Any report submitted by you may be revised only upon our approval.

5. Amounts of insurance and coverage levels.

a. The amount of insurance per acre is computed by multiplying the qualifying crop yield guarantee times the price election selected for the qualifying crop, times .35.

b. The coverage level is the same as that selected under your crop insurance contract for the qualifying crop.

6. Annual premium

a. The annual premium is earned and payable on the date insurance attaches. The amount is computed by multiplying the amount of insurance per acre times the premium rate, times the insured acreage, times your share.

b. Interest will accrue at the same rate and terms on any unpaid premium balance as on the qualifying crop insurance contract.

7. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its agencies.

8. Insurance period.

Insurance attaches on the sales closing date of the qualifying crop insurance contract for the crop year and ends at the earlier of:

a. Planting of the insured acreage to the qualifying crop or any other non-conserving crop; or

b. The prevented planting date.

9. Notice of damage or loss and claim for indemnity.

a. If you fail to plant the insured acreage and expect to claim an indemnity on the unit, you must give us notice in writing not later than 5 days after the prevented planting date.

b. Any claim for indemnity must be submitted to us on our form prior to the time a claim is or should be filed for the qualifying crop.

c. We will not pay any indemnity unless you:

(1) Establish that any prevention of planting on insured acreage was directly caused by one or more of the insured causes during the insurance period for the crop year for which the indemnity is claimed; and

(2) Furnish all information we require concerning the loss.

d. The indemnity will be determined for the unit by:

(1) Multiplying the insured acreage times the amount of insurance as determined in section 5 of this endorsement;

(2) Subtracting therefrom the amount obtained by multiplying the planted acreage, times the amount of insurance; and

(3) Multiplying this result by your share.

e. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section.

10. Life of contract: cancellation and termination.

a. This contract will be in effect only for the crop year specified on the application and may not be canceled by you for such crop year.

b. This contract may be renewed for each succeeding crop year if:

(1) You apply and report your intended acreage for planting not later than the sales closing date of the qualifying crop; and

(2) The qualifying crop insurance contract is not canceled or terminated for the crop year.

11. Meaning of terms.

For the purposes of prevented planting crop insurance:

A. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

b. "Cultivated acreage intended for planting" means land that was ready or, except for insured causes, could have been made ready for planting, but does not include land:

(1) On which a perennial forage crop is being grown or on which the qualifying crop or other non-conserving crop was planted prior to the prevented planting acreage reporting date; or

(2) Which was not or would not have been planted to comply with any other United States Department of Agriculture or State programs or for any other reason.

c. "Farm" means the land which is designated by ASCS under a single farm serial number.

d. "Insurable acreage" means the land classified as insurable by us for the qualifying crop and shown as such by the actuarial table.

e. "Non-conserving crop" means any crop planted for harvest as food, feed, or fiber.

f. "Planted acreage" means the insurable acreage:

(1) Planted to the qualifying crop or any non-conserving crop during the insurance period; or

(2) Which could have been planted to the qualifying crop or any non-conserving crop during the insurance period.

g. "Prevented planting date" means the latest final spring planting date established by the crop actuarial tables for any insurable crop in the county, except tobacco, plus any extended date or final planting date offered under any late planting agreement. (In areas where there are no spring planting dates, we will use the latest final planting fall planting date.)

h. "Qualifying crop" means the ASCS program crop (barley, corn, cotton, ELS Cotton, grain sorghum, oats, rice, or wheat) which is also insured.

i. "Unit" means all insurable acreage in the county which you intend for planting to the qualifying crop prior to the prevented planting date for the crop year at the time insurance first attaches under this policy for the crop year. The unit will be determined when the acreage is reported.

j. "Yield guarantee" means the result of multiplying your yield for the qualifying crop by your coverage level for that crop.

Done in Washington, DC, on June 10, 1987.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-14797 Field 6-29-87; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 959

Onions Grown in South Texas; Increase in Rate of Assessment for 1986-87 Fiscal Period

AGENCY Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule will authorize an increase in the rate of assessment to cover the expenses of the South Texas Onion Committee for the 1986-87 fiscal period. The assessment rate will be increased from four cents to five and one-half cents per 50-pound container or equivalent. The change is necessary for the committe to meet its 1986-87 expense obligations. Adverse weather during the 1987 growing season significantly reduced the assessable tonnage and the current rate of assessment will not generate sufficient funds to meet authorized committee expenses. Assessments are paid by handlers under the marketing order program. The committee works with the Department in administering that program.

EFFECTIVE DATES: August 1, 1986-July 31, 1987, which is the 1986-87 fiscal period.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250-1400, telephone (202) 475-3914.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (the Act, 7 U.S.C. 601–674), and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that 40 South Texas onion handlers will be subject to this regulation during the course of the current season. In addition, there are about 160 producers in the production area. The majority of these producers and handlers may be classified as small entities as defined by the Small Business Administration (SBA). The SBA defines agricultural service firms, like handlers, as those whose gross annual receipts were less than $3.5 million and small agricultural producers as those having average annual gross revenues for the last three years of less than $100,000 (13 CFR 121.2).

This final rule is issued under the marketing agreement and Marketing Order 959, both as amended, regulating the handling of onions grown in South Texas (7 CFR Part 959). The assessment rate increase was recommended by the South Texas Onion Committee in a telephone vote completed on May 4, 1987. Fourteen committee members voted unanimously in favor of this action.

Notice of this action was contained in a proposed rule published in the **Federal Register** on June 4, 1987 (52 FR 21069). Written comments were invited until June 15, 1987. One comment was received opposing the assessment rate increase.

A final rule establishing expenses in the amount of $283,227 for the 1986–87 fiscal period and fixing the assessment rate at four cents per 50-pound container or equivalent quantity for that period was published in the **Federal Register** on February 26, 1987 (52 FR 5737). The assessment rate is derived by dividing anticipated expenses by expected shipments of the commodity (e.g. pounds, tons, boxes, cartons, etc.). That rate is applied to actual shipments to produce income sufficient to pay the committee's expenses. The assessment rate increase in this instance is necessary because of a significant crop shortfall due to the adverse growing conditions experienced during the 1986–87 growing season.

When the South Texas Onion Committee met October 29, 1986, to prepare and submit its 1986–87 fiscal period budget and assessment rate, it expected 6,768,750 containers of onions to be shipped this season. On this basis it recommended, and the Department established, the current four cent per 50-pound container or equivalent quantity assessment. This would have resulted in assessment income of $270,750 and along with reserve funds would have provided adequate funds for the committee's authorized expenditures.

However, due to a cold spell in late March and other adverse weather during the 1986–87 growing season, the assessable tonnage will not be as great as initially expected. Most of the industry expects no more than 4,000,000 containers to be shipped. The deficit in income resulting from the crop shortfall is too large to be made up with the committee's operating reserve. The proposed five and one half cent per container rate of assessment would generate $220,000. This amount, along with the committee's reserve funds, will provide adequate funds to meet the committee's authorized expenses.

It is the Department's view that the final rule is needed for the committee to generate enough funds to meet its authorized 1986–87 fiscal period expenses, and to cover expenses next season until assessment income is sufficient to cover authorized 1987–88 fiscal year expenses. The fiscal period begins August 1 and ends July 31. However, onion shipments and the collection of assessments usually do not start until mid-March. Hence, the committee needs funds from previous season assessments to cover the first seven months of expenses during a fiscal period.

The commenter opposed to this action felt that the assessment rate increase was inappropriate and suggested that the committee should cut back on its expenses, and make do with the income generated from the short crop and the established four cent per 50-pounds of onions assessment rate and its operating reserve. However, to accomplish what the commenter suggested, the committee would have to reduce expenses by approximately $110,750, based on the anticipated shortfall in the number of containers expected to be shipped. In addition, the committee might not have enough money in reserve to cover the first seven months of expenses during the 1987–88 fiscal period, since onion shipments and the collection of assessments usually do not start until mid-March. The committee has cut back on authorized expenses, but the deficit in income resulting from the crop shortfall is still too large to be made up without an assessment rate increase.

In view of this, the Department believes that the recommended assessment rate increase is appropriate. Hence, the comment is denied.

While this action will impose some additional costs on handlers to make up for the crop shortfall and income deficit, the costs will be in the form of uniform assessments on all handlers which will not impose a significant economic impact on the small entities involved.

After consideration of all relevant information, including the proposal set forth in the notice and the comment received thereon, it is hereby found that the 1986–87 fiscal period assessment rate increase, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the marketing order for South Texas onions requires an increase in the rate of assessment for a fiscal period to be applicable from the beginning of that period to all onions which were regulated under this part and which were handled by the first handler thereof during such fiscal period. The 1986–87 fiscal period began August 1, 1986.

List of Subjects in 7 CFR Part 959

Marketing agreements and orders, Onions, Texas.

PART 959—[AMENDED]

For the reasons set forth in the preamble, Part 959 is amended as follows:

1. The authority citation for 7 CFR Part 959 continues to read as follows:

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

§ 959.227 [Amended]

2. Section 959.227 is amended by changing "$0.04" to "$0.055" (this section prescribes the annual assessment rate and will not be published in the Code of Federal Regulations).

Dated: June 23, 1987.

Ronald L. Cioffi,

Acting Deputy Director, Fruit and Vegetable Division Agricultural Marketing Service.

[FR Doc. 87–14762 Filed 6–29–87; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Parts 1930, 1944 and 1965

Revision of Procedures Regarding Prepayment of Multifamily Housing Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) revises its rural rental housing (RRH) and labor housing (LH) regulations. The action is being taken to alleviate the problems caused by the displacement of tenants from projects after the FmHA loans are prepaid. In addition, servicing actions which subject borrowers to prepayment restrictions are being enumerated and more completely defined. These changes will provide tenants with sufficient time to make relocation plans when a project owner prepays.

EFFECTIVE DATE: June 30, 1987.

FOR FURTHER INFORMATION CONTACT: Arlene Halfon, Senior Loan Specialist, Multiple Housing Servicing and Property Management Division, FmHA, Room 5329, South Agriculture Building, Washington, DC 20250, telephone (202) 447–3187.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291 and has been determined to be "nonmajor". It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions or significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, *Environmental Program*. It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Intergovernmental Review

This program/activity is listed in the Catalog of Federal Domestic Assistance under Nos. 10.427, Rural Rental Assistance Payments (Rental Assistance); 10.415, Rural Rental Housing Loans; 10.405, Farm Labor Housing Loans and Grants. For the reasons set forth in the Final Rule related Notice(s) to 7 CFR Part 3015, Subpart V, this program/activity is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), Mr. Vance Clark, Administrator of FmHA, has determined that this action will not have a significant economic impact on a substantial number of small entities because only a few hundred borrowers will likely attempt to prepay annually.

GENERAL INFORMATION:

Background and Statutory Authority

The Housing and Community Development Amendments to the Housing Act of 1949, signed into law in 1979, and the Housing and Community Development Act of 1980, interpreted in § 1965.90 of Subpart B of Part 1965 of this chapter allow that FmHA section 514 and Section 515 Multi-family Housing borrowers, who received loans prior to December 21, 1979, and who have not subsequently become subject to restrictions due to specified servicing actions, may prepay their loans and remove their housing from the low- and moderate-income market at will. Those receiving loans after December 21, 1979, will be able to do so after their restrictive-use requirements expire in either 15 or 20 years. When projects are removed from this market, low- and moderate-income families and senior citizens may have their rents raised well beyond their means, and tenants may be displaced from the housing with 30 days notice. Fifty-one percent of FmHA projects and 44% of FmHA units nationwide are eligible to prepay. To keep the problem from growing severe before remedial action could be taken, Congress, in Pub. L. 99–500, imposed a moratorium on prepayments beginning October 18, 1986, and scheduled to end June 30, 1987.

This regulation is being issued to mitigate the problems which prepayment creates for displaced tenants. Due to the emergency nature of this regulation and, in accordance with section 534(c) of the Housing Act of 1949, as amended, there will be no waiting period between the date this final rule is published and the effective date of the regulation.

Due to the emergency situation which led to publication of this regulation, no waiver to the 180–day notification period from the effective date of this regulation can be granted unless all protections to tenants and reporting requirements covered by this regulation can be met.

The major changes and additions in this rule are as follows:

1. The impact of tenant displacement will be partially alleviated by:

a. Transferring rental assistance (RA) to FmHA-financed projects to which displaced tenants receiving RA are moving, and assigning these displaced tenants the transferred RA for their use (paragraph XV B 3 of Exhibit E of Subpart C of Part 1930, and § 1965.90 (d)(1)(viii) of Subpart B of Part 1965).

b. Extending to six months the period in which borrowers must notify FmHA, and that FmHA must notify tenants and other interested agencies of a pending prepayment (§ 1965.90 (a)(2)(i) and 1965.90 (d)(1) and (d)(2) of Subpart B of Part 1965).

c. Requiring that all leases in FmHA RRH projects be effective for a one-year period, (with provision for cancellation for good cause), with renewal after notification of intent to prepay allowed for a minimum term ending at the time of prepayment, and that no rent increases due to prepayment may take place prior to the expiration of the lease (paragraphs VIII A and VIII C of Exhibit B of Subpart C of Part 1930, and § 1965.90 (d)(1)(iii) of Subpart B of Part 1965).

d. Extending the period of time to six months prior to prepayment that tenants can apply for and use their letter of priority entitlement for placement at the top of the waiting list of other FmHA-financed projects regardless of location (§ 1965.90 (d)(1)(iv) and (d)(1)(v) of Subpart B of Part 1965).

2. Identifying more clearly the servicing actions which subject borrowers to restrictive-use provisions (reamortizations and transfers and assumptions on same or new terms to eligible borrowers) (§ 1965.90 (b)(1) of Subpart B of Part 1965) and instructions for insertion of the provisions into the loan documents provided (§§ 1965.65 (c)(1) and (f)(8) and 1965.70 (a) and (d)(8) of Subpart B of Part 1965). The term "restrictive-use provisions" has replaced "prepayment restrictions" wherever relevant throughout all procedures.

3. Enforcement of restrictive-use provisions will be strengthened by:

a. Adding the statement that tenants have a right to enforce the restrictive-use provisions, along with guidelines for measuring compliance (§ 1965.90 (b)(2) of Subpart B of Part 1965).

b. Providing a 30–day tenant comment period for prepayment on projects approved after December 21, 1979, those requesting prepayment in less than 180 days, and those appealing denials of prepayment (§ 1965.90 (d)(1)(xii) of Subpart B of Part 1965).

c. Providing methods for dealing with violations of restrictive-use clauses (§ 1965.90 (d)(6) of Subpart B of Part 1965).

4. The time period necessary for FmHA to approve prepayments is being extended to give FmHA personnel the time necessary to:

a. Determine the potential impact of prepayment on tenants;

b. Determine whether prepayment can be accepted;

c. Notify tenants of the pending prepayments;

d. Evaluate comments;

e. Issue the letters of priority entitlement; and

f. prepare the prepayment report (§ 1965.90 (a)(2)(i) of Subpart B of Part 1965).

5. Clarify that accelerations of accounts, foreclosure sales and bankruptcies do not release projects from restrictive-use provisions (§ 1965.90 (d)(7) and (d)(8) of Subpart B of Part 1965).

Discussion of Comments

For the same reason that the final rule is effective immediately, upon publication, the proposed rule published in the **Federal Register** (51 FR 8606) on March 19, 1987, allowed a 30–day comment period due to the emergency nature of the problem to be resolved. Twenty-two comments were received. Three of these were from FmHA field employees. Nine were from tenant advocacy groups, which included National and local organizations as well as local chapters of Legal Services, a Farmworker organization, and an interested individual who did not state his affiliation. No individual tenant responded. Four State Agencies, representing two States, responded with comments strongly reflecting those of the tenant organizations. Six comments were received from an individual borrower, national borrower organizations, investment counselors and a management firm. One late comment, from a management firm, was not received until after the rewrite of the regulation was well underway. These late comments were not specifically considered, but a brief review indicated that all had been submitted by others.

Most of the commentors were positive toward the fact that something was being proposed to alleviate the tenant displacement problem. Seven expressed this opinion quite strongly. Some sent descriptions of hardship suffered by displaced tenants after prepayment of FmHA loans. All, however, had additional comments and suggestions for clarifying the proposed regulation or changing it to be, as they perceived, more equitable. Many more changes were recommended by the tenant advocacy groups than by the borrower representatives.

Two commentors felt that the summary statement in the **Federal Register** was inaccurate in that it stated that the displacement of tenants after prepayment was unexpected. They pointed out that displacement had to be expected. The summary statement is being revised to adopt this recommendation.

The statement describing major changes in the regulations is being revised to alleviate confusion which exists regarding priority for rental assistance by displaced tenants, the length of time they are being given to apply for and use letters of priority to other projects, where these letters of priority may be used, and which servicing actions subject borrowers to restrictive-use provisions. While some changes were made in the regulation itself, the regulation in many cases already contained the suggested provisions, and it was felt that the confusion had come about because the **Federal Register** summary statement was not as clear as it should have been.

Changes have also been made to the summary statement to accommodate additions noted below.

A summary of the comments received and clarifications and changes to the proposed regulation which are being incorporated into the final rule follow:

Paragraph VI C 3 a of Exhibit B of Subpart C of Part 1930

Suggestions were made to indicate that displacees due to prepayment always get priority consideration. This paragraph refers to displacees due to other circumstances as well as to prepayment. It is specified elsewhere that displacees due to prepayment must get priority placement, and so for those displacees, this paragraph is only relevant in that it allows for a separate waiting list. "May" is retained to cover both types of situations.

Paragraph VIII A 1–4, VIII C 20 and 21 of Exhibit B of Subpart C of Part 1930, and § 1965.90(d)(1)(iii) of Subpart B of Part 1965

The greatest number of comments and recommended changes had to do with required lease provisions.

While all tenant advocates approved of the one-year lease requirement, many felt there should be provision for terminating the lease for "good cause;" (e.g. transfer, death of spouse, severe illness, unemployment, or receipt of a notice of the borrower's intent to prepay). Some felt that being able to terminate leases by mutual agreement could lead to tenant exploitation by landlords offering relatively poor incentives to move.

Borrower groups and two FmHA employees, on the other hand, felt that one-year leases were unmanageable and would not allow the necessary flexibility that both landlords and tenants needed. They also stated that it would conflict with laws in some States, would make it too difficult to evict a tenant, and would make prepayment even more difficult, since there would be leases remaining in effect after the prepayment. It was felt that local custom should be followed in this regard and it was also suggested that the lease could be guaranteed renewable for a period of time after notice of intent to prepay. One commentor felt that tenants would initiate recertifications in the middle of lease years if they were afraid there may be a prepayment.

It was also suggested that the one-year lease provision should be implemented immediately upon the regulation taking effect, that one-year renewals be required up until the date of prepayment, that leases in labor housing projects should be for the duration of the season, and that landlords be required to accept Section 8 or other subsidy until the lease term ends.

The argument that one-year leases are not manageable is disproven by the States in which they are already used. With proper "good cause" cancellation provisions annual leases should not be any more restrictive than current one-month leases where the landlord is required to renew except for "good cause". Eviction procedures would essentially remain the same. This provision would also serve borrower interests in that existing projects could not suddenly have large unexpected vacancies. The tenant and landlord could still agree to terms for release from the lease and these kinds of provisions should meet the requirements of most State laws. The suggestion that

local custom prevail offered no alternative method for providing protection to tenants. In addition, a one-year lease provision will allow for a more gradual transition of displaced tenants into the community.

It was decided not to implement the one-year lease provision immediately when this regulation takes effect because it would prove too disruptive. The borrowers are permitted to wait until the next tenant recertification. The six-month notification period will be in effect and there would already have been a lengthy moratorium on prepayments at that time. All tenants should have received ample notice of pending prepayments. One year after the regulation is in effect, this issue will no longer be relevant.

Renewing leases for a one-year period up until the actual date of prepayment would mean that some leases would be extended for 1½ years beyond the prepayment notification date. It was felt this was too great a restriction to place on those not subject to restrictive-use provisions.

The Agency could not implement a different lease policy after notification of intent to prepay (e.g., extend all leases at that time) so this alternative was not considered to be a satisfactory alternative. The possibility of tenants initiating recertification should not be a concern, since there is no requirement that the lease year correspond to the certification year; this option was merely made available to borrowers to use at their discretion. In addition, there are only specific situations which require recertification; certifications are not done at the tenant's option.

It was felt that implementing a seasonal lease for labor housing was not feasible for many of the migrant farm laborers.

Specifying that landlords must accept Section 8 or other non-FmHA subsidy for the duration of the lease was felt to be unnecessary, since the tenant rent contribution remains in effect, with or without subsidy, until the expiration of the lease term; there would therefore be no reason for a landlord to refuse to accept subsidy. Indeed, they would be required to retain this subsidy if the tenant had access to it, and wished to retain it and pay the higher rent after expiration of the lease.

The regulation will contain the provision that all leases for tenants occupying units for which they are eligible will be for a one-year period and will contain the provision that tenants can cancel for "good cause" with 30 days notice. Good cause will cover whatever is mandatory or customary in the community, such as transfers for employment, unemployment, death in the family, and illness. It must also cover notification by the borrower of intent to prepay. All other provisions of the proposed regulation regarding leases will remain as proposed with some minor clarifications.

Paragraph VIII A of Exhibit B of Subpart C of Part 1930 has been consolidated so that the rewritten clauses are now covered in subsections 1–3.

Exhibit E of Subpart C of Part 1930 and § 1965.90 (d)(1)(iii) through (d)(1)(vii) and (d)(4) of Subpart B of Part 1965

All groups representing tenants commented on these sections. Most of the comments showed that the regulation as proposed required clarification, rather than revision. We believe this has been done. In addition, changes were made in the summary statement at the beginning of this **Federal Register** entry to help alleviate the confusion. To accommodate other changes, in Subpart B of Part 1965, paragraph (d)(i)(vii) is now (d)(1)(viii) and paragraph (d)(4) has been changed to (d)(5).

These regulations as proposed provided:

(1) All tenants, upon receiving notification of intent by the borrower to prepay, would have a minimum of six months (longer if their lease hadn't expired or prepayment is extended beyond the six-month period) to apply for and use a letter of priority entitlement to have their name placed on the top of any waiting list for any unit, in any FmHA financed project, in any location for which they are eligible. (They would have a minimum of 120 days to apply for these letters, which they need not do until they have found a project with suitable units, and another 60 days to actually be placed on the list.) Their name would remain in top priority on this waiting list until it was reached, no matter how long it took.

(2) Rental assistance cannot legally be assigned to a tenant, so tenants cannot take rental assistance with them to another FmHA project. In lieu of this, if a tenant in a prepaid project were receiving rental assistance and was on a waiting list for a unit in a different project in which they were eligible for both occupancy and RA, and the borrower at the receiving project was willing to administer the RA, then the RA would be put in suspense until the tenant's name was reached on the waiting list for that eligible unit. The RA would be assigned to the receiving project when the tenant occupied the unit. The displaced tenant would be assigned first priority to receive the unit of RA; in other words, not have to compete for RA. To avoid a situation where the unit is held in suspense indefinitely, only tenants who move from the prepaid project directly to the new project would have the RA held for them.

Based on comments received, the following additional changes are being incorporated: (1) RA will be held in suspense for tenants on waiting lists for FmHA units even if they have to occupy non-FmHA or ineligible housing while waiting for their name to be reached. (2) In some situations, tenants can receive RA in units for which they are not occupancy eligible, provided these units are in a project in which the tenants' names are on a waiting list for units for which they are eligible. (3) Any project eligible to receive and administer RA will be required to accept it for the displaced tenants. (4) FmHA will advise tenants of other Agencies in the community which may be able to help them locate suitable housing as well as of other FmHA-financed units in the market area.

We also added that tenants displaced by liquidation would receive letters of priority and transfer of RA benefits.

We did not adopt comments that the RA be held indefinitely, that the length of time to apply for and use the letter of priority be extended, that tenants not be allowed to have the RA transferred to a project which was eligible to prepay, that priority for recaptured RA go to projects which are not eligible to prepay, and that FmHA be responsible for finding alternative housing for displaced tenants. All of these suggestions would have placed an undue burden on the program for a variety of different reasons.

There was no way to reconcile our need to alleviate displacement problems with the needs of those tenants already on waiting lists, whose position would be superceded by those with letters of priority entitlement. It was also suggested that HUD Section 8 vouchers be given to displaced tenants, but FmHA cannot regulate the use of HUD vouchers.

The method for calculating funds for RA to be transferred is deleted because this function is performed automatically by computer.

Section 1944.164 of Subpart D of Part 1944

Only one comment was received and it was favorable.

Section 1944.176 of Subpart D of Part 1944

Language was added to this section dealing with labor housing loans to make it consistent with § 1944.236(b)(4) which deals with RRH loans. Many tenant advocacy groups felt that our interpretation of the law was incorrect and that the language should be deleted from § 1944.236 of Subpart E of Part 1944 rather than added to § 1944.176 of Subpart D of Part 1944. The date of contract is the date that the loan was approved, rather than the date the loan was closed. Therefore, we will continue to interpret the provision in the law that "any loan made or insured . . . pursuant to a contract entered into after the date of enactment of this subsection" refers to the date the loan was approved, rather than the date it was closed.

Section 1944.237 of Subpart E of Part 1944, and §§ 1965.65, 1965.70 and 1965.90(b)(1) of Subpart B of Part 1965

Where comments were received, tenant groups generally supported these changes while borrower groups did not. The tenant groups supported the codification in regulation that all subsequent loans, transfers to eligible borrowers and reamortizations would subject borrowers to new restrictive-use provisions commencing from the date these actions were taken.

It should be noted that although a borrower is subject to restrictive-use provisions, based on date of loan approval, the restrictive-use period begins when the loan is actually closed or transferred, or the servicing action occurs.

Borrower groups wanted these actions to subject borrowers to the restrictions from the date of the initial loan. They felt that this regulation would encourage prepayment or sale out of the program, since borrowers or applicants for transfer would not wish to be subject to new 20-year restrictive-use provisions. Since these actions involve new contracts, we could not change the interpretation from those of the proposed regulations and still comply with section 502(c)(1) of the Housing Act. There was some rearrangement of wording to clarify that all reamortizations subject the project to restrictive-use provisions.

Some suggestions regarding these sections were not followed:

(1) Specifying that a subsequent loan would make the entire project subject to restrictive-use provisions. It is not necessary to specify this, since any loan made after December 21, 1979, subjects the project to restrictive-use provisions. (2) Making transfers to ineligible borrowers subject to restrictive-use provisions. Transfers and assumptions are only made to ineligible borrowers when no alternative is available; generally because the housing is not suitable or does not meet other objectives of the program. Loans designated "Other Real Estate" are non-program loans and do not have the restrictions placed upon them since we may not want the project to be used for low-income individuals in many cases. However, if the project was already subject to restrictive-use provisions, these would remain in place, unless removed in accordance with other regulation. (3) Making other servicing actions, such as Special Servicing Marketing Rate Rents, actions which subject borrowers to restrictive-use provisions. We could not legally do this since these actions do not require new loan contracts.

Section 1965.90 of Subpart B of Part 1965

Paragraph (a)(1): Several commentors felt that we should state that borrowers "must" notify FmHA prior to making a final installment rather than saying they "should." This change is being made.

Paragraphs (a)(2)(i) and (d)(3): Few commentors did not approve of the required 180-day notification period. There was some concern from tenant groups about the possibility of an exception and they wanted the provision for one eliminated. There are sufficient safeguards provided elsewhere in the procedure (e.g., tenant comment period and verifications of information provided by the borrower) to protect against problems which may be caused by such an exception. In some cases, such as projects with total Section 8 subsidy which is to continue after prepayment, no displacement would occur and an exception would generally be justified. A borrower group felt the period of notification was too long since lenders would not issue commitments for a six-month period. They felt that only a 3-month notification period should be required. If all safeguards of a six-month notification were retained (e.g., no rent increases or tenant displacement occurring any sooner than with a 6-month notification period), an exception could be made to the requirement after all procedural safeguards were met, and if information given to the District Office to prepare the prepayment report was complete, well-documented, and accurate so the District Office could complete the report in a shorter period. To accommodate other changes, paragraph (d)(3) has been changed to (d)(4).

All tenants are protected by these regulations as of the date of publication. In addition, reporting requirements are in place as of this time. The 180-day notification period would take effect as of the effective date of this regulation unless an exception to the 180-day notification period can be granted in accordance with this regulation, specifically paragraph (d)(4) of § 1965.90, which guarantees that no tenant displacement will occur prior to 180 days.

Paragraphs (a)(2)(i) and (d)(2): Many commentors felt that FmHA should not be responsible for preparing the prepayment report. We felt that this was a necessary FmHA activity so that the Agency can control the accuracy of the report. Based on the comments, however, we will require that well-documented complete information necessary for completing the prepayment report be submitted along with the request to prepay. The District Office will then be responsible for verifying this information. If the information is inaccurate and/or incomplete, it could result in a denial or delay of prepayment. Borrowers should be aware that since tenants must receive the full 180-day notification, tenants will be notified as soon as the District Office is notified of intent to prepay. Therefore, if prepayment is delayed or denied, tenants will have already received this notice and so be allowed to cancel their leases with 30 days notice in accordance with lease provisions. To accommodate other changes, paragraph (d)(2) has been changed to (d)(3).

One commentor suggested that borrowers be required to submit relocation plans prior to being allowed to prepay. This requirement could not be made mandatory for those not subject to restrictive-use provisions. Those who are subject would be preparing sufficient documentation on their own to show that there would be no displacement of tenants.

Paragraphs (a)(2)(ii) and (d)(1)(viii): One commentor felt that we should specify that the borrower must accept HUD vouchers for tenants in prepaid projects. We did not specify this as the proposed regulations did provide that borrowers must continue to administer the housing in accordance with Fair Housing policies and tenants who wish to remain and pay the higher rent may do so if they choose. We did add, however, that the higher rent may be paid by the tenants themselves or with outside subsidy. Paragraph (d)(1)(viii) has been changed to (d)(1)(ix) to

accommodate sections which have been added.

Paragraph (a)(2)(iii): One commentor felt that all requirements for borrowers who were planning to prepay were not clear. We added this section to make it clear that all items listed as protections for tenants in the remainder of the subpart (e.g., notification to tenants and posting requirements) would be binding on the borrower.

Paragraph (a)(3): Several comments suggested that Environmental Impact Statements must be filed and/or tenant comment periods provided prior to a prepayment. Under existing legislation, we cannot halt a prepayment of a loan made prior to December 21, 1979, due to tenant impact. However, tenant comment periods will be available before approval of release of restrictive-use provisions for loans subject to them, for the appeal period when prepayment is denied due to tenant impact or lack of adequate information, or if an exception to the 180-day notification period is sought.

Paragraphs (b)(2) and (b)(3) and Exhibit A: Some comments suggested that applicants for occupancy, as well as tenants, should be allowed to seek legal enforcement of the restrictive-use provisions. It was also felt that stronger enforcement procedures were necessary by FmHA itself. These changes have not been adopted because they would not be manageable.

A State Agency suggested that non-profit borrowers be allowed to assume the mortgages and rental assistance prior to prepayment, and that prepayment be allowed only if such an assumption is made. In accordance with current FmHA regulations, non-profits, as well as profit-motivated borrowers may now assume a mortgage and continue with the rental assistance at the project if they meet eligibility criteria. We cannot mandate this approach, however, for projects not subject to restrictive-use provisions. This suggestion was therefore not followed.

It was suggested that FmHA continue to monitor compliance of prepaid projects subject to restrictive-use provisions. It was also suggested that objective guidelines be developed to determine compliance. It was felt FmHA should not continue to monitor the activities of prepaid projects. It was also felt that the Agency could not offer guidelines which would be valid for all locations at all times. We did, however, add that notice must be posted, and available to tenants until the expiration of the restrictive-use period, stating that these provisions are in effect and that both management practices and rent structure would comply with practices necessary to maintain the units for low- and moderate-income tenants.

Several commentors felt that borrowers should not be released from restrictive-use provisions if "Federal and other financial assistance. . . . will no longer be provided." This provision is written into the law and cannot be changed by regulation. Others, however, asked that we clarify the intent so that borrowers who choose not to take advantage of available subsidy (e.g. "opt-out" of Section 8 or lose subsidy for non-compliance) would not be released from the provisions. This clarification has been added.

Several commentors felt that borrowers who were released from restrictive-use provisions should have to provide evidence to show that the displacement projections provided prior to prepayment were achieved. This would provide us with information necessary for processing further waivers. Requiring a report from those who have no other legal obligations to the Agency would not be manageable, and would create an undue burden on the public. The tenant comment period should help the District Office to make a more-informed decision regarding release of restrictive-use clauses.

Paragraph (b)(4): Few comments were received to this Section. An FmHA employee stated that the distinction was not clear between prepayment and restrictive-use provisions. The others felt that there should be no guidelines for accepting prepayment other than what is required by law.

Clarifications have been made to accommodate the first comment and to clarify the purposes for keeping § 1965.90 (b)(4). First, this section offers guidance to the District Office on how to determine if the provision of § 1965.90 (b)(3)(i) has been met. Allowing prepayment when the housing is clearly not needed is in the government's best interest. We do not want to maintain housing within the program if it is not needed for low- and moderate-income tenants. Units would either be left vacant or remain within the program, serving ineligible tenants. We must have a way to eliminate such housing from the program.

The distinction between "restrictive-use" and "prepayment" was made in all other sections where necessary.

Paragraph (c): No comments were received. A redundant statement was corrected and procedure for release of insurance referred to another section.

Paragraph (d): The introduction to this section was clarified to emphasize which actions need to be taken immediately upon notification of intent to prepay and which can take place over various time-frames.

Paragraph (d)(1) (i) and (ii): There were many comments received from tenant advocacy groups and State Agencies concerning these sections. These comments were: Tenants must receive the full 180-day notice prior to prepayment; borrowers should have to prepare the prepayment report; local authorities should be notified of pending prepayments; and tenants should be advised of non-FmHA housing available. In addition, various suggestions were made concerning leases, notification periods, tenant comment, HUD voucher and relocation.

"Immediately" has been moved to the tenant notification provision; tenants *must* be given the full 180-day notice prior to prepayment unless a waiver is justified. This means that tenants will be notified as soon as the borrower notifies FmHA of intent to prepay and before FmHA has determined that the prepayment can be accepted. The borrower should therefore be certain that all requirements are being met prior to giving FmHA the 180-day notification. Tenants will be notified of other housing assistance available in the area and other interested agencies will be notified of the pending prepayment so they can make appropriate arrangements. A tenant comment period is being required in those cases where restrictive-use provisions are in effect, those requesting less than 180-day notification, and those where full information has not been provided by the borrower to FmHA with the request. Additional subsections have been added to paragraph (d)(1), and the original paragraph (d)(2) has been moved to accommodate other changes. Therefore, section designations of these and following sections have been revised.

The other suggestions have not been adopted because they would impose too great a restriction on those not subject to restrictive-use provisions or could not be provided for within the FmHA program. The reasons for not adopting these suggestions are discussed in appropriate sections elsewhere in this **Federal Register.**

Paragraph (d)(1) (ix) through (xii) of § 1965.90 of Subpart B of Part 1965

Some tenant advocacy groups felt that tenants should be referred to advocacy groups for help when notified of a pending prepayment. FmHA did not feel this was a function the Agency should be responsible for. The advocacy groups can find alternative methods for learning of potential tenant displacements.

Paragraphs (d)(5) and (d)(6) of § 1965.90 of Subpart B of Part 1965 have been changed to (d)(6) and (d)(7) to accommodate other changes. Few comments were received on these sections. Tenant advocacy groups wanted the Agency to continue to monitor compliance with restrictive-use provisions after prepayment, and to be certain that borrowers cannot have restrictive-use clauses exempted during bankruptcy proceedings. FmHA cannot continue to monitor projects after prepayment, but some guidelines have been included to better define non-compliance. Bankruptcy proceedings would not alter the status of restrictive-use provisions, but this has been clarified in (d)(8). Also added is the requirement that the restrictive-use provisions be added to the deed for projects sold at foreclosure sale.

Exhibit B of Subpart B of Part 1965

Changes were made in this Guide Letter to conform with the revised requirements for the letter as specified in § 1965.90(d)(1) above.

Exhibit C of Subpart B of Part 1965

Based on comments, we have added to the prepayment report: date of initial loan and of all servicing actions which will subject the borrower to restrictions; the earliest date on which borrower can "opt-out" of Section 8; whether restrictive-use provisions will remain in effect after prepayment; and, if an exception was granted, the basis for the exception.

Some of the other comments received were: (1) Develop incentives to encourage borrowers to remain within the program rather than prepaying. (2) Extend the prepayment moratorium. (3) Adopt regulations to make additional units affordable rather than allowing tenant displacement. (4) Not accepting any prepayments. (5) Encourage prepayment because it provides additional housing in rural areas which in turn helps the local economies, with the lost units for low- and moderate-income families being replaced with additional funding. (6) Require borrowers to pay moving costs for displaced tenants.

These suggestions do not fall within the parameters of the current regulation, are not legally possible, and/or do not meet the goals of the Rural Housing Program.

List of Subjects

7 CFR Part 1930

Accounting; Administrative practice and procedure; Grant programs—Housing and community development; Loan programs—Housing and community development; Low and moderate income housing—Rental; Reporting Requirement.

7 CFR Part 1944

Adminstrative practice and procedure; Aged; Handicapped; Loan programs—Housing and community development; Low and moderate income housing—Rental; Mobile homes; Mortgages; Nonprofit organizations; Rent subsidies; Rural housing; Farm labor housing; Grant Programs—Housing and community development; Migrant labor; Public housing.

7 CFR Part 1965

Administrative practice and procedure; Low and moderate income housing—Rental; Mortgages.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1930—GENERAL

1. The authority citation for Part 1930 continues to read as follows:

Authority: 42 U.S.C. 1480, 7 CFR. 2.23, 7 CFR 2.70.

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

2. In Exhibit B to Subpart C, paragraph VI C 3(e) is revised; paragraphs VIII A 3 through VIII A 5 are redesignated as paragraphs VIII A 4 through VIII A 6; paragraphs VIII A 1 and VIII A 2 are revised; new paragraph VIII A 3 is added; paragraph VIII C 20 is redesignated as VIII C 22 and new paragraphs 20 and 21 are added to read as follows:

Exhibit B—Multiple Housing Management Handbook

* * * * *

VI * * *
C * * *
3 * * *

(e) Displacees, such as victims of natural disasters, eminent domain, and holders of letters of priority entitlement to whom priority may be given.

* * * * *

VIII * * *
A * * *

1. All leases will be in writing. Leases for units for which tenants are eligible, must cover a period of one year, except that leases for LH may be for shorter periods where occupancy is typically seasonal. Leases for all tenants signed after notification of intent to prepay, but prior to prepayment, may be for a term which ends on the date of prepayment. Leases for tenants who entered a project with a Letter of Priority Entitlement and who are temporarily occupying a unit for which they are not occupancy eligible, will have a clause inserted to deal with their obligation to move when an eligible unit becomes available. For leases in effect on the effective date of this revision, the one-year provision need not be put into effect until the next regularly scheduled tenant recertification is performed.

2. Leases should contain an appropriate escalation clause permitting changes in basic and/or market rents prior to the expiration of the lease. Rent changes would normally be necessary due to changing utility and other operating costs. Any changes must be approved by FmHA according to Exhibit C of this subpart. Leases must specify that no increases in tenant contribution to rent will take place due to prepayment of the FmHA loan during the term of the lease.

3. In areas where there is a concentration of non-English speaking individuals, leases and the established rules and regulations for the project written in both plain English and the non-English concentration language must be avaiable to the tenants. The tenant should have the opportunity to examine and execute either form of lease.

* * * * *

C * * *

20. That in the event of borrower prepayment of the FmHA loan, all leases will be handled in accordance with Paragraph VIII A of this exhibit, and all procedures specified in Section 1965.90 of Subpart B of Part 1965 of this chapter will be followed. No tenant contribution to rent may be increased by reason of prepayment for the term of the lease. An escalation clause for rent changes approved by FmHA for budgetary reasons will continue to be applicable.

21. That the lease may be terminated by the tenant with 30 days notice, prior to expiration of its term for "good cause" such as moving to another location for employment, loss of job, severe illness, death of spouse, or other reasons customary or mandatory in the community, or after notification by borrower of intent to prepay.

* * * * *

3. In Exhibit E to Subpart C, paragraph XV B 3 is revised to read as follows:

Exhibit E—Rental Assistance Program

* * * * *

XV * * *
B * * *

3. *Suspension and transfer after a liquidation or prepayment.* a. When a project with RA is liquidated through sale outside of the program or the loan is paid in full, the RA will be suspended and, subsequently, transferred to a different FmHA financed project in accordance with paragraph b below, if applicable, or if not, to another project at the State Director's discretion.

b. When a tenant receiving RA is, or will be, displaced from an FmHA project due to prepayment or liquidation, the RA the tenant was receiving will be transferred, or suspended and transferred, to any other FmHA project, regardless of location, to which the displaced tenant moves. That

tenant will be given first priority for a unit of RA, regardless of other priorities for the RA, if all the following conditions are met:

(1) The borrower is eligible to receive and administer RA.

(2) The tenant is eligible to occupy the project and to receive RA.

(3) The tenant had taken all the following steps to insure eligibility to receive priority for the unit of RA:

(i) Had been placed on at least one waiting list for an FmHA project with a Letter of Priority Entitlement.

(ii) Moved to the project as soon as the name was reached on a waiting list, even if it meant temporarily occupying an ineligible unit. The ineligible unit may not differ from one for which the tenant is eligible by more than one bedroom.

(iii) Moved to an eligible unit as soon as one was available.

(4) The RA has not previously been transferred for the tenant's current displacement.

c. Procedures for transferring RA and modifying RA agreements outlined in paragraphs V C and XV A 2 of this exhibit will be followed, but the receiving project borrower need not submit Form FmHA 1944-25 if the RA was received as a result of the occupancy of a displaced tenant.

* * * * *

PART 1944—HOUSING

4. The authority citation for Part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart D—Farm Labor Housing Loan Policies, Procedures and Authorizations

5. In § 1944.164, paragraph (p) is revised to read as follows:

§ 1944.164 Limitations and conditions.

* * * * *

(p) *Prepayment of LH loan.* The acceptance of a farm labor housing loan will make the borrower subject to the restrictive-use provisions contained in § 1944.176(c)(2) of this subpart.

* * * * *

6. In § 1944.176, paragraph (c)(3) is revised to read as follows:

§ 1944.176 Loan and/or grant closing.

* * * * *

(c) * * *

(3) Borrowers whose loans were approved prior to December 21, 1979, and closed on or after that date with the restrictive-use clause in the Mortgage, Loan Resolution, or Agreement should be notified that they have the option of having these instruments modified if they desire to do so. Any cost associated with the modification must, however, be borne by the borrowers. Any action in this regard should be approved by the Office of the General Counsel.

* * * * *

§ 1944.200 [Removed and reserved]

7. Section 1944.200 is removed and reserved.

Subpart E—Rural Rental Housing Loan Policies, Procedures and Authorizations

8. In § 1944.237, paragraph (e) is added to read as follows:

§ 1944.237 Subsequent RRH Loans.

* * * * *

(e) A subsequent loan will be subject to the restrictive-use provisions cited in § 1944.236(b)(4) of this subpart. The cited restrictive-use language for the subsequent loan, only, must be appended to the mortgage referencing all notes for a term beginning on the date of loan closing. The advice of the Office of the General Counsel should be sought in carrying out the provisions of this paragraph.

PART 1965—REAL PROPERTY

9. The authority citation for Part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Security Servicing For Multiple Housing Loans

10. In § 1965.65, paragraph (a)(1)(i) is revised; paragraph (a)(1)(iv) is removed; current paragraph (a)(1)(v) is redesignated as (a)(1)(iv); paragraphs (c)(1) through (c)(14) are redesignated as (c)(2) through (c)(15), a new (c)(1) is added, and the newly redesignated (c)(10)(i) is revised; paragraph (f)(6)(iv) is removed; paragraphs (f)(8) through (f)(13) are redesignated as (f)(9) through (f)(14) and a new paragraph (f)(8) is added to read as follows:

§ 1965.65 Transfer of real estate security and assumption of loans.

(a) * * *

(1) * * *

(i) Title to the security property is transferred, either when the project is sold or through a change in the borrowing legal entity, such that the new entity is considered a distinct and separate legal entity from the original borrower.

* * * * *

(c) * * *

(1) All transfers to eligible borrowers will subject the borrower to the restrictive-use provisions contained in § 1965.90 of this subpart.

* * * * *

(10) * * *

(i) The transferee contributes funds for repairs or authorized improvements beyond those which would have been paid from the transferor's equity as indicated in paragraph (c)(2) of this section, or

* * * * *

(f) * * *

(8) All RRH, RCH and LH loans including those approved prior to December 21, 1979, which are transferred to eligible applicants will become subject to the restrictive-use provisions of section 502 (c) of Title V, Housing Act of 1949, as amended. The restrictive-use language set forth in § 1965.90 (b)(2)(i) of this Subpart must be added, with the advice of OGC, to the assumption agreement and loan agreement/resolution. The restrictive-use period will begin on the date the transfer and assumption is closed.

* * * * *

11. In § 1965.70, paragraph (a) is amended to add a sentence to the end of the paragraph, and paragraph (d)(8) is revised to read as follows:

§ 1965.70 Reamortization

(a) * * * The reamortization of an account will make the borrower subject to the restrictive-use provisions contained in § 1965.90 of this subpart.

* * * * *

(d) * * *

(8) The prepayment restrictive-use provisions of section 502 (c) of Title V, Housing Act of 1949, as amended will apply. The appropriate restrictive-use language set forth in § 1965.90 (b)(2)(i) of this subpart for RRH, RCH or LH loans will be added, with the advice of OGC, to the loan agreement/resolution as a condition of FmHA approval of the action. The restrictive-use period will begin on the date the reamortization agreement is effective.

12. Section 1965.90 is revised to read as follows:

§ 1965.90 Payment in full.

(a) *General requirements.* Payment in full of an FmHA loan requires certain actions be taken by FmHA to evidence satisfaction of the account and to ease the transition of the tenants that may be affected by the conversion of a federally-financed project to a conventionally-financed one. The borrower's cooperation in these actions will assist in the orderly close-out of the account.

(1) *Final installments.* Borrowers must advise the District Office servicing the account of any final installment payment to facilitate the prompt

preparation of any required releases and closeout actions.

(2) *Prepayment.* Borrowers seeking to repay a multiple family housing loan must:

(i) At least 180 days in advance of the anticipated prepayment date (unless an exception is granted in accordance with paragraph (d)(4) of this section), submit a written request to prepay, and provide the District Office with complete and well-documented information necessary to complete the prepayment report as outlined in Exhibit C of this subpart.

(ii) Certify that they will continue to administer housing in accordance with Fair Housing policies.

(iii) Comply with all other requirements for prepaying borrowers contained in paragraphs (b)(2)(ii) and (d)(1) of this section.

(3) *Denial of prepayment request.* Borrowers will be denied a request to prepay if conditions stated in this Subpart as required for prepayment cannot be met, or if the information submitted with the prepayment request cannot be verified. If the borrower is denied a request to prepay, the District Director will provide a letter stating the reasons for the denial and the right to appeal the decision in accordance with Subpart B of Part 1900 of this Chapter. Upon the scheduling of a prepayment appeal hearing, tenants will be notified that they may submit comments concerning the proposed prepayment.

(b) *Special requirements*—(1) *Applicability of prepayment restrictive-use clause to loans approved prior to December 21, 1979.* Prepayment restrictive-use clauses are not normally required to be inserted in a deed of release, satisfaction of mortgage, or other conveyance instrument for multiple family housing loans approved prior to December 21, 1979, unless such loans were later made subject to these restrictions due to reamortization of the loan, or a transfer and assumption on same or new terms to eligible borrowers.

(2) *Applicability of prepayment restrictive-use clause to loans approved on or after December 21, 1979, or subsequently made subject to these restrictions.* For any multiple family housing loan approved on or after December 21, 1979, or which has been subsequently made subject to the prepayment restrictive-use provisions of section 502 of Title V of the Housing Act of 1949, as amended, prepayments may be accepted only if the title to the real property is made subject to the applicable restrictive-use clause set out at paragraph (b)(2)(i) or (b)(2)(ii) of this section or upon granting an exception in accordance with paragraph (b)(3) of this section. The restrictive-use period is: Fifteen years from the date on which the loan was closed or subsequently made subject to such provisions as a result of a servicing action as specified in this subpart, whichever is later, and which has not received interest credit, rental assistance, or Section 8 assistance under a Housing Assistance Payment contract; or twenty years from the date on which the loan was closed or subsequently made subject to such provisions as a result of a servicing action as specified in this subpart, whichever is later, in the case of any other loan.

(i) Project loans subject to this section as a result of a servicing action as set forth in paragraph (b)(1) of this section, with outstanding FmHA debt, will have the following prepayment restrictive-use clause inserted in the deed, conveyance instrument, loan agreement/resolution, assumption agreement, or reamortization agreement, as appropriate:

The borrower and any successors in interest agree to use the housing for the purpose of housing people eligible for occupancy as provided in section 514 or section 515 of Title V of the Housing Act of 1949 and FmHA regulations then extant during this _____ (15 years for unsubsidized and 20 years for subsidized loans) year period beginning _____ (the date the last loan on the project is closed or date the project was last made subject to the prepayment restrictive-use provisions as a result of servicing actions authorized under this subpart or other subparts). No person occupying the housing shall be required to vacate prior to the close of such _____ (15 years for unsubsidized and 20 years for subsidized loans) year period because of early prepayment. The borrower will be released during such period from these obligations only when the Government determines that there is no longer a need for such housing or that such other financial assistance provided to the residents of such housing will no longer be provided due to no fault, action or lack of action on the part of the borrower. A tenant may seek enforcement of this provision as well as the Government.

(ii) Project loans subject to this section, which are being prepaid, for which an exception to the restrictive-use clause cannot be granted, will have the following restrictive-use clause inserted in the deed, conveyance instrument, deed of release or satisfaction, as appropriate:

The owner and any successors in interest agree that the housing located on this property will be used only as authorized under section 514 or 515 of Title V of the Housing Act of 1949, as amended, and FmHA regulations then extant until _____ (insert date, 15 years for unsubsidized or 20 years for subsidized loans from the date the last loan on the project was closed or the project was last made subject to the prepayment restrictive-use provisions as a result of servicing actions authorized under this subpart or other subparts). A tenant may seek enforcement of this provision as well as the Government. No person occupying the housing shall be required to vacate during such period because of early prepayment. The owner also agrees to keep a notice posted at the project, for the remainder of the restrictive-use period, in a place available for tenant inspection, stating that the project is to be used in accordance with the Housing Act, and that management practices and rental rates will be consistent with those necessary to maintain the project for low- and moderate-income tenants for the remainder of the restrictive-use period.

Exhibit A of this Subpart sets forth the format for this notice.

(3) *Exception to prepayment restrictive-use clause.* An exception may be made to the restrictive-use clause for projects when the State Director determines that:

(i) There is no longer a need for such housing and related facilities to be so utilized, or

(ii) Federal or other financial assistance provided to the residents of such housing will no longer be provided due to no fault, action or lack of action on the part of the borrower.

(4) *Determination to release restrictive-use clause.* The determination to be made in paragraph (b)(3)(i) of this subpart, that there is no longer a need for such housing and related facilities to be so utilized, may be made when:

(i) There will be no change in the use of the housing and related facilities, and no likely increase in rental or other charges as a result of prepayment, which will cause the low- and moderate-income and elderly or handicapped tenants occupying the assisted housing at the time of the offer or request to reasonably expect to be unable to remain in occupancy for such period (15 or 20 years).

(ii) Affordable, decent, safe, sanitary and nonassisted alternative housing, or vacant assisted units for which there is no waiting list, is available to the tenants who are likely to be displaced as a result of the change or increase, and

(iii) In the case of housing or related facilities containing more than 10 dwelling units, that the changes likely to occur as a result of the prepayment will not have a substantial adverse effect on the supply of affordable, decent, safe, and sanitary housing available to low- and moderate-income and elderly or handicapped persons in the area in which the housing and related facilities are located.

(c) *Final payments and release of security.* The FmHA office charged with servicing the account must ensure payments in full and release of security are processed in the manner set out as Part 1866 of this chapter (FmHA Instruction 451.4), Subparts A and B of Part 1951, and Subpart A of Part 1962 of this chapter, as applicable, and appropriate program requirements and regulations. FmHA's interest in the property insurance will be released in accordance with § 1806.4 (a)(3) of Subpart A of Part 1806 of this chapter (paragraph IV A 3 of FmHA Instruction 426.1). Interest in other insurance and security will be released as appropriate. In all cases, references to County Supervisor shall be construed to mean District Director when applied to multiple family housing borrowers.

(d) *Special FmHA processing requirement.* In order to alleviate tenant displacement problems the District Director will take the following actions upon receiving notification of intent to prepay any RRH, RCH or LH loans.

(1) *Notification to tenants.* Immediately notify *each* tenant of the property by Certified Mail, Return Receipt Requested, and prepare notices for the borrower to post in the project. The District Director will not wait to determine if submitted information is accurate or if prepayment will be accepted or denied before sending the notification to tenants. The letter and notices will contain all the following information necessary to allow tenants to make informed choices (Exhibit B of this subpart is provided as a guide for this purpose):

(i) That the borrower plans to prepay the FmHA loan on a specified date and remove the housing from the FmHA program if all requirements imposed by FmHA are met.

(ii) The level at which rents at the project are expected to be placed subsequent to prepayment.

(iii) That each tenant will be affected by this change in rents at final lease expiration which will not occur prior to the prepayment.

(iv) That all displaced tenants and those experiencing rent overburden as defined in paragraph XIV A 4 of Exhibit B to Subpart C of Part 1930 of this chapter will be eligible for Letters of Entitlement that will place them at the top of all waiting lists for any FmHA project in any location for which they qualify.

(v) Instructions on how to apply for a Letter of Entitlement; that they have up to 60 days prior to the termination of their final lease (a minimum of 4 months from date of notification) to apply for these letters; that they will have up to 60 days after receipt of the letters to use them to be placed on FmHA waiting lists; and that the letters will serve to maintain their names on these waiting lists until they are reached, or purged in accordance with paragraph VI C 7 of Exhibit B to Subpart C of Part 1930 of this chapter.

(vi) The names, location, number of apartments, and unit sizes of other FmHA projects in the market area and whether they serve senior citizens or families.

(vii) The names and locations of other subsidized housing and Agencies which administer housing subsidies or aid in relocation anywhere in the market area.

(viii) That those tenants on rental assistance (RA), who move to another FmHA project at which they are eligible for RA as soon as their name is reached on a waiting list entered with a letter of priority entitlement, will receive RA in the new project if the project is eligible to receive and administer RA. This RA will remain at the receiving project if the tenant then moves to another FmHA project.

(ix) That those tenants choosing to stay in their units after prepayment and pay the higher rents, with or without subsidy, are entitled to do so, unless evicted for a cause unrelated to prepayment.

(x) That in accordance with Title V of the Housing Act of 1949, as amended, which states that certain FmHA loans may be subject to restrictive-use covenants if the loan is prepaid, a tenant, as well as the government, may seek enforcement of the provisions.

(xi) That all letters of priority will be issued in accordance with Title VI of the Civil Rights Act of 1964, as codified in Subpart E of Part 1901 of this chapter.

(xii) That a 30-day comment period is available to tenants to present evidence on a proposed exception when one is requested for release of restrictive-use provisions or the 180-day notification period.

(xiii) Any other information pertinent to the particular case.

(2) *Notification to other Agencies.* The FmHA State and District Offices will send a letter of notification to other local, State and Federal agencies which provide housing assistance to low- and moderate-income people to apprise them of the extent of any anticipated displacement.

(3) *Prepayment report.* Send a report, completed in the format of Exhibit C of this subpart, on each prepayment case to the State Director for indefinite retention. Any information for the report supplied by the borrower must be researched and verified by the District Office. The State Office will forward a copy of this report to the National Office in accordance with § 1951.264 of Subpart F of Part 1951 of this chapter.

(4) *Acknowledgment letter.* Send an acknowledgment letter to the borrower upon receipt of any prepayment request. The letter must inform the borrower that prepayment commitments should not be finalized until the Agency issues a letter of consent. Receipt of a prepayment request less than 180 days in advance of the projected prepayment date may not be processed unless:

(i) The tenants have been given a 30-day comment period,

(ii) FmHA verifies that *no* tenant displacement nor other adverse effects on tenants will occur, and

(iii) The District Office determines that there is time to prepare an accurate prepayment report in a shorter period of time.

(5) *Letters of priority entitlement.* Notification on how and where to apply for a letter of entitlement will be posted in the project by the borrower at the time of notification of intent to prepay. The notices will remain posted until 60 days prior to the expiration of any leases still in effect. Upon receipt of a request for a letter of priority entitlement, the District Director will prepare the letter which will include a statement that the affected tenant has 60 days to apply in writing with other FmHA RRH projects in any location. The letter of priority entitlement will enable those tenants to be placed at the top of the waiting list in the projects which have units for which they qualify. A list of FmHA RRH projects in the market area will be included as part of the letter of priority entitlement. Eligible tenants in LH projects will also be advised of other available LH projects in the area.

(6) *Processing of a potential violation of the prepayment restrictive-use clause.* Should the District Office staff receive a written complaint or become otherwise aware of a violation of the prepayment restrictive-use clause set out in paragraph (b)(2)(i) or (ii) of this section, by the owner of a previously FmHA-financed project, the following actions will be taken:

(i) The complainants will be informed that they may pursue enforcement through the courts.

(ii) The complaint will be subject to a preliminary evaluation by FmHA. The evaluation may warrant gathering added information. Should this preliminary evaluation indicate the complaint is not valid, the complainant will be so informed. Should the preliminary evaluation indicate the complaint is or may be valid, the complaint, facts

gathered, evaluation report and staff recommendation will be forwarded to the State Office for processing.

(iii) Should the State Office staff determine a violation of the provisions of paragraph (b)(2)(i) or (ii) of this section has likely occurred, the Administrator will be contacted. The OGC will be asked to provide advice in such cases. The complaint may then be referred to the Department of Justice or other appropriate Agency for enforcement. A copy of any complaint submitted to the Department of Justice or other appropriate Agency with a request to seek enforcement of the provisions of paragraph (b)(2)(i) or (ii) of this section should be forwarded to the Administrator.

(7) *Relationship with acceleration of accounts.* Any prepayment of an FmHA loan subject to the provisions of paragraph (b)(2) of this section, prepaid in response to an acceleration of the account, will have the restrictive language contained in paragraph (b)(2)(ii) of this section inserted, with the advice of OGC, in the deed of release or satisfaction, as appropriate. If a project is sold at foreclosure, the restrictive-use provisions will be added to the deed.

(8) *Relationship with bankruptcy.* A bankruptcy proceeding will have no effect on this contractual requirement for restrictive-use.

§ 1965.92 [Amended]

13. Section 1965.92 is amended in the third sentence by changing the reference "Exhibit B to this subpart (available in any FmHA office)" to read "Exhibit D to this subpart (available in any FmHA office)."

14. Exhibit A to Subpart B is redesignated as Exhibit B, new Exhibits A and C are added, and the newly designated Exhibit B is revised to read as follows:

Exhibit A—Exhibit for Borrower to Use as a Guide to Notify Tenants of Compliance with Title V of the Housing Act of 1949, As Amended

Notice to Tenants

This apartment complex was previously financed through the U.S. Department of Agriculture, Farmers Home Administration (FmHA). As a condition of paying the FmHA indebtedness, the owners agreed to operate the complex in accordance with section 514 or section 515 of Title V of the Housing Act of 1949, as amended, and FmHA regulations until _____ (insert expiration date of 15 year period for unsubsidized or 20 year period for subsidized loans). This requires that apartments be rented to qualified low- and moderate-income tenants and that management policies and rental rates at the project are consistent with such use.

If you have any reason to believe that the requirements of the Housing Act of 1949 or the regulations of the FmHA are being violated in the operation of this complex, you are advised to contact the FmHA office listed below or any other FmHA office listed in the telephone directory under U.S. Government.

_____

_____

_____

Exhibit B—Guide Letter to Notify Tenant of Pending Prepayment

Notice of Owners Intent to Prepay

To: Tenants of (Name of Project) _____

On or about (date) _____, the owners of (Name of Project) _____ plan to pay their FmHA loan in full, and remove the housing from the FmHA program. If FmHA can accept the payment, rental rates may no longer be subsidized by FmHA, and it is anticipated that rents may change to approximately _____ for a _____ unit and _____ for a _____ unit. You would not be affected by these increases until the date your final lease expires, the above date, or the date of prepayment, whichever occurs last.

You may apply for a letter of priority entitlement to be placed on the waiting list of any FmHA-financed project in the country for which you qualify. You will have up to 60 days prior to the date your final lease expires, the above date, or the date of prepayment, whichever occurs last, to apply for this letter and it will be valid for 60 days after issue. If you are currently receiving rental assistance (RA), you are eligible to receive RA at the project to which you are moving, and the project to which you are moving is eligible to administer RA, the RA will continue when you move to the new project. If you choose to remain in your present apartment and pay the higher rent, with or without outside subsidy, you may not be evicted without good cause.

Other FmHA projects in this area and the size of their units are:

Other agencies which may be able to offer you housing or help to find you other housing are:

(If applicable): This prepayment is being accepted before (_____) because the determination was made that:

(If applicable): All tenants currently in residence to this project have 30 days to present evidence contrary to the basis for this determination.

In accordance with Title V of the Housing Act of 1949, as amended, tenants as well as the government may seek enforcement of the provisions under which an FmHA Multi-family housing loan may be prepaid.

All equal opportunity provisions apply to the issuance of the letters of priority.

If you have any questions or wish to apply for a letter of priority, please write or call:

_____

_____

_____

_____

District Director

Exhibit C—Report on Prepayment

1. Name of borrower.
2. Name of project.
3. Case and project number.
4. Date of all loan approvals, transfers and reamortizations.
5. Type of borrower entity and plan of operation.
6. The number of units in the project.
7. The number of eligible tenants presently occupying units.
8. The estimated replacement cost per unit.
9. The estimate of the number of households that will be displaced as a result of prepayment.
10. The estimated relocation cost of the households being displaced.
11. An indication of the displaced households' ability to pay relocation costs.
12. The income range of the tenants presently in the project.
13. The number of elderly tenants in the project.
14. The present rents and rents projected after prepayment.
15. The number and type of Section 8 or RA units, and whether Section 8 will continue after prepayment
a. The earliest date borrower can "opt-out" of Section 8.
16. Any cause of displacement other than rent.
17. The availability of other vacant units in the area and their rental structure.
18. The District Office's recommendation on the final action.
19. Date of prepayment.
20. Whether restrictive-use provisions will remain in release of security documents and, if an exception was granted, the basis for this exception.

Dated: June 19, 1987.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 87-14760 Filed 6-30-87; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 6

[T.D. 87-77]

Air Commerce; Customs Regulations Amendments Relating to Entry and Clearance of Aircraft Arriving From or Departing for Cuba

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by substituting Miami International Airport for Ft. Lauderdale-Hollywood International Airport as the location at which aircraft and passengers departing the U.S. for, or entering the U.S. from, Cuba must clear Customs, unless otherwise authorized. This change will enhance Customs enforcement efforts and will reduce paperwork and costs for Customs and the public.

EFFECTIVE DATE: July 30, 1987.

FOR FURTHER INFORMATION CONTACT: Louis N. Razzino, Office of Inspectional Enforcement Liaison (202–566–2140).

SUPPLEMENTARY INFORMATION:

Background

Section 6.3a, Customs Regulations (19 CFR 6.3a), provides that unless otherwise authorized by the Regional Commissioner of Customs in Miami, Florida, the owner or person in command of any aircraft clearing for the U.S. for, or entering from, Cuba, shall clear or obtain permission to depart from, or enter at, the Ft. Lauderdale-Hollywood International Airport, Ft. Lauderdale, Florida. The owner or person in command, before arrival of the aircraft from Cuba, must furnish a notice of intended arrival to Customs not less than 15 minutes before crossing the U.S. coast or border. The notice, which shall be furnished through the Federal Aviation Administration flight notification procedures or directly to the Customs officer in charge at the Ft. Lauderdale-Hollywood International Airport, must include such information as the aircraft registration number, the name of the aircraft commander, and the number of U.S. citizen and alien passengers. No passengers arriving from Cuba by aircraft will be released by Customs, nor will the aircraft be cleared or permitted to depart, before the passenger is released by an officer of the Immigration and Naturalization Service or by a Customs officer acting on behalf of the Immigration and Naturalization Service.

Section 6.3a was enacted by publication of T.D. 80–264 in the **Federal Register** on November 3, 1980 (45 FR 72646). The regulations were necessitated by the political situation involving aliens attempting to reach the U.S. from Cuba, in which there was serious reason to believe that unsafe and unlawful means of transportation were being used. The procedures enacted by the new regulations were intended to prevent such transportation. Further, Customs enforcement efforts concerning the interdiction of illegal travelers and articles going to, or arriving from, Cuba, were enhanced by requiring the use of one airport for all flights to and from Cuba.

At the time § 6.3a was enacted, Ft. Lauderdale-Hollywood International Airport was the airport in South Florida best suited to meet Customs needs. Since that time, however, Customs staffing and other resources in Florida have changed to the extent that greater manpower and other resources exist in Miami. Also, review of the requests for authorization to land elsewhere than at Ft. Lauderdale reveals that most of the requests are to use Miami International Airport. This is apparently because most airlines willing to offer services to and from Cuba are based in Miami and their passengers, in most cases, are Cuban resident aliens or U.S. citizens of Cuban birth living in Miami. When an aircraft flies into or out of Ft. Lauderdale-Hollywood International Airport instead of Miami International Airport, it increases the cost for all involved parties.

On January 22, 1987, Customs published a notice in the **Federal Register** (52 FR 2418) soliciting comments regarding a proposal to amend § 6.3a, Customs Regulations, to substitute Miami International Airport for Ft. Lauderdale-Hollywood International Airport as the location at which the aircraft and passengers arriving from, and departing for, Cuba, regardless of intermediate stops, must enter and clear Customs.

It was noted that this would enhance Customs enforcement efforts concerning flights to and from Cuba, would reduce the paperwork burden on Customs of processing requests for authorization to land elsewhere than at Ft. Lauderdale, and would reduce the costs for Customs and the public. No comments were received in response to the notice.

After further review of the proposal, Customs has concluded that the proposal should be adopted. In order to conform this provision to those of § 6.14, Customs Regulations (19 CFR 6.14), which generally deals with private aircraft arriving from areas south of the U.S., the time period, as prescribed in the proposal, for the giving of the advance notice of arrival is being extended to 60 minutes and the phrase "regardless of intermediate stops", also contained in the proposal, is being deleted. Accordingly, § 6.3a, Customs Regulations, is being amended as proposed with the changes noted above.

Executive Order 12291

This amendment does not constitute a "major rule" as defined by E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

It is certified that the amendment will not have a significant impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Drafting Information

The principal author of this document was Arnold L. Sarasky, Regulations Control Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 6

Air carriers, Aircraft, Airports, Cuba, Customs duties and inspection, Freight and Imports.

Amendment of the Regulations

Part 6, Customs Regulations (19 CFR Part 6), is amended as set forth below.

PART 6—AIR COMMERCE REGULATIONS

1. The general authority citation of Part 6 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (Gen. Hdnote. 11), 1624, 49 U.S.C. 1474, 1509.

2. The introductory text of paragraph (a) and paragraphs (a)(1) and (a)(2) of § 6.3a are revised to read as follows:

§ 6.3a Entry and clearance; Cuba.

(a) Unless otherwise authorized by the Regional Commissioner of Customs, Miami, Florida, the owner or person in command of any aircraft clearing the U.S. for, or entering from, Cuba, shall:

(1) Clear or obtain permission to depart from, or enter at, the Miami International Airport, Miami, Florida;

(2) Before arrival from Cuba, furnish a notice of intended arrival to Customs, either by or at the request of the commander of the aircraft, not less than 60 minutes before crossing the U.S. coast or border. The notice shall be furnished through the Federal Aviation Administration flight notification procedures or directly to the Customs officer in charge at the Miami International Airport, Miami, Florida. The notice shall include the following:

(i) Aircraft registration number;

(ii) Name of aircraft commander;

(iii) Number of U.S. citizen passengers;

(iv) Number of alien passengers;

(v) Place of last foreign departure;

(vi) Estimated time and location of crossing U.S. coast or border, and

(vii) Estimate time of arrival.

* * * * *

William von Raab,

Commissioner of Customs.

Approved: June 3, 1987.

Francis A. Keating, II,

Assistant Secretary of the Treasury.

[FR Doc. 87–14751 Filed 6–29–87; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 556 and 558

Animal Drugs, Feeds, and Related Products; Mono-Alkyl (C_8-C_{18}) Trimethyl Ammonium Oxytetracycline

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer, Inc., providing for safe and effective use of mono-alkyl (C_8-C_{18}) trimethyl ammonium oxytetracycline in lobster feed for control of gaffkemia. The regulations are also amended to establish a tolerance for negligible drug residues in edible lobster tissue.

EFFECTIVE DATE: June 30, 1987.

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

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed supplemental NADA 38–439 providing for administration of mono-alkyl (C_8-C_{18}) trimethyl ammonium oxytetracycline in feed to lobsters for control of gaffkemia (red tail) caused by *Aerococcus viridans*. The supplemental NADA incorporates data and information in Public Master File 5028, for which a notice of availability of certain safety, effectiveness, and environmental data for use in support of NADA's concerning the aforementioned use was published in the **Federal Register** of January 13, 1986 (51 FR 1441). The drug is currently approved for use in feed intended for Pacific salmon, salmonids, and catfish.

The supplemental NADA is approved and 21 CFR 556.500(d) and 558.450(d)(1) are amended to reflect the approval and to establish a tolerance for negligible residues of oxytetracycline in edible lobster tissue. The basis for approval is discussed in the freedom of information summary.

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

The agency has carefully considered the potential environmental effects of this action and 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. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

List of Subjects

21 CFR Part 556

Animal drugs, Foods.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 556 and 558 are amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for 21 CFR Part 556 continues to read as follows:

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

2. Section 556.500 is amended by revising paragraph (d) to read as follows:

§ 556.500 Oxytetracycline.

* * * * *

(d) A tolerance of 0.1 part per million is established for negligible residues of oxytetracycline in uncooked edible tissues of salmonids, catfish, and lobsters.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR Part 558 continues to read as follows:

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

4. Section 558.450 is amended in paragraph (d)(1) in Table 3 by adding new item (iii) to read as follows:

§ 558.450 Oxytetracycline.

* * * * *

(d) * * *

(1) * * *

TABLE 3.—IN FISH FEED

Oxytetracycline combination	Indications for use	Limitations	Sponsor
* * *	* * *	* * *	
(iii) 1 g per lb of medicated feed.....	Lobsters; control of gaffkemia caused by *Aerococcus viridans*.	Administer as sole ration for 5 consecutive days in feed containing monoalkyl (C_8—C_{18}) trimethyl ammonium oxytetracycline; withdraw medicated feed 30 days before harvesting lobsters.	000069

* * * * *

Dated: June 19, 1987.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 87–14739 Filed 6–29–87; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6651

[AK–932–07–4220–10; A–025744]

Partial Revocation of Public Land Order No. 1231 for Selection of Lands by the State of Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order (PLO) insofar as it affects 960 acres of public land withdrawn for the Department of the Interior in connection with the construction, operation and maintenance of the Eklutna Project. This action will also classify the land as suitable for selection by the State of Alaska, if the land is otherwise available. The land will remain closed to all other forms of appropriation and disposition under the public land laws, including the mining and mineral leasing laws, pursuant to PLO 5184, as amended.

EFFECTIVE DATE: June 30, 1987.

FOR FURTHER INFORMATION CONTACT: Sandra Thomas, BLM Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by section 204

of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and by section 17(d)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 708 and 709; 43 U.S.C. 1616(d)(1), it is ordered as follows:

1. Public Land Order No. 1231, signed September 28, 1955, which withdrew land for the Department of the Interior in connection with the construction, operation, and maintenance of the Eklutna Project is hereby revoked as to the following described land:

Seward Meridian

T. 16 N., R. 2 E.,
Sec. 29, NE¼, W½W½, W½W½E½SW¼, E½W½W½SE¼, E½W½SE¼, E½SE¼;
Sec. 32, E½NE¼, E½W½NE¼, W½NW¼, SW¼, E½SE¼.

The area described contains approximately 960 acres.

2. Subject to valid existing rights, the land described above is hereby classified as suitable for and opened to selection by the State of Alaska under either the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, et seq.; 48 U.S.C. prec. 21, or section 906(b) of the Alaska National Interest Lands Conservation Act of December 2, 1980, 94 Stat. 2437–2438.

3. As provided by section 6(g) of the Alaska Statehood Act, the State of Alaska is provided a preference right of selection for the land described above for a period of ninety-one (91) days from the date of publication of this order, if the land is otherwise available. Any of the land described herein that is not selected by the State of Alaska will continue to be subject to the terms and conditions of PLO 5184, as amended, and other withdrawals of record.

J. Steven Griles,

Assistant Secretary of the Interior.

June 23, 1987.

[FR Doc. 87–14773 Filed 6–29–87; 8:45 am]

BILLING CODE 4310–JA–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86–209; RM–5308]

Radio Broadcasting Services; Augusta, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots a first FM channel to Augusta, Illinois, at the request of Francis L. Hollon. The *Notice* proposed Channel 250A for Augusta. In comments, Palmyra Broadcasting Company, licensee of Station KIDS (FM), Palmyra, Missouri, proposed instead allotting Channel 266A to Augusta, in order to upgrade its Class A facility (252A) to Channel 250C2. The switch in channel also allows Station WBBA(FM) Pittsfield, Illinois to modify to Channel 248B1 (Docket 86–146). Since the petitioner has stated his willingness to accept the substitute channel, we have allotted Channel 266A to Augusta, Illinois. With this action, this proceeding is terminated.

DATES: Effective date: August 7, 1987. The window period for filing applications will open on August 10, 1987, and close on September 8, 1987.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–209, adopted May 5, 1987, and released June 23, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended in the entry for Augusta, Illinois, by adding Channel 266A.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 87–14776 Filed 6–29–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 86–415; RM–5373]

Radio Broadcasting Services; Conway, NH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Pursuant to a request by Pemigewasset Broadcasters, Inc., this document allocates Channel 283A to Conway, NH, as the community's second local FM service. Channel 283A can be allocated to Conway in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.2 kilometers (2.6 miles) southeast. Canadian concurrence has been received since the community is within 320 kilometers of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective date: August 10, 1987. The window period for filing applications for open on August 11, 1987, and close on September 9, 1987.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–415, adopted May 29, 1987, and released June 24, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Conway, New Hampshire, is amended by adding Channel 283A.

Mark N. Lipp,

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

[FR Doc. 87–14777 Filed 6–29–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 86-436; RM-5493]

Radio Broadcasting Services; Defiance, OH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Pursuant to a request by Gary Wilson, this document allocates Channel 290A to Defiance, Ohio, as the community's second local FM service. Although Gary Wilson failed to express continuing interest in the allocation, such interest was expressed by James Phillips. Channel 290A can be allocated to Defiance in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. Canadian concurrence has been received since Defiance is located within 320 kilometers of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective date: August 10, 1987. The window period for filing applications for open on August 11, 1987, and close on September 9, 1987.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-436, adopted May 29, 1987, and released June 24, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73—[AMENDED]

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

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

§ 73.202 [Amended]

2 Section 73.202(b), the Table of FM Allotments for Defiance, Ohio, is amended by adding Channel 290A.

Mark N. Lipp,

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

[FR Doc. 87-14778 Filed 6-29-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-412; RM-5491]

Radio Broadcasting Services; Coalville, UT

AGENCY: Federal Communications Commissions.

ACTION: Final rule.

SUMMARY: This document allots Channel 223A to Coalville, Utah, as that community's first FM service, at the request of Gene Guthrie. A site restriction of 10.9 kilometers (6.8 miles) southeast of the community is required. With this action, this proceeding is terminated.

DATES: Effective Dates: August 6, 1987. The window period for filing applications will open on August 7, 1987, and close on September 8, 1987.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-412, adopted May 29, 1987, and released June 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, in the entry for Coalville, Utah, Channel 223A is added.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-14779 FIled 6-29-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-490; RM-5517]

Radio Broadcasting Services; Sauk City, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 242B1 for Channel 244A at Sauk City, Wisconsin, and modifies the license of Station WSEY(FM) to specify operation on the new frequency, at the request of Madison Radio Ltd. Petitioner's preferred site is 2.8 kilometers (1.7 miles) north of the community. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 6, 1987.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-490, adopted May 29, 1987, and released June 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW. Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended, under Wisconsin, by revising Channel 244A to 242B1 for Sauk City.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-14780 Filed 6-29-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-472; RM-5581]

Television Broadcasting Services; Tamuning, GU

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots UHF television Channel 14 to Tamuning, Guam, as a first television allotment at the request Guahan Airwaves Corporation. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 7, 1987.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–472, adopted May 7, 1987, and released June 23, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

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. In § 73.606(b), the Table of TV Allotments is amended, in the entry for Tamuning, Guam, by adding Channel 14.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 87–14781 Filed 6–29–87; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 70845–7085]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California; Inseason Adjustment

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

ACTION: Notice of inseason adjustment and request for comments.

SUMMARY: NOAA announces revised harvest quotas for chinook salmon in the commercial fisheries from the U.S.-Canada border to Cape Falcon, Oregon, and from Cape Blanco, Oregon, to Point Delgada, California. These quota adjustments are authorized by the ocean salmon management plan and the preseason notice of 1987 ocean salmon management measures, and reflect quota over- or under-harvests in earlier all-except-coho fisheries. The adjustments are intended to allow maximum harvest of ocean salmon quotas established for the 1987 season.

EFFECTIVE DATE: The revised commercial chinook quotas are effective June 25, 1987 at 4:54 pm. Comments are invited until July 10, 1987.

ADDRESS: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, BIN C15700, 7600 Sand Point Way, NE., Seattle, WA 98115–0070; or E. Charles Fullerton, Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Regional Director), 206–526–6150; or E. Charles Fullerton, 213–514–6196.

SUPPLEMENTARY INFORMATION: The ocean salmon fisheries are managed under a framework fishery management plan (50 CFR Part 661). Management measures for 1987 were published on May 6, 1987 (52 FR 17264).

U.S.-Canada Border to Cape Falcon. Regulations implementing the framework ocean salmon fishery management plan at 50 CFR 661.21 authorize inseason adjustments to management measures if the adjustments are consistent with fishery regimes established by the U.S.-Canada Pacific Salmon Commission, ocean escapement goals, conservation of the salmon resource, any adjudicated Indian fishing rights, and the ocean allocation schemes in the framework amendment. In addition, all inseason adjustments must be based on consideration of the following factors: Predicted sizes of salmon runs; harvest quotas and hooking mortality limits for the area and total allowable impact limitations if applicable; amount of recreational, commercial, and treaty Indian catch for each species in the area to date; amount of recreational, commercial, and treaty Indian fishing effort in the area to date; estimated average daily catch per fisherman, predicted fishing effort for the area to the end of the scheduled season; and other factors as appropriate.

In its preseason notice of 1987 management measures, NOAA announced that the commercial fishery from the U.S.-Canada border to Cape Falcon would be partitioned into three areas and seasons. The all-except-coho fishery from the U.S.-Canada border to Cape Falcon closed in federal waters on May 18, 1987, when it was projected that the 42,400 chinook quota for the season would be reached. Actual landings totaled 39,800 chinook, a harvest of 2,600 chinook under the all-except-coho season quota.

NOAA has determined, in consultation with the Chairman of the Pacific Fishery Management Council and the Directors of the Oregon Department of Fish and Wildlife (ODFW) and the Washington Department of Fisheries (WDF), that the commercial harvest quota for the next opening, an all-species season beginning July 25 from the Queets River to Cape Falcon, should be increased by the number of chinook underharvested in the May all-except-coho fishery. Accordingly, this notice increases the commercial quota for the all-species season from the Queets River to Cape Falcon beginning July 25, 1987, from 15,000 to 17,600 chinook salmon.

Cape Blanco to Point Delgada. In its preseason notice of 1987 management measures, NOAA also announced that "any quota overage or underage from the troll chinook harvest in the Sisters Rocks to Chetco Point fishery will be subtracted from or added to the quota for the all-species troll fishery from Cape Blanco to Point Delgada" (Table 1, footnote i, 52 FR 17270).

The commercial all-except-coho fishery from Sisters Rocks to Chetco Point closed on May 14, 1987, when it was projected that the 7,500 subarea chinook quota would be reached. Actual landings through May 15, 1987, totaled 9,200 chinook in the subarea, a harvest of 1,700 chinook over the subarea quota.

NOAA has determined that the commercial harvest quota for the all-species season from Cape Blanco to Point Delgada should be decreased by the number of chinook overharvested in the May fishery from Sisters Rocks to Chetco Point. Accordingly, this notice decreases the commercial quota for the all-species season from Cape Blanco to Point Delgada beginning June 1, 1987, from 115,000 to 113,300 chinook salmon. In accordance with the preseason notice, this quota may be further adjusted on or about July 29, depending upon the number of chinook needed to complete the recreational season and the projected harvest of Klamath River fall chinook in all ocean areas south of Cape Falcon.

The Regional Director consulted with representatives of WDF, ODFW, and the California Department of Fish and Game, who confirmed that the commercial fishery in state waters adjacent to these areas of the EEZ will be managed in accordance with the revised quotas.

Other Matters

This action is taken under 661.21(b)(1) and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Dated: June 25, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87-14839 Filed 6-25-87; 4:45 pm]

BILLING CODE 3510-22-M

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50 CFR Part 661

[Docket No. 70845-7085]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California; Closure

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

ACTION: Notice of closure and request for comments.

SUMMARY: NOAA announces the closure of the commercial salmon fishery in the exclusive economic zone (EEZ) from Cape Blanco, Oregon, to Point Delgada, California, at midnight, June 25, 1987, to ensure that the chinook salmon quota is not exceeded. The Director, Northwest Region, NMFS, has determined in consultation with the NMFS Southwest Regional Director, Pacific Fishery Management Council, and representatives of the Oregon Department of Fish and Wildlife (ODFW) and the California Department of Fish and Game (CDFG), that the commercial fishery quota of 113,300 chinook salmon for the area will be reached by that time. The closure is necessary to conform to the preseason announcement of 1987 management measures. This action is intended to ensure conservation of chinook salmon.

EFFECTIVE DATE: Closure of the EEZ from Cape Blanco, Oregon, to Point Delgada, California, to commercial salmon fishing is effective at 2400 hours local time, June 25, 1987. Comments on this closure will be received until July 9, 1987.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, BIN C15700, 7600 Sand Point Way NE., Seattle, WA 98115-0070; or E. Charles Fullerton, Director, Southwest Region, NMFS, 300 S. Ferry Street, Terminal Island, CA 90731-7415. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten at 206-526-6150, or E. Charles Fullerton at 213-514-6196.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR Part 661 specify at § 661.21(a)(1) that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the **Federal Register** under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

Management measures for 1987 were effective on May 1, 1987 (52 FR 17264, May 6, 1987). The 1987 commercial season for all salmon species from Cape Blanco to Point Delgada was established as June 1 through the earliest of September 7 or the attainment of the chinook or coho quota. In accordance with preseason regulations, the preseason chinook quota of 115,000 fish was reduced inseason, to account for a harvest in excess of the quota for the Sisters Rocks to Chetco Point fishery. The current chinook quota for the area is 113,300 fish (see Notice of inseason adjustment published in this issue of the **Federal Register**).

Based on the best available information, the commercial fishery catch in the area is projected to reach the 113,300 chinook quota by midnight, June 25, 1987.

Therefore, NOAA issues this notice to close the commercial fishery in the EEZ from Cape Blanco, Oregon, to Point Delgada, California, effective midnight, June 25, 1987. This notice does not apply to other fisheries which may be operating in this or other areas.

The Regional Director consulted with the Chairman of the Pacific Fishery Management Council, the NMFS Southwest Regional Director, and representatives of ODFW and CDFG regarding this commercial closure. The state representatives confirmed that Oregon and California will close the commercial fishery in state waters adjacent to this area of the EEZ consistent with this federal action.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

(16 U.S.C. 1801 *et seq.*)

Dated: June 25, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87-14840 Filed 6-25-87; 4:54 pm]

BILLING CODE 3510-22-M

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50 CFR Part 675

[Docket No. 61225-7052]

Groundfish of the Bering Sea and Aleutian Islands Area; Inseason Adjustment

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

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces the apportionment of amounts of Alaska groundfish to the joint venture processing (JVP) portion of the domestic annual harvest (DAH) and to the total allowable level of foreign fishing (TALFF) under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). Groundfish are apportioned according to the regulations implementing the FMP. The intent of this action is to assure optimum use of these groundfish by allowing the domestic and foreign fisheries to proceed without interruption.

EFFECTIVE DATE: June 25, 1987. Comments will be accepted through July 10, 1987.

ADDRESS: Comments should be mailed to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802-1668, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker (Resource Management Specialist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: The FMP governs the groundfish fishery in the exclusive economic zone under the Magnuson Fishery Conservation and Management Act. The FMP was developed by the North Pacific Fishery Management Council (Council) and implemented by rules appearing at 50 CFR 611.93 and Part 675. The total allowable catches (TAC) for various groundfish species are apportioned initially among DAH, reserves, and TALFF. The reserve amount, in turn, is to be apportioned to DAH and/or TALFF during the fishing year, under 50 CFR 611.93(b) and 675.20(b). As soon as practicable after April 1, June 1, August 1 and on such other dates as are

necessary, the Secretary of Commerce apportions to DAH all or part of the reserve that he finds will be harvested by U.S. vessels during the remainder of the year, except that part or all of the reserve may be withheld if an apportionment would adversely affect the conservation of groundfish resources or prohibited species. No apportionment action was made after the April 1 date because no need for adjustment to the initial specifications was apparent at that time.

The initial specifications of domestic annual processing (DAP) and JVP (both components of DAH) for 1987 were based in part on the projected needs of the U.S. industry as assessed by a mail survey sent by the Director, Alaska Region, NMFS (Regional Director), to fishermen and processors in November 1986. The results of the survey indicated that the total DAH capacity for pollock in the Bering Sea subarea exceeded the TAC. After the fifteen percent of TAC was placed in the nonspecific reserve, as required at § 675.20(a)(3), the initial specifications for Bering Sea pollock were determined as follows: for DAP, 189,987 mt; and for JVP, the remainder, 830,013 mt, (52 FR 785, January 9, 1987).

On January 1, JVP was supplemented by 18,339 mt of the nonspecific reserve, and TALFF by 10,071 mt of the nonspecific reserve, including 5,000 mt to the Bering Sea pollock TALFF, to provide bycatch in foreign flatfish fisheries. On May 15, JVP was supplemented by 100,000 mt from the 271,590 mt nonspecific reserve (52 FR 18367). On June 10, JVP was supplemented by 75,000 mt from the nonspecific reserve, reducing the nonspecific reserve to 96,590 mt (52 FR 21958).

Reapportionment (Table 1)

TABLE 1.—BERING SEA/ALEUTIANS REAPPORTIONMENTS OF TAC

		Current	This action	Revised
Yellowfin sole	DAP	100		100
TAC–187,000; EY = 187,000	JVP	158,850	+23,050	181,900
	TALFF	5,000		5,000
Pacific cod	DAP	111,767		111,767
TAC–280,000; EY = 400,000	JVP	94,938		94,938
	TALFF	31,295	+22,000	53,295
Total (TAC = 2,000,000)	DAP	416,018		416,018
	JVP	1,423,040	+23,050	1,446,090
	TALFF	64,352	+22,000	86,352
	RESERVES	96,590	−45,050	51,540

The following actions are taken by this notice to reapportion specifications in the Bering Sea and Aleutian Islands area (BSA).

To the BSA JVP

In the Bering Sea, about 45 U.S. catcher boats delivering fish to about 35 foreign processors are conducting directed fisheries on yellowfin sole. To provide for continued JVP fishing in the Bering Sea for yellowfin sole, 23,050 mt of the nonspecific reserve is apportioned to the Bering Sea yellowfin sole JVP.

This apportionment does not result in overfishing of the yellowfin sole stock, as the revised TAC is 187,000 mt, equal to the equilibrium yield (EY).

To the BSA TALFF

At its May, 1987 meeting, the Council recommended that the TALFF for Pacific cod should be increased in order to provide the Japanese longliners with a directed fishery on cod of 44,000 mt. To allow this, 22,000 mt of the nonspecific reserve is apportioned to the BSA TALFF for Pacific cod.

This apportionment does not result in overfishing of the Pacific cod stock, as the resulting sum of DAP, JVP, and TALFF is 260,000 mt. This amount is 20,000 mt less than the original TAC for Pacific cod and 140,000 mt less than the EY.

Comments and Responses

In accordance with 50 CFR 611.93(b) and 675.20(b), aggregated reports on U.S. catches of Alaska groundfish and the processing of those groundfish were available for public inspection to facilitate informed public comment. In addition, those provisions afforded the public an opportunity to submit comments on the extent to which U.S. fishermen will harvest and the extent to which U.S. processors will process Alaska groundfish. One comment was received.

Comment: Amounts of fish determined excess to needs of DAH fisheries, including Pacific cod, Greenland turbot, arrowtooth flounder, and "other flatfish," should be approved for release to TALFF on a timely basis to permit early allocation.

Response: An amount of Pacific cod is being released to TALFF, as recommended by the Council. Because of current uncertainty as to what amounts of Greenland turbot and "other flatfish" may be required by domestic fisheries during the remainder of the year, transferrals of amounts of these two species (and arrowtooth flounder, which is a bycatch species to Greenland turbot) will be considered later in the year.

Classification

This action is taken under the authority of 50 CFR 675.20(b) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment. Immediate effectiveness of this notice is necessary to benefit fishermen who otherwise would have to forego substantial amounts of other groundfish species if fishing were closed as a result of achieving previously specified JVPs or TACs. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: June 25, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87–14838 Filed 6–25–87; 4:54 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 52, No. 125
Tuesday, June 30, 1987

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 455

[Docket No. 4219S]

Macadamia Nut Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to add a new Part 455 in Chapter IV of Title 7, Code of Federal Regulations to be known as the Macadamia Nut Crop Insurance Regulations (7 CFR Part 455), effective for the 1987 and succeeding crop years. The intended effect of this rule is to: (1) Prescribe procedures for insuring macadamia nuts in counties approved by the Board of Directors of FCIC; and (2) provide for codification of the Macadamia Nut Crop policy of insurance in 7 CFR Part 455 in the Code of Federal Regulations. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

COMMENT DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than July 30, 1987 to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 1, 1992.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

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

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

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

Background

On October 9, 1986, the Board of Directors of FCIC approved a resolution to authorize the introduction of crop insurance programs in the State of Hawaii as soon as possible for marketing by private insurance companies under a Standard Reinsurance Agreement or an Agency Sales and Service Contract with FCIC.

Hawaii is the only state without a crop insurance program and the Board, in authorizing the introduction of crop insurance protection to macadamia nut producers in the islands, is responding to a long standing interest in providing Hawaiian producers protection against loss of production from natural hazads.

FCIC is soliciting public comment on the proposed rule for 30 days following publication in the **Federal Register.** Written comments received pursuant to this proposed rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 455

Crop insurance, Macadamia nuts.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation hereby proposes to issue a new Part 455 in Chapter IV of Title 7, Code of Federal Regulations, to be known as 7 CFR Part 455—Macadamia Nut Crop Insurance Regulations, effective for the 1987 and succeeding crop years, to read as follows:

PART 455—MACADAMIA NUT CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1987 and Succeeding Crop Years

Sec.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1987 and Succeeding Crop Years

§ 455.1 Availability of macadamia nut crop insurance.

(a) Insurance shall be offered under the provisions of this subpart on the insured crop in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended (the Act). The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of

the Corporation. The insurance is offered through two methods. First, the Corporation offers the contract contained in this part directly to the insured through Agents of the Corporation. Those contracts are specifically identified as being offered by the Federal Crop Insurance Corporation. Second, companies reinsured by the Corporation offer contracts containing substantially the same terms and conditions as the contract set out in this part. No person may have in force more than one contract on the same crop for the crop year, whether insured by the Corporation or insured by a company which is reinsurd by the Corporation. If a person has more than one contract under the Act outstanding on the same crop for the same crop year, all such contracts will be voided for that crop year but the person will still be liable for the premium on all contracts unless the person can show to the satisfaction of the Corporation that the multiple contract insurance was inadvertent and without the fault of the insured. If the multiple contract insurance is shown to be inadvertent and without the fault of the insured, the contract with the earliest application will be valid and all other contracts on that crop for that crop year will be cancelled. No liability for indemnity or premium will attach to the contracts so cancelled. The person must repay all amounts received in violation of this section with interest at the rate contained in the contract for delinquent premiums.

(b) An insured whose contract with the Corporation or with a Company reinsured by the Corporation under the Act has been terminated because of violation of the terms of the contract is not eligible to obtain multi-peril crop insurance under the Act with the Corporation or with a company reinsured by the Corporation unless the insured can show that the default in the prior contract was cured prior to the sales closing date of the contract applied for or unless the insured can show that the termination was improper and should not result in subsequent ineligibility. All applicants for insurance under the Act must advise the agent, in writing, at the time of application, of any previous applications for a contract under the Act and the present status of the applications or contracts.

§ 455.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for macadamia nuts which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices set by the actuarial table for the crop year.

§ 455.3 OMB control numbers.

OMB control numbers are contained in Subpart H of Part 400, Title 7 CFR.

§ 455.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 455.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the macadamia nut insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§ 455.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the macadamia nut crop as provided in the policy. The contract shall consist of the application, the policy and the county actuarial table. This contract is not continuous. Application must be made annually for the macadamia nut contract on or prior to the sales closing date established by the actuarial table. The forms referred to in the contract are available at the applicable service offices.

§ 455.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation must be made by any person to cover such person's share in the macadamia nut crop as landlord, owner-operator, or tenant if the person wishes to participate in the program. The application shall be submitted to the Corporation at the service office on or before the applicable sale closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of any application or applications in any county upon its determination that the insurance risk is excessive. The Manager of the Corporation is authorized in any crop year to extend the sales closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) A contract in the form provided for in this subpart will be in effect as a macadamia nut contract applicable for one year. A new application must be submitted for each subsequent crop year.

(d) The application for the 1987 and succeeding crop years is found at Subpart D of Part 400—General Administration Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Macadamia Nut Crop Insurance Policy for the 1987 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Macadamia Nut—Crop Insurance Policy

(This is NOT a continuous contract. Refer to Section 15)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted application and "we," "us,' and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Earthquake;

(3) Fire;

(4) Volcanic eruption;

(5) Wildlife; or

(6) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

unless those causes are excepted, excluded, or limited by the actuarial table or subsection 9.e.(4).

b. We will not insure against any loss of production due to:

(1) Unmarketability as a direct result of quarantine, boycott, or refusal of any entity to accept production unless production has actual physical damage due to a cause specified in subsection 1.a.;

(2) The neglect, mismanagement, or wrongdoing by you, any member of your household, your tenants, or employees;

(3) The failure to follow recognized good macadamia nut farming practices;

(4) Water contained by any governmental, public, or private dam or reservoir project;

(5) Flooding on any unit subject to a flood or water flowage easement;

(6) Flooding on any unit located between any body of water and a primary flood control structure for that body of water;

(7) Failure or breakdown of irrigation equipment or facilities;

(8) Failure to carry out a good macadamia nut irrigation practice; or

(9) Any cause not specified in subsection 1.a. as an insured cause of loss.

2. Crop, acreage, and share insured.

a. The crop insured will be all varieties of macadamia nuts grown for processing on insurable acreage which has been inspected and accepted by us and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be macadamia nuts grown on insurable acreage as designated by the actuarial table, and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured macadamia nuts at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your insured share will not exceed your share on the earlier of:

(1) The time of loss; or

(2) The beginning of harvest.

d. We do not insure any macadamia nuts:

(1) If the farming practices carried out are not the same as those for which the guarantee and premium rate have been established;

(2) Of a type or variety not established as adapted to the area or excluded by the actuarial table;

(3) Produced by macadamia trees that have not reached the fifth growing season after transplanting or grafting;

(4) If the macadamia trees have not produced an average yield of at least 190 pounds of wet inshell nuts per acre in a previous year;

(5) If the trees are interplanted with a crop other than macadamia nuts;

(6) If acceptable production records of at least the previous crop year are not available;

(7) If there is less than a 50 percent stand of bearing trees based on the original planting pattern; or

(8) Which we consider not acceptable.

e. We may limit the insurable acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to the date insurance attaches.

3. Report of acreage, share, variety, practice, and number of bearing trees.

You must report on our form by unit:

a. All the acreage of macadamia nuts in the county in which you have a share;

b. Your share at the time insurance attaches;

c. The variety;

d. The dates on which the trees were transplanted or grafted;

e. The practice; and

f. The number of bearing trees.

You must designate separately any acreage that is not insurable. This report must be submitted annually prior to the time insurance attaches. If insurance is provided for an irrigated practice, you must report as irrigated only the acreage for which you have adequate facilities and water, at the time insurance attaches, to carry out a good macadamia nut irrigation practice. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report within 15 days after the time insurance attaches, we may elect to determine, by unit, the insured acreage, share, practice, and number of bearing trees, or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. If the number of bearing trees (fifth growing season after transplanting or grafting and older) is reduced more than 10 percent from the preceding calendar year as a result of damage occurring within that year, the production guarantee will be reduced 1 percent for each percent reduction in excess of 10 percent.

c. You may change the coverage level and price election for the succeeding crop year on or before December 31 of the current crop year.

d. You must report production to us for the insured crop year by December 31 of that crop year. If you do not provide the required production report, we will assign a yield for the insured crop year. The yield assigned by us will not be more than 75 percent of the yield used to determine your guarantee for the insured crop year. The production report or assigned yield will be used to compute your production history for the purpose of determining your guarantee for the succeeding crop year. If you have filed a claim for the insured crop year, the production report will be calculated based on the actual production used to determine the indemnity payment.

5. Annual Premium.

a. The annual premium is earned and payable on the date insurance attaches.The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share on the date of insurance attaches.

b. Interest will accrue at the rate of one and one-fourth percent (1¼%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the premium billing date.

6. Deductions for Debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its agencies.

7. Insurance period.

Insurance on insurable acreage attaches for each crop year on January 1. However, if we accept your application for insurance after Janaury 1, insurance does not attach until the thirtieth (30th) day after you sign and submit a properly completed application. Insurance will not attach to any acreage inspected by us and determined to be unacceptable. Insurance ends on a per-acre basis at the earliest of:

a. Total destruction of the macadamia nuts on the unit;

b. The date harvest would normally start on the unit on any acreage which will not be harvested;

c. Completion of harvest;

d. Final adjustment of a loss; or

e. December 31 of the crop year.

8. Notice of damage or loss.

a. You must give us written notice:

(1) Without delay if damage resulting in probable loss occurs at any time during the period before harvest; and

(2) At least fifteen (15) days before the beginning of harvest if you anticipate a loss on any unit.

b. If probable loss is determined within fifteen (15) days prior to or during harvest and you are going to claim an indemnity on any unit, you must give us notice not later than seventy-two (72) hours after the earliest of:

(1) Total destruction of the macadamia nuts on the unit;

(2) Discontinuance of harvest of any acreage on the unit;

(3) The date harvest would normally start if any acreage on the unit is not to be harvested; or

(4) December 31 of the crop year.

c. You must obtain written consent from us before you destroy any of the macadamia nuts which are not to be harvested.

d. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for indemnity

a. Any claim for indemnity on a unit must be submitted to us on our form not later than sixty (60) days after the earliest of:

(1) Total destruction of the macadamia nuts on the unit;

(2) Harvest of the unit; or

(3) December 31 of the crop year.

b. We will not pay any indemnity unless you:

(1) Establish the total production of macadamia nuts on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of macadamia nuts to be counted (see subsection 9.e.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

d. If the information reported by you under section 3 of this policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (wet inshell pounds) to be counted for a unit will include all harvested and appraised production.

(1) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good macadamia nut farming practices;

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause, or destroyed by you without our prior written consent; and

(c) Any production detached from trees and not removed from the orchard.

(2) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:

(a) Further damaged by an insured cause and reappraised by us; or

(b) Harvested.

(3) We may determine the amount of production of any unharvested macadamia nuts on the basis of field appraisals conducted after the end of the insurance period.

(4) If you elect to exclude hail and fire as insured causes of loss and the macadamia nuts are damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire."

f. You must not abandon any acreage to us.

g. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

h. An indemnity will not be paid unless you comply with all policy provisions.

i. It is our policy to pay your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. However, we will pay simple interest computed on the net indemnity ultimately found to be due to you, if the reason for non-payment is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. Interest due will be paid from and including the 61st day after the date you sign, date, and submit to us the properly completed claim-for-indemnity form. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semi-annually on or about January 1, and July 1.

The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

j. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

k. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this subsection, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation (Recovery of loss from a third party).

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay for your loss, then your right of recovery will, at our option, belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for three years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all macadamia nuts produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in: (a) Cancellation of the contract prior to the crop year to which the records apply; (b) assignment of production to units by us; or (c) a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year.

b. The term of this contract begins and ends as shown in section 7 of this policy. We are under no obligation to send you any renewal notice or other notice that the contract term is ending and the receipt by you of any such notice is not a waiver of this provision.

c. This contract shall terminate and not be renewed for any successive contract term if any amount due us on this or any other contract with you is not paid on or before the termination date. The date of payment of the amount due if deducted from:

(1) An indemnity, will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture, will be the date both such other payment and setoff are approved.

d. The termination date is January 31 of the crop year insured. However, if we accept your application after December 31 for the first crop year insured, the termination date will be thirty (30) days after insurance attaches.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolutioin. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. This contract will automatically terminate at the end of the current contract period unless we offer to renew the contract for a subsequent crop year and you accept.

16. Meaning of terms.

For the purposes of macademia nut crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us. The Actuarial Table is available for public inspection in your service office and shows the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding macadamia nut insurance in the county.

b. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

c. "Crop year" means the period beginning with the date insurance attaches and extending through the normal harvest time and will be designated by the calendar year in which the macadamia nuts are normally harvested.

d. "Harvest" means the picking of the macadamia nuts from the ground.

e. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

f. "Insured" means the person who submitted the application accepted by us.

g. "Person" means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State.

h. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

i. "Tenant" means a person who rents land from another person for a share of the macadamia nuts or a share of the proceeds therefrom.

j. "Unit" means all insurable acreage of macadamia nuts in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the macadamia nuts on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

k. "Wet inshell" means the weight of the macadamia nuts as they are removed from the orchard with the nut meats in the shells after removal of the husk and prior to being dried.

17. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

18. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with the Appeal Regulations (7 CFR Part 400—Subpart J).

19. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, DC, on June 10, 1987.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-14798 Filed 6-29-87; 8:45 am]

BILLING CODE 3410-08-M

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 86-011E]

Requirements for Imported Poultry Products; Extension of Comment Period

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On May 1, 1987, the Food Safety and Inspection Service (FSIS) published a proposed rule to implement the provisions of the Food Security Act of 1985, Pub. L. 99-198, that amended the Poultry Products Inspection Act. The proposal would amend the poultry products inspection regulations regarding the inspection, sanitation, quality, species verification and residue standards applied to foreign poultry or parts of products offered for importation into the United States. The comment period was scheduled to close on June 30, 1987. FSIS has received a request to extend the comment period for an additional 60 days. FSIS has determined that the request should be granted and, therefore, is extending the comment period to August 31, 1987.

DATE: Comments must be received on or before August 31, 1987.

ADDRESS: Written comments to: Policy Office, ATTN: Linda Carey, FSIS Hearing Clerk, Room 3168 South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments, as provided by the Poultry Products Inspection Act, should be directed to Dr. William Havlik, Director, Foreign Programs Division, (202) 447-2644.

FOR FURTHER INFORMATION CONTACT: Dr. William Havlik, Director, Foreign Programs Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6244.

SUPPLEMENTARY INFORMATION: On December 23, 1985, Pub. L. 99-198, The Food Security Act of 1985, was enacted which amended section 17 of the Poultry Products Inspection Act. The primary purpose of the legislation was to require that foreign countries exporting poultry or poultry products to the United States implement residue and random species verification inspection and testing programs for residues at the point of slaughter on poultry or poultry products offered for importation into the United States. The secondary purpose of the legislation was to require that a foreign inspection system be "the same as" the United States' inspection system before product can be imported.

On May 1, 1987, FSIS published a proposed rule (52 FR 15960), to amend the poultry products inspection regulations regarding the inspection, sanitation, quality, species verification, and residue standards applied to foreign poultry or poultry products offered for importation into the United States. The proposed rule would specifically amend § 381.196 of the poultry products inspection regulations to require that foreign countries implement residue sampling and testing programs at the point of slaughter for poultry and poultry products offered for importation into the United States. The proposal would also amend the regulations to make clear that all inspection, sanitation, quality, species identification and residue standards that are applied to imported poultry and poultry products are the same standards as those applied to poultry and poultry products produced in the United States.

Interested persons were given until June 30, 1987, to comment on this proposed rule. FSIS has received a request to extend the comment period to allow more time to review the proposal and to submit comments. FSIS is interested in receiving additional information and is, therefore, extending the comment period for an additional 60 days, to August 31, 1987.

Done at Washington, DC, on June 25, 1987.

Lester M. Crawford,

Associate Administrator, Food Safety and Inspection Service.

[FR Doc. 87-14763 Filed 6-29-87; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-42-AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes equipped with Rolls Royce RB211-535C or -535E4 engines, which would require modifications to the electromagnetic protection shielding of the engine electrical/electronic control unit wires. This proposal is prompted by a review of the Rolls Royce engine wiring installation between the engine and fuselage pressure seal, which has shown that not all essential engine electronic control unit wires requiring electromagnetic protection shielding are shielded. This condition, if not corrected, could lead to an electrical transient from a lightning strike to one engine, causing damage or malfunction to the unstruck engine's essential control unit; this may affect the thrust of the unstruck engine, as well as that of the struck engine.

DATE: Comments must be received no later than August 18, 1987.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-42-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Pasion, Aerospace Engineer, Propulsion Branch, ANM-140S; telephone (206) 431-1974. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-42-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

In a review of the Rolls Royce engine wiring installations between the engine and fuselage pressure seal, FAA determined that not all essential engine electrical and electronic control unit wires requiring lightning protection were properly shielded. A lightning strike to one engine may result in an electrical trransient, which may cause damage to or malfunction of the other engine's essential control equipment. This event could affect the thrust of the unstruck engine, as well as that of the struck engine.

The FAA has reviewed and approved Boeing 757 Alert Service Bulletin 757-71A0026, dated March 26, 1987, which provides instructions for modifications to certain electrical wiring to provide lightning protection shielding to the essential engine electrical and electronic control unit wires.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require modification of certain engine control wiring in accordance with the service bulletin previously mentioned.

It is estimated that 31 airplanes of U.S. registry would be affected by this AD, that it would take approximately 93 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Cost of parts is $193 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $121,303.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 757 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[Amended]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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

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

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes equipped with Rolls Royce RB 211-535C or -535E4 engines, specified in Boeing Alert Service Bulletin 757-71A0026, dated March 26, 1987, certificated in any category. Compliance required within 60 days after the effective date of this AD, unless previously accomplished.

To minimize the potential for total thrust loss in both engines due to a lightning strike, accomplish the following:

A. Modify engine electrical and electronic control unit wiring in accordance with Boeing Alert Service Bulletin 757-71A0026, dated March 26, 1987, or later FAA-approved revision.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 19, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-14725 Filed 6-29-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ASW-21]

Proposed Removal of Transition Area; Jena, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposed to remove the transition area at Jena LA. The intended effect of the proposed action is to release controlled airspace no longer required since a proposed standard instrument approach procedure (SIAP) to the Jena Aiport will not be established. This action is necessary since the proponent of a proposed nonfederal nondirectional radio beacon (NDB) has notified the FAA and the NDB will not be installed at the Jena Airport. The proposed SIAP has been canceled since the NDB will not be constructed. Coincident with this action, the airport status will change from instrument flight rules (IFR) to visual flight rules (VFR).

DATE: Comments must be received on or before July 31, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

An informal docket may also be examined during normal business hours at the Department of Transportation, Federal Aviation Administration, 440 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: David J. Souder, Department of Transportation, Federal Aviation Administration, 4400 Blue Mount Road, Forth Worth, TX 76193-0530; telephone (817) 624-5530.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-ASW-21." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mount Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel with this rulemaking will be filed in the docket.

Availability of NPRM'S

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Department of Transportation, Federal Aviation Administration, 4400 Blue Mount Road, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to remove the transition area at Jena, LA. This action is necessary since the proposed nonfederal NDB that would have supported a proposed SIAP to the Jena Airport has been canceled. Coincident with this action, the airport status will change from IFR to VFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulations only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Jena, LA [Removed]

Issued in Fort Worth, TX, on June 15, 1987.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.a

[FR Doc. 87-14726 Filed 6-29-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-Asw-27]

Proposed Amendment of Transition Area and Control Zone; Temple, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the transition area and control zone at Temple, TX. The intended effect of the proposed action is to provide additional controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Draughton-Miller Municipal Airport, Temple, TX. This action is necessary since a new SIAP to Runway 33 has been developed using the Temple Very High Frequency Omnidirectional Radio Range (VOR).

DATE: Comments must be received on or before August 3, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

An informal docket may also be examined during normal business hours at the Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: David J. Souder, Department of Transportation, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX 76193-0530; telephoe (817) 624-5530.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-ASW-27." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM'S

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the control zone and transition area at Temple, TX. This action is necessary since a SIAP to Runway 33 has been developed for the Draughton-Miller Municipal Airport using the Temple VOR. This will result in additional controlled airspace south of the airport similar to the existing airspace configuration north of the airport. The intended effect of this action is to insure segregation of aircraft using the new SIAP under instrument flight rules (IFR) and other aircraft operating under visual flight rules (VFR). Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore — (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

The Proposed Amendment

PART 71 — [AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854;49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Temple, TX [Amended]

By deleting: and 1.5 miles each side of the south localizer course extending from the 5-mile radius to 6 miles south of the airport.

And adding: and within 4 miles each side of the 166° radial of the Temple VOR extending from the 5-mile radius to 13.5 miles south of the airport.

§ 71.181 [Amended]

3. Section 71.181 is amended as follows:

By deleting: and within 3 miles each side of the south localizer course extending from the 7-mile radius to 17 miles south of the airport.

And adding: and within 4.5 miles each side of the 166° radial of the Temple VOR extending from the 7-mile radius to 17 miles south of the airport.

Issued in Fort Worth, TX, on June 16, 1987.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 87-14727 Filed 6-29-87; 8:45 am]

BILLING CODE 4910-13-M

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 401

Comprehensive Plan and Administrative Manual; Rules of Practice and Procedure; Public Hearing; Water Quality Program Availability

AGENCY: Delware River Basin Commission.

ACTION: Proposed rules and public hearing.

SUMMARY: Pursuant to the provisions of Delaware River Basin Compact § 14.17, Penal Sanctions, the Delaware River Basin Commission is now proposing administrative procedures applicable where the Commission has information that there has been a violation or attempted violation of the Compact or any of its rules, regulations, or orders.

Notice is hereby given that the Delaware Rive Basin Commission will hold a public hearing to receive comments on proposed amendments to its Comprehensive Plan and Rules of Practice and Procedure in relation to penalties and settlements in lieu of penalties. The hearing will be part of the Commission's regular business meeting which is open to the public.

DATES: The public hearing is scheduled for Wednesday, August 5, 1987 beginning at 9:30 a.m. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing. Written comments received by the Commission by the close of business on August 21 will be included in the hearing record.

ADDRESSES: Written comments should be submitted to Susan M. Weisman, Delaware Rive Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628. The public hearing will be held in Room 334 of the offices of the Department of Environmental Conservation at 50 Wolf Road, Albany, New York.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission: Telephone (609) 883-9500.

SUPPLEMENTARY INFORMATION: The proposed Subpart addresses notice to possible violators, records for decision-making, adjudicatory hearings, factors to be applied in assessing the amounts of penalties, enforcement, settlement by agreement in lieu of penalty and penalty suspension or modification.

The subject of the hearing will be as follows:

Amendment to the Comprehensive Plan and Administrative Manual—Rules of Practice and Procedure.

List of Subjects in 18 CFR Part 401

Administrative practice and procedure, Environmental impact statements, Freedom of information, Water pollution control, Water resources.

PART 401—[AMENDED]

It is proposed to amend Part 401 as follows:

1. The authority citation for Part 401 continues to read as follows:

Authority: Sec. 14.2, Delaware River Basin Compact, 75 Stat. 688, unless otherwise noted.

Subpart H (§§ 401.111-401.114) [redesignated as Subpart I (§§ 401.121-401.124)]

2. Subpart H consisting of §§ 401.111-401.114 is redesignated as Subpart I, §§ 401.121-401.124.

Subpart G (§§ 401.91-401.109) [redesignated as Subpart H (§§ 401.101-401.119)]

3. Subpart G consisting of §§ 401.91-401.109 is redesignated as Subpart H, §§ 401.101-401.119.

4. New Subpart G is added to read as follows:

Subpart G—Penalties and Settlements in Lieu of Penalties

Sec.

Subpart G—Penalties and Settlements in Lieu of Penalties

§ 401.91 Scope of subpart.

This Subpart shall be applicable where the Commission shall have information indicating that a person has violated or attempted to violate any provision of the Commission's Compact or any of its rules, regulations or orders (hereafter referred to as possible violator). For the purposes of this Subpart, person shall include person, partnership, corporation, business association, governmental agency or authority.

§ 401.92 Notice to possible violators.

Upon direction of the Commission the Executive Director shall, and in all other instances, the Executive Director may require a possible violator to show cause before the Commission why a penalty should not be assessed in accordance with the provisions of these Rules and section 14.17 of the Compact. The notice to the possible violator shall:

(a) Set forth the date on which the possible violator shall respond; and

(b) Set forth any information to be submitted or produced by the possible violator.

§ 401.93 The record for decision making.

(a) *Written submission.* In addition to the information required by the Commission, any possible violator shall be entitled to submit in writing any other information that it desires to make available to the Commission before it shall act. The Executive Director may require documents to be certified or otherwise authenticated and statements to be verified. The Commission may also receive written submissions from any other persons as to whether a violation has occurred and the adverse consequences resulting from a violation of the Commission's Compact or its rules, regulations and orders.

(b) *Presentation to the Commission.* At the date set in the Notice, the possible violator shall have the opportunity to supplement its written presentation before the Commission by any oral statement it wishes to present and shall be prepared to respond to any questions from the Commission or its staff or to the statements submitted by persons affected by the possible violation.

§ 401.94 Adjudicatory hearings.

(a) An adjudicatory hearing, which may be in lieu of or in addition to proceedings pursuant to § 401.93 at which testimony may be presented and documents received shall not be scheduled unless:

(1) The Executive Director determines that a hearing is required to have an adequate record for the Commission; or

(2) The Commission directs that such a hearing be held.

(b) If an adjudicatory hearing is scheduled, the possible violator shall be given at least 14 days written notice of the hearing date unless waived by consent. Notice of such a hearing may

be given to the general public and the press in the manner provided in section 14.4(b) of the Compact but may be waived by the Executive Director.

(c) Except to the extent inconsistent with the provisions of this subpart, adjudicatory hearings shall be conducted in accordance with the provisions of § 401.83 through 401.88 (including § 401.86 *et seq.*).

§ 401.95 Assessment of a penalty.

The Executive Director may recommend to the Commission the amount of the penalty to be imposed. Such a recommendation shall be in writing and shall set forth the basis for the penalty amount proposed. Based upon the record submitted to the Commission, the Commission shall decide whether a violation has occurred that justifies the imposition of a penalty pursuant to § 14.17 of the Compact. If it is found that such a violation has occurred, the Commission shall determine the amount of the penalty to be paid.

§ 401.96 Factors to be applied in fixing penalty amount.

(a) Consideration shall be given to the following factors in deciding the amount of any penalty or any settlement in lieu of penalty:

(1) Previous violation, if any, of the Commission's Compact and regulations;

(2) Whether the violation was unintentional or willful and deliberate;

(3) Whether the violation caused adverse environmental consequences and the extent of any harm;

(4) The costs incurred by the Commission or any signatory party relating to the failure to comply with the Commission's Compact and regulations;

(5) The extent to which the violator has cooperated with the Commission in correcting the violation and remediating any adverse consequences or harm that resulted therefrom; and

(6) Whether the failure to comply with the Commission's Compact and regulations was economically beneficial to the violator.

(b) The Commission retains the right to waive any penalty or reduce the amount of the penalty should it determine that, after consideration of the factors in paragraph (a) of this section, extenuating circumstances justify such action.

§ 401.97 Enforcement of penalties.

Any penalty imposed by the Commission shall be paid within 30 days or such further time period as shall be fixed by the Commission. The Executive Director and Commission counsel are authorized to take such action as may be necessary to assure enforcement of this subpart. If a proceeding before a court becomes necessary, the action of the Commission in determining a penalty amount shall constitute the penalty amount recommended by the Commission to be fixed by the court pursuant to section 14.17 of the Compact.

§ 401.98 Settlement by agreement in lieu of penalty.

A possible violator may request settlement of a penalty proceeding by agreement. If the Executive Director determines that settlement by agreement in lieu of a penalty is in the best interest of the Commission, he may submit to the Commission a proposed settlement agreement in lieu of a penalty. No settlement will be considered by the Commission unless the possible violator has indicated to the Commission acceptance of the terms of the agreement and the intention to comply with all requirements of the settlement agreement including payment of any settlement amount within the time period provided. If the Commission determines not to approve a settlement agreement, the Commission may proceed with a penalty action in accordance with this Subpart.

§ 401.99 Suspension or modification of penalty.

The Commission may postpone the imposition of a penalty or provide for reconsideration of the penalty amount imposed pending correction of the condition that gave rise to the violation or pending a satisfactory resolution of any adverse consequences that resulted from the violation.

5. These amendments become effective upon adoption by the Commission.

(Delaware River Basin Compact, 75 Stat. 688)

Public Information Notice

Water Quality Program

The Commission is preparing its water quality program for the fiscal year ending September 30, 1988. Notice of this action is given in accordance with the requirements of the Federal Clean Water Act, as amended. The proposed program will involve a variety of activities in the areas of planning, surveillance, compliance monitoring, regional coordination, use attainability assessment, wasteload allocations and public participation. While the proposed program is not subject to public hearing by the Commission, it is available for examination and review by interested individuals at the Commission's offices upon request. The public review and comment period will end August 8, 1987. Contact Seymour P. Gross at the Commission.

Susan M. Weisman,

Secretary.

[FR Doc. 87-14619 Filed 6-29-87; 8:45 am]

BILLING CODE 6360-01-M

FEDERAL MARITIME COMMISSION

46 CFR Part 588

[Docket No. 87-11]

Actions To Adjust or Meet Conditions Unfavorable to Shipping in the United States/Colombia Trade

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule—extension of time to comment.

SUMMARY: Due to requests of interested persons, the Federal Maritime Commission is extending until July 24, 1987, the period for filing comments in this proceeding.

DATE: Period for filing comments extended until July 24, 1987.

ADDRESS: Send comments (original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION: The Commission instituted this proceeding by Notice published in the **Federal Register** on May 29, 1987 (52 FR 20119), to address apparent conditions unfavorable to shipping in the United States/Colombia trade pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. App. 876. Comments on the proposed rule are presently due June 29, 1987. Flota Mercante Grancolombiana, S.A. ("Grancol") has filed a request to extend the time for comments for 45 days. Grancol states that the present due date for comments does not allow sufficient time to address the legal and factual issues in the matter, particularly, the seven specific questions that the Federal Maritime Commission would like interested persons to address. Grancol also cites the need to obtain certain information from Colombia. In addition, the Government of Colombia has transmitted to the Federal Maritime Commission, via the United States Department of State ("DOS"), a diplomatic note expressing its concern over the proposed rulemaking and

requesting "that a reasonable extension of the established time-period be granted". DOS has been orally advised that the Government of Colombia seeks an extension of 45 days.

We do not believe that the requests for a full 45-day extension are warranted; however, they have demonstrated good cause for some additional time. The Commission, therefore, will extend the time for filing comments in the proceeding for 25 days. This, plus the original comment period of 30 days, should provide adequate time for interested parties to respond to the proposed rule.

Therefore, the time within which interested parties may file comments in this proceeding is extended until July 24, 1987.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87-14674 Filed 6-29-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-216, RM-5466]

Radio Broadcasting Services; Booneville, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Booneville Broadcasting Company, proposing the substitution of FM Channel 284C2 for Channel 221A at Booneville, AR and modification of its license for Station KBSS(FM), accordingly, to provide that community with its first wide coverage area FM service.

DATES: Comments must be filed on or before August 14, 1987, and reply comments on or before August 31, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Richard J. Hayes, Jr., Esq., 1359 Black Meadow Road, Spotsylvania, VA 22553 (Counsel).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-216, adopted March 27, 1987, and released June 24, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 87-14782 Filed 6-29-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-204, RM-5617]

Radio Broadcasting Services; Morro Bay, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Morro Bay Investment Company proposing the allotment of FM Channel 259A to Morro Bay, California, as that community's first local FM service.

DATES: Comments must be filed on or before August 13, 1987, and reply comments on or before August 28, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: B. Jay Baraff, Esq., Baraff, Koerner, Olender & Hochberg, P.C., 2033 M St. NW., Suite 203, Washington, DC 20036-3355.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-204, adopted May 29, 1987, and released June 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 87-14783 Filed 6-29-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-205, RM-5743, RM-5843]

Radio Broadcasting Services; Albany, GA, and Quincy, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two separately filed petitions. The first, submitted by Platinum Broadcasting, Ltd., licensee of Station WKAK(FM), Albany, Georgia, proposes to substitute Channel 268C2 for Channel 269A and to modify its Class A license accordingly. The second petition, filed by Capital Broadcasting, Inc. licensee of Station WIQI(FM),

Quincy, Florida, proposes to modify its Class A license to a Class C2 facility by substituting Channel 268C2 for Channel 269A at Quincy. Interested parties are requested to submit gain area showings for their respective proposals.

DATES: Comments must be filed on or before August 13, 1987, and reply comments on or before August 28, 1987.

ADDRESS: 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:

Bruce A. Eisen, Kaye, Scholer, Fierman, Hayes and Handler, 1575 Eye Street NW., Washington, DC 20005 (Counsel for Platinum Broadcasting, Inc.)

Thomas W. Fletcher, Cole, Raywid and Braverman, 1919 Pennsylvania Avenue NW., Washington, DC 20002 (Counsel for Capital Broadcasting, Inc.)

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–205 adopted May 29, 1987, and released June 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 87–14784 Filed 6–29–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–219, RM–5748]

Radio Broadcasting Services; Hugo, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Harold E. Cochran, licensee of Station KITX–FM, requesting the substitution of Channel 238C2 for Channel 237A at Hugo, Oklahoma, and the modification of its license to specify operation on the higher powered channel. Channel 238C2 can be allocated to Hugo in compliance with the Commission's minimum distance separation requirements, and used at Station KITX–FM's transmitter site. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in use of Channel 238C2 at Hugo nor require the petitioner to demonstrate the availability of an additional equivalent channel.

DATES: Comments must be filed on or before August 17, 1987, and reply comments on or before September 1, 1987.

ADDRESS: 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: Vincent J. Curtis, Jr., Esq., Fletcher, Heald & Hildreth, 1225 Connecticut Avenue NW., Suite 400, Washington, DC 20036–2679 (Counsel to petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–219, adopted May 29, 1987, and released June 24, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 87–14785 Filed 6–29–87; 8:45 a.m.]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–206, RM–5702]

Radio Broadcasting Services; Etowah and Jamestown, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Bvack Broadcasting, Inc., licensee of Station WCPH-FM, Channel 276A, Etowah, Tennessee, proposing the substitution of Channel 276C2 for Channel 276A at Etowah and the modification of its license to specify operation on the higher class of channel. In addition the proposal requires the substitution of Channel 286A for Channel 276A at Jamestown, Tennessee in order to accomplish the Etowah substitution. A first wide coverage area FM station could be provided to the community. Also a site restriction of 13.5 kilometers (8.4 miles) north of the community is required.

DATES: Comments must be filed on or before August 13, 1987, and reply comments on or before August 28, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Richard J. Hayes, Jr., Esquire, 1359 Black Meadow Road,

Spotsylvania, Virginia 22553 (Counsel to petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission' Notice of Proposed Rule Making, MM Docket No. 87–206, adopted May 29, 1987, and released June 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 87–14786 Filed 6–29–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–208, RM–5650]

Radio Broadcasting Services; Bay City, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Sandlin Broadcasting Company, Inc., licensee of Station KMKS–FM, Channel 221A, bay City, Texas, proposing the substitution of Channel 273C2 for Channel 221A and the modification of its license to specify operation on the new frequency, as that community's first wide coverage area FM station. A site restriction of 24.7 kilometers (15.3 miles) southwest of the city is required.

DATES: Comments must be filed on or before August 13, 1987, and reply comments on or before August 28, 1987.

ADDRESS: Federal Communications Commission, Washington DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Helen E. Disenhaus, Esquire, Dow, Lohnes & Albertson, 1255 23rd Street, NW., Washington DC 20037 (Counsel to petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–208, adopted May 29, 1987, and released June 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 87–14787 Filed 6–29–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–209, RM–5700]

Radio Broadcasting Services; New Ulm, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by New Ulm Broadcasting proposing the allotment of Channel 222A to New Ulm, Texas as that community's first local FM service. A site restriction of 4.0 kilometers (2.5 miles) west of the city is required.

DATES: Comments must be filed on or before August 13, 1987, and reply comments on or before August 28, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Thomas L. Root, Esquire, Jill L. Rygwalski, Esquire, Thomas L. Root, P.C., 2120 L Street NW., Washington, DC 20037 (Counsel to petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–209, adopted May 29, 1987, and released June 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 87–14788 Filed 6–29–87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-207, RM-5709]

Radio Broadcasting Services; Accomac, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by C&R Communications proposing the allotment of Channel 222B1 to Accomac, Virginia as that community's first local FM service. A site restriction of 13.3 kilometers (8.3 miles) south of the city is required.

DATES: Comments must be filed on or before August 17, 1987, and reply comments on or before September 1, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Shelley Sadowsky, Esquire, Bechtel & Cole, Chartered, Suite 502, 2101 L Street NW., Washington, DC 20037 (Counsel to petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-207, adopted May 29, 1987, and released June 24, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 87-14789 Filed 6-29-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Findings on Pending Petitions and Description of Progress on Listing Actions

AGENCY Fish and Wildlife Service, Interior.

ACTION: Notice of petition findings and description of progress.

SUMMARY: The Service announces its findings on pending petitions to add to and revise the Lists of Endangered and Threatened Wildlife and Plants. These findings must be made within one year of either the date of receipt of such a petition or of a previous positive finding. The Service also describes its progress in revising the lists during the period from October 1, 1985, to September 30, 1986.

DATES: The findings announced in this notice were made on or before October 31, 1986. The description of the Service's progress in revising the lists is current as of October 1, 1986.

FOR FURTHER INFORMATION CONTACT: William Knapp, Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, 500 Broyhill Building, Washington, DC 20240 (703/235-2771 or FTS 235-2771).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended in 1982 (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information, a finding be made on the merits within 12 months of the date of receipt of the petition. Provisions of the Endangered Species Act Amendments of 1982 required that such petitions pending on the date of enactment of the Amendments be treated as having been filed on that date, i.e. October 13, 1982. Section 4(b)(3)(C)(i) of the Act requires that any petition for which a 12-month finding of "warranted but precluded" is made should be treated as having been resubmitted, with substantial scientific or commercial information that the petitioned action may be warranted, on the date of such a finding, i.e. requiring an additional finding to be made within 12 months. This notice reports findings made on or before October 13, 1986, in respect to pending petitions for which such additional findings were due, and describes the Service's progress in revising the Lists of Endangered and Threatened Wildlife and Plants during the fourth year following the enactment of the 1982 Amendments.

The initial (90-day) findings for petitions considered here were announced in the **Federal Register** on February 15, 1983 (48 FR 6752), January 16, 1984, (49 FR 1919), December 18, 1984 (49 FR 49118), or May 2, 1986 (51 FR 16363).

All but one of the plant species involved in these petition findings were listed individually in a comprehensive notice of review for plants first published in the **Federal Register** on December 15, 1980 (45 FR 82480), and most recently updated as a notice of review published September 27, 1985 (50 FR 39526). The animal species mentioned below, but not named individually, were identified individually in the first announcement of 12-month petition findings published in the **Federal Register** on January 20, 1984 (49 FR 2485), and again in the second annual announcement published on May 10, 1985 (50 FR 19761).

Findings

Section 4(b)(3)(B) of the Act requires that the Service make one of the following 12-month findings on each petition presenting substantial information: (i) The petitioned action is not warranted; (ii) the petitioned action is warranted and will be proposed promptly; or (iii) the petitioned action is warranted but precluded by other efforts to revise the lists, and expeditious progress is being made in listing and delisting species. Petitioned actions found to be warranted are the subjects of proposals that will be published promptly or have already been published in the **Federal Register.** Therefore only findings of "not warranted" and "warrranted but precluded" for pending petitions are reported here.

"Not warranted" and "warranted but precluded" findings for pending plant petitions repeat the findings made in October 1985 and announced in the **Federal Register** for January 9, 1986 (51 FR 996), except for the removal of 32

plant species proposed for listing as threatened or endangered during fiscal 1986. Findings on the plants are made by notice of review catagories; application of these to individual taxa is published in a notice of review for plants published September 27, 1985 (50 FR 39526). The plant notice category number opposite the name of each taxon that is the subject of a pending petition indicates the Service's finding on that taxon. Findings of "not warranted" on the petitioned action are reported by the designation of subcategories 3A, 3B, or 3C for such taxa. Findings of "warranted but precluded" are reported by the designation of category, 1,1*,1**,2,2*, or 2** for such subject taxa. The complete definitions of these category numbers are described on pages 39526 and 39527 in the 1985 general plant notice of review (50 FR 39526).

The Service's 12–month findings of "not warranted" and "warranted but precluded" on pending animal petitions are presented in Table 1. A single petitioned action that was found not to be warranted is indicated by the word 'No" in the "Warranted?" column. The "Yes" in the same column indicates petitions to list, delist, or reclassify species for which the principal findings are "warranted but precluded" from immediate proposal by other efforts to revise the lists. A "Yes" qualified with an asterisk signifies that at least some taxa mentioned in the original petition have been individually found to be not warranted for listing in previous petition notices, or in previous notices of review, or both.

TABLE 1.—TWELVE-MONTH FINDING ON PENDING ANIMAL PETITIONS

Description	Petitioner	Date Received	Warranted?
6 species of sponges	Mr. Ronald M. Cowden	June 17, 1974	Yes.[1]
45 species of cave crustaceans	National Speleological Society	Sept. 9, 1974	Yes.[1]
6 species of cave amphipod crustaceans	Dr. John Holsinger	July 12, 1974	Yes.
Uncompahgre fritillary butterfly	Dr. Lawrence F. Gall	Nov. 5, 1979	Yes.
Columbia River tiger beetle	Mr. Gary Shook	Dec. 15, 1979	Yes.
Shoshone sculpin	Dr. Peter A. Bowler	Dec. 3, 1979	Yes.
Bonneville cutthroat trout	Desert Fishes Council	Oct. 23, 1979	Yes.
Silver rice rat	Center for Action on Endangered Species	Mar. 12, 1980	Yes.
Bliss Rapids snail and Snake River physa snail	Dr. Peter A. Bowler	Feb. 7, 1980	Yes.
19 U.S. and 60 foreign species of birds	International Council for Bird Preservation	Nov. 24, 1980	Yes.[1]
Wiest's sphinx moth	Dr. Karolis Bagdonas	Jan. 26, 1981	No.
Guam rufous-fronted fantail	Hon. Paul M. Calvo,Governor of Guam	Dec. 23, 1981	Yes.
Orangefin madtom and Roanoke logperch	Mr. Noel M. Burkhead	Oct. 6, 1983	Yes.

[1] Petitions for which the requested action is considered warranted for all taxa except for certain ones that were specified individually in previous petition notices and/or current comprehensive notices of review.

A finding of "not warranted" for the 1981 petition from Dr. Karolis Bagdonas to list Weist's sphinx moth as an endangered species was made by the Service on October 10, 1985, The finding is based on results of a status survey by U.S. Fish and Wildlife Service personnel in late spring of 1986. The survey showed unequivocally that this species has a much wider distribution than previously believed, in a type of habitat that appears to be adequately represented for survival of the moth and reasonably secure from adverse modification. The category indicated by this information for the next comprehensive invertebrate notice of review is 3C, signifying a species that is no longer under active consideration by the Service for listing.

The finding of "warranted but precluded" for a 1980 petition by Dr. Peter A. Bowler applies equally to two species mentioned in his petition, the Bliss Rapids snail and the Snake River physa snail. Although the latter species was inadvertently omitted from individual mention in Table 1 of the notice published January 9, 1986 (51 FR 996), it was included in the finding for October 1985, as well as in the October 1986 findings being announced here.

Another petition finding became due and was made in October, and can be conveniently reported at this time. In a petition dated October 8, 1985, and received October 15, 1985, Mr. Paul R. Neal requested the Service to list *Talinm humile*, the Pinos Altos fame flower (one of only a few plant species under Service review but not listed in the 1975 Smithsonian petition or its 1978 update). An administrative finding that substantial information had been submitted indicating that the action requested may be warranted was announced in a **Federal Register** notice published on May 2, 1986 (51 FR 16363). Historically, *Talinum humile* has been known from three locations, one each in Arizona, New Mexico, and Sierra de Ajusco, Mexico. Recent searches have failed to relocate the species at its type locality in New Mexico. No recent searches for it have been conducted in Mexico. The only verified locality is in southern Arizona, where a single known population occurs on private land and could easily be eliminated if management of the site does not consider the plant's well-being. However, more information is needed regarding distribution of the species in New Mexico and Mexico before it can be given a high priority for possible listing. While this information is lacking, this species will remain in category 2 of the Service's comprehensive plant notice of review. The action requested by this petition is considered to be warranted according to the best information available, but precluded by work on other species having higher priority for listing.

Progress in Revision of the Lists

Section 4(b)(3)(B)(iii) of the Act states that petitioned actions may be found to be warranted but precluded by other listing actions when it is also found that the Service is making expeditious progress in revising the lists. The Service's progress in revising the lists in the year following October 1, 1985, the cutoff date of the previous report, is described below. For simplification in reporting, the 12–month period described actually coincides with the 1986 fiscal year; activity during the last 12 days preceding the anniversary of the Amendments will be described in a subsequent notice. The described activities prevented immediate action on the "warranted but precluded" petitioned actions.

The Service's progress in revising the lists during fiscal year 1986 is represented by the publication in the **Federal Register** of final listing actions on 51 species, and proposed listing actions of 66 species. The number of species affected by each type of listing action published during this period is presented in Table 2.

TABLE 2—LISTING ACTIONS DURING THE PERIOD OCTOBER 1, 1985, THROUGH SEPTEMBER 30, 1986

Type of action	Number of species affected
Final endangered status with critical habitat	2
Final endangered status	39
Final threatened status with critical habitat	3
Final threatened status	7
Proposed endangered status with critical habitat	2
Proposed endangered status	46
Proposed threatened status with critical habitat	4
Proposed threatened status	11
Proposed delisting	1
Proposed reclassification endangered or threatened to threatened due to similarity of appearance	2

As of October 1, 1986, the Service's Washington Office of Endangered Species was also reviewing documents that would propose or make final listing actions on 82 species. The type of action and numbers of affected species are given in Table 3.

TABLE 3—POSSIBLE LISTING ACTIONS FOR WHICH THE SERVICE WAS REVIEWING DRAFT DOCUMENTS ON OCTOBER 1, 1986

Type of action	Number of species affected
Final endangered status with critical habitat	3
Final endangered status	18
Final threatened status with critical habitat	7
Final threatened status	5
Proposed endangered with critical habitat	1
Proposed endangered status	30
Proposed threatened with Critical habitat	2
Proposed threatened status	10
Proposed change from endangered to threatened status	4
Proposed delisting	2

The general plant and animal notices of review are important tools for gathering data on species that are candidates for listing and for informing interested parties on the Service's general views on the status of present and past candidate species. The Service is currently preparing a general notice of review for animals, to include both vertebrate and invertebrate species. The most recent previous general notices were for plants on September 27, 1985 (50 FR 39526), for vertebrate animals on September 18, 1985 (50 FR 37958), and for invertebrate animals on May 22, 1984 (49 FR 21664).

The Service also funded status surveys for 45 species during the 1986 fiscal year. These surveys were designed to gather any additional data needed to make a determination on whether the subject species are eligible for protection under the Endangered Species Act.

Author

This notice was prepared by George Drewry, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington DC 20240 (703/235–1975 or FTS 235–1975).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.* ; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: June 19, 1987.

Susan Recce

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–14769 Filed 6–29–87; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 52, No. 125
Tuesday, June 30, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration
Title: National Climatic Data Center (NCDC) Subscriber Survey
Form Number: Agency—N/A; OMB—N/A
Type of Request: New Collection
Burden: 2,000 respondents; 500 burden hours
Needs and Uses: NCDC currently has five subscription climate publications. The number of subscribers has been steadily declining, so a survey to assess customer satisfaction is needed. The survey will include questions on cost, data content, data presentation, timeliness of delivery and method of delivery.
Affected Public: Individuals; state or local governments; farms; businesses or other for-profit institutions; federal agencies; non-profit institutions; small businesses or organizations
Frequency: One-time only
Respondent's Obligation: Voluntary
OMB Desk Officer: John Griffen 395–7340

Agency: National Oceanic and Atmospheric Administration
Title: Commercialization of Climate Information
Form Number: Agency—N/A; OMB—N/A
Type of Requests: New Collection
Burden: 200 respondents; 100 burden hours
Needs and Uses: The National Climatic Data Center services over 85,000 users each year with a wide variety of climate data and information. There may exist a potential that some of this information could be made available via the private sector. This collection will seek to identify not only the climatic data and information that could be disseminated by the private sector, but also identify those specific groups within the private sector who wish to offer the data and information.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: One-time only
Respondent's Obligation: Voluntary
OMB Desk Officer: John Griffen 395–7340

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to John Griffen, OMB Desk Office, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: June 24, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–14755 Filed 6–29–87; 8:45 am]

BILLING CODE 3510–CW–M

International Trade Administration

Articles of Quota Cheese; Quarterly Determination and Listing of Foreign Government Subsidies

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Publication of quarterly update of foreign government subsidies on articles of quota cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared a quarterly update to its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: July 1, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Paul J. McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 ("the TAA") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Department of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese.

In the current quarter the Department has determined that the subsidy amounts have changed for each of the countries for which subsidies were identified in our April 1, 1987 quarterly update to our annual subsidy list. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amount of each subsidy on which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Deputy Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the TAA (19 U.S.C. 1202 note).

Dated: June 23, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

APPENDIX.—QUOTA CHEESE SUBSIDY PROGRAMS

Country	Program(s)	Gross [1] subsidy	Net [2] subsidy
Belgium	European Community (EC) Restitution Payments.	17.9¢/lb.	17.9¢/lb.
Canada	Export Assistance on Certain Types of Cheese	26.7¢/lb.	26.7¢/lb.
Denmark	EC Restitution Payments	22.9¢/lb.	22.9¢/lb.
Finland	Export Subsidy	74.2¢/lb.	74.2¢/lb.
	Indirect Subsidy	19.2¢/lb.	19.2¢/lb.
		93.5¢/lb.	93.5¢/lb.
France	EC Restitution Payments	17.7¢/lb.	17.7¢/lb.
Ireland	EC Restitution Payments	18.2¢/lb.	18.2¢/lb.
Italy	EC Restitution Payments	38.4¢/lb.	38.4¢/lb.
Luxembourg	EC Restitution Payments	17.9¢/lb.	17.9¢/lb.
Netherlands	EC Restitution Payments	13.6¢/lb.	13.6¢/lb.
Norway	Indirect (Milk) Subsidy	17.8¢/lb.	17.8¢/lb.
	Consumer Subsidy	39.4¢/lb.	39.4¢/lb.
		57.2¢/lb.	57.2¢/lb.
Switzerland	Deficiency Payments	96.0¢/lb.	96.0¢/lb.
U.K.	EC Restitution Payments	15.4¢/lb.	15.4¢/lb.
W. Germany	EC Restitution Payments	20.0¢/lb.	20.0¢/lb.

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 87-14826 Filed 6-29-87; 8:45 am]
BILLING CODE 3510-DS-M

[A-122-605]

Preliminary Determination of Sales at Less Than Fair Value; Color Picture Tubes From Canada

ACTION: Notice.

SUMMARY: We have preliminarily determined that color picture tubes from Canada are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to suspend liquidation of all entries of color picture tubes from Canada as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by September 8, 1987.

EFFECTIVE DATE: June 30, 1987.

FOR FURTHER INFORMATION: Contact: John Brinkmann (202) 377-3965 or John Kenkel (202) 377-3530, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that color picture tubes from Canada are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The weighted-average margins of sales at less than fair value are shown in the "Suspension of Liquidation" section of this notice

Case History

On November 26, 1986, we received a petition in proper form filed by: The International Association of Machinists and Aerospace Workers; International Brotherhood of Electrical Workers; International Union of Electronic, Electrical, Technical, Salaried & Machine Workers, AFL-CIO-CLC; United Steelworkers of America, AFL-CIO; Industrial Union Department, AFL-CIO. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or threaten material injury, to a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated the investigation on December 16, 1986 (51 FR 45786, December 22, 1986), and notified the ITC of our action.

On January 12, 1987, the ITC determined that there is a reasonable indication that imports of color picture tubes are materially injuring a U.S. industry (U.S. ITC Pub. No. 1937, January 1987).

On February 20, 1987, our questionnaire was presented to Mitsubishi Electronics Industries Canada, Inc. (Mitsubishi) which accounts for a substantial portion of the exports to the United States during the period of investigation. On March 6, 1987, we received a questionnaire response to question 7, section A of the questionnaire from Mitsubishi.

On March 20, 1987, petitioners requested a postponement of the preliminary determination. On March 26, 1987, in accordance with section 733(c)(1)(A) of the Act, we postponed the preliminary determination to May 26, 1987 (52 FR 10394, April 1, 1987). On April 2, 1987, we received a response to the remainder of Section A from Mitsubishi. The response for Sections B-E of the questionnaire was received on April 20, 1987. We sent a deficiency letter on the Section A response to Mitsubishi on April 16, 1987. On April 30, 1987, petitioners requested another postponement of the preliminary determination. On May 6, 1987, in accordance with the above-referenced section of the Act, we postponed the preliminary determination to June 24, 1987 (52 FR 17795, May 12, 1987). A deficiency letter concerning Sections B-E was sent on May 15, 1987. A response to the deficiency letter was received on April 22, 1987 for Section A and on June 3, 1987 for Sections B-E.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedule of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with the product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitons filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are color picture tubes (CPTs) which are provided for in the *Tariff Schedules of the United States Annotated* (TSUSA) items 687.3512, 687.3513, 687.3514, 687.3516, 687.3518, and 687.3520. The corresponding Harmonized System (HS) numbers are 8540.11.00.10, 8540.11.00.20, 8540.11.00.30, 8540.11.00.40, 8540.11.00.50 and 8540.11.00.60.

CPTs are defined as cathode ray tubes suitable for use in the manufacturer of color television receivers or other color entertainment display devices intended for television viewing.

Petitioners have also requested that the Department examine CPTs which are imported as part of color television receiver kits which contain all parts necessary for assembly into complete television receivers, or as a part of an incomplete television receive assembly that has CPT as well as additional components. Color television receiver kits are provided for in TSUSA item 684.9655, while incomplete television receiver assemblies are provided for in TSUSA items 684.9556, 684.9658 and 684.9660. This merchandise is included in the same HS numbers as listed above for CPTs.

In accordance with petitioners' request, we are tentatively including CPTs in these kits and assemblies in the scope of this investigation. In the course of this proceeding, we will determine whether to continue to include imports of CPTs in these kits and assemblies in the scope of this investigation.

Fair Value Comparisons

In order to determine whether sales of CPTs in the United States were made at less than fair value, we compared the United States price to the foreign market value as specified below. We investigated sales of CPTs for the period June 1, 1986, through November 30, 1986.

United States Price

For certain sales we based United States price on exporter's sales price, in accordance with seciton 772(c) of the Act, since the sale to the first unrelated purchaser took place in the United States after importation. For those sales made directly to unrelated parties in the United States prior to importation, we based the United States price on purchase price in accordance with section 772(b) of the Act.

We calculated purchase price and exporter's sales price based on the packed, f.o.b., c.i.f., c.&.f duty paid prices to unrelated purchasers in the United States. We made deductions from the purchase price and exporters' sales price, where appropriate, for foreign inland freight, brokerage and handling charges, ocean freight, marine insurance, U.S. duty, and U.S. inland freight, pursuant to section 772(d)(1)(A) of the Act. We also made deductions for discounts and rebates pursuant to section 772(b) of the Act. Where we used exporter's sales price, we made additional deductions for discounts, rebates, credit expenses, other U.S. selling expenses, advertising, warranty expenses, royalties, commissions and the value added through further manufacture prior to sale in the United States, pursuant to section 772(e)(3) of the Act. For exporter's sales price sales involving further manufacturing, we deducted all value added in the United States. This value added consisted of the costs associated with the manufacture of the color television (CTV), other than the costs of the CPT, and a proportional amount of the profit or loss related to these costs. Profit or loss was calculated by deducting from the sales price of the CTV all production costs incurred by the company. This total profit or loss was then apportioned to the non-CPT based on the ratio of these costs to the total CTV cost.

In calculating the CPT and CTV costs, the Department relied primarily on the cost data provided by the respondent. In those instances where it appeared all costs were not included or were not appropriately quantified or valued, certain adjustments were made. For Mitsubishi the interest expense for the CPT and the CTV was increased to reflect the expense presented on the financial statements. Packing was added to the cost of the CPT. It could not be determined whether all costs incurred for the production of the CTV in third countries had been captured. The Department will seek additional information related to these costs.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on delivered, packed, home market prices to unrelated purchasers. We made deductions, where appropriate, for inland freight and insurance. For U.S. purchase price sales, we made adjustments under § 353.15 of the Commerce Regulations for differences in circumstances of sale for credit expenses, warranties, royalties, advertising, technical service expenses, and after sale warehousing expenses in the United States and home market.

For U.S exporter's sales price transactions, we made deductions for home market credit expenses, warranty costs, royalties, and technical service expenses. We also deducted indirect selling expenses in the home market to offset other U.S. selling expenses, in accordance with § 353.15(c) of our regulations.

For both purchase price and exporter's sales price comparisons, we subtracted home market packing and added U.S. packing to home market prices.

We established separate categories of "such or similar" merchandise, pursuant to section 771(16)(C) of the Act, on the basis of CPT screen size. We considered any CPT sold in the home market or third country markets that was within two inches in screen size of the CPT sold in the U.S. to be such or similar merchandise. When there was no identical product in the home market with which to compare a product sold to the United States, we made adjustments to similar merchandise to account for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act. These adjustments were based on differences in the costs of materials, direct labor and directly related factory overhead.

Currency Conversion

For comparisons involving exporter's sales price transactions, we used the official exchange rate on the dates of sale since the use of that exchange rate is consistent with section 615 of the Trade and Tariff Act of 1984 (1984 Act). We followed section 615 of the 1984 Act rather than § 353.56(a)(2) of our regulations because the later law supersedes that section of the regulations. For comparisons involving purchase price transactions we made currency conversions in accordance with § 353.56(a)(1) of our regulations. All currency conversions were made at the rate certified by the Federal Reserve Bank.

Verification

As provided in section 776(a) of the Act, we will verify all information used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S Customs Service to suspend liquidation of all entries of CPTs from Canada that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Custom Service shall require a cash deposit or the posting of a bond equal to the estimated amounts by which the foreign maket value of the merchandise subject to this investigation exceeds the United States price as shown below. This suspension will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Mitsubishi Electronics Industries Canada, Inc	0.64%
All others	0.64%

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

If our final determination is affirmative, then the ITC will determine no later than 120 days after the date of this preliminary determination or 45 days after the final determination, whichever is later, whether these imports are materially injuring, or threaten material injury to, a U.S. industry.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 9:00 a.m. on August 14, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by August 7, 1987. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, not less than 30 days before the final determination, or, if a hearing is held, within 7 days after the hearing transcript is available, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

June 24, 1987.

[FR Doc. 87-14820 Filed 6-29-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-605]

Preliminary Determination of Sales at Less Than Fair Value: Color Picture Tubes From Korea

ACTION: Notice.

SUMMARY: We have preliminarily determined that color picture tubes (CPTs) from Korea are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to suspend liquidation of all entries of CPTs from Korea as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by September 8, 1987.

EFFECTIVE DATE: June 30, 1987.

FOR FURTHER INFORMATION CONTACT: John Brinkmann (202) 377-3965 or Raymond Busen (202) 377-3464, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that CPTs from Korea are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The weighted-average margins of sales at less than fair value are shown in the "Suspension of Liquidation" section of this notice.

Case History

On November 26, 1986, we received a petition in proper form filed by: The International Association of Machinists and Aerospace workers; International Brotherhood of Electrical Workers; International Union of Electronic, Electrial, Technical, Salaried & Machine Workers, AFL-CIO-CLC; United Steelworkers of America, AFL-CIO; and the Industrial Union Department, AFL-CIO. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Korea are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that these imports are causing material injury, or threaten material injury, to a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated the investigation on December 16, 1986 (51 FR 45786, December 22, 1986), and notified the ITC of our action.

On January 12, 1987, the ITC determined that there is a reasonable indication that imports of CPTs are materially injuring a U.S. industry (U.S. ITC Pub. No. 1937, January 1987).

On February 26, 1987, questionnaires were presented to Gold Star Company, Ltd. (GSC) and Samsung Electron Devices Company, Ltd. (SED), which account for a substantial portion of the exports to the United States during the period of investigation.

On March 11, 1987, we received a questionnaire response to question 7, section A of the questionnaire from GSC and on March 12, 1987, we received a partial questionnaire response from SED.

On March 20, 1987, petitioners requested a postponement of the preliminary determination. On March 26, 1987, in accordance with section 733(c)(1)(A) of the Act, we postponed the preliminary determination to May 26, 1987 (52 FR 10394, April 1, 1987). On April 2 and 20, 1987, we received responses to the remainder of the questionnaire. We sent deficiency letters to the two respondents on April 15, 1987. On April 30, 1987, petitioners requested a further postponement of the preliminary determination. On May 6, 1987, in accordance with the above-referenced section of the Act, we postponed the preliminary

determination to June 24, 1987 (52 FR 17795, May 12, 1987). Further deficiency letters were sent on May 15, 1987 and responses were received on April 22 and on June 3, 1987.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedule of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System Schedule is available for consultation at the Central Records Unit, Room R-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are color picture tubes (CPTs) which are provided for the *Tariff Schedules of the United States Annotated* (TSUSA) items 687.3512, 687.3513, 687.3514, 687.3516, 687.3518, and 687.3520. The corresponding Harmonized System (HS) numbers are 8540.11.00.10, 8540.11.20, 8540.11.00.30, 8540.11.00.40, 8540.11.00.50 and 8540.11.00.60.

CPTs are defined as cathode ray tubes suitable for use in the maufacture of color television receivers or other color entertainment display devices intended for television viewing.

In the initiation notice in this case, we tentatively included CPTs imported as part of color television receiver kits or as a part of incomplete color television receiver assemblies. Where such CPTs are subsequently combined into televisions by a related party, however, they are already covered in the existing order on complete and incomplete television receivers from Korea ("CTV order") (40 FR 18336, April 30, 1984). We had tentatively determined to resolve this overlap by a partial revocation of the CTV order *(See, Color Television receivers from Korea; Intention to Review and Preliminary Results of Changed Circumstances Administratives Review and Tentative Determination to Revoke Antidumping Duty Order,* 52 FR 6840 (March 5, 1987)). After consideration of all the comments received in the context of that administrative review, however, we now have determined to keep the entire CTV order in place. *(Seem, Final Results of Changed Circumstances Review and Determination Not to Revoke Antidumping Duty Order* published concurrently herewith). This determination not to revoke the CTV order reflects the Department's decision to resolve any overlap between the scope of the CTV order and this investigation by narrowing the scope of the CPT investigation. Therefore, in this preliminary determination we find that those CPTs that are included within the scope of the CTV order will not be covered in this investigation.

Fair Value Comparisons

In order to determine whether sales of CPTs in the United States were made at less than fair value, we compared the United States price to the foreign market value as specified below. We investigated sales of CPTs for the period June 1, 1966 through November 30, 1986.

Samsung reported both purchase price and exporter's sales price transactions in the United States. In Samsung's exporter's sales price transactions, the first sale of a CPT to an unrelated customer was in the sale of a color television. We have excluded these sales from our fair value comparisons since these CPTs are covered by the CTV order. As a result, we have made our fair value comparisons for Samsung using only its purchase price sales.

Gold Star reported no sales of CPTs to unrelated purchasers in the United States and reported that all CPTs imported into the United States were used by a related company in the production of color televisions. Therefore, we have preliminarily determined, subject to verification, that since all of Gold Star's U.S. sales are already covered by the CTV order, Gold Star had no U.S. sales subject to this investigation during the period of review.

United States Price

For those sales made directly to unrelated parties in the United States prior to importation, we based the United States price on purchase price.

For the sales by SED that were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we used purchase price as the basis for determining United States price. For these sales, the Department determined that purchase price was the most appropriate indicator of United States price based on the following elements:

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 the 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 the processor of sales-related documentation and a communication link with the unrelated U.S. buyers.

Where all the above elements are met, we regard the routine selling functions of the exporter as having been merely relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions are done in the United States or abroad does not change the substance of the transactions or the functions themselves.

In instances where merchandise is ordinarily diverted into the related U.S. selling agent's inventory, we regard this factor as an important distinction because it is associated with a materially different type of selling activity than the mere facilitation of a transaction such as occurs on a direct shipment to an unrelated U.S. purchaser. In situations where the related party places the merchandise into inventory, it commonly incurs substantial storage and financial carrying costs and has added flexibility in its marketing. We also use the inventory test because it can be readily understood and applied by respondents who must respond to Department questionnaires in a short period of time. It is objective in nature, as the final destination of the goods can be established from normal commercial documents associated with the sale and verified with certainty.

We calculated purchase price based on the packed, c.i.f. duty paid prices to unrelated purchasers in the United States. We made deductions from the purchase price, where appropriate, for foreign wharfage, foreign inland freight, U.S. and foreign brokerage and handling charges, ocean freight, marine insurance, U.S. duty and U.S. inland freight, pursuant to section 772(d)(2)(A) of the Act. We made additions to purchase price for duty drawback (i.e., import duties which were rebated, or not collected, by reasons of the exportation

of the merchandise to the U.S.) pursuant to section 772(d)(1)(B) of the Act.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on delivered, packed, home market prices to unrelated purchasers. We made deductions, where appropriate, for inland freight. For U.S. purchase price sales, we made adjustments under § 353.15 of the Commerce Regulations for differences in circumstances of sale for credit expenses, warranties, royalties and advertising in the United States and home markets. For SED, where we had commissions in only one market, we offset commissions in the applicable market by indirect selling expenses incurred in the other market, in accordance with § 353.15(c) of our regulations. We subtracted home market packing and added U.S. packing to home market prices.

We established separate categories of "such or similar" merchanside, pursuant to section 771(16)(C) of the Act, on the basis of CPT screen size. We considered any CPT sold in the home market that was within plus or minus two inches in screen size of the CPT sold in the U.S. to be such or similar merchandise. Where there was no identical product in the home market with which to compare a product sold to the United States, we made adjustments to similar merchanside to account for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act. These adjustments were based on differences in the costs of materials, direct labor, and directly related factory overhead.

Currency Conversion

We made currency conversions in accordance with § 353.56(a)(1) of our regulations. All currency conversions were made at the rate certified by the Federal Reserve Bank.

Verification

As provided in section 776(a) of the Act, we will verify all information used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of BPTs from Korea that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown below. This suspension will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturing/producer/exporter	Weighted-average margin percentatge
Samsung Electron Devices Company , Ltd.	11.77
All others	11.77

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

If our final determination is affirmative, then the ITC will determine no later than 120 days after the date of this preliminary determination or 45 days after the final determination, whichever is later, whether these imports are materially injuring, or threaten material injury to, a U.S. industry.

Public Comments

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 9:00 a.m. on August 10, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Asssistant Secretary for Import Administration, Room B-099, a the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by August 3, 1987. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.36, not less than 30 days before the final determination, or, if a hearing is held, within 7 days after the hearing transcript is available, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

June 24, 1987.

[FR Doc. 87-14821 Filed 6-29-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-609]

Preliminary Determination of Sales at Less Than Fair Value: Color Picture Tubes from Japan

ACTION: Notice.

SUMMARY: We have preliminarily determined that color picture tubes from Japan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to suspend liquidation of all entries of color picture tubes from Japan as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by September 8, 1987.

EFFECTIVE DATE: June 30, 1987.

FOR FURTHER INFORMATION: Contact John Brinkmann (202) 377-3965 or John Kenkel (202) 377-3530, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that color picture tubes from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The weighted-average margins of sales at less than fair value are shown in the "Suspension of Liquidation" section of this notice.

Case History

On November 26, 1986, we received a petition in proper form filed by: The International Association of Machinists and Aerospace Workers; International Brotherhood of Electrical Workers;

International Union of Electronic, Electrical, Technical, Salaried & Machine Workers, AFL–CIO–CLC; United Steelworkers of America, AFL–CIO; Industrial Union Department, AFL–CIO, on behalf of the U.S. industry producing color picture tubes. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or threaten material injury, to a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated the investigation on December 16, 1986 (51 FR 45786, December 22, 1986), and notified the ITC of our action.

On January 12, 1987, the ITC determined that there is a reasonable indication that imports of color picture tubes are materially injuring a U.S. industry (U.S. ITC Pub. No. 1937, January 1987).

On February 20, 1987, questionnaires were presented to Mitsubishi Electric Corporation (Mitsubishi), Matsushita Electronics Corporation (Matsushita), Toshiba Corporation (Toshiba), and Hitachi, Ltd. (Hitachi), which account for a substantial portion of the exports to the United States from Japan during the period of investigation.

On March 6, 1987, we received a questionnaire response to question 7, section A of the questionnaire from Mitsubishi, Matsushita and Hitachi. On March 18, 1987, Toshiba Corporation notified us that they would not be responding to the questionnaire because they are moving their color picture tube operation from Japan to the United States.

On March 20, 1987, petitioners requested a postponement of the preliminary determination. On March 26, 1987, in accordance with section 733(c)(1)(A) of the Act, we postponed the preliminary determination to May 26, 1987 (52 FR 10394, April 1, 1987). On April 2, 1987, we received a response to the remainder of Section A from the three respondents. The responses for Sections B–E of the questionnaire were received on April 20, 1987. We sent deficiency letters on Section A responses to the three respondents on April 16, 1987. On April 30, 1987, petitioners requested another postponement of the preliminary determination. On May 6, 1987, in accordance with the above-referenced section of the Act, we postponed the preliminary determination to June 24, 1987 (52 FR 17795, May 12, 1987). Deficiency letters concerning Sections B–E were sent on May 15, 1987. Responses to the deficiency letters were received on April 22, 1987 for Section A and on June 3, 1987 for Sections B–E. In their response to the deficiency letters, Matsushita did not provide critical information on difference in merchandise adjustments.

On May 19 and May 27, 1987, petitioners alleged that Matsushita's sales of color picture tubes in the home market and in third countries were below the cost of production. On June 24, 1987, the Department initiated a cost of production investigation on CPTs sold by Matsushita. Since we have not yet received a response to our sales below cost questionnaire, we will consider this issue in our final determination.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedule of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item numbers(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs office have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are color picture tubes (CPTs) which are provided for in the *Tariff Schedules of the United States Annotated* (TSUSA) items 687.3512, 687.3513, 687.3514, 687.3516, 687.3518, and 687.3520. The corresponding Harmonized System (HS) numbers are 8540.11.00.10, 8540.11.00.20, 8540.11.00.30, 8540.11.00.40, 8540.00.50 and 8540.11.00.60.

CPTs are defined as cathode ray tubes suitable for use in the manufacture of color television receivers or other color entertainment display devices intended for television viewing.

Petitioners have also requested that the Department examine CPTs which are imported as part of color television receiver kits which contain all parts necessary for assembly into complete television receivers, or as a part of an incomplete television receiver assembley that has a CPT as well as additional components. Color Television receiver kits are provided for in TSUSA item 684.9655, while incomplete television receiver assemblies are provided for in TSUSA items 684.9656, 684.9658 and 684.9660. This merchandise is included in the same TSUSA numbers as listed for CPTs above.

In accordance with petitioners' request, we are tentatively including CPTs in assemblies from Japan and assemblies and kits containing Japanese CPTs which enter the United States through third countries, such as Mexico, in the scope of this investigation. Kits shipped directly to the United States from Japan are already covered by the scope of the Department's antidumping duty order on television receivers from Japan (36 FR 4597, March 10, 1971) and are therefore not included in the scope of this investigation. In the course of this proceeding, we will determine whether to continue to include imports of CPTs in kits and assemblies from Japan in the scope of this investigation. With regard to the shipment of CPTs in kits and assemblies from Japan through third countries such as Mexico, we are tentatively including these CPTs in our fair value comparisions. No further manufacturing is performed on the Japanese CPT component of these kits and assemblies in Mexico. In fact, the CPTs are not removed from their packing boxes in Mexico. Therefore, for the preliminary determination, we are treating these products as CPTs from Japan which are merely transshipped through Mexico.

Fair Value Comparisons

In order to determine whether sales of CPTs in the United States were made at less than fair value, we compared the United States price to the foreign market value as specified below. We investigated sales of CPTs for the period June 1, 1986 through November 30, 1986.

As required by section 776(b) of the Act, in making our fair value comparisons we used the best information available in calculating both United States price and foreign market value for Toshiba and Matsushita. We

used information in the petition as the best information available for Toshiba because it did not submit a response to our antidumping duty questionnaire. We also used information in the petition as the best information available for Matsushita because it did not provide critical information concerning difference in merchandise adjustments in a timely manner for use in this preliminary determination.

United States Price

For certain sales we based United States price on exporter's sales price, in accordance with section 772(c) of the Act, since the sale to the first unrelated purchaser took place in the United States after importation. For those sales made directly to unrelated parties in the United States prior to importation, we based the United States price on purchase price in accordance with section 772(b) of the Act.

For sales that were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we used purchase price as the basis for determining United States price. For these sales, the Department determined that purchase price was the most appropriate indicator of United States price based on the following elements:

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 the 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 the processor of sales-related documentation and a communication link with the unrelated U.S. buyers.

Where all the above elements are met, we regard the routine selling functions of the exporter as having been merely relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions are done in the United States or abroad does not change the substance of the transactions of the functions themselves.

In instances where merchandise is ordinarily diverted into the related U.S. selling agent's inventory, we regard this factor as an important distinction because it is associated with a materially different type of selling activity than the mere facilitation of a transaction such as occurs on a direct shipment to an unrelated U.S. purchaser. In situations where the related party places the merchandise into inventory, it commonly incurs substantial storage and financial carrying costs and has added flexibility in its marketing. We also use the inventory test because it can readily be understood and applied by respondents who must respond to Department questionnaires in a short period of time. It is objective in nature, as the final destination of the goods can be established from normal commercial documents associated with the sale and verified with certainty.

We calculated purchase price and exporter's sales price based on the packed, f.o.b., c.i.f., c. & f. duty unpaid, or c.i.f. duty paid prices to unrelated purchasers in the United States. We made deductions from the purchase price and exporter's sales price, where appropriate, for foreign inland freight, brokerage and handling charges, ocean freight, marine insurance, U.S. duty and U.S. inland freight and insurance pursuant to section 772(d)(2)(A) of the Act. We also made deductions for discounts and rebates. Where we used exporter's sales price, we made additional deductions, where appropriate, for credit expenses, other U.S. selling expenses, advertising, warranty expenses, royalties, commissions and the value added through further manufacture prior to sale in the United States, pursuant to section 772(e)(3) of the Act. For Hitachi Ltd. we also made deductions from exporter's sales price for technical service expenses and warehousing expenses.

For exporter's sales price sales involving further manufacturing, we deducted all value added in the United States. This value added consisted of the costs associated with the manufacture of the color television (CTV), other than the costs of the CPT, and a proportional amount of the profit or loss related to these costs. Profit or loss was calculated by deducting from the sales price of the CTV, all production costs incurred by the company. This total profit or loss was then apportioned to the non-CPT costs based on the ratio of these costs to total CTV costs.

In calculating the CPT and CTV costs the Department relied primarily on the cost data provided by the respondents. In those instances where it appeared all costs were not included or were not appropriately quantified or valued, certain adjustments were made. For Mitsubishi, an appropriate amount of interest expense related to the production of the CPT in Japan and similarly those general expenses, including interest expense incurred in the U.S. for the production of the CTV, were revised to account for such costs as presented on Mitsubishi's financial statements. For Hitachi, an amount of interest expense related to production of the CPT in Japan and the cost of packing the color television in the United States were included in the total costs of the CTV.

In some cases it could not be determined whether costs incurred for the production of the CTV in third world countries had been captured. The Department will continue to seek additional information related to these costs.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on delivered, packed, home market prices to unrelated and related purchasers. We included sales to related purchasers pursuant to 19 CFR 353.22(b) when the prices paid by those purchasers were at or above the prices paid by unrelated purchasers. We made deductions, where appropriate, for inland freight, handling, insurance, discounts and end-of-year loyalty rebates. For U.S. purchase price sales, we made adjustments under § 353.15 of the Commerce Regulations for differences in circumstances of sale for credit expenses, warranties, royalties and advertising in the United States and home markets, as appropriate.

For U.S. exporter's sales price transactions, we made deductions for home market credit expenses, end-of-year loyalty rebate, and warranties. We also deducted indirct selling expenses in the home market to offset other U.S. selling expenses, in accordance with § 353.15(c) of our regulations.

For Mitsubishi we also made deductions for royalties and advertising expenses from the home market price when comparing it to exporter's sales price.

For both purchase price and exporter's sales price comparisons we subtracted home market packing and added U.S. packing to home market prices.

We established separate categories of "such or similar" merchandise, pursuant to section 771(16) (c) of the Act, on the basis of CPT screen size. We considered any CPT sold in the home market or third country markets that was within two inches in screen size of the CPT sold in the U.S. to be such or similar merchandise. When there was no identical product in the home market with which to compare a product sold to

the United States, we made adjustments to similar merchandise to account for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4) (C) of the Act. These adjustments were based on differences in the costs of materials, direct labor and directly related factory overhead.

For Matsushita, we used the best information available. Matsushita did not provide the requested information for making the required physical difference in merchandise adjustments for all such or similar merchandise insufficient time for use in this preliminary determination. Therefore, we were unable to determined what merchandise comparisons should be made. The best information available was information contained in the petition.

Currency Conversion

For comparisons involving exporter's sales price transactions, we used the official exchange rate on the dates of sale since the use of the exchange rate is consistent with section 615 of the Trade and Tariff Act of 1984 (1984 Act). We followed section 615 of the 1984 Act rather than § 353.56(a) (2) of our regulations because the later law supersedes that section of the regulations. For comparisons involving purchase price transactions we made currency conversions in accordance with § 353.56(a) (1) of our regulations. All currency Conversions were made at the rae certified by the Federal Reserve Bank.

Verification

As provided in section 776(a) of the act, we will verify all information used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733 (d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of CPTs from Japan that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown below. This suspension will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage (percent)
Mitsubishi Electric Corporation	1.69
Hitachi, Ltd	13.14
Matsushita Electronics Corporation	27.02
Toshiba Corporation	33.22
All Others	27.24

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

If our final determination is affirmative, then the ITC will determine no later than 120 days after the date of this preliminary determination or 45 days after the final determination, whichever is later, whether these imports are materially injuring, or threaten material injury to, a U.S. industry.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 9:00 a.m. on August 14, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by August 7, 1987. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, not less than 30 days before the final determination, or, if a hearing is held, within 7 days after the hearing transcript is available, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

June 24, 1987.

[FR Doc. 87-14822 Filed 6-29-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-559-601]

Preliminary Determination of Sales at Less Than Fair Value; Color Picture Tubes from Singapore

ACTION: Notice.

SUMMARY: We have preliminary determined that color picture tubes from Singapore are being, or are likely to be, sold in the Unied States as less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to suspend liquidation of all entries of color picture tubes from Singapore as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by September 8, 1987.

EFFECTIVE DATE: June 30, 1987.

FOR FURTHER INFORMATION: Contact John Brinkmann (202) 377-3965 or Jess Bratton (202) 377-3963, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminary determined that color picture tubes from Singapore are being, or are likely to be, sold in the United States at less than fair value as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The weighted-average margin of sales at less than fair value are shown in the "Suspension of Liquidation" section of this notice.

Case History

On November 26, 1986, we received a petition in proper form filed by: The International Association of Machinists and Aerospace Workers; International Brotherhood of Electrical Workers; International Union of Electronic, Electrical, Technical, Salaried & Machine Workers, AFL-CIO-CLC;

United Steelworkers of America, AFL–CIO; Industrial Union Department, AFL–CIO. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Singapore are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that these imports are causing material injury, or threaten material injury, to a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated the investigation on December 16, 1986 (51 FR 45787, December 22, 1986), and notified the ITC of our action.

On January 12, 1987, the ITC determined that there is a reasonable indication that imports of CPTs are materially injuring a U.S. industry (U.S. ITC Pub. No. 1937, January 1987).

On February 12, 1987, a questionnaire was presented to Hitachi Electronic Devices (Singapore) Pte., Ltd. (Hitachi) which accounts for virtually all of the exports to the United States from Singapore during the period of investigation.

On February 26, 1987, we received a questionnaire response, to question 7, section A of the questionnaire from Hitachi.

On March 20, 1987, petitioners requested a postponement of the preliminary determination. On March 26, 1987, in accordance with section 733(c)(1)(A) of the Act, we postponed the preliminary determination to May 26, 1987 (52 FR 10394, April 1, 1987). On April 2, 1987, we received a response to the remainder of Section A from Hitachi. The responses for Sections B–E of the questionnaire were received on April 20, 1987. We sent a deficiency letter on Section A responses to Hitachi on April 16, 1987. On April 30, 1987, petitioners requested another postponement of the preliminary determination. On May 6, 1987, in accordance with the above-referenced section of the Act, we postponed the preliminary determination to June 24, 1987 (52 FR 17795, May 12, 1987). A deficiency letter concerning Sections B–E was sent on May 15, 1987. Responses to the deficiency letters were received on April 22, 1987 for Section A and on June 3, 1987 for Sections B–E.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedule of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are color picture tubes (CPTs) which are provided for in the *Tariff Schedules of the United States Annotated* (TSUSA) items 687.3512, 687.3513, 687.3514, 687.3516, 687.3518, and 687.3520. The corresponding Harmonized System (HS) numbers are 8540.11.00.10, 8540.11.20, 8540.11.00.30, 8540.11.00.40, 8540.11.00.50 and 8540.11.00.60.

CPTs are defined as cathode ray tubes suitable for use in the manufacture of color television receivers or other color entertainment display devices intended for television viewing.

Petitioners have also requested that the Department examine CPTs which are imported as part of color television receiver kits which contain all parts necessary for assembly into complete television receivers, or as a part of an incomplete television receiver assembly that has a CPT as well as additional components. Color television receiver kits are provided for in TSUSA item 684.9655, while incomplete television receiver assemblies are provided for in TSUSA items 684.9656, 684.9658 and 684.9660. This merchandise is included in the same HS numbers as listed for CPTs above.

In accordance with petitioners' request, we are tentatively including CPTs in these kits and assemblies in the scope of this investigation. In the course of this proceeding, we will determine whether to continue to include imports of CPTs in these kits and assemblies in the scope of this investigation.

Fair Value Comparisons

In order to determine whether sales of CPTs in the United States were made at less than fair value, we compared the United States price to the foreign market value as specified below. We investigated sales of CPTs for the period June 1, 1986 through November 30, 1986.

United States Price

For certain sales we based United States price on exporter's sales price in accordance with section 772(c) of the Act, since the sale to the first unrelated purchaser took place in the United States after importation. For those sales made directly to unrelated parties in the United States prior to importation, we based the United States price on purchase price in accordance with section 772(b) of the Act.

For sales that were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we used purchase price as the basis for determining United States price. For these sales, the Department determined that purchase price was the most appropriate indicator of United States price based on the following elements:

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 the 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 the processor of sales-related documentation and a communication link with the unrelated U.S. buyers.

Where all the above elements are met, we regard the routine selling functions of the exporter as having been merely relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions are done in the United States or abroad does not change the substance of the transactions or the functions themselves.

In instances where merchandise is ordinarily diverted into the related U.S. selling agent's inventory, we regard this factor as an important distinction because it is associated with a materially different type of selling activity than the mere facilitation of a transaction such as occurs on a direct shipment to an unrelated U.S. purchaser. In situations where the related party places the merchandise into inventory, it commonly incurs substantial storage and financial carrying costs and has

added flexibility in its marketing. We also use the inventory test because it can be readily understood and applied by respondents who must respond to Department questionnaires in a short period of time. It is objective in nature, as the final destination of the goods can be established from normal commercial documents associated with the sale and verified with certainty.

We calculated purchase price and exporter's sales price based on the packed, f.o.b., and c.i.f prices to unrelated purchasers in the United States. We made deductions from the purchase price and exporter's sales price, where appropriate, for foreign inland freight, brokerage and handling charges, ocean freight, marine insurance, U.S. duty and U.S. inland freight, pursuant to section 772(d)(2)(A) of the Act. Where we used exporter's sales price, we made additional deductions for rebates, credit expenses, other U.S. selling expenses, advertising, warranty expenses, commissions and the value added through further manufacture prior to sale in the United States, pursuant to section 772(e)(3) of the Act.

For ESP sales involving further manufacturing, we deducted all value added in the United States. This value added consisted of the costs associated with the manufacture of the color television (CTV), other than the costs of the CPT, and a proportional amount of the profit or loss related to these costs. Profit or loss was calculated by deducting from the sales price of the CTV all production costs incurred by the company. This total profit or loss was then apportioned to the non-CPT costs based on the ratio of these costs to total CTV costs.

In calculating the CPT and CTV costs, the Department relied primarily on the cost data provided by the respondent. The cost of packing the CTV in the United States was included in the total costs of the CTV.

It could not be determined whether costs incurred for the production of the color television in third countries had been captured. The Department will continue to seek additional information related to these costs.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on delivered, packed, home market prices to related purchasers. We used sales to related purchasers pursuant to 19 CFR 353.22(b) as the prices paid by these purchasers were at or above the prices paid by unrelated purchasers. We made deductions, where appropriate, for inland freight, handling and insurance. For U.S. purchase price sales, we made adjustments under § 353.15 of the Commerce Regulations for differences in circumstances of sale for credit expenses in the United States and home market.

For U.S. exporter's sales price transactions, we made a deduction for home market credit expenses. We also deducted indirect selling expenses in the home market to offset other U.S. selling expenses and commissions, in accordance with § 353.15(c) of our regulations.

For both purchase price and exporter's sales price comparisons, we subtracted home market packing and added U.S. packing to home market prices.

We established separate categories of "such or similar" merchandise, pursuant to section 771(16)(C) of the Act, on the basis of CPT screen size. We considered any CPT sold in the home market or third country markets that was within plus or minus two inches in screen size of the CPT sold in the United States to be such or similar merchandise. When there was no identical product in the home market with which to compare a product sold to the United States, we made adjustments to similar merchandise to account for differences in the physical characteristics of the merchandise, in accordance with section 733(a)(4)(C) of the Act. These adjustments were based on differences in the costs of materials, direct labor and directly related factory overhead.

Currency Conversion

For redundant comparisons involving exporter's sales price transactions, we used the official exchange rate on the dates of sale since the use of that exchange rate is consistent with section 615 of the Trade and Tariff Act of 1984 (1984 Act). We followed section 615 of the 1984 Act rather than § 353.56(a)(2) of our regulations because the latter law supersedes that section of the regulations. For comparisons involving purchase price transactions we made currency conversions in accordance with § 353.56(a)(1) of our regulations. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Verification

As provided in section 776(a) of the Act, we will verify all information used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of CPTs from Singapore that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown below. This suspension will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Hitachi Electronic Devices (Singapore) Pte., Ltd.	1.52
All others	1.52

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

If our final determination is affirmative, then the ITC will determine no later than 120 days after the date of this preliminary determination or 45 days after the final determination, whichever is later, whether these imports are materially injuring, or threaten material injury to, a U.S. industry.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 1:00 a.m. on August 14, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants;

(3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by August 7, 1987. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, not less than 30 days before the final determination, or, if a hearing is held, within 7 days after the hearing transcript is available, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

June 24, 1987.

[FR Doc. 87-14823 Filed 6-29-87; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Sea Grant Review Panel; Open Meeting

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting has several purposes. Panel members will finish work on reports prepared by subcommittees on the role and responsibility of the Panel, site visits, and priority setting. Members will also hear from the Deputy Assistant Administrator of Oceanic and Atmospheric Research (OAR), NOAA, and the Head, Directorate of Geosciences, National Science Foundation (NSF), to learn of their respective programs and how Sea Grant cooperates. There will also be presentations by Sea Grant technical staff concerning programs in coastal and ocean processes and the marine advisory services. Panel members will elect officers for the next term and plan activities for the coming year. At times other than those scheduled for the Panel, individual members will be attending sessions programmed for Sea Grant Week.

DATE: The announced meeting is scheduled during three days: July 20, 21, and 22, 1987, as follows: July 20, 1987, 8:30–11:30 a.m., and 1:30–3:00 p.m., July 21, 1987, 8:30–11:30 a.m., and 3:30–5:30 p.m.; and July 22, 1987, 10:00–11:00 a.m.

ADDRESS: The meetings will be held at The Washington Marriott, 22nd and M Streets, NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Dr. David B. Duane, National Sea Grant College Program, R/SE1, 6010 Executive Boulevard, Rockville, Maryland 20852, (301) 443–8894.

SUPPLEMENTARY INFORMATION: The Panel, which consists of balanced representation from academia, industry, state government, and citizens groups, was established in 1976 and section 209 of the Sea Grant Improvement Act (Pub. L. 94–461, 33 U.S.C. 1128) and advises the Secretary of Commerce, Under Secretary, NOAA, and the Director of the National Sea Grant College Program with respect to operations under the act, and such other matters as the Secretary refers to the Panel for review and advice.

The agenda for the meeting is:

Monday, July 20, 1987

8:30–10:00 a.m.—A. Joint meeting with leaders, Marine Advisory Service
10:00 to 11:30 a.m.—B. Review and consider subcommittee reports on roles and responsibilities, site visits, priorities setting, and National Office policy on small Sea Grant Colleges
1:30 to 3:00 p.m.—C. Status and trends in the National Office

Tuesday, July 21, 1987

8:30–11:00 a.m.—D. National office staff reviews-Coastal Processes and Marine Advisory Services
11:00–11:30 a.m.—E. Election of Officers
3:30–5:30 p.m.—F. Address by Dr. Thomas, OAR and Dr. Corell, NSF

Wednesday, July 22, 1987

10:00 to 11:00 a.m.—G. Set topics and agenda for the future

The meeting will be open to the public.

Dated: June 24, 1987.

Alan R. Thomas,

Deputy Assistant Administrator, Oceanic and Atmospheric Research.

[FR Doc. 87-14700 Filed 6-29-87; 8:45 am]

BILLING CODE 3510-12-M

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. CRT 87-4 PBRA]

1987 Adjustment of the Public Broadcasting Royalty Rates and Terms

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice of commencement of proceedings.

SUMMARY: The Copyright Act of 1976 requires that the Copyright Royalty Tribunal commence the public broadcasting rate adjustment proceedings on June 30, 1987. This notice announces the commencement of proceedings and specifies certain procedural dates.

DATES: The proceeding is commenced effective June 30, 1987. Notices of Appearance from those parties intending to participate are due August 14, 1987. Direct case testimony is due September 21, 1987.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Councel, Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036 (202) 653–5175.

SUPPLEMENTARY INFORMATION: Section 118(b) of the Copyright Act of 1976 (Act) authorizes the Copyright Royalty Tribunal (Tribunal) to establish reasonable terms and rates of royalty payments with respect to certain uses by public broadcasting entities of published nondramatic musical works, and published pictorial, graphic, and sculptural works. Section 118(c) requires the Tribunal to initiate and to conclude proceedings to establish such rates and terms between June 30, 1982 and December 31, 1982, and at each five-year interval thereafter.

Section 118(b)(2) of the Act states that license agreements voluntarily negotiated at any time between one or more copyright owners and one or more public broadcasting entities shall be given effect in lieu of any determination by the Tribunal. Accordingly, the Tribunal sent a letter on May 1, 1987 to all the parties who had participated in either the 1978 and/or the 1982 public broadcasting rate adjustment proceedings to determine whether any private agreements had been reached. The Tribunal received comments from National Public Radio, Public Broadcasting Service, SESAC, Broadcast Music, Inc. and the American Society of Composers, Authors, and Publishers. Generally, the commenters state that preliminary contacts have been made between representatives of the owners and the users, that settlement agreements are expected to be reached, but that none has been reached so far. Accordingly, in lieu of any private settlements, the Tribunal commences the 1987 Public Broadcasting Rate Adjustment Proceeding, effective June 30, 1987.

The Tribunal orders that all parties intending to participate in this proceeding shall file a Notice of Appearance with the Tribunal by

August 14, 1987. Written direct cases are due September 21, 1987. The Tribunal expects to hold hearings sometime in October. Further procedural dates will be issued to the participating parties.

The Tribunal reminds the parties that this proceeding must conclude by December 31, 1987, and therefore, urges that settlement negotiations be conducted expeditiously.

Dated: June 25, 1987.

J.C. Argetsinger,

Chairman.

[FR Doc. 87-14794 Filed 6-29-87; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

June 22, 1987.

The USAF Scientific Advisory Board Committee on Software Expertise and Ada will conduct closed meetings at the Lockheed Missile and Space Corporation, Sunnyvale, CA on July 17, 1987 from 8:00 a.m. to 11:30 a.m. and at Rationale Corporation, Mountain View, CA on July 17, 1987 from 1:00 p.m. to 5:00 p.m.

The purpose of these meetings is to review, discuss and evaluate the effectiveness of software expertise being developed by the Air force and the success of implementing the Ada computer language on space systems.

These meetings concern matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-14765 Filed 6-29-87; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Grant to the Electric Power Research Institute

AGENCY: Department of Energy.

ACTION: Notice of restricted eligibility for grant award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.7(b), it is restricting eligibility for a grant under Procurement Request Number 22-87PC79861.000 to EPRI for cosponsorship of a test program at their High Sulfur Test Center.

Scope: The grant to the Electric Power Research Institute is to co-sponsor a test program over a period of five years in their High Sulfur Test Center located at the Somerset Station of New York State Electric and Gas Company in Barker, New York. The overall objective of this test program is to evaluate and develop cost effective solutions for the control of sulfur dioxide, nitrogen oxides, and particulate emissions from high-sulfur coal-fired utility boilers.

The High Sulfur Test Center was established by the Electric Power Research Institute to provide a single research center for environmental control research and development activities to limit emissions from electric power generating plants burning coal containing greater than two percent sulfur. The High Sulfur Test Center is unique. It is the first and only known time that a completely integrated series of flue gas treatment test units, including wet scrubbing, spray drying, and duct injection technologies, has been assembled in a single facility. The flue gas, process streams, and waste streams used in the evaluation of flue gas cleanup concepts are taken directly from the state-of-the-art electric power generating and emissions control units at the Somerset Station providing experience with actual materials produced in an operating plant. The size of the test equipment ranges from bench-scale to pilot-scale (4 MWe) and includes all auxiliary equipment required to provide self-sufficient and controlled operating including reagent preparation equipment, filtration and clarification equipment, and particulate collection devices.

Eligibility for award of the grant is being limited to EPRI because their High Sulfur Test Facility is unique. There is no other facility that is designed and equipped to perform the functions that it can perform. DOE participation provides an outstanding opportunity for the government to collaborate with the electric utility industry in an important environmental control technology effort while contributing only a small fraction of the project's cost. EPRI is the electric power industry's research organization, and participation with them in this program supports the goal of the DOE Flue Gas Cleanup Program, which is assisting industry in the development of advanced emissions control technology to promote the environmentally acceptable use of coal in the generation of electricity.

The DOE considers this a unique opportunity to support the evaluation and development of flue gas cleanup concepts and has determined that award of this grant to the Electric Power Research Institute on a restricted eligibility basis is appropriate.

The term of this grant shall be from approximately July 1, 1987 to June 30, 1992 and the grant is for $1.0 million.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, P.O. Box 10940, Pittsburgh, PA 15236, ATTN: Brian J. Luzik, 412-892-6221.

Issued on June 1, 1987.

Sun W. Chun,

Director, Pittsburgh Energy Technology Center.

[FR Doc. 87-14759 Filed 6-29-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER87-496-000, et. al.]

Electric Rate and Corporate Regulation Filings; Baltimore Gas and Electric Co. et. al.

July 23, 1987.

Take notice that the following filings have been made with the Commission:

1. Baltimore Gas and Electric Co.

[Docket No. ER87-496-000]

Take notice that on June 18, 1987, Baltimore Gas and Electric Company (BG&E) tendered for filing as an initial rate schedule a specimen letter agreement by which BG&E and certain members of the Pennsylvania-New Jersey-Maryland Interconnection (PJM) can enter into monthly sales of BG&E's unutilized entitlement for use of the PJM transmission system which is used to import energy from systems to the west of PJM. BG&E's importation entitlement will be sold to the member companies through an open auction. Certificates of concurrence to the entitlement sale procedure by Public Service Electric and Gas Company, Atlantic Electric, Jersey Central Power and Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Philadelphia Electric Company, Potomac Electric Power Company and UGI Corporation were submitted. A copy of the initial rate schedule has been mailed to the above-mentioned companies.

BG&E's importation entitlement will be sold through an open auction process. Auctions will be held on a modified calendar month basis, that is the "month" for which the importation entitlement will be sold will start on the first Monday of the calendar month and

end on the first Sunday after or coincident with the end of the calendar month. PJM members wishing to bid on increments of BG&E's importation entitlement will be required to submit their bids at an open auction held on or about the 20th day of the calendar month prior to the modified calendar month they are bidding on. All bids must be submitted for 10% increments of BG&E's importation entitlement. The highest bid submitted will be accepted. If the highest bid is not for 100% of BG&E's importation entitlement, BG&E will accept the offer[s] for the remainder of its importation entitlement made by the next highest bidder[s]. BG&E reserves the right to retain, on a weekly basis, any or all of its importation entitlement whenever in its sole judgment it has a need to utilize such capability for its own purpose.

BG&E requests that the Commission waive its customary notice period and allow the rate schedule to become effective on June 18, 1987.

Comment date: July 7, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Boston Edison Co.

[Docket No. ER87-408-000]

Take notice that on June 17, 1987, Boston Edison Company (Edison) of Boston, Massachusetts tendered for filing its response to the Commission's request for information regarding an agreement for the exchange of power between itself and Montaup Electric Company of Boston, Massachusetts (Buyer) which was filed with the Commission on April 29, 1987.

Under the agreement, the parties may negotiate daily power exchanges involving Edison units and entitlements and Buyer's facilities. The parties state that the purpose of the power exchanges is to attain greater efficiencies of operation.

Edison requests waiver of the Commission's notice requirements to permit the Agreement to become effective August 29, 1983.

Copies of the filing have been served upon Buyer and on the Department of Public Utilities of the Commonwealth of Massachusetts.

Comment date: July 7, 1987, in accordance with Standard Paragraph E at the end of this notice.

Central Hudson Gas & Electric Corp.

[Docket No. ER87-495-000]

Take notice that on June 18, 1987, Central Hudson Gas and Electric Corporation (Central Hudson) tendered for filing as a rate schedule and executed Agreement dated April 22, 1987 between Central Hudson and Orange and Rockland Utilities, Inc. (O&R). The proposed rate schedule provides for a transmission agreement between Central Hudson and O&R.

Central Hudson states that the service to be provided by Central Hudson is the transmission of power and energy between (a) Central Hudson's transmission connection with the 345 Kv. Leeds Substation of Niagara Mohawk Power Corporation and (b) Central Hudson's transmission connection with O&R at the 115 Kv. Sugarloaf Substation.

Central Hudson states that transmission capacity to be made available to O&R will be that scheduled as unsupported firm power for O&R by the New York Power Authority (NYPA) in accordance with contracts in effect between NYPA and O&R.

Central Hudson states that copies of the subject filing were served upon: Orange and Rockland Utilities, Inc., 75 West Route 59, Spring Valley, New York 10977.

Comment date: July 7, 1987, in accordance with Standard Paragraph E at the end of this document.

4. Consumers Power Co.

[Docket No. ER87-493-000]

Take notice that on June 15, 1987, Consumers Power Company (Consumers) tendered for filing a revision to the annual charge rate for charges due Consumers from Northern Indiana Public Service Company (Northern), under the terms of the Barton Lake—Batavia Interconnection Facilities Agreement (designated Consumers Power Company Electric Rate Schedule FERC No. 44).

The revised charge is provided for in Subsection 1.043 of the Agreement, which provides that the annual charge rate may be determined from time to time by Consumers. The annual fixed charge factor has been redetermined using year-end 1986 data with the new annual charge rate effective May 1, 1987. As a result of the redetermination, the monthly charges to be paid by Northern were reduced from $20,388 to $19,045.

Consumers requests an effective date of May 1, 1987, and therefore requests waiver of the Commission's notice requirements.

Comment date: July 7, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Montana Power Co.

[Docket No. ER87-494-000]

Take notice that on June 18, 1987, Power Company (Montana), tendered for filing a revised Appendix I as required of the Residential Purchase and Sale Agreement (Agreement) between Montana and the Bonneville Power Administration (BPA).

The Agreement was entered into pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, Public Law 96-501. The Agreement provides for the exchange of electric power between Montana and BPA for the benefit of Montana's residential and farm customers.

Montana requests that the rate have an effective date of September 29, 1986 and, therefore, requests waiver of the Commission's notice requirements.

A copy of the filing was served upon BPA.

Comment date: July 7, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. Montana Power Co.

[Docket No. EC87-15-000]

Take notice that on June 18, 1987, Montana Power Company (Montana Power), a corporation organized under the laws of the State of Montana, filed an application with the Federal Energy Regulatory Commission pursuant to Section 203 of the Federal Power Act, seeking an order authorizing Montana Power to purchase or acquire securities of other public utilities as part of a planned expansion of corporate investments. Montana Power proposes to limit its holding or ownership of any given class of securities, directly or through subsidiaries, to an amount of less than five percent of the issuer's capital stock or funded debt outstanding.

Additionally, Montana Power is requesting a modification of the reporting requirements under 18 CFR 33.8 to allow an annual update and status report only. The application is on file with the Commission and open to public inspection.

Comment date: July 7, 1987, in accordance with Standard Paragraph E at the end of this document.

7. Portland General Electric Co.

[Docket No. ER87-492-000]

Take notice that on June 18, 1987, Portland General Electric Company (PGE) tendered for filing its revised Average System Cost (ASC) which reflects PGE's Power Cost Adjustment (PCA) rate change which became effective with meter readings on and after October 31, 1986. This filing includes a revised Schedule 4 to Appendix 1, Exhibit C of the Residential Purchase and Sale Agreement along with the authorization to implement this

rate change from the Public Utility Commissioner of Oregon.

PGE states that the filing shows that the fourth quarter PCA adjustment to the current base ASC is 1.17 mill/kWh credit, which when added with the base ASC results in a net ASC rate effective for this period.

Comment date: July 7, 1987, in accordance with Standard Paragraph E at the end of this notice.

8. Toledo Edison Co.

[Docket No. ER87-336-000]

Take notice that on June 15, 1987, Toledo Edison Company tendered for filing pursuant to the Commission's order in the above-captioned docket a one page calculation reflecting monthly billing determinants, revenues by month under the prior and present rates, monthly revenue refund and, monthly interest computed pursuant to the Commission's rules and regulations.

A copy of this filing is being served on the Michigan Public Service Commission.

Comment date: July 7, 1987, in accordance with Standard Paragraph E at the end of this notice.

9. Virginia Electric and Power Co.

[Docket No. ER86-372-006]

Take notice that on June 18, 1987, Virginia Electric and Power Company tendered for filing pursuant to the Commission's letter order issued May 4, 1987, in this docket a refund compliance report after refunds were made to the electric cooperatives.

Comment date: July 7, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 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 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-14771 Filed 6-29-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-370-000 et al.]

Natural Gas Certificate Filings; Tennessee Gas Pipeline Co., et al., a Division of Tenneco Inc.

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP87-370-000]

June 17, 1987.

Take notice that on May 29, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP87-370-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for (1) authority to abandon a total of 150,000 dt per day of firm sales service to Columbia Gas Transmission Corporation (Columbia) and The Inland Gas Company, Inc. (Inland); and (2) a certificate of public convenience and necessity authorizing (a) the sale for resale in interstate commerce of up to 122,000 dt per day, on a firm basis, to the Cincinnati Gas and Electric Company (CG&E) under Tennessee's CD-2 Rate Schedule; (b) the sale for resale in interstate commerce of up to 28,000 dt per day, on a firm basis to the Union Light, Heat and Power Company (Union) under Tennessee's CD-2 Rate Schedule; and (c) the construction and operation of facilities necessary to render the sale in two phases with Phase I construction utilizing a temporary, portable compressor to commence on August 1, 1987, and Phase 2 construction utilizing permanent compression to commerce at the end of the 1987-1988 winter heating season, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that CG&E and Union are local distribution company custonmers of Columbia and propose to reduce their existing sales entitlements with Columbia and replace that service with a firm sales service from Tennessee, effective November 1, 1987. It is further stated that CG&E specifically has requested that Tennessee provide it with firm sales service under Tennessee's CD-2 Rate Schedule at a Maximum Daily Quantity of 122,000 dt and an Annual Quantity Limitation of 22,082,000 dt. Union has requested firm sales service under Tennessee's CD-2 Rate Schedule at a Maximum Daily Quantity of 28,000 dt and an Annual Quantity Limitation of 5,068,000 dt, it is asserted.

In order to provide the total 150,000 dt per day of firm sales service to CG&E and Union, Tennessee requests authority to abandon 150,000 dt per day of existing firm sales service to Columbia and Inland in the amounts of 138,720 dt per day of firm sales service for Columbia and 11,280 dt per day of firm sales service for Inland. Tennessee states that the request for abandonment is conditioned on the receipt of acceptable authorization to provide firm sales service to CG&E and Union, and the proposed effective date of the abandonment is November 1, 1987, the date on which Tennessee proposes to commence service to CG&E and Union.

Tennessee proposes to effectuate delivery of gas to CG&E and Union through a firm transportation agreement with Columbia. Under this arrangement, Columbia would receive the gas from Tennessee at Tennessee's North Means Meter Station in Montgomery County, Kentucky, for redelivery to CG&E and Union at one of the following points of delivery:

CG&E

1. At CG&E's measuring stations identified as California, East Gas Works, Front and Rose and Anderson Ferry, all in the City of Cincinnati, Hamilton County, Ohio.

2. At the interconnection of the facilities of Columbia and CG&E near Aberdeen, Brown County, Ohio.

Union

1. At the interconnections of the facilities of Union and Columbia near Cold Spring and Alexandria, Campbell County, Kentucky.

2. At various and sundry taps off Columbia's mainline, all in the state of Kentucky.

In order to accommodate the CG&E and Union quantities at North Means, Tennessee states that it would be required to upgrade and relocate the existing meter station and to install a 3,000-horsepower compressor station at a total estimated cost of $10,772,000. Tennessee further states that the November 1, 1987 commencement date would require that the construction be authorized in two phases. Phase I construction would involve temporary, portable compression to be installed in 1987 and Phase 2 construction would involve permanent compression to be installed in 1988, it is sta'ed. Tennessee

asserts that Phase I construction must be authorized no later than August 1, 1987, in order to allow sufficient time to install the temporary compression for November 1 deliveries.

Comment date: July 8, 1987, in accordance with Standard Paragraph F at the end of this notice.

2. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP85-710-006]

June 18, 1987

Take notice that on June 9 1987, Northern Natural Gas Company, Divisions of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-710, a Petition to Amend the Commission's Order of July 24, 1986, as modified by its January 28, 1987 order on rehearing to permit additional categories of natural gas to be eligible for release and sale under the remaining conditions of Northern's existing limited-term abandorment authorization (LTA), and the accompanying producer-suppliers certificates of public convenience and necessity to make or abandon sales for resale in interstate commerce.

Northern requests that all natural gas subject to the Commission's jurisdiction under the Natural Gas Act be eligible for release and sale for the remaining term of its LTS, as set by the Commission in its Order in Docket No., CP85-710 *et al.* on July 24, 1986, its January 28, 1987 order an rehearing, and its March 31, 1987 order in *Odeco Oil and Gas Company, et al.*, Docket Nos. CI85-29-007, *el al.*, 38 FERC #61,343 (1987) extending the term of the LTA.

Comment date: July 1, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. East Tennessee Natural Gas Company

[Docket No. CP87-379-000]

June 19, 1987.

Take notice that on June 2, 1987, East Tennessee Natural Gas Company (Applicant), P.O. Box 10245, Knoxville, Tennessee, 37939-0245, filed in Docket No. CP87-379-000, a request pursuant to §§ 157.205 and 157.212(a) of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212(a)) to construct and operate new delivery points for United Cities Gas Company (United Cities), under Applicant's "blanket certificate" issued in Docket No. CP82-412-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant proposes to establish new delivery points for its existing customer, United Cities, at two points; (1) At or near the intersection of Applicant's 12-inch line and Axley Chapel Road in Loudon County, Tennessee; and (2) at or near the intersection of Applicant's 3300 Line at MLV 3313 in Rural Retreat, Virginia.

It is stated that the new delivery points would enable United Cities to service Foothills Village, a newly developed residential and small commercial property in Loudon County, Tennessee, and the town of Rural Retreat, Virginia, the latter which is currently without natural gas service.

Applicant states that service to Rural Retreat, Virginia, would make natural gas available to approximately 300 residential and 48 commercial customers and three small industries located in the Industrial Park at Rural Retreat and that said service would be provided on an economic basis by United Cities.

Applicant further states that deliveries at the proposed new delivery points would not disadvantage its other customers. The proposed maximum hourly quanties of natural gas to be delivered would be 30 Mcf at Foothills Village and 42 Mcf at Rural Retreat, it is stated.

Applicant also states that the estimated cost of the proposed facilities at Foothills Village and at Rural Retreat is $30,900, each and that each will be paid for with cash on hand.

Comment date: August 8, 1987, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, A hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-14772 Filed 6-29-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-11-20-000]

Algonquin Gas Transmission Co.; Notice of Filing

June 25, 1987.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on June 17, 1987 submitted for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Revised Nineteenth Revised Sheet No. 201
Revised Nineteenth Revised Sheet No. 203
Twelfth Revised Sheet No. 205
Thirteenth Revised Sheet No. 211
Fifth Revised Sheet No. 214.

Algonquin states such tariff sheets are being filed pursuant to the provisions of

Algonquin's tariff for the purpose of revising Algonquin's rates to reflect the effect of Texas Eastern Transmission Corporation's ("Texas Eastern") filing of June 1, 1987.

On June 1, 1987, Texas Eastern filed with the Federal Energy Regulatory Commission revised rates in accordance with article IX of the Stipulation and Agreement filed May 13, 1983 and approved by the Commission on July 14, 1983 in Docket No. RP83–35, *et. al.*, in order to reflect the reduction in the statutory corporate Federal income tax rate from 46% to 34% effective July 1, 1987.

With the exception of Twelfth Revised Sheet No. 205, the above-mentioned tariff sheets supersede corresponding tariff sheets filed by Algonquin on June 2, 1987 in Docket No. RP87–73 and reflect the rates which were filed in such docket to implement open-access transportation pursuant to section 311 of the Natural Gas Policy Act of 1978.

In the events Algonquin's filing in Docket No. RP87–73 is not accepted with an effective date prior to July 1, 1987, Algonquin is also filing the following alternate tariff sheets:

Alternate Revised Nineteenth Revised Sheet No. 201
Alternate Revised Nineteenth Revised Sheet No. 203
Alternate Thirteenth Revised Sheet No. 211
Alternate Fifth Revised Sheet No. 214

The alternate tariff sheets supersede corresponding tariff sheets moved into effect in Docket No. RP87–14 which Algonquin is currently collecting subject to refund.

The proposed effective date of the tariff sheets filed herein is July 1, 1987 coincident with Texas Eastern's rate change.

Algonquin requests that the Commission accept the tariff sheets as filed herein and to grant any waiver of the Regulations as may be necessary by the Commission to permit such accepted tariff sheets to become effective as proposed. However, if the Commission should not permit an effective date prior to July 1, 1987 for the tariff sheets filed in Docket No. RP87–73, Algonquin requests that the Commission accept the alternate tariff sheets filed herein in place of the corresponding primary tariff sheets.

In addition Algonquin is submitting for filing two substitute tariff sheets designated as Second Substitute Eleventh Revised Sheet No. 204 and Substitute Revised Twelfth Revised Sheet No. 204, in order to reflect the current rate for transportation service under Rate Schedule F–3.

On April 1, 1987, Transcontinental Gas Pipe Line Corporation ("Transco") filed a motion to place into effect as of April 1, 1987 its revised rates in Docket No. RP87–7. Such filing reflected a 70 cent/dekatherm reduction in Transco's transportation charge, which Algonquin tracked under its Rate Schedule F–3 in Docket No. TA87–10–20–000 and 001 and which the Commission accepted by its letter order dated May 18, 1987. Algonquin subsequently incorporated such rate reduction into its next two tariff filings, i.e. its Motion filing in Docket No. RP87–14, accepted by Commission order dated May 27, 1987, and its section 311 Transportation filing in Docket No. RP87–73, currently pending Commission action. However, on May 20, 1987 the Commission rejected Transco's reduced transportation rate which had supported Algonquin's rate change. In light of the above, the Commission has issued an errata notice dated June 15, 1987 which in effect rejects Algonquin's filing in Docket No. TA87–10–20–000 and 001 and reinstates the rate which was in effect prior to April 1, 1987. As a result, Algonquin is filing the above-mentioned tariff sheets in place of the respective corresponding tariff sheets filed in Docket No. RP87–14 and Docket No. RP87–73 for the sole purpose of accurately reflecting Transco's transportation charge.

The propose effective dates for Second Substitute Eleventh Revised Sheet No. 204 and Substitute Twelfth Revised Sheet No. 204 are May 1, 1987 and June 2, 1987, respectively, the same effective dates as the sheets they are replacing.

Algonquin request that the Commission accept the above-mentioned tariff sheets and to grant any waiver of the Regulations as may be necessary by the Commission to permit such accepted tariff sheets to become effective as proposed.

Algonquin notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 2, 1987. 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.

Kenneth F. Plumb,

Secretary

[FR Doc. 87–14842 Filed 6–29–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. SA87–47–000]

Petition for Adjustment; FMP Operating Co.

June 25, 1987.

On May 6, 1987, FMP Operating Company filed with the Federal Energy Regulatory Commission a petition for adjustment pursuant to Commission Order No. 399–A,[1] section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[2] and Supart K of the Commission's Rules of Practice and Procedure.[3] Petitioner seeks an extension of time with respect to that portion of its Btu refund obligations attributable to certain royalties paid by petitioner to (1) the Minerals Management Service of the United States Department of the Interior (MMS) and (2) the State of Texas (Texas). Under Order No. 399, these refunds were due by November 5, 1986,[4] but this deadline has been postponed.[5]

Petitioner states that until MMS and Texas issue their rulings on petitioner's claims for refunds, petitioner is threatened with special hardship, inequity or an unfair distribution of burdens within the meaning of section 502(c) of the NGPA, unless the Commission grants the requested extension of time.

The procedures applicable to the conduct of this adjustment proceeding are found in Supart K of the

[1] Refunds Resulting from Btu Measurement Adjustments, 49 Fed. Reg. 46,353 (Nov. 26, 1984); FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,612.

[2] 15 U.S.C. 3412(c) (1982).

[3] 18 CFR 385.1101–.1117 (1986).

[4] 49 FR 37,735 at 37,740 (Sept. 26, 1984), FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,597 at 31,150. In Order No. 399, the Commission established refund procedures for charges for natural gas that exceeded NGPA ceilings as a result of Btu measurements based on the water vapor content of the gas "as delivered," rather than on a water saturated basis. In so doing, the Commission was implementing the decision in Interstate Natural Gas Association of America v. Federal Energy Regulatory Commission, 716 F.2d 1 (D.C. Cir. 1983), *cert. denied*, 465 U.S. 1108 (1984).

[5] In Order No. 399–C, 37 FERC ¶ 61,091, issued November 5, 1986, the Commission postponed the November 5, 1986 deadline for payment of Btu refunds attributable to royalty payments for any first seller that has a petition on file with the Commission seeking waiver of or postponement of the deadline to pay Btu refunds attributable to royalty payments.

Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-14843 Filed 6-29-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-3-53-000]

Proposed Changes in FERC Gas Tariff; K N Energy, Inc.

June 25, 1987.

Take notice that on June 19, 1987 K N Energy, Inc. (K N) tendered for filing Twenty Seventh Revised Sheet No. 4 and Sixth Revised Sheet No. 4B to its FERC Gas Tariff, Third Revised Volume No. 1. K N states that the proposed changes reflect an out-of-cyle PGA in response to the second sentence of Ordering Paragraph (A)(1) of Commission's Order dated November 28, 1987 in Docket No. TA87-1-53. The subject filing reflects an increase in the base cost of gas and does not change the surcharge which was determined in Docket No. TA87-1-53. The proposed change would thus increase the commodity rate under each of K N Energy's jurisdictional rate schedules by 01.00¢ per Mcf.

K N states that copies of this filing were served on its jursidictional customers and interested public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214, 385.211). All such notions or protests should be filed on or before July 2, 1987. 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 notion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-14844 Filed 6-29-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA87-46-000]

Petition for Adjustment; Shell Offshore Inc. and Shell Oil Co.

June 25, 1987.

On May 6, 1987, Shell Offshore Inc. and Shell Oil Company filed with the Federal Energy Regulatory Commission a petition for adjustment pursuant to Commission Order No. 399-A,[1] section 502(c) of the Natural Gas Policy Act of 1978,[2] and Subpart K of the Commission's Rules of Practice and Procedure.[3] Petitioner seeks waiver of that portion of its Btu refund obligations attributable to certain royalties said by petitioner to the State of Louisiana for sales of gas from state-owned leases. Under Order No. 399, these refunds were due by November 5, 1986,[4] but this deadline has been postponed.[5] Petitioner states that such refunds were made to its pipeline-purchasers.

Petitioner states that it bases its request for waiver on grounds that the State Mineral Board of Louisiana, Department of Natural Resources has adopted a resolution prohibiting producers from recovering Btu refund amounts attributable to state royalty payments by deductions from current royalty payments. Petitioner further states that such excess royalty payments are uncollectible and that irreparable injury will result in the absence of a waiver by the Commission. Petitioner asserts that a waiver is sought, rather than deferral, in order that it may recoup refunds already made to its pipeline-purchasers.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-14845 Filed 6-29-87; 8:45 am]

BILLING CODE 6717-01-M

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[1] Refunds Resulting from Btu Measurement Adjustments, 49 Fed. Reg. 46,353 (Nov. 26, 1984); FERC Stats. & Regs. [Regulations Preambles 1982-1985] ¶ 30,612.

[2] 15 U.S.C. 3412(c) (1982).

[3] 18 CFR 385.1101-.1117 (1986).

[4] 49 F.R. 37,735 at 37,740 (Sept. 26, 1984), FERC Stats. & Regs. [Regulations Preambles 1982-1985] ¶ 30,597 at 31,150. In Order No. 399, the Commission established refund procedures for charges for natural gas that exceeded NGPA ceilings as a result of Btu measurements based on the water vapor content of the gas "as delivered," rather than on a water saturated basis. In so doing, the Commission was implementing the decision in Interstate Natural Gas Association of America v. Federal Energy Regulatory Commission, 716 F.2d 1 (D.C. Cir. 1983), *cert. denied*, 465 U.S. 1108 (1984).

[5] In Order No. 399-C, 37 FERC ¶ 61,091, issued November 5, 1986, the Commission postponed the November 5, 1986 deadline for payment of Btu refunds attributable to royalty payments for any first seller that has a petition on file with the Commission seeking waiver of or postponement of the deadline to pay Btu refunds attributable to royalty payments.

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3224-5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that EPA has forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The ICRs that follow are available for review and comment.

FOR FURTHER INFORMATION CONTACT: Patricia Minami, (202) 382-2712 (FTS 382-2712) or Jackie Rivers, (202) 382-2740 (FTS 382-2740).

Office of Air and Radiation

Title: Ambient Air Quality Monitoring and Quality/Precision Data (EPA ICR #0940). (This is a revision of a currently approved collection.)

Abstract: State and local air pollution control agencies must operate ambient air quality sampling devices. Agencies are then required to submit quarterly reports (including quality assurance data) to EPA as well as annual summaries of all air quality data. The Agency uses the information for compliance determinations and control analyses as well as for planning and evaluation.

Respondents: State and regional air pollution control agencies.

Estimated Annual Burden: 1,113,277 hours.

Title: NESHAP for Benzene Fugitive Emissions (EPA ICR #1153). (This is a revision of a currently approved collection.)

Abstract: Petroleum refineries and chemical manufacturers must limit benzene emissions from new and existing fugitive emission sources. Owners and operators must submit to EPA one-time notifications for new construction, modification, and start-up. They must also submit semi-annual reports of the number of valves, pumps, and compressors for which leaks were detected. EPA uses the collected information as the basis for enforcement actions as well as to spot trends and plan program strategies.

Respondents: Chemical manufacturers and petroleum refineries.

Estimated Annual Burden: 91,697 hours.

Office of Pesticides and Toxic Substances

Title: Household Surveys of Chemical Product Usage (EPA ICR #1200). (This is a renewal without revision of a currently approved collection.)

Abstract: These annual surveys will provide information on household use of common chemical products. From the results, EPA will derive exposure assessments for use in making regulatory decisions required by the Toxic Substances Control Act.

Respondents: Individuals and households.

Estimated Annual Burden: 800 hours.

Agency PRA Clearance Requests Completed by OMB

EPA ICR #0155; Pesticide Application Certification Form, Training and Examination of Applicators; was approved 6/17/87 (OMB #2070–0029; expires 6/30/90).

EPA ICR #0613, Trade Secret Clearance Justification for Pesticides, was extended 6/18/87 (OMB #2070–0053–expires 9/30/87).

EPA ICR #1160, NSPS for Wool Fiberglass Manufacturing (Subpart PPP) Information Requirements, was approved 6/12/87 (OMB #2060–0114; expires 6/30/90).

EPA ICR #1315, Information Request for Development of NESHAP for Chromium Plating and Anodizing Operations, was approved 6/11/87 (OMB #2060–0142; expires 12/31/87).

EPA ICR #1362, NESHAP for Coke Oven Emissions from Wet-Coal Charged By-Product Coke Oven Batteries, was approved 6/15/87 (OMB #2060–0144; expires 6/30/90).

Send comments on the above abstract(s) to:

Patricia Minami, PM–223, U.S. Environmental Protection Agency, Information and Regulatory Systems Division, 401 M Street, SW., Washington, DC 20460

and

Susan Dudley (ICR #1200) and Nicolas Garcia (ICRs 0940 and 1153), Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, 726 Jackson Place, NW., Washington, DC 20503

Dated: June 24, 1987.

Daniel J. Fiorino,

Director, Information and Regulatory Systems Division.

[FR Doc. 87–14800 Filed 6–29–87; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3224–7]

Science Advisory Board Executive Committee; Open Meeting

July 21 through 22, 1987.

Under Pub. L. 92–463, notice is hereby given of a meeting of the Executive Committee of the Science Advisory Board on July 21 through 22, 1987. The meeting will be held at the U.S. Environmental Protection Agency, 401 M Street, SW. On July 21 the meeting will be held in the Administrator's Conference Room, 1101. The meeting will begin at 9:00 a.m. and will adjourn at approximately 5:00 p.m. The meeting July 22 will be held in the North Conference Center Room # 3 from 9:00 a.m. to approximately 12:00 noon.

Issues to be discussed at the meeting include: a status report of the Board's review of scientific issues related to municipal waste combustion; working relationships with the Science Advisory Panel; consideration of a request from the Deputy Administrator to form an indoor air panel; reports of committees and subcommittees; and other issues of member interest.

The meeting is open to the public. Any member of the public wishing to attend, obtain information, or submit written comments should contact Dr. Terry F. Yosie, Director, Science Advisory Board or Mrs. Joanna Foellmer located at 401 M Street, SW., Washington, DC 20460 or call (202) 382–4126 by close of business July 16, 1987.

Dated: June 24, 1987.

Terry F. Yosie,

Science Advisory Board.

[FR Doc. 87–14801 Filed 6–29–87; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00243; FRL–3224–3]

State FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2–day meeting of the State FIFRA Issues Research and Evaluation Group (SFIREG). The meeting will be open to the public.

DATE: Monday, July 20 and Tuesday, July 21, 1987, beginning at 8:30 a.m. each day and ending by 4:30 p.m. on Tuesday, July 21.

ADDRESS: The meeting will be held at: The Hyatt Regency, Crystal City, 2799 Jefferson Davis Highway, Arlington, VA, (703–486–1234).

FOR FURTHER INFORMATION CONTACT:

By mail: Philip H. Gray, Jr., Office of Pesticide Programs (TS–766C), 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1115, Crystal Mall, Building No. 2, Arlington, VA, (703–557–7096).

SUPPLEMENTARY INFORMATION: This will be the twenty-seventh meeting of the full Group. The tentative agenda thus far includes the following topics:

1. Action items from the March 1987 meeting of the SFIREG.
2. Regional reports.
3. Working Committee reports.
4. Other topics which may arise.

Dated: June 22, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 87–14670 Filed 6–29–87; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3224–4]

Superfund Program; De Minimis Contributor Settlements

AGENCY: Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: The Agency is publishing today its Interim Guidance on Settlements with *De Minimis* Waste Contributors under section 122(g) of SARA in order to inform the public and to solicit public comment on this important aspect of the Superfund enforcement process. This document provides guidelines for determining which potentially responsible parties ("PRPs") under section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or "Superfund"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), may qualify for treatment as *de minimis* waste contributors pursuant to section 122(g)(1)(A) of SARA. It also provides

guidelines for negotiating with *de minimis* waste contributors and for entering into settlements with such parties pursuant to section 122(g) of SARA.

This publication does not address qualifications for or settlements with *de minimis* landowners under section 122(g)(1)(B) of SARA, which will be covered by separate guidance.

DATE: Comments must be provided on or before August 31, 1987.

ADDRESS: Comments should be addressed to Janice Linett, U.S. Environmental Protection Agency, Office of Enforcement and Compliance Monitoring, Waste Enforcement Division, LE–134S, 401 M Street, SW., Washington, DC 20460, (202) 382–3077.

FOR FURTHER INFORMATION CONTACT: Janice Linett, U.S. Environmental Protection Agency, Office of Enforcement and Compliance Monitoring, Waste Enforcement Division, LE–134S, 401 M Street, SW., Washington, DC 20460, (202) 382–3077.

SUPPLEMENTARY INFORMATION: Section 122(g) of SARA provides EPA with discretionary authority to enter into expedited, final settlements with *de minimis* waste contributors to Superfund sites. *De minimis* waste contributors are those generator and transporter PRPs who, in the judgment of the Agency (as delegatee of the President), contributed hazardous substances in an amount and of such toxic or other hazardous effects as to be minimal in comparison to other hazardous substances at the facility. Section 122(g)(1)(A). Pursuant to the requirements of section 122(g)(1), *de minimis* contributor settlements must be practicable and in the public interest, as determined by the Agency, and must involve only a minor portion of the response costs at the facility concerned with respect to each settling party.

De minimis contributor settlements under section 122(g) of SARA offer potential advantages to PRPs and the Agency alike. For *de minimis* parties, such settlements can be an effective means of achieving an early and equitable resolution of their liability with the expenditure of reduced legal fees and other transaction costs. For the Agency, section 122(g) settlements provide a means of simplifying the CERCLA enforcement process through early elimination from litigation and negotiations of the often numerous minimal contributor PRPs. *De minimis* settlements also offer the potential for increased numbers of voluntary settlement agreements. This is because *de minimis* contributors may be attracted by the advantages offered by section 122(g) settlements, and non-*de minimis* parties may be encouraged to settle as a result of the revenues raised through such agreements.

To use the *de minimis* settlement provision most effectively, the Agency will focus on achieving settlements in which multiple *de minimis* PRPs at a particular site are "cashed out" under one comprehensive agreement. *De minimis* parties should be encouraged to organize and present multiparty settlement offers to the government. Further, to limit governmental and PRP transaction costs, *de minimis* settlements should be standardized in form and should not be the subject of lengthy negotiations.

In the typical *de minimis* settlement, the settling parties, in exchange for a payment, will receive statutory contribution protection under section 122(g)(5) of SARA and may be granted a covenant not to sue where such a covenant is consistent with the public interest under section 122(g)(2). The scope of the covenant not to sue will vary depending upon the timing of the settlement, the amount of information available to the Agency about site PRPs and response costs, the amount of any premium payments recovered through the settlement, and other relevant considerations.

The Agency is aware that *de minimis* contributor settlements are the subject of great interest to potentially responsible parties and the public. Therefore, EPA is publishing this interim guidance to provide wide public distribution of information on this aspect of SARA implementation and to gain the benefit of public comment. EPA will reevaluate this interim guidance based upon its experience with its implementation and upon any public comments that may be received.

The interim guidance follows.

Dated: June 19, 1987.

Edward E. Reich,

Acting Assistant Administrator for Enforcement and Compliance Monitoring.

Dated: June 19, 1987.

J. Winston Porter,

Assistant Administrator for Solid Waste and Emergency Response.

Memorandum

Subject: Interim Guidance on Settlements with *De Minimis* Waste Contributors under Section 122(g) of SARA

From: Edward E. Reich, Acting Assistant Administrator for Enforcement and Compliance Monitoring
J. Winston Porter, Assistant Administrator for Solid Waste and Emergency Response

To: Regional Administrators
Regional Counsels
Regional Waste Management Division Directors

June 19, 1987.

I. Purpose

The purpose of this memorandum is to provide interim guidance for determining which PRPs qualify for treatment as *de minimis* waste contributors pursuant to section 122(g)(1)(A) of the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. No. 99–499, and to present interim guidelines for settlement with such *de minimis* parties pursuant to section 122(g) of SARA. Guidance on *de minimis* landowners under section 122(g)(1)(B) of SARA will be provided by separate memorandum.

II. Background

When the harm is indivisible, generators and transporters of hazardous substances disposed of at a facility are strictly and jointly and severally liable for all costs of removal or remedial action incurred by the United States under section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9607(a), as amended by SARA. Although this liability is not statutorily limited by the amount or type of hazardous substance generated or transported to the facility, Congress, in section 122(g)(1)(A) of SARA, recognized the concept of the *de minimis* waste contributor, *i.e.*, the potentially responsible party ("PRP") who satisfies the requirements for liability under section 107(a) of CERCLA and who does not have a valid section 107(b) defense, but who has made only a minimal contribution (by amount and toxicity) in comparison to other hazardous substances at the site.

Since the beginning of the Superfund program, the Agency has been faced with the problem of how to treat *de minimis* contributor PRPs. The legal fees and other transactions costs of negotiating and litigating with the Government, compounded by the potential costs of asserting and defending claims for contribution with other PRPs at the site, often could exceed the amount such minimal contributors would be expected to pay, even under a settlement or a judgment unfavorable to them. As a result, *de minimis* parties often seek a swift and efficient means to pay a sum that is commensurate with their involvement at the site and allows them to be dismissed from further negotiations and litigation. The Agency also needs a method for

achieving settlements with minimal waste contributors in order to make negotiations and litigation more manageable.

EPA formally recognized and endorsed the concept of the *de minimis* contributor settlement in the Interim CERCLA Settlement Policy ("Settlement Policy"), 50 FR 5034 (Feb. 5, 1985). The Settlement Policy advised that negotiations with *de minimis* parties should focus on achieving cash settlements and should be limited to low volume, low toxicity disposers who normally would not make a significant contribution to the costs of cleanup in any event.

Section 122(g) of SARA [1] is in large part a codification of the Agency's position with regard to settlements with *de minimis* parties. While recognizing the liability of such parties, that section gives EPA discretionary authority to enter into expedited settlements with *de minimis* waste contributors and *de minimis* landowners. Section 122(g)(1) generally provides that when EPA determines that a settlement is "practicable and in the public interest," the Agency shall, "as promptly as possible," seek to reach a "final" settlement with a *de minimis* PRP by consent decree or administrative order, if the settlement "involves only a minor portion of the response costs at the facility concerned." Section 122(g)(1). A *de minimis* contributor settlement with a generator or transporter is authorized if these criteria are met and if the Agency determines that both "the amount of the hazardous substances contributed by that party to the facility," and "the toxic or other hazardous effects of the substances contributed by that party to the facility," are "minimal in comparison to other hazardous substances at the facility." Section 122(g)(1)(A). Section 122(g) further authorizes settlements with *de minimis* landowners as defined by section 122(g)(1)(B) of SARA. Because the Agency will be providing a separate guidance document on *de minimis* landowners under SARA, this document will focus on the definition and settlement requirements of the *de minimis* waste contributor.

III. Guidelines for Negotiating With De Minimis Parties

De minimis contributor settlements under section 122(g) of SARA can be an effective means of providing *de minimis* parties with an early and equitable resolution of their liability while minimizing their transaction costs. *De minimis* settlements can be particularly useful to the Government in complex cases involving numerous PRPs. In such cases, *de minimis* settlements offer the Agency a method of simplifying CERCLA enforcement actions through early elimination of the sometimes numerous minimal contributor PRPs from litigation and negotiations. *De minimis* settlements may also increase the amount of response costs recovered through voluntary settlement agreements. This is because *de minimis* parties (who otherwise might not have participated in settlements) may be attracted by the advantages offered by *de minimis* settlements and encouraged by the fact that their funds will be used to pay costs of cleanup, rather than transaction costs. Finally, *de minimis* settlements may increase the likelihood of settlement with the major waste contributors by raising sufficient revenues to reduce the overall liabilities of such parties.

To use the *de minimis* settlement provision most effectively, the Agency will focus on achieving comprehensive settlements in which interested *de minimis* PRPs at a particular site are addressed in one settlement agreement. *De minimis* parties should be encouraged to organize and present multi-party settlement offers to the Government. To limit Governmental and PRP transaction costs, *de minimis* settlements should take the form of standardized agreements, and the Regions should try to avoid lengthy settlement negotiations with *de minimis* parties.

At sites with dozens or hundreds of PRPs, the *de minimis* settlement authority will be particularly useful in helping to simplify the negotiation process. In situations of this kind, it is particularly important for the Agency to gather and release information about PRP waste contributions to the site at an early stage, so that potentially *de minimis* parties can identify and organize themselves to present settlement offers to the Government. Where sufficient information is available, the Agency may tentatively identify potentially *de minimis* parties in the information released to PRPs under section 122(e)(1) of SARA. The Agency may also consider negotiating separately with PRP Steering Committees representing substantial numbers of *de minimis* parties. In addition, the Agency may wish to consult with the major, *i.e.*, non-*de minimis*, parties during the *de minimis* negotiations in order to facilitate a later, comprehensive settlement with such major parties. This is because, among other things, the volume and toxicity criteria established by the Agency for participation in the *de minimis* settlement may have a significant effect on the willingness of the major parties to settle.

In determining the timing of a *de minimis* settlement, the Agency must consider a variety of factors: the amount of information available about the PRPs and their waste contributions to the site; the amount of information available about the costs of remediating site contamination; the nature of the reopeners included in the covenant not to sue; the amount of the premium to be paid by the settling parties; and the volume and toxicity criteria used by the Agency to distinguish between the *de minimis* and major parties at the site. The approach taken at a particular site should be designed to promote voluntary settlement, minimize transaction costs for both the PRPs and the Government, address the legitimate interests of the *de minimis* and major parties at the site, and assure that the level of risk to the Agency is acceptable. The Regions are not encouraged to devote extensive effort to assessing proposals for *de minimis* settlement unless there is a reasonable prospect of successful settlement.

The Agency may consider early settlement where complete information concerning PRP contributions and the nature of the remedy is not yet available. In such early settlements, the reopeners should be more expansive, and/or the premiums should be substantial. In addition, volume and toxicity levels should normally be set low, so that parties who may legitimately be treated as major do not instead end up being treated as *de minimis*. Where the Agency determines that it is more important to have finality in releases and reopeners and more certainty in the definition of premiums and volume/toxicity levels, negotiations for *de minimis* settlements should be deferred until the remedial investigation and feasibility study have been completed and the remedy and the relative PRP contributions have been definitively identified.

IV. Guidelines for Defining the De Minimis Waste Contributor

Because site conditions, remedial programs, number of PRPs and other considerations vary tremendously among sites, the approach taken by this guidance, consistent with section 122(g)(1)(A) of SARA, is that the *de minimis* contributor will be defined on a site-specific basis. To qualify as a *de minimis* generator or transporter, the PRP must have contributed an amount of

[1] The full text of section 122(g) of SARA is provided as an appendix to this memorandum.

hazardous substances which is minimal in comparison to the total amount at the facility. The PRP must also have contributed hazardous substances which are not significantly more toxic and not of significantly greater hazardous effect than other hazardous substances at the facility, as well as meeting the other conditions set forth in this guidance.

If, for example, all PRPs at the site disposed of waste of similar toxicity and hazardous nature, *e.g.*, organic solvents, then those PRPs who had contributed a minimal amount (in relation to the total amount at the facility) could qualify for *de minimis* status because their waste was not more toxic or otherwise hazardous than other hazardous substances at the site. If, on the other hand, a PRP disposed of a minimal amount of a waste which is more highly toxic or which exhibits other more serious hazardous effects than other hazardous substances at the site, then that PRP, despite the minimal amount of his contribution, normally would not qualify for treatment as a *de minimis* party.

Another way to analyzing the facts posed by the second example is to consider the cost of remediating site contamination resulting from the hazardous substance contributed by a particular party. If a PRP disposed of a hazardous substance requiring disproportionately high treatment and disposal costs, or requiring a different or more costly remedial technique than that which otherwise would be technically adequate for the site, then that PRP should not be treated as a *de minimis* contributor even if he disposed of a relatively minimal amount of such substance.

Even if a particular waste contributor meets the volume and toxicity requirements for *de minimis* contributor status, a possible settlement with a *de minimis* PRP must be determined by the Agency to be "practicable and in the public interest." Section 122(g)(1). This requires the consideration of factors beyond the basic eligibility criteria—factors relating to whether the settlement would effectuate the intent of section 122(g) and other purposes of the Act. For example, in the unlikely event that every PRP at a site meets the basic *de minimis* eligibility criteria, a *de minimis* settlement would not serve one of the primary goals of section 122(g): elimination of certain minor parties early in the process to focus the remaining case on the major parties. In such an instance, the emphasis should be on reaching a settlement as soon as possible with all parties using traditional settlement approaches. Similarly, in a situation where several major parties at a site are bankrupt or otherwise non-viable, it may not be in the public interest to "cash out" smaller contributors before reaching a settlement with the remaining parties.

The Agency currently has several *de minimis* pilot projects underway. After these and other section 122(g) settlements have been concluded, we will consider providing further guidance on the definition of the *de minimis* waste contributor based upon our experience with these early settlements and comments received on this interim guidance.

V. Guidelines for Settlement With De Minimis Waste Contributors

A. Timing of Settlement and Necessary Information

The general goal of settlements with *de minimis* parties is to allow PRPs who made minimal contributions to a site to resolve their liability quickly and without the need for extensive negotiations with the Government. Section 122(g)(3) indicates that the President shall reach a settlement or grant a covenant not to sue as soon as possible after the President has available the information necessary to reach such a settlement or grant such a covenant.

The first type of information that the Agency must have is adequate information about the identity, waste contributions and viability of PRPs for the site concerned. Such information is essential because the Agency must be able to determine, under section 122(g)(1)(A) of SARA, that each settling party's contribution by volume and toxicity is minimal in comparison to other hazardous substances at the facility in order to enter into a *de minimis* settlement. Such information is also important because the Agency must be able to evaluate the financial viability of, and strength of its case against, the non-settling parties at the site to determine whether a *de minimis* settlement is "practicable and in the public interest" under section 122(g)(1) of SARA.

Therefore, although the Regions may engage in preliminary negotiations with likely candidates for *de minimis* settlements prior to completion of full PRP investigatory work, as a general rule, *de minimis* settlements should not be concluded prior to completion of a PRP search (including title search and financial assessments) or prior to such time as the Agency is confident that adequate information about the extent of each settling party's waste contribution to the site has been discovered. The Regions should commence PRP investigatory work concurrent with the expanded site investigation or, at the latest, the National Priorities List scoring quality assurances process, and should make aggressive use of information requests pursuant to section 104(e) of CERCLA, as amended, and section 3007 of RCRA, as appropriate. The Regions should also use subpoenas, as needed and appropriate, pursuant to section 122(e) of SARA, and should consider all information discovered during site and PRP investigations.[2]

Early discussions with potential candidates for *de minimis* settlements will be most beneficial at sites with numerous PRPs, where such discussions may be used to encourage minimal waste contributors to organize and present multi-party settlement offers to the Government. In appropriate cases, the Agency may consider concluding *de minimis* settlements prior to completion of full PRP investigatory work. In such cases, the Agency may use more conservative criteria for distinguishing between *de minimis* and non-*de minimis* parties, *i.e.*, lower volume and toxicity levels, so that parties who may legitimately be treated as non-*de minimis* are not included within the *de minimis* class. Such settlements must also be drafted carefully to assure that they provide added protection to the Agency against the risk that new information may be discovered about a settling party's waste contribution to the site.

The second type of information that the Agency must have is information about the costs of remediating site contamination. *De minimis* settlements in which PRPs are granted an expansive covenant not to sue, *i.e.*, one without reservations of rights for cost overruns and future response action, *see infra*, pp. 16–18, generally should not be pursued until the Agency is able to estimate, with a reasonable degree of confidence, the total response costs associated with cleaning up the subject site, including oversight and operation and maintenance costs.[3] The Agency usually will arrive at this level of confidence only after a remedial investigation and feasibility study ("RI/FS") and a Record of Decision ("ROD") have been (or are close to being) completed at the site. A

[2] PRPs who have been unresponsive to information requests or subpoenas generally should not be considered for *de minimis* settlements.

[3] Past costs should be fully documented by the Agency prior to entering into a *de minimis* settlement.

de minimis settlement with an expansive covenant not to sue of this kind may be concluded prior to completion of the RI/FS and ROD, however, if the Agency is relatively confident of its ability to estimate future response costs, and the settlement takes into account the increased level of uncertainty through an adequate premium payment and/or other safeguards. *See* section V(B)(2) below. The Agency will also consider alternative methods of structuring pre-RI/FS and ROD *de minimis* settlements, which afford *de minimis* contributors the opportunity for early settlements (when cost information is less certain) while protecting the Government against the additional risks presented by such early agreements. Options for such settlements are discussed in Section V(B)(2) below.

B. Content and Form of Settlements

1. Introduction

The goal of negotiations with *de minimis* parties is to achieve quick and standardized agreements through the expenditure of minimal enforcement resources and transaction costs. To attain this goal, the *de minimis* settlement normally will be a "cashout," *i.e.*, it will not include a commitment to perform work,[4] but rather will require a payment to be made to the Hazardous Substance Superfund.[5] In exchange for this payment, the settling parties will receive statutory contribution protection under section 122(g)(5) of SARA and may receive a covenant not to sue as described in section V(B)(2) below.

2. Releases from Liability and Reopeners

De minimis settlors may be granted a convenant not to sue for civil claims concerning the site which seek injunctive relief under section 106 of CERCLA and section 7003 of RCRA, or cost recovery under section 107 of CERCLA, when EPA determines that such a convenant is consistent with the public interest, as provided in section 122(g)(2) of SARA.[6] The scope of this convenant not to sue will vary, depending upon the timing of the settlement, the amount of information available to the Agency, and the amount of any premium payment to be made by the *de minimis* parties pursuant to the settlement. Natural resource damage claims may not be released, however, and should be expressly reserved unless the Federal natural resourse trustee has agreed in writing to such a convenant not to sue pursuant to the terms of section 122(j)(2) of SARA.

In order to protect the Agency against the possibility that a *de minimis* party's full waste contribution to a site has not been discovered, *de minimis* settlements should, in most cases, also include a reservation of rights which would allow the Government to seek further relief from any settling party if information not known to the Government at the time of settlement is discovered which indicates that the volume or toxicity criteria for the site's *de minimis* parties are no longer satisfied with respect to that party.[7] This reservation need not be included if sufficient information about the waste contributions of all site PRPs is known at the time of settlement, *i.e.*, if virtually all of the waste is accounted for, or if site records and results of PRP investigations are sufficiently complete for the Agency to conclude that the risk of discovering new information about waste contributions to the site is negligible.

In addition to the natural resource damage reservation and the reservation for new information indicating that the volume and toxicity criteria for the particular settlement are no longer satisfied, two further reservations of rights or "reopeners" may be required depending upon the facts of the case and the timing of the settlement. These reopeners protect the Agency against (1) The risk of cost overruns during the completion of the remedial action and (2) the risk that further response action will be necessary in addition to the work specified in the ROD.

If an RI/FS and ROD have been (or are close to being) completed at the site, and the Agency has sufficient information upon which to evaluate the likelihood of cost overruns or future response action and the potential costs associated with these contingent events, then the Agency may accept a premium payment from the settling *de minimis* parties in lieu of one or both of these two reopeners, depending on the facts. However, if a *de minimis* settlement is concluded prior to completion (or substantial completion) of the RI/FS and ROD, at a time when the Agency has insufficient information upon which to evaluate these risks and develop a premium payment commensurate with them, then reopeners for cost overruns and future response action generally will be required. In appropriate cases, the Agency may make exceptions to this general rule and accept a very high premium payment, which provides a wide margin of safety to the Government, at an earlier stage in the process in lieu of these two reopeners.

As noted above, the Agency will also consider various forms of pre-RI/FS and ROD *de minimis* settlements which provide *de minimis* contributors the opportunity for early settlements while protecting the Government against the additional risks presented by such early agreements. For example, EPA may consider partial settlements in which the *de minimis* parties make a payment in satisfaction of their liability for past costs and projected RI/FS costs. Settlements of this kind would not address the settling parties' liability for post-RI/FS costs. EPA may also consider settlements of greater scope in which an up-front payment is made for known past costs and projected RI/FS and remedial costs. In settlements of this kind, EPA would reserve the right to reopen the agreement if actual costs exceed EPA's estimate by an agreed-upon dollar amount or percentage. Alternatively, the Agency may pursue settlements in which an up-front payment is made for past costs only and in which the settling *de minimis* parties agree to pay a specified percentage of all future response costs.

In certain additional situations, the cost overrun or future remediation risks may be covered through a method other than a reservation of rights or a premium payment from the settling *de minimis* parties. First, if an extremely high or worst-case estimate of remedial action costs is used for the settlement, then a cost overrun premium or reopener may not be required from the settling *de minimis* parties. Second, if the major PRPs at the site have made a binding commitment to perform the remedial action selected in the ROD regardless of its cost, then the risk of cost overruns will be borne by those major parties, and a premium payment or reopener for cost overruns will not be required by the Government from the settling *de minimis* PRPs. Finally, if the major PRPs

[4] In appropriate cases, the Agency will also consider entering into *de minimis* settlements under which the settling *de minimis* parties agree to perform a discrete portion of the response action needed for the site, *e.g.*, an RI/FS or operable unit.

[5] We are exploring the circumstances under which it may be appropriate for the settling parties to deposit the amount paid pursuant to a *de minimis* settlement into a site-specific trust fund to be administered by a third-party trustee and used for site cleanup. Further guidance on this issue will be provided by separate memorandum.

[6] Under no circumstances may a convenant not to sue for criminal claims be granted.

[7] In some situations, the Agency may also require each settling *de minimis* party to certify in the settlement agreement that it has disclosed all information in its possession concerning its waste contribution to the site. This certification should be used in cases in which the *de minimis* settlement is concluded prior to completion of PRP investigations, particularly where information requests or subpoenas have not been issued.

have expressly assumed the *de minimis* parties' liability for cost overruns and future remediation as part of a comprehensive settlement with the Government, then these risks will be borne by the major parties, and a premium payment or reopener for cost overruns and future remediation will not be required by the Government from the settling *de minimis* parties.

3. Amount of Payment

In the typical *de minimis* settlement, the cash offer submitted by the *de minimis* parties must be at least equal to their volumetric share of the total past and projected response costs at the site.[8] Nature of the waste is less relevant to the amount of payment of a *de minimis* settlement because the waste must be minimal in toxicity in order for a party to meet the basic eligibility criteria for *de minimis* status. Volume is, therefore, a useful and simple method for tentatively determining the *de minimis* share. It is based upon the type of information that is most likely to be readily available and does not require the PRPs and the Agency to invest an inordinate amount of effort arguing about the appropriate share.

The volumetric share may be adjusted, however, based upon the other factors regarding partial settlements identified in the Interim CERCLA Settlement Policy (Part IV, 50 FR 5037–38). Factors that may be of particular importance include ability to pay, litigative risks, public interest considerations, value of a present sum certain, inequities and aggravating factors, and the nature of the case remaining against other parties after settlement. The shares may also be adjusted on the basis of a Nonbinding Preliminary Allocation of Responsibility, if one has been developed for the site pursuant to section 122(e)(3) of SARA.

In addition to the volumetric share of past and projected response costs, the Agency generally will require payment of a premium from each settling *de minimis* party in exchange for granting a covenant not to sue which does not include reopeners for cost overruns and future response action.[9] If the settlement is concluded prior to completion of the RI/FS and ROD, and information about projected costs is limited, then the cost overrun and future response action premiums should be calculated to reflect this increased level of uncertainty.[10] As discussed earlier, if the major PRPs are assuming the responsibility for conducting the cleanup, then the premium amounts may be made available to those PRPs rather than to the Agency. In this situation, the premium amounts may be negotiated between the major PRPs and the *de minimis* settlors.

Furthermore, because *de minimis* PRPs are jointly and severally liable for response costs at the site, the amount to be paid by a *de minimis* settlor is affected by the amount available from other PRPs. Thus, if a significant portion of the major parties at the site are bankrupt or otherwise not financially viable, then the *de minimis* offer may need to refledt a greater proportion of response costs, rather then simply a volumetric share and a premium. It is also possible that mixed funding may be appropriate in such a situation.[11]

4. Enforcement of Payment

If a settling party fails to make any payment required by a *de minimis* settlement, or otherwise fails to comply with any term or condition of the settlement, that party is subject to enforcement action, including imposition of civil penalties pursuant to Section 109 of CERCLA, as amended. *See* section 122(1) of SARA. In addition, the Agendcy may include a porovision in the settlement document which permits the agreement to be vacated in the event of noncompliance.

5. Type of Agreement

Section 122(g)(4) of SARA requires that *de minimis* settlements be entered as either judicial consent decrees or administrative orders on consent. The circumstances and procedures under which these two alternatives should be used are briefly describe below.

a. *Judicial Consent Decree.* Under section 122(d)(1)(A) of SARA, settlements with non-*de minimis* PRPs which provide for remedial action must be embodied in consent decrees. Thus, if the *de minimis* settlement is part of a larger, more comprehensive agreement with the non-*de minimis* parties under which remedial action will be performed, it may be advisable and efficient to use a consent decree for the entire settlement. Similarly, if the Government has already filed a CERCLA Section 106 or 107 action with respect to the site, a consent decree with the *de minimis* parties may be useful because the court will be familiar with the case and should be able to approve the settlement expeditiously.

At the present time, all *de minimis* consent decrees must be referred to Headquarters by the Regions and must receive the concurrence of the Assistant Administrator for Enforcement and Compliance Monitoring ("AA–OECM") and the Assistant Administrator for Solid Waste and Emergency Response ("AA–OSWER") or his or her designee prior to referral to the Department of Justice for filing. Further, all *de minimis* consent decrees will be subject to a thirty-day public comment period after lodging.[12] A model section 122(g) consent decree will be issued shortly.

b. *Adminstrative Order on Consent.* A *de minimis* settlement may also be embodied in an administrative order on consent ("consent order"). *See* section 122(d)(1)(A) of SARA. Because of the potential effect of administrative *de minimis* settlements upon future litigation and negotiations with the major waste contributors at the site, all such settlements currently must receive the concurrence of the AA-OECM and the AA-OSWER prior to signature by the Regional Administrator. Additionally, if the total past and projected response costs at the site, excluding interest, exceed $500,000 (as will generally be the case at sites involving *de minimis* settlements), section 122(g)(4) of SARA requires that the *de minimis* consent order receive the prior written approval of the Attorney General or his designee ("AG"). That subsection of SARA gives the AG thirty days from referral by EPA to approve or disapprove the settlement, unless the AG has reached agreement with the Agency on an extension of time.

Section 122(i) of SARA requires notice of all administrative *de minimis* settlements to be published in the **Federal Register** for a thirty-day public comment period. The Agency must consider all comments received and "may withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate the proposed settlement is inappropriate.

[8] The Agency's projection of future response costs generally should be based on a site-specific assessment of the most probable costs of the response action.

[9] The premium payment reduces the liability of the non-settling PRPs in the amount of the premium, unless otherwise provided in the settlement agreement. In some cases, it may be appropriate for the premium to be deposited in a site-specific trust fund as discussed *supra* n. 5, p. 14.

[10] Further guidance on calculating premium payments will be provided by separate memorandum.

[11] Guidance on mixed funding will be issued separately and is forthcoming.

[12] The payment provisions of *de minimis* consent decrees should not require payment to be made until after the United States has responded to any public comments received and until after the court has entered the decree.

improper, or inadequate." [13] Section 122(i)(3) of SARA. Modifying or withdrawing consent to an administrative settlement is subject to the same OECM and OSWER concurrences as are initial agreements.

More detailed guidance on the procedural aspects of *de minimis* consent orders, including Regional referral of orders for Headquarters concurrence and AG approval, solicitation of public comment, enforcement of orders, and other related matters, will be provided by separate memorandum. A model section 122(g) consent order will be issued shortly.

VI. Purpose and Use of This Memorandum

This memorandum and any internal procedures adopted for its implementation are intended solely as guidance for employees of the U.S. Environmental Protection Agency. They do not constitute rulemaking by the Agency and may not be relied upon to create a right or a benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with this memorandum or its internal implementing procedures.

Appendix—Text of Section 122(g) of Sara

(1) *Expedited Final Settlement.*—Whenever practicable and in the public interest, as determined by the President, the President shall as promptly as possible reach a final settlement with a potentially responsible party in an administrative or civil action under section 106 or 107 if such settlement involves only a minor portion of the response costs at the facility concerned and, in the judgment of the President, the conditions in either of the following subparagraph (A) or (B) are met:

(A) Both of the following are minimal in comparison to other hazardous substances at the facility:

(i) The amount of the hazardous substances contributed by that party to the facility.

(ii) The toxic or other hazardous effects of the substances contributed by that party to the facility.

(B) The potentially responsible party—

(i) is the owner of the real property on or in which the facility is located;

(ii) did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility; and

(iii) did not contribute to the release or threat of release of a hazardous substance at the facility through any action or omission.

This subparagraph (B) does not apply if the potentially responsible party purchased the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance.

(2) *Covenant Not To Sue.*—The President may provide a covenant not to sue with respect to the facility concerned to any party who has entered into a settlement under this subsection unless such a covenant would be inconsistent with the public interest as determined under subsection (f).

(3) *Expedited Agreement.*—The President shall reach any such settlement or grant any such covenant not to sue as soon as possible after the President has available the information necessary to reach such a settlement or grant such a covenant.

(4) *Consent Decree or Administrative Order.*—A settlement under this subsection shall be entered as a consent decree or embodied in an administrative order setting forth the terms of the settlement. In the case of any facility where the total response costs exceed $500,000 (excluding interest), if the settlement is embodied as an administrative order, the order may be issued only with the prior written approval of the Attorney General. If the Attorney General or his designee has not approved or disapproved the order within 30 days of this referral, the order shall be deemed to be approved unless the Attorney General and the Administrator have agreed to extend the time. The district court for the district in which the release or threatened release occurs may enforce any such administrative order.

(5) *Effect of Agreement.*—A party who has resolved its liability to the United States under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially responsible parties unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(6) *Settlements with Other Potentially Responsible Parties.*—Nothing in this subsection shall be construed to affect the authority of the President to reach settlements with other potentially responsible parties under this Act.

[FR Doc. 87-14802 Filed 6-29-87; 8:45 am]

BILLING CODE 6560-50-M

[13] The payment provisions in *de minimis* consent orders should not require payment to be made until after the public comment period has closed and until after the Agency has had sufficient time to determine whether any comments received require modification of or withdrawal from the consent order

FEDERAL COMMUNICATION COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of these submissions may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037, or telephone (202) 857-3815. Persons wishing to comment on an information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395-4814. Copies of these comments should also be sent to the Commission. For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0051
Title: Ship/Aircraft License Expiration Notice and/or Renewal Application
Form No.: FCC 405-B
Action: Revision
Estimated Annual Burden: 39,183 Responses; 1,959 Hours.
Needs and Uses: A computer-generated expiration notice which is sent to ship (voluntarily equipped and Title III Part III vessels) and aircraft radio service station licenses.The license may be renewed by returning the application when there is no change, or only minor changes, to the existing license. The data is used to update the existing data base and issue renewed licenses.

OMB No.: 3060-0096
Title: Application for Ship Radio Station License and Temporary Operating Authority
Form No.: FCC 506/506-A
Action: Revision
Estimated Annual Burden: 106,192 Responses; 21,238 Hours.
Needs and Uses: Form FCC 506 is used to apply for a new, modified, or renewal of a ship radio station license. Form FCC 506-A is retained by the applicant as a temporary operating authority and is valid for 90 days. The data is used to determine eligibility, update the existing data base, and issue licenses.

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 87-14790 Filed 6-29-87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL ELECTION COMMISSION

Clearinghouse Advisory Panel; Renewal of Charter

SUMMARY: The National Clearinghouse on Election Administration announces the renewal of the charter for the Clearinghouse Advisory Panel.

The purpose of the Panel is to provide advice and consulation to the Clearinghouse with respect to its

research programs on election administration.

FOR FURTHER INFORMATION CONTACT: Janet McKee, National Clearinghouse on Election Administration, Washington, DC 20463, (202) 376-5670.

Dated: June 25, 1987.

Penelope Bonsall,

Director, National Clearinghouse on Election Administration.

[FR Doc. 87-14793 Filed 6-29-87; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL HOME LOAN BANK BOARD

Appointment of Receiver; Frontier Savings and Loan Association, Fairbanks, AK

Notice is hereby given that, pursuant to the authority contained in Section 406(c)(2) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(2) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for the purpose of liquidation for Frontier Savings and Loan Association, Fairbanks, Alaska, on June 12, 1987.

Dated: June 12, 1987.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 87-14833 Filed 6-29-87; 8:45 am]

BILLING CODE 6720-01-M

Appointment of Receiver; Security Savings Association, Texarkana, TX

Notice is hereby given that pursuant to the authority contained in section 406(c)(2) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(2) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Security Savings Association, Texarkana, Texas on June 11, 1987.

Dated: June 12, 1987.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 87-14834 Filed 6-29-87; 8:45 am]

BILLING CODE 6720-01-M

Acceptance of Appointment of Receiver; Security Savings Association, Texarkana, TX

Notice is hereby given that pursuant to the authority contained in section 406(c)(1) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1) (1982), and as directed by the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, on June 11, 1987, accepted the tender of the Savings and Loan Commissioner for the State of Texas, pursuant to § 8.12 of Article 852a of the Texas Savings and Loan Act, of appointment as receiver for Security Savings Association, Texarkana, Texas, for the purpose of liquidation.

Dated: June 12, 1987.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 87-14835 Filed 6-29-87; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 87-14]

Order of Investigation; Banfi Products Corp.

June 24, 1987.

This proceeding is instituted pursuant to sections 16, 22, and 27 of the Shipping Act, 1916, 46 U.S.C. 815, 821, and 826, *amended by* 46 U.S.C. app. section 801 (1984), and sections 11, 13 and 17 of the Shipping Act of 1984, 46 U.S.C. 1710, 1712, and 1716.

Banfi Products Corporation (Banfi), an importer and distributor of Italian wines, is located at 1111 Cedar Swamp Road, Old Brookfield, New York 11545.

It appears that, since March 28, 1987, Banfi has been, knowingly and willingly, directly or indirectly, by false device or means obtaining ocean transportation for property at less than the rates or charges that would otherwise be applicable in violation of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1709(a)(1), and for activity prior to June 18, 1984, section 16, Initial Paragraph, of the Shipping Act, 1916, 46 U.S.C. 815, Initial Paragraph, *amended by* 46 U.S.C. app. § 801 (1984).

In particular, it appears that Banfi has created or controls an Italian company which has received funds from ocean carriers for ostensibly forwarding or brokering wine and other products imported into the U.S. by, from, or for Banfi. Apparently, either with or without the knowledge of the ocean carriers, Banfi has been the recipient of these funds and in effect has been obtaining ocean transportation for these wine and other products at less than the rates or charges that would otherwise be applicable.

Now therefore, it is ordered, That pursuant to section 22 of the Shipping Act, 1916, and section 11 of the Shipping Act of 1984, an investigation into the practices of Banfi is hereby instituted to determine:

1. Whether, during the period from June 30, 1982 through June 18, 1984, Banfi violated section 16, Initial Paragraph, of the Shipping Act, 1916, by knowingly and willfully, directly or indirectly, by means of an unjust or unfair device or means, obtaining transportation by water for property at less than the rates or charges which would otherwise be applicable;

2. Whether, since June 18, 1984, Banfi violated section 10(a)(1) of the Shipping Act of 1984, by knowingly and willingly, directly or indirectly, by means of an unjust or unfair device or means, obtaining ocean transportation for property at less than the rates or charges that would otherwise be applicable; and

3. Whether, in the event Banfi has violated the above-cited provisions, civil penalties should be assessed and, if so, the amount of such penalties, and whether any other appropriate order, including a cease and desist order, should be entered.

It is further ordered, That a public hearing be held in this proceeding and that the matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judge at a date and place to be hereafter determined by the Administrative Law Judge, in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61;

It is further ordered, That Banfi Products Corporation, be designated Respondent in this proceeding;

It is further ordered, That pursuant to the terms of Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61, the initial decision of the Administrative Law Judge shall be issued by June 24, 1988 and the final decision of the Commission shall be issued by October 24, 1988.

It is further ordered, That the Commission's Bureau of Hearing Counsel is designated a party to this proceeding;

It is further ordered, That notice of this Order be published in the Federal Register, and a copy be served on parties of record;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, That all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing

conference, shall be served on parties of record;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on parties of record.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87-14724 Filed 6-29-87; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 87-12]

In the Matter of Maximum Potential Liability in Independent Ocean Freight Forwarder Bonds; Enlargement of Time To File Replies

By **Federal Register** notice of June 3, 1987 (52 FR 20780), the Federal Maritime Commission published a "Notice of Filing of Petition for Declaratory Order" ("Petition") filed by Old Republic Insurance Company, The Surety Association of America, and the National Custom Brokers and Forwarders Association of America, Inc. ("Petitioners"). Petitioners seek a ruling from the Federal Maritime Commission regarding the maximum potential liability of a surety under an Independent Ocean Freight Forwarder Bond (FMC-59 Rev), required to be filed with the Commission pursuant to 46 CFR 510.14. Interested persons were given until June 29, 1987, to file replies to the Petition.

Counsel for several ocean carriers and conferences of ocean carriers has requested an extension of time to file replies until July 13, 1987. As grounds for the requests counsel indicates that the Petition "raises complex legal and factual issues" and additional time is needed to review and analyze these issues. Also, several carriers are based overseas and further time is needed to communicate with them regarding a response. Finally, counsel states that Petitioners do not oppose the requested extension.

Good cause having been shown, the time for interested persons to submit replies in response to the Petition is extended to July 13, 1987.

Joseph C. Polking,

Secretary.

[FR Doc. 87-14799 Filed 6-29-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Cornerstone Financial Corp. et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 22, 1987.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Cornerstone Financial Corporation,* Derry, New Hampshire; to acquire 100 percent of the voting shares of Cornerstone Bank, Nashua, New Hampshire.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Gratiot Bancshares, Inc.,* Gratiot, Wisconsin; to become a bank holding company by acquiring at least 98.75 percent of the voting shares of Gratiot State Bank, Gratiot, Wisconsin.

Board of Governors of the Federal Reserve System, June 24, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-14728 Filed 6-29-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisitions of Companies Engaged in Permissible Nonbanking Activities; First Alabama Bancshares, Inc., et al.

The organizations listed in this notice have 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.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express there 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.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than July 22, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Alabama Bancshares, Inc.,* Montgomery, Alabama; to acquire The Georgia Company, Columbus, Georgia, and thereby engage in activities commonly performed by a mortgage banking firm, namely, the origination of single family residential loans, long term loans for multifamily dwellings, commercial and industrial loans, and loans on special purpose properties

pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Madelia Bancshares, Inc.*, Madelia, Minnesota; to acquire Madelia Agency, Inc., Madelia, Minnesota, and thereby engage in making, acquiring, or servicing loans or other extensions of credit for its own account pursuant to § 225.25(b)(1) of the Board's Regulation Y. This activity will be conducted in Madelia, Minnesota.

Board of Governors of the Federal Reserve System, June 24, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-14729 Filed 6-29-87; 8:45 am]

BILLING CODE 6210-01-M

Applications To Engage de Novo in Permissible Nonbanking Activities; First Chicago Corp. et al.

The companies listed in this notice have 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.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also the 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.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 17, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Chicago Corporation*, Chicago, Illinois, and First Chicago Acquisition Corp., Chicago, Illinois; to engage *de novo* through their subsidiary, Arlington Mortgage Company, Arlington Heights, Illinois, in making, acquiring, and servicing loans or other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

2. *First Midwest Corporation of Delaware*, Elmwood Park, Illinois; to engage *de novo* in leasing personal property or acting as agent, broker or adviser in leasing property pursuant to § 225.25(b)(5) of the Board's Regulation Y. Comments on this application must be received by July 22, 1987.

3. *Lizton Financial Corporation*, Lizton, Indiana; to engage *de novo* through its subsidiary Schorling & Associates, Inc., Lizton, Indiana, in providing data processing services pursuant to § 225.25(b)(7) and providing management consulting advice pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 24, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-14730 Filed 6-29-87; 8:45 am]

BILLING CODE 6210-01-M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Trustcorp, Inc., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 20, 1987.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Trustcorp, Inc.*, Toledo, Ohio; to acquire 100 percent of the voting shares of Citizens Trust Bancorp, Inc., Ann Arbor, Michigan, and thereby indirectly acquire Citizens Trust, Ann Arbor, Michigan.

In connection with this application, Trustcorp of Michigan, Inc., Toledo, Ohio, has applied to become a bank holding company by merging with Citizens Trust Bancorp, Inc., Ann Arbor, Michigan, and thereby indirectly acquire Citizens Trust, Ann Arbor, Michigan. Comments on this application must be received by July 22, 1987.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Suburban Bancorp, Inc.*, Palatine, Illinois; to acquire 100 percent of the voting shares of Woodstock State Bancorp, Inc., Woodstock, Illinois, and thereby indirectly acquire The State Bank of Woodstock, Woodstock, Illinois.

In connection with this application, Woodstock Acquisition Corp., Palatine, Illinois, has applied to become a bank holding company by merging with Woodstock State Bancorp, Inc., Woodstock, Illinois.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Country Bancorp, Inc.*, Mt. Olive, Illinois; to acquire at least 93.7 percent of the voting shares of Montgomery County National Bank, Hillsboro, Illinois.

2. *Green County Bancshares, Inc.*, Corbin, Kentucky; to become a bank holding company by acquiring at least 80 percent of the voting shares of Greensburg Deposit Bank, Greensburg, Kentucky. Comments on this application must be received by July 17, 1987.

D. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Camino Real Bancshares, Inc.*, Carrizo Springs, Texas; to acquire 100 percent of the voting shares of Frio National Bank, Pearsall, Texas.

Board of Governors of the Federal Reserve System, June 24, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-14731 Filed 6-29-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Company Engaged in Permissible Nonbanking Activities; U.S. Bancorp

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 Federl 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 July 13, 1987.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *U.S. Bancorp*, Portland, Oregon; to acquire U.S. Bancorp Leasing and Financial, Portland, Oregon, and thereby engage in making, acquiring, and servicing loans and other extensions of credit, either secured or unsecured, for its own account or for the account of others; leasing of personal property and equipment, and acting as agent broker, or advisor in the leasing of such property; and acting as agent or broker with regard to credit life and disability insurance pursuant to §225.25 (b)(1), (b)(5), and (b)(8)(i) (A) and (B) of the Board's Regulation Y. These activities will be conducted in the States of Arizona and California.

Board of Governors of the Federal Reserve System, June 24, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-14732 Filed 6-29-87; 8:45 am]

BILLING CODE 6210-01-M

Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company; U.S. Bancorp

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under 225.23(a)(2) of Regulation Y (12CFR 225.23(a)(2) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(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, or to engage in such an activity. Unless otherwise noted, these 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 requests 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 July 24, 1987.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *U.S. Bancorp*, Portland, Oregon; to acquire 100 percent of the voting shares of Peoples Ban Corporation, Seattle, Washington, and thereby indirectly acquire Peoples National Bank of Washington.

In connection with this application, Applicant also proposes to acquire People All Lines Insurance Agency, Inc., Langley, Washington, and thereby engage through Peoples National Bank of Washington, Seattle, Washington, in general insurance services pursuant to section 4(c)(5) and (4)(c)(8) (i) of the Bank Holding Company Act; Peoples Discount Brokerage Company, Seattle, Washington, and thereby engage in securities brokerage services pursuant to §225.25(b)(15); Peoples Insurance, Inc., Seattle, Washington, and thereby engage in credit related property, casualty, and accident insurance pursuant to § 225.25(b)(8)(i); Peoples Service Corporation, Seattle, Washington, and thereby engage in providing escrow services pursuant to § 225.25(b)(3); and Peoples Computer Services, Inc., Washington, an inactive corporation which originally engaged in providing data processing services pursuant to §225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 24, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-14733 Filed 6-29-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87N-0213]

International Drug Scheduling; Convention on Psychotropic Substances; Single Convention on Narcotic Drugs; Certain Agonist/Antagonist Drugs; Certain Stimulant/Hallucinogenic Drugs and Certain Nonbarbiturate Sedative Drugs

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting interested persons to submit data or comments concerning abuse potential, actual abuse, and medical usefulness and trafficking of 14 various drug substances. This information will be considered in preparing a response from the United States to the World Health Organization (WHO) regarding abuse liability, actual abuse, and trafficking of these drugs. WHO will use this information to consider whether to recommend that certain international restrictions be placed on these drugs. This notice requesting information is required by the Controlled Substances Act (21 U.S.C. 811 et seq.)

DATE: Comments by July 30, 1987.

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

FOR FURTHER INFORMATION CONTACT: Nicholas P. Reuter, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The United States is a party to the 1971 Convention on Psychotropic Substances. Article 2 of the Convention on Psychotropic Substances provides that if a party to that Convention or WHO has information about a substance which in its opinion may require international control or change in such control, it shall so notify the Secretary-General of the United Nations and provide the Secretary-General with information in support of its opinion.

The Controlled Substances Act (CSA) (Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970) provides that when WHO notifies the United States under Article 2 of the Convention on Psychotropic Substances that it has information that may justify adding a drug or other substance to one of the schedules of that Convention, transferring a drug or substance from one schedule to another, or deleting it from the schedules, the Secretary of State must transmit the notice to the Secretary of Health and Human Services (HHS). The Secretary of HHS must then publish the notice in the **Federal Register** and provide opportunity for interested persons to submit comments to assist HHS in preparing scientific and medical evaluations about the drug or substance. The Secretary of HHS received the following notices from WHO on behalf of the Secretary-General:

I. Who Notifications

A. Notification of May 13, 1987

Ref.: NAR/CL.6/1987
DND 411/1(2) WHO/ECDD 25

[The Secretary-General of the United Nations presents his compliments to the Secretary of State of the United States of America] and has the honour to draw attention to a request from the Director-General of the World Health Organization for assistance in obtaining data on the following fourteen substances:

1. Bromisoval
2. Buprenorphine
3. Butorphanol
4. Carbromide
5. Clonidine
6. Dezocine
7. Meptazinol
8. Methaqualone
9. Nalbuphine
10. Paraldehyde
11. Pemoline
12. Pentazocine
13. Propylhexedrine
14. Pyrovalerone

The WHO 25th Expert Committee on Drug Dependence (ECDD), to be convened in April 1988, will examine the fourteen substances listed above to determine if any proposals should be made concerning their scheduling, rescheduling or descheduling under the provisions of the existing international drug control treaties. At present, methaqualone is listed in Schedule II, pentazocine in Schedule III, and propylhexedrine and pyrovalerone in Schedule IV of the 1971 Convention on Psychotropic Substances.

Under the new review procedures adopted by WHO, the ECDD is responsible for making scheduling recommendations to the Director-General of WHO. In this connection, it would be appreciated if the Government would submit data on any of the fourteen substances. It would greatly assist the Secretary-General if such data were submitted on a substance-by-substance basis following the outline contained in the questionnaire attached to the present note as an annex.

Attention is draw to the fact that by note NAR/CL.8/1984 of 14 June 1984, the Secretary-General is requested information on pemoline, and by the same note as well as by notes NAR/CL.10/1986 NAR/CL.11/1986 dated, respectively, 17 and 18 November 1986, on propylhexedrine and pyrovalerone; by note NAR/CL.22/1985 dated 5 December 1985, information was also requested by bromisoval. If the Government has already replied to those requests, any additional updated information on the substances would be useful.

In view of the fact that data provided by Governments will be used by WHO in the preparation of a report on this subject for a WHO review group which will meet well in advance of the 25th ECDD, it would be very much appreciated if information could be transmitted to the Secretary-General at the Government's earliest convenience and preferably before 31 July 1987. Replies should be addressed to the attention of the Director of the Division of Narcotic Drugs, Vienna International Centre, P.O. Box 500, A-1400 Vienna, Austria.

United Nations Division of Narcotic Drugs

Vienna International Centre, A-1400 Vienna, Austria

Questionnaire for Data Collection for Use by the World Health Organization and the Commission on Narcotic Drugs of the Economic and Social Council

May 13, 1987.
Substance Reported on:

1. Does the substance have any licit medical, veterinary, scientific or commercial use in the reporting country? If so, please describe in general terms the extent of such use.

2. Are any control measures applied to the substance at the national level? If so, please describe briefly.

3. Please describe the extent of any known abuse of the substance in the reporting country, including the degree of seriousness of the public health and social problems [1] associated with abuse of the substance.

4. Please give data or any known or presumed illicit traffic in the substance, including the number of seizures of the substance and the quantities involved, as well as the existence of any clandestine laboratories manufacturing the substance.

B. Notification of May 25, 1987

Ref.: C.L.12.1987

The Director-General of the World Health Organization presents his compliments and has the pleasure to inform you that the Fourth Programme Planning Working Group for review of dependence-producing psychoactive substances for international control met from 2 to 7 March 1987. It has recommended that the Twenty-fifth Expert Committee on Drug Dependence, which will meet in April 1988, review the following substances:

1. Bromisoval
2. Buprenorphine
3. Butorphanol
4. Carbromal

[1] Examples of public health and social problems are acute intoxication, accidents, work absenteeism, mortality, behaviour problems, criminality, etc. For a thorough examination of the question please refer to the WHO publication entitled "Assessment of Public Health and Social Problems Associated with the Use of Psychotropic Drugs" (No. 656 in the WHO Technical Report Series) and Chapter 7 of the WHO publication entitled "Guidelines for the Control of Narcotic and Psychotropic Substances".

5. Clonidine
6. Dezocine
7. Meptazinol
8. Methaqualone
9. Nalbuphine
10. Pentazocine
11. Paraldehyde
12. Pemoline
13. Propylhexedrine
14. Pyrovalorone

The Executive Board at its seventy-third session adopted resolution EB73.R11 establishing guidelines for the review by WHO of dependence-producing psychoactive substances for international control. One of the essential elements of this process is for WHO to collect and review information, and subsequently to prepare a Critical Review document for submission to the Expert Committee on Drug Dependence. This document is made available to the pharmaceutical industry and others who have contributed data on specific drugs by 1 November of the year preceding the Expert Committee. The Director-General requests your collaboration in this process by providing pertinent information available in your country. In particular, he would appreciate receiving any such information under the following six headings:

(1) Availability of the Substances

Information is required on whether any of the substance listed above are available officially: (a) Without a prescription, (b) with a prescription, or (c) as a narcotic drug.

(2) Production, Consumption and Trade Data for the substances

Information is required on import, export and national production statistics, as well as statistical data on purchase of the substances by health care institutions. Additional information may also be available in some cases from wholesalers, distributing agents and major purchasing establishments.

(3) Drug Utilization Data

Published and unpublished reports by investigators on drug utilization, including prescription and/or drug consumption studies, are required.

(4) Illicit Manufacture and Illicit Traffic

Data under this heading are being collected by the Secretary-General of the United Nations and Interpol. It would be appreciated if these reports could also be included with your answers to this questionnaire, together with any additional remarks.

(5) Extent and Nature of Public Health and Social Problems

5.1 *Data on mortality.* Published and unpublished reports on deaths and, in particular, reports on cases of death due to unnatural causes where drugs are involved, are required.

5.2 *Data on morbidity.* Published and unpublished reports from a variety of settings (such as drug dependence treatment centres, mental hospitals, prisons and emergency departments in hospitals) are required.

(6) Extent of Drug Abuse

Published and unpublished reports regarding cases of dependence and abuse of these substances are required.

Further clarification on any of the above items can be obtained from the Division of Mental Health (WHO/HQ).

Your response not later than 31 August 1987 would be appreciated.

GENEVA, May 25, 1987.

II. Background

A. Agonist/Antagonists

1. Buprenorphine
2. Nalbuphine
3. Pentazocine
4. Butorphanol
5. Dezocine
6. Meptazinol

Buprenorphine, nalbuphine, pentazocine, and butorphanol are commercially available in the United States. In addition, buprenorphine and pentazocine are controlled under the CSA in schedules V and IV, respectively. In 1981, 1982 through 1984 (see 46 FR 21447, April 10, 1981; 47 FR 38407, August 31, 1982; and 48 FR 37714, August 9, 1983), buprenorphine, nalbuphine, pentazocine, and butorphanol, among others, were reviewed by the United Nations for control under the conventions. As a result of that review, WHO recommended that one substance, pentazocine, be considered by the Commission on Narcotic Drugs (CND) for control. The Eighth Special Session of the CND voted to control pentazocine under schedule III of the Convention on Psychotropic Substances. The three other substances, buprenorphine, nalbuphine, and butorphanol are not subject to international control.

Dezocine and meptazinol are not available in the United States nor controlled under the CSA at this time. These two substances are not scheduled under the international control treaties.

B. Nonbarbiturate Sedatives

1. Bromisvol
2. Carbromide
3. Paraldehyde

Bromisoval and carbromide (Note: The official notification from WHO dated May 25, 1987, mistakenly lists carbromide as carbromal) are not controlled domestically or internationally. Further these two substances are not marketed in the United States. Bromisoval was evaluated for international scheduling by WHO in 1986 (see 51 FR 7639; March 5, 1986). At that time, WHO did not recommend scheduling this substance under the Convention on Psychotropic Substances.

Paraldehyde is marketed in the United States and controlled in schedule IV of the CSA. In 1982 and 1983 (see 47 FR 38407; August 31, 1982 and 48 FR 37714; August 19, 1983), paraldehyde was reviewed by the United Nations for control under the conventions. WHO did not recommend international control of paraldehyde at that time.

C. Stimulant and/or Hallucinogenics

1. Pemoline
2. Propylhexedrine
3. Pyrovalerone

Pemoline is marketed in the United States and is currently controlled in schedule IV of the CSA. The drug substance was evaluated for international control beginning in 1983 (see 48 FR 41096, September 13, 1983; 49 FR 29273, July 19, 1984; and 50 FR 36486, September 6, 1985). As a result of this review, pemoline was not recommended for international control under the Conventions.

Propylhexedrine is available in the United States as the active ingredient in two OTC nasal decongestant products. Pyrovalerone is not marketed domestically and neither product is scheduled under the CSA. The ninth CND voted in 1986 to place both substances into schedule IV of the Psychotropic Convention. However, the United States Government filed notifications, under Article 2, Paragraph 1 and Article 2, Paragraph 7 of the Psychotropic Convention for these two substances. These notifications petition the WHO to delete the two substances from schedule IV of the Convention without transferring them to any other schedule annexed to the Convention The notifications also state that the United States will apply the minimum controls necessary to comply with the terms of the Convention, while the re-review proceeds.

Subsequently, WHO informed the United States Government by a note dated November 17, 1986, that the propylhexedrine and pyrovalerone requests will be considered by the 25th WHO Expert Committee on Drug Dependence in April 1988. The November 17, 1986, note from WHO also requested the United States Government to submit, by June 30, 1987, domestic data to aid in the reexamination of the two substances. Accordingly, FDA published two notices in the Federal Register of March 20, 1987 (52 FR 8970 and 8971), asking interested persons to submit information to be forwarded to WHO. These materials will be forwarded to WHO separately, ahead of the other 12 substances listed in this notice. However, any additional information on propylhexedrine and pyrovalerone submitted in response to this notice will also be forwarded to WHO.

D. Miscellaneous

1. Clonidine
2. Methaqualone

Clonidine is marketed in the United States as an antihypertensive agent. However, the substance is widely used in many other countries in the treatment of opiate and alcohol withdrawal syndrome. According to WHO, clonidine is abused in some countries and has appeared in illicit traffic.

Methaqualone is a depressant controlled in schedule I of the CSA. The substance currently has no accepted medical use. In 1980, the CND rescheduled methaqualone from schedule IV to schedule II of the Psychotropic Convention.

III. Opportunity to Submit Domestic Information

As required by section 201(d)(2)(A) of the Controlled Substances Act (21 U.S.C. 811(c)(2)(A)), FDA on behalf of HHS invites interested persons to submit data or comments regarding the above-named 14 drugs. Data and information received in response to this notice will be used to prepare scientific and medical information on these drugs, with a particular focus on each drug's abuse liability. HHS will forward that information to WHO, through the Secretary of State, for WHO's consideration in preparing a report for presentation to a WHO review group, which will evaluate the need for international control of these drugs. Such control could limit, among other things, the manufacture and distribution (import/export) of these drugs, and could impose certain recordkeeping requirements on them.

HHS will not now make any recommendations to WHO regarding whether any of these drugs should be subjected to international controls. Instead, HHS will defer such consideration until WHO has made official recommendations to the Commission on Narcotic Drugs, which are expected to be made in the second half of 1988. Any HHS position regarding international control of these drugs will be preceded by another **Federal Register** notice soliciting public comment as required by 21 U.S.C. 811(d)(2)(B).

Interested persons may, on or before July 3, 1987, submit to the Dockets Management Branch (address above) written comments regarding this action. This abbreviated acceptance period is necessary to allow sufficient time to prepare and submit the domestic information package by the deadline imposed by WHO.

Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice contains information collection requirements that were submitted for review and approval to the Director of the Office of Management and Budget (OMB). The requirements were approved and assigned OMB control number 0910–0226.

Dated: June 25, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–14874 Filed 6–26–87; 11:07 am]

BILLING CODE 4160–01–M

National Institutes of Health

National Cancer Institute; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the NCI Thyroid/Iodine-131 Assessments Committee, Division of Cancer Etiology on August 24–25, 1987, Building 31, C Wing, Conference Room 7, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The meeting will be open to the public from 9 a.m. to recess on August 24 and from 9 a.m. to adjournment on August 25. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. David McB. Howell, Executive Secretary of the NCI Thyroid/Iodine-131 Assessments Committee, Division of Cancer Etiology, National Cancer Institute, Building 31, Room 11A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–6927) will furnish substantive program information.

Dated: June 24, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–14715 Filed 6–29–87; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Institute of Environmental Health Sciences, Advisory Council on Hazardous Substances Research and Training Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting to be held at the National Institutes of Health, National Library of Medicine, Director's Board Room (on the mezzanine), Building 38, Bethesda, Maryland, on July 20, 1987. The meeting will begin at 9:00 a.m. and end at approximately 4:30 p.m. The meeting is open to the public.

The Superfund Amendments and Reauthorization Act of 1986 (SARA) established a university-based program of basic research and education within the NIEHS. The purpose of the meeting is to provide the Advisory Council on Hazardous Substances Research and Training the opportunity to review and comment upon the NIEHS plan and priorities for this program, which was previously described in the **Federal Register** of November 28, 1986 (51 FR 43089–43092) and March 9, 1987 (52 FR 7218–7223). The Council also is to aid in coordinating the NIEHS program with related programs of research, development, and demonstration conducted under other provisions of SARA.

Topics to be discussed during the meeting may include but are not limited to: Overview of the NIEHS research program, NIEHS implementation plans, status of first-year grants, and research programs of other Federal agencies.

Attendance is limited only by space available. For further information regarding the meeting, please contact Mr. Daniel C. VanderMeer, Executive Secretariat, NIEHS, P.O. Box 12233, Research Triangle Park, N.C. 27709 or telephone 919–541–3484 or FTS 629–3484. The official Government representative for this meeting will be Dr. Anne P. Sassaman.

(Catalog of Federal Domestic Assistance Program No. 13.142, NIEHS Hazardous Waste Worker Health and Safety Training, NIH)

Dated: June 24, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–14717 Filed 6–29–87; 8:45 am]

BILLING CODE 4140–01–M

Recombinant DNA Advisory Committee, Working Group on Revision on the NIH Guidelines; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the

Recombinant DNA Advisory Committee Working Group on Revision of the NIH Guidelines at the National Institutes of Health, Building 1, Wilson Hall, 9000 Rockville Pike, Bethesda, Maryland 20892, on July 16, 1987, from approximately 9 a.m. to adjournment at approximately 5 p.m. to discuss revisions to the NIH Guidelines for Research Involving Recombinant DNA Molecules proposed by the U.S. Department of Agriculture. This meeting will be open to the public. Attendance by the public will be limited to space available.

Further information may be obtained from Dr. William J. Gartland, Executive Secretary, Recombinant DNA Advisory Committee Working Group on Revision of the NIH Guidelines, Office of Recombinant DNA Activities, 12441 Parklawn Drive, Suite 58, Rockville, Maryland 20852, telephone (301) 770–0131.

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.

Dated: June 24, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–14716 Filed 6–29–87; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–660–07–4121–02]

Minerals Management; Availability of Final Guidelines for Reduction of Royalty Rate for Solid Leasable Minerals

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Final Guidelines for reduction of royalty rate for solid leasable minerals.

SUMMARY: This notice announces the availability of the final guidelines setting forth the policy of the Department of the Interior for administration of section 39 of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 209), as it relates to reduction of royalty rates for coal and other solid leasable minerals, as well as a document discussing the comments received on the draft guidelines and the action taken on those comments. The final guidelines will be used by Bureau personnel and, where appropriate, Minerals Management Service personnel to determine whether a lessee of Federal solid minerals may be granted a reduction of the royalty rate paid on production under the provisions of 43 CFR 3485.2(c), 43 CFR 3503.2–4, 43 CFR 3140.1–4(c)(3), 43 CFR 3141.5–3(b), and 43 CFR 3103.4–1. The final guidelines do not apply to leases on Indian lands.

The final guidelines address the requirements that a lessee must meet in order to file an application for reduction of royalty rate; the contents of an application for reduction of royalty rate; detailed procedures to be followed by the Bureau of Land Management and, as appropriate, the Minerals Management Service in processing an application; and coordination with the States. The guidelines also provide for: uniform approval criteria; varying duration of the reduction of royalty rate period, depending on the category under which the application is filed; an annual requirement that the lessee recertify the continued existence of the conditions that warranted a reduction of royalty rates and, where required, certification of accounting and financial data by an independent certified public accountant as part of an application and also again at the end of the term of the reduction of royalty rate.

The final guidelines incorporate the action taken by the Bureau of Land Management on the comments received on the draft guidelines that were published in the **Federal Register** on February 13, 1985 (50 FR 6062), including statements received at a public meeting held on the draft guidelines in Denver, Colorado, on April 3, 1985. A discussion of the comments and the action taken on them may be obtained by writing the Bureau at the address set out below.

Based on the comments received on the draft guidelines and their careful analysis by the Department of the Interior, the final guidelines incorporate the following additional policy considerations: (1) The establishment of categories for reduction of royalty rate applications that would require the submission of lease-specific financial data; (2) an emphasis on fostering and encouraging the development of solid leasable mineral resources that might otherwise remain unmined; (3) greater reliance on the professional expertise of Bureau of Land Management technical field personnel in evaluating reduction of royalty rate applications; (4) enhanced standards for fiscal accountability to ensure a fair return from leases receiving a reduction of royalty rate; and (5) a commitment to consult with State Governors before a final determination is made on a reduction of royalty rate.

Effective upon the publication of this notice, the Bureau of Land Management is lifting its suspension of taking final action on applications for reduction of royalty rate. All action on new or pending applications for reduction of royalty rate will be carried out using the final guidelines announced in this notice.

EFFECTIVE DATE: June 30, 1987.

ADDRESS: Copies of the final guidelines and the document discussing the comments received on the draft guidelines may be obtained from: Director (130), Bureau of Land Management, Room 5600, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

Copies of the final guidelines also are available from all Bureau of Land Management State Offices. In addition, copies of the final guidelines are being mailed to all those who submitted comments on the draft guidelines.

FOR FURTHER INFORMATION CONTACT: Paul W. Politzer, (202) 343–7722.

Robert F. Burford,

Director.

June 23, 1987.

[FR Doc. 87–14774 Filed 6–29–87; 8:45 am]

BILLING CODE 4310–84–M

[MT–070–07–4212–13; M66052]

Realty Action: Exchange of lands in Beaverhead County, MT; Correction

AGENCY: Bureau of Land Management, Butte, District Office, Interior.

ACTION: Correction of notice of realty action for M66052, exchange of public lands and private lands in Beaverhead County.

SUMMARY: This notice corrects the original Notice of Realty Action for M66052 published on May 29, 1987 (52 FR 20162). In exchange for the public

lands listed in the notice, the United States will acquire certain private lands from Jim Easley. Publication of the notice in the Federal Register segregated the public lands from settlement, sale, location and entry under the public land laws, including the mining laws but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. This segregative effect will expire two years from the date of publication of the notice or when patent issues whichever occurs first.

J.A. Moorhouse,

District Manager.

June 22, 1987.

[FR Doc. 87-14734 Filed 6-29-87; 8:45 am]

BILLING CODE 4310-DM-M

[MT-070-4332-08]

Wilderness Study for Sleeping Giant Wilderness Study Area, Montana; Cancellation of a Previous Notice

AGENCY: Bureau of Land Mangement, Butte District Office, Interior.

ACTION: Cancellation of beginning of wilderness study.

SUMMARY: The Notice to Begin Wilderness Study, pertaining to the Sleeping Giant Wilderness Study Area north of Helena, Montana, published in the **Federal Register** June 4, 1987 on page 21126 is hereby rescinded.

The two public open-house meetings announced will not be held.

FOR FURTHER INFORMATION CONTACT: Cary Leppart, Headwaters Resource Area Manager, Bureau of Land Management, Box 3388, Butte, Montana 59702. Telephone 406-494-5059

J.A. Moorhouse,

District Manager.

June 17, 1987.

[FR Doc. 87-14735 Filed 6-29-87; 8:45 am]

BILLING CODE 4310-DN-M

[CO-940-07-4220-10; C-45714]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

June 22, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw approximately 374 acres of National Forest System land near Aspen, Colorado, to protect recreational and resource values. This notice closes the land to location and entry under the mining laws for 2 years. The land will remain open to mineral leasing and all uses other than mining.

DATE: Comments or requests for hearing should be received on or before 90 days from publication date.

ADDRESS: Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, (303) 236-1768.

The Department of Agriculture filed application on June 11, 1987, to withdraw the following identified National Forest System land from location and entry under the mining laws, subject to valid existing rights, pursuant to the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714:

White River National Forest

Sixth Principal Meridian

T. 10 S., R. 84 W.,
- Sec. 18, S½SE¼NW¼NW¼, SW¼NW¼, W½SW¼, and W½E½SW¼, excluding patented lands;
- Sec. 19, W½E½W½, W½W½, W½SE¼NE¼NW¼, W½E½SE¼NW¼, E½E½SW¼, W½SW¼NW¼SE¼, W½NW¼SW¼SE¼, and SW¼SW¼SE¼, excluding patented lands;
- Sec. 30, W½W½NE¼, W½E½SW¼NE¼, NW¼, N½N½NE¼SW¼, SW¼NW¼NE¼SW¼, SW¼NE¼NE¼SW¼, N½NE¼NW¼SW¼, and N½NW¼NW¼SE¼, excluding patented lands.

T. 10 S., R. 85 W.,
- Sec. 13, SE¼NE¼, E½SW¼NE¼, E½W½SE¼, and E½SE¼, excluding patented lands;
- Sec. 24, E½E½ and E½W½NE¼, excluding patented lands;
- Sec. 25, NE¼NE¼, NE¼SE¼NE¼, and NE¼SE¼SE¼NE¼, excluding patented lands.

The areas described aggregate approximately 374 acres in Pitkin County.

The purpose of the proposed withdrawal is to protect the high recreational values of the land within the Aspen Mountain Ski Area.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with this proposal may present their views in writing to the Colorado State Director.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with this proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on this proposed action must submit a written request to the Colorado State Director within 90 days of the date of publication of this notice. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with Bureau of Land Management Manual, section 2351.16B.

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated from the mining laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date.

Richard D. Tate,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-14736 Filed 6-29-87; 8:45 am]

BILLING CODE 4310-JB-M

Bureau of Reclamation

Environmental Statements; Uinta Basin Unit, Colorado River Water Quality Improvement Program, Duchesne and Uintah Counties, UT

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Availability of Planning Report/Final Environmental Statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a final environmental statement to discuss the alternatives and the environmental impacts of the Uinta Basin Unit of the Colorado River Water Quality Improvement Program. The draft environmental statement on the unit (INT DES 86-20) was made available to the Environmental Protection Agency and the public on April 25, 1986.

FOR FURTHER INFORMATION: Copies of the final environmental statement are available for inspection at the following locations:

Director, Office of Environmental Affairs, Room 7425, Bureau of Reclamation, Washington, DC 20240, (202) 343-4991

Management Operations Center, Document Systems Management Branch, Library Section, Code D-823, Engineering and Research Center, Denver Federal Center, Denver, Colorado 80225, (303) 236-6963

Regional Director, Bureau of Reclamation, Upper Colorado Regional Office, P.O. Box 11568, Salt Lake City, Utah 84147, (801) 524–5520

Utah Projects Office, Bureau of Reclamation, 302 East 1860 South, P.O. Box 1338, Provo, Utah 84603, (801) 379–1000

Single copies of the statement may be obtained on request from the Director, Office of Environmental Affairs or the Regional Director at the address given above. Copies also will be available for inspection in libraries in the project vicinity.

SUPPLEMENTARY INFORMATION: Under the recommended plan for the Uinta Basin Unit, 55.5 miles of irrigation canals and laterals in the Uinta Basin of northeastern Utah will be concrete lined to reduce salt loading caused by seepage and deep percolation. Construction and operation of the recommended plan will reduce the area's sale contribution to the Colorado River by a range of 21,000 to 30,000 tons per year. In addition to salinity reduction, major impacts of the unit will include improving irrigation efficiency and reducing wetlands associated with canal and lateral seepage.

A public hearing on the draft environmental statement was conducted in Roosevelt, Utah, on June 4, 1986. Sixteen letters commenting on the draft statement also were received by the Bureau of Reclamation. The final environmental statement contains responses to issues and concerns raised in the letters and appropriate revisions to the draft statement.

Dated: June 24, 1987.

C. Dale Duvall,

Commissioner of Reclamation.

[FR Doc. 87–14792 Filed 6–29–87; 8:45 am]

BILLING CODE 4310-09-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 June 20, 1987. 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, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by July 15, 1987.

Carol D. Shull,

Chief of Registration, National Register.

COLORADO

Grand County

Estes Park vicinity, *Timber Creek Road Camp Barn (Rocky Mountain National Park MRA)*, Timber Creek Rd.

CONNECTICUT

Hartford County

Stafford, *Stafford Hollow Historic District*, Roughly parts of Leonard, Murphy, Old Monson, Orcuttville, and Patten Rds.

Middlesex County

BOC Site (Lower Connecticut River Valley Woodland Period Archaeological TR)

Oriole Rockshelter (Lower Connecticut River Valley Woodland Period Archaeological TR)

Roaring Brook I Site (Lower Connecticut River Valley Woodland Period Archaeological TR

Roaring Brook II Site (Lower Connecticut River Valley Woodland Period Archaeological TR)

New London County

Bennett Rockshelter (Lower Connecticut River Valley Woodland Period Archaeological TR)

Cooper Site (Lower Connecticut River Valley Woodland Period Archaeological TR)

Hamburg Cove Site(Lower Connecticut River Valley Woodland Period Archaeological TR)

Lieutenant River III Site (Lower Connecticut River Valley Woodland Period Archaeological TR)

Lieutenant River IV (Lower Connecticut River Valley Woodland Period Archaeological TR)

Lieutenant River No. 2 (Lower Connecticut River Valley Woodland Period Archaeological TR)

Lord Cove Site (Lower Connecticut River Valley Woodland Period Archaeological TR)

Natcon Site (Lower Connecticut River Valley Woodland Period Archaeological TR)

Seldon Island Site (Lower Connecticut River Valley Woodland Period Archaeological TR)

Baltic vicinity, *Baltic Historic District*, Roughly bounded by Fifth Ave., River, High, Main, W. Main, and Shetucket River

KANSAS

Kiowa County

Mullinville vicinity, *Fromme-Birney Round Barn*, SW of Mullinville

MINNESOTA

Freeborn County

Albert Lea, *Albert Lea Commercial Historic District*, N. Broadway Ave. Between Water and E. Main Sts.

MISSISSIPPI

Warren County

Vicksburg, *Lonewood*, 1203 Harris St.

Washington County

Greenville, *Bank of Washington*, 120 S. Poplar St.

MONTANA

Carbon County

Bridger, *Bridger Coal Company House (Bridger MRA)*, 307 W. Broadway

Bridger, *Bridger Opera House (Bridger MRA)*, E. Broadway

Bridger, *Corey House (Bridger MRA)*, 106 North E St.

Bridger, *Forsman House (Bridger MRA)*, 406 E. Carbon Ave.

Bridger, *Gebo, Henry, House (Bridger MRA)*, E of Bridger

Bridger, *Glidden House (Bridger MRA)*, 112 North E St.

Bridger, *Glidden Mercantile (Bridger MRA)*, 102 N. Main

Bridger, *Heatherington Boarding House (Bridger MRA)*, 209 E. Broadway

Bridger, *Hough, Raymond, House (Bridger MRA)*, 312 S. Second

Bridger, *Marcus, Dr. Carl, House (Bridger MRA)*, 210 S. Second

Bridger, *Methodist Episcopal Church and Parsonage (Bridger MRA)*, 220 W. Broadway

Bridger, *Nutting Rental (Bridger MRA)*, Carbon Ave.

Bridger, *Wool Warehouse (Bridger MRA)*, E. Bridger

Flathead County

Kalispell, *Keith, Harry C., House*, 538 Fifth Ave. E.

Ravalli County

Hamilton, *Riverside*, Eastside Hwy.

Stillwater County

Columbus, *Mountain View Cemetery*, US 10 and Rapelje Rd.

NORTH CAROLINA

Vance County

Henderson, *Henderson Central Business Historic District*, Garnett St. from Church to Young Sts.

OHIO

Geauga County

Middlefield, *Batavia House*, 14979 S. State St.

Hamilton County

Montgomery, *Montgomery Saltbox Houses*, 7789 and 7795 Cooper Rd.

Lorain County

Lorain, *Duane Block*, 387–401 Broadway

PENNSYLVANIA

Bucks County

Doylestown, *Tabor Home for Needy and Destitute Children*, 601 New Britain Rd.

Newtown vicinity, *Newtown Presbyterian Church*, Sycamore St.

Newtown, *Tyler, George F., Mansion*, W side of Swamp Rd. (PA 313)

Solebury, *Upper Aquetong Valley Historic District*, Meeting House and Aquetong Rds., between US 202 and Sugan Rd.

Chester County

Kennett Square vicinity, *Harlan House*, Fairville Rd.
Kimberton vicinity, *Kimberton Historic District (Boundary Increase)*, Hare's Hill, Prizer, and Kimberton Rds.
Marshallton vicinity, *Taylor-Cope Historic District*, 890–1100 blk. Strasburg Rd. (PA 162)
Phoenixville vicinity, *White Horse Farm*, 54 S. Whitehorse Rd.

Philadelphia County

Philadelphia, *Colonial Germantown Historic District (Boundary Increase)*, 6500–7600 blks. Germantown Ave. from Ft. Washington branch of PA Railroad to Sharpnack St.
Philadelphia, *Society Hill Historic District (Boundary Decrease)*, Front St. to Eighth St. between Walnut and Pine Sts.

TENNESSEE

Hawkins County

Bulls Gap, *Bulls Gap Historic District*, S. Main, Church, McGregor, Price and Mill Sts.

WASHINGTON

Klickitat County

Glenwood vicinity, *Whitcomb Cabin (Proposed Move)*, 8 mi S of Glenwood along County Rd. 163

[FR Doc. 87–14846 Filed 6–29–87; 8:45 am]
BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44) U.S.C. Chapter 35 is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser (202) 275–6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget Room 3228 NEOB, Washington, DC 20503, (202) 395–7340.

Type of Clearance: Extension
Bureau/Office: Office of Compliance & Consumer Assistance
Title of Form: Financial responsibility—Trucking & Freight Forwarders
OMB Form No.: 3120–0081
Agency Form No.: BMC32, 34, 35, 36, 83, 84, 90 & 91
Frequency: On occasion
Respondents: ICC regulated transportation entities
No. of Respondents: 43,704
Total Burden Hrs.: 10,926
Brief Description of the need & proposed use: Filing of these forms is required to satisfy statutory requirements that transportation entities have liability insurance coverage. This is to insure that the public is protected for any claims involving bodily injury and property loss or damage.

Noreta R. McGee,
Secretary.

[FR Doc. 87–14756 Filed 6–29–87; 8:45 am]
BILLING CODE 7035-01-M

Rail Carriers; Release of Waybill Data for Use in Conducting Academic Research Into the Competitive Effects of Trackage Rights Awards

The Commission has received a request from the University of Missouri-Columbia, Department of Economics, for permission to use: (1) Origin railroad and station, (2) termination railroad and station, (3) junction points, (4) commodity codes, (5) car type, (6) revenue, (7) net tonnage, (8) mileage, and (9) sampling strata from the Commission's 1985 waybill sample to conduct academic research into the competitive effects of trackage rights awards. This information will be used solely for academic research and only aggregate statistics and results will be reported.

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines at least: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR Part 1244). From this waybill information, the Commission has developed a Public Use File that has satisfied the majority of all our waybill data requests while protecting the confidentiality of propriety data submitted by the railroads. However, if confidential waybill date are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) Public notice is provided so affected parties have an opportunity to object and (2) certain requirements designed to protect the data's confidentiality are agreed to by the requesting party (52 **Federal Register** 12415, April 16, 1987).

Accordingly, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Transporation Analysis (OTA) within 14 calendar days of the date of this notice. They should also include all grounds for objection to the full or partial disclosure of the requested data. The Director of OTA will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

Contact: James A. Nash, (202) 275–6864.

Noreta R. McGee,
Secretary.

[FR Doc. 87–14758 Filed 6–29–87; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Controlled Substances: Proposed Revised 1987 Aggregate Production Quota for Ibogaine

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of a proposed revised 1987 aggregate production quota for ibogaine.

SUMMARY: This notice propose a revision in the aggregate production quota for ibogaine, a Schedule I controlled substance, which will be used for toxicology studies.

DATE: Comments or objections should be received on or before July 30, 1987.

ADDRESS: Send comments or objections in quintuplicate to the Administrator, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537, Attn: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telepone: (202) 633–1366.

SUPPLEMENTAL INFORMATION: Section 306 of the Controlled Substances Act (21 U.S. Code 826) requires that the Attorney General establish aggregate production quotas for all controlled substances listed in Schedules I and II. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations.

Recently, an amended application for a manufacturing quota for ibogaine was

received by the Drug Enforcement Administration. The increased amount of substance requested is to be used for toxicology studies.

The Administrator of the Drug Enforcement Administration, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S. Code 826) and delegated to the Administrator by § 0.100 of Title 28 of the Code of Federal Regulations, hereby proposes the following change in the aggregate production quota for ibogaine, expressed in grams of anhydrous base:

Basic class	Previously established 1987 aggregate production quota	Proposed revised 1987 aggregate production quota
Ibogaine	35	545

All interested persons are invited to submit their comments and objections in writing regarding this proposal. Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA **Federal Register** Representative, and must be received by July 30, 1987. If a person believes that one or more issues raised by him warrant a hearing, he should so state and summarize the reasons for his belief.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall order a public hearing by a notice in the *Federal Register*, summarizing the issues to be heard and setting the time for the hearing.

Pursuant to sections (3)(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S. Code 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Dated: May 27, 1987.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 87-14740 Filed 6-29-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-50]

Hearing; Raymond A. Carlson, M.D., Vinton, LA

Notice is hereby given that on May 27, 1986, the Drug Enforcement Administration, Department of Justice, issued to Raymond A. Carlson, M.D. an Order to Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificate of Registration, AC340374, and deny any pending applications for renewal.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Tuesday, August 25, 1987, in Courtroom 211, United States Tax Court, U.S. Custom House, 423 Canal Street, New Orleans, Louisiana.

Dated: June 23, 1987.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 87-14741 Filed 6-29-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-92]

Hearing; Irving Davis, M.D., San Francisco, CA

Notice is hereby given that on October 16, 1987, the Drug Enforcement Administration, Department of Justice, issued to Irving Davis, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for registration executed on June 6, 1986.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 9:30 a.m. on Tuesday, July 7, 1987, in Courtroom 5, United States District Court, 450 Golden Gate Avenue, San Francisco, California.

Dated: June 23, 1987.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 87-14742 Filed 6-29-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-90]

Hearing; Wilfredo Fernandez-Vila, M.D., South Houston, TX

Notice is hereby given that on November 4, 1986, the Drug Enforcement Administration, Department of Justice, issued to Wilfredo Fernandez-Vila, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AFO912798, and deny any pending applications for registration.

Thirty days having elasped since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 9:30 a.m. on Tuesday, July 28, 1987, at the Harris County Courthouse, LaPort Annex, 117 East Avenue-A, LaPort, Texas.

Dated: June 23, 1987.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 87-14743 Filed 6-29-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 87-7]

Hearing; Great Lakes Wholesale Drugs, Inc., Livonia, MI

Notice is hereby given that on December 16, 1986, the Drug Enforcement Administration, Department of Justice, issued to Great Lakes Wholesale Drugs Inc. an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, PG0033112 and deny any pending applications for renewal.

Thirty days having elasped since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 9:30 a.m. on Tuesday, June 30, 1987, in Courtroom No. 10, United States Claims Court, 717 Madison Place, NW., Washington, DC.

Dated: June 23, 1987.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 87-14744 Filed 6-29-87; 8:45 am]

BILLING CODE 4410-09-M

Denial of Application; Roy R. Kinder, Jr., M.D.

On March 23, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Roy R. Kinder, Jr., M.D. (Respondent) of Ludlow Street and Brandon Road, Upper Darby, Pennsylvania 19082, proposing to deny his application, executed on August 12, 1986, for registration as a practitioner under 21 U.S.C. 823(f). The proposed action was predicated on Respondent's felony conviction relating to controlled substances. In addition, the Order to Show Cause alleged that Respondent materially falsified the application which is the subject of the this final order.

On April 20, 1987, Respondent specifically waived his opportunity for a hearing and instead submitted a written statement regarding his position on the matters of fact and law involved pursuant to 21 CFR 1301.54(c). The Administrator enters his final order in this matter based on the investigative file and Respondent's written statement. 21 CFR 1301.57.

The Administrator finds that during the course of an investigation of a local pharmacy, DEA investigators discovered a large number of prescriptions for Dilaudid and Quaalude in the pharmacy which were written by Respondent. Dilaudid, containing hydromorphone, is a Schedule II narcotic controlled substance. Quaalude, containing methaqualone, is a Schedule I controlled substance, but at the time that the prescriptions were written, it was a Schedule II non-narcotic controlled substance. The investigation revealed that during 1980, the pharmacy purchased 74,500 dosage units of Quaalude, of which 62,830 dosage units were allegedly dispensed pursuant to prescriptions issued by Respondent, which amounted to 84.3% of all of the Quaalude ordered by the pharmacy in 1980. During the same time period, the pharmacy purchased 13,100 dosage units of Dilaudid 4 mg., of which 12,480 dosage units were allegedly dispensed pursuant to prescriptions issued by Respondent, which amounted to 95.3% of all of the Dilaudid 4 mg. ordered by the pharmacy in 1980.

DEA investigators interviewed a number of the patients whose names appeared on the prescriptions written by Respondent which were found at the pharmacy. These individuals stated that they had never seen Respondent nor had they received the drugs allegedly prescribed for them by Respondent.

Respondent is a dermatologist. He sometimes sees individuals who are patients of another dermatologist that works in the same building as Respondent. Upon further investigation, it was discovered that the names that appeared on the prescriptions were patients of the other dermatologist. The medical charts of these individuals did not indicate that they had been prescribed any controlled substances nor had they even seen Respondent on the date the drugs were allegedly prescribed for them. In fact, one individual whose name was used had not even seen the other dermatologist for eight years. Respondent wrote these fraudulent prescriptions that were then filed at the pharmacy to cover any shortages that may have occurred as a result of diversion of controlled substances from the pharmacy.

On January 25, 1984, Respondent was indicted in the United States District Court for the Eastern District of Pennsylvania. Respondent was charged with one count of conspiracy to possess with intent to distribute and dispense outside the course of accepted professional medical practice and for no legitimate medical purpose, Dilaudid and Quaalude in violation of 21 U.S.C. 841(a)(1) and 21 U.S.C. 846; one count of possession with intent to distribute and dispense approximately 12,000 Dilaudid tablets in violation of 21 U.S.C. 841(a)(1); one count of possession with intent to distribute and dispense approximately 62,000 Quaalude tablets in violation of 21 U.S.C. 841(a)(1); and one count of furnishing false and fraudulent prescriptions for Schedule II controlled substances in violation of 21 U.S.C. 843(a)(4)(A).

On March 20, 1984, Respondent pled guilty to and was convicted of one count of conspiracy to possess with intent to distribute controlled substances outside the course of professional practice and for no legitimate medical need and one count of furnishing fraudulent material information, both felony offenses relating to controlled substances. The Administrator concludes that based solely on Respondent's felony convictions and the underlying facts surrounding such convictions, Respondent's application for registration must be denied.

In addition, the Administrator concludes that Respondent materially falsified his application for registration. In an order dated October 30, 1985, the Pennsylvania State Board of Medical Education and Licensure suspended Respondent's license to practice medicine and surgery for three years, thereby terminating his authority to handle controlled substances. The order further stated that the first year of the suspension would be active and the second two years of the suspension would be stayed with Respondent being placed on probation for two years. In a letter from the Administrative Assistant for the State Board of Medicine, dated June 12, 1986, Respondent was notified that his medical license would remain on active suspension until December 14, 1986. Respondent submitted the application for registration, which is subject to this final order, on August 12, 1986. In response to a question on the application, Respondent stated that he was then authorized to handle controlled substances in the state in which he practices, Pennsylvania, when in fact he would not be so authorized until December 14, 1986.

In his written statement, submitted on April 20, 1987, regarding his position on the issues raised in the Order to Show Cause, Respondent stated that, "it was his understanding that allowance of time would have to be made for delay in processing, and therefore he applied early in anticipation of the expiration of the State Board Order scheduled for December 15, 1986." If this was truly the case, Respondent should have indicated on his application that he was not then authorized to handle controlled substances in Pennsylvania, but expected to be so authorized as of December 15, 1986.

In his written statement, Respondent states that his, "only purpose in making application for DEA registration was to maintain his staff privileges at two area hospitals where a DEA registration for at least Schedule V substances is a pre-requisite." He further states that he "has no objection to issuance of a registration restricted to Schedule V substances only with suspension continuing as to all other Schedules." The Drug Enforcement Administration does not register individuals so that they may obtain hospital privileges. Instead, DEA registers practitioners to enable them to handle controlled substances. Respondent's actions have demonstrated that he cannot be entrusted with the responsibilities that accompany DEA registration. The Administrator concludes that the registration of Respondent to handle

controlled substances is inconsistent with the public interest pursuant to 21 U.S.C. 823(f), and therefore, the application must be denied.

Having concluded that lawful grounds exist to deny the application, and having further concluded that under the facts and circumstances presented in this case the application should be denied, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that the application, submitted by Roy R. Kinder, Jr., M.D. on August 12, 1986, for registration as a practitioner under the Controlled Substances Act, be, and it hereby is, denied. This order is effective immediately.

Dated: June 22, 1987.

John C. Lawn,

Administrator.

[FR Doc. 87-14745 Filed 6-29-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 87-18

Hearing; Nicetown Pharmacy, Philadelphia, PA

Notice is hereby given that on January 20, 1987, the Drug Enforcement Administration, Department of Justice, issued to Nicetown Pharmacy an Order to Show Cause as to why the Drug Enforcement Administration should not revoke the pharmacy's DEA Certificate of Registration, AN2013693, and deny any pending applications for renewal.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Thursday July 16, 1987, in Courtroom No. 10, United States Claims Court, 717 Madison Place, NW., Washington, DC.

Dated: June 23, 1987.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 87-14746 Filed 6-29-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 87-32]

Hearing; John S. Noell, M.D., Black Mountain, NC

Notice is hereby given that on March 5, 1987, the Drug Enforcement Administration, Department of Justice, issued to John S. Noell, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for registration executed on May 14, 1986.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Adminstration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Tuesday, September 22, 1987, in Courtroom No. 10, United States Claims Court, 717 Madison Place, NW., Washington, DC.

Dated: June 23, 1987.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 87-14747 Filed 6-29-87 8:45 am]

BILLING CODE 4410-09M

Application; Importation of Controlled Substances; Philadelphia Seed Co.

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in according with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on April 24, 1987, Philadelphia Seed Company, Division of Stanford Seed Company, Muddy Creek Road, Lancaster County, Denver, Pennsylvania 17517, made application to the Drug Enforcement Administration to be registered as an importer of Marihuana (7360), a basic class controlled substance in Schedule I. This application is exclusively for the importation of marihuana seed which will be rendered non-viable and used as bird feed.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of ths basic class of controlled substance may file written comments on or objection to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than July 30, 1987.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I and II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Dated: June 22, 1987.

Gene R. Haislip,

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

[FR Doc. 87-14748 Filed 6-29-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 87-51]

Hearing; Harvey Presser, M.D., Los Angeles, CA

Notice is hereby given that on March 23, 1987, the Drug Enforcement Administration, Department of Justice, issued to Harvey Presser, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for registration executed on June 6, 1986.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 9:30 a.m. on Wednesday, July 8, 1987, in Courtroom 5, United States District Court, 450 Golden Gate Avenue, San Francisco, California.

Dated: June 23, 1987.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 87-14749 Filed 6-29-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 87-41]

Hearing; White's Best Buy Drugs, Collins, MS

Notice is hereby given that on March

23, 1987, the Drug Enforcement Administration, Department of Justice, issued to White's Best Buy Drugs, an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AW4660456, and deny any pending applications for registration.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 9:30 a.m. on Thursday, August 27, 1987, in Courtroom 211, United States Tax Court, U.S. Custom House, 423 Canal Street, New Orleans, Louisiana.

Dated: June 23, 1987.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 87-14750 Filed 6-29-87; 8:45 am]

BILLING CODE 4410-09-M

Office of Juvenile Justice and Delinquency Prevention

Coordinating Council on Juvenile Justice and Delinquency Prevention; Meeting

The third quarterly meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention will be held in Washington, DC, on July 24, 1987. The meeting will take place in Room 703A at the Department of Health and Human Services, Hubert Humphrey Building, 200 Independence Avenue, SW., from 9:30 a.m. to 12:00 p.m. The public is welcome to attend.

The agenda will focus on matters related to the coordination of drug abuse preventation programs for high risk youth and coordination of missing children's programs.

For further information, please contact Roberta Dorn, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531, (202) 724-7655.

Dated: June 25, 1987.

Approved

Verne L. Speirs,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 87-14767 Filed 6-29-87; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-18,329]

Affirmed Determination Regarding Application for Reconsideration; AT&T Technologies, Incorporated AT&T Technology Systems

After being granted a filing extension, the Communications Workers of America (CWA) requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on behalf of workers and former workers of AT&T Technologies, Inc., AT&T Tehnology Systems, Kansas City, Missouri. The determination was published in the **Federal Register** on March 10, 1987 (52 FR 7330).

The union claims that the investigation findings did not address a separately identifiable group at the Kansas City plant producing 256K semiconductor microchips.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 18th day of June 1987.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-14818 Filed 6-29-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19,585]

Termination of Investigation; Drilco Industrial, Inc., Newport Beach, CA

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 27, 1987 in response to a worker petition which was filed on behalf of workers at Drilco Industrial, Incorporated, Midland, Texas.

Although the petition was filed on behalf of workers at Drilco's Midland, Texas location, the investigation was instituted as Drilco Industrial, Incorporated, Newport Beach, California. Newport Beach, California is the location of Drilco's parent firm.

Workers at the correct location, Midland, Texas, are subject to an ongoing investigation for which a determination has not yet been issued (TA-W-19,586). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 23rd day of June 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-14816 Filed 6-29-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19,622]

Termination of Investigation; Drilco Industrial, Inc., Midland, TX

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 4, 1987 in response to a worker petition which was filed on behalf of workers at Drilco Industrial, Incorporated, Midland, Texas.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA-W-19,586). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 23rd day of June 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-14817 Filed 6-29-87; 8:45 am]

BILLING CODE 4510-30-M

Negative Determination Regarding Application for Reconsideration; Kitt Energy Corp

In the matter of Kitt Energy Croporation, TA-W-19,388—Meadow Lands, Pennsylvania; TA-W-19,389—Fredericktown, Pennsylvania; TA-W-19,390—Verona, Pennsylvania; TA-W-19,391—Russellton, Pennsylvania.

By an application dated May 14, 1987, the petitioners requested administrative reconsideration of the Department's negative determination on the subject petitions for trade adjustment assistance for workers at Kitt Energy Croporation, Meadow Lands, Pennsylvania; Fredericktown, Pennsylvania; Verona, Pennsylvania and Russellton, Pennsylvania. The denial notice was signed on April 23, 1987 and published in the **Federal Register** on May 12, 1987 (52 FR 17852).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the

determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioners claim that workers at Kitt Energy are controlled by LTV Steel Company. They base this position on the following: (1) Decisions to operate the mines is at the discretion of LTV Steel; (2) daily, weekly and monthly reports are made to LTV Steel; (3) Kitt Energy is reimbursed by LTV Steel for 100 percent or employee salaries and benefits; (4) Kitt Energy exists for the sole purpose of managing the LTV mines; and (5) no firm decisions are made without the prior approval at Kitt Energy were certified earlier under petition TA-W-14,367

The Deparment's denial was based on findings that the Kitt Energy workers provide a service and do not produce an article within the meaning of section 222 (3) of the Trade Act of 1974. Kitt Energy, a subsidiary of Standard Oil, manages the coal mines under a contractual arrangement with LTV Steel. The Department of Labor has consistently determined that the performance of services does not constitute the production of an article. This determination has been upheld in the U.S. Court of Appeals.

LTV Steel may be determined to be the "workers' firm" for the Kitt Energy workers only if LTV Steel and Kitt Energy are related by ownership or by a substantial degree of proprietary control. Case records show that there is no element of ownership or proprietary control between the firms. Payroll transactions, personnel actions and payment employee benefits for Kitt Energy workers are under the control of Kitt Energy and not LTV Steel. The fact that Kitt Energy makes reports to LTV Steel, receives a management fee from LTV Steel which includes the salary expense for Kitt Energy workers; and LTV Steel makes operational decisions are not sufficient to support the position that LTV is the "workers' firm" for purposes of qualifying for adjustment assistance.

Workers of Kitt Energy were certified for adjustment assistance under an earlier petition (TA-W-14,367) while operating a different mine. According to findings for that petition, import impact occurred when Kitt Energy Corporation was an affiliate of Republic Steel. Workers at several Republic Steel mills qualified for trade adjustment assistance in 1981 and 1982 because of increased imports of articles like or directly competitive with those produced at Republic's trade impacted mills. Workers of Kitt Energy also qualified for trade adjustment assistance because of reduced demand for management services at affiliated coal mines producing metallurgical coal for Republic's mills. Because of subsequent changes to the ownership of Kitt Energy, it is no longer an affiliate of a steel company whose workers are independently certified for trade adjustment assistance. Therefore, the condition for approving adjustment assistance are no longer applicable.

Conclusion

After review of the applications and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's decisions. Accordingly, the applications are denied.

Signed at Washington, DC, this 18th day of June 1987.

Robert O. Deslongchamps,

Director, Office of Legislation and Acturial Services, UIS.

[FR Doc. 87-14819 Filed 6-29-87; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Extended Benefits; Ending of Extended Benefit Period in the State of Idaho

This notice announces the ending of the Extended Benefit Period in the State of Idaho, effective on June 13, 1987.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Extended Benefits are payable in a State during an Extended Benefit Period which is triggered "on" when the rate of insured unemployment in the State reaches the State trigger rate set in the Act and the State law. During an Extended Benefit Period, individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when the rate of insured unemployment in the State is no longer at the trigger rate set in the law. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator, but not less than 13 weeks after the benefit period began.

An Extended Benefit Period commenced in the State of Idaho on March 15, 1987, and has now triggered off.

Determination of an "off" Indicator

The head of the employment security agency and the State named above has determined that the rate of insured unemployment in the State for the period consisting of the week ending on May 23, 1987, and the immediately preceding twelve weeks, fell below the State trigger rate, so that for that week there was an "off" indicator in the State.

Therefore, the Extended Benefit Period in the State terminated with the week ending June 13, 1987.

Information for Claimants

The State employment security agency will furnish a written notice to each individual who is filing claims for Extended Benefits of the ending of the Extended Benefit Period and its effect on the individual's right to Extended Benefits. 20 CFR 615.13(d)(3).

Persons who wish information about their rights to Extended Benefits in the State named above should contact the nearest State employment service office in their locality.

Signed at Washington, DC, on June 23, 1987.

Roger D. Semerad,

Assistant Secretary of Labor.

[FR Doc. 87-14814 Filed 6-29-87; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Extended Benefits; Ending of Extended Benefit Period in the State of Wyoming

This notice announces the ending of the Extended Benefit Period in the State of Wyoming, effective on June 13, 1987.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Extended Benefits are payable in a State during an Extended Benefit Period which is triggered "on" when the rate of insured unemployment in the State reaches the State trigger rate set in the Act and the State law. During an Extended Benefit Period, individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when the rate of insured unemployment in the State is no longer at the trigger rate set in the law. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator, but not less than 13 weeks after the benefit period began.

An Extended Benefit commenced in the State of Wyoming on March 15, 1987, and has now triggered off.

Determination of an "off" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State for the period consisting of the week ending on May 23, 1987, and the immediately preceding twelve weeks, ending below the State trigger rate, so that for that week there was an "off" indicator in the State.

Therefore, the Extended Benefit Period in the State terminated with the week ending June 13, 1987.

Information for Claimants

The State employment security agency will furnish a written notice to each individual who is filing claims for Extended Benefits of the ending of the Extended Benefit Period and its effect on the individual's right to Extended Benefits. 20 CFR 615.13(d)(3).

Persons who wish information about their rights to Extended Benefits in the State named above should contact the nearest State employment service office in their locality.

Signed at Washington, DC, on June 23, 1987.

Roger D. Semerad,

Assistant Secretary of Labor.

[FR Doc. 87-14815 Filed 6-29-87; 8:45 am]

BILLING CODE 4510-30-M

Labor Surplus Area Classifications; Additions to List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The additions to the labor surplus area list are effective July 1, 1987.

SUMMARY: The purpose of this notice is to announce additions to the list of labor surplus areas.

FOR FURTHER INFORMATION CONTACT: William J. McGarrity, Labor Economist, Employment and Training Administration, 200 Constitution Avenue, NW., Room N4470, Attention: TEESS, Washington, DC 20210. Telephone: 202-535-0185.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Procurement Regulations Temporary Regulation 57 (41 CFR Chapter 1, Appendix), issued by the General Services Administration on January 15, 1981, (46 FR 3519), implements Executive Order 12260. Executive agencies should refer to Temporary Regulation 57 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR Part 654, Subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor published the annual list of labor surplus areas on March 26, 1987 (52 FR 9727).

Subpart B of Part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under Subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The areas described below have been classified by the Assistant Secretary of Labor as labor surplus areas pursuant to 20 CFR 654.5(b) (48 FR 15615 April 12, 1983) and are added to the list of labor surplus areas, effective July 1, 1987.

The following additions to the list of labor surplus areas are published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, DC, on June 23, 1987.

Roger D. Semerad,

Assistant Secretary of Labor.

ADDITIONS TO THE ANNUAL LIST OF LABOR SURPLUS AREAS

[July 1, 1987]

Labor Surplus Area	Civil Jurisdiction Included
Georgia: Putnam County	Putnam County.
Texas: Calhoun County, Victoria City.	Calhoun County, Victoria City in Victoria County.
Wyoming:	
Big Horn County	Big Horn County.
Campbell County	Campbell County.
Converse County	Converse County.
Casper City	Casper City in Natrona County.
Balance of Natrona County.	Natrona County Less Casper City.
Uinta County	Uinta County.

[FR Doc. 87-14813 Filed 6-29-87; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Arts, Ad Hoc Challenge Review Committee; 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 Ad Hoc

Challenge Review Committee to the National Council on the Arts will be held on July 22, 1987, from 9:00 a.m.–5:30 p.m. in room MO-9 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting 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 discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne Sabine,

Committee Management Officer, National Endowment for the Arts.

June 25, 1987.

[FR Doc. 87–14803 Filed 6–29–87; 8:45 am]

BILLING CODE 7537-01-M

Initiative for Interdisciplinary Artists, Ad Hoc Review Committee; 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 Ad Hoc Review Committee for the Initiative for Interdisciplinary Artists, a joint program with the Rockefeller Foundation, will be held on July 16, 1987, from 9:00 a.m.–5:30 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on July 16, 1987 from 4:00 p.m.–5:30 p.m. The topics for discussion will include policy issues.

The remaining session of this meeting on July 16, 1987, from 9:00 a.m.–4:00 p.m. is for the purpose of application review. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, this session will be closed to the public pursuant to subsection (c)(9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC 20506, 202–682/5532, TTY 202682/5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Yvonne Sabine,

Committee Management Officer, National Endowment for the Arts.

June 25, 1987.

[FR Doc. 87–14804 filed 6–29–87; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–280 and 50–281]

Denial of Amendments to Facility Operating Licenses and Opportunity for a Hearing; Virginia Electric and Power Company

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Virginia Electric and Power Company (the licensee) for amendments to Facility Operating License Nos. DPR–32 and DPR–37, issued to the licensee for operation of the Surry Power Station, Unit Nos. 1 and 2 (that facilities) located in Surry County, Virginia.

The proposed amendments would have reduced the minimum number of thimbles required for taking flux maps with the incore movable detector system from 75% to 50%. Notice of Consideration of Issuance of these amendments was published in the Federal Register on May 21, 1985 (50 FR 20996). The licensee's application for the amendments was dated April 15, 1985.

The request was found unacceptable due to the fact that the ability to detect anomalous conditions in the core would be seriously degraded. Technical Specification changes to reduce the number of thimbles required for taking flux maps with the incore movable detector system to 50% might result in a lack of incentive to keep the system operating as close to 100% as possible, and could result in an unacceptably degraded ability to detect anomalous conditions in the core. Therefore, the proposed change to the Technical Specifications is denied.

The licensee was notified of the Commission's denial of this request by letters dated June 24, 1987.

By July 30, 1987, the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC by the above date.

A copy of any petition should also be sent to the Office of the General Counsel—Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Michael W. Maupin, Esq., Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

For further details with respect to this action, see: (1) The application for amendments dated April 15, 1985, and (2) the Commission's letter to Virginia Electric and Power Company dated June 24, 1987, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185. Copies of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects-I/II.

Dated at Bethesda, Maryland, this 24th day of June, 1987.

For the Nuclear Regulatory Commission.

Lester S. Rubenstein,

Director, Project Directorate II–2, Division of Reactor Projects-I/II.

[FR Doc. 87–14810 Filed 6–29–87; 8:45 am]

BILLING CODE 7590-01-M

Governors' Designees Receiving Advance Notification of Transportation of Nuclear Waste

On January 6, 1982, the Nuclear Regulatory Commission (NRC) published in the Federal Register, as final, certain amendments to 10 CFR Parts 71 and 73 (effective July 6, 1982), which require advance notification to Governors or their designees concerning transportation of certain shipments of nuclear waste and spent fuel. The advance notification covered in Part 73 is for spent nuclear reactor fuel shipments and the notification for Part 71 is for large quantity shipments of radioactive waste (and of spent nuclear reactor fuel not covered under the final amendment to 10 CFR Part 73).

The following list updates the names, addresses and telephone numbers of

those individuals in each State who are responsible for receiving information on nuclear waste shipments. The list will be published annually in the **Federal Register** on or about June 30, to reflect any changes in information.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS

States	Part 71	Part 73
Alabama	Col. Thomas H. Wells, Director, Alabama Department of Public Safety, P.O. Box 1511, Montgomery, AL 36192-0501, (205) 261-4378.	
Alaska	Mr. Dennis Kelso, Commissioner, Alaska Department of Environmental Conservation, Pouch O, Junea, AK 99811, (907) 465-2600.	Same.
Arizona	Charles F. Tedford, Director, Arizona Radiation Regulatory Agency, 4814 South 40 Street, Phoenix, AZ 85040, (602) 255-4845. After hours: (602) 998-4662.	Same.
Arkansas	Greta, J. Dicus, Director, Division of Radiation Control and Emergency Management Programs, Arkansas Department of Health, 4815 West Markham Street, Little Rock, AR 72201, (501) 661-2301, After hours: (501) 661-2136 or 661-2000.	Same.
California	L.M. Short, Chief, California Highway Patrol, P.O. Box 942898, Sacramento, CA 94298-0001, (916) 445-3253	Same.
Colorado	Captain Lonnie J. Westphal, Officer in Charge, Administrative Branch Services, Colorado State Patrol, 700 Kipling Street, Denver, CO 80215, (303) 239-4560, After hours: (303) 239-4501.	Same.
Connecticut	The Honorable Leslie Carothers, Commissioner, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106, (203) 566-2110.	Same.
Delaware	Edward J. Steiner, Secretary, Department of Public Safety, Highway Administration Building, P.O. Box 818, Dover, DE 19903, (302) 736-4321.	Same.
Florida	Harlan Keaton, Public Health Physicist Manager, Office of Radiation Control, Department of Health and Rehabilitative Services, P.O. Box 15490, Orlando, FL 32858, (305) 297-2095.	Same.
Georgia	Tom Doyal, Director, Transportation Division, Public Service Commission, 1007 Virginia Avenue, Hapeville, GA 30354, (404) 761-2229.	Same.
Hawaii	James K. Ikeda, Deputy Director for Environmental Health, Department of Health, P.O. Box 3378, Honolulu, HI 96813, (808) 548-4139.	Same.
Idaho	Mark Torf, Manager, Compliance Section, Department of Health and Welfare, Hazardous Materials Bureau, Division of Environment, 450 W. State, 5th Floor, Statehouse, Boise, ID 83720, (208) 334-5879, After hours: (208) 344-4908.	Same.
Illinois	Dr. Terry Lash, Director, Illinois Department of Nuclear Safety, 1035 Outer Park Drive, 5th Floor, Springfield, IL 62704, (217) 785-9900.	Same.
Indiana	Larry D. Furnas, Acting Superintendent, Indiana State Police, 301 State Office Building, 100 North Senate Avenue, Indianapolis, IN 46204, (317) 232-8248 (24 hours).	Same.
Iowa	Ellen M. Gordon, Director, Office of Disaster Services, Hoover State Office Building, Des Moines, IA 50319, (515) 281-3231	Same.
Kansas	Leon H. Mannell, P.E., Administrator, Radiological Systems, The Adjutant General's Department, Division of Emergency Preparedness, P.O. Box C-300, Topeka, KS 66601, (913) 233-9253, Ext. 321.	Same.
Kentucky	Donald R. Hughes, Sr., Manager, Radiation Control, Department for Health Services, 275 East Main Street, Frankfort, KY 40621, (502) 564-3700.	Same.
Louisiana	Col. Wiley D. McCormick Head, Louisiana State Police, 265 South Foster Drive, P.O. Box 66614, Baton Rouge, LA 70896, (504) 925-6117.	Same.
Maine	Chief of the State Police, Maine Dept. of Public Safety, 36 Hospital Street, Augusta, ME 04330, (207) 289-2155	Same.
Maryland	Colonel James A. Jones, Chief, Services Bureau, Maryland State Police, 1201 Reisterstown Road, Pikesville, MD 21208, (301) 486-3101.	Same.
Massachusetts	Robert M. Hallisey, Director, Radiation Control Program, Massachusetts Department of Public Health, 150 Tremont Street, 2nd Floor, Boston, MA 02111, (617) 727-6214.	Same.
Michigan	James E. Cox, Captain, Commanding Officer, Operations Division Michigan Department of State Police, 714 S. Harrison Road, East Lansing, MI 48823, (517) 337-6100.	Same.
Minnesota	John R. Kerr, Natural Disaster Planner, Minnesota Division of Emergency Services, B5 State Control, St. Paul, MN 55155, (612) 296-2233, After hours: (612) 778-0800.	Same.
Mississippi	James E. Maher, Director, Mississippi Emergency Management Agency, P.O. Box 4501, Fondren Station, Jackson, MS 39216, (601) 352-9100.	Same.
Missouri	Richard D. Ross, Director, State Emergency Management Agency, 1717 Industrial Drive, P.O. Box 116, Jefferson City, MO 65102, (314) 751-9779, After hours: (314) 751-2748.	Same.
Montana	Mr. Larry Lloyd, Chief, Occupational Health Bureau, Department of Health and Environmental Sciences, Room A113, Cogswell Bldg., Helena, MT 59620, (406) 444-3671.	Mr. George DeWolf, Administrator, Disaster and Emergency Services Division, 1100 North Last Chance Gulch, Helena, MT 59601, (406) 444-6111.
Nebraska	Harold W. LeGrande, Superintendent, Nebraska State Patrol, P.O. Box 94907, State House, Lincoln, NE 68509, (402) 471-2406 or (402) 471-4545.	Same.
Nevada	Stanley R. Marshall, Supervisor, Radiological Health Section, Bureau of Regulatory Health Services, Nevada Division of Health, 505 East King Street, Room 202, Carson City, NV 89710, (702) 885-5394.	Same.
New Hampshire	Richard M. Flynn, Commissioner, New Hampshire Dept. of Safety, James H. Hayes Building, Hazen Drive, Concord, NH 03305, (603) 271-3636 (24 hours).	Same.
New Jersey	David Scott, Acting Chief, Department of Environmental Protection, Bureau of Nuclear Engineering, CN 411, Trenton, NJ 08625, (609) 530-4022.	Same.
New Mexico	Chief Maurice Payne, State Police, P.O. Box 1628, Santa Fe, NM 87504-1628, (505) 827-9000	Same.
New York	Donald A. DeVito, Director, State Emergency Mgmt. Office, Division of Military and Naval Affairs, Public Security Building, State Campus, Albany, NY 12226, (518) 457-2222.	Same.
North Carolina	Captain Walter K. Chapman, Director, Administrative Services, North Carolina Highway Patrol Headquarters, P.O. Box 27687, Raleigh, NC 27611, (919) 733-7952, After hours: (919) 733-3861.	Same.
North Dakota	Dana K. Mount, Director, Division of Environmental Engineering, North Dakota State Department of Health, 1200 Missouri Avenue, Rm 304, Box 5520, Bismarck, ND 58502-5520, (701) 224-2348, After hours: 1-800-472-2121.	Same.
Ohio	James R. Williams, Chief of Staff, Disaster Services Agency, 2825 Granville Road, Worthington, OH 43085, (614) 889-7157	Same.
Oklahoma	Clent Dedek, Commissioner of Public Safety, Oklahoma Department of Public Safety, 3600 N. King Avenue, P.O. Box 11415, Oklahoma City, OK 73136-0145, (405) 424-4011.	Same.
Oregon	William T. Dixon, Administrator, Siting and Regulation, Oregon Department of Energy, 625 Marion Street, N.E., Salem, OR 97310, (503) 378-6469.	Same.
Pennsylvania	George M. Johnson, Director, Response and Recovery, Pennsylvania Emergency Management Agency, P.O. Box 3321, Harrisburg, PA 17105, (717) 783-8150, After Hours: (717) 783-8150.	Same.
Rhode Island	William A. Maloney, Associate Administrator, MotorCarriers, Division of Public Utilities and Carriers, 100 Orange Street, Providence, RI 02903, (401) 277-3500.	Same.
South Carolina	Heyward G. Shealy, Chief, Bureau of Radiological Health, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201, (803) 758-7806, After Hours: (803) 758-5531.	Same.
South Dakota	Robert D. Gunderson, Division Director, Emergency and Disaster Services, Capitol Building, Basement, Pierre, SD 57501, (605) 773-3231.	Same.
Tennessee	John White, Assistant Deputy Director, Tennessee Emergency Management Agency, State Emergency Operations Center, 3041 Sidco Drive, Nashville, TN 37204, (615) 252-3300, After hours: 1-800-258-3300.	Same.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

States	Part 71	Part 73
Texas	Dr. Robert Bernstein, Commissioner, Texas Department of Health, Bureau of Radiological Health, 1100 West 49th Street, Austin, TX 78756, (512) 458-7375.	Col. Leo Gossett, Director, Texas Department of Public Safety, 5805 N. Lamar Blvd., Austin, TX 78752, (512) 465-2000.
Utah	Larry F. Anderson, Director, Bureau of Radiation Control, State Office Bldg., Rm 3253, P.O. Box 45500, Salt Lake City, UT 84145-0500, (801) 538-6734.	Same.
Vermont	Susan C. Crampton, Secretary, Vermont Agency of Transportation, 133 State Street, Montpelier, VT 05602, (802) 828-2657	Same.
Virginia	Michael M. Cline, Director of Operations, Department of Emergency Services, Commonwealth of Virginia, 310 Turner Road, Richmond, VA 23225, (804) 323-2300.	Same.
Washington	Curtis P. Eschels, Chairman, Energy Facility Site Evaluation Council, Mail Stop PY-11, Olympia, WA 98504, (206) 459-6490	Same.
West Virginia	Colonel W.F. Donohoe, Superintendent, Department of Public Safety, 725 Jefferson Road, South Charleston, WV 25309, (304), 746-2111.	Same.
Wisconsin	BG (Ret.), Richard I. Braund, Administrator, Wisconsin Division of Emergency Government, 4802 Sheboygan Ave., Room 99A, P.O. Box 7865, Madison, WI 53707, (608) 266-3232.	Same.
Wyoming	Julius E. Haes, Jr., Chief, Radiological Health Services, Department of Health and Social Services, Hathaway Building, Cheyenne, WY 82002, (307) 777-7956.	Same.
District of Columbia	Norma J. Stewart, Program Manager, Pharmacuetical and Medical Devices, Control Division, Department of Consumer and Regulatory Affairs, 614 H Street, NW, Washington, DC 20001, (202) 727-7219, After hours: (202) 727-6161.	Same.
Puerto Rico	Santos Rohena, Jr., Chairman, Environmental Quality Board, P.O. Box 11488, Santurce, PR 00910, (809) 722-1175 or (809) 725-5140.	Same.
Guam	Charles P. Crisostomo, Administrator, Guam Environmental Protection Agency, P.O. Box 2999, Agana, Guam 96910, (671) 646-7579.	Same.
Trust Territory of the Pacific Islands.	R. Kent Harvey, Attorney General, Trust Territory of the Pacific Islands, Saipan, CM 96950, Saipan 9325 or 9364	Same.
Virgin Islands	Honorable Juan Luis, Governor, Government House, Charlotte Amalie, St. Thomas, Virgin Islands 00801, (809) 774-0001	Same.
American Samoa	Mr. Pati Faiai, Government Ecologist, Environmental Protection Agency, Office of the Governor, Pago Pago, American Samoa 96799, (684) 633-2304.	Same.
Commonwealth of the Northern Mariana Islands.	Nicolas M. Leon Guerrero, Director, Department of Natural Resources, Commonwealth of Northern Mariana Islands Government, Saipan, CM 96950, #9830 or #9834.	Same.

Questions regarding this matter should be directed to Mindy Landau at (301) 492-9880.

Dated at Washington, DC, this 19th day of June, 1987.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Governmental and Public Affairs.

[FR Doc. 87-14807 Filed 6-29-87; 8:45 am]

BILLING CODE 7590-01-M

NRC Changes Official Hours of Work

Effective June 21, 1987, the official hours of work for NRC employees in the Washington, DC, commuting area will become 7:30 a.m. to 4:15 p.m.

Dated at Bethesda, Maryland, this 24th day of June 1987.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 87-14809 Filed 6-29-87; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

Request for Public Comments in Connection With Presidential Review of Exclusion Order Under Section 337

AGENCY: Office of the United States Trade Representative.

ACTION: Request for public comments on modification of the general exclusion order issued by the U.S. International Trade Commission (Commission) in *Certain Amorphous Metal and Amorphous Articles*, Inv.No. 337-TA-143 (modification proceeding).

SUMMARY: On June 19, 1987, the Commission referred to the President for review its modification of an exclusion order issued in this investigation in 1985.

The Commission's modified order directs the U.S. Customs Service to exclude from entry in the United States imports of amorphous metal articles manufactured abroad according to a process that, if practiced in the United States would infringe certain claims of U.S. Letters Patent 4,221,257, ('257 patent), as those claims are interpreted by the Commission. The Commission order does not cover amorphous metal strip that is less than 7mm in width or articles imported by or for the use of the United States, or imported for and to be used for, the United States with the authorization or consent of the Government.

The modified order includes an interpretation of the relevant claims and provides that persons desiring to import articles including amorphous metal produced in accord with the '257 patent may petition the Commission to determine whether such articles are within the scope of the order.

Furthermore, the modified order requires persons desiring to import amorphous metal articles to certify that such articles are manufactured by a non-infringing means and shall provide specified documentation in support of the certification. Neither the modified order nor the Commission opinion specifies the precise articles containing amorphous metals covered by the order and thus excluded from entry into the United States.

Under section 337(g), the President, for policy reasons may disapprove the Commission's determination within 60 days following receipt of the determination and record. If disapproved by the President, the determination, and any order issued under its authority, would be without force or effect. The President also may approve the Commission's determination rendering the determination and order final on the date that the Commission receives notice of the approval. If the President takes no action to approve or disapprove the determination and order, they become final automatically following the 60-day review period.

Interested parties may submit comments concerning foreign or domestic policy issues that should be considered by the President in making his decision regarding this investigation. In particular, we invite parties to address the scope and enforceability of the modified order. Parties commenting on domestic policy issues should specifically refer to the portion of the Commission's record related to that issue. If the domestic policy issue was not raised before the Commission, parties should provide a rationale for that omission.

Comments may not exceed 15 letter-sized pages, including attachments. Parties must provide twenty copies of the submission to the Secretary, Trade Policy Staff Committee, Room 521, 600

17th Street, NW., Washington, DC 20506. All submissions must be received by close of business, Monday, July 13, 1987.

FOR FURTHER INFORMATION CONTACT: Catherine R. Field, Assistant General Counsel, (202) 395-3432.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

[FR Doc. 87-14876 Filed 6-29-87; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-15820; 812-6681]

PaineWebber Mortgage Acceptance Corporation III; Application

June 23, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: PaineWebber Mortgage Acceptance Corporation III.

Relevant 1940 Act Section: Order requested under section 6(c).

Summary of Application: Applicant seeks a conditional order of exemption from all provisions of the 1940 Act for it and certain trusts that it has formed or may form in connection with the issuance and sale of mortgage-backed securities and Residual Interests (as hereinafter defined).

Filing Date: The application was filed on April 9, 1987, and amended on June 19, 1987. A third amendment, the substance of which is included herein, will be filed during the notice period.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC no later than 5:30 p.m., July 15, 1987. Request a hearing in writing giving the nature of your interest, the reason for the request, and the issues contested. Serve Applicant with the request, either personally, or by mail, and also send it to the Secretary of the SEC, along with proof of service of affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, Rodney Square North, Wilmington, DE 19890.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney (202) 272-3037 or Brion R. Thompson, Special Counsel (202) 272-3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations:

1. The Applicant, a Delaware corporation, is a limited purpose finance corporation organized to facilitate the financing of residential mortgages through the issuance of bonds collateralized by mortgage-backed securities. Applicant is wholly-owned by PaineWebber Group Inc.

2. Applicant seeks exemptive relief on its behalf and on behalf of each trust already established or to be established by the Applicant ("Trusts"). Each Trust has been or will be formed pursuant to a separate Trust Agreement between the Applicant, acting as depositor, and a bank, trust company or other fiduciary, acting as Issuer Trustee. The Trusts will engage in activities substantially similar to those engaged in by the Applicant.

3. Applicant and the Trusts (together "Issuers") will issue and sell bonds ("Bonds") in series ("Series") secured solely by Agency Certificates [1] and related collection accounts and reserve funds as described below. Each Series of Bonds will be issued pursuant to an indenture ("Indenture") between an Issuer and an independent trustee ("Indenture Trustee"). The Indentures for the Bonds will be qualified under the provisions of the Trust Indenture Act of 1939, unless an approriate exemption is available. Each Series will consist of one or more classes ("Classes") which will have fixed (established at the time of issuance) or variable (adjusted periodically according to a fixed index set forth in the Indenture) interest rate. The proceeds from the sale of the Bonds will be used to facilitate the long-term financing of residential mortgage loans through the reinvestment of the proceeds in housing or housing-related assets.

4. The Agency Certificates securing each Series of Bonds will be owned by the related Issuer. Each Series of Bonds collateralized by Agency Certificates may also include a separate collection account for each series and may include one or more reserve funds, in each case as specified in the prospectus supplement for such Series (any or all of the foregoing together with the Agency Certificates, "Mortgage Collateral"). Each Issuer will assign to the Indenture Trustee as security for the relevant Series of Bonds its entire right, title and interest in the Mortgage Collateral.

5. The Mortgage Collateral securing each Series of Bonds will have scheduled cash flow sufficient, when taken together with reinvestment income thereon at assumed reinvestment rates acceptable to each rating agency rating the Bonds, to make timely payments of principle and interest on the Bonds in accordance with their terms. The outstanding bond value of the Mortgage Collateral securing a Series will be at least equal to the initial principal amount of such Series as of the issue date.

6. An Issuer issuing Bonds in Series which are collateralized solely by Agency Certificates may sell some or all of its equity interest in that series ("Residual Interest") to one or more banks, savings and loan associations, pension funds, insurance companies or other investors which customarily engage in the purchase of mortgages or mortgage collateral ("Residual Interest Holders") in transactions not constituting a public offering under Section 4(2) of the Securities Act of 1933 ("1933 Act").

7. There will not be a conflict of interest between the holders of the Bonds ("Bondholders") and Residual Interest Holders as: (a) The Mortgage Collateral will not be speculative in nature; (b) the Bonds will be issued only if an independent nationally recognized statistical rating agency has rated such Bonds in one of the two highest rating categories; and (c) the relevant Indenture subjects the Mortgage Collateral, all income distributions thereon and all proceeds from a conversion, voluntary or involuntary, of any such collateral to a first priority perfected security interest in the name of the Indenture Trustee on behalf of the Bondholders. Further, neither the Residual Interest Holders, the Indenture Trustee nor the Issuer Trustee will be able to impair the security afforded by the agency Certificates because, without the consent of each affected Bondholder, neither the Residual Interest Holders, the Indenture Trustee nor the Issuer Trustee will be able to: (a) Change the stated maturity on any Bond; (b) reduce

[1] The Agency Certificates collateralizing the Bonds will be limited to fully-modified pass-through mortgage-backed certificates guaranteed by the Government National Mortgage Association ("GNMA Certificates"), guaranteed mortgage pass-through securities issued by the Federal National Mortgage Association ("FNMA Certificates"), and mortgage participation certificates issued by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates").

the principal amount or rate of interest on any Bond; (c) change the priority of repayment on any class of any Series; (d) impair or adversely affect the Mortgage Collateral; (e) permit the creation of a lien ranking prior to or on parity with the lien of the related Indenture with respect to the Mortgage Collateral; or (f) otherwise deprive the Bondholders of the security afforded by the lien of the related Indenture.

8. The sale of Residual Interests will not alter the payment of cash flow under any Indenture, including the amounts to be deposited in the collection account or any reverse fund. Pricing efficiencies mandate that the Mortgage Collateral does not substantially exceed the amount of collateral required to be pledged in order to satisfy the standards of the rating agency. Thus, the excess cash flow from the Mortgage collateral which is available to Residual Interest Holders always will be far less than the cash flow from the Mortgage Collateral that is used to make principal and interest payments to Bondholders. Further, except for the limited right to substitute Agency Certificates, it will not be possible for Residual Interest Holders to alter the Mortgage Collateral, and, in no event will such right of substitution result in a diminution in the value or quality of the Mortgage Collateral. Although substitution may result in a different prepayment experience, the Bondholders' interest will not be impaired because: (a) The prepayment experience of any collateral will be determined by market conditions beyond the Residual Interest Holders' control, which market conditions are likely to affect similar mortgage certificates in similar fashion; (b) the Residual Interest Holders' interest are not likely to be different from those of Bondholders with respect to prepayment experience; and (c) to the extent that the Residual Interest Holders may cause substitution which has a different prepayment experience than the original collateral, this situation is no different for the Bondholders than the traditional collateralized mortgage obligation structure where bonds are issued by an entity that is a wholly-owned subsidiary.

9. An election by an Issuer to be treated as a real estate mortgage investment conduit ("REMIC") will have no material adverse effect on the level of expenses that would be incurred by such Issuer. Administrative fees and expenses will be paid or provided for in a manner satisfactory to the agency rating the Series and subject to Condition D below.

Applicant's Legal Conclusions:

1. The relief requested is necessary and appropriate in the public interest because neither the Applicant nor any Trust is the type of entity to which the provisions of the 1940 Act were intended to be applied, the safeguards afforded by Bondholders fully protect investors, prospective purchasers of Residual Interests will be sophisticated in the area of mortgages and mortgage-backed assets and limited in number, and the proposed activities will promote the public interest by facilitating the financing of housing by supplying capital for reinvestment in the real estate and mortgage markets.

Conditions to Order

Applicant agrees that the requested order may be expressly conditioned upon the following:

A. Condition Relating to the Mortgage Collateral

(1) Each Series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration pursuant to section 4(2) of the 1933 Act.

(2) The Bonds will be "mortgage-related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. In addition, the Mortgage Collateral directly securing the Bonds will consist solely of GNMA Certificates, FNMA Certificates and/or FHLMC Certificates and related reserve funds and collection accounts.

(3) If new Agency Certificates are substituted as security for a Series, the substitute collateral must: (i) Be of equal or better quality than the Agency Certificates replaced; (ii) have similar payment terms and cash flow as the Agency Certificates replaced; (iii) be insured or guaranteed at least to the same extent as the Agency Certificates replaced; (iv) meet the conditions set forth in Conditions A (2) and (4). New Agency Certificates may not be substituted for more than 40% of the aggregate face amount of the Agency Certificates initially pledged. In no event may any new Agency Certificates be substituted for any substitute Agency Certificates.

(4) All Mortgage Collateral securing a Series of Bonds will be held by the Indenture Trustee or on behalf of the Indenture Trustee by an independent custodian. Neither the Indenture Trustee nor custodian will be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405 ("Rule 405")) of the Issuer. The Indenture Trustee for each Series will be provided with a first priority perfected security or lien interest in and to all Mortgage Collateral.

(5) Each Series will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating organization that is not affiliated with the Issuer. The Bonds will not be "redeemable securities" within the meaning of section 2(a)(32) of the 1940 Act.

(6) At least annually, an independent public accountant will audit the books and records of the Issuer and will report on whether the anticipated payments of principal and interests on the Agency Certificates continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's report(s) will be provided to the Indenture Trustee.

B. Conditions Relating to Variable Rate Bonds

(1) Each Series of adjustable or floating interest rate Bonds will have a set maximum interest rate.

(2) At the time of deposit of the Mortgage Collateral and during the life of the Bonds, the scheduled payments of principal and interest to be received by the Indenture Trustee on all Agency Certificates plus reinvestment income thereon, and funds, if any, pledged to secure the Bonds (as described in the application) will be sufficient to make all payments of principal and interest on the Bonds then outstanding, assuming the maximum interest rate on each Series of adjustable or floating interest rate Bonds.[2] Such Collateral will be paid

[2] In the case of a Series of Bonds that contains a class or classes of variable or floating interest rate Bonds, a number of mechanisms exist to ensure that this representation will be valid notwithstanding subsequent potential increases in the interest rate applicable to the variable or floating interest rate Bonds. Procedures that have been identified to date for achieving this result include the use of (i) interest rate caps for the variable or floating interest rate Bonds; (ii) "inverse" floating interest rate Bonds (which pay a lower rate of interest as the rate increases on the corresponding "normal" floating interest rate Bonds); (iii) variable or floating rate collateral (such as variable rate FNMA Certificates) to secure the Bonds; (iv) interest rate swap agreements (under which the issuer of the Bonds would make periodic payments to a counterparty at a fixed rate of interest based on a stated notional principal amount, such as the principal amount of Bonds in the variable or floating interest rate class of such series, in exchange for receiving corresponding periodic payments from the counterparty at a variable or floating rate of interest based on the same notional principal amount); and (v) hedge agreements (including interest rate futures

Continued

down as the mortgages underlying the Agency Certificates are repaid, but will not be released from the lien of the Indenture prior to the payment of the Bonds.

C. Conditions Relating to the Sale of Residual Interests

(1) A Residual Interest in an Issuer will be offered and sold only to institutions, or non-institutions which are "accredited investors" as defined in Rule 501(a) of the 1933 Act. Institutional investors will have such knowledge and experience in financial and business matters as to be capable to evaluate the risks of purchasing Residual Interests and understand the volatility of interest rate fluctuations as they affect the value of mortgages, mortgage-related securities and residual interests therein. Non-institutional accredited investors will be limited to not more than 15, will purchase at least $200,000 of such Residual Interest and will have a net worth at the time of purchase that exceeds $1,000,000 (exclusive of their primary residence). Further, non-institutional accredited investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage-related securities, as to be able to evaluate the risk of purchasing a Residual Interest in such Issuer and will have direct, personal and significant experience in making investments in mortgage-related securities and because of such knowledge and experience, understand the volatility of interest rate fluctuations as they affect the value of mortgage-related securities and residual interests therein. Residual Interest Holders will be limited to mortgage lenders, thrift institutions, commercial and investment banks, savings and loan associations, pension funds, employee benefit plans, insurance companies, real estate investment trusts or other institutional or non-institutional investors as described above which customarily engage in the purchase of mortgages and mortgage-related securities.

(2) Each sale of a Residual Interest will qualify as a transaction not involving any public offering within the meaning of section 4(2) of the 1933 Act.

(3) Each sale of a Residual Interest will prohibit the transfer of Residual Interest if there would be more than 100 beneficial owners of Residual Interests in an Issuer at any time.

(4) Each sale of a Residual Interest will require each purchaser thereof to represent that it is purchasing for investment and not for distribution and that it will hold such Residual Interest in its own name and not as nominee for undisclosed investors.

(5) Each sale of a Residual Interest will provide that (i) no holder of such Residual Interest may be affiliated with the Indenture Trustee for the relevant Issuer and (ii) no holders of a controlling (as that term is defined in Rule 405) Residual Interest in any Issuer may be affiliated with either the custodian of the Agency Certificates or the agency rating the Bonds of the relevant Series.

(6) If the sale of the Residual Interests results in the transfer of control (as the term "control" is defined in Rule 405) of the Applicant from PaineWebber Group Inc., the relief afforded by any Commisson order granted on the application would not apply to subsequent Bond offerings by that Issuer.

D. Conditions Relating to REMICs

The election by an Issuer to be treated as a REMIC will have no material adverse effect on the level of the expenses that would be incurred by any such Issuer. Any Issuer which elects to be treated as a REMIC will provide for the payments of administrative fees and expenses as set forth in the application. Each Issuer will ensure that the anticipated level of fees and expenses will be adequately provided for regardless of the method selected.

E. Special Condition

The Applicant undertakes to secure each Trust's consent to comply with all of the applicable representations and conditions set forth about and more specifically described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-14806 Filed 6-29-87; 8:45 am]

BILLING CODE 8010-01-M

and option contracts, under which the issuer of the Bonds would realize gains during periods of rising interest rates sufficient to cover the higher interest payments that would become due during such periods on the variable or floating interest rate class of Bonds). It is expected that other mechanisms may be identified in the future. Applicant will give the Staff of Investment Management (the "Staff") of the SEC notice by letter of any such additional mechanisms before they are utilized, in order to give the Staff an opportunity to raise any questions as to the appropriateness of their use. In all cases, these mechanisms will be adequate to ensure the accuracy of the representation and will be adequate to meet the standards required for a rating of the Bonds in one of the two highest bond rating categories, and no Bonds will be issued for which this is not the case.

DEPARTMENT OF STATE

Bureau of Consular Affairs

[Public Notice 1015]

Termination of Stateside Criteria Program (SCP)

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Notice of extension of the termination of the Stateside Criteria Program and comment period.

SUMMARY: On May 22, 1987, the Department published Public Notice 1011 announcing that it proposed to terminate the Stateside Criteria (SCP) Program as of July 1, 1987, and inviting public comment on the proposal prior to June 12, 1987. This Notice extends the comment period to July 15, 1987, and rescinds the announced July 1, 1987 termination date for the Stateside Criteria Program (SCP).

DATE: Interested parties are invited to submit, in duplicate, comments relative to this proposal on or before July 15, 1987. In addition, comments received prior to the date of this Notice but after June 12 will be considered as having been timely submitted.

ADDRESS: Send comments to the Assistant Secretary of State for Consular Affairs, Room 6811, Department of State, Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Cornelius D. Scully, III, Director, Office of Legislation, Regulations and Advisory Assistance, Visa Office, Department of State, Washington, DC 20520, (202) 663-1184.

SUPPLEMENTARY INFORMATION: As stated in its Public Notice of May 22, 1987, the Department considers that the SCP program is not a regulatory one but a program which is based solely on administrative decisions. Nevertheless, since Federal Register announcements normally allow for a 30-day comment period, the Department has decided to allow for an additional two-week period for public comment.

The announced July 1, 1987 termination date is rescinded. It is now the Department's intention to make a final determination concerning the possible termination of the SCP program not later than September 1, 1987.

Accordingly, the date for submission of comments in Public Notice 1011, 52 FR 19442, May 22, 1987 is extended to read July 15, 1987 and the July 1 termination date is rescinded.

Dated: June 26, 1987.

Joan M. Clark,

Assistant Secretary for Consular Affairs.

[FR Doc. 87-14880 Filed 6-26-87; 11:13 am]

BILLING CODE 4710-06-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[AC NO. 121-XX]

Proposed Advisory Circular—Carry-On Baggage; Request for Comments

AGENCY: Federal Aviation Administration, DOT.

ACTION: Request for comments on proposed Advisory Circular (AC) 121-XX, Carry-On Baggage.

SUMMARY: The proposed AC provides guidance about the information which should be contained in an air carrier's approved carry-on baggage program and provides guidance and suggestions about one method, but not the only method, for complying with pertinent regulations.

COMMENTS INVITED: Comments are invited on all aspects of the proposed AC. Commentators must identify file number AC 121-XX.

DATE: Comments must be received on or before August 3, 1987.

ADDRESS: Send all comments and requests for copies of the proposed AC to: Federal Aviation Administration, AFS-220, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Janet Jones, AFS-220, at the above address, telephone (202) 267-3733 (8:30 a.m. to 5:00 p.m. est).

SUPPLEMENTARY INFORMATION: During various cabin safety meetings members of the aviation community have expressed the need for guidance in applying regulations pertaining to carry-on baggage. This AC suggests information to be included in an air carrier's approved carry-on baggage program and provides guidance and suggestions about one method, but not the only method, of complying with the pertinent regulations.

Issued in Washington, DC, on March 17, 1987.

William T. Brennan,

Acting Director of Flight Standards.

[FR Doc. 87-14737 Filed 6-29-87; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-87-13]

Petitions for Exemption; Summary and Disposition

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: July 8, 1987.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c)(e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on June 12, 1987.

Leonard R. Smith,

Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
20090	Sierra Academy of Aeronautics	14 CFR 61.63(d)(2) and (3) and 61.157(d)(1)	To allow trainees of Sierra Academy of Aeronautics, who are applicants for a type rating to be added to any grade of pilot certificate, to substitute the practical test requirements of § 61.157(a) for those of § 61.63(d) (2) and (3), and complete a portion of that practical test in a simulator as authorized by § 61.157(d).
25276	Department of Air Force	14 CFR 91.109	USAF requests exemption to conduct aerial refueling below 12,000 feet MSL without regard to usual flight rules cruising altitudes.
039CE	Porsche Aviation Products, Inc.	§ 23.991(a)(1)	To allow installation of the Porsche PFM 3200 engine in the Cessna 182 airplane with two identical electric-driven fuel pumps for the fuel injection system rather than a fuel pump directly driven by the engine as is currently required by § 23.991(a)(1).
038CE	Porsche Aviation Products, Inc.	§ 23.991(a)(1)	To allow installation of the Porsche PFM 3200 engine in the Cessna 172 airplane with two identical electric-driven fuel pumps for the fuel injection system rather than a fuel pump directly driven by the engine as is currently required by § 23.991(a)(1).

Docket No.	Petitioner	Regulations affected	Description of relief sough, dispositiont
25091	Classic Aircraft Corporation	14 CFR 45.29	To allow petitioner to display 2-inch high nationality and registration marks (N-numbers) on its Waco Classic YMF-5 open cockpit biplane, rather than the 12-inch high N-numbers required by the regulations. *Denied, May 28, 1987.*
11144	American Airlines, Inc.	14 CFR 121.99 and 121.351(a)	To allow petitioner to operate its airplane between Wilmington, North Carolina, and St. Croix and St. Thomas, Virgin Islands, via Nassau, without maintaining two-way radio communications between each airplane and the dispatch office along the named routes, subject to certain conditions and limitations. *Granted, May 22, 1987.*

Docket No.	Petitioner	Regulations affected	Description of relief sough, dispositiont
23869	Strong Enterprises, Inc., and The Relative Workshop, Inc.	14 CFR 105.43(a)	To allow petitioner to continue to make tandem parachute jumps using dual harness, dual parachute packs. *Granted, May 28, 1987.*
25165	HAL Aviation, Inc.	14 CFR 141.65	To allow petitioner to hold examining authority for the flight instructor and airline transport pilot written test. *Granted, May 26, 1987.*
25173	Airlift International, Inc.	14 CFR 121.371(a) and 121.378	To allow petitioner to use on the F-27/FH-227 aircraft, certain engines, components, and spare parts that have been manufactured, repaired, tested, overhauled, or inspected by persons outside of the United States who do not hold U.S. airman certificates. *Granted, May 27, 1987.*
25211	Eastern Air Lines, Inc.	14 CFR 121.371(a) and 121.378	To allow petitioner to utilize original equipment manufacturers and foreign repair stations which are certificated and appropriately rated by the Civil Aviation Authority of France, Italy, West Germany, and United Kingdom, for the inspection, repair, and overhaul of Airbus A300 aircraft parts and equipment. *Granted, May 26, 1987.*
25191	Northwest Airlines, Inc.	14 CFR 121.371(a) and 121.378	To allow petitioner to contract with foreign original equipment manufacturers and foreign repair stations which are certificated and appropriately rated by the French, West German, and United Kingdom civil aviation authorities for inspection, repair, and overhaul of selected aircraft parts to support its Boeing B-757 and B-747 aircraft program. *Granted, May 26, 1987.*
23336	Simulator Training, Inc.	14 CFR 61.157(d)(1), 61.63(d)(2) and (3), and 121.407(a)(1)(i).	To allow trainees of petitioner to complete a practical test for the issuance of a type rating to be added to any private, commercial, or airline transport pilot certificate, including those items and procedures approved for testing in an airplane simulator as set forth under the heading of visual simulators in Appendix A of Part 61. *Granted, May 22, 1987.*

[FR Doc. 87-14738 Filed 6-29-87; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: June 23, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: SWR DP-2752
Type of Review: New Collection
Title: Alien Request for Tax Information
Description: Public Law 99-603 allows illegal aliens to apply for residence status if they can prove continuous residency. One item of proof is a fact-of-filing certification of U.S. income tax returns. The information on the attached form is needed to research a taxpayer's tax account to issue the requested certification. The respondent will be an individual taxpayer.
Respondents: Individuals or households
Estimated Burden: 3,750 hours
Clearance Officer: Garrick Shear (202) 566-6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,
Departmental Reports Management Officer.
[FR Doc. 87-14753 Filed 6-29-87; 8:45 am]
BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 24, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paprework Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Departmental Offices

OMB Number: 1505-0087
Form Number: None
Type of Review: Extension
Title: Casino Regulations
Description: The Treasury Department needs reports of currency transactions exceeding $10,000 at casinos to help identify persons who may be involved in drug trafficling, tax evasions, or other illegal activities. The information will be made available to Treasury law enforcement agencies and other Federal, state, and local law enforcement agencies.
Respondents: Businesses
Estimated Burden: 10,000 hours
Clearance Officer: Dale A. Morgan (202) 343-0263, Departmental Offices, Room 2224, Main Treasury Building, 15th & Pennsylvania Avenue, NW., Washington, DC 20220
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,
Departmental Reports Management Officer.
[FR Doc. 87-14754 Filed 6-29-87; 8:45 am]
BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 125
Tuesday, June 30, 1987

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).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 20492.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 11:00 a.m., June 30, 1987.

CHANGE IN THE MEETING: The meeting on Enforcement Matters is cancelled.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 87-14883 Filed 6-26-87; 11:26 am]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11:00 a.m., June 30, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule enforcement review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 87-14884 Filed 6-26-87; 11:26 am]
BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 2:30 p.m., Wednesday, June 24, 1987.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Enforcement Matter OS #5678

The Commission will consider issues related to Enforcement Matter OS #5678.

The Commission decided that Agency business required scheduling this meeting without normal advance notice.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Sheldon D. Butts,
Deputy Secretary.
June 25, 1987.

[FR Doc. 87-14894 Filed 6-26-87; 12:18 pm]
BILLING CODE 6355-01-M

INTER-AMERICAN FOUNDATION ADVISORY COUNCIL MEETING

TIME AND DATE:

July 8, 1987
6:00-9:00 p.m.
July 9, 1987
9:00 a.m.-12:00 noon

PLACE: 1515 Wilson Boulevard, Fifth Floor, Rosslyn, Virginia 22209.

STATUS: Open.

MATTERS TO BE CONSIDERED:

July 9, 1987

1. Opening Remarks by Chairman of the Board, Chairman of the Advisory Council, and the Foundation's President
2. Introduction of Advisory Council Members
3. Introduction of Foundation Staff and presentation of Program Overview

July 10, 1987

4. Briefings on Foundation Programs
5. Organization of Advisory Council

CONTACT PERSONS FOR MORE INFORMATION: Charles M. Berk, Secretary to the Board of Directors (703) 841-3812.

Dated: June 22, 1987.

Charles M. Berk,
Sunshine Act Officer.

[FR Doc. 87-14865 Filed 6-26-87; 11:04 am]
BILLING CODE 7025-01-M

INTER-AMERICAN FOUNDATION BOARD COUNCIL MEETING

TIME AND DATE:

July 9, 1987
6:00-9:00 p.m.
July 10, 1987
9:00 a.m.-12:00 noon

PLACE: 1515 Wilson Boulevard, Fifth Floor, Rosslyn, Virginia 22209.

STATUS: Open.

MATTERS TO BE CONSIDERED:

July 9, 1987

1. The Chairman's Report
2. The President's Report
3. Approval of the Minutes of the Meeting of March 23-24, 1987

July 10, 1987

4. Report of the Committees of the Board
5. Other Business

CONTACT PERSONS FOR MORE INFORMATION: Charles M. Berk, Secretary to the Board of Directors (703) 841-3812.

Dated: June 22, 1987.

Charles M. Berk,
Sunshine Act Officer.

[FR Doc. 87-14866 Filed 6-26-87; 11:04 am]
BILLING CODE 7025-01-M

MERIT SYSTEMS PROTECTION BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 22576 (June 12, 1987).

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Friday, June 26, 1987.

CHANGE IN THE MEETING: Additional matter to be considered:

Campbell v. Defense Logistics Agency, MSPB Docket No. PH07528510377.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Clerk of the Board, (202) 653-7200.

Dated: June 25, 1987.

Robert E. Taylor,
Clerk of the Board.

[FR Doc. 87-14847 Filed 6-26-87; 9:19 am]
BILLING CODE 7400-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Tuesday, July 7, 1987.

PLACE: Conference Room 8A, B, C, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Aircraft Accident Report: Aeronaves de Mexico, S.A., McDonnell Douglas DC-9-32, XA-JED, and Piper PA-28-181, N4891F, Cerritos, California, August 31, 1986
2. Recommendations to Federal Aviation Administration regarding air traffic control

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Ray Smith,
Assistant Federal Register Liaison Officer.
June 26, 1987.

[FR Doc. 87-14848 Filed 6-26-87; 9:20 am]
BILLING CODE 7533-01-M

NEIGHBORHOOD REINVESTMENT CORPORATION

Ninth Annual Meeting

TIME AND DATE: 3:00 p.m.—Wednesday, June 17, 1987 (rescheduled from May 20, 1987).

PLACE: 1325 G Street, NW., Suite 800. Washington, DC, 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Timothy McCarthy, Director of Communications 376–2623.

AGENDA:

I. Call to order/corporate secretary
II. Election of temporary chairman
III. Election of chairman and vice chairman
IV. Approval of minutes, November 24, 1986
V. Executive director's activity report
VI. Personnel Committee report
VII. Election of officers and appointment of assistant secretary
VIII. Audit Committee report: Budget adjustments and reallocations
IX. Budget Committee report
X. Treasurer's report

Carol J. McCabe,

Secretary.

[FR Doc. 87–14879 Filed 6–26–87; 11:05 am]

BILLING CODE 7570–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 29, July 6, 13, and 20, 1987.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of June 29

Tuesday, June 30

9:30 a.m.
Discussion of Pending Investigations (Closed-Ex. 5 & 7)
10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed-Ex. 2 & 6)
2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for Braidwood-1 (Public Meeting)

Wednesday, July 1

8:30 a.m.
Discussion/Possible Vote on Full Power Operating License for Nine Mile Point-2 (Public Meeting)
10:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed-Ex. 2 & 6)

Week of July 6—Tentative

Wednesday, July 8

10:00 a.m.
Discussion/Possible Vote on Full Power Operating License for Beaver Valley-2 (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 13—Tentative

Wednesday, July 15

10:00 a.m.
Briefing on Mark I Containments Status (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 20—Tentative

Tuesday, July 21

10:00 a.m.
Briefing on Research Adjustment in Response to the National Academy of Sciences Report (Public Meeting)
2:00 p.m.
Briefing on Final Plan for NUREG-0956 Uncertainty Areas (Source Term) (Public Meeting)

Wednesday, July 22

10:00 a.m.
Discussion of Standardization Policy Statement Development (Public Meeting)

Thursday, July 23

10:00 a.m.
Briefing on Status of High Level Waste Management Program (Public Meeting)
2:00 p.m.
Briefing on the Status of TVA (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Discussion of Management-Organization and Internal Personnel Matters (Closed-Ex. 2 & 6) scheduled for June 22, *postponed.*

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634–1410.

Robert McOsker,

Office of the Secretary

June 25, 1987.

[FR Doc. 87–14946 Filed 6–26–87; 3:49 pm]

BILLING CODE 7590–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

STATUS: Open. The Council will hold an executive session to discuss internal personal matters.

TIME AND DATE: July 8–9, 1987, 9:00 a.m.

PLACE: Templin's Hotel, 414 East First Avenue, Post Falls, Idaho.

MATTERS TO BE CONSIDERED:

1. Council Deliberation on System Planning Work Plan.
2. Staff Presentation on Status of Snake River Salmon and Steelhead Stocks.
3. Staff Presentation and Panel Discussion on Protected Areas.
4. Staff Presentation on Draft Analysis of Conservation Measures as required by Section 4(k) of the Northwest Power Act.
5. Council Discussion on Activities to help Lenders and Appraisers Recognize the Value of Energy Efficiency in Homes.
6. Public Comment on Western Electricity Study Briefing Paper on Electricity Use in the Western United States and Canada.
7. Council Action on the Council's Fiscal Year 1989 and 1988 Revised Budget.
8. Council Business.
9. Public Comment.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Atkins at (503) 222–5161.

Edwards Sheets,

Executive Director.

[FR Doc. 87–14886 Filed 6–26–87; 11:35 am]

BILLING CODE 0000–00–M

Corrections

Federal Register
Vol. 52, No. 125
Tuesday, June 30, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Western Area Power Administration

Boulder Canyon Project; Rate Order; Confirmation and Approval

Correction

In notice document 87-12816 beginning on page 21351 in the issue of Friday, June 5, 1987, make the following correction:

On page 21359, in the third column, in the second paragraph from the bottom, in the second line ".3410" should read "3.410".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AD-FRL-3044-2]

Air Quality Implementation Plans; Restructuring SIP Preparation Regulations

Correction

In rule document 86-24433 beginning on page 40656 in the issue of Friday, November 7, 1986, make the following corrections:

PART 52—[CORRECTED]

1. On page 40676, in amendatory instruction 15, in the second column:

a. In the seventh line, after "(a)(10)(ii),", insert "(a)(11)(i),".

b. In the eighth line, remove "(a)(11)(i),".

c. In the 10th line, after "§ 52.1275(b)", insert "§ 52.1325".

2. In the same column, in amendatory instruction 16, in the fourth line, "§ 52.74(a)(2)(iv)" should read "§ 52.74(a)(2)(vi)".

3. On the same page, in the third column, in amendatory instruction 28, in the fourth line, "§ 52.828(1)(i)" should read "§ 52.828(b)(1)(i)".

4. On page 40677, in amendatory instruction 30, in the first column, in the third line, after "§ 52.2223", insert "(a)(7),".

5. On the same page, in amendatory instruction 38, in the second column, in the second line, "§ 52.24(j)(2)" should read § 52.24(i)(2)".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[PP 4G3138/T538; FRL-3196-2]

E.I. DuPont de Nemours and Co., Inc.; Extension of Temporary Tolerances

Correction

In notice document 87-10267 beginning on page 16905 in the issue of Wednesday, May 6, 1987, make the following correction:

On page 16905, in the second column, in the **SUPPLEMENTARY INFORMATION**, in the seventh line, "methoxy" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86P-0369]

Canned Pacific Salmon Deviating From Identity Standard; Amendment of Temporary Marketing Permit

Correction

In notice document 87-12229 appearing on page 20147 in the issue of Friday, May 29, 1987, make the following corrections:

1. In the first column, under **SUPPLEMENTARY INFORMATION**, in the eighth line, "store" should read "style".

2. In the second column, in the third line, "cans and" should read "cans each and".

3. Also, in the second column, in the 12th line, "produce" should read "product".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 33

Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Labor

Correction

In rule document 87-7883 beginning on page 11600 in the issue of Thursday, April 9, 1987, make the following corrections:

1. On page 11603, in the third column, in the last paragraph, in the 11th line, before "regulations" insert "requirements and procedures of section 501 as established in".

§ 33.11 [Corrected]

2. On page 11609, in the second column, in § 33.11(e)(1), in the 10th line, "or" should read "for".

BILLING CODE 1505-01-D

DEPARTMENT OF STATE

[Public Notice 1013]

Certain Nonimmigrant Visas; Validity

Correction

In notice document 87-13306 appearing on page 22408 in the issue of Thursday, June 11, 1987, make the following correction:

In the second column, in the second paragraph, in the first line, "deleted" should read "deletes".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: DeSoto County, MS

Correction

In notice document 87-13307 beginning on page 22411 in the issue of Thursday, June 11, 1987, make the following correction:

On page 22411, in the third column, in the **SUPPLEMENTARY INFORMATION**, in the sixth line, "MS 391" should read "MS 301".

BILLING CODE 1505-01-D

federal register

Tuesday
June 30, 1987

Part II

Federal Emergency Management Agency

44 CFR Parts 59 and 60

National Flood Insurance Program; Evaluation Requirements for Manufactured Homes in Existing Mobile Home Parks or Subdivisions; Suspension of Rule and Amendment of Rule With Request for Comments

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 59 and 60

[Docket No. FEMA-FIA]

National Flood Insurance Program; Elevation Requirements for Manufactured Homes in Existing Mobile Home Parks or Subdivisions; Suspension of Rule and Amendment of Rule With Request for Comments

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Suspension of Rule; Amendment of Rule with Request for Comments.

SUMMARY: This notice suspends revisions to National Flood Insurance Program (NFIP) regulations regarding the elevation of manufactured homes placed in existing mobile home parks and subdivisions in special flood hazard areas which became effective on October 1, 1986 until March 31, 1988 and restores certain prior provisions. In order to seek additional public input, comments are requested on the impacts of the October 1, 1986 rule revision on owners of existing mobile home parks, owners and renters of individual mobile homes, government expenditures, and public safety.

EFFECTIVE DATE: Suspension of the rule and amendment of the rule are effective from June 30, 1987 until March 31, 1988.

Date for comments: Comments must be received on or before August 31, 1987.

ADDRESS: Send comments to: Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Michael F. Robinson, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472; telephone number (202) 646-2717.

SUPPLEMENTARY INFORMATION: The revisions to National Flood Insurance Program (NFIP) criteria which became effective on October 1, 1986 in part required the elevation to or above the base flood elevation of new placements, replacements and substantial improvements of manufactured homes in existing mobile home parks or subdivisions (those mobile home parks and subdivisions established prior to the adoption by communities of floodplain management regulations). This notice suspends implementation of this provision until March 31, 1988 and in the interim restores prior requirements regarding these existing mobile home parks or subdivisions. These prior requirements are restored by adding two definitions to § 59.1 and by adding § 60.3(c)(12) which establishes the elevation requirements for manufactured homes. Comments are requested on the impacts of the October 1, 1986, rule revision on owners of existing mobile home parks or subdivisions, owners and renters of individual manufactured homes, government expenditures, and public safety as well as on alternative approaches for the resolution of problems related to the hazards posed by the location of these existing mobile home parks and subdivisions in floodplain areas.

Background

The October 1, 1986 revision eliminated a provision in NFIP floodplain management criteria which allowed for the replacement, new placement or substantial improvement of mobile homes in existing mobile home parks or subdivisions without meeting any elevation requirements. This provision had been added to NFIP criteria in a rule revision which became effective on December 1, 1976 (41 FR 46968). From December 1, 1976 until October 1, 1986 mobile homes placed in existing mobile home parks and subdivisions constituted the only form of housing not required to have the lowest floor elevated to or above the base flood elevation where such elevations were provided to the community. This provision has been commonly referred to as the "grandfathering of existing mobile home parks and subdivisions". Conventional residential structures and mobile homes placed on lots outside of mobile home parks or subdivisions, in new mobile home parks or subdivisions, in expansions to existing mobile home parks and subdivisions and in existing mobile home parks in which the park infrastructure was repaired, reconstructed or improved in excess of 50 percent of its value all had to meet the elevation requirement. New non-residential structures have to be either elevated or floodproofed to the base flood elevation. The rationale for this special treatment of existing mobile home parks was that the mobile home park operator's investment was in the roads, utilities, accessory structures and mobile home pads and not the mobile homes themselves, which are usually owned by individuals who rent sites. In many older mobile home parks the sites were so crowded together that there was concern that the elevation of individual replacement mobile homes would not be feasible and sites would have to be eliminated. On March 28, 1986, FEMA published a proposed rule in the **Federal Register** (51 FR 10742) that included a series of changes to NFIP criteria that would incorporate the term "manufactured home" in lieu of "mobile home" and that would eliminate most of the distinctions between mobile homes and conventional structures such as the prohibitions on the placement of manufactured homes in the floodway and in coastal high hazard areas (V-zones). As part of this overall revision, the proposed rule removed the provisions that had allowed the replacement, new placement or substantial improvement of mobile homes in existing mobile home parks or subdivisions without elevation to the base flood elevation. All newly placed or substantially improved "manufactured homes" would have to be elevated to or above the base flood elevation regardless of whether or not the mobile home park or subdivision was in existence prior to the adoption of the local floodplain management measures.

The rationale for elimination of these grandfather provisions was expressed in the Supplementary Information in the proposed rule as follows:

> The elimination of these grandfather provisions will not only make the NFIP treatment of "manufactured homes" consistent with that accorded to conventional structures, but will also result in reduced flood losses to owners of "manufactured homes." In addition, there will be savings to the Federal government through reduced flood insurance claims payments and disaster assistance. Post-disaster Interagency Hazard Mitigation Teams chaired by FEMA have identified a number of instances where large numbers of mobile homes in mobile home parks have been destroyed by floods and then replaced by new non-elevated mobile homes. These mobile homes in turn were destroyed by floods and again were replaced by non-elevated mobile homes. Three of the reports of these Hazard Mitigation Teams have recommended that this cycle be broken by eliminating NFIP grandfather provisions for existing mobile home parks. This conclusion is supported by NFIP insurance claims information which included numerous examples of multiple claims paid to a single policyholder for mobile homes. On a number of occasions the claims payments have been used to purchase a more expensive mobile home, increasing the potential for larger flood losses. These documented examples of repetitive losses due to the grandfather provisions were limited since only eight years of claims can be analyzed. The problem could become more serious due to the large number of mobile homes in existing mobile home parks that have not yet been flooded but are likely to be in the future. For example, one Florida county has approximately 7,000 "manufactured homes," most of which are in

existing mobile home parks and under the grandfather provision.

All of these structures are located in areas that are likely to be flooded by hurricane storm surges. Although some of these structures are now insured by private insurers, they are generally eligible for NFIP flood insurance coverage. These structures and those the NFIP currently insures represents a significant liability to the taxpayer unless the grandfather provisions are eliminated.

Copies of the proposed rule were mailed to approximately 17,000 participating communities and made available to various organizations with interests in floodplain development. Of the 61 comments that were received on the rule only 14 specifically addressed the elimination of the grandfathering of existing mobile home parks. Of the 14 comments, 6 supported and 7 opposed the change and 1 comment was unclear. Although comments were received from two organizations representing various aspects of the manufactured home industry, no comments were received from the owners of individual mobile home parks. In addition, no comments raised issues related directly to potential adverse economic impacts on the owners of existing mobile home parks or subdivisions. Based on its belief that the continuation of the grandfather provision could no longer be justified and on the minimal comment, FEMA published a final rule on August 25, 1986 (51 FR 30291) with an effective date of October 1, 1986. Subsequent to that October 1, 1986 effective date, concerns were raised about the potential adverse economic impacts of the rule provision on the owners of existing mobile home parks and subdivisions. The purpose of this notice is to suspend implementation of the provision to allow for additional comment and analysis to address these concerns.

Description of Action

This notice of suspension has the effect of suspending those provisions of the October 1, 1986 revisions to NFIP regulations which require the elevation of new, replacement and substantially improved manufactured homes in existing mobile home parks and subdivisions until March 31, 1988. The October 1, 1986 revisions contained extensive amendments to regulations affecting all aspects of the NFIP including a number of changes affecting manufactured homes that are not currently at issue. FEMA cannot restore the grandfathering of existing mobile home parks and subdivisions merely by suspending specific items in the October 1, 1986 revisions without introducing conflicts in terminology into the regulations or rescinding new requirements that apply to conventional construction. In particular, the term "mobile home" has been replaced by "manufactured home" throughout NFIP criteria and a provision regulating mobile home parks at paragraph 60.3(c)(5) has been replaced by a provision requiring that openings be placed in the walls of enclosures below the base flood elevation.

As a result, FEMA has developed a new § 60.3(c)(12) that has the effect of restoring the grandfather requirement without introducing other conflicts to the regulations. First, a definition of "existing manufactured home park or subdivision" is being added to Section 59.1. "Existing manufactured home park or subdivision" is defined as a manufactured home park or subdivision for which the construction of facilities including utilities, final grading or pouring of pads and the construction of streets is completed before the effective date of the floodplain management regulations adopted by the community. The term "existing manufactured home park or subdivision" includes the same parks and subdivisions as were included in the term "existing mobile home park or mobile home subdivision" prior to the October 1, 1986 rule revision.

In addition, a definition of an "expansion to an existing manufactured home park or subdivision" has been added. This term means the preparation of additional manufactured home sites in an existing manufactured home park or subdivision beyond those that had been completed prior to the effective date of the local floodplain management regulations. The definition of "expansion to an existing manufactured home park or subdivision" is the same as that of "expansion to an existing mobile home park or mobile home subdivision" as defined prior to the October 1, 1986 rule revision.

Finally, a new § 60.3(c)(12) is added which requires that all manufactured homes to be placed or substantially improved in zones A1–30, AE and AH have their lowest floors elevated to or above the base flood elevation. First, a sentence has been added clearly stating that the elevation requirement in that paragraph applies to manufactured homes placed or substantially improved in expansions to existing manufactured home parks and subdivisions. Second, a sentence has been added that states that the requirements of the paragraph do not apply to other manufactured homes placed or substantially improved in existing manufactured home parks or subdivisions except where the repair, reconstruction, or improvement of the streets, utilities or pads in the existing manufactured home parks equals or exceeds 50 percent of the value of the streets, utilities, or pads. These provisions were contained in § 60.3(c)(5) of NFIP criteria prior to the October 1, 1986 effective date of the rule revisions.

The addition of the two definitions and the new § 60.3(c)(12) will have the affect of temporarily restoring the grandfather provision to that which existed prior to October 1, 1986. It must be emphasized that the elevation requirement continues to apply to all manufactured homes placed or substantially improved outside of manufactured home parks as well as those placed in manufactured home parks established after the date of adoption of the floodplain management regulations of a community. In addition, all manufactured homes placed or substantially improved in existing mobile home parks and subdivisions continue to be subject to the anchoring provisions at § 60.3(b)(8).

Impacts of the Suspension of the Rule Revision on Communities

The provisions in the preceding paragraphs will impact on certain communities. NFIP criteria at § 60.7 require that communities revise their floodplain management ordinances to comply with revisions to NFIP regulations within six months of their effective date. The deadline for adoption of the October 1, 1986 revisions was April 1, 1987. Many communities completed adoption of the revisons by this date. These communities have the option of either retaining the new provisions at § 60.3(c)(6) of the October 1, 1986 rule or restoring the grandfather provision by again revising their ordinance to include the provisions of § 60.3(c)(12) contained in this rule. FEMA strongly recommends that communities which do not currently contain existing mobile home parks or subdivisions and which are unlikely to annex areas containing such parks or subdivisions, retain the October 1, 1986 provisions. Those communities which have not yet incorporated the October 1, 1986 rule revisions into their ordinances should initiate action to do so immediately since they are in violation of NFIP criteria and subject to suspension from the program. With respect to regulations applying to existing manufactured home parks and subdivisions, these communities may either adopt the provisions meeting § 60.3(c)(12) of the October 1, 1986 rule revision or adopt provisions that meet the provision as modified by this notice. Communities are reminded that FEMA

indicated in the Supplementary Information in the final rule which became effective October 1, 1986, that subsequent to April 1, 1987 they would be suspended from the Program on 90 days prior written notice for failure to adopt the rule revisions. FEMA will be proceeding with the review of local ordinances to ensure compliance with provisions of the October 1, 1986 revisions other than those dealing with existing mobile home parks and subdivisions. FEMA will begin issuing 90-day and 30-day suspension letters to ensure adoption.

Request for Comments

During the period that this suspension is in effect, FEMA will be analyzing the impacts of applying the elevation requirement to manufactured homes placed or substantially improved in existing manufactured home parks and subdivisions. In addition, FEMA will be evaluating alternative means for addressing the hazards and threats to lives and property related to existing manufactured home parks that are located in flood hazard areas. FEMA encourages organizations, individuals and units of government to submit data and other information, as well as suggestions for alternative actions during the 60-day comment period provided in this notice. Data and other information should include statistical data, information on specifically how the end to the grandfather provision would impact on individual manufactured home parks owners, on individual manufactured home owners or renters, or on units of government, or on how this provision would interrelate with manufactured home financing, insurance, or other regulations of the industry. This information will be reviewed and analyzed along with other information developed by FEMA or provided to it both before and after October 1, 1986. At this time FEMA will also review possible alternative means of addressing the problem of the exposure to hazards to life and property of existing mobile home parks located in flood hazard areas. However, FEMA currently believes that a permanent return to the grandfather provision as it existed prior to October 1, 1986 is not justified and would be contrary to the purposes of the program's legislation.

FEMA has determined that, since this notice suspends a requirement that has been recently imposed, an environmental assessment need not be prepared. An environmental impact statement was prepared on the rule which became effective on December 1, 1976 and an environmental assessment was prepared on the revisions which became effective on October 1, 1986. Both contain an analysis of the impacts of the revisions in this rule. An environmental assessment will be prepared on any future rulemaking which results from FEMA's review of the impacts of the October 1, 1986 rule revision.

Since this notice suspends a requirement on small entities that has only recently been imposed, it will not have a significant economic affect on a substantial number of those entities and has not undergone a regulatory flexibility analysis. If, as a result of comments received, it appears that such an analysis is desirable, it will be performed for any future rulemaking on this issue.

This notice of suspension is not a "major rule" as defined in Executive Order 12291, dated February 27, 1981, and hence no regulatory analysis has been prepared.

FEMA has determined that this notice of suspension does not contain a collection of information requirements as described in section 3504(h) of the Paperwork Reduction Act.

List of Subjects in 44 CFR Parts 59 and 60

Flood insurance.

Accordingly, Title 44, Code of Federal Regulations is amended as follows:

PART 59—GENERAL PROVISIONS

The authority citation for Part 59 continues to read as follows:

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

§ 59.1 [Amended]

1. Section 59.1 is amended as follows:

a. By adding alphabetically, a definition of "existing manufactured home park or subdivision" to read as follows: "Existing manufactured home park or subdivision" means a manufactured home park for which the construction of facilities for servicing the lot on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) are completed before the effective date of floodplain management regulations adopted by a community.

b. By adding alphabetically, a definition of "Expansion to an existing manufactured home park or subdivision" to read as follows:

"Expansion to an existing manufactured home park or subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, either final site grading or pouring of concrete pads, or the construction of streets).

PART 60—CRITERIA FOR LAND MANAGEMENT AND USE

The authority citation for Part 60 continues to read as follows:

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

§ 60.3 [Amended]

2. Section 60.3(c)(6) is suspended.

3. Section 60.3(c)(12) is added to read as follows:

§ 60.3 Floodplain management criteria for flood-prone areas.

* * * * *

(c) * * *

(12) Require that all manufactured homes to be placed or substantially improved within Zones A1–30, AH, and AE on the community's FIRM be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation; and be securely anchored to an adequately anchored foundation system in accordance with the provisions of paragraph (b)(8) of this section. This paragraph applies to manufactured homes to be placed or substantially improved in an expansion to an existing manufactured home park or subdivision. This paragraph does not apply to manufactured homes to be placed or substantially improved in an existing manufactured home park or subdivision except where the repair, reconstruction, or improvement of the streets, utilities and pads equals or exceeds 50 percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement has commenced.

Dated: June 18, 1987.

Harold T. Duryee,

Federal Insurance Administrator.

[FR Doc. 87–14527 Filed 6–29–87; 8:45 am]

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federal register

Tuesday
June 30, 1987

Part III

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 48 and 75
Underground Coal Mining; Self-Contained Self-Rescue Devices; Emergency Temporary Standard and Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Self-Contained Self-Rescue Devices; Emergency Temporary Standard

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Emergency temporary standard.

SUMMARY: The Mine Safety and Health Administration (MSHA) is issuing an emergency temporary standard (ETS) which requires persons using self-contained self-rescue (SCSR) devices to receive training in the opening and activation of the device; insertion or simulated insertion of the mouthpiece; and the wearing of the nose clip. This training, commonly referred to as "hands-on" training, will be required after September 28, 1987 for all persons entering underground coal mines.

The basis for this ETS is MSHA's determination that "hands-on" training in SCSR units is necessary in the particular circumstances presented by this situation to avoid grave danger to underground miners from suffocation or poisoning from toxic products of combustion in the event of a mine fire or explosion. The Agency has further determined that immediate implementation of a "hands-on" training requirement is necessary to protect persons in underground coal mines from this grave danger. In accordance with section 101(b)(3) of the Mine Act this ETS will also serve as the basis for the Agency's final rule on the same subject. Elsewhere in this issue of the **Federal Register**, MSHA is proposing to implement on a permanent basis the requirement for "hands-on" training in the use of SCSR units.

DATES: Emergency Temporary Standard: The ETS is effective on June 30, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Acting Associate Assistant Secretary for MSHA, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203; phone (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Background

This ETS is issued in accordance with section 101(b) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 811. The ETS is effective immediately and revises the existing safety standard for self-contained self-rescue (SCSR) devices, 30 CFR 75.1714.

Existing safety standards in 30 CFR 75.1714 require that all persons going into underground coal mines have SCSR devices available to them and that they be instructed and trained in the use of such devices. These devices are closed-circuit breathing apparatuses that provide a source of oxygen and greatly increase a person's chance of surviving a mine emergency involving an irrespirable atmosphere. In the event of such a mine emergency, the SCSR device provides miners with the last protection allowing escape. For successful escape, miners must be able to rapidly and properly use the devices. In order to protect persons who go into underground coal mines from the grave danger of being unable to protect themselves with SCSR devices in the event of a mine emergency, the ETS specifies "hands-on" training in the use of SCSR's.

The decision to require "hands-on" training reflects the Agency's evaluation of SCSR training programs at underground coal mines and the results of an investigation of a mining accident where victims did not know how to properly use their SCSR devices. MSHA has also reviewed, and is guided by, recommendations from studies conducted by the U.S. Department of the Interior, Bureau of Mines, in conjunction with the University of Kentucky.

MSHA estimates that there are 93,000 workers affected by this ETS. An informal Agency evaluation of existing training programs indicated that a significant number of these miners, as many as half of them, have not had "hands-on" training in the use of SCSR's. Because the effective use of SCSR devices is essential to successful evacuation in an immediately life-threatening situation, the Agency believes that the lack of "hands-on" training demands immediate regulatory action.

The ETS applies to miners and visitors who go underground and requires that they receive "hands-on" training in the use of the SCSR units provided at the mine. Under the ETS, this training must include each person properly opening the device, activating it, inserting the mouthpiece or simulating this task while explaining proper insertion of the mouthpiece, and putting on the nose clips. After September 28, 1987, persons who have not received this training will not be permitted to enter an underground coal mine. Persons who have received "hands-on" training specified by the ETS within the preceding nine months or who have had this "hands-on" training in accordance with training programs approved under 30 CFR Part 48 do not have to be retrained to comply with the ETS.

In accordance with the Mine Act, the provisions of the ETS also serve as the basis for a proposed rule. Elsewhere in this issue of the **Federal Register**, MSHA proposes to revise the existing requirements in 30 CFR Part 48 and 30 CFR 75.160–1 to include "hands-on" training with SCSR devices as part of miners' and supervisors' regular training. Under the Mine Act, MSHA must promulgate final standards no later than nine months after publication of this ETS.

As an alternative to this ETS, MSHA considered implementing the "hands-on" training provisions of the ETS through the Agency's existing training regulations in 30 CFR Part 48. Under the Part 48 regulations, mine operators are required to develop and administer training programs for miners (with the exception of supervisory personnel subject to MSHA-approved State certification requirements) and for visitors. These programs are required to provide for a wide range of mine safety and health training, including instruction in the use, care and maintenance of SCSR devices.

The training programs required by Part 48 are subject to approval by MSHA District Managers. As part of this approval function, District Managers are authorized to require revisions to operators' training programs in accordance with certain notice and consultation provisions (30 CFR 48.3(j)(1)). Using this process, MSHA considered administratively requiring existing training programs to be amended to include "hands-on" training with SCSR devices.

However, this approach was not adopted for two primary reasons. The Part 48 training regulations do not require training for supervisory personnel subject to MSHA-approved State certification requirements (30 CFR 48.2(a)(1)(ii)). In the underground coal mining industry, a substantial majority of supervisory personnel are trained and "certified" in safety-related matters such as roof control, mine ventilation, gas measurements and first-aid. In addition to the State certification programs, MSHA standards address the training and retraining of these persons (30 CFR 75.160–1). Training in the use of SCSR devices is not, however, among the required courses of instruction and, consequently, "hands-on" training with SCSR devices could not be required for most supervisory personnel without some regulatory action.

Another deficiency with this approach is that it would not assure that all persons who go into underground coal mines would receive "hands-on" training with SCSR devices on a schedule commensurate with the danger

posed. In accordance with the Part 48 training regulations and existing MSHA-approved training programs, miners are trained before they begin working and before undertaking new tasks. Thereafter, on an annual basis, they must receive "refresher training," which includes instruction in the use, care and maintenance of SCSR devices. With this existing structure for training miners, mandatory "hands-on" training with SCSR devices would be delayed by the process of amending and approving existing training programs. In addition, depending on when a training program amendment specifying "hands-on" SCSR training became effective relative to the annual cycle of refresher training at a mine, as much as an additional 12 months could pass before a miner received the "hands-on" SCSR training specified by the ETS.

The Agency also considered addressing the subject of additional SCSR training through the regular rulemaking process (Section 101(a) of the Mine Act). These procedures ordinarily involve several months for the submission of comments and public hearings, followed by the time necessary for development and publication of final rules. Postponing mandatory "hands-on" training for this amount of time would not be responsive to the degree of danger.

II. Basis for the Emergency Temporary Standard

A. Regulatory Authority

Section 101(b) of the Mine Act provides that:

(1) The Secretary shall provide, without regard to the requirements of Chapter 5, Title 5, United States Code, for an emergency temporary mandatory health or safety standard to take immediate effect upon publication in the **Federal Register** if he determines (A) that miners are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful, or to other hazards, and (B) that such emergency standard is necessary to protect miners from such danger.

(2) A temporary mandatory health or safety standard shall be effective until superseded by a mandatory standard promulgated in accordance with the procedures prescribed in paragraph (3) of this subsection.

(3) Upon publication of such standard in the **Federal Register**, the Secretary shall commence a proceeding in accordance with section 101(a), and the standards as published shall also serve as a proposed rule for the proceeding. The Secretary shall promulgate a mandatory health or safety standard under this paragraph no later than nine months after publication of the emergency temporary standard as provided in paragraph (2).

Issuance of a temporary mandatory standard is an extraordinary measure provided for by the Mine Act to enable MSHA to "react quickly to grave dangers which threaten miners before those dangers manifest themselves in serious or fatal injuries or illnesses." S.Rept. 181, 95th Cong., 1st sess. 23 (1977). The language authorizing the issuance of a temporary mandatory standard for these purposes indicates that it is appropriate to address miner exposure to "other hazards", as well as toxic substances or harmful agents. This broad scope is further indicated in the legislative history, which states that "[t]o exclude any kind of grave danger would contradict the basic purpose of emergency temporary standards—protecting miners from grave dangers." *Id.* The suggestion that a temporary mandatory standard is limited to new dangers in the mining industry is also dispelled in the legislative history which explains: "That a danger has gone unremedied should not be a bar to issuing an emergency standard. Indeed, if such is the case, the need for prompt action is that much more pressing." *Id.* In addition, the legislative history emphasizes that a record of fatalities or serious injuries is not necessary before an emergency temporary standard can be issued because "[d]isasters, fatalities, and disabilities are the very thing this provision is designed to prevent." "Waiting until those dangers manifest themselves as fatalities or disabling injuries or illnesses, frustrates the purpose of this [ETS] provision." *Id.* at 23–24.

B. Grave Danger

Diligent compliance with safety standards and safety-conscious work practices provide a substantial measure of protection against fires and explosions in underground coal mines. However, in this high-hazard work environment, the danger of a fire or explosion is ever present. Electricity or other sources of power can ignite coal dust or methane gas resulting in an explosion. Equipment can also be the source of a fire, which may involve fuel, lubricants and the surrounding coal. In caved, mined-out areas, which contain coal and accumulated gas, explosions can be caused by rock falls and in some instances fires are started by spontaneous combustion. When active mine areas are connected into previously mined-out areas, there is also the risk of exposure to an oxygen-deficient atmosphere.

MSHA standards are designed to prevent these hazards, but if an emergency occurs because other measures have failed, the SCSR is the last protection that allows escape. Rapid and proper donning of an SCSR under such extreme adverse circumstances is essential to survival.

The Secretary has therefore determined that miners are exposed to a grave danger when they enter underground coal mines without being prepared to properly use the SCSR devices provided for their protection in the event of a fire or explosion.

C. The Need for "Hands-On" Training in the Use of SCSR Devices

Existing MSHA standards in 30 CFR 75.1714 require that underground coal mine operators make SCSR devices available to the miners employed at their mines who go underground, and to the visitors which operators authorize to go underground. The existing standards also specify that mine operators instruct and train miners and visitors in the use and location of the self-rescue devices made available to them. Miner training is required to include use, care and maintenance of the units, and is required to be conducted in accordance with MSHA training regulations in 30 CFR Part 48.

The Part 48 regulations set forth requirements for operator-administered programs that address a wide-range of mine safety and health instruction and training. They include SCSR use instruction for visitors, new underground miners and annual refresher training for underground miners. The Part 48 training regulations do not cover supervisors who are subject to MSHS-approved State certification requirements. The supervisory personnel issue is discussed in section IV of this preamble.

The death of 27 miners in a mine fire on December 19, 1984, raised serious questions about the sufficiency of miner training in the use of SCSR devices. MSHA's investigation into the accident was protracted by problems of extinguishing the fire, and later by the hazardous conditions created by the fire damage. However, evidence gathered during the investigation *(Preliminary Report of Investigation, Underground Coal Mine Fire, Wilberg Mine,* issued April 27, 1987) indicated that some of the 27 victims did not have basic knowledge about how to start and use the SCSR devices available to them, and they were unaware of the critical need to protect their lungs from the smoke

and carbon monoxide contaminated atmosphere created by the fire.

MSHS is aware that miners have in several instances successfully used SCSR devices to escape from mines following a mine fire or explosion. However, in November 1986, MSHA completed a nationwide evaluation of the effectiveness of SCSR training covering 1,174 underground coal mines. At each mine, a representative number of miners and supervisors were asked to respond to a series of questions concerning SCSR use and storage at the mine. The same miners and supervisors were then asked to don an SCSR unit provided by MSHS. When the evaluation was completed, a total of 8,904 persons had been interviewed and tested. Of this group nearly 20 percent, or 1,780, persons were graded as failing. At 243 mines where the evaluation indicated ineffective SCSR training, additional retraining was required for all underground personnel.

In addition to this evaluation, researchers from the University of Kentucky and the Bureau of Mines have recently reported their findings based on a series of SCSR donning studies. (Cole and Vaught, "Training in the use of self-contained self-rescuers," and Vaught and Cole, "Problems in donning the self-contained self-rescuer" (USBM project H0034800040)). In cooperation with two coal companies, studies were made of miners' skill in the correct use of SCSR devices. Problem areas pointed out by the studies included heavy reliance by the industry on teaching methods that do not provide individual performance simulation. MSHA experience confirms that training in the use of SCSR devices typically consists of a film, slide or tape presentation, or demonstration by an instructor to either a class or an individual. "Hands-on" training, which would familiarize miners with the skills necessary to successfully use the units in an emergency, has not been industry-wide practice.

More recently, as the industry become aware of shortcomings in miners' training, some operators have taken the initiative to introduce "hands-on" training in the use of SCSR devices through their annual miner training programs or by other means. However, as stated above, approximately one-half of all coal miners currently working underground, or 46,000 persons, may not have had "hands-on" SCSR training.

"Hands-on" training is widely recognized in the training field as important to the development of task-oriented skills. Practice that closely duplicates the procedures that must be performed for survival during actual emergency situations is an essential part of task-oriented training. It also provides feedback to the instructor and the trainee about which procedural steps have been correctly performed as well as identifying those areas in which additional training is needed. (Hagman and Rose, "Retention of Military Tasks: A Review," Human Factors (1983)).

D. The Need for an Emergency Temporary Standard

SCSR devices provide the last means of protection to miners in an emergency escape situation. Miners are exposed to grave danger when they enter underground coal mines without being prepared to rapidly and properly use the SCSR device provided for their protection in the event of a mine emergency. "Hands-on" training will provide miners with the skills necessary to successfully use the units in an emergency. This is an effective, yet simple, method of assuring that miners will have the skills necessary to avoid the dangers posed by an emergency escape situation. As discussed previously, regularly rulemaking would not be immediately responsive to the degree of danger posed to underground miners. Given this particular circumstance presented in this situation, the Secretary has determined that an emergency temporary standard requiring "hands-on" training is necessary to immediately protect miners.

III. Discussion of the Emergency Temporary Standard

The ETS requires that each mine operator administer a basic level of "hands-on" training with the SCSR devices provided at the mine, and that this training be completed within 90 days after publication of this ETS. In accordance with existing 30 CFR 75.1714 this training is required for all miners employed by the operator who go undergound and for all visitors authorized by the operator to go underground. The ETS does not require retraining of persons who received this "hands-on" training within the nine-month period proceeding the effective date of this ETS, or who have received such training in accordance with a program approved by MSHA under 30 CFR Part 48.

The ETS specifies four task-oriented elements that must be included in SCSR training: (1) Opening the device; (2) activating the device; (3) inserting the mouthpiece or simulating this task while explaining proper insertion of the mouthpiece; and (4) putting on the nose clip. These steps are critical to isolating the lungs from a contaminated atmosphere and they are required to be performed by each person being trained. This "hands-on" training is to be made a part of the overall instruction and training provided miners and visitors in the location, use, care and maintenance of SCSR devices.

The effective date of this ETS is June 30, 1987 and it requires that operators administer the required training to their work force and visitors who go underground by no later than September 28, 1987. After September 28, 1987 miners and visitors will not be permitted to go underground without having received the required SCSR training.

MSHA recognizes that some mines may experience difficulty in meeting the requirements of this ETS within the time permitted. Influencing factors include the size of the mine's work force, the nature of prior SCSR training administered, and the availability of SCSR devices that can be used for training exercises. Accordingly, all underground coal mine operators are urged to make arrangements for and begin administering the required SCSR training without delay.

IV. Drafting Information

The principal persons responsible for preparing this document are: Douglas C. Altizer, Jr., Coal Mine Safety and Health, MSHA; Frank Schwamberger, Education Policy and Development, MSHA; Earnest C. Teaster, Jr., Office of Standards, Regulations and Variances, MSHA; and Edward C. Hugler, Office of the Solicitor, Department of Labor.

V. Executive Order 12291 and the Regulatory Flexibility Act

In accordance with Executive Order 12291, MSHA has prepared an initial analysis to identify potential costs and benefits associated with the emergency temporary standard. The Agency has incorporated this analysis into the Initial Regulatory Flexibility Analysis required by the Regulatory Flexibility Act. In this analysis, MSHA has determined that the emergency temporary standard would not result in major cost increases nor have an effect of $100 million or more on the economy. Therefore, the rule is not within the criteria for a major rule and a Regulatory Impact Analysis is not required.

The Regulatory Flexibility Act requires that agencies evaluate and include, whenever possible, compliance alternatives that minimize any adverse impact on small businesses when developing regulations. MSHA has determined that compliance alternatives are not available for small mines for the "hands-on" training requirement of this emergency temporary standard.

In the following summary of the Initial Regulatory Flexibility Analysis MSHA addressed the cost impact on industry by factoring in, where applicable, all direct and indirect costs for equipment and labor. MSHA estimates are based primarily upon the expertise of senior MSHA personnel who provided estimates for the time required to perform specific tasks and the compliance level of the industry.

MSHA estimates that the total compliance cost for the ETS is $834,355. The cost for SCSR training devices ($529,500) comprises about 63 percent of this cost. The remaining cost ($304,855) is attributed to labor for the miners taking the training, for the instructors giving the training and for persons revising the training plans. A copy of the full analysis is available upon request.

VI. Paperwork Reduction Act

The emergency temporary standard does not contain recordkeeping or reporting requirements.

List of Subjects in 30 CFR Part 75

Administrative practice and procedure, Education, Mine safety and health, Self-contained self-rescue devices.

Dated: June 25, 1987.

Alan C. McMillan,

Deputy Assistant Secretary for Mine Safety and Health.

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

30 CFR Part 75 is amended as follows:

1. The authority citation for 30 CFR Part 75 is revised to read as follows:

Authority: 30 U.S.C. 811, 957, and 961.

2. The authority citations following any Subpart heading or section are removed.

3. New paragraph (c) is added to § 75.1714 Part 75, Subchapter O, Chapter I, Title 30 of the Code of Federal Regulations to read as follows:

§ 75.1714 Availability of approved self-rescue devices; instruction in use and location.

* * * * *

(c)(1) After September 28, 1987 no miner employed by the operator or visitor authorized by the operator to enter the mine shall go underground without having received the training required by paragraph (2) of this section within the preceding nine months or in accordance with the training program required by 30 CFR Part 48.

(2) Training in the use of self-contained self-rescue devices shall include each person properly opening the device, activating the device, inserting the mouthpiece or simulating this task while explaining proper insertion of the mouthpiece, and putting on the nose clip.

[FR Doc. 87-14764 Filed 6-25-87; 3:54 pm]

BILLING CODE 4510-43-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 48 and 75

Self-Contained Self-Rescue Devices

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Mine Safety and Health Administration (MSHA) is proposing to require persons using self-contained self-rescue (SCSR) devices to receive training in the opening and activation of the device; insertion or simulated insertion of the mouthpiece; and the wearing of the nose clip. This training, commonly referred to as "hands-on" training, would be required for all persons entering underground coal mines. "Hands-on" training in the use of SCSR units is necessary to avoid danger to underground miners from suffocation or poisoning from toxic products of combustion in the event of a mine fire or explosion. Elsewhere in this issue of the **Federal Register**, MSHA is publishing an Emergency Temporary Standard requiring "hands-on" training in the use of SCSR units for all persons entering an underground coal mine after September 28, 1987.

DATES: Comments on this proposed rule and requests for public hearings must be received by August 14, 1987.

ADDRESS: Send written comments and requests for public hearings to the Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Acting Associate Assistant Secretary for MSHA, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203; phone (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Background

Diligent compliance with safety standards and safety-conscious work practices provide a substantial measure of protection against fires and explosions in underground coal mines. However, in this high-hazard work environment, the danger of a fire or explosion is ever present. Electricity or other sources of power can ignite coal dust or methane gas resulting in an explosion. Equipment can also be the source of a fire, which may involve fuel, lubricants and the surrounding coal. In caved, mined-out areas, which contain coal and accumulated gas, explosions can be caused by rock falls and in some instances fires are started by spontaneous combustion. When active mine areas are connected into previously mined-out areas, there is also the risk of exposure to an oxygen-deficient atmosphere.

MSHA standards are designed to prevent these hazards, but if an emergency occurs because other measures have failed, the SCSR is the last protection that allows escape. Rapid and proper donning of an SCSR under such extreme adverse circumstances is essential to survival. MSHA has issued an emergency temporary standard (ETS) effective today that requires all persons who enter an underground coal mine after September 28, 1987, to have had "hands-on" training in the use of self-contained self-rescue devices (SCSRs). This training includes properly opening the device, activating the device, inserting the mouthpiece or simulating this task while explaining proper insertion of the mouthpiece, and putting on the nose clip. The ETS was issued in accordance with section 101(b) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 811. The ETS revised the existing safety standard for SCSRs, 30 CFR 75.1714. The ETS will be superseded by this rule when promulgated in final form.

Prior to the ETS, 30 CFR 75.1714 required that underground coal mine operators make SCSR devices available to the miners employed at their mines who go underground, and to the visitors which operators authorize to go underground. The standard also specified that mine operators instruct and train miners and visitors in the use and location of the self-rescue devices made available to them. It required miner training to include use, care and maintenance of the units, which had to be conducted in accordance with MSHA training regulations in 30 CFR Part 48. However, the standard did not require "hands-on training."

The death of 27 miners in a mine fire on December 19, 1984, raised serious questions about the sufficiency of miner training in the use of SCSR devices. MSHA's investigation into the accident was protracted by problems of extinguishing the fire, and later by the hazardous conditions created by the fire damage. However, evidence gathered during the investigation (*Preliminary Report of Investigation, Underground Coal Mine Fire, Wilberg Mine*, issued April 27, 1987) indicated that some of the 27 victims did not have basic knowledge about how to start and use the SCSR devices available to them, and they were unaware of the critical need to protect their lungs from the smoke and carbon-monoxide contaminated atmosphere created by the fire.

MSHA is aware that miners have in several instances successfully used SCSR devices to escape from mines following a mine fire or explosion. However, in November 1987, MSHA completed a nationwide evaluation of the effectiveness of SCSR training covering 1,174 underground coal mines. At each mine, a representative number of miners and supervisors were asked to respond to a series of questions concerning SCSR use and storage at the mine. The same miners and supervisors were then asked to don an SCSR unit provided by MSHA. When the evaluation was completed, a total of 8,904 persons had been interviewed and tested. Of this group nearly 20 percent, or 1,780, persons were graded as failing. At 243 mines where the evaluation indicated ineffective SCSR training, additional retraining was required for all underground personnel.

In addition to this evaluation, researchers from the University of Kentucky and the Bureau of Mines have recently reported their findings based on a series of SCSR donning studies. (Cole and Vaught, "Training in the use of self-contained self-rescuers," and Vaught and Cole, "Problems in donning the self-contained self-rescuer" (USBM project H003408040)). In cooperation with two coal companies, studies were made of miners' skill in the correct use of SCSR devices. Problem areas pointed out by the studies included heavy reliance by the industry on teaching methods that do not provide individual performance simulation. MSHA experience confirms that training in the use of SCSR devices typically consists of a film, slide or tape presentation, or demonstration by an instructor to either a class or an individual. "Hands-on" training, which would familiarize miners with the skills necessary to successfully use the units in an emergency, has not been industry-wide practice.

More recently, as the industry has become aware of short-comings in miners' training, some operators have taken the initiative to introduce "hands-on" training in the use of SCSR devices through their annual miner training programs or by other means. MSHA estimates that there are 93,000 workers affected by the ETS. An informal Agency evaluation of existing training programs indicated that a significant number of these miners, as many as half of them, have not had "hands-on" training in the use of SCSR's.

"Hands-on" training is widely recognized in the training field as important to the development of task-

oriented skills. Practice that closely duplicates the procedures that must be performed for survival during actual emergency situations is an essential part of task-oriented training. It also provides feedback to the instructor and the trainee about which procedural steps have been correctly performed as well as identifying those areas in which additional training is needed. (Hagman and Rose, "Retention of Military Tasks: A Review," Human Factors (1983)).

SCSRs are closed-circuit breathing apparatuses that provide a source of oxygen and greatly increase a person's chance of surviving a mine emergency involving an irrespirable atmosphere. In the event of such a mine emergency, the SCSR device provides miners with the last protection allowing escape. For successful escape, miners must be able to rapidly and properly use the devices. Because the effective use of SCSR devices is essential to successful evacuation in an immediately life-threatening situation, the Agency addressed the lack of "hands-on" training demands through the immediate regulatory action of the ETS.

In accordance with the Mine Act, the provisions of the ETS must be replaced by a final rule within nine months of its publication. This proposed rule initiates section 101(a) rulemaking to accomplish that requirement. Under the proposal, the existing requirements in 30 CFR Part 48 and 30 CFR 75.160–1 would be revised to include "hands-on" training with SCSR devices as part of miners' and supervisors' regular training.

II. Discussion of the Proposed Rule

The ETS revises 30 CFR 75.1714 which applies to all miners and visitors authorized by the operator to go underground. It requires that "hands-on" training be provided to such persons prior to September 28, 1987. To integrate the safety protection afforded by this training into the framework of existing Agency standards, MSHA is proposing that the "hands-on" training required by the ETS be codified in the training regulations for 30 CFR Part 48, and also be codified in the training requirements for "certified persons" in 30 CFR 75.160–1.

With this approach, the majority of MSHA training requirements would be maintained within 30 CFR Part 48 which is consistent with MSHA's goal to provide a comprehensive miner training program. However, in accordance with § 48.2(a)(1)(ii), supervisory personnel subject to MSHA-approved State certification requirements are not covered by Part 48. The regular training of these individuals is addressed by 30 CFR 75.160–1. Therefore, MSHA is also proposing to revise § 75.160–1 to include the added training requirements to assure that all miners, including supervisors, receive "hands-on" training as an integral component of their training in the use, care and maintenance of SCSR's. These proposed changes, which are separately discussed below, would replace the amendments made by the ETS to § 75.1714.

A. Part 48—Training and Retraining of Miners

Subpart A of 30 CFR Part 48, prescribes requirements for submitting and obtaining MSHA approval of operator-administered programs for training and retraining underground miners. Each mine must have an approved training program for training new miners and newly-employed experienced miners, as well as training miners for new tasks, providing annual refresher training and giving certain persons, including visitors, hazard training.

Under this proposal, the existing training requirements for new miners (§ 48.5), newly-employed experienced miners (§ 48.6), annual refresher training (§ 48.8), and hazard training (§ 48.11) would be revised to specify "hands-on" training in the use of SCSR devices. As with the ETS, "hands-on" training would include each person properly opening the device, activating the device, inserting the mouthpiece or simulating this task while explaining proper insertion of the mouthpiece, and wearing the nose clip.

The Agency specifically requests comment on the prescribed "hands-on" training. MSHA's goal is to develop an SCSR training program which will best assure that persons can properly use the device in the event of an emergency. The Agency is also interested in comment on revising the existing training requirements in 30 CFR Part 48 and § 75.160–1 to reflect "hands-on" training. Because the Part 48 training requirements do not cover training and retraining of supervisors who are certified in accordance with state requirements, MSHA is also proposing to revise § 75.160–1 (training and retraining of qualified and certified persons) to also include "hands-on" training.

B. Section 75.160–1—Plans for Training and Retraining of Qualified and Certified Persons

Section 75.160 requires each operator to provide a program, approved by the Secretary, for training and retraining qualified and certified persons. This standard, published in 1970, addresses the training of persons who perform certain functions prescribed by the Mine Act and MSHA standards. The Part 48 training regulations published in 1978, included the training and retraining of qualified persons, but not certified persons. Thus, the requirements of §§ 75.160 and 75.160–1 were retained. The vast majority of supervisors at underground coal mines are certified persons.

Section 75.160–1 sets forth the courses that must be included in the training program required by § 75.160. It does not, however, require that the program include a course in the use, care and maintenance of SCSR devices. MSHA believes that all miners, including certified persons, need proper training and retraining in the use of SCSR devices. Therefore, the Agency is proposing to revise this standard to require that training programs for certified persons address use of SCSR devices, including "hands-on" training.

The proposed rule would redesignate § 75.160–1 as § 75.161 to facilitate codification in the Code of Federal Regulations.

III. Drafting Information

The principal persons responsible for preparing this document are: Douglas C. Altizer, Jr., Coal Mine Safety and Health, MSHA; Frank Schwamberger, Education Policy and Development, MSHA; Earnest C. Teaster, Jr., Office of Standards, Regulations and Variances, MSHA; and Edward C. Hugler, Office of the Solicitor, Department of Labor.

IV. Executive Order 12291 and the Regulatory Flexibility Act

In accordance with Executive Order 12291, MSHA has prepared an initial analysis to identify potential costs and benefits associated with the proposed rule. The Agency has incorporated this analysis into the Initial Regulatory Flexibility Analysis required by the Regulatory Flexibility Act. In this analysis, MSHA has determined that the proposed rule would not result in major cost increases nor have an effect of $100 million or more on the economy. Therefore, the rule is not within the criteria for a major rule and a Regulatory Impact Analysis is not required.

The Regulatory Flexibility Act requires that agencies evaluate and include, whenever possible, compliance alternatives that minimize any adverse impact on small businesses when developing regulations. MSHA has determined that compliance alternatives are not available for small mines for the "hands-on" training requirement of this proposed rule.

In the following summary of the Initial Regulatory Flexibility Analysis MSHA addressed the cost impact on industry by factoring in, where applicable, all direct and indirect costs for equipment and labor. MSHA estimates are based primarily upon the expertise of senior MSHA personnel who provided estimates for the time required to perform specific tasks and the compliance level of the industry.

MSHA estimates that the total compliance cost for the ETS is $834,355. The cost for SCSR training devices ($529,500) comprises about 63 percent of this cost. The remaining cost ($304,855) is attributed to labor for the miners taking the training, for the instructors giving the training and for persons revising the training plans. A copy of the full analysis is available upon request.

V. Paperwork Reduction Act

Codification of the "hands-on" training provision in 30 CFR Part 48 and in the training requirements for certified persons specified in 30 CFR 75.160–1 would require operators of underground coal mines to submit revised training plans and programs to MSHA for approval. MSHA estimates that it would take 30 minutes for each of the 2016 underground coal mines to revise the training plan and program.

MSHA will submit the paperwork requirements contained in this document to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980. Comments on the paperwork provisions should be sent directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for MSHA, Room 3208, 726 Jackson Place, NW, Washington, DC 20746.

List of Subjects in 30 CFR Parts 48 and 75

Administrative practice and procedure; Education; Mine safety and health; Self-contained self-rescue devices.

Dated: June 26, 1987.

Alan C. McMillan,

Deputy Assistant Secretary for Mine Safety and Health.

Accordingly, it is proposed to amend Parts 48 and 75 of Chapter I, Title 30 of the Code of Federal Regulations as follows:

PART 48—TRAINING AND RETRAINING OF UNDERGROUND MINERS

1. The authority citation to 30 CFR Part 48 is revised to read as follows:

Authority: 30 U.S.C. 811 and 825.

2. Section 48.5 is amended by revising paragraph (b)(2) to read as follows:

§ 48.5 Training of new miners; minimum courses of instruction; hours of instruction.

* * * * *

(b)(2) *Self-rescue and respiratory devices.* The course shall include instruction and demonstration in the use, care, and maintenance of self-rescue and respiratory devices used at the mine. Training in the use of self-contained self-rescue devices shall include each person properly opening the device, activating the device, inserting the mouthpiece or simulating this task while explaining proper insertion of the mouthpiece, and putting on the nose clip. The course shall be given before the new miner goes underground.

* * * * *

3. Section 48.6 is amended by redesignating paragraph (b)(8) as (b)(9) and adding a new paragraph (b)(8) to read as follows:

§ 48.6 Training of newly employed experienced miners; minimum courses of instruction.

* * * * *

(b)(8) *Self-rescue and respiratory devices.* Training in the use of self-contained self-rescue devices shall include each person properly opening the device, activating the device, inserting the mouthpiece or simulating this task while explaining proper insertion of the mouthpiece, and putting on the nose clip.

* * * * *

4. Section 48.8 is amended by revising paragraph (b)(8) to read as follows:

§ 48.8 Annual refresher training of miners; minimum courses of instruction; hours of instruction.

* * * * *

(b)(8) *Self-rescue and respiratory devices.* The course shall include instruction in the use, care, and maintenance of self-rescue and respiratory devices. Training in the use of self-contained self-rescue devices shall include each person properly opening the device, activating the device, inserting the mouthpiece or simulating this task while explaining proper insertion of the mouthpiece, and putting on the nose clip.

* * * * *

5. Section 48.11 is amended by revising paragraph (a)(4) to read as follows:

§ 48.11 Hazard training.

* * * * *

(a)(4) Self-rescue and respiratory devices. Training in the use of self-contained self-rescue devices shall include each person properly opening the device, activating the device, inserting the mouthpiece or simulating this task while explaining proper insertion of the mouthpiece, and putting on the nose clip.

* * * * *

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

1. The authority citation to 30 CFR Part 75 continues to read as follows:

Authority: 30 U.S.C. 811, 957, and 961.

2. Section 75.160–1 is redesignated as § 75.161 and is revised to read as follows:

§ 75.161 Plans for training programs.

Each mine operator shall submit to the District Manager a program or plan setting forth what, when, how, and where the operator will train and retrain persons whose work assignments require that they be certified or qualified. The program shall provide—

(a) For certified persons, annual training courses in methane measurement and oxygen deficiency testing, roof and rib control, ventilation, first aid, principles of mine rescue, and the provisions of this Part 75;

(b) For qualified persons, annual courses in performance of the tasks which they perform and qualified persons; and

(c) For qualified and certified persons, annual training in the use of self-contained self-rescue devices used at the mine. This training shall include each person properly opening the device, activating the device, inserting the mouthpiece or simulating this task while explaining proper insertion of the mouthpiece, and putting on the nose clip.

§ 75.1714 [Amended]

3. Section 75.1714 is amended by removing paragraph (c).

[FR Doc. 87–14977 Filed 6–29–87; 8:45 am]

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federal register

Tuesday
June 30, 1987

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

Section 8 Housing Assistance Payments Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

[Docket No. N-87-1644; FR-2292]

Section 8 Housing Assistance Payments Program; Fair Market Rent Schedules for Use in the Existing Housing Certificate Program, Housing Voucher Program, Loan Management and Property Disposition Programs, and Moderate Rehabilitation Program

AGENCY: Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final notice.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to publish Fair Market Rents (FMRs) periodically, but not less frequently than annually. On April 29, 1987 (52 FR 15630), the Department published FMR schedules for the Section 8 Existing Housing Program covering 2,645 of 2,760 rental areas. Today's document publishes FMRs for the remaining 115 rental areas.

EFFECTIVE DATE: June 30, 1987.

FOR FURTHER INFORMATION CONTACT: Cecelia D. Livingston, Housing Voucher Division, Officer of Elderly and Assisted Housing, telephone (202) 755-6477. For technical information on the development of schedules for specific areas or the method used for the rent calculations, contact Michael R. Allard, Economic and Market Analysis Division, Office of Economic Affairs, telephone (202) 755-5577. (These phone numbers are not toll-free.).

SUPPLEMENTARY INFORMATION:

Background

Section 8 of the United States Housing Act of 1937 (the Act) (42 U.S.C. 1437f) authorizes a housing assistance program to aid lower income families in renting decent, safe, and sanitary housing. Assistance payments are limited by Fair Market Rents established by HUD for different areas. The final FMRs contained in this document apply to the Section 8 Existing Housing Certificate Program, including space rentals by owners of manufactured homes (Part 882, Subparts A, B, and F), for the Section 8 Moderate Rehabilitation Program (Part 882, Subparts D and E), and for Section 8 existing housing assisted under Part 886, Subparts A and C (Section 8 Loan Management and Property Disposition Programs). FMRs are also used in determining the amount of subsidy for families under the Housing Voucher Program.

FMRs are also used to calculate the administrative fee paid to PHAs under the covered Section 8 programs. (Administrative fees are not provided under the Property Disposition and Loan Management Programs (Part 886, Subpart A and C) because HUD, rather than the PHA, administers these programs.)

1987 Proposed Fair Market Rent Schedules

Proposed FMRs

The Department proposed fiscal year 1987 FMRs for Section 8 existing housing on December 8, 1986 (51 FR 44198). These FMRs reflected estimated rent levels as of April 1, 1987. The criteria and methodology used by HUD in developing the proposed FMRs appear at 24 CR Part 888, Subpart A and have been in use since 1983. The criteria used to compute FMRs are as follows: (1) The 45th percentile rent of standard quality rental units (*i.e.*, the rent below which 45 percent of the standard quality rental housing units in a market area are distributed); (2) Rents for units occupied by recent movers (households who moved within two years preceding the date of the survey data used in these calculations); and (3) Exclusion from the data base of all public housing units and recently completed housing (units built within two years of the survey dates). The FMRs for manufactured home spaces are based on the 45th percentile rent for manufactured home spaces. (See 24 CFR 888.113(a)).

Section 888.113(d) provides that HUD will use the most recent Census and American Housing Survey (AHS) data to compute base rents and will update these base rents through the use of the most current available Consumer Price Index (CPI) data. Last year, the Department completely revised the FMRs for all areas using 1980 Census data and post-1980 AHS data which were available for the first time. This year's FMRs built upon this recently completed process by considering more current CPI data. (A more complete description of HUD's calculations may be found at 51 FR 44198-99, December 8, 1986).

In the December 8, 1986 notice, the Department indicated that it would develop its FMRs by publishing proposed FMRs for public comment, analyzing and reestimating rents based on the public comments, and publishing final FMRs. (See 24 CFR 888.115). Accordingly, in the proposed notice, the Department sought public comment for specific areas and described the documentation required to justify the proposed changes.

Final FMRs

In response to the request for public comments, HUD received 137 comments. The Department used these comments to assist in determining which FMRs could be published for effect without waiting to complete the analysis of all of the submitted comments. Accordingly, on April 29, 1987 (52 FR 15630), HUD announced final FMRs for 2,645 of the 2,760 rental areas. These 2,645 areas included areas for which no public comments were received, or for which all public comments received supported the proposed FMRs. (In the April 29, 1987 publication, HUD stated that it was publishing FMRs for 2,647 areas. The schedules attached to the April 29, 1987 notice, however, correctly published FMRs for the 2,645 uncontested areas.) The Department stated that it would publish a second notice announcing the final FMRs for effect in the remaining market areas and that the second publication would contain an analysis and response to all public comments received.

Today's document announces FMRs for the remaining 115 rent market areas and contains an analysis of public comments. The FMRs are listed in two parts—Schedule B (Fair Market Rents for Existing Housing) and Schedule D (Fair Market Rents for Manufactured Home Spaces in Section 8 Existing Housing Certificate Program).

For the purpose of establishing assistance payments under the affected programs, the FMRs published in this document are effective today. For the purposes of computing the administrative fee for a PHA administering a Section 8 program in a jurisdiction where the two-bedroom FMR has been increased by this notice, the administrative fee will be computed as if the FMRs published today were in effect on April 29, 1987 (the effective date of FMRs published for the 2,645 uncontested areas). For PHAs administering a Section 8 program in the area where the two-bedroom FMR is decreased, the PHA's administrative fee will be adjusted as of the first day of the PHA's fiscal year that begins after the effective date (today) of the FMRs appearing in this document.

Public Comments

As noted above, 137 comments were received on the proposed notice. Approximately two-thirds of these comments were submitted by PHAs. Of the remainder, 30 were from State and

local governments, 19 were from management companies, development corporations, realtors, and owners, and four were from others.

Almost every commenter stated that the FMRs published for the commenter's area were too low. Fourteen commenters, however, supported the proposed FMRs for their areas and one commenter argued that the FMRs for its area were too high. The Department has evaluated all comments carefully and has sought to look behind the information presented when the data appeared to have merit but were incompletely or poorly represented. As a result of HUD's evaluation, modifications have been made in 46 of the 115 contested FMR areas.

Computation of FMRs

a. *Geographic area.* Section 888.113 provides that FMRs are established for all Metropolitan Statistical Areas (MSAs), Primary Metropolitan Statistical Areas (PMSAs), nonmetropolitan counties and county equivalents. Some commenters believed that these FMR areas in general are too large. Thirty-one commenters felt, given the actual markets existing in their specific area, that it would be more appropriate for their jurisdiction to be included in an adjacent FMR area (with higher FMRs), to recompute the FMRs for their areas to reflect adjacent FMR areas (with higher FMRs), or to exclude certain lower cost areas from their FMR areas.

An FMR published for Section 8 Existing Housing is established on a market area basis (*i.e.*, a geographic area within which housing units are in mutual competition). The factors used by the Office of Management and Budget (OMB) to define metropolitan and nonmetropolitan areas include commuting patterns and population densities. These factors are also appropriate to define housing market areas. The Department believes that these OMB determinations constitute a rational basis for determining housing market areas and will continue to use the definitions of metropolitan and nonmetropolitan areas adopted by OMB.

Since FMRs in any geographic area reflect the rent level below which 45 percent of the rents will fall, actual rents will vary within each area. Thus, portions of a FMR area may have rent levels that exceed the FMR. For such areas within FMR market areas that have active Section 8 Existing programs and also have rent levels that are on average higher than the published FMRs, HUD's regulations permit, under specified conditions, PHAs to approve rents that exceed FMRs. (See e.g., 24 CFR 882.106(a).) HUD has found that these exception rents usually will be sufficient to achieve their program objectives.

b. *Data base.* As noted above, HUD computes FMRs by a combination of 1980 Census, AHS and CPI data. Several commenters argued that the use of these data failed to reflect accurately the cost of rental housing. Census data were questioned on the following grounds: (1) The Census data are seven years old and do not reflect expansions and contractions in rental markets during this period; (2) the Census definition of substandard is too limited and does not reflect Section 8 housing quality standards; (3) the average rents that are reported in the Census are typically lower than those derived through other surveys; (4) publicly assisted units may not always be excluded from Census data; and (5) Census data do not appear to exclude minority impacted or economically depressed areas. AHS data were questioned because: (1) The data do not consist entirely of recent moves and permits old rents to be averaged in the rental calculation; (2) AHS data are limited to approximately 50 metropolitan areas; (3) HUD uses an extremely small subset of AHS data to calculate rents; and (4) the housing quality standards of the AHS do not match the Section 8 housing quality standards. CPI data were questioned because: (1) It is not limited to recent moves; (2) the geographic areas used to calculate the CPI are not the same as the FMR areas; and (3) there is a significant time lag between the collection and use of the data. One commenter suggested that HUD's data bases should exclude data for all assisted housing.

HUD continues to believe that the estimates resulting from the application of the Census, AHS, and CPI data provide FMRs that generally reflect local market conditions and changes. However, HUD also relies on the public comment process to identify areas where the use of these data is not appropriate or where there have been abrupt changes in local market conditions.

With the exception of the issues specifically addressed below, most of the questions regarding the accuracy of the HUD data base were discussed at length in HUD's August 29, 1986 publication of FMRs for fiscal year 1986 (51 FR 31014, 31015–16). Responses to these issues will not be repeated here. Additional issues raised are discussed below.

Commenters argued that the application of the AHS data was inappropriate because the surveys cover only 54 metropolitan areas. In establishing FMRs, HUD attempts to use the most reliable data available. Absent reliable local data submitted by commenters, AHS data represent the best recurring data source for the computation of FMRs within the MSAs–PMSAs covered by these surveys. The AHS provides HUD with specific information on local rental trends occurring between decennial Censuses for 54 of the largest market areas. These market areas have a rental inventory equal to over one-half of the nation's rental properties. It would be inappropriate to exclude these reliable data merely because they do not extend to all market areas.

Other commenters argued that the use of AHS data is inappropriate because HUD uses an extremely small subpart of the AHS data to calculate the FMRs. The AHS is a scientifically developed sample of households and has been designed by HUD and the Bureau of Census to derive statistically reliable rent estimates for metropolitan areas. Our regulations provide that FMRs must be based on the 45th percentile rent for standard quality rental housing units, must exclude public housing units and recently completed housing, and may include only recent mover rents. Accordingly, HUD uses only that portion of the AHS sample that reflects these standards. While HUD, thus, does not use all of the unit data collected in the AHS sample, HUD has sought to assess the accuracy of Census- and AHS-based rent estimates for localities where surveys were conducted at about the same time. These comparisons strongly suggest that errors are within a statistically reasonable range.

One commenter objected to the AHS data because they do not consist entirely of rents of recent movers and may permit old rents to be averaged into the computation. This commenter has misunderstood HUD's use of AHS survey data, which appropriately excludes old rents and consists of only rents of recent movers.

A commenter noted that Census data are not appropriate since they are seven years old and do not reflect recent expansions and contractions of the rental market. Both the Census data and the AHS are updated to April 1, 1987 by the application of regional and local CPI data. As noted above, HUD relies on the public comment process to identify those areas where the CPI adjustment does not adequately reflect local changes.

Some commenters suggested that CPI data are suspect because the CPI areas are not coextensive with the FMR areas.

CPI surveys are prepared for 77 selected metropolitan areas and for Census regions. The geographic boundaries of the 77 selected metropolitan areas are the same as the FMR areas for those locations. For the remaining FMR areas not covered by the area-specific CPI data, HUD applies the appropriate CPI for the Census region. HUD's analysis indicates that over time the rent estimates derived from these sources fall within a statistically reasonable range of acccuracy.

c. *Trending*. The proposed FMRs were trended to April 1, 1987, the proposed effective date. One commenter urged HUD to trend FMRs to the midpoint of the year because "Beginning the FMR year with units at or below the 45th percentile really means that a far smaller supply of units is available at the end of the FMR year." Another commenter suggested that if there is a delay in the promulgation of a final notice beyond April 1, 1987, HUD should make further trending adjustments to the FMRs to ensure that FMRs established will retain the same fairness and reasonableness as those proposed for April 1, 1987.

Given the relatively low inflation rates of recent years, HUD does not share the commenters' concern that the supply of rental units will be sufficiently diminished by our failure to trend beyond April 1, 1987. The purpose of establishing the FMRs with a date of April 1st is to have them set at the mid-point of the fiscal year for which they will be in use. Because of the technical complexities involved in developing FMR schedules, the Department does not have the capacity to revise these estimates every time the publication schedule is changed. Our objective is to publish FMRs as early in the program year as possible. We anticipate that much of the delay in the publication of FMRs past the beginning of the fiscal year will be eliminated in future publications.

d. *Local conditions*. Numerous commenters argued that HUD's formulation ignored local conditions that mandate higher FMRs. Commenters cited factors that create a high demand for, and low supply of, suitable rental properties in the area. These factors included the location or expansion of universities, military bases or industries in their areas, the loss of suitable housing because of condominium and cooperative conversions in the area, gentrification, high demand for seasonal rentals, condemnation and demolition of existing rental units, rapid population increases, and declines in new construction. Other commenters cited dramatic increases in utility costs, insurance expenses, debt servicing costs (usually caused by property changing hands), and sales and property taxes.

We agree that HUD's development of the proposed FMRs may not keep pace with dynamic shifts in local rental housing conditions. As stated earlier, however, we rely on local data submitted during the public comment period to identify these changes. To the extent that commenters have presented sufficient evidence that the proposed FMRs do not reflect these shifts, the FMRs published for effect today have been revised.

Several commenters noted that increases in utility costs have caused, or will soon cause, PHAs to increase the amount of the applicable utility allowances. These commenters noted that these increased allowances will effectively reduce the amount available for contract rent. They urged HUD to permit FMR increases necessary to offset these increases to the allowances. The FMRs developed under Part 888 are intended to include the cost of contract rent *and* utilities (except telephones). In market areas for which data were submitted to demonstrate utility *cost* increases beyond the level reflected in the proposed FMRs, HUD has made appropriate adjustments.

e. Tax code changes. Several commenters predicted that the new tax code will increase ownership costs. (E.g., one commenter stated that the new code would require landlords to operate under different depreciation schedules that would lower tax deductions and increase their tax burden.) These commenters argued that the 1987 FMRs should reflect these expected changes.

Like all increases to expenses associated with the ownership of rental housing, if the projected increases in taxes occur, the increases will result in higher rents and will be reflected by an increase in the 45th percentile, standard quality, recent-mover FMR standard. To the extent these tax increases occur and are reflected in the 45th percentile rents in future years, HUD will make appropriate increases in FMR levels.

f. *FMRs and contract rents adjusted by the AAF*. Some commenters noted that the annual adjustment factor (AAF) has not kept up with private market increases or increases to the FMR. They argued that difference between the adjusted contract rents and the new FMRs, and the adjusted contract rents and private market rents, are causing the loss of many units from the Program on the anniversary date. Other commenters noted that, in their area, the reverse is true (*i.e.*, adjusted contract rents exceed FMRs). These commenters noted that this disparity results in newly vacant units not qualifying for the Program because of high rents, while occupied units in the same building continue to be assisted.

HUD's procedures do not require that adjusted contract rents and FMRs be equivalent. As noted above, FMRs are based on the 45th percentile, standard quality rental unit, recent mover rents, and exclude consideration of public housing units and recently completed housing. This computation differs from the AAF computation which is designed *only* to reflect changes in local rent and utility cost levels. Units under lease may, thus, rent at levels above or well below the revised 45th percentile, but this does not mean that the FMR or the adjusted rents are incorrect or should be changed.

Impact on the Section 8 Existing Housing Program

Approximately one-half of the commenters discussed the impact that low FMRs would have on the Section 8 Existing Housing Certificate Program. The primary concern voiced was that the proposed FMRs would not insure an adequate supply of decent, safe and sanitary housing.

Specific negative impacts cited by commenters included the following: Low FMRs: (1) Would not provide a sufficient economic incentive to owners to participate or continue to participate in the Program; (2) would severely limit the options of Certificate holders, making it difficult or impossible for these families to exercise their Certificates within the prescribed time limits; (3) would cause the clustering of assisted families in areas of low income or minority concentration, contrary to the purposes of the Section 8 program; (4) would reduce the quality of housing by limiting family options to marginally acceptable units and by failing to provide the owner with sufficient revenues to maintain and rehabilitate deteriorating units; (5) would increase homelessness; (6) would have negative impact on the Housing Voucher Program by increasing the percentage of family income necessary to rent an acceptable unit; and (7) would make it easier for owners to discriminate against low income and minority individuals.

When HUD established the FMR methodology, the Department balanced many competing factors. HUD recognized that setting FMRs at a level higher than the 45th percentile rent level would provide a broader range of locations and amenities to assisted families and would have a beneficial

impact on family mobility and placement rates. HUD, however, also recognized that a higher FMR level would reduce the number of households that could be assisted.

Use of the 45th percentile of recent mover rents as the FMR standard represents a compromise. When properly applied, it ensures that an adequate supply of standard quality units will be available to assisted families and that there will be a wide choice of housing types and locations. It provides a reasonable range of housing opportunities, but is not so high as to constrict unreasonably the size of the Program or to permit subsidization of units that exceed modest, nonluxury levels.

While some commenters advocated the return to the 50th percentile rent standard, the Department continues to believe that the 45th percentile rent standard, as established by the application of Census, AHS and CPI data as well as local data submitted by public commenters, generally provides an adequate supply of decent, safe and sanitary housing units and is sufficient to avoid the negative impacts predicted by the commenters. HUD notes that FMRs established under this methodology have been sufficient to avoid the negative consequences predicted by the public commenters. For example, while 45th percentile rents have been used since 1983, HUD is not aware of decreases in the quality of housing to date. In fact, there have been improvements in the enforcement of Housing Quality Standards which have resulted in increases in the quality of leased units.

In addition to commenters addressing the impact of low FMRs on the Section 8 Certificate Program, two commenters discussed the impact on the Rental Rehabilitation Grants Program. One commenter claimed that the rents permitted under the new FMRs would not be high enough to cover debt service. Another claims that present owners participating in the Rental Rehabilitation Grants Program will pay off loans to avoid the application of "rental rehabilitation market rents."

FMRs are used to determine rent "affordability" in the Rental Rehabilitation Grants Program and thus affect the selection of properties for eligibility in the program and the eligibility of tenants for various forms of rental or relocation assistance. FMRs, however, do not have a direct impact on the rents that may be charged in a rehabilitated project. After rehabilitation such rents are set by owners at makret rates and are not limited by FMRs. To the extent that FMRs affect the rent affordability determination and the selection of projects for assistance, we note that local officials are responsible for selecting appropriate buildings and neighborhoods and for developing methods to finance rehabilitations that ensure affordability under the Rental Rehabilitation Program. As to projects already completed and occupied, the FMR changes will not affect the owner's ability to raise rents; it will only affect the ability of Certificate and Voucher holders to live in projects with rents in excess of the FMRs.

Administrative Fee

Seven commenters objected that the administrative fee calculated from the proposed FMRs will be inadequate. Commenters noted that the factor used to calculate the administrative fee was reduced in 1986 and that this reduction, coupled with the reduction of FMRs in some areas for 1986 and the modest revisions to FMRs proposed in this proceeding, has resulted in administrative fees that are too low. Commenters claim that these fees (1) impair the PHAs' ability to administer the program; (2) have a significant impact on small PHAs' ability to administer the Program, since these PHAs may not be able to obtain funds from other sources; and (3) in some cases may jeopardize a PHA's continued operation. Two commenters noted that their fees were not sufficient when compared to other PHAs in nearby FMR areas that have similar administrative costs.

Initially, we note that the 1987 fiscal year appropriation mandates that the method of calculating administrative fees must be that percentage established by the Secretary as of September 30, 1986 (see Pub. L. 99–500 (approved October 18, 1986) and Pub. L. 99–591 (approved October 30, 1986), making appropriations as provided for in H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess. (1986)).

The Department believes that the mechanism used to establish administrative fees is generally adequate—for large and small, urban and rural programs. HUD recognizes, however, that there is a point below which a program is too small to be financially viable. In such cases, we recommend that PHAs seek the cooperation and possible assistance of any county, State or Regional program, including transferring the Program to a larger PHA that can operate in the same jurisdiction.

Other Matters

A Finding of No Significant Impact with respect to the environment required by the National Environmental Policy Act (42 U.S.C. 4321–4374) is unnecessary, since the Section 8 Existing Housing program is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(d).

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this Notice does not have a significant economic impact on a substantial number of small entities because FMRs reflect the rents for similar quality units in the area. Therefore, FMRs do not change the rent from that which would be charged if the project were not in the Section 8 program.

This document does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the document indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program number is 14.156, Lower-Income Housing Assistance Program (Section 8).

Accordingly, the Fair Market Rent Schedules are amended as follows.

Dated: June 24, 1987.

James E. Schoenberger,

Acting General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

Section 8 Fair Market Rent Schedules for Use in the Existing Housing Certificate Program, Loan Management and Property Disposition Programs, Moderate Rehabilitation Program and Housing Voucher Program; Schedules B and D—General Explanatory Notes

1. Geographic Coverage

a. The FMRs contained in Schedules B and D reflect 115 market areas. FMRs for the remaining 2,645 market areas were published on April 29, 1987 (52 FR 15630).

b. FMRs for Existing Housing (Schedule B) are established for Metropolitan Statistical Areas (MSAs), Primary Metropolitan Statistical Areas (PMSAs), nonmetropolitan counties, and county equivalents in the United States, District of Columbia, Puerto Rico, the Virgin Islands, and Guam. FMRs also are established for nonmetropolitan parts of counties in the New England States.

c. FMRs for Manufactured Home spaces in the Section 8 Certificate Program (Schedule D) are established for MSAs, PMSAs, selected nonmetropolitan counties, and the residual nonmetropolitan portion of each State.

d. The MSAs and PMSAs used in these schedules are those established by the Office of Management and Budget effective October 18, 1986.

2. Arrangement of FMR Areas and Identification of Constituent Parts

a. The FMR areas in Schedules B and D are listed alphabetically by MSA-PMSA and nonmetropolitan county within each State.

b. The constituent counties (and New England towns and cities) included in each MSA and PMSA are listed immediately following the MSA-PMSA names in each State listed in Schedule B. All of the constituent parts of an MSA that are in more than one State can be identified by consulting the listings for each applicable State.

c. Two nonmetropolitan counties are listed alphabetically on each line of the nonmetropolitan county listings.

d. The New England towns and cities included in a nonmetropolitan part of a county are listed immediately following the county name.

e. The FMRS are listed by dollar amount on the first line beginning with the FMR area name.

BILLING CODE 4210-27-M

* SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 060387
FINAL FMRS
STATE: ALABAMA

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BULLOCK	193	234	275	344	385
CRENSHAW	193	234	275	344	385
MACON	205	249	293	366	410

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BUTLER	178	216	254	318	357
LOWNDES	193	234	275	344	385
PIKE	205	249	293	366	410

STATE: CALIFORNIA

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
SAN FRANCISCO, CA PMSA	533	646	765	953	1066

COUNTY(IES): MARIN, SAN FRANCISC, SAN MATEO

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
KINGS	289	351	412	516	578

STATE: CONNECTICUT

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BRIDGEPORT-MILFORD, CT PMSA	381	462	545	680	763
DANBURY, CT PMSA	412	501	590	737	826
HARTFORD, CT PMSA	388	473	553	696	776
MIDDLETOWN, CT PMSA	327	398	468	586	656
NEW BRITAIN, CT PMSA	346	420	494	618	692
NEW HAVEN-MERIDEN, CT MSA	418	509	599	749	838
WATERBURY, CT MSA	336	408	480	600	672

COUNTY: FAIRFIELD TOWNS OF BRIDGEPORT, EASTON, FAIRFIELD, MONROE, SHELTON, STRATFORD, TRUMBULL
COUNTY: NEW HAVEN TOWNS OF ANSONIA, BEACON FALLS, DERBY, MILFORD, OXFORD, SEYMOUR

COUNTY: FAIRFIELD TOWNS OF BETHEL, BROOKFIELD, DANBURY, NEW FAIRFIEL, NEWTOWN, REDDING, RIDGEFIELD, SHERMAN
COUNTY: LITCHFIELD TOWNS OF BRIDGEWATER, NEW MILFORD

COUNTY: HARTFORD TOWNS OF AVON, BLOOMFIELD, CANTON, EAST GRANBY, EAST HARTFOR, EAST WINDSOR, ENFIELD, FARMINGTON GLASTONBURY, GRANBY, HARTFORD, MANCHESTER, MARLBOROUGH, NEWINGTON, ROCKY HILL, SIMSBURY, SOUTH WINDSO SUFFIELD, WEST HARTFOR, WETHERSFIELD, WINDSOR, WINDSOR LOCK
COUNTY: LITCHFIELD TOWNS OF BARKHAMSTED, NEW HARTFORD
COUNTY: MIDDLESEX TOWNS OF EAST HADDAM
COUNTY: NEW LONDON TOWNS OF COLCHESTER
COUNTY: TOLLAND TOWNS OF ANDOVER, BOLTON, COLUMBIA, COVENTRY, ELLINGTON, HEBRON, SOMERS, STAFFORD, TOLLAND, VERNON WILLINGTON

COUNTY: MIDDLESEX TOWNS OF CROMWELL, DURHAM, EAST HAMPTON, HADDAM, MIDDLEFIELD, MIDDLETOWN, PORTLAND

COUNTY: HARTFORD TOWNS OF BERLIN, NEW BRITAIN, PLAINVILLE, SOUTHINGTON

COUNTY: MIDDLESEX TOWNS OF CLINTON, KILLINGWORTH
COUNTY: NEW HAVEN TOWNS OF BETHANY, BRANFORD, CHESHIRE, EAST HAVEN, GUILFORD, HAMDEN, MADISON, MERIDEN, NEW HAVEN NORTH BRANFO, NORTH HAVEN, ORANGE, WALLINGFORD, WEST HAVEN, WOODBRIDGE

COUNTY: LITCHFIELD TOWNS OF BETHLEHEM, THOMASTON, WATERTOWN, WOODBURY
COUNTY: NEW HAVEN TOWNS OF MIDDLEBURY, NAUGATUCK, PROSPECT, SOUTHBURY, WATERBURY, WOLCOTT

NONMETROPOLITAN COUNTIES OR PARTS OF COUNTIES

		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
LITCHFIELD	COUNTY TOWNS OF CANAAN, COLEBROOK, CORNWALL, GOSHEN HARWINTON, KENT, LITCHFIELD, MORRIS, NORFOLK, NORTH CANAAN, ROXBURY, SALISBURY, SHARON, TORRINGTON, WARREN WASHINGTON, WINCHESTER	357	434	510	638	714
WINDHAM	COUNTY TOWNS OF ASHFORD, BROOKLYN, CHAPLIN, EASTFORD, HAMPTON KILLINGLY, PLAINFIELD, POMFRET, PUTNAM, SCOTLAND, STERLING, THOMPSON, WINDHAM, WOODSTOCK	342	416	489	611	686

STATE: FLORIDA

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
FORT WALTON BEACH, FL MSA	224	272	320	400	448
WEST PALM BEACH-BOCA RATON-DELRAY BEACH, FL MSA	342	409	476	581	640

COUNTY(IES): OKALOOSA

COUNTY(IES): PALM BEACH

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
COLUMBIA	199	243	286	357	400

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 060387
FINAL FMRS

STATE: HAWAII

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
KAUAI	389	472	554	694	777

STATE: IDAHO

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
CANYON	259	315	371	463	519
PAYETTE	259	315	371	463	519
ELMORE	259	315	371	463	519
WASHINGTON	259	315	371	463	519

STATE: INDIANA

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
CASS	236	287	338	422	473
MIAMI	236	287	338	422	473

STATE: KENTUCKY

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
CLARKSVILLE-HOPKINSVILLE, TN-KY MSA COUNTY(IES): CHRISTIAN	256	322	403	489	543
OWENSBORO, KY MSA COUNTY(IES): DAVIESS	231	280	330	412	462

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
LAUREL	195	272	342	358	389
NELSON	208	253	297	372	416

STATE: LOUISIANA

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ALLEN	166	202	238	298	333
WEST CARROLL	165	201	236	295	330

STATE: MAINE

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
PORTLAND, ME MSA COUNTY: CUMBERLAND TOWNS OF CAPE ELIZABE, CUMBERLAND, FALMOUTH, FREEPORT, GORHAM, GRAY, NORTH YARMOU, PORTLAND, RAYMOND SCARBOROUGH, SOUTH PORTLA, STANDISH, WESTBROOK, WINDHAM, YARMOUTH COUNTY: YORK TOWNS OF BUXTON, HOLLIS, OLD ORCHARD	354	451	569	638	766

NONMETROPOLITAN COUNTIES OR PARTS OF COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
YORK COUNTY TOWNS OF ACTON, ALFRED, ARUNDEL, BIDDEFORD, CORNISH, DAYTON KENNEBUNK, KENNEBUNKPOR, LEBANON, LIMERICK, LIMINGTON, LYMAN, NEWFIELD, PARSONSFIELD, SACO, SANFORD, SHAPLEIGH WATERBORO	339	400	504	519	629

STATE: MARYLAND

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BALTIMORE, MD MSA COUNTY(IES): ANNE ARUNDEL, BALTIMORE, CARROLL, HARFORD, HOWARD, QUEEN ANNES, BALTIMORE	335	407	479	599	671

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 060387
FINAL FMRS

STATE: MASSACHUSETTS

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BOSTON, MA PMSA	508	617	727	908	1017
COUNTY: BRISTOL TOWNS OF MANSFIELD, NORTON, RAYNHAM					
COUNTY: ESSEX TOWNS OF LYNN, LYNNFIELD, NAHANT, SAUGUS					
COUNTY: MIDDLESEX TOWNS OF ACTON, ARLINGTON, ASHLAND, AYER, BEDFORD, BELMONT, BOXBOROUGH, BURLINGTON, CAMBRIDGE, CARLISLE CONCORD, EVERETT, FRAMINGHAM, GROTON, HOLLISTON, HOPKINTON, HUDSON, LEXINGTON, LINCOLN, LITTLETON, MALDEN MARLBOROUGH, MAYNARD, MEDFORD, MELROSE, NATICK, NEWTON, NORTH READIN, READING, SHERBORN, SHIRLEY SOMERVILLE, STONEHAM, STOW, SUDBURY, TOWNSEND, WAKEFIELD, WALTHAM, WATERTOWN, WAYLAND, WESTON, WILMINGTON WINCHESTER, WOBURN					
COUNTY: NORFOLK TOWNS OF BELLINGHAM, BRAINTREE, BROOKLINE, CANTON, COHASSET, DEDHAM, DOVER, FOXBOROUGH, FRANKLIN, HOLBROOK MEDFIELD, MEDWAY, MILLIS, MILTON, NEEDHAM, NORFOLK, NORWOOD, QUINCY, RANDOLPH, SHARON, STOUGHTON, WALPOLE WELLESLEY, WESTWOOD, WEYMOUTH, WRENTHAM					
COUNTY: PLYMOUTH TOWNS OF CARVER, DUXBURY, HANOVER, HANSON, HINGHAM, HULL, KINGSTON, LAKEVILLE, MARSHFIELD, MIDDLEBOROUG NORWELL, PEMBROKE, PLYMOUTH, PLYMPTON, ROCKLAND, SCITUATE					
COUNTY: SUFFOLK TOWNS OF BOSTON, CHELSEA, REVERE, WINTHROP					
COUNTY: WORCESTER TOWNS OF BERLIN, BOLTON, HARVARD, HOPEDALE, LANCASTER, MENDON, MILFORD, SOUTHBOROUGH, UPTON					
BROCKTON, MA PMSA	379	458	574	695	779
COUNTY: BRISTOL TOWNS OF EASTON					
COUNTY: NORFOLK TOWNS OF AVON					
COUNTY: PLYMOUTH TOWNS OF ABINGTON, BRIDGEWATER, BROCKTON, EAST BRIDGEW, HALIFAX, WEST BRIDGEW, WHITMAN					
FITCHBURG-LEOMINSTER, MA MSA	366	444	523	653	732
COUNTY: MIDDLESEX TOWNS OF ASHBY					
COUNTY: WORCESTER TOWNS OF ASHBURNHAM, FITCHBURG, LEOMINSTER, LUNENBURG, WESTMINSTER					
LAWRENCE-HAVERHILL, MA-NH PMSA	405	493	591	675	751
COUNTY: ESSEX TOWNS OF AMESBURY, ANDOVER, BOXFORD, GEORGETOWN, GROVELAND, HAVERHILL, LAWRENCE, MERRIMAC, METHUEN, NEWBURY NEWBURYPORT, NORTH ANDOVE, SALISBURY, WEST NEWBURY					
LOWELL, MA-NH PMSA	390	474	553	669	763
COUNTY: MIDDLESEX TOWNS OF BILLERICA, CHELMSFORD, DRACUT, DUNSTABLE, LOWELL, PEPPERELL, TEWKSBURY, TYNGSBOROUGH, WESTFORD					
✓ PAWTUCKET-WOONSOCKET-ATTLEBORO, RI-MA PMSA	326	395	465	570	651
COUNTY: BRISTOL TOWNS OF ATTLEBORO, NORTH ATTLEB, REHOBOTH, SEEKONK					
COUNTY: NORFOLK TOWNS OF PLAINVILLE					
COUNTY: WORCESTER TOWNS OF BLACKSTONE, MILLVILLE					
PITTSFIELD, MA MSA	339	410	480	596	672
COUNTY: BERKSHIRE TOWNS OF CHESHIRE, DALTON, HINSDALE, LANESBOROUGH, LEE, LENOX, PITTSFIELD, RICHMOND, STOCKBRIDGE					
SALEM-GLOUCESTER, MA PMSA	452	548	645	806	903
COUNTY: ESSEX TOWNS OF BEVERLY, DANVERS, ESSEX, GLOUCESTER, HAMILTON, IPSWICH, MANCHESTER, MARBLEHEAD, MIDDLETON, PEABODY ROCKPORT, ROWLEY, SALEM, SWAMPSCOTT, TOPSFIELD, WENHAM					
SPRINGFIELD, MA MSA	348	421	490	612	687
COUNTY: HAMPDEN TOWNS OF AGAWAM, CHICOPEE, EAST LONGMEA, HAMPDEN, HOLYOKE, LONGMEADOW, LUDLOW, MONSON, MONTGOMERY, PALMER RUSSELL, SOUTHWICK, SPRINGFIELD, WESTFIELD, WEST SPRINGF, WILBRAHAM					
COUNTY: HAMPSHIRE TOWNS OF BELCHERTOWN, EASTHAMPTON, GRANBY, HUNTINGTON, NORTHAMPTON, SOUTHAMPTON, SOUTH HADLEY					
WORCESTER, MA MSA	351	431	506	634	708
COUNTY: WORCESTER TOWNS OF AUBURN, BARRE, BOYLSTON, BROOKFIELD, CHARLTON, CLINTON, DOUGLAS, DUDLEY, EAST BROOKFI, GRAFTON HOLDEN, LEICESTER, MILLBURY, NORTHBOROUGH, NORTHBRIDGE, NORTH BROOKF, OXFORD, PAXTON, PRINCETON, RUTLAND SHREWSBURY, SPENCER, STERLING, SUTTON, UXBRIDGE, WEBSTER, WESTBOROUGH, WEST BOYLSTO, WORCESTER					

NONMETROPOLITAN COUNTIES OR PARTS OF COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BERKSHIRE COUNTY TOWNS OF ADAMS, ALFORD, BECKET, CLARKSBURG, EGREMONT FLORIDA, GREAT BARRIN, HANCOCK, MONTEREY, MOUNT WASHIN, NEW ASHFORD, NEW MARLBORO, NORTH ADAMS, OTIS, PERU SANDISFIELD, SAVOY, SHEFFIELD, TYRINGHAM, WASHINGTON, WEST STOCKBR, WILLIAMSTOWN, WINDSOR	298	362	426	532	596
WORCESTER COUNTY TOWNS OF ATHOL, GARDNER, HARDWICK, HUBBARDSTON NEW BRAINTRE, OAKHAM, PETERSHAM, PHILLIPSTON, ROYALSTON, SOUTHBRIDGE, STURBRIDGE, TEMPLETON, WARREN, WEST BROOKFI WINCHENDON	330	389	469	575	639

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 060387
FINAL FMRS

S T A T E: MICHIGAN	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
DETROIT, MI PMSA	341	410	478	596	664
COUNTY(IES): LAPEER, LIVINGSTON, MACOMB, MONROE, OAKLAND, ST CLAIR, WAYNE					
GRAND RAPIDS, MI MSA	248	304	356	444	501
COUNTY(IES): KENT, OTTAWA					

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
CHIPPEWA	217	263	311	388	434
MACKINAC	217	263	311	388	434

DELTA	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
	217	263	311	388	434

STATE: MISSISSIPPI

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
JONES	230	267	301	342	380

S T A T E: NEW HAMPSHIRE	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
LAWRENCE-HAVERHILL, MA-NH PMSA	405	493	591	675	751
COUNTY: ROCKINGHAM TOWNS OF ATKINSON, BRENTWOOD, DANVILLE, DERRY, EAST KINGSTO, HAMPSTEAD, KINGSTON, NEWTON, PLAISTOW SALEM, SANDOWN, SEABROOK, WINDHAM					
LOWELL, MA-NH PMSA	390	474	553	669	763
COUNTY: HILLSBOROUGH TOWNS OF PELHAM					

NONMETROPOLITAN COUNTIES OR PARTS OF COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BELKNAP COUNTY	317	382	445	551	617
CHESHIRE COUNTY	355	430	507	633	700
HILLSBOROUGH COUNTY TOWNS OF ANTRIM, BENNINGTON, DEERING, FRANCESTOWN GREENFIELD, GREENVILLE, HANCOCK, HILLSBOROUGH, LYNDEBOROUGH, MASON, NEW BOSTON, NEW IPSWICH, PETERBOROUGH, SHARON TEMPLE, WEARE, WINDSOR	400	486	571	714	790
MERRIMACK COUNTY TOWNS OF ANDOVER, BOSCAWEN, BOW, BRADFORD, CANTERBURY CHICHESTER, CONCORD, DANBURY, DUNBARTON, EPSOM, FRANKLIN, HENNIKER, HILL, HOPKINTON, LOUDON, NEWBURY, NEW LONDON NORTHFIELD, PEMBROKE, PITTSFIELD, SALISBURY, SUTTON, WARNER, WEBSTER, WILMOT	391	474	558	698	781
ROCKINGHAM COUNTY TOWNS OF CHESTER, DEERFIELD, EPPING, FREMONT HAMPTON FALL, KENSINGTON, NORTHWOOD, NOTTINGHAM, RAYMOND, SOUTH HAMPTO	400	486	571	714	790
STRAFFORD COUNTY TOWNS OF MIDDLETON, NEW DURHAM, STRAFFORD	364	433	509	637	703

S T A T E: NEW JERSEY	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ALLENTOWN-BETHLEHEM, PA-NJ MSA	290	352	411	518	577
COUNTY(IES): WARREN					
JERSEY CITY, NJ PMSA	330	400	471	588	659
COUNTY(IES): HUDSON					
MIDDLESEX-SOMERSET-HUNTERDON, NJ PMSA	442	537	631	790	884
COUNTY(IES): HUNTERDON, MIDDLESEX, SOMERSET					
MONMOUTH-OCEAN, NJ PMSA	397	481	567	709	794
COUNTY(IES): MONMOUTH, OCEAN					
NEWARK, NJ PMSA	371	450	530	662	742
COUNTY(IES): ESSEX, MORRIS, SUSSEX, UNION					
PHILADELPHIA, PA-NJ PMSA	334	404	474	592	662
COUNTY(IES): BURLINGTON, CAMDEN, GLOUCESTER					
TRENTON, NJ PMSA	419	508	598	748	837
COUNTY(IES): MERCER					

S T A T E: NEW YORK	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BUFFALO, NY PMSA	274	332	391	489	547
COUNTY(IES): ERIE					
NEW YORK, NY PMSA	353	428	503	631	706
COUNTY(IES): BRONX, KINGS, NEW YORK, PUTNAM, QUEENS, RICHMOND, ROCKLAND, WESTCHESTER					
NIAGARA FALLS, NY PMSA	263	319	375	469	525
COUNTY(IES): NIAGARA					
ORANGE COUNTY, NY PMSA	350	425	500	625	700
COUNTY(IES): ORANGE					
POUGHKEEPSIE, NY MSA	402	488	575	718	805
COUNTY(IES): DUTCHESS					
SYRACUSE, NY MSA	278	332	389	486	545
COUNTY(IES): MADISON, ONONDAGA, OSWEGO					

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
SCHOHARIE	264	310	365	455	510

SULLIVAN	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
	274	335	394	481	550

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 060387
FINAL FMRS

STATE: NORTH CAROLINA

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
CHATHAM	297	361	425	531	594	HAYWOOD	228	274	323	404	453
LENOIR	233	283	333	417	468	MACON	244	297	350	438	491

STATE: OHIO

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
DAYTON-SPRINGFIELD, OH MSA					
COUNTY(IES): CLARK, GREENE, MIAMI, MONTGOMERY	258	314	366	459	510

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
MUSKINGUM	236	286	337	421	471						

STATE: OKLAHOMA

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
GRADY	200	243	286	357	400	STEPHENS	200	243	286	357	400

STATE: OREGON

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
PORTLAND, OR PMSA					
COUNTY(IES): CLACKAMAS, MULTNOMAH, WASHINGTON, YAMHILL	296	361	433	560	620

STATE: PENNSYLVANIA

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ALLENTOWN-BETHLEHEM, PA-NJ MSA					
COUNTY(IES): CARBON, LEHIGH, NORTHAMPTON	290	352	411	518	577
PHILADELPHIA, PA-NJ PMSA					
COUNTY(IES): BUCKS, CHESTER, DELAWARE, MONTGOMERY, PHILADELPHIA	334	404	474	592	662
SCRANTON--WILKES-BARRE, PA MSA					
COUNTY(IES): COLUMBIA, LACKAWANNA, LUZERNE, MONROE, WYOMING	243	299	348	429	486

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BRADFORD	239	291	342	427	478	PIKE	277	324	400	496	540
TIOGA	239	291	342	427	478	WAYNE	266	324	381	477	534

STATE: RHODE ISLAND

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
PAWTUCKET-WOONSOCKET-ATTLEBORO, RI-MA PMSA	326	395	465	570	651
COUNTY: PROVIDENCE TOWNS OF BURRILLVILLE, CENTRAL FALL, CUMBERLAND, LINCOLN, NORTH SMITHF, PAWTUCKET, SMITHFIELD WOONSOCKET					
PROVIDENCE, RI PMSA	345	411	482	604	673
COUNTY: BRISTOL TOWNS OF BARRINGTON, BRISTOL, WARREN					
COUNTY: KENT TOWNS OF COVENTRY, EAST GREENWI, WARWICK, WEST WARWICK					
COUNTY: NEWPORT TOWNS OF JAMESTOWN					
COUNTY: PROVIDENCE TOWNS OF CRANSTON, EAST PROVIDE, FOSTER, GLOCESTER, JOHNSTON, NORTH PROVID, PROVIDENCE, SCITUATE					
COUNTY: WASHINGTON TOWNS OF EXETER, NARRAGANSETT, NORTH KINGST, RICHMOND, SOUTH KINGST					

NONMETROPOLITAN COUNTIES OR PARTS OF COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
NEWPORT COUNTY TOWNS OF MIDDLETOWN, NEWPORT, PORTSMOUTH	406	493	580	725	812
WASHINGTON COUNTY TOWNS OF CHARLESTOWN, NEW SHOREHAM	311	378	445	556	622

STATE: SOUTH DAKOTA

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
CLARK	205	246	294	364	404						

STATE: TENNESSEE

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
CLARKSVILLE-HOPKINSVILLE, TN-KY MSA					
COUNTY(IES): MONTGOMERY	256	322	403	489	543

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 060387
FINAL FMRS

STATE: TEXAS

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
HALE	214	261	308	381	425
KARNES	187	227	267	334	374

STATE: VERMONT

NONMETROPOLITAN COUNTIES OR PARTS OF COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
RUTLAND COUNTY	288	359✓	412	516	577

STATE: VIRGINIA

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
NORFOLK-VIRGINIA BEACH-NEWPORT NEWS, VA MSA	308	369	425	523	585
COUNTY(IES): GLOUCESTER, JAMES CITY, YORK, CHESAPEAKE, HAMPTON, NEWPORT NEWS, NORFOLK, POQUOSON, PORTSMOUTH, SUFFOLK VIRGINIA BEA, WILLIAMSBURG					
RICHMOND-PETERSBURG, VA MSA	294	353	413	517	579
COUNTY(IES): CHARLES CITY, CHESTERFIELD, DINWIDDIE, GOOCHLAND, HANOVER, HENRICO, NEW KENT, POWHATAN, PRINCEGEORGE COLONIAL HEI, HOPEWELL, PETERSBURG, RICHMOND					

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
CARROLL	217	263	310	388	434
FRANKLIN	222	270	318	397	445
ISLE OFWIGHT	208	253	294	367	403
SOUTHAMPTON	208	253	294	367	403
GALAX	217	263	310	388	434
FAUQUIER	268	325	383	479	536
HENRY	258	313	368	460	516
LOUISA	272	328	383	479	536
BEDFORD	222	270	318	397	445

STATE: WASHINGTON

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
VANCOUVER, WA PMSA	253	308	384	500	560
COUNTY(IES): CLARK					

STATE: WEST VIRGINIA

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
HARRISON	276	323	374	486	536

STATE: WISCONSIN

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
MADISON, WI MSA	300	366	436	529	610
COUNTY(IES): DANE					
MILWAUKEE, WI PMSA	302	366	431	538	603
COUNTY(IES): MILWAUKEE, OZAUKEE, WASHINGTON, WAUKESHA					

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

BILLING CODE 4210-27-C

SCHEDULE D—FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) 051887

	Single wide space	Double wide space
State: California:		
Oxnard-Ventura, CA PMSA, County(ies): Ventura	198	298
State: Colorado:		
Boulder-Longmont, CO PMSA, County(ies): Boulder	220	240
Denver, CO PMSA, County(ies): Adams, Arapahoe, Denver, Douglas, Jefferson	250	270
State: New York:		
Albany-Schnectady-Troy, NY MSA, County(ies): Albany, Greene, Montgomery, Rensselaer, Saratoga, Schnectady	148	148
State: Oregon:		
Portland, OR PMSA, County(ies): Clackamas, Multnomah, Washington, Yamhill	174	193

[FR Doc. 87-14761 Filed 6-29-87; 8:45 am]

BILLING CODE 4210-27-M

federal register

Tuesday
June 30, 1987

Part V

Department of Transportation

Research and Special Programs Administration

Triborough Bridge and Tunnel Authority

Regulations Governing Transportation of Radioactive Materials and Explosives; Notice

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Inconsistency Ruling No. IR-20; Docket No. IRA-37]

Triborough Bridge and Tunnel Authority Regulations Governing Transportation of Radioactive Materials and Explosives

Applicant: Citizens Against Nuclear Trucking.

Regulations Affected: §§ 1074.3, 1074.6 and 1075.19 of the Triborough Bridge and Tunnel Authority (TBTA) Regulations governing the shipment and transportation of certain radioactive materials and explosives over or through seven bridges and two tunnels regulated by the TBTA.

Applicable Federal Requirements: Hazardous Materials Transportation Act (HMTA) (Pub. L. 93–633, 49 App. U.S.C. 1801 *et seq.*) and the Hazardous Materials Regulations (HMR) (49 CFR Parts 170–179) issued thereunder.

Modes Affected: Highway

Issue Date: June 23, 1987

Ruling: Sections 1074.3 and 1075.19, as well as paragraph (a) and the "permission to use" phrase in paragraph (b) of § 1074.6, of the Triborough Bridge and Tunnel Authority Regulations are inconsistent with the HMTA and the HMR and, therefore, preempted under 49 App. U.S.C. 1811(a). Paragraphs (c), (d), (e), and the "traffic permitting" phrase in paragraph (b) of § 1074.6, as construed in this ruling, are consistent with the HMTA and the HMR. The record is insufficient to make a determination concerning the consistency of the weekday time restrictions in paragraph (b) of § 1074.6.

Summary: This inconsistency ruling is the opinion of the Office of Hazardous Materials Transportation (OHMT) concerning whether §§ 1074.3, 1074.6 and 1075.19 of the Regulations of the Triborough Bridge and Tunnel Authority are inconsistent with the HMTA and regulations issued thereunder and thus preempted by section 112(a) of the HMTA. This ruling was applied for and is issued under the procedures set forth at 49 CFR 107.201–107.209.

For Further Information Contact: Edward H. Bonekemper, III, Senior Attorney, Office of the Chief Counsel, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590 [Tel. (202) 366–4362].

I. Background

A. Chronology

On July 21, 1986, Citizens Against Nuclear Trucking (CANT) filed an application for an administrative ruling seeking a determination that §§ 1074.3 and 1075.19 of the regulations of TBTA regulating the transport of certain radioactive materials and explosives are inconsistent with the HMTA and the HMR. These TBTA rules regulate carriage of certain radioactive materials and explosives over the Triborough Bridge, Bronx-Whitestone Bridge, Throgs Neck Bridge, Henry Hudson Bridge, Marine Parkway Gil Hodges Memorial Bridge, Cross Bay Veterans Memorial Bridge, and the Verrazano-Narrows Bridge and through the Queens Midtown Tunnel and the Brooklyn-Battery Tunnel. They prohibit certain transport unless U.S. Department of Transportation (DOT) requirements have been met and prior permission has been obtained from TBTA. Section 1074.3 cross-references § 1074.6, which contains related requirements.

On October 20, 1986, the Office of Hazardous Materials Transportation (OHMT) published a Public Notice and Invitation to Comment on CANT's application. [51 FR 37248]. A correction was published on November 5, 1986 [51 FR 40294]. No comments were received in response to the Public Notice and Invitation to Comment.

B. Preemption under the HMTA

The HMTA at section 112(a) (49 App. U.S.C. 1811(a)) preempts ". . . any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in [the HMTA], or in a regulation issued under [the HMTA]." This express preemption provision makes it evident that Congress did not intend the HMTA and its regulations to completely occupy the field of transportation so as to preclude any state or local action. The HMTA preempts only those state and local requirements that are "inconsistent."

Although advisory in nature, inconsistency rulings issued by the Department under 49 CFR Part 107, Subpart C provide an alternative to litigation for a determination of the relationship between Federal requirements and those of a state or political subdivision thereof. If a state or political subdivison requirement is found to be inconsistent, the state or local government then may apply to the Secretary of Transportation for a determination as to whether preemption will be waived (49 App. U.S.C. 1811(b); 49 CFR 107.215–107.225).

Since these proceedings are conducted pursuant to the HMTA, only the question of statutory preemption under the HMTA will be considered. A Federal court might find a non-Federal requirement statutorily preempted under another statute or preempted by the Commerce Clause of the U.S. Constitution because of an undue burden on interstate commerce. However, the Department of Transportation does not make such determinations in the context of an inconsistency ruling.

OHMT has incorporated into its procedures (49 CFR 107.209(c)) the following case law criteria for determining whether a state or local requirement is consistent:

(1) Whether compliance with both the non-Federal requirement and the Act or the regulations issued under the Act is possible; and

(2) The extent to which the non-Federal requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act.

The first criterion, commonly called the "dual compliance" test, concerns those non-Federal requirements which are irreconcilable with Federal requirements; that is, compliance with the non-Federal requirement causes the Federal requirement to be violated, or *vice versa*. The second criterion, the "obstacle" test, requires an analysis of the non-Federal requriement in light of the requirements of the HMTA and the HMR, as well as the purposes and objectives of Congress in enacting the HMTA and the manner and extent to which those purposes and objectives have been carried out through the OHMT's regulatory program.

Certain areas of transportation safety do demand a strong, predominant Federal role. In the HMTA's Declaration of Policy Section 102 and in the Senate Commerce Committee language reporting out what became Section 112 of the HMTA, Congress indicated a desire for uniform national standards in the field of hazardous materials transportation. Congress inserted the preemption language in Section 112(a) "in order to preclude a multiplicity of state and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous material transportation" S. Rep. 1192, 93rd Cong., 2d Sess., 37–38 (1974). Through its enactment of the HMTA, Congress gave the Department the authority to promulgate uniform national standards. While the HMTA did not totally preclude state or local action in this area, Congress apparently

intended, to the extent possible, to make such state or local action unnecessary. The comprehensiveness of the HMR severely restricts the scope of historically permissible state or local activity. The nature, necessity and number of hazardous materials shipments make uniform standards extremely important.

There is a longstanding Federal-state relationship in the field of highway transportation safety which recognizes the legitimacy of state action taken to protect persons and property within the state, even where such action impacts upon interstate commerce. Despite the dominant role that Congress intended for the standards of the Department, there are certain aspects of hazardous materials tansportation that are not amenable to exclusive nationwide regulation. One example is traffic control. Although the Federal Government can regulate in order to establish certain national standards promoting the safe, smooth flow of highway traffic, maintaining that flow in the face of short-term disruptions is necessarily a predominantly local reasponsibility. Another aspect of hazardous materials transportation that is not amenable to effective nationwide regulation is the problem of safety hazards which are peculiar to a local area. To the extent that nationwide regulations do not adequately address a uniquely local safety hazard, state or local governments can regulate narrowly for the purpose of eliminating or reducing the hazard.

It is important to note that, even when there is an unquestionably unique local safety hazard, a State or local government may not resolve the problem by effectively exporting it to another jurisdiction. *(Kassel v. Consolidated Freightways,* 450 U.S. 662 (1981)). For example, a previous inconsistency ruling dealing with a hazardous materials routing rule issued by the City of Boston (IR–3, 46 FR 18918, March 26, 1981), stated that consistency with the HMTA requires a state or local government to "act through a process that adequately weighs the full consenquences of its routing choices and ensures the safety of citizens in other jurisdictions that will be affected by its rules." (46 FR 18922).

II. The TBTA Regulations

A. Summary

Section 1074.3 of the TBTA Regulations prohibits most shipments of class A or B explosives or radioactive materials over seven named bridges. It allows shipments of radioactive pharmaceuticals over three of the bridges under certain conditions.

Section 1074.6 applies only to transportation of explosives over the Throgs Neck Bridge, transportation which also is regulated under § 1074.3. Both sections contain prohibitions on the transportation of most class A and B explosives over that Bridge, the latter section cross-references the former, both were reprinted in Appendix A to the public notice on this matter, and both must be considered in order to understand under what circumstances class A or B explosives maybe transported across the Throgs Neck Bridge. Therefore, the consistency of both §§ 1074.6 and 1074.7 will be discussed in this ruling.

Finally, § 1075.19 prohibits most shipments of radioactive materials through the Queens Midtown Tunnel or the Brooklyn-Battery Tunnel or over the Verrazano-Narrows Bridge Lower Level. It provides exceptions for small quantities of radioactive materials under specified limited conditions.

CANT contends that its members live and work near a highway affected by the cited provisions and thus are affected by those provisions. They contend that TBTA's "ban" on radioactive shipments across its bridges caused a truck carrying low-level nuclear waste to be diverted into their neighborhood, where it collided with a rail bridge over a city street.

CANT asserts that the TBTA regulations are inconsistent for two general reasons:

(1) They place routing restrictions on shipments of materials that are exempted from such requirements under Federal rules, and

(2) They force use of a highly circuitous route that passes through more densely populated areas on local streets when safer interstate highways are available.

The applicant contends that these regulations are inconsistent with the Federal regulations because they significantly restrict movement by public highway and apply because of the hazardous nature of the cargo. Thus, it asserts, they constitute a prohibited local routing rule.

Also, CANT states that these regulations are inconsistent with 49 CFR 177.825(a) because they block use of a route that minimizes radiological risk: To avoid the bridges controlled by TBTA, the driver must use New York City bridges that pass through the most densely populated and active areas of the City along local roads not designed to interstate highway standards.

Finally, CANT contends that these regulations fail both the "obstacle" and "dual compliance" tests. They assert that these regulations are an obstacle to choosing a route that minimizes risk and that simultaneous compliance with them and with 49 CFR 177.825(a) is impossible.

B. Regulation of Explosive Materials Transportation

Section 1074.3, entitled "Explosives—radioactive materials," prohibits transportation of most class A or B explosives (all except special fireworks in quantities of 10 pounds or less per vehicle) over seven designated bridges, including the Throgs Neck Bridge. That section, however, begins with the words, "Except as otherwise set forth in § 1074.6 of this Part, ..." Section 1074.6 is entitled "Transportation of explosives over the Throgs Neck Bridge," and its provisions thus appear to govern transportation over that Bridge.

Section 1074.6 prohibits transportation across the Throgs Neck Bridge of the same quantities of class A or B explosives as described above for § 1074.3 except if the following five conditions are met:

(a) Prior permission must be granted by the facility supervisor of the bridge, or his authorized representative, at least two hours before intended travel over the bridge.

(b) If permission to use the facility is granted by the facility supervisor or his representative, passage may be made during the following hours:

Monday through Friday—10:00 a.m. to 3 p.m., 7 p.m. to 6 a.m.

Saturdays, Sundays and holidays—traffic permitting.

(c) Vehicles transporting class A or B explosives, their contents and shipping documents, shall be subject to inspection by bridge personnel prior to entering the facility.

(d) Operators of vehicles transporting class A or B explosives must comply with all lawful orders, instructions and directives of authorized bridge personnel.

(e) Vehicles transporting class A or B explosives, whether halted or in motion, must remain at least 300 feet behind any vehicle traveling in the same direction while crossing the bridge.

This provision is not a total ban or prohibition on the transport of class A or B explosives; if it were, it would be inconsistent *per se.* IR–3, *supra;* IR–3(A), 47 FR 18457 (Apr. 29, 1982); IR–10, 49 FR 46645 (Nov. 27, 1984); IR–16, 50 FR 20872 (May 20, 1985). Instead it is a permit or approval system; such a system is not *per se* inconsistent, but its consistency depends upon the consistency of the requirements that must be complied with in order to obtain approval to

transport. IR–2, 44 FR 75566 (Dec. 20, 1979); IR–3, *supra*. Although hazardous materials transportation approval requirements identical to Federal requirements are consistent (IR–14, 49 FR 46656 (Nov. 27, 1984); IR–15, 49 FR 46660 (Nov. 27, 1984)), such transportation approval requirements different from or additional to Federal requirements are inconsistent. IR–8, FR 46637 (Nov. 27, 1984); IR–8(A), 52 FR 13000 (Apr. 20, 1987); IR–10, *supra*; IR–11, 49 FR 46647 (Nov. 27, 1984); IR–12, 49 FR 46650 (Nov. 27, 1984); IR–13, 49 FR 46653 (Nov. 27, 1984); IR–15, supra; IR–15(A), 52 FR 13062 (Apr. 20, 1987).

Because permission to transport explosives across the Throgs Neck Bridge is made contingent upon compliance with each of five conditions, the inconsistency of any of them would render the entire approval process of § 1074.6 inconsistent unless any inconsistent provision is severed from the process. Thus, in order to make a consistency determination concerning that section, it is necessary to evaluate the consistency of each of the five stipulated conditions.

Paragraph (a) requires permission from the bridge's facility supervision (or his authorized representative) at least two hours before intended travel over the bridge. Because no standards are set forth defining when permission will or will not be granted, the facility supervisor (or authorized representative) has the type of unfettered discretion to prohibit transportation which has been found previously to be inconsistent with the HMTA and the HMR. IR–8(A), *supra* at 13003, 13006; IR–15(A), *supra* at 13063; IR–18, 52 FR 200 at 203 (Jan. 2, 1987).

Another problem with Paragraph (a) is its time requirement. Requiring approval at least two hours before the intended transportation across the Bridge is inconsistent with a primary objective of the HMTA and the HMR: expediting shipments of hazardous materials in order to reduce time in transit and consequent exposure to accidents. "The manifest purpose of the HMTA and the Hazardous Materials Regulations is safety in the transportation of hazardous materials. Delay in such transportation is incongruous with safe transportation." IR–2, *supra*, at 75571." The mere threat of delay may redirect commercial hazardous materials traffic into other jurisdictions that may not be aware of or prepared for a sudden, possibly permanent, change in traffic patterns." IR–3, *supra* at 18921. "Since safety risks are 'inherent in the transportation of hazardous materials in commerce' [49 U.S.C. 1801], an important aspect of transportation safety is that transit time be minimized. This precept has been incorporated in the HMR at 49 CFR 177.853, which directs highway shipments to proceed without unnecessary delay, and at 49 CFR 174.14, which directs rail shipments to be expedited within a stated time frame." IR–6, 49 FR 760 at 765 (Jan. 6, 1983); see also IR–16, *supra*, at 20879.

Since Paragraph (a) requires the *approval* of the transportation at least two hours before the transportation, additional delay beyond two hours would result between the time approval is requested and the time approval is granted. It is difficult to judge the length of the delay because the regulation does not explain what information, if any, may be requested or required in order to obtain the necessary approval. There is no evidence in the record that this notice requirement serves any specific purpose (e.g., providing adequate time for the TBTA to provide escorts). Thus, paragraph (a) threatens the possibility of significant delay in transportation and, as indicated in IR–3, *supra*, may be a cause of the type of diversions of traffic complained of by the applicants.

In summary, paragraph (a) contains a broadly discretionary and delay-inducing approval process which is inconsistent with the HMTA and the HMR.

Paragraph (b) of § 1074.6 provides that, if permission is granted to cross the bridge, passage may only be made on weekdays between 10 a.m. and 3 p.m. and between 7 p.m. and 6 a.m., and on Saturdays, Sundays and holidays—"traffic permitting." Because paragraph (a) is inconsistent, the language in Paragraph (b) referring back to the approval process in (a) also is inconsistent.

The time restrictions in paragraph (b) require separate analysis. In IR–3, *supra* a city prohibition of hazardous materials transportation in a downtown area between 6 a.m. and 8 p.m. on weekdays was found consistent only insofar as it applied to in-city pickups and deliveries. Time restrictions going beyond those on in-city pickups and deliveries, however, must have an adequate safety justification and be appropriately coordinated with adjoining affected jurisdictions. IR–3(A), *supra*. A statewide prohibition of hazardous materials transportation from 7–9 a.m. and 4–6 p.m. on weekdays was found inconsistent. IR–2, *supra; National Tank Truck Carriers, Inc. v. Burke*, 535 F. Supp. 509 (R.I. 1982), aff'd 698 F.2d 559 (1st Cir. 1983). However, a citywide prohibition of such transportation from 6–10 a.m. and 3–7 p.m. was found consistent. *National Tank Truck Carriers, Inc. v. City of New York*, 677 F.2d 270 (2nd Cir. 1982), affirming *City of New York v. Ritter Transportation Co.*, 515 F. Supp. 663 (S.D. N.Y. 1981).

In the case at hand, there is no information concerning any safety justification for these time restrictions, any coordination of them with adjoining affected jurisdictions, or concerning any delays or redirection of hazardous materials shipments resulting therefrom. In the absence of such information, it would be inappropriate to render a decision on the consistency of these time restrictions. Thus, no opinion is expressed concerning the consistency of the time restrictions in paragraph (b).

Paragraph (b) allows weekend and holiday transportation of class A and B explosives—"traffic permitting." So long as that pharse represents a criterion that is reasonably administered to restrict or suspend operations only when road, weather, traffic or other hazardous conditions or circumstances warrant, it is consistent with the HMTA and the HMR. IR–3, *supra;* IR–15(A), *supra; American Trucking Assns. v. City of Boston*, C.A. 81–628–MA (D. Mass. 1981); *National Tank Truck Carriers, Inc. v. Burke*, 535 F. Supp. 509 (D. R.I. 1982), *aff'd* 698 F.2d 559 (1st Cir. 1983). Local traffic controls are presumed to be valid. In the absence in the record of any evidence of unreasonable administration, paragraph (b)'s "traffic permitting" limitation on weekend and holiday transportation is consistent with the HMTA and the HMR.

Paragraph (c) of § 1074.6 provides that vehicles transporting class A or B explosives, as well as their contents and shipping documents, are subject to inspection by bridge personnel prior to entering the bridge. Inspection requirements imposed to assure compliance with Federal or consistent requirements are themselves consistent. IR–2, *supra* at 75572; IR–8, *supra* at 46644; IR–15, *supra* at 46666; IR–17, 57 FR 20925 at 20930 (June 9, 1986). RSPA encourages state and local enforcement of, and inspections for compliance with, Federal and consistent hazardous materials transportation requirements. Therefore, in the absence of any evidence that the TBTA inspections are for compliance with inconsistent requirements, paragraph (c) is consistent with the HMTA and the HMR.

Similarly, paragraph (d) of § 1074.6 facilitates safe transportation by requiring operators of vehicles transporting class A or B explosives to comply with all lawful orders, instructions and directives of authorized bridge personnel. Because such orders,

etc. would not be "lawful" if inconsistent with the HMTA or the HMR, this provision requires compliance only with orders (regulations), instructions and directives issued by the Federal Government or those issued by the TBTA that are consistent with the HMTA and the HMR. As such, this provision is consistent with the HMTA and the HMR.

Finally, paragraph (e) of § 104.6 requires vehicles transporting class A or B explosives, whether halted or in motion, to remain at least 300 feet behind any vehicle traveling in the same direction while crossing the bridge. This requirement is more restrictive in some respects than a City of Boston distance restriction found consistent in IR–3, *supra*:

> 7.1.2 Except when overtaking or passing in opposite directions of travel, all vehicles transporting hazardous materials shall maintain a minimum distance of at least 300 feet from other vehicles carrying hazardous materials except where the conditions of traffic make it impractical to do so. This requirement shall apply whether such vehicles are moving or parked except when at a destination or point of origin.

Unlike the Boston rule, the TBTA requirement makes no exception for overtaking situations or for situations in which traffic conditions make it impractical to comply. However, TBTA's paragraph (e) requires a 300-feet separation distance only "behind" any vehicle traveling in the same direction. Because a vehicle driver would have no control over the distance that vehicle is from vehicles in adjoining lanes (in which, for example, vehicles could pass that vehicle and remain slightly ahead of it), it is assumed that paragraph (e) applies only to traffic ahead of, and in the same lane as, the vehicle carrying class A or B explosives. Therefore, construed as applying within a single lane of traffic, paragraph (e) does not create any obvious hazards, does not cause unreasonable delays, and thus is consistent with the HMTA and the HMR.

In summary, the consistency of each of the paragraphs of § 1074.6 is as follows:

(a) Inconsistent
(b) "Permission to use" language—Inconsistent
Weekday time restrictions—No opinion
"Traffic permitting" restriction—Consistent
(c) Consistent
(d) As construed, consistent
(e) As construed, consistent.

Therefore, based on the limited record in this matter and construed as indicated, the § 1074.6 class A or B explosives approval process for the Throgs Neck Bridge may, consistent with the HMTA and the HMR, be implemented by the TBTA, with the exception of paragraph (a) and the "permission to use" portion of paragraph (b)—and with the possible exception of the weekday time restrictions, concerning which no opinion is rendered.

Except for the foregoing restricted passage over the Throgs Neck Bridge, § 1074.3(a) of the TBTA's regulations prohibits the transportation of a single vehicle of any class A or B explosives (except special fireworks, including railway or track torpedoes, in quantities of ten pounds or less) across the Triborough Bridge, Bronx-Whitestone Bridge, Henry Hudson Bridge, Marine Parkway Gil Hodges Memorial Bridge, Cross Bay Veterans Memorial Bridge and the Verrazano-Narrows Bridge Upper Level.

State or local prohibitions upon the transportation of hazardous materials generally are inconsistent with the HMTA and the HMR. State or local governments may not resolve problems related to such transportation by exporting those problems to other jurisdictions. *Kassel v. Consolidated Freightways*, 450 U.S. 662 (1981).

The inconsistency of local bans was discussed in the Decision on Appeal of IR–3, *supra:*

> The power to ban, as contrasted with the power to channel and guide the flow of hazardous materials highway traffic, in our view, is exclusively Federal. The nature of the subject matter and the structure and purpose of the HMR and the HMTA support this view. Hazardous materials, packaged and handled as required by the HMR, are safe for movement in interstate commerce. The HMR assume that they move freely and expeditiously under levels of local regulation appropriate to local highway traffic flow management considerations and emergency response planning and management. A unilateral local ban is a negation, rather than an exercise, of local responsibility, since it isolates the local jurisdiction from the risks associated with the commercial life of the nation.
>
> 47 FR 18457.

In this instance, the transportation of class A and B explosives is thoroughly regulated by the HMR under the authority of the HMTA. The HMR prohibit the transportation of ten specific explosives, 49 CFR 173.51; contain detailed requirements relating to the packaging and handling of Class A explosives, §§ 173.3–173.87; and control the transportation of Class B explosives, §§ 173.88–173.95.

Therefore, transportation of Class A or B explosives in accordance with those regulations is presumptively safe and may not be prohibited by state or local governments. Thus, the ban in the TBTA's § 1074.3(a) on the transportation of class A or B explosives is inconsistent with the HMTA and the HMR and, therefore, preempted.

C. Regulation of Radioactive Materials Transportation

Section 1074.3(b) applies to the same six bridges as § 1074.3(a) and also to the Throgs Neck Bridge. Section 1074.3(b) prohibits transportation across those bridges of any radioactive materials, "including but not limited to radionuclides, nuclear fissionable material, reactor fuel rods, irradiated fuel rods, and radioactive ores, residues and wastes," with three limited exceptions.

Those three exceptions are as follows:

> (1) When the type and quantity of radioactive material is such that it is exempt from all U.S.D.O.T. prescribed packaging, marking, labeling and placarding;
>
> (2) When radioactive materials are a component part of manufactured articles other than liquids, such as instrument or clock dials or electronic tubes or apparatus, which are exempt from all U.S.D.O.T. specification packaging, marking, labeling and placarding; and
>
> (3) With respect to the Verrazano-Narrows Bridge, upper level only, the Bronx-Whitestone Bridge and the Triborough Bridge, when radioactive pharmaceuticals are shipped in compliance with the packaging, marking, labeling, placarding and all other regulations issued by the United States Department of Transportation, and when prior permission has been granted by the facility supervisor or his authorized representative at least two hours before he intended travel over the bridge.

Because the first two exceptions allow transportation of radioactive materials which are exempt from DOT requirements, they are consistent with the HMTA and the HMR. To the extent that the third exception allows transportation of radioactive pharmaceuticals across three bridges when they are in compliance with DOT regulations, it is similarly consistent.

However, the third exception contains the same type of inconsistent provision as § 1074.6(a), which governs transportation of class A or B explosives over the Throgs Neck Bridge and was discussed above. Because no standards are provided defining when permission will or will not be granted, the facility supervisor or authorized representative has the type of unfettered discretion to prohibit transportation which is inconsistent with the HMTA and the

HMR. IR–8(A), *supra* at 13003, 13006; IR–15(A), *supra* at 13063; IR–18, *supra* at 203. Similarly inconsistent is the time-consuming and delay-inducing requirement of at least two hours' advance approval for transportation. As indicated in the discussion above of the similar language in § 1074.6(a), this provision involves unnecessary delay, increases safety risks, and is inconsistent with the HMTA and the HMR, particularly § 177.853 thereof. IR–2, IR–3, IR–6, IR–16, all *supra*.

The larger problems here, however, are that exception (3) impliedly bans the transportation of radioactive pharmaceuticals over the Throgs Neck Bridge, the Henry Hudson Bridge, the Marine Parkway Gil Hodges Memorial Bridge, and that § 1074.3 in its entirety bans the transportation of all DOT-regulated radioactive materials except radioactive pharmaceuticals across seven delineated bridges. Since these bans explicitly do not apply to certain radioactive materials exempt from DOT requirements, it is clear that they *do* apply to radioactive materials regulated by DOT.

Combined with the companion TBTA prohibitions on transportation of radioactive materials in § 1075.19, discussed *infra*, these § 1074.3(b) limitations might be evaluated either as prohibitions of radioactive materials transportation or as *de facto* routing requirements which effectively divert that transportation to other bridges and tunnels in the New York City area. Whether viewed as bans on transportation or as *de facto* routing requirements, these provisions are inconsistent with the HMTA and the HMR.

The TBTA effectively bans the transportation of most radioactive materials across seven bridges and two tunnels under its jurisdiction. Such a ban is similar to a unilateral local ban, which was described in IR–3(A), *supra* at 18457 as "a negation, rather than an exercise, of local responsibility, since it isolates the local jurisdiction from the risks associated with the commercial life of the nation." Political subdivisions, like the TBTA, may not resolve problems associated with radioactive materials transportation by effectively exporting them to other political subdivisions. Preamble to IR–7 through IR–15 (the "Nine-Pack"), 46 FR 46632 at 46633 (Nov. 27, 1984), citing *Kassel v. Consolidated Freightways*, 450 U.S. 662 (1981) and IR–3, *supra*. Therefore, prohibitions of radioactive materials shipments, including those of spent nuclear fuel, are inconsistent with the HMTA and HMR. *Jersey Central Power & Light Co. v. Township of Lacey*, 772 F.2d 1103 (3rd Cir. 1985); IR–16, *supra;* IR–18, *supra;* see 49 CFR Part 177, Appendix A. TBTA's prohibitions thus are inconsistent with the HMTA and the HMR and, therefore, are preempted.

They are similarly inconsistent when viewed as routing restrictions. Routing restrictions on highway route controlled quantity radioactive materials not in accordance with 49 CFR 177.825(b), which authorizes state (not local) designation of certain alternate preferred routes, are inconsistent. IR–16, *supra;* IR–18, *supra; Jersey Central Power & Light Co. v. State of New Jersey*, Civil No. 84–5883 (D. N.J., Dec. 27, 1984), *appeal dismissed as moot* 772 F.2d 35 (3rd Cir. 1985).

> [T]hrough promulgation of 49 CFR 177.825, [DOT] has established a near total occupation of the field of routing . . . requirements relating to the transportation of radioactive materials. Thus, state and local radioactive materials transportation routing . . . requirements other than (1) those identical to Federal requirements or (2) state designated alternate routes under 49 CFR 177.825(b), are very likely to be inconsistent and thus preempted under section 112(a) of the HMTA.

IR–8(A), 52 FR 13000 at 13003.

Impacts of the rerouting caused by the TBTA's § 1074.3 were discussed in the following unrebutted statements made by the applicants in this case:

> CANT members live and work adjacent to the route recently used by carriers of low level waste from the Radiac Corporation. A truck from Radiac, carrying low level waste, recently collided with a rail bridge over a city street. The driver was using this route because other drivers from his firm had been turned back from the Verrazano Narrows Bridge which is part of Interstate 278.
>
> * * * * *
>
> Part 1074 is inconsistent because it blocks use of a route that minimizes radiological risk. To avoid the bridges controlled by TBTA, the driver must use New York City bridges that pass through the most densely populated and active areas of the City along local roads not designed to interstate highway standards.

49 CFR 177.825(a) states in pertinent part:

> The carrier shall ensure that any motor vehicle which contains a radioactive material for which placarding is required is operated on routes that minimize radiological risk. The carrier shall consider available information on accident rates, transit time, population density and activities, time of day and day of week during which transportation will occur . . .
>
> A finding of inconsistency must be based on the results of the "obstacle" or "dual compliance" tests. Part 1074 fails both tests. On the one hand, it is an obstacle to choosing a route that minimizes risk. On the other hand, complying with Part 1074 by avoiding TBTA bridges requires use of tunnels and bridges the pass through a highly populated area when a safer route is available that is also more direct than any of the routes using non-TBTA bridges. It is therefore impossible to simultaneously comply with both 1074 and 49 CFR 177.825(a).

With a supplement to their application, CANT provided a map of the New York City area. On the map they indicated a shorter, more direct route from the Radiac facility in Brooklyn via I–278 and the Verrazano-Narrows Bridge to the New Jersey Turnpike (I–95) and a longer, less direct route from Radiac via the Queensboro Bridge and streets of Manhattan to I–95 at a point several miles north of the intersection with I–95 resulting from use of the Verrazano-Narrows Bridge route. The unrebutted contention of CANT is that the longer route represents the only available route to comply with present TBTA rules. The record, therefore, indicates that the unavailability of the Verrazano-Narrows Bridge for most radioactive materials shipments causes such shipments to be diverted away from Interstate routes onto non-preferred routes (including local city streets), causes them to travel greater distances, and thus caused delay and greater exposure to the risks of transportation. A study map of the New York City area indicates that the restrictions on the Verrazano-Narrows, Throgs Neck, Bronx Whitestone and Triborough bridges would have similar effects on any highway transportation of radioactive materials between (1) Queens, Brooklyn, or all of Long Island and (2) the rest of the United States.

For all the foregoing reasons, the § 1074.3(b) prohibitions on the transportation of radioactive materials across seven specific bridges preclude compliance with § 177.825 of the HMR. They make it impossible for a carrier transporting placarded radioactive materials to operate on routes that minimize radiological risk, as required by § 177.825(a), and for a carrier transporting highway route controlled quantity radioactive materials to operate over a preferred route, as required by § 177.825(b). The prohibitions, as a result, fail the "dual compliance" test. In addition, because they create unnecessary delay, unjustifiably shift transportation risks to others, and constitute an impermissible local ban on transportation, these prohibitions also fail the "obstacle" test. Therefore, the TBTA's § 1074.3(b), in its entirety, is inconsistent with the HMTA and the HMR and thus is preempted.

Additional restrictions are placed upon the transportation of radioactive

materials by § 1075.19. That section prohibits transportation across the Verrazano-Narrows Bridge Lower Level and through Queens Midtown Tunnel and the Brooklyn-Battery Tunnel of "any radioactive material, including but not limited to radionuclides, nuclear or fissionable materials, radioactive ores, residue or waste or any radioactive material."

There are, however, three exceptions to this prohibition. Paragraph (a) excludes "specifically packaged and labeled magnesium-thorium alloys in formed shapes (not powdered, and which shall contain not more than four percent nominal thorium 232)." That provision bears some resemblance to RSPA's regulatory exception for certain articles containing natural uranium or thorium in § 173.424 of the HMR. However, the definition of hazard classes and hazardous materials is an exclusive Federal function. "The key to hazardous materials transportation safety is precise communication of risk. The proliferation of differing State and local systems of hazard classification is antithetical to a uniform, comprehensive system of hazardous materials transportation safety regulations." IR–6, *supra* at 764. Thus local provisions, such as paragraph (a) of § 1075.19, which in effect, create new definitions of regulated radioactive materials are inconsistent with the HMTA and the HMR. *Union Pacific RR Co. v. City of Las Vegas*, CV–LV–85–932 HDM (D. Nev. 1986); IR–8, IR–12, IR–15, IR–16, IR–18, all *supra*.

Paragraph (b) provides an exception for radioactive materials exempt from DOT packaging, labeling and marking requirements because of their type or quantity—"but not exempt by reason of Nuclear Regulatory Commission shipment and escort, military convoy or other special authorization." The effect of this provision is to prohibit shipments of radioactive materials made by or under the direction or supervision of the Department of Defense or Department of Energy, escorted by specifically designated or authorized personnel, and for national security purposes—even though RSPA, in § 173.7(b) of the HMR, has expected such shipments from the HMR. State governments or political subdivisions may not regulate—let alone prohibit—the transportation of radioactive or other hazardous materials specifically excepted from regulation under the HMTA or the HMR. The determination of what hazardous materials may or may not be regulated in the transportation field is the essence of DOT's exclusive authority to define and classify hazardous materials. IR–5, IR–6, IR–18, all *supra*.

Finally, paragraph (c) of the TBTA's § 1075.19 excepts from the general prohibition radioactive instrument or clock dials or electronic tubes shipped in conformity with DOT regulations—so long as the gross weight of the radioactive materials and their container does not exceed 500 pounds per vehicle and so long as prior permission has been granted by the facility supervisor or authorized representative at least two hours before the intended travel. As indicated in earlier discussions, an approval provision containing unfettered discretion and causing a delay of at least two hours is inconsistent with the HMTA and the HMR.

In addition, the weight limitation, because it applies only to the radioactive materials and their container rather than to the entire vehicle and its contents, is not a *bona fide* traffic control measure. Unlike the Interstate Highway System 80,000-pound maximum limitation at issue in *Jersey Central Power & Light Co. v. State of New Jersey*, Civil No. 84–5883 (D. N.J., Dec. 27, 1984), *appeal dismissed as moot* 772 F.2d 25 (3rd Cir. 1985), the TBTA limitation is prohibitively low and applies solely as a result of the hazardous nature of the cargo; it would ban numerous shipments which are in full compliance with the HMR and thus presumptively safe.

In summary, each of the three exceptions in § 1075.19 is inconsistent with the HMTA and the HMR. Furthermore, the remainder of that section is a prohibition on radioactive materials transportation through two tunnels and across one bridge which has the same or similar effects as the similar prohibition across seven bridges contained in § 1074.3(b). Because two tunnels are involved, an additional HMR provision is relevant:

Section 177.810 Vehicular tunnels

Except as regards radioactive materials, nothing contained in Parts 170–189 of this subchapter shall be so construed as to nullify or supersede regulations established and published under authority of State statute or municipal ordinance regarding the kind, character, or quantity of any hazardous material permitted by such regulations to be transported through any urban vehicular tunnel used for mass transportation. *For radioactive materials, see § 177.825 of this part.* (Emphasis added)

Even assuming that this provision authorizes the TBTA to regulate the transportation of other hazardous materials through these two urban vehicular tunnels, it clearly does not authorize the TBTA to prohibit the transportation of most radioactive materials through those tunnels. In fact, § 177.810 specifically provides that § 177.825 governs the transportation of radioactive materials through urban vehicular tunnels. Under the latter provision, a carrier of placarded radioactive materials is required to operate on routes that minimize radiological risk and a carrier of highway route controlled quantity radioactive materials is required to operate over preferred routes, (i.e., Interstate System routes, in the absence of a state-designated alternate route). All of the § 1075.19 prohibitions prevent compliance with the former requirement, and the Verrazano-Narrows Bridge Lower Level prohibition (combined with the § 1074.3 prohibition over the upper level of the same bridge) precludes compliance with the latter requirement. All of those provisions furthermore induce unnecessary delay and thus greater risk in transportation. Therefore, §1075.19 in its entirety fails both the "dual compliance" and the "obstacle" tests, is inconsistent with the HMTA and the HMR, and thus is preempted.

D. Summary

The bans on hazardous materials transportation contained in the TBTA regulations considered here not only cause rerouting and delays of such shipments but also deny them the use of Interstate routes and compel them to use local streets in the heart of a major metropolitan area. These prohibitions adversely affect the safety of virtually every significant highway shipment of class A or B explosives or radioactive materials between Queeens, Brooklyn or Long Island and the rest of the United States. They demonstrate the need for a systematic, inter-governmental, regional approach to the issue of hazardous materials routing in the New York City metropolitan area.

III. Ruling

For the foregoing reasons, I find §§ 1074.3 and 1075.19, as well as subsection (a) and the "permission to use" phrase in paragraph (b) of § 1074.6,

of the Triborough Bridge and Tunnel Authority Regulations inconsistent with the HMTA and the HMR and, therefore, preempted under 49 App. U.S.C. 1811(a). Paragraphs (c), (d), (e), and the "traffic permitting" phrase in paragraph (b) of § 1074.6, as construed in this ruling, are consistent with the HMTA and the HMR. The record is insufficient to make a determination concerning the consistency of the weekday time restrictions in paragraph (b) of § 1074.6.

Any appeal of this ruling must be filed within 30 days of service in accordance with 49 CFR 107.211.

Issued in Washington, DC on June 23, 1987.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 87-14812 Filed 6-29-87; 8:45 am]

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Part VI

Department of Transportation

Research and Special Programs Administration

Nevada Public Service Commission Regulations Governing Transportation of Hazardous Materials; Notice

DEPARTMENT OF TRANSPORTATION
Research and Special Programs Administration

[Inconsistency Ruling No. IR-19; Docket No. IRA-39]

Nevada Public Service Commission Regulations Governing Transportation of Hazardous Materials

Applicant: Southern Pacific Transportation Company.

State Regulations Affected: Sections 705.310–705.380 of the Nevada Administrative Code governing certain railroad-related loading, unloading, transfer and storage of specified hazardous materials in the State of Nevada.

Applicable Federal Requirements: Hazardous Materials Transportation Act (HMTA) (Pub. L. 93–633, 49 App. U.S.C. 1801 *et seq.)* and the Hazardous Material Regulations (HMR) (49 CFR Parts 170–179) issued thereunder.

Modes Affected: Rail and Highway.

Issue Date: June 23, 1987.

Ruling: Sections 705.310, 705.320, 705.330, 705.340, 705.350, 705.360, and 705.370 of the Nevada Administrative Code are inconsistent with the HMTA and regulations issued thereunder and thus are preempted. Section 705.380 thereof is consistent with the HMTA and the HMR and thus is not preempted.

Summary: This inconsistency ruling is the opinion of the Office of Hazardous Materials Transportation (OHMT) concerning whether §§ 705.310–705.380 of the Nevada Administrative Code are inconsistent with the HMTA and regulations issued thereunder and thus preempted by section 112(a) of the HMTA. This ruling was applied for and is issued under the procedures set forth at 49 CFR 107.201–107.209.

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I. Background

A. Chronology

On October 21, 1986, Southern Pacific Transportation Company (Southern Pacific) filed an in consistency ruling application in which it requested that §§ 705.310–705.380 of the Nevada Administrative Code be found inconsistent with the HMTA and the HMR. OHMT published a notice and invitation to comment concerning the application in the **Federal Register** (51 FR 42808; Nov. 25, 1986).

In response to that notice, the Nevada Public Service Commission (PSC) filed comments in support of its regulations and the Association of America Railroads, the State of New Jersey, the Electric Utility Companies' Nuclear Transportation Group, the Department of Energy, the Union Pacific System, Sea Containers America, Inc., the Southern Pacific Transportation Company and the National Tank Truck Carriers, Inc., filed comments contending that the Nevada regulations are inconsistent with the HMTA and the HMR.

Earlier, a dispute had arisen concerning the State of New Jersey's attempt to transport 7,200 tons of low-level radiation-contaminated soils to Nevada for disposal. Nevada's Department of Human Resource (DHR) refused to issue New Jersey the required disposal permit. This led to a legal action in the U.S. Supreme Court by New Jersey attempting to compel the State of Nevada to accept the soils. *State of New Jersey v. State of Nevada,* No. 104, Original (U.S. Supreme Ct., filed Sept. 19, 1985). New Jersey challenged the DHR's action and the PSC's hazardous materials transportation regulations. The Supreme Court denied a request for an injunction, appointed a special master, and has taken no further action.

Nevada's PSC adopted an emergency regulation on August 30, 1985, requiring railroads to obtain a permit to transport radioactive material destined for permanent disposal in Nevada. On November 26, 1985, the PSC adopted the more comprehensive regulations at issue in this proceeding. In a January 27, 1986 statement of principal reasons for adopting these regulations, the PSC concluded with the following statements:

> Nevada business should be reassured that there is some oversight at the state level and that there is a state agency in possession of vital safety information. The railroads both gave examples of their excellent safety records. Although the Commission was impressed with their history of safety, the major concern of the Commission is what might happen in the future and what effect it would have on Nevada. Even if the probability of a hazardous materials accident in a railyard is low, the consequences associated with such an accident are great, and the risks are high. Accidents with highly dangerous materials cause severe property damage and numerous injuries, some of which might be fatal. It is this concern coupled with [the] fact that railyard operators are not required to prepare emergency plans that leads the Commission to believe General Order 52 is a necessity regulation.

Southern Pacific in September 1986 filed a complaint against the PSC in the U.S. District Court for the District of Nevada and requested the Court to enjoin enforcement of the PSC regulations at issue here. *Southern Pacific Transportation Co. v. Public Service Commission of Nevada,* CV–R–86–444–BRT (D. Nev. 1986). After a brief hearing, including two witnesses' testimony and counsel's arguments, the Court on October 9, 1986, denied the request for an injunction, which had been based upon Commerce Clause and HMTA preemption theories. The Court discussed neither the "dual compliance" nor the "obstacle" tests for consistency (see discussion in Section B. *infra*). The PSC also had argued to the Court that the Federal Anti-Injunction Act, 28 U.S.C. 2283, precluded issuance of an injunction against pending state criminal proceedings. Such proceedings for alleged violations of the PSC regulations were dismissed in Lyon and Storey counties in Nevada but remain pending in Washoe County. Injunctive relief from the PSC regulations also was denied in *Stephens v. Nevada,* CVR–85–539 (D. Nev. 1985).

In a development related to the New Jersey soils issue, Union Pacific on December 3, 1985, applied for a PSC permit to transport those soils in accordance with the August 1985 emergency regulations. The PSC held an oral evidentiary hearing on that application on April 18, 1986. Its staff recommended approval of the permit. In June 1986, the PSC reopened the record. To date, the PSC has not acted on the application. It contends that: "It is simply unnecessary and unwarranted to issue this shipment-specific permit to the Union Pacific Railroad until the Supreme Court resolves the issue of whether the radioactive dirt can be disposed of in Nevada. If the Supreme Court finds that disposal in Nevada is required, Union Pacific will receive its permit."

To the latter comment, Southern Pacific replied:

> The foregoing comment confirms that, as SP has charged, the purpose of the permit procedure is not to protect particular localities against localized safety hazards. It is to provide a supplementary arsenal of state procedures to implement Nevada's intention to control how, when, and where hazardous materials may move in interstate commerce to, from or through Nevada. Union Pacific, after having complied with the cumbersome Nevada permit process, and having shown a total lack of any harm, hazard or danger to the community in which the transfer is to take place, was still not given a permit, and is now told that a permit will be issued if the United States Supreme Court compels Nevada to receive the dirt. This is an admission that the true purpose of the Nevada regulations is to provide a cloak for the exercise of a power to prevent movement of undesired hazardous materials to Nevada—a power which is denied to Nevada

by the United States Constitution, and by Congress.

B. General Authority and Preemption Under the HMTA

The HMTA at section 112(a) (49 App. U.S.C. 1811(a)) preempts ". . . any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in [the HMTA], or in a regulation issued under [the HMTA]." This express preemption provision makes it evident that Congress did not intend the HMTA and its regulations to completely occupy the field of transportation so as to preclude any state or local action. The HMTA preempts only those state and local requirements that are "inconsistent."

Although advisory in nature, inconsistency rulings issued by the Department under 49 CFR Part 107 provide an alternative to litigation for a determination of the relationship between Federal requirements and those of a state or political subdivision thereof. If a state or political subdivision requirement is found to be inconsistent, such a finding provides the basis for application to the Secretary of Transportation for a determination as to whether preemption will be waived (49 App. U.S.C. 1811(b); 49 CFR 107.215–107.225).

Since these proceedings are conducted pursuant to the HMTA, only the question of statutory preemption under the HMTA will be considered. A Federal court might find a non-Federal requirement statutorily preempted under another statute or preempted by the Commerce Clause of the U.S. Constitution because of an undue burden on interstate commerce. However, the Department of Transportation does not make such determinations in the context of an inconsistency ruling.

OHMT has incorporated into its procedures (49 CFR 107.209(c)) the following case law criteria for determining whether a state or local requirement is consistent:

(1) Whether compliance with both the non-Federal requirement and the Act or the regulations issued under the Act is possible; and

(2) The extent to which the non-Federal requirement is an obstacle to the accomplishment and execution of the act and the regulations issued under the Act.

The first criterion, commonly called the "dual compliance" test, concerns those non-Federal requirements which are irreconcilable with Federal requirements; that is, compliance with the non-Federal requirement causes the Federal requirement to be violated, or *vice versa.* The second criterion, the "obstacle" test, requires an analysis of the non-Federal requirement in light of the requirements of the HMTA and the HMR, as well as the purposes and objectives of Congress in enacting the HMTA and the manner and extent to which those purposes and objectives have been carried out through the OHMT's regulatory program.

In the HMTA's Declaration of Policy (section 102) and in the Senate Commerce Committee language reporting out what became section 112 of the HMTA, Congress indicated a desire for uniform national standards in the field of hazardous materials transportation. Congress inserted the preemption language in § 112(a) "in order to preclude a multiplicity of state and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous material transportation" S. Rep. 1192, 93rd Cong., 2d Sess., 37–38 (1974). Through its enactment of the HMTA, Congress gave the Department the authority to promulgate uniform national standards. While the HMTA did not totally preclude state or local action in this area, Congress apparently intended, to the extent possible, to make such state or local action unnecessary. The comprehensiveness of the HMR severely restricts the scope of historically permissible state or local activity. The nature, necessity and number of hazardous materials shipments make uniform standards extremely important.

II. Nevada Administrative Code Provisions

A. Overview

Nevada's regulations (Sections 705.310–705.380) constitute a permitting system for certain railroad-related loading, unloading, transfer, and storage of specified hazardous materials.

The heart of the Nevada regulations is § 705.320. That Section requires a Nevada Public Service Commission (PSC) permit in order to load or unload hazardous material onto or from railroad equipment on railroad property, transfer hazardous material from railroad property to another means of transportation, or store hazardous material on railroad property (except on a through track).

The hazardous materials covered by these permit requirements are, under § 705.310, defined as radioactive materials, class A explosives, poison A materials, and flammable solids (DANGEROUS WHEN WET labels only) requiring placarding, as those terms are defined in the HMR. Section 705.310 also defines storage as keeping any hazardous material for more than 48 hours.

Section 705.330 specifies detailed permit application information and documentation requirements and requires payment of a $200 permit fee. Section 705.340 lists nine factors which the PSC will consider in evaluating a permit application, including "[a]ny other pertinent information requested by the commission."

Section 705.350 provides that permits are valid for one year and may be renewed if specified information is provided and a $200 fee paid. That Section also states that the PSC, upon a showing of compelling need, may issue a temporary permit.

Under § 705.360, a permit may be suspended or revoked for three reasons, including when "necessary to protect against risks to life and property." Section 705.370 provides for 30 days' notice of pending permit applications and for dismissal of permit applications for failure to provide certain information.

Finally, § 705.380 requires railroads to comply with 49 CFR Parts 171–174 as those parts existed on November 1, 1985, and incorporates those parts by reference.

Southern Pacific (SP) and all commenters except the PSC contend that these regulations are inconsistent with the HMTA and the HMR, but the PSC responds that they are land use requirements issued under the police powers of the State. The PSC's contention is difficult to accept because these regulations do not apply to both transportation and non-transportation activities but instead apply solely to railroad-related activities concerning hazardous materials. In fact, these regulations were promulgated by the PSC under the heading, "Transportation of Hazardous Material by Rail." Thus, these are not the type of non-transportation land use restrictions which arguably could be free from interface with the HMTA and the HMR. See IR–16, 50 FR 20872 at 20875 (May 20, 1985). If the PSC believes that Federal regulations concerning hazardous materials transportation do not adequately provide for the safety of the public, it may petition RSPA or the FRA for regulatory amendments. 49 CFR 106.31 and Part 211, Subpart B.

In summary, with the exception of § 107.380 on incorporation by reference, these regulations constitute a hazardous materials transportation permitting system which requires transporters of many types of hazardous materials to take specified actions in addition to

complying with the HMTA and the HMR. They prohibit or require certain transportation activities depending upon whether a PSC permit has been issued—regardless of whether the activity is in full compliance with the HMTA. The PSC requirements apply to selected hazardous materials, involve extensive information and documentation requirements and provide the PSC with considerable discretion concerning permit issuance.

For all of the above reasons, these regulations are the type of varying and conflicting state and local requirements which Congress intended to preempt by enactment of the HMTA. S. Rep. 1192, 93rd Cong., 2d Sess., 37–38 (1974). They constitute an obstacle to the accomplishment of the objectives of the HMTA and the HMR, are inconsistent with the HMTA and the HMR, and, therefore, are preempted by 49 App. U.S.C. 1811(a).

The essence of this inconsistency ruling is that the Nevada regulations at issue, with the exception of § 705.380, cumulatively constitute an inconsistent permitting system. As the following section-by-section analysis indicates, many of the provisions of those sections individually also are inconsistent with the HMTA and the HMR.

B. Definitions

The definitions in § 705.310 of "hazardous material" and "storage" create consistency problems.

Hazardous materials are defined as follows:

> "Hazardous material" means low specific activity material as defined in 49 CFR § 173.403(n) and radioactive material as defined in 49 CFR § 173.403(y) and:
> (a) Class A explosives as defined in 49 CFR § 173.53;
> (b) Class B explosives as defined in 49 CFR § 173.88;
> (c) Poison A as defined in 49 C.F.R. § 173.26; and
> (d) Flammable solids (DANGEROUS WHEN WET labels only) as defined in 49 CFR § 173.150, which are subject to the requirements for placards in Table 1 of 49 CFR § 172.504.

Although the PSC cross-referenced specific Federal regulations, this definition is not without problems. It is unclear whether the phrase "which are subject to the requirements for placards in Table 1 of 49 CFR § 172.504" applies to flammable solids only, to the four (a)–(d) materials, or to all six types of materials referred to in the regulation. This ambiguity gave rise to a debate between commenters and the PSC concerning coverage of railway torpedoes and fusees (which are not required to be placarded). On this issue, the PSC commented:

> Because the Nevada regulations were developed only to encompass those hazardous materials that would be placarded in any quantity, it would seem logical for the Commission to interpret its rules to the effect that if a material is not subject to the regulations at all, then the permit requirements would not apply. This is not explicit in the Nevada rules but certainly is within the realm of proper interpretation of those rules by the body which administers them. The issuance of such an interpretation will be considered.

Thus, the applicability of these regulations remains unclear. The poison A cross-reference is incorrect; it should be to § 173.326, not § 173.26.

The ambiguity and selectivity of the PSC's hazardous materials definition are troublesome. State and local hazardous materials definitions and classifications which result in regulation of different materials than the HMR are obstacles to uniformity in transportation regulation and thus are inconsistent with the HMR. IR–5, 47 FR 51991 (Nov. 18, 1982); IR–6, 48 FR 760 (Jan. 6, 1983); IR–12, 49 FR 46650 (Nov. 27, 1984).

Under its regulatory definition, the PSC is selectively determining which of DOT's hazardous materials are subject to its regulations. Although this approach does not create new hazard classifications, as found inconsistent in IR–6, 48 FR 760 (Jan. 6, 1983), and, thus does not constitute an inconsistency *per se*, it can contribute to the overall inconsistency of a series of interrelated regulations, particularly by creating conflicts with the HMR insofar as what requirements apply to each individual hazardous material.

At the very least, the PSC definition creates the kind of confusion referred to in an earlier inconsistency ruling:

> If every jurisdiction were to assign additional requirements on the basis of independently created and variously named subgroups of radioactive materials, the resulting confusion of regulatory requirements would lead directly to the increased likelihood of reduced compliance with the HMR and subsequently decrease in public safety.

IR–12, 49 FR 46650 at 46651.

The second troublesome definition is one defining "storage" as "keeping any hazardous material for more than 48 hours." This definition relates to the prohibition in § 705.320 of storage of hazardous material on railroad property without a PSC permit. By not excluding Saturdays, Sundays, and holidays, this definition creates a conflict with 49 CFR 174.14(a), which provides: "A [rail] carrier must forward each shipment of hazardous materials promptly and within 48 hours *(Saturdays, Sundays, and holidays excluded)*, after acceptance at the originating point or receipt at any yard, transfer station, or interchange point. . . ." (Emphasis added.) The PSC definition of "storage," therefore, results in a PSC prohibition on retention of hazardous materials beyond 48 hours while the Federal regulation literally permits retention for as long as 120 hours depending upon what combination of weekend days and holidays might be involved. In addition, § 174.14(a) allows additional time where biweekly and weekly service only is performed, and the Federal Railroad Administration has interpreted this regulation as placing no time limitation on storage at the destination shown on shipping papers or at the final agency station. Where the HMR have struck a definite balance of safety and economic interests with respect to a particular transportation safety issue, a state or local requirement striking a different balance is inconsistent; that is the case here. See the discussion, below, of the regulation of tansportation-related storage.

The different State and Federal definitions of "hazardous materials" result in further inconsistency between the State and Federal expediting/storage requirements. Section 174.14(a) of the HMR applies to all "hazardous materials" as that term is defined in 49 CFR 171.8, but the counterpart PSC provision applies only to those particular hazardous materials designated by the PSC in § 705.310. This is conclusive evidence of the inconsistency of the PSC's definition of "hazardous material."

In summary, the § 705.310 definitions of "hazardous material" and "storage" are inconsistent with the HMR.

C. Activities for Which Permit Required

The heart of the Nevada regulations is § 705.320, which provides:

> A person shall not:
> 1. Load or unload hazardous material or containers carrying hazardous material onto or from railroad equipment on property owned by or under the control of a railroad;
> 2. Transfer hazardous material from property owned by or under the control of a railroad to another means of transportation; or
> 3. Store hazardous material on property owned by or under the control of a railroad, except a through track, without a permit issued by the commission.

Because the heading of this section is "Activities for which permit required," it is apparent that the phrase "without a permit issued by the commission" applies to paragraphs 1, 2, and 3, not just to paragraph 3.

Each of the three PSC-regulated activities constitutes hazardous

materials transportation in commerce subject to RSPA regulation under the HMTA. Transportation subject to the HMTA is "any movement of property by any mode, and any loading, unloading, or storage incidental thereto." 49 App. U.S.C. 1802(6). Loading and unloading onto or from railroad equipment are literally covered by both the HMTA and PSC § 705.320. The PSC's coverage of intermodal transfers on railroad-owned or -controlled property is included within the HMTA coverage of "movement of property by any mode." In addition, the PSC's regulation of storage of hazardous materials on railroad-owned or controlled property comes within the scope of the HMTA's coverage of storage incidential to the movement of property by any mode. See discussion of storage issues, below. Finally, the PSC's prohibition of storage (which it defines as keeping for more than 48 hours) without a PSC permit actually constitutes a mandate to transport within 48 hours or less.

Examples of HMR provisions regulating the railroad transportation-related loading, unloading, or transfer of hazardous materials follow:

(1) Section 174.16 requires certain unloading from rail cars.

(2) Section 174.103 requires certain unloading or immediate removal of damaged or astray shipments.

(3) Section 174.18 requires immediate forwarding of certain astray shipments of non-explosive hazardous materials.

(4) Section 174.103 provides detailed requirements for the disposition of damaged or astray shipments of explosives.

(5) Section 174.20 authorizes carriers to impose local restrictions when local conditions make the acceptance, transportation or delivery of hazardous materials unusually hazardous.

(6) Section 174.67 contains detailed regulations for the unloading of tank cars.

(7) Section 174.104(e) and (f) require supervision of loading of trailers and containers containing class A explosives on flatcars, as well as certification of that supervision.

(8) Section 174.101(n) and (o) prescribe detailed requirements for the loading of class A or B explosives on flatcars or other railroad cars.

(9) Section 174.55(d) regulates the loading and unloading of heavy packages and containers of hazardous materials.

(10) Section 174.5 exempts railway torpedoes and fusees (class B explosives) from the HMR when they are carried in engines or rail cars but does require that they be in closed metal boxes when not in use.

(11) Section 174.700 regulates the loading of radioactive materials onto rail cars and provides distance limitations therefor.

(12) Section 177.841(a) prohibits loading or unloading of poisons from motor vehicles "near or adjacent to any place where there are or are likely to be . . . assemblages of persons . . . or upon any public highway or in any public place."

Examples (1) through (4) demonstrate "dual compliance" difficulties which may arise under the PSC regulations. In many circumstances, they require unloading, loading, or transfers by carriers which the PSC regulations prohibit without a PSC permit. The PSC permit requirements, therefore, are inconsistent with these HMR provisions under the "dual compliance" test.

In addition, these requirements are inconsistent under the "obstacle" test. All of the cited Federal requirements demonstrate the depth and complexities of the Federal regulatory scheme and the difficulties a carrier would encounter in attempting to comply simultaneously with them and the PSC's burdensome and open-ended permitting process. For example, the carrier must describe all of its loading, unloading, and transfer procedures to the PSC, § 775.330(1)(d), and the PSC then decides whether these procedures are adequate—regardless of whether they are in compliance with the HMR.

In summary, therefore, all of the activities for which § 705.320 requires a PSC permit are activities extensively covered by the HMTA and the HMR. Thus, the effect of that regulation is to require a PSC permit for hazardous materials transportation activities even if those activities are in full compliance with the HMTA and HMR. Activities in compliance with the HMTA and the HMR are presumptively safe, and permitting requirements relating to them cause confusion and delay and thus are inconsistent with the HMTA and the HMR under the "obstacle" test.

To the extent that the PSC permit regulations apply to the transportation of radioactive materials, they are inconsistent. The issue of state or local permits for such transportation was addressed recently by RSPA's Administrator:

> In light of the virtually total occupation of the field of radioactive materials transportation by the HMTA and the HMR, State or local provisions requiring approval or authorizing conditions to be established for the transportation of radioactive materials (other than compliance with Federal regulations) constitute unauthorized prior restraints on shipments that are presumptively safe based on their compliance with Federal regulations and are inconsistent with the HMTA and the HMR. IR–8 (49 FR 46637), IR–10 (49 FR 46645), IR–11 (49 FR 46647), IR–12 (49 FR 46650), IR–13 (49 FR 46653) (all Nov. 27, 1984). Vermont's Rule V purports to authorize state approvals, conditions, and limitations in this field and thus is inconsistent.

IR–15 Decision on Appeal (IR–15(A)), 52 FR 13062 at 13063 (Apr. 20, 1987). That statement is dispositive of the issue here.

To the extent that the PSC permit regulations apply to the transportation of nonradioactive hazardous materials, they are not *per se* inconsistent; their consistency depends upon the requirements for obtaining a permit. IR–2, 44 FR 75566 (Dec. 20, 1979); IR–3, 46 FR 18918 (Mar. 26, 1981).

Unlike the Rhode Island provisions considered in IR–2, the PSC regulations do not necessarily require a permit prior to each individual transportation movement. In fact, testimony before the U.S District Court for the District of Nevada, which decided not to enjoin enforcement of the Nevada regulations, indicated that a railroad only needs an annual permit (probably for each site) to conduct hazardous materials operations. However, the Court did not consider whether any other party conducting a regulated activity needs a permit. Section 705.320 states: "A person shall not . . . [l]oad or unload . . . [t]ransfer . . . or. . . [s]tore hazardous material . . . without a permit issued by the commission." Literally, therefore, any trucking company loading, unloading, or transferring hazardous materials on railroad property is required to obtain a PSC permit. It is clear that one or more parties must obtain a permit before any intermodal transfer (including any trailer-on-flatcar (TOFC) and container-on-flatcar (COFC) transfer) could take place. Therefore, the mere fact that the required permits are "annual" does not necessarily eliminate the necessity for permits for individual shipments.

In any event, as discussed in more detail below, the PSC's annual permit information and documentation requirements are burdensome and redundant, the overlap of the PSC's requirements with HMR provisions is great, their potential for delay is considerable, and the PSC's discretion concerning permit issuance is virtually unfettered. Cumulatively, these factors constitute unauthorized prior restraints on shipments of nonradioactive hazardous materials that are presumptively safe based on their compliance with Federal regulations. Therefore, the PSC permitting system is an obstacle to accomplishment of the

objectives of the HMTA and the HMR and thus is inconsistent with them.

D. Information and Documentation Requirements

Section 705.330(1) requires submission of the following information and documentation in support of an application for an annual PSC permit:

(a) A map of the proposed site for loading, unloading, storage or transfer, including the indicators of its location on the track and all structures at the site;
(b) A report identifying each switch, siding, spur or branch of track at the site and its purpose;
(c) A copy of any report made by a federal or state inspector during the preceding 6 months on defects in the track and the remedial action taken;
(d) A summary of all major construction or other work on the track at the site during the preceding year;
(e) A summary of all hazardous material carried by the railroad during the preceding 12 months;
(f) A summary of all unintended releases of hazardous material during the preceding 12 months which were reported by the applicant pursuant to 49 C.F.R. §§ 171.16 and 171.17;
(g) An outline of the procedure to be used in the loading, unloading, transfer or storage of the hazardous materials;
(h) A description of the measures to be used by the railroad to ensure that the hazardous material is safe from vandalism, theft or sabotage; and
(i) An outline of all plans to be used in the event of an accident.

In addition, § 705.340 contains a list of factors which the PSC is to consider in evaluating an application for a permit. That list follows:

1. The topography of the proposed site;
2. The proximity of the proposed site to:
(a) Centers of population;
(b) Heavily traveled highways;
(c) Hospitals;
(d) Schools;
(e) Sources of water; and
(f) Other sites for the storage of hazardous material;
3. The expected duration of the operation at the site;
4. The availability of alternative sites;
5. The quality of the track;
6. The security at the site;
7. The plans to be used in the event of an accident at the site;
8. The equipment and resources available in the event of an accident at the site; and
9. Any other pertinent information requested by the commission.

It is apparent that this list involves the obtaining of information not specifically required in § 705.330. Also, it is noteworthy that the last item authorizes the PSC to request any "other pertinent information."

In order to renew a permit, § 705.350 requires the applicant to certify that the original information remains correct or update the information. The applicant for renewal also must file a statement:

(1) Describing any relevant accident or release of hazardous materials since the issuance or renewal of the permit, or if an accident or release has not occurred, a certification to that effect; and
(2) Summarizing the loading, unloading, transfer or storage conducted pursuant to the permit, as well as any incident involving the hazardous material.

Under § 705.360(3), the PSC many suspend or revoke a permit if its issuance was based on false, fraudulent, or misleading representations or information. Under § 705.370(2), the PSC will dismiss a permit application if there is insufficient information or if the applicant fails to submit additional information the PSC requests.

With respect to information and documentation requirements relating to radioactive materials transportation, RSPA's Administrator recently set forth the following standard:

DOT and NRC have determined what information and documentation requirements are needed for the safe transportation of radioactive materials, and state and local requirements going beyond them create confusion, impose burdens on transporters, are obstacles to the accomplishment of the HMTA's objectives, and thus are inconsistent.

IR–8(A), 52 FR 13000 at 13004 (Apr. 20, 1987). This statement also provides an appropriate standard with regard to hazardous materials information and documentation requirements generally. RSPA has determined what information and documentation requirements are needed for the safe transportation of hazardous materials, and thus state and local requirements going beyond them create confusion, impose burdens on transporters, are obstacles to the accomplishment of the objectives of the HMTA and the HMR, and thus are inconsistent with them. IR–2, 44 FR 75566 (Dec. 20, 1979); IR–6, 48 FR 760 (Jan. 6, 1983).

Despite the fact that the PSC's information and documentation requirements are annual and not shipment-specific, they are extremely comprehensive and burdensome. As such, they create confusion and delay and thus constitute obstacles to implementation of the HMTA and the HMR. The burdensome nature of the requirements is demonstrated by § 705.330(e), which requires a summary of all hazardous material carried by the railroad (presumably nationwide) during the preceding 12 months. Section 705.330(f) is a redundant and inconsistent requirement for information on incidents reported by the applicant to DOT under 49 CFR 171.16 and 171.17. IR–2, 44 FR 75566 (Dec. 20, 1979); IR–3, 46 FR 18918 (Mar. 26, 1981); IR–3(A), 47 FR 18457 (Apr. 29, 1982); IR–8, 49 FR 46637 (Nov. 29. 1984); IR–8(A), 52 FR 13000 (Apr. 20, 1987).

Because emergency response is primarily a local responsibility, IR–2, *supra*, at 75568, transportation cannot be made contingent upon the adequacy of emergency response capabilities. IR–18, 52 FR 200 (Jan. 2, 1987). Therefore, the express and implied emergency response-related information requirements of §§ 705.330(i) and 705.340 (7) and (8) represent efforts to obtain information which may not be used as a prerequisite to hazardous material transportation; as a result, those provisions are inconsistent with the HMTA and the HMR.

In summary, the HMTA and HMR provide sufficient information and documentation requirements for the safe transportation of hazardous materials; state and local requirements in excess of them constitute obstacles to implemenation of the HMTA and HMR and thus are inconsistent with them. As such, §§ 705.330, 705.340, 705.350, 705.360(3), and 705.370(2) of the PSC regulations are inconsistent with the HMTA and the HMR.

E. Potential for Delay

"The manifest purpose of the HMTA and the HMR is safety in the transportation of hazardous materials. Delay in such transportation is incongruous with safe transportation." IR–2, 44 FR 75566 at 75571. However, several aspects of the PSC regulations raise issues concerning potential transportation delays.

Section 705.350 provides for an annual renewable permit and for a temporary permit which may be issued "[u]pon a showing of compelling need" while an annual permit application is pending. Under § 705.370(1), the PSC gives at least 30 days' notice of permit applications before taking action on them.

Under its regulations, therefore, the PSC can take as much time as it deems desirable or necessary to consider, grant or deny permit applications. It can prolong the process by insistence upon compliance with its comprehensive information and documentation requirements and upon submission of any other pertinent information (§ 705.340(9)).

In fact, the PSC has not taken any definitive action with respect to the only permit application filed under these regulations. In December 1985, Union Pacific filed an application involving transportation of certain low-level

radioactive soils which were to be transported from New Jersey to Nevada for disposal. The PSC contends it has not acted upon this application because there is a pending U.S. Supreme Court case (*New Jersey* v. *Nevada*, Original Jurisdiction Docket 104) concerning Commerce Clause issues relating to the same proposed transportation. See discussion, above, at end of Section A.

Of relevance to all hazardous materials transportation is the following recent statement of RSPA's Administrator:

> While states do have a role in effectuating the safe transportation of radioactive materials, it does not follow that they have unfettered discretion to take actions which have the effect of restricting or delaying transportation being conducted in compliance with Federal law.

IR–8(A), 52 FR 13000 at 13003 (Apr. 20, 1987).

An earlier inconsistency ruling cited specific inconsistencies with the HMR which result from delays:

> Since safety risks "are inherent in the transportation of hazardous materials in commerce" [49 U.S.C. 1801], an important aspect of transportation safety is that transit time be minimized. This precept has been incorporated in the HMR at 49 CFR 177.853, which directs highway shipments to proceed without unnecessary delay, and at 49 CFR 174.14, which directs rail shipments to be expedited within a stated time frame.

IR–6, 49 FR 760 at 765 (Jan. 6, 1983).

Both of the cited HMR provisions are relevant here because the PSC permit system applies to railroad operations and to intermodal transfers on railroad property. Intermodal COFC and TOFC shipments obviously would be covered. Under the PSC regulations, a trucking company cannot load, unload or transfer hazardous materials on railroad property without a PSC permit having been issued to the railroad and possibly to the trucking company as well.

To obtain a permit, an applicant must, as previously discussed, make extensive and burdensome submissions of information and documents. This obviously would be time-consuming. In addition, the PSC gives 30 days' notice of these applications and specifically reserves the right to request additional relevant information. As demonstrated by the PSC's non-action on the only permit application which has been filed (other than holding a hearing 3½ months after the application was filed), the PSC has considerable discretion concerning whether to even act on a permit application. There is no requirement that the PSC issue a permit when certain conditions have been met by the applicant or determined by the PSC. As in IR–13, 49 FR 46653 (Nov. 27, 1984), the PSC appears to be able to impose whatever preconditions it desires. As the Union Pacific indicated in its comments, nothing in the PSC regulations precludes the PSC from knowingly or unknowingly creating permit terms which conflict with specific provisions of the HMR or *ad hoc* exemptions or approvals issued by RSPA or the FRA under HMR provisions, including 49 CFR 107.109(d) (exemption authority); § 173.3a(a)(3) (approvals for packaging of certain materials, including Poison A); §§ 173.22(b) and 174.61(c) (FRA approval authority for transporting materials, including Poison A, in multi-unit tank car trailers in TOFC/COFC service); and § 174.63(b) (FRA approval authority for transporting materials, including "Flammable Solids—Dangerous When Wet" in TOFC/COFC service).

The PSC contends that judicial review would be available to rectify abuses of its permitting discretion; however, the PSC regulations provide no specific standard for permit issuances or denial against which a court could conduct meaningful judicial review. Furthermore, a court is unlikely to intervene while the PSC "deliberates" concerning a petition application.

The fact that the PSC may issue a temporary permit "[u]pon a showing of compelling need" does not alter the completely discretionary nature of the PSC's permitting authority. Also, since a temporary permit is valid only "while the application for an annual permit is pending," it apparently cannot be sought or issued until a permit application is filed.

The PSC's broad discretion, especially in light of the burdensome and open-ended application requirements, translates into delay—or at least the overwhelming prospect for delay. The Nevada permitting process makes delay beyond the timeframes contemplated in the HMR possible, even likely. This prospect of delay contrasts sharply with the railroads' Federal obligations. As common carriers subject to Interstate Commerce Commission mandates, they must accept, without advance notice, deliveries of all types of hazardous materials for transportation. Thereafter, they must immediately begin handling these materials in accordance with the detailed requirements of the HMR. Therefore, the entire permitting process contained in the Nevada regulations is inconsistent with 49 CFR 177.853 and 174.14 and thus is preempted.

F. Regulation of Transportation-Related Storage

As indicated in the discussion of definitions above, the combined effect of PSC §§ 705.310 and 705.320 is the prohibition of storage or retention of hazardous materials on railroad property for more than 48 hours without a PSC permit. It is unclear how long and under what conditions the PSC, by permit, would allow what hazardous materials to be retained on which railroad properties.

The issue for resolution is whether this discretionary PSC control over the storage of hazardous materials is inconsistent with the HMTA and HMR provisions on transportation-related storage. Clearly, the HMTA applies; section 103 thereof provides that storage incidental to the movement of property by any mode is included within the definitions of "transports" and "transportation." 49 App. U.S.C. 1802. Section 105 of the HMTA, in turn, authorizes the Secretary of Transportation to issue "regulations for the safe transportation of hazardous materials" (49 App. U.S.C. 1804), which, under section 103, includes the safe storage of hazardous materials.

This regulatory authority concerning storage has been exercised extensively, particularly with respect to railroad-related storage. A few examples illustrate the extent of such regulations.

(1) *Expedition movements.* Under § 174.14(a) a rail carrier must forward hazardous materials within 48 hours (Saturdays, Sundays and holidays excluded) after acceptance at the originating point or receipt at any yard, transfer station or interchange point. Where only biweekly or weekly service is performed, the hazardous materials must be forwarded in the first available train. This section applies only to holding of shipments at points other than their intended destinations as shown on the shipping papers. Once shipments have reached that destination, even if not the ultimate point of unloading, unlimited storage is permitted except as noted below (see (9) "Prohibitions on storage in transit"). Under § 174.14(b), tank cars containing a flammable liquid or gas or a poison gas may not be received and held at any point subject for forwarding orders in order to defeat the purpose of § 174.14(a).

(2) *Disposition of hazardous materials at destination.* Section 174.16(a) forbids the unloading of explosives at non-agency stations unless the consignee directly receives them or unless they are properly locked and secure storage

facilities are provided there for their protection. At agency stations, § 174.16(b) mandates that carriers require consignees of hazardous materials shipments to remove them from the carriers' properties within 48 hours (exclusive of Saturdays, Sundays and holidays) after notice of arrival has been sent or given. That section further specifies alternative carrier disposal requirements for class A explosives, and other hazardous materials in both carload and non-carload shipments in the event that the consignee does not remove them within the specified period. Safe storage on carrier property is one permissible alternative.

(3) *Notice and reporting of incidents.* The regulation requiring immediate notification of certain hazardous materials incidents (§ 171.15) and detailed reports on other rail incidents (§ 174.750) expressly applies to incidents that occur in "temporary storage."

(4) *Methods of storage.* DOT (and thus the Federal Railroad Administration) is authorized by §§ 173.3 and 174.8 to inspect "methods of storage" of hazardous materials. Rail carriers are required by § 174.55(e) to store hazardous materials securely while they are being held for loading or delivery.

(5) *Separation and segregation of materials in storage.* The restrictions found in § 174.81, on what materials can be placed next to each other in rail cars and at what distance, apply during storage, as well as during loading and other transportation.

(6) *Limitations on storage of specific commodities.* The regulations contain restrictions on how certain radioactive materials may be stored. Section 173.447, entitled "Storage incident to transportation—general requirements," contains limitations on how certain radioactive materials may be stored, including a requirement that they be stored at least 20 feet from other groups of packages containing radioactive materials. See also §§ 173.457(a) and 174.700.

(7) *Other storage restrictions.* Class A explosives may not be stored on carrier property with certain other materials (§ 174.102), and rail cars placarded "Explosives A" must be placed so that they will be safe from all probable danger of fire when in a yard or on a siding (§ 174.85). Class A explosives, flammable gases, and flammable liquids may not be stored in a rail car equipped with any type of lighted heater, open-flame device, or any mechanism utilizing an internal combustion engine. §§ 174.101, .200, .300. Other storage restrictions are contained in §§ 173.101(c), 174.450 and 174.204(a)(2).

(8) *Local carrier restrictions.* Section 174.20 authorizes carriers to impose local restrictions when local conditions make the acceptance, transportation or delivery of hazardous materials unusually hazardous.

(9) *Prohibitions on storage in transit.* Requirements for compressed gases in tank cars allow a filling density of 58.8 percent from November through March but provide that, when that density is used, tank cars must be loaded and shipped directly to consumers for unloading and that storage in transit is prohibited. § 173.314(c), note 15. A similar prohibition applies to tank cars carrying liquefied petroleum gas and butadiene (materials not covered by the PSC regulations). § 173.314(f), note 1.

In summary, the HMR contain a comprehensive series of regulations relating to the storage of hazardous materials incidental to transportation by rail. These regulations authorize or prohibit specific types of hazardous materials storage under specified circumstances. Creation by the PSC of a separate regulatory regime for rail transport-related storage of hazardous materials raises the spectre of widespread confusion. The PSC regulations are so open-ended and discretionary that they authorize the PSC to approve storage prohibited by the HMR or prohibit storage authorized by the HMR.

These potential inconsistencies appear to have become a reality. Southern Pacific alleged, and the PSC did not deny, that the PSC instituted criminal actions against Southern Pacific and its employees for holding carts at a siding beyond 48 hours to wait for a weekly train on the branch line—a holding or storage authorized by § 174.14 of the HMR. There also is an unrebutted allegation by Southern Pacific that there are over 200 locations (stations, intermodel transfer points, sites, and siting areas) for which it would have to apply for PSC permits to fulfill its common carrier obligations.

Therefore, insofar as they concern rail transportation-related storage of hazardous materials, the PSC regulations are an obstacle to the accomplishment of the objectives of the HMTA and the HMR and, therefore, are inconsistent with them.

G. Permit-related Provisions

Because, as indicated in the prior sections, the Nevada PSC's permitting system is inconsistent with the HMTA and the HMR, all of the challenged provisions relating to the permitting system are similarly inconsistent.

For example, while a fee provision relating to consistent requirements may be consistent (IR–17; 51 FR 20925 (June 9, 1986); *New Hampshire Motor Transport Assn. v. Flynn*, 751 F.2d 43 (1st Cir. 1984)), the PSC's $200 permit fee provisions (§§ 705.330(2) and 705.350(3)) are inconsistent because they are related to inconsistent requirements. IR–11, 49 FR 46647 (Nov. 27, 1984); IR–13, 49 FR 46653 (Nov. 27, 1984); IR–15, 49 FR 46660 (Nov. 27, 1984).

Similarly, the permit suspension and revocation provisions of § 705.360 are directly related to the inconsistent permitting system and are thus themselves inconsistent with the HMTA and the HMR.

H. Incorporation by Reference of Federal Regulations

Section 705.380 of the PSC regulations is entitled "Adoption of federal regulations by reference." It requires railroads subject to the PSC's jurisdiction to comply with Parts 171, 172, 173 and 174 of the HMR as those parts existed on November 1, 1985. It specifically adopts those parts by reference and provides information concerning how to obtain copies of them.

Some commenters contended that this regulation is inconsistent with the HMR because it adopts November 1, 1985 versions of the HMR, which have been superseded by the October 1, 1986 edition of the HMR and subsequent HMR amendments published in the **Federal Register.** This contention is without merit at this time. The HMR consist of an extensive body of regulations which are amended on a regular basis by changes published in the **Federal Register** and incorporated into the annual editions of the Code of Federal Regulations (CFR). RSPA encourages states to adopt and enforce the HMR as state requirements. IR–17, 51 FR 20925 at 20929 (June 9, 1986).

It is impossible, however, for states to adopt new HMR requirements simultaneously with RSPA's issuance of them. This inconsistency ruling application was filed in November 1986, less than two months after the October 1, 1986 revision date of the current CFR version of the HMR. CFR volumes generally are not published and available for a few months after the dates as of which they are current. Therefore, the incorporation by reference in § 705.380 is reasonably currently and thus consistent with the HMR.

If a change to the HMR results in a direct conflict with a state requirement, the HMR would control as soon as the

HMR change becomes effective. However, there is no basis for a wholesale preemption of state regulations which contain slightly outdated state incorporations by reference or adoptions of the HMR as state requirements.

I. Summary

The permitting system established by the PSC constitutes a regulatory system for the transportation of hazardous materials. Its applicability solely to railroad transportation-related hazardous materials activities and its non-applicability to non-transportation facilities demonstrate that it is not a land use or zoning regulation.

The PSC regulations contain inconsistent definitions; govern activities comprehensively regulated by the HMTA and the HMR; provide the PSC with unfettered discretion to determine whether transportation may occur; contain redundant, burdensome and inconsistent information and documentation requirements; have the potential—even likelihood—to cause delay in hazardous materials transportation; and regulate transportation-related storage of hazardous materials in a manner inconsistent with the HMR.

Therefore, the entire permitting system contained in the PSC regulations constitutes an obstacle to the accomplishment and execution of the HMTA and the HMR and, therefore, is in consistent with them.

III. Ruling

For the foregoing reasons, I find §§ 705.310 through 705.370 of the Nevada Administrative Code inconsistent with the HMTA and the HMR and, therefore, preempted under 49 App. U.S.C. 1811(a). Section 705.380 of the Nevada Administrative Code is consistent with the HMTA and the HMR and thus is not preempted.

Any appeal of this ruling must be filed within 30 days of service in accordance with 49 CFR 107.211.

Issued in Washington, DC, on June 23, 1987.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 87–14811 filed 6–29–87; 8:45 am]

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federal register

Tuesday
June 30, 1987

Part VII

Department of Agriculture

Federal Grain Inspection Service

7 CFR Parts 800 and 810

Grain Standards; Official U.S. Standards, Handling Practices and Insect Infestation; Final Rules

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 810

Official U.S. Standards for Grain

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS or Service) is issuing this final rule which makes changes to the Official United States Standards for Grain. The Service reviewed these standards under the requirements for the periodic review of existing regulations and is reissuing them with amendments. This action amends the grain standards by establishing a Subpart A—General Provisions for terms common to all grains and revising the rounding procedures as stated in the section on percentages to more generally accepted mathematical procedures. In addition, the barley standards are amended by revising the definition of Sample grade, damaged kernels, and the classes of malting barley; and by revising certain names of terms relating to damaged or injured kernels. Also, this action amends the standards by condensing language, reorganizing text, removing most footnotes and references to footnotes throughout the standards, and renumbering each of the standards. These changes and other miscellaneous nonsubstantive changes are made to simplify and provide for uniform provisions and language in the standards, and to conform the standards to present trading practices.

EFFECTIVE DATE: June 30, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Information Resources Staff, USDA, FGIS, Room 1661 South Building, 1400 Independence Avenue, SW., Washington, DC 20250, telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This Final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

W. Kirk Miller, Administrator, FGIS has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities because those persons who apply the standards and most users of the inspection services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities by FGIS employees and licensed persons.

Effective Date

Pursuant to section 4(b) of the United States Grain Standards Act (7 U.S.C. 76(b)) (the Act), no standards established or amendments or revocations of standards are to become effective less than one calendar year after promulgation, unless in the judgment of the Administrator, the public health, interest, or safety requires that they become effective sooner. Pursuant to that section of the Act, it has been determined that in the public interest the revisions to the standards shall become effective upon publication, except for the determination of protein content in barley. This effective date will coincide as nearly as practicable with the beginning of the 1987 crop year which has already begun. The revision that provides for the determination of protein content in barley will become effective on May 1, 1988. This effective date will coincide as nearly as practicable with the beginning of the 1988 crop year for barley, and will provide sufficient time to establish the new program as a part of the official inspection program. Many of the changes made in this final rule are reformatting changes and therefore are not substantive in nature. All of the revisions including those to the barley standards will facilitate domestic and export marketing of grain. The proposed rules noted that any changes to the standards if adopted, would be made effective at the beginning of the 1987 crop year. Also, for these reasons, it is further found that good cause exists for not postponing the effective date of this action, except protein determination in barley, until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

Final Action

In the October 2, 1986 **Federal Register** (51 FR 35224), the Service proposed the reissuance of the Official United States Standards for Grain with revisions. Comments were to be submitted by December 1, 1986. In the November 20, 1986 **Federal Register** (51 FR 41971), the Service supplemented the October 2, 1986, proposal by proposing further amendments to the U.S. Standards for Barley. A correction was issued in the December 2, 1986 **Federal Register** (51 FR 43495). Further, in the March 13, 1987 **Federal Register** (52 FR 7880), the comment period for the October 2, 1986 proposal was reopened. Comments were to be submitted by April 13, 1987 on the proposals. Twenty-seven comments were received concerning the proposed changes.

The Service has determined that it is appropriate to revise the format of the standards at this time to further simplify the standards and to eliminate unnecessary duplication. These changes will accomplish several objectives including: (1) Conforming Part 810 regulations into a format generally used for standards in other USDA programs; (2) enhancing clarity, simplicity, and cost effectiveness as well as eliminating duplication; and (3) conforming the Official U.S. Standards for Grain to specific requirements for promulgation of regulations in the Code of Federal Regulations (1 CFR Part 21).

Accordingly, the Service has revised the format of the standards by standardizing the language of terms common to all standards, removing such terms from the individual standards and incorporating them into a subpart headed *General Provisions*. In addition, terms and provisions in the individual standards that appear in the remaining subparts are revised to provide for uniform and common language, where possible. For example, the terms damage and dockage are revised, as appropriate, in each standard to reflect uniform language. Accordingly, language of the terms and provisions in these revised standards may not, in all instances, reflect the language currently in the standards. However, these revisions do not represent substantive changes to the standards.

The new *General Provisions* subpart parallels the format of the current standards. Definitions common to all grain standards are contained under the heading *Terms Defined*. The heading, *Principles Governing The Application of Standards* contains a general *Basis of determination* common to all grain standards and the revised rules for rounding and recording *Percentages*. Included under the heading, *Grades, Grade Requirements, and Grade Designations*, is a general description of grades and grade requirements and a grade designation section applicable to all standards. Similarly, the *Special Grades, Special Grade Requirements, and Special Grade Designations* heading would include a section generally describing *Special grades and special grade requirements* and a section covering *Special grade designations* applicable to all standards.

With the creation of the *General Provisions* subpart, certain sections are

removed from individual grain standards and are included in Subpart A. For example, common definitions such as *Test weight per bushel, Moisture,* and *Stones* are removed from each standard. The common wording for *Basis of determination* and rounding *Percentages* are removed from each standard. Also, the wording for *Grade designations,* and *Special grade designations* are removed from the individual standards and rewritten in general terms for inclusion into Subpart A.

Similarly, except for the barley standards, the sections remaining in each of the individual grain standard subparts remain unchanged except for conforming changes for format and uniform language purposes. For instance, the grade tables which presently appear in each grade standard are virtually unchanged except for changes to formats for consistency among standards, and minor changes for purposes of clarity. Changes to the barley standards are discussed below.

To provide ease in reference and identification of individual standards, each standard is established as a subpart to the Part 810 regulations. The standards also are reorganized numerically and in alphabetical order.

The presence of footnotes in the standards has caused confusion among users of the standards and made publication difficult. To eliminate such confusion, most footnotes and references to footnotes have been removed from the standards. The information contained in the footnotes are included, as appropriate, within the text of the standards. Footnotes contained within the body of the grade tables are, for the most part, retained.

The twelve comments received regarding the format changes favored the proposed changes, and generally agreed that use of the standards would be enhanced.

Other changes are also made to improve the uniformity between the grain standards. The first of these changes is a redesignation of the Special grade "weevily" to "infested." Two U.S. standards for grain (soybeans and sunflower seed), currently use the term "infested" to refer to grain found to contain live insect infestation above a threshold level. The other grain standards are being amended to use the term "infested" because it more appropriately describes grain containing live insects injurious to stored grain. The term "weevily" connotes a specific insect species, e.g., *Sitophilus.* Other insects, in addition to types of weevils, are included within the scope of the term "infested" grain. The majority of comments received favored this change. Accordingly, this change is adopted in this final rule.

The current definitions of barley, oats, and flaxseed specify that mixtures of other grains may not exceed 25 percent in barley and oats and 20 percent in flaxseed to conform to the grain's identity. In the remaining grain standards, if a mixture of more than 10 percent of other grains is present in a sample, the grain would be graded under the U.S. Standards for Mixed Grain. For uniformity between standards, the definitions for barley, oats, and flaxseed were proposed to be revised so that all standards restrict mixtures of standardized grain to not more than 10.0 percent. Inasmuch as the definition of mixed grain corresponds to the definitions of the individual grains in the standards, it was concluded that these revisions would provide for a more concise and uniform parameter for the definition of a mixed grain. Based on inspection experience and current production practices, it was not expected that a significant number of officially inspected samples of barley, oats, and flaxseed inspections would be graded mixed grain based on the change.

The six comments received concerning this change expressed obections to the proposal stating that the change was too restrictive because the increase in barley graded as mixed grain would reduce producer returns and diminish markets. Barley in storage would be downgraded because much of the barley in the lower grades contain admixtures of wheat and/or wild oats in excess of 10.0 percent. It was also stated that the proposal needed to be studied further, and that changes be made after such study. Accordingly, the current definitions of barley, oats, and flaxseed will be retained. The Service will review this issue and, based upon its review, may reintroduce the proposal at a later time.

Currently, the presence of two or more pieces of animal filth in 1000 grams of wheat, rye, and triticale would grade such grain Sample grade. All other grains except corn, may contain 10 or more pieces of animal filth before a Sample grade designation is applied. Corn may contain 0.20 percent of animal filth. It was proposed that the Sample grade requirements be made more consistent by making the allowable limits of animal filth identical for all grains. All twelve comments received concerning this change, objected to the proposal, stating that multiple pellets of animal filth is not uncommon in feed type grains, that a severe restriction would not improve the quality of the grain in proportion to the penalty in grade and price, and that it is unnecessary that all grains have identical limits. Some of these commenters favored basing the limit of animal filth on weight rather than count. Some stated that the short interval before implementation would have a detrimental effect on grain currently in storage, suggesting that, if adopted, the change should not become effective until the 1988 grain harvest. Accordingly, it has been determined that further study is warranted and that the proposal should not be adopted at this time. The current limits for animal filth in the definition of Sample grade will be retained for each of the individual standards.

Also proposed was the removal of current "Interpretations [Added]" from the U.S. Standards for Corn. These sections are currently § 810.904, and § 810.905; *Interpretations with respect to the term "yellow kernels of corn with a slight tinge of red,"* and *Interpretations with respect to the term "white kernels of corn with a slight tinge of straw or pink color,"* respectively. In the last 5-year review period similar provisions for other standards were deleted. The information contained in the corn interpretations, as is similar information for the other grains, appear in current FGIS instructions; and there is therefore, no need to retain this information in the corn standards. Accordingly, this proposed change is adopted in the final rule.

The current rounding procedures for percentages provides that when a figure to be rounded is followed by a figure greater than 5, the figure is rounded up to the next higher figure, e.g., 0.46 is reported as 0.5; when a figure to be rounded is followed by a figure less than 5, the figure is to be retained, e.g., 0.54 is reported as 0.5; when figures that are even are followed by the figure 5, the even figure is retained; and when a figure is odd and followed by the figure 5 the figure is rounded to the next higher even figure, e.g., 0.45 is reported as 0.4, 0.35 is reported as 0.4.

The proposed rounding rules simply stated provide that a figure to be rounded followed by a 5 or a figure greater than 5 be rounded up to the next higher figure, e.g., report 0.35 as 0.4, 6.46 as 6.5. If the figure is followed by a number less than 5, the figure is retained, e.g., report 8.34 as 8.3. This procedure is consistent with rounding performed by calculators and in computer applications. It is also a more generally accepted mathematical rounding procedure and would facilitate

the understanding and usage of the standards.

Those commenters addressing this change were in favor of the proposal. Accordingly, the rounding procedures are removed from each standard and included in Subpart A, General Provisions § 810.104, *Percentages* as proposed.

It was proposed that all grain standards be revised to report all percentages (except ergot) to the nearest tenth of a percent. Currently, dockage provisions in barley, flaxseed, rye, and sorghum are reported in whole percent with a fraction of a percent being disregarded. Dockage in triticale is reported in whole and half percent with a fraction less than one-half percent being disregarded.

Currently foreign material in sunflower seed is reported to the nearest one-half percent. Ranges of sunflower seed foreign material are reported as follows: 0.0 to 0.25 is reported as 0.0 percent; 0.26 to 0.75 as 0.5 percent; 0.76 to 1.25 as 1.0 percent, and the like. Foreign materials and fines in mixed grain is currently reported in whole percent. Both foreign material factors were proposed to be reported to the nearest tenth of a percent.

In the determination whether grain conforms to the definition for each grain, figures were proposed to be reported to the nearest tenth of a percent. For example, currently the definition of wheat requires that the grain after the removal of dockage, consists of 50 percent or more of whole kernels of wheat . . . and not more than 10 percent of other grains. The figures in this definition and other similar definitions were proposed to be expressed in tenths such as 50.0 percent of whole kernels of wheat . . . and not more than 10.0 percent of other grains . . .

Similarly, the definitions for subclasses in the U.S. Standards for Wheat were proposed to be stated to the nearest tenth of a percent. Several definitions for classes (and subclasses) are currently stated in tenths such as in corn, sorghum, and soybeans. Subclass definitions in the U.S. Standards for Wheat, however, are currently expressed in whole percent. For enhanced accuracy and for uniformity and consistency, these definitions were proposed to express values in tenths of a percent. For example, the subclass Dark Northern Spring wheat would be required to contain 75.0 percent or more of dark, hard, and vitreous kernels instead of the present 75 percent.

An exception to this proposed uniform system of expressing values in tenths of a percent is the determination of ergot. Ergot is determined for the Special grade "Ergoty" and is applicable to the U.S. Standards for Barley, Mixed Grain, Oats, Rye, Triticale, and Wheat. The determination for ergot is currently expressed in hundredths of a percent and remains unchanged because of the need for and the capability of achieving as much precision as possible due to the toxicity of this special grading factor.

Test weight per bushel values were also proposed to be expressed in tenths. Currently, test weight results are rounded to whole and half pounds in the U.S. Standards for Barley, Corn, Flaxseed, Mixed Grain, Oats, Sorghum, Soybeans, and Sunflower Seed. A value of less than a half pound is disregarded.

The majority of comments on the proposal to report percentages in tenths of a percent, opposed the proposal, stating that the proposal lacks sufficient supporting data; that the final rule should await the completion of the review of reporting procedures by the Grain Quality Workshops, which would provide useful insight into the potential impact of the proposal; that the standard deviation for several of the determinations is greater than 0.1 percent; that a change in dockage procedures would result in severe economic loss for producers; and that dockage material in feed grains is not as undesirable as it would be in a grain used for food purposes. The Grain Quality Workshops have been initiated by the trade. They are a series of meetings attended by different segments of the grain industry including grain handlers, researchers, and trade associations. The basic objective of the sessions is to recommend standards changes which would improve the image of U.S. grain in world trade.

The Grain Quality Workshops should yield information useful to the inspection and marketing of grain. Data on the impact of determining dockage in tenth percent in wheat shows that the result of such change is not negative. Data on the impact of showing other factors in tenth percent would be desirable.

Accordingly, the Service has determined that the proposal to revise procedures for stating percentages and values so that all figures are reported to the nearest tenth percent should not be adopted at this time, and that further study of the proposal is warranted. The industry should note however, that dockage in wheat will be shown in whole and tenth percent to the nearest tenth percent as provided in the August 26, 1986 **Federal Register** (51 FR 30323).

An Advance Notice of Rulemaking requesting public comment on the U.S. Standards for Barley was published in the September 12, 1980, **Federal Register** (45 FR 60848). Changes to the barley standards suggested by industry members during the comment period included: (1) A return to the previously used terminology of "injured-by-mold" and "injured-by-frost"; (2) a tightening of factors that would be applicable to Six-rowed as well as Two-rowed barley; (3) grading barley as malting barley only upon request of the applicant; and (4) showing the percentage of plump barley in terms of a whole percent instead of a range of 5 percent increments.

To gather additional information, discussions were held with industry representatives. These organizations included the American Malting Barley Association; National Barley Growers Association; National Feed Grains Council; Montana Elevator Operators Association; producer organizations in the States of Washington, Oregon, Montana, North Dakota, and Idaho; and individual grain handlers and producers. Also, four meetings were held with interested parties to discuss the issues concerning revising the barley standards.

In addition to those changes proposed on October 2, 1986, the following changes to the barley standards were proposed on November 20, 1986 (51 FR 41971):

1. Remove the requirement, "semisteely in mass", from the definition of malting barley and remove the special grades "Tough", "Stained", "Bleached", and "Bright";

2. Remove the terms "frost-damaged kernels (minor)", "mold-damaged kernels (minor)", and "heat-damaged kernels (minor)", and substitute the terms "injured-by-frost kernels", "injured-by-mold kernels", and "injured-by-heat kernels", respectively and deletion of such terms, except for injured-by-heat, from the definition of damage;

3. Remove the term "black barley" as a grade-determining factor and include black barley under the definition of "other grains";

4. Remove the requirement that barley containing smut in excessive amounts be graded Sample grade;

5. Remove the requirement for wild bromegrass seeds in the definition of Sample grade.

6. Miscellaneous format changes.

Seven comments were received regarding the November 20, 1986 proposed changes to the barley standards. All comments either supported or did not oppose the proposed changes.

The current definitions for the three subclasses of malting barley provide that the barley be "not semisteely in

mass." This quality evaluation is subjective, and not commonly used as a separate quality evaluation by the brewing industry because maltsters have their own objective tests available to indicate suitability for brewing purposes. Accordingly, the requirement "not semisteely in mass" is removed from the definition of malting barley as no longer necessary.

Currently, the special grade "Tough" is defined as barley that contains more than 14.5 percent moisture. Moisture content is not descriptive of grain quality. Moisture content is a condition of grain rather than a quality factor. Pursuant to current trade practices, discounts for moisture generally are assessed on the actual content rather than the Special grade "Tough" to account for weight loss and drying costs to handlers. In addition, moisture content is required by regulation (7 CFR 800.162(a)) to be shown on all official certificates when an official grade determination is made. Therefore, the special grade "Tough" is removed. This change conforms the barley standards to other grain standards.

The special grades "Stained," "Bleached," and "Bright" have not been applied in several years according to inspection information available to FGIS. Consequently these special grades appear to have little value in the barley standards. Present commercial practices have made their use no longer necessary. Accordingly, the special grades "Stained," "Bleached," and "Bright" are removed. While not a special grade, badly stained barley will remain a criterion in determining numerical grades. One commenter questioned the subjective nature of the determination and the validity of the factor. However, the factor is important in the inspection of barley, and will be retained.

During meetings with the trade, several members suggested removal of the current descriptive terms "frost-damaged kernels (minor)," "mold-damaged kernels (minor)," and "heat-damaged kernels (minor)" and substitution of the terms "injured-by-frost kernels," "injured-by-mold kernels," and "injured-by-heat kernels," respectively. The terms "injured-by-frost kernels" and "injured-by-mold kernels" include kernels which are slightly affected by adverse environmental factors and are not acceptable to maltsters because of unsatisfactory germination or other reasons. These kernels, however, are affected to such a slight degree that they are not considered damaged kernels in the inspection procedure. While kernels that are "injured-by-heat" are considered damaged kernels it was suggested that the term "injured-by-heat" was the descriptive term preferred by the trade. The terms "injured-by-frost kernels" and "injured-by-mold kernels" better describe and differentiate the condition of the kernels than the terms "frost-damaged kernels (minor)" and "mold-damaged kernels (minor)", especially when used in conjunction with the terms "frost-damaged kernels (major)" and "mold-damaged kernels (major)". Similarly, the term "injured-by-heat kernels" is considered more descriptive than the term "heat-damaged kernels (minor)". Therefore the terms "injured-by-frost kernels", "injured-by-mold kernels", and "injured-by-heat kernels" are substituted for the currently used "frost-damaged kernels (minor)", "mold-damaged kernels (minor)", and "heat-damaged kernels (minor)", respectively. The terms "frost-damaged kernels", "mold-damaged kernels", and "heat-damaged kernels" are substituted for the currently used "frost-damaged kernels (major)", "mold-damaged kernels (major)", and "heat-damaged kernels (major)", respectively. In addition, the definition of damaged kernels is revised to delete references to "frost-damaged kernels (minor)" and "mold-damaged kernels (minor)". Also, in that definition, the term "heat-damaged (minor)" is removed and "injured-by-heat" substituted in its place. Further, all of the grading tables for barley are revised to reflect proper use of the new terminology.

Barley with black colored hulls, referred to as black barley, is not used by brewers because of poor brewing characteristics. Black barley currently is a grading factor with specific grade limits for malting and nonmalting barley. For many years black barley has not been grown, and therefore has not been seen in commercial channels. Therefore black barley is removed as a grade-determining factor and black-colored barley kernels are included under the definition and limits for "other grains".

The requirement that Six-rowed barley, Two-rowed barley, and the class Barley be graded U.S. Sample grade when the presence of smut is so great than one or more of the grade factors cannot be determined accurately, has not been applied for many years because the presence of smut has been reduced due to seed treatment and other improvements. Accordingly, the requirement regarding the presence of smut is removed from the definition of U.S. Sample grade for Six-rowed barley, Two-rowed barley, and the class Barley. However, the special grade "Smutty" is retained to identify those samples which show the presence of smut.

Currently, when 8 or more unhulled wild bromegrass seeds are found, barley is graded Sample grade. The factor was included because the harsh awns of wild bromegrass were believed to stick in the mouths of livestock and cause distress. University animal specialists contacted by FGIS indicate that there has been no record of complaints about animals being adversely affected by ingesting wild bromegrass seeds. Accordingly, the requirement regarding the presence of wild bromegrasses is removed from the definition of U.S. Sample grade for Six-rowed barley, Two-rowed barley, and the class Barley. The definition for "wild bromegrasses" is removed as unnecessary.

In the inspection of barley, a threshold determination is made by official inspection personnel as to whether a sample represents barley of a malting or nonmalting variety or quality. The determination is based primarily on whether or not the barley is of a suitable malting type. The barley is then graded according to various factors for malting and nonmalting barley provided for in the standards. Some producers have asked that grading procedures be changed to allow an applicant for inspection to request that a sample be graded as a nonmalting barley without regard to barley variety or quality. It has been stated that in certain production areas, this provision would aid in the marketing of barley of malting quality for feed purposes.

In the normal marketing of grain, a lot of barley may be inspected several times from the time of delivery at the country elevator to final inspection at export. FGIS believes that permitting an applicant to choose between grading barley as malting or nonmalting would confuse the marketing of this grain. Therefore, it was not proposed to permit an applicant to request a sample of barley be graded as a malting or nonmalting barley.

In commenting on the proposals however, three commenters stated that an applicant should be permitted to request how a sample should be graded. They stated that there is an advantage in certain situations for barley of malting quality to be graded as a nonmalting barley. Based upon all information available, it is the Service's view that this issue needs further study and that any changes, if deemed appropriate, will be proposed at a later time.

The redesignation of the class Barley as Feed barley was discussed in meetings with the industry as possibly

enhancing the export of barley for feed purposes. However, because of the lack of a clear consensus among industry representatives, the change was not proposed. One commenter addressing the issue stated that barley which fails to meet requirements for malting purposes can best be described as "Feed barley" or "Barley Other than Malting". The Service believes this issue needs further review, and that any changes, if deemed appropriate, will be proposed at a later time.

One commenter suggested that the 5/64 × ¾ slotted-hole sieve be used to determine the factor "thin barley" in all samples. Currently the 5–½/64 × ¾ slotted-hole sieve is used to determine thin barley in Two-rowed barley, and the 5/64 × ¾ slotted-hole sieve is used for Six-rowed barley and for mixtures of Two- and Six-rowed barley. The use of different sized sieves used for this determination is due to the different degree of plumpness usually found between the two types of barley. Because of the large number of new varieties grown today, the Service plans to regularly run sieving tests to determine if sieve sizes need to be adjusted. However, it is the view of the Service that no changes need to be made at this time.

One commenter stated that one of the botanical names currently used to identify barley is no longer appropriate. Currently, Six-rowed barley is identified as *Hordeum vulgare* L. and Two-rowed barley as *H. distichum* L. Since *H. distichum* L. is no longer used, both types of barley will now be identified as *Hordeum vulgare* L., and the definition of barley will be revised to reflect the new terminology.

The same commenter suggested that the grade charts and definitions of the subclasses Six-rowed Malting barley, Six-rowed Blue Malting barley, and Two-rowed Malting barley were contradictory. The Service has reviewed the wording of the definitions of these subclasses and has revised them to include the class factor information currently shown in the grade charts. The class factor information included as footnotes in the grade charts is removed.

In addition to the recommended changes to the barley standards, industry representatives suggested, and the Service requested comments on, the following changes:

1. Make information on the percentage of plump barley available upon request in place of the current procedure of showing the percentages on all samples of malting barley, and

2. Determine the protein content of barley upon request and show results on a moisture-free basis.

It was recommended that the determination of plump kernals be made only upon request instead of upon every sample grading malting barley because this determination is used primarily by maltsters for in-house quality. During the comment period one commenter stated that the percentage of plump barley should not be shown on the grade line, and one did not support the proposal, suggesting that it be shown on all samples of malting barley. However, during previous discussions of the factor, it was recommended unanimously by industry groups that the determination of plump kernals be made upon request instead of upon all samples of malting barley. This would make the information available for those who need the information but would not be shown for applicants who do not desire the information. It has been stated that the inspection process would be simplified and speeded up. While conforming changes to FGIS instructions will be made, it has been determined that § 800.106 of the standards should be revised to provide that the percentage of plump barley be determined upon request of the applicant, and reflected in the remarks section of an official certificate.

Protein content may be useful information to a buyer. Methodology has been developed to determine protein content in barley including the use of near infrared reflectance (NIR) instruments. Information on the protein content of barley is important in brewing, and in the formulation of feeding rations.

Currently, information on protein content is not available on an official basis. Protein is an official criteria under the U.S. Grain Standards Act for wheat. The percentage of protein would not be a grading factor, but would be additional information offered upon request, similar to protein in wheat. However, unlike wheat, the protein content of barley determined by laboratory methods has always been on a moisture-free basis. Two commenters expressed concern about the establishment of an official test for protein content. One expressed hope that the calibration of the near infrared devices for barley would be accomplished smoothly without major problems. The other opposed the establishment of the test and stated that NIR's do not provide satisfactory performance. NIR protein results are continually monitored to assure that instrument calibrations and procedures are within established tolerances. Therefore, the NIR should provide satisfactory performance for the intended purpose and would provide valuable information for users of barley. Accordingly, it has been determined that protein content in barley be determined upon request as an official criterion under the U.S. Grain Standards Act, and certificated on a moisture-free basis beginning May 1, 1988. While conforming changes will be made to FGIS instructions, it has been determined that § 800.106 of the standards should be revised to indicate that the results of protein testing for both wheat and barley would appear in the remarks section of an official certificate.

In addition, this final rule removes § 810.104 *Temporary modifications in equipment and procedures* as unnecessary, and renumbers subsequent sections as appropriate.

This final rule also corrects language that was incorrectly incorporated or deleted in the composition of the October 2, 1986 **Federal Register**. For example, the definitions of "Smutty rye" and "Light smutty rye" were reversed; and specific wording was omitted from the definition of "Test weight per bushel". Also, it was not the intention of the Service to provide uniform language for stones in the Sample grade definitions for all grains as "8 or more stones which have an aggregate weight in excess of 0.2 percent of the sample weight." Rather, the Sample grade definition for barley, rye, triticale, and wheat should have been "8 or more stones or any number of stones which have an aggregate weight in excess of 0.2 percent of the sample weight."

These and other nonsubstantive changes have been included in this final rule.

List of Subjects in 7 CFR Part 810

Export, Grain.

Accordingly, 7 CFR Part 810 is revised as follows:

PART 810 OFFICIAL UNITED STATES STANDARDS FOR GRAIN

SUBPART A—GENERAL PROVISIONS

Terms Defined

Authority: Sections 3A and 4, United States Grain Standards Act (7 U.S.C. 75a, 76).

Subpart A—General Provisions

Note.—Compliance with the provisions of these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal laws.

Terms Defined

§ 810.101 Grains for which standards are established.

Grain refers to barley, corn, flaxseed, mixed grain, oats, rye, sorghum, soybeans, sunflower seed, triticale, and wheat. Standards for these food grains, feed grains, and oilseeds are established under the United States Grain Standards Act.

§ 810.102 Definition of other terms.

Unless otherwise stated, the definitions in this section apply to all grains. All other definitions unique to a particular grain are contained in the appropriate subpart for that grain.

(a) *Distinctly low quality.* Grain that is obviously of inferior quality because it is in an unusual state or condition, and that cannot be graded properly by use of other grading factors provided in the standards. Distinctly low quality includes the presence of any objects too large to enter the sampling device; i.e., large stones, wreckage, or similar objects.

(b) *Moisture.* Water content in grain as determined by an approved device according to procedures prescribed in FGIS instructions.

(c) *Stones.* Concreted earthy or mineral matter and other substances of similar hardness that do not disintegrate in water.

(d) *Test weight per bushel.* The weight per Winchester bushel (2,150.42 cubic inches) as determined using an approved device according to procedures prescribed in FGIS instructions. Test weight per bushel in the standards for corn, mixed grain, oats, sorghum, and soybeans, is determined on the original sample. Test weight per bushel in the standards for barley, flexseed, rye, sunflower seed, triticale, and wheat is determined after mechanically cleaning the original sample. Test weight per bushel is recorded in whole and tenth pounds to the nearest tenth pound for wheat, rye, and triticale. Test weight per bushel for all other grains is recorded in whole and half pounds, with a fraction of a half pound disregarded.

(e) *Whole kernels.* Grain with ¼ or less of the kernel removed.

Principles Governing the Application of Standards

§ 810.103 Basis of determination.

(a) *Distinctly low quality.* The determination of distinctly low quality is made on the basis of the lot as a whole at the time of sampling when a condition exists that may or may not appear in the representative sample and/or the sample as a whole.

(b) *Certain quality determinations.* Each determination of rodent pellets, bird droppings, other animal filth, broken glass, castor beans, cockleburs, crotalaria seeds, dockage, garlic, live insect infestation, large stones, moisture, temperature, an unknown foreign substance(s), and a commonly recognized harmful or toxic substance(s) is made on the basis of the sample as a whole. When a condition exists that may not appear in the representative sample, the determination may be made on the basis of the lot as a whole at the time of sampling according to procedures prescribed in FGIS instructions.

(c) *All other determinations.* The basis of determination for all other factors is contained in the individual standards.

§ 810.104 Percentages.

(a) *Rounding.* Percentages are determined on the basis of weight and are rounded as follows:

(1) When the figure to be rounded is followed by a figure greater than or equal to 5, round to the next higher figure; e.g., report 6.36 as 6.4, 0.35 as 0.4, and 2.45 as 2.5.

(2) When the figure to be rounded is followed by a figure less than 5, retain the figure; e.g., report 8.34 as 8.3, and 1.22 as 1.2.

(b) *Recording.* The percentage of dockage in barley, flaxseed, rye, and sorghum is reported in whole percent with a fraction of a percent being disregarded. Dockage in triticale is reported in whole and half percent with a fraction less than one-half percent being disregarded. Dockage in wheat is reported in whole and tenth percent to the nearest tenth percent. Foreign material in sunflower seed is reported to the nearest one-half percent. Ranges of sunflower seed foreign material are reported as follows: 0.0 to 0.24 is reported as 0.0 percent, 0.25 to 0.74 as 0.5 percent, 0.75 to 1.24 as 1.0 percent, and the like. Foreign material and fines in mixed grain is reported in whole percent. The percentage of ergot is reported to the nearest hundredth percent. The percentage when determining the identity of all grains is reported to the nearest whole percent. Also reported to the nearest whole percent are the classes and subclasses in wheat; flint corn; flint and dent corn; waxy corn; classes in barley; splits in soybeans; and the percentage of each kind of grain in mixed grain. Plump barley shall be expressed in terms of the range in which it falls. Ranges shall be: Below 50 percent, 50 to 55 percent, 56 to 60 percent, 61 to 65 percent, and the like.

Grades, Grade Requirements, and Grade Designations

§ 810.105 Grades and grade requirements.

The grades and grade requirements for each grain (except mixed grain) and shown in the grade table(s) of the respective standards. Mixed grain grade requirements are not presented in tabular form.

§ 810.106 Grade Designations.

(a) *Grade designations for grain.* The grade designations include in the following order (1) the letters "U.S."; (2) the abbreviation "No." and the number of the grade or the words "Sample grade"; (3) when applicable, the subclass; (4) the class or kind of grain; (5) when applicable, the special grade(s) except in the case of bright, extra heavy, and heavy oats or plump rye, the special grades, "bright", "extra heavy", "heavy" and "plump" will precede the word "oats" or "rye" as applicable; and (6) when applicable, the word "dockage" together with the percentage thereof. When applicable, the remarks section of the certificate will include in the order of predominance; in the case of a mixed class, the name and approximate percentage of the classses; in the case of sunflower seed, the percentage of admixture; in the case of mixed grain, the grains present in excess of 10.0 percent of the mixture and when applicable, the words *Other grains* followed by a statement of the percentage of the combined quantity of those kinds of grains, each of which is present in a quantity less than 10.0 percent; in the case of barley, if requested, the word "plump" with the percentage range thereof; in the case of barley or wheat, if requested, the percentage of protein content, provided that, in the case of barley, recording the percentage of protein content shall commence on May 1, 1988.

(b) *Optional grade designations.* In addition to paragraph (a) of this Section, grain may be certificated under certain conditions as described in FGIS instructions when supported by official analysis, as "U.S. No. 2 or better (*type of grain*)", "U.S. No. 3 or better (*type of grain*)", and the like.

Special Grades, Special Grade Requirements, and Special Grade Designations

§ 810.107 Special grades and special grade requirements.

A special grade serves to draw attention to a special factor or condition present in the grain and, when applicable, is supplemental to the grade assigned under § 810.106. Special grades

are identified and requirements are established in each respective grain standard.

§ 810.108 Special grade designations.

Special grade designations are shown as prescribed in § 810.106. Multiple special grade designations will be listed in alphabetical order. In the case of treated wheat, the official certificate shall show whether the wheat has been scoured, limed, washed, sulfured, or otherwise treated.

Subpart B—United States Standards for Barley

Terms Defined

§ 810.201 Definition of barley.

Grain that, before the removal of dockage, consists of 50 percent or more of whole kernels of cultivated barley (*Hordeum vulgare* L.) and not more than 25 percent of other grains for which standards have been established under the United States Grain Standards Act. The term "barley" as used in these standards does not include hull-less barley or black barley.

§ 810.202 Definition of other terms.

(a) *Black barley.* Barley with black hulls.

(b) *Broken kernels.* Barley with more than ¼ of the kernel removed.

(c) *Classes.* There are three classes for barley: Six-rowed barley, Two-rowed barley, and Barley.

(1) *Six-rowed barley.* Barley of the six-rowed type with white hulls that contains not more than 10.0 percent of Two-rowed barley. This class is divided into the following three subclasses:

(i) *Six-rowed Malting barley.* Six-rowed barley of a suitable malting type that has 90.0 percent or more of kernels with white aleurone layers; that contains not more than 1.9 percent of injured-by-frost kernels that may include not more than 0.4 percent of frost-damaged kernels; not more than 0.2 percent of injured-by-heat kernels that may include not more than 0.1 percent of heat-damaged kernels; that is not blighted, ergoty, garlicky, infested, or smutty; and that otherwise meets the grade requirements of the subclass Six-rowed Malting barley; and may contain unlimited amounts of injured-by-mold kernels; however, mold-damaged kernels are scored as damaged kernels and against sound barley limits.

(ii) *Six-rowed Blue Malting barley.* Six-rowed barley of a suitable malting type that has 90.0 percent or more of kernels with blue aleurone layers; that contains not more than 1.9 percent of injured-by-frost kernels that may include not more than 0.4 percent of frost-damaged kernels; not more than 0.2 percent of injured-by-heat kernels that may include not more than 0.1 percent of heat-damaged kernels; that is not blighted, ergoty, garlicky, infested, or smutty; and that otherwise meets the grade requirements of the subclass Six-rowed Blue Malting barley; and may contain unlimited amounts of injured-by-mold kernels; however, mold-damaged kernels are scored as damaged kernels and against sound barley limits.

(iii) *Six-rowed barley.* Any barley of the class Six-rowed barley that does not meet the requirements of the subclass Six-rowed Malting barley or Six-rowed Blue Malting barley.

(2) *Two-rowed barley.* Barley of the two-rowed type with white hulls that contains not more than 10.0 percent of Six-rowed barley. This class is divided into the following two subclasses:

(i) *Two-rowed Malting barley.* Two-rowed barley of a suitable malting type; that contain not more than 1.9 percent of injured-by-frost kernels that may include not more than 0.4 percent frost-damaged kernels; not more than 1.9 percent of injured-by-mold kernels that may include not more than 0.4 percent of mold-damaged kernels; and not more than 0.2 percent of injured-by-heat kernels that may include not more than 0.1 percent of heat-damaged kernels; that is not blighted, ergoty, garlicky, infested, or smutty; and that otherwise meets the grade requirements of the subclass Two-rowed Malting barley. Injured-by-frost kernels and injured-by-mold kernels are not scored against sound barley.

(ii) *Two-rowed barley.* Two-rowed barley that does not meet the requirements of the subclass Two-rowed Malting barley.

(3) *Barley.* Barley that does not meet the requirements for the classes Six-rowed barley or Two-rowed barley.

(d) *Damaged kernels.* Kernels, pieces of barley kernels, other grains, and wild oats that are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, germ-damaged, heat-damaged, injured-by-heat, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

(e) *Dockage.* All matter other than barley that can be removed from the original sample by use of an approved device according to procedures prescribed in FGIS instructions. Also, underdeveloped, shriveled, and small pieces of barley kernels removed in properly separating the material other than barley and that cannot be recovered by properly rescreening or recleaning.

(f) *Foreign material.* All matter other than barley, other grains, and wild oats that remains in the sample after removal of dockage.

(g) *Frost-damaged kernels.* Kernels, pieces of barley kernels, other grains, and wild oats that are badly shrunken and distinctly discolored black or brown by frost.

(h) *Germ-damaged kernels.* Kernels, pieces of barley kernels, other grains, and wild oats that have dead or discolored germ ends.

(i) *Heat-damaged kernels.* Kernels, pieces of barley kernels, other grains, and wild oats that are materially discolored and damaged by heat.

(j) *Injured-by-frost kernels.* Kernels and pieces of barley kernels that are distinctly indented, immature or shrunken in appearance or that are light green in color as a result of frost before maturity.

(k) *Injured-by-heat kernels.* Kernels, pieces of barley kernels, other grains, and wild oats that are slightly discolored as a result of heat.

(l) *Injured-by-mold kernels.* Kernels, pieces of barley kernels containing slight evidence of mold.

(m) *Mold-damaged kernels.* Kernels, pieces of barley kernels, other grains, and wild oats that are weathered and contain considerable evidence of mold.

(n) *Other grains.* Black barley, corn, cultivated buckwheat, einkorn, emmer, flaxseed, guar, hull-less barley, nongrain sorghum, oats, Polish wheat, popcorn, poulard wheat, rice, rye, safflower, sorghum, soybeans, spelt, sunflower seed, sweet corn, triticale, and wheat.

(o) *Plump barley.* Barley that remains on top of a 6/64 × ¾ slotted-hole sieve after sieving according to procedures prescribed in FGIS instructions.

(p) *Sieves.* (1) *6/64 × ¾ slotted-hole sieve.* A metal sieve 0.032 inch thick with slotted perforations 0.0781 (6/64) inch by 0.750 (¾) inch.

(2) *5–½/64 × ¾ slotted-hole sieve.* A metal sieve 0.032 inch thick with slotted perforations 0.0895 (5–½/64) inch by 0.750 (¾) inch.

(3) *6/64 × ¾ slotted-hole sieve.* A metal sieve 0.032 inch thick with slotted perforations 0.0937 (6/64) inch by 0.750 (¾) inch.

(q) *Skinned and broken kernels.* Barley kernels that have one-third or more of the hull removed, or that the hull is loose or missing over the germ, or broken kernels, or whole kernels that have a part or all of the germ missing.

(r) *Sound barley.* Kernels and pieces of barley kernels that are not damaged, as defined under (d) of this section.

(s) *Stained barley.* Barley that is badly stained or materially weathered.

(t) *Suitable malting type.* Varieties of malting barley that are recommended by

the Federal Grain Inspection Service as being suitable for malting purposes. The recommended varieties are listed in FGIS instructions.

(u) *Thin barley.* Six-rowed barley which passes through a 5/64 × 3/4 slotted-hole sieve and two-rowed barley which passes through a 5-1/2/64 × 3/4 slotted-hole sieve after sieving according to procedures prescribed in FGIS instructions.

(v) *Wild oats.* Seeds of *Avena fatua* L. and *A. sterilis* L.

Principles Governing the Application of Standards

§ 810.203 Basis of determination.

All other determinations. Each determination of heat-damaged kernels, injured-by-heat kernels, and white or blue aleurone layers in Six-rowed barley is made on pearled, dockage-free barley. Other determinations not specifically provided for under the *General Provisions* are made on the basis of the grain when free from dockage, except the determination of odor is made on either the basis of the grain as a whole or the grain when free from dockage.

Grades and Grade Requirements

§ 810.204 Grades and grade requirements for the subclasses Six-rowed Malting barley and Six-rowed Blue Malting barley.

Grade	Minimum limits of—			Maximum limits of—				
	Test weight per bushel (pounds)	Suitable malting type (percent)	Sound barley [1] (percent)	Damaged kernels [1] (percent)	Foreign material (percent)	Other grains (percent)	Skinned and broken kernels (percent)	Thin barley (percent)
U.S. No. 1	47.0	95.0	97.0	2.0	1.0	2.0	4.0	7.0
U.S. No. 2	45.0	95.0	94.0	3.0	2.0	3.0	6.0	10.0
U.S. No. 3	43.0	95.0	90.0	4.0	3.0	5.0	8.0	15.0

[1] Includes heat-damaged kernels. Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels or scored against sound barley.

Note.—Six-rowed barley that meets the requirements of U.S. No. 1 to U.S. No. 3, inclusive, for the subclasses Six-rowed Malting barley and Six-rowed Blue Malting barley is classified and graded according to the requirements in this section. Otherwise, it will be graded according to the requirements in § 810.206.

§ 810.205 Grades and grade requirements for the subclass Two-rowed Malting barley

Grade	Minimum limits of—			Maximum limits of—			
	Test weight per bushel (pounds)	Suitable malting types (percent)	Sound barley [1] (percent)	Wild oats (percent	Foreign material (percent)	Skinned and broken kernels	Thin barley (percent)
U.S. No. 1 Choice	50.0	97.0	98.0	1.0	0.5	5.0	5.0
U.S. No. 1	48.0	97.0	98.0	1.0	0.5	7.0	7.0
U.S. No. 2	48.0	95.0	96.0	2.0	1.0	10.0	10.0
U.S. No. 3	48.0	95.0	93.0	3.0	2.0	10.0	10.0

[1] Injured-by-frost kernels and injured-by-mold kernels are not stored against sound barley.

Note.—Two-rowed barley that meets the requirements of U.S. No. 1 Choice to U.S. No. 3, inclusive, for the subclass Two-rowed Malting barley is classified and graded according to the requirements in this section. Otherwise, it will be graded according to the requirements in § 810.206.

§ 810.206 Grades and grade requirements for the subclasses Six-rowed barley, Two-rowed Barley and the class Barley.

Grade	Minimum limits of—		Maximum limits of—				
	Test weight per bushel (pounds)	Sound barley (percent)	Damaged kernels [1] (percent)	Heat-damaged kernels (percent)	Foreign material (percent)	Broken kernels (percent)	Thin barley (percent)
U.S. No. 1	47.0	97.0	0.2	0.2	1.0	4.0	10.0
U.S. No. 2	45.0	94.0	4.0	0.3	2.0	8.0	15.0
U.S. No. 3	43.0	90.0	6.0	0.5	3.0	12.0	25.0
U.S. No. 4 [2]	40.0	85.0	8.0	1.0	4.0	18.0	5.0
U.S. No. 5	36.0	75.0	10.0	3.0	5.0	28.0	75.0

U.S. Sample grade:

U.S. Sample grade shall be barley that:

(a) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, 4, or 5; or

(b) Contains 8 or more stones or any number of stones which have an aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria spp.*), 2 or more castor beans (*Ricinus communis* L.), 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), 8 or more cocklebur (*Xanthium*) ssp.) or similar seeds singly or in combination, 10 or more rodent pellets, bird droppings, or equivalent quantity of other animal filth per 1 1/8 to 1 1/4 quarts of barley; or

(c) Has a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or

(d) Is heating or otherwise of distinctly low quality.

[1] Includes heat-damaged kernels. Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels.

[2] Barley that is badly stained or materially weathered shall be graded not higher than U.S. No. 4.

Special Grades and Special Grade Requirements

§ 810.207 Special grades and special grade requirements.

(a) *Blighted barley.* Barley that contains more than 4.0 percent of fungus-damaged and/or mold-damaged kernels.

(b) *Ergoty barley.* Barley that contains more than 0.10 percent ergot.

(c) *Garlicky barley.* Barley that contains three or more green garlic bulblets, or an equivalent quantity of dry or partly dry bulblets in 500 grams of barley.

(d) *Infested barley.* Barley that is infested with live weevils or other live insects injurious to stored grain according to procedures prescribed in FGIS instructions.

(e) *Smutty barley.* Barley that has kernels covered with smut spores to give a smutty appearance in mass, or which contains more than 0.20 percent smut balls.

Subpart C—United States Standards for Corn

Terms Defined

§ 810.401 Definition of corn.

Grain that consists of 50 percent or more of whole kernels of shelled dent corn and/or shelled flint corn (*Zea mays* L.) and not more than 10.0 percent of other grains for which standards have been established under the United States Grain Standards Act.

§ 810.402 Definition of other terms.

(a) *Broken corn and foreign material.* All matter that passes readily through a $^{12}/_{64}$ round-hole sieve and all matter other than corn that remains in the sieved after sieving according to procedures prescribed in FGIS instructions.

(b) *Classes.* There are three classes for corn: Yellow corn, White corn, and Mixed corn.

(1) *Yellow corn.* Corn that is yellow-kerneled and contains not more than 5.0 percent of corn of other colors. Yellow kernels of corn with a slight tinge of red are considered yellow corn.

(2) *White corn.* Corn that is white-kerneled and contains not more than 2.0 percent of corn of other colors. White kernels of corn with a slight tinge of light straw or pink color are considered white corn.

(3) *Mixed corn.* Corn that does not meet the color requirements for either of the classes Yellow corn or White corn and includes white-capped Yellow corn.

(c) *Damaged kernels.* Kernels and pieces of corn kernels that are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

(d) *Heat-damaged kernels.* Kernels and pieces of corn kernels that are materially discolored and damaged by heat.

(e) *Sieve. $^{12}/_{64}$ round-hole sieve.* A metal sieve 0.032 inch thick with round perforations 0.1875 ($^{12}/_{64}$) inch in diameter which are ¼ inch from center to center. The perforations of each row shall be staggered in relation to the adjacent row.

Principles Governing the Application of Standards

§ 810.403 Basis of determination.

Each determination of class, damaged kernels, heat-damaged kernels, flint corn, and flint and dent corn is made on the basis of the grain after the removal of the broken corn and foreign material. Other determinations not specifically provided for under the general provisions are made on the basis of the grain as a whole, except the determination of odor is made on either the basis of the grain as a whole or the grain when free from broken corn and foreign material.

Grades and Grade Requirements

§ 810.404 Grades and grade requirements for corn.

Grade	Minimum test weight per bushel (pounds)	Maximum limits of—		
		Damaged kernels		Broken corn and foreign material (percent)
		Heat damaged kernels (percent)	Total (percent)	
U.S. No. 1	56.0	0.1	3.0	2.0
U.S. No. 2	54.0	0.2	5.0	3.0
U.S. No. 3	52.0	0.5	7.0	4.0
U.S. No. 4	49.0	1.0	10.0	5.0
U.S. No. 5	46.0	3.0	15.0	7.0
U.S. Sample grade—				

U.S. Sample grade is corn that:

(a) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, 4, or 5; or

(b) Contains 8 or more stones which have an aggregate weight in excess of 0.20 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis* L.), 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), 8 or more cocklebur (*Xanthium* spp.) or similar seeds singly or in combination, or animal filth in excess of 0.20 percent in 1000 grams; or

(c) Has a musty, sour, or commercially objectional foreign odor; or

(d) Is heating or otherwise of distinctly low quality.

Special Grades and Special Grade Requirements

§ 810.405 Special grades and special grade requirements.

(a) *Flint corn.* Corn that consists of 95 percent or more of flint corn.

(b) *Flint and dent corn.* Corn that consists of a mixture of flint and dent corn containing more than 5.0 percent but less than 95 percent of flint corn.

(c) *Infested corn.* Corn that is infested with live weevils or other live insects injurious to stored grain according to

procedures prescribed in FGIS instructions.

(d) *Waxy corn.* Corn that consists of 95 percent of more waxy corn, according to procedures prescribed in FGIS instructions.

Subpart D—United States Standards for Flaxseed

Terms Defined

§ 810.601 Definition of flaxseed.

Grain that, before the removal of dockage, consists of 50 percent or more of common flaxseed (*Linum usitatissimum* L.) and not more than 20 percent of other grains for which standards have been established under the United States Grain Standards Act and which, after the removal of dockage, contains 50 percent or more of whole flaxseed.

§ 810.602 Definition of other terms.

(a) *Damaged kernels.* Kernels and pieces of flaxseed kernels that are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

(b) *Dockage.* All matter other than flaxseed that can be removed from the original sample by use of an approved device according to procedures prescribed in FGIS instructions. Also, underdeveloped, shriveled, and small pieces of flaxseed kernels removed in properly separating the material other than flaxseed and that cannot be recovered by properly rescreening or recleaning.

(c) *Heat-damaged kernels.* Kernels and pieces of flaxseed kernels that are materially discolored and damaged by heat.

(d) *Other grains.* Barley, corn, cultivated buckwheat, einkorn, emmer, guar, hull-less barley, nongrain sorghum, oats, Polish wheat, popcorn, poulard wheat, rice, rye, safflower, sorghum, soybeans, spelt, sunflower seed, sweet corn, triticale, wheat, and wild oats.

Principles Governing the Application of Standards

§ 810.603 Basis of determination.

Other determinations not specifically provided for under the general provisions are made on the basis of the grain when free from dockage, except the determination of odor is made on either the basis of the grain as a whole or the grain when free from dockage.

Grades and Grade Requirements

§ 810.604 Grades and grade requirements for flaxseed.

Grade	Minimum test weight per bushel (pounds)	Maximum limits of damaged kernels—	
		Heat damaged kernels (percent)	Total (percent)
U.S. No. 1	49.0	0.2	10.0
U.S. No. 2	47.0	0.5	15.0

U.S. Sample grade—

U.S. Sample grade is flaxseed that:

(a) Does not meet the requirements for the grades U.S. Nos. 1 or 2; or

(b) Contains 8 or more stones which have an aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis* L.), 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), 10 or more rodent pellets, bird dropping, or equivalent quantity of other animal filth per 1⅛ to 1¼ quarts of flaxseed; or

(c) Has musty, sour, or commercially objectionable foreign odor (except smut or garlic odor), or

(d) Is heating or otherwise of distinctly low quality.

Subpart E—United States Standards for Mixed Grain

Terms Defined

§ 810.801 Definition of mixed grain.

Any mixture of grains for which standards have been established under the United States Grain Standards Act, provided that such mixture does not come within the requirements of any of the standards for such grains; and that such mixture consists of 50 percent or more of whole kernels of grain and/or whole or broken soybeans which will not pass through a 5/64 triangular-hole sieve and/or whole flaxseed that passes through such a sieve after sieving according to procedures prescribed in FGIS instructions.

§ 810.802 Definition of other terms.

(a) *Damaged kernels.* Kernels and pieces of grain kernels for which standards have been established under the Act, that are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

(b) *Foreign material and fines.* All matter other than whole flaxseed that passes through a 5/64 triangular-hole sieve, and all matter other than grains for which standards have been established under the Act, that remains in the sieved sample.

(c) *Grades.* U.S. Mixed Grain, or U.S. Sample grade Mixed Grain, and special grades.

(d) *Heat-damaged kernels.* Kernels and pieces of grain kernels for which standards have been established under the Act, that are materially discolored and damaged by heat.

(e) *Sieve—5/64 triangular-hole sieve.* A metal sieve 0.032 inch thick with equilateral triangular perforations the inscribed circles of which are 0.0781 (5/64) inch in diameter.

Principles Governing the Application of Standards

§ 810.803 Basis of determination.

Each determination of damaged and heat-damaged kernels, and the percentage of each kind of grain in the mixture is made on the basis of the sample after removal of foreign material and fines. Other determinations not specifically provided for under the general provisions are made on the basis of the grain as a whole, except the determination of odor is made on either the basis of the grain as a whole or the grain when free from foreign material and fines.

Grades and Grade Requirements

§ 810.804 Grades and grade requirements for mixed grain.

(a) *U.S. Mixed Grain (grade).* Mixed grain with not more than 15.0 percent of damaged kernels, and not more than 3.0 percent of heat-damaged kernels, and that otherwise does not meet the requirements for the grade U.S. Sample grade Mixed Grain.

(b) *U.S. Sample grade Mixed Grain.* Mixed grain that:

(1) Does not meet the requirements for the grade U.S. Mixed Grain; or

(2) Contains more than 16.0 percent moisture; or

(3) Contains 8 or more stones that have an aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of glass, 3 or more Crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis* L.), 8 more cockleburs (*Xanthium* spp.) or similar seeds singly or in combination, 4 or more pieces of an unknown foreign substance(s) or a recognized harmful or toxic substance(s), 10 or more rodent pellets, bird droppings, or an equivalent quantity of other animal filth per 1,000 grams of mixed grain; or

(4) Is musty, sour, or heating; or

(5) Has any commercially objectionable foreign odor except smut or garlic; or

(6) Is otherwise of distinctly low quality.

Special Grades and Special Grade Requirements

§ 810.805 Special grades and special grade requirements.

(a) *Blighted mixed grain.* Mixed grain in which barley predominates and that contains more than 4.0 percent of fungus-damaged and/or mold-damaged barley kernels.

(b) *Ergoty mixed grain.* (1) Mixed grain in which rye or wheat predominates and that contains more than 0.30 percent ergot, or

(2) Any other mixed grain that contains more than 0.10 percent ergot.

(c) *Garlicky mixed grain.* (1) Mixed grain in which wheat, rye, or triticale predominates, and that contains 2 or more green garlic bulblets, or an equivalent quantity of dry or partly dry bulblets in 1,000 grams of mixed grain; or

(2) Any other mixed grain that contains 4 or more green garlic bulblets, or an equivalent quantity of dry or partly dry bulblets, in 500 grams of mixed grain.

(d) *Infested mixed grain.* Mixed grain that is infested with live weevils or other live insects injurious to stored grain according to procedures prescribed in FGIS instructions.

(e) *Smutty mixed grain.* (1) Mixed grain in which rye, triticale, or wheat predominates, and that contains 15 or more average size smut balls, or an equivalent quantity of smut spores in 250 grams of mixed grain, or

(2) Any other mixed grain that has the kernels covered with smut spores to give a smutty appearance in mass, or that contains more than 0.2 percent smut balls.

(f) *Treated mixed grain.* Mixed grain that has been scoured, limed, washed, sulfured, or treated in such a manner that its true quality is not reflected by the grade designation U.S. Mixed Grain or U.S. Sample grade Mixed Grain.

Subpart F—United States Standards for Oats

Terms Defined

§ 810.1001 Definition of oats.

Grain that consists of 50 percent or more of oats (*Avena sativa* L. and *A. byzantina C.* Koch) and may contain, singly or in combination, not more than 25 percent of wild oats and other grains for which standards have been established under the United States Grain Standards Act.

§ 810.1002 Definition of other terms.

(a) *Fine seeds.* All matter that passes through a 5/64 triangular-hole sieve after sieving according to procedures prescribed in FGIS instructions.

(b) *Foreign material.* All matter other than oats, wild oats, and other grains.

(c) *Heat-damaged kernels.* Kernels and pieces of oat kernels, other grains, and wild oats that are materially discolored and damaged by heat.

(d) *Other grains.* Barley, corn, cultivated buckwheat, einkorn, emmer, flaxseed, guar, hull-less barley, nongrain sorghum, Polish wheat, popcorn, poulard wheat, rice, rye, safflower, sorghum, soybeans, spelt, sunflower seed, sweet corn, triticale, and wheat.

(e) *Sieves.* (1) *5/64 triangular-hole sieve.* A metal sieve 0.032 inch thick with equilateral triangular perforations the inscribed circles of which are 0.0781 (5/64) inch in diameter.

(2) *0.064 x 3/8 oblong-hole sieve.* A metal sieve 0.032 inch thick with oblong perforations 0.064 inch by 0.375 (3/8) inch.

(f) *Sound oats.* Kernels and pieces of oat kernels (except wild oats) that are not badly ground-damaged, badly weather-damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

(g) *Wild oats.* Seeds of *Avena fatua* L. and *A. sterillis* L.

Principles Governing the Application of Standards

§ 810.1003 Basis of determination.

Other determinations not specifically provided for under the general provisions are made on the basis of the grain as a whole.

Grades and Grade Requirements

§ 810.1004 Grades and grade requirements for oats.

Grade	Minimum limits—		Maximum limits—		
	Test weight per bushel (pounds)	Sound oats (percent)	Heat-damaged kernels (percent)	Foreign material (percent)	Wild oats (percent)
U.S. No. 1	36.0	97.0	0.1	2.0	2.0
U.S. No. 2	33.0	94.0	0.3	3.0	3.0
U.S. No. 3 [1]	30.0	90.0	1.0	4.0	5.0
U.S. No. 4 [2]	27.0	80.0	3.0	5.0	10.0

U.S. Sample grade—

U.S. Sample grade are oats which:

(a) Do not meet the requirements for the grades U.S. Nos. 1, 2, 3, or 4; or

(b) Contain 8 or more stones which have an aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis* L.), 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), 8 or more cocklebur (*Xanthium* spp.) or similar seeds singly or in combination, 10 or more rodent pellets, bird droppings, or equivalent quantity of other animal filth per 1 1/8 to 1 1/4 quarts of oats; or

(c) Have a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or

(d) Are heating or otherwise of distinctly low quality.

[1] Oats that are slightly weathered shall be graded not higher than U.S. No. 3.

[2] Oats that are badly stained or materially weathered shall be graded not higher than U.S. No. 4.

Special Grades and Special Grade Requirements

§ 810.1005 Special grades and special grade requirements.

(a) *Bleached oats.* Oats that in whole or in part, have been treated with sulfurous acid or any other bleaching agent.

(b) *Bright oats.* Oats, except bleached oats, that are of good natural color.

(c) *Ergoty oats.* Oats that contain more than 0.10 percent ergot.

(d) *Extra-heavy oats.* Oats that have a test weight per bushel of 40 pounds or more.

(e) *Garlicky oats.* Oats that contain 4 or more green garlic bulblets or an equivalent quantity of dry or partly dry bulblets in 500 grams of oats.

(f) *Heavy oats.* Oats that have a test weight per bushel of 38 pounds or more but less than 40 pounds.

(g) *Infested oats.* Oats that are infested with live weevils or other live insects injurious to stored grain according to procedures prescribed in FGIS instructions.

(h) *Smutty oats.* Oats that have kernels covered with smut spores to give a smutty appearance in mass, or that contain more than 0.2 percent of smut balls.

(i) *Thin oats.* Oats that contain more than 20.0 percent of oats and other matter, except fine seeds, that pass through a 0.064 × ⅜ oblong-hole sieve but remain on top of a 5/64 triangular-hole sieve after sieving according to procedures prescribed in FGIS instructions.

Subpart G—United States Standards for Rye

Terms Defined

§ 810.1201 Definition of rye.

Grain that, before the removal of dockage, consists of 50 percent or more of common rye (*Secale cereale* L.) and not more than 10 percent of other grains for which standards have been established under the United States Grain Standards Act and that, after the removal of dockage, contains 50 percent or more of whole rye.

§ 810.1202 Definition of other terms.

(a) *Damaged kernels.* Kernels, pieces of rye kernels, and other grains that are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

(b) *Dockage.* All matter other than rye that can be removed from the original sample by use of an approved device in accordance with procedures prescribed in FGIS instructions. Also, underdeveloped, shriveled, and small pieces of rye kernels removed in properly separating the material other than rye and that cannot be recovered by properly rescreening and recleaning.

(c) *Foreign material.* All matter other than rye that remains in the sample after the removal of dockage.

(d) *Heat-damaged kernels.* Kernels, pieces of rye kernels, and other grains that are materially discolored and damaged by heat.

(e) *Other grains.* Barley, corn, cultivated buckwheat, einkorn, emmer, flaxseed, guar, hull-less barley, nongrain sorghum, oats, Polish wheat, popcorn, poulard wheat, rice, safflower, sorghum, soybeans, spelt, sunflower seed, sweet corn, triticale, wheat, and wild oats.

(f) *Sieve—0.064* × ⅜ oblong-hole sieve. A metal sieve 0.032 inch thick with oblong perforations 0.064 by 0.375 (⅜) inch.

(g) *Thin rye.* Rye and other matter that passes through a 0.064 × ⅜ oblong-hole sieve after sieving according to procedures prescribed in FGIS instructions.

Principles Governing the Application of Standards

§ 810.1203 Basis of determination.

Other determinations not specifically provided for under the general provisions are made on the basis of the grain when free from dockage, except the determination of odor is made on either the basis of the grain as a whole or the grain when free from dockage.

Grades and Grade Requirements

§ 810.1204 Grades and grade requirements for rye.

Grade	Minimum test weight per bushel (pounds)	Maximum limits of—				
		Foreign material		Damaged kernels		Thin Rye (percent)
		Foreign matter other than wheat (percent)	Total (percent)	Heat damaged (percent)	Total (percent)	
U.S. No. 1	56.0	1.0	3.0	0.2	2.0	10.0
U.S. No. 2	54.0	2.0	6.0	0.2	4.0	15.0
U.S. No. 3	52.0	4.0	10.0	0.5	7.0	25.0
U.S. No. 4	49.0	6.0	10.0	3.0	15.0	.....

U.S. Sample grade—

U.S. Sample grade is rye that:

(a) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, or 4; or

(b) Contains 8 or more stones or any numbers of stones which have an aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis* L.), 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), 2 or more rodent pellets, bird droppings, or equivalent quantity of other animal filth per 1⅛ to 1¼ quarts of rye; or

(c) Has a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or

(d) Is heating or otherwise of distinctly low quality.

Special Grades and Special Grade Requirements

§ 810.1205 Special grades and special grade requirements.

(a) *Ergoty rye.* Rye that contains more than 0.30 percent of ergot.

(b) *Garlicky rye.* Rye that contains in a 1,000-gram portion more than six green garlic bulblets or an equivalent quantity of dry or partly dry bulblets.

(c) *Infested rye.* Rye that is infested with live weevils or other live insects injurious to stored grain according to procedures prescribed in FGIS instructions.

(d) *Light garlicky rye.* Rye that contains in a 1,000-gram portion two or more, but not more than six, green garlic bulblets or an equivalent quantity of dry or partly dry bulblets.

(e) *Light smutty rye.* Rye that has an unmistakable odor of smut, or that contains in a 250-gram portion smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 14 smut balls but not in excess of a quantity equal to 30 smut balls of average size.

(f) *Plump rye.* Rye that contains not more than 5.0 percent of rye and other matter that passes through a 0.064 × ⅜ oblong-hole sieve.

(g) *Smutty rye.* Rye that contains in a 250-gram portion smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 30 smut balls of average size.

Subpart H—United States Standards for Sorghum

Terms Defined

§ 810.1401 Definition of sorghum.

Grain that, before the removal of dockage, consists of 50 percent or more of whole kernels of sorghum (*Sorghum bicolor* (L.) Moench) excluding nongrain sorghum and not more than 10.0 percent of other grains for which standards have been established under the United States Grain Standards Act.

§ 810.1402 Definition of other terms.

(a) *Broken kernels, foreign material, and other grains.* All matter, other than dockage, that passes through a 5/64 triangular-hole sieve after sieving according to procedures prescribed in FGIS instructions and all matter other than sorghum that remains in the sieved sample.

(b) *Classes.* There are four classes for sorghum: White sorghum, Yellow sorghum, Brown sorghum, and Mixed sorghum.

(1) *White sorghum.* Sorghum with white or translucent pericarps. Such sorghum containing spots that singly or in combination cover 25.0 percent or less of the kernel is considered as White sorghum. White sorghum will contain not more than 2.0 percent (singly or combined) of kernels of sorghum of other colors.

(2) *Yellow sorghum.* Sorghum with yellow, salmon-pink, red, white, or translucent pericarps, that contains not more than 10.0 percent of sorghum with brown pericarps or pigmented subcoats, and that does not meet the requirements for the class White sorghum.

(3) *Brown sorghum.* Sorghum with brown pericarps or pigmented subcoats that contains not more than 10.0 pecent of sorghum of other colors.

(4) *Mixed sorghum.* Sorghum that does not meet the requirements for any of the classes White sorghum, Yellow sorghum, or Brown sorghum.

(c) *Damaged kernels.* Kernels, pieces of sorghum kernels and other grains that are badly ground damaged, badly weather damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

(d) *Dockage.* All matter other than sorghum that can be removed from the original sample by use of an approved device according to procedures prescribed in FGIS instructions. Also, underdeveloped, shriveled, and small pieces of sorghum kernels removed in properly separating the material other than sorghum and that cannot be recovered by properly rescreening or recleaning.

(e) *Heat-damaged kernels.* Kernels, pieces of sorghum kernels, and other grains that are materially discolored and damaged by heat.

(f) *Nongrain sorghum.* Seeds of broomcorn, Johnson-grass, *Sorghum almum* Parodi, sorghum-sundangrass hybrids, sorgrass, sudangrass, and sweet sorghum (*sorgo*).

(g) *Other grains.* Barley, corn, cultivated buckwheat, einkorn, emmer, flaxseed, guar, hull-less barley, nongrain sorghum, oats, Polish wheat, popcorn, poulard wheat, rice, rye, safflower, soybeans, spelt, sunflower seed, sweet corn, triticale, wheat, and wild oats.

(h) *Pericarp.* The pericarp is the outer layers of the sorghum grain and is fused to the seedcoat.

(i) *Sieves*—(1) *5/64 triangular-hole sieve.* A metal sieve 0.032 inch thick with equilateral triangular perforations and inscribed circles of that are 0.0781 (5/64) inch in diameter.

(2) *2½/64 round-hole sieve.* A metal sieve 0.032 inch thick with round holes 0.0391 (2½/64) inch in diameter.

Principles Governing the Application of Standards

§ 810.1403 Basis of determination.

Each determination of broken kernels, foreign material, and other grains is made on the basis of the grain when free from dockage. Each determination of class, damaged kernels, heat-damaged kernels, and stones is made on the basis of the grain when free from dockage and that portion of the broken kernels, foreign material, and other grains that will pass through a 5/64 triangular-hole sieve. Other determinations not specifically provided for in the general provisions are made on the basis of the grain as a whole except the determination of odor is made on either the basis of the grain as a whole or the grain when free from dockage and broken kernels, foreign material, and other grains removed by the 5/64 triangular-hole sieve.

Grades and Grade Requirements

§ 810.1404 Grades and grade requirements for sorghum.

Grade	Minimum test weight per bushel (pounds)	Maximum limits of—		
		Damaged kernels		Broken kernels, foreign material and other grains (percent)
		Heat damaged (percent)	Total (percent)	
U.S. No. 1	57.0	0.2	2.0	4.0
U.S. No. 2	55.0	0.5	5.0	8.0
U.S. No. 3 [1]	53.0	1.0	10.0	12.0
U.S. No. 4	51.0	3.0	15.0	15.0
U.S. Sample grade—				

U.S. Sample grade is sorghum that:

(a) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, or 4; or

(b) Contains 8 or more stones which have an aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis* L.), 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), 8 or more cocklebur (*Xanthium* spp.) or similar seeds singly or in combination, 10 or more rodent pellets, bird droppings, or equivalent quantity of other animal filth per 1,000 grams of sorghum; or

(c) Has a musty, sour, or commercially objectionable foreign odor (except smut odor); or

(d) Is badly weathered, heating, or distinctly low quality.

[1] Sorghum which is distinctly discolored shall be graded not higher than U.S. No. 3.

Special Grades and Special Grade Requirements

§ 810.1405 Special grades and special grade requirements.

(a) *Infested sorghum.* Sorghum that is infested with live weevils or other live insects injurious to stored grain according to procedures prescribed in FGIS instructions.

(b) *Smutty sorghum.* Sorghum that has kernels covered with smut spores to give a smutty appearance in mass, or that contains 20 or more smut balls in 100 grams of sorghum.

Subpart I—United States Standards for Soybeans

Terms Defined

§ 810.1601 Definition of soybeans.

Grain that consists of 50 percent or more of whole or broken soybeans (*Glycine max* (L.) Merr.) that will not pass through an 9/64 round-hole sieve and not more than 10.0 percent of other grains for which standards have been established under the United States Grain Standards Act.

§ 810.1602 Definition of other terms.

(a) *Classes.* There are two classes for sobyeans: Yellow soybeans and Mixed soybeans.

(1) *Yellow soybeans.* Soybeans that have yellow or green seed coats and which in cross section, are yellow or have a yellow tinge, and may include not more than 10.0 percent of soybeans of other colors.

(2) *Mixed soybeans.* Soybeans that do not meet the requirements of the class Yellow soybeans.

(b) *Damaged kernels.* Soybeans and pieces of soybeans that are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, stinkbug-stung, or otherwise materially damaged. Stinkbug-stung kernels are considered damaged kernels at the rate of one-fourth of the actual percentage of the stung kernels.

(c) *Foreign material.* All matter that passes through an 9/64 round-hole sieve and all matter other than soybeans remaining in the sieved sample after sieving according to procedures prescribed in FGIS instructions.

(d) *Heat-damaged kernels.* Soybeans and pieces of soybeans that are materially discolored and damaged by heat.

(e) *Purple mottled or stained.* Soybeans that are discolored by the growth of a fungus; or by dirt; or by a dirt-like substance(s) including nontoxic inoculants; or by other nontoxic substances.

(f) *Sieve—9/64 round-hole sieve.* A metal sieve 0.032 inch thick perforated with round holes 0.125 (9/64) inch in diameter.

(g) *Soybeans of other colors.* Soybeans that have green, black, brown, or bicolored seed coats. Soybeans that have green seed coats will also be green in cross section. Bicolored soybeans will have seed coats of two colors, one of which is brown or black, and the brown or black color covers 50 percent of the seed coats. The hilum of a soybean is not considered a part of the seed coat for this determination.

(h) *Splits.* Soybeans with more than 1/4 of the bean removed and that are not damaged.

Principles Governing the Application of Standards

§ 810.1603 Basis of determination.

Each determination of class, heat-damaged kernels, damaged kernels, splits, and soybeans of other colors is made on the basis of the grain when free from foreign material. Other determinations not specifically provided for under the general provisions are made on the basis of the grain as a whole.

Grades and Grade Requirements

§ 810.1604 Grades and grade requirements for soybeans.

Grade	Minimum test weight per bushel (pounds)	Maximum limits of—				
		Damaged kernels		Foreign material (percent)	Splits (percent)	Soybeans of other colors (percent)
		Heat damaged (percent)	Total (percent)			
U.S. No. 1	56.0	0.2	2.0	1.0	10.0	1.0
U.S. No. 2	54.0	0.5	3.0	2.0	20.0	2.0
U.S. No. 3 [1]	52.0	1.0	5.0	3.0	30.0	5.0
U.S. No. 4 [2]	49.0	3.0	8.0	5.0	40.0	10.0

U.S. Sample grade—

U.S. Sample grade is soybeans that:

(a) Do not meet the requirements for U.S. Nos. 1, 2, 3, or 4; or

(b) Contain 8 or more stones that have an aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of glass, 3 or more Crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis* L.), 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), 10 or more rodent pellets, bird droppings, or equivalent quantity of other animal filth per 1,000 grams of soybeans; or

(c) Have a musty, sour, or commercially objectionable foreign odor (except garlic odor); or

(d) Are heating or otherwise of distinctly low quality.

[1] Soybeans that are purple mottled or stained are graded not higher than U.S. No. 3.

[2] Soybeans that are materially weathered are graded not higher than U.S. No. 4.

Special Grades and Special Grade Requirements

§ 810.1605 Special grades and special grade requirements.

(a) *Garlicky soybeans.* Soybeans that contain 5 or more green garlic bulblets or an equivalent quantity of dry or partly dry bulblets in a 1,000 gram portion.

(b) *Infested soybeans.* Soybeans that are infested with live weevils or other live insects injurious to stored grain according to procedures prescribed in FGIS instructions.

Subpart J—United States Standards for Sunflower Seed

Terms Defined

§ 810.1801 Definition of sunflower seed.

Grain that, before the removal of foreign material, consists of 50.0 percent or more of cultivated sunflower seed (*Helianthus annuus* L.) and not more than 10.0 percent of other grains for which standards have been established under the United States Grain Standards Act.

§ 810.1802 Definition of other terms.

(a) *Cultivated sunflower seed.* Sunflower seed grown for oil content. The term seed in this and other definitions related to sunflower seed refers to both the kernel and hull which is a fruit or achene.

(b) *Damaged sunflower seed.* Seed and pieces of sunflower seed that are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, heat-damaged, mold-damaged, sprout-damaged, or otherwise materially damaged.

(c) *Dehulled seed.* Sunflower seed that has the hull completely removed from the sunflower kernel.

(d) *Foreign material.* All matter other than whole sunflower seeds containing kernels that can be removed from the original sample by use of an approved device and by handpicking a portion of the sample according to procedures prescribed in FGIS instructions.

(e) *Heat-damaged sunflower seed.* Seed and pieces of sunflower seed that are materially discolored and damaged by heat.

(f) *Hull (Husk).* The ovary wall of the sunflower seed.

(g) *Kernel.* The interior contents of the sunflower seed that are surrounded by the hull.

Principles Governing the Application of Standards

§ 810.1803 Basis of determination.

Each determination of heat-damaged kernels, damaged kernels, test weight per bushel, and dehulled seed is made on the basis of the grain when free from foreign material. Other determinations not specifically provided for in the general provisions are made on the basis of the grain as a whole, except the determination of odor is made on either the basis of the grain as a whole or the grain when free from foreign material.

Grades and Grade Requirements

§ 810.1804 Grades and grade requirements for sunflower seed.

Grade	Minimum test weight per bushel (pounds)	Maximum limits of—		
		Damaged Sunflower Seed		Dehulled seed (percent)
		Heat Damaged (percent)	Total (Percent)	
U.S. No. 1	25.0	0.5	5.0	5.0
U.S. No. 2	25.0	1.0	10.0	5.0
U.S. Sample grade—				

U.S. Sample grade is sunflower seed that:
(a) Does not meet the requirements for the grades U.S. Nos. 1 or 2; or
(b) Contains 8 or more stones which have an aggregate weight in excess of 0.20 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis* L.), 4 or more particles of an unknown foreign substance(s), or a commonly recognized harmful or toxic substance(s), 10 or more rodent pellets, bird droppings, or equivalent quantity of other animal filth per 600 grams of sunflower seed; or
(c) Has a musty, sour, or commercially objectionable foreign odor; or
(d) Is heating or otherwise of distinctly low quality.

Special Grades and Special Grade Requirements

§ 810.1805 Special grades and special grade requirements.

Infested sunflower seed. Sunflower seed that is infested with live weevils or other live insects injurious to stored grain according to procedures prescribed in FGIS instructions.

Subpart K—United States Standards for Triticale

Terms Defined

§ 810.2001 Definition of triticale.

Grain that, before the removal of dockage, consists of 50 percent or more of triticale (*X Triticosecale* Wittmack) and not more than 10 percent of other grains for which standards have been established under the United States Grain Standards Act and that, after the removal of dockage, contains 50 percent or more of whole triticale.

§ 810.2002 Definition of other terms.

(a) *Damaged kernels.* Kernels, pieces of triticale kernels, and other grains that are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insert-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

(b) *Defects.* Damaged kernels, foreign material, and shrunken and broken kernels. The sum of these three factors may not exceed the limit for the factor defects for each numerical grade.

(c) *Dockage.* All matter other than triticale that can be removed from the original sample by use of an approved device according to procedures prescribed in FGIS instructions. Also, underdeveloped, shriveled, and small pieces of triticale kernels removed in properly separating the material other than triticale and that cannot be recovered by properly rescreening or recleaning.

(d) *Foreign material.* All matter other than triticale.

(e) *Heat-damaged kernels.* Kernels, pieces of triticale kernels, and other grains that are materially discolored and damaged by heat.

(f) *Other grains.* Barley, corn, cultivated buckwheat, einkorn, emmer, flaxseed, guar, hull-less barley, nongrain

sorghum, oats, Polish wheat, popcorn, poulard wheat, rice, rye, safflower, sorghum, soybeans, spelt, sunflower seed, sweet corn, wheat, and wild oats.

(g) *Shrunken and broken kernels.* All matter that passes through a 0.064 x 3/8 oblong-hole sieve after sieving according to procedures prescribed in FGIS instructions.

(h) *Sieve—0.064 x 3/8 oblong-hole sieve.* A metal sieve 0.032 inch thick with oblong perforations 0.064 inch by 0.375 (3/8) inch.

Principles Governing the Application of Standards

§ 810.2003 Basis of determination.

Each determination of heat-damaged kernels, damaged kernels, material other than wheat or rye, and foreign material (total) is made on the basis of the grain when free from dockage and shrunken and broken kernels. Other determinations not specifically provided for under the general provisions are made on the basis of the grain when free from dockage except the determination of odor is made on either the basis of the grain as a whole or the grain when free from dockage.

Grades and Grade Requirements

§ 810.2004 Grades and grade requirements for triticale.

Grade	Minimum test weight per bushel (pounds)	Maximum limits of—					
		Damaged Kernels		Foreign material		Shrunken and broken kernels (percent)	Defects [3] (percent)
		Heat damaged (percent)	Total [1] (percent)	Material other than wheat or rye (percent)	Total [2] (percent)		
U.S. No. 1	48.0	0.2	2.0	1.0	2.0	5.0	5.0
U.S. No. 2	45.0	0.2	4.0	2.0	4.0	8.0	8.0
U.S. No. 3	43.0	0.5	8.0	3.0	7.0	12.0	12.0
U.S. No. 4	41.0	3.0	15.0	4.0	10.0	20.0	20.0

U.S. Sample grade—

(a) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, or f; or

(b) Contains 8 or more stones or any number of stones which have an aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis* L.), 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), 2 or more rodent pellets, bird droppings, or equivalent quantity of other animal filth per 1⅛ to 1¼ quarts of triticale; or

(c) Has a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or

(d) Is heating or otherwise of distinctly low quality.

[1] Includes heat-damaged kernels.

[2] Includes material other than wheat or rye.

[3] Defects include damaged kernels (total), foreign material (total) and shrunken and broken kernels. The sum of these three factors may not exceed the limit for defects for each numerical grade.

Special Grades and Special Grade Requirements

§ 810.2005 Special grades and special grade requirements.

(a) *Ergoty triticale.* Triticale that contains more than 0.10 percent of ergot.

(b) *Garlicky triticale.* Triticale that contains in a 1,000 gram portion more than six green garlic bulblets or an equivalent quantity of dry or partly dry bulblets.

(c) *Infested triticale.* Triticale that is infested with live weevils or other live insects injurious to stored grain according to procedures prescribed in FGIS instructions.

(d) *Light garlicky triticale.* Triticale that contains in a 1,000 gram portion two or more, but not more than six, green garlic bulblets or an equivalent quantity of dry or partly dry bulblets.

(e) *Light smutty triticale.* Triticale that has an unmistakable odor of smut, or that contains in a 250 gram portion smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 14 smut balls, but not in excess of a quantity equal to 30 smut balls of average size.

(f) *Smutty triticale.* Triticale that contains in a 250 gram portion smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 30 smut balls of average size.

Subpart L—United States Standards for Wheat

Terms Defined

§ 810.2201 Definition of wheat.

Grain that, before the removal of dockage, consists of 50 percent or more common wheat (*Triticum aestivum* L.), club wheat (*T. compactum* Host.), and durum wheat (*T. durum* Desf.) and not more than 10 percent of other grains for which standards have been established under the United States Grain Standards Act and that, after the removal of the dockage, contains 50 percent or more of whole kernels of one or more of these wheats.

§ 810.2202 Definition of other terms.

(a) *Classes.* There are seven classes for wheat: Durum wheat, Hard Red Spring wheat, Hard Red Winter wheat, Soft Red Winter wheat, White wheat, Unclassed wheat, and Mixed wheat.

(1) *Durum wheat.* All varieties of white (amber) durum wheat. This class is divided into the following three subclasses:

(i) *Hard Amber Durum wheat.* Durum wheat with 75 percent or more of hard and vitreous kernels of amber color.

(ii) *Amber Durum wheat.* Durum wheat with 60 percent or more but less than 75 percent of hard and vitreous kernels of amber color.

(iii) *Durum wheat.* Durum wheat with less than 60 percent of hard and vitreous kernels of amber color.

(2) *Hard Red Spring wheat.* All varieties of Hard Red Spring wheat. This class shall be divided into the following three subclasses:

(i) *Dark Northern Spring wheat.* Hard Red Spring wheat with 75 percent or more of dark, hard, and vitreous kernels.

(ii) *Northern Spring wheat.* Hard Red Spring wheat with 25 percent or more but less than 75 percent of dark, hard, and vitreous kernels.

(iii) *Red Spring wheat.* Hard Red Spring wheat with less than 25 percent of dark, hard, and vitreous kernels.

(3) *Hard Red Winter wheat.* All varieties of Hard Red Winter wheat. There are no subclasses in this class.

(4) *Soft Red Winter wheat.* All varieties of Soft Red Winter wheat. There are no subclasses in this class.

(5) *White wheat.* All varieties of white wheat. This class is divided into the following four subclasses:

(i) *Hard White wheat.* White wheat with 75 percent or more of hard kernels. It may contain not more than 10 percent of white club wheat.

(ii) *Soft White wheat.* White wheat with less than 75 percent of hard kernels. It may contain not more than 10 percent of white club wheat.

(iii) *White Club wheat.* White club wheat containing not more than 10 percent of other white wheat.

(iv) *Western White wheat.* White wheat containing more than 10 percent of white club wheat and more than 10 percent of other white wheat.

(6) *Unclassed wheat.* Any variety of wheat that is not classifiable under other criteria provided in the wheat standards. There are no subclasses in this class. This class included:

(i) *Red durum wheat.*

(ii) Any wheat which is other than red or white in color.

(7) *Mixed wheat.* Any mixture of wheat that consists of less than 90 percent of one class and more than 10 percent of one other class, or a combination of classses that meet the definition of wheat.

(b) *Contrasting classes.* Contrasting classes are:

(1) Durum wheat, White wheat, and Unclassed wheat in the classes Hard Red Spring wheat and Hard Red Winter wheat.

(2) Hard Red Spring wheat, Hard Red Winter wheat, Soft Red Winter wheat, White wheat, and Unclassed wheat in the class Durum wheat.

(3) Durum wheat and Unclassed wheat in the class Soft Red Winter wheat.

(4) Hard Red Spring wheat, Durum wheat, Hard Red Winter wheat, and Unclassed wheat in the class White wheat.

(c) *Damaged kernels.* Kernels, pieces of wheat kernels, and other grains that are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

(d) *Defects.* Damaged kernels, foreign material, and shrunken and broken kernels. The sum of these three factors may not exceed the limit for the factor defects for each numerical grade.

(e) *Dockage.* All matter other than wheat that can be removed from the original sample by use of an approved device according to procedures prescribed in FGIS instructions. Also, underdeveloped, shriveled, and small pieces of wheat kernels removed in properly separating the material other than wheat and that cannot be recovered by properly rescreening or recleaning.

(f) *Foreign material.* All matter other than wheat that remains in the sample after the removal of dockage and shrunken and broken kernels.

(g) *Heat-damaged kernels.* Kernels, pieces of wheat kernels, and other grains that are materially discolored and damaged by heat which remain in the sample after the removal of dockage and shrunken and broken kernels.

(h) *Other grains.* Barley, corn, cultivated buckwheat, einkorn, emmer, flaxseed, guar, hull-less barley, nongrain sorghum, oats, Polish wheat, popcorn, poulard wheat, rice, rye, safflower, sorghum, soybeans, spelt, sunflower seed, sweet corn, triticale, and wild oats.

(i) *Shrunken and broken kernels.* All matter that passes through a 0.064 × ⅜ oblong-hole sieve after sieving according to procedures prescribed in the FGIS instructions.

(j) *Sieve—0.064 × ⅜ oblong-hole sieve.* A metal sieve 0.032 inch thick with oblong perforations 0.064 inch by 0.375 (⅜) inch.

Principles Governing the Application of Standards

§ 810.2203 Basis of determination.

Each determination of heat-damaged kernels, damaged kernels, foreign material, other classes, contrasting classes, and subclasses is made on the basis of the grain when free from dockage and shrunken and broken kernels. Other determinations not specifically provided for under the general provisions are made on the basis of the grain when free from dockage, except the determination of odor is made on either the basis of the grain as a whole or the grain when free from dockage.

Grades and Grade Requirements

§ 810.2204 Grades and grade requirements for wheat.

(a) Grades and grade requirements for all classes of wheat, except Mixed wheat.

Grade	Minimum limits of—		Maximum limits of—						
	Test weight per bushel		Damaged kernels		Foreign material (percent)	Shrunken and broken kernels (percent)	Defects [3] (percent)	Wheat of other classes [4]	
	Hard Red Spring Wheat or White Club wheat [1] (pounds)	All other classes and subclasses (pounds)	Heat damaged kernels (percent)	Total [2] (percent)				Contrasting classes (percent)	Total [5] (percent)
U.S. No. 1	58.0	60.0	0.2	2.0	0.5	3.0	3.0	1.0	3.0
U.S. No. 2	57.0	58.0	0.2	4.0	1.0	5.0	5.0	2.0	5.0
U.S. No. 3	55.0	56.0	0.5	7.0	2.0	8.0	8.0	3.0	10.0
U.S. No. 4	53.0	54.0	1.0	10.0	3.0	12.0	12.0	10.0	10.0
U.S. No. 5	50.0	51.0	3.0	15.0	5.0	20.0	20.0	10.0	10.0

U.S. Sample grade—

U.S. Sample grade is wheat that:

(a) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, 4, or 5; or

(b) Contains 8 or more stones or any number of stones which have an aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis* L.), 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), 2 or more rodent pellets, bird droppings, or equivalent quantity of other animal filth per 1,000 grams of wheat; or

(c) Has a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or

(d) Is heating or otherwise of distinctly low quality.

[1] These requirements also apply when Hard Red Spring wheat or White Club wheat predominate in a sample of Mixed wheat.

[2] Includes heat-damaged kernels.

[3] Defects include damaged kernels (total), foreign material, and shrunken and broken kernels. The sum of these three factors may not exceed the limit for defects for each numerical grade.

[4] Unclassed wheat of any grade may contain not more than 10.0 percent of wheat of other classes.

[5] Includes contrasting classes.

(b) *Grades and grade requirements for Mixed wheat.* Mixed wheat is graded according to the U.S. numerical and U.S. Sample grade requirements of the class of wheat that predominates in the mixture, except that the factor wheat of other classes is disregarded.

Special Grades and Special Grade Requirements

§ 810.2205 Special grades and special grade requirements.

(a) *Ergoty wheat.* Wheat that contains more than 0.30 percent of ergot.

(b) *Garlicky wheat.* Wheat that contains in a 1,000 gram portion more than two green garlic bulblets or an equivalent quantity of dry or partly dry bulblets.

(c) *Infested wheat.* Wheat that is infested with live weevils or other live insects injurious to stored grain according to procedures prescribed in FGIS instructions.

(d) *Light smutty wheat.* Wheat that has an unmistakable odor or smut, or which contains in a 250 gram portion, smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 14 smut balls, but not in excess of a quantity equal to 30 smut balls of average size.

(e) *Smutty wheat.* Wheat that contains, in a 250 gram portion, smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 30 smut balls of average size.

(f) *Treated wheat.* Wheat that has been scoured, limed, washed, sulfured, or treated in such a manner that the true quality is not reflected by either the numerical grades or the U.S. Sample grade designation alone.

Dated: June 16, 1987.

D.R. Galliart,

Acting Administrator.

[FR Doc. 87-14827 Filed 6-29-87; 8:45 am]

BILLING CODE 3410-EN-M

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7 CFR Parts 800 and 810

Grain Handling Practices

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS or Service) is establishing regulations under the United States Grain Standards Act (USGSA) concerning grain handling practices. The regulations prohibit the recombining or adding of dockage or foreign material to grain. Dockage and foreign material is defined as including dust from bins or sweepings for export elevators at export port locations. Further, FGIS is amending the Official U.S. Standards for Grain to define both foreign material and broken kernels for corn and sorghum.

EFFECTIVE DATE: July 30, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Information Resources Staff, USDA, FGIS, Room 1661 South Building, 1400 Independence Avenue, SW., Washington, DC 20250, telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

W. Kirk Miller, Administrator, FGIS, has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the official inspection and weighing services and those entities that perform these services do not meet the requirements for small entities. Further, the standards are applied equally to all entities by FGIS employees and licensed persons.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) and section 3504(h) of that Act, the information collection and recordkeeping requirements contained in this rule have been approved by OMB and assigned OMB No. 0580-0011.

Effective Date

Pursuant to section 4(b) of the United States Grain Standards Act (7 U.S.C. 76(b)) (the Act), no standards established (7 CFR Part 810) or amendments or revocations of standards are to become effective less than one calendar year after promulgation, unless in the judgment of the Administrator, the public health, interest, or safety requires that they become effective sooner. Pursuant to that section of the Act, it has been determined that in the public interest the revisions to Part 810 in this final rule will become effective 30 days after publication along with the changes to the regulations (7 CFR Part 800) in order to implement the provisions of the Grain Quality Improvement Act of 1986.

Final Action

The Grain Quality Improvement Act of 1986 (GQIA) amended the United States Grain Standards Act (USGSA) to provide that dockage and foreign material once removed from grain shall not be recombined with any grain and that no dockage or foreign material of any origin may be added to any grain. This requirement applies to all persons handling grain, not just those receiving official inspection or weighing services. FGIS is establishing a new section under Part 800 to specifically provide for the grain handling requirements set forth in the GQIA.

FGIS proposed new regulations under the USGSA concerning grain handling practices in the March 13, 1987, **Federal Register** (52 FR 7880) and solicited comments for 30 days.

Implementing the GQIA also requires changes to 7 CFR Part 810 to define dockage and foreign material for each grain as well as to define broken corn and broken kernels. The Official U.S. Standards for Grain include the required definitions for all grains except for the individual components of the factor "broken corn and foreign material" in the corn standards and the individual components of the factor "broken kernels, foreign material, and other grains" in the sorghum standards. The October 2, 1986, proposed rule as supplemented on November 20, 1986 (51 FR 41971) and corrected December 2, 1986 (51 FR 43495), was reopened for comment in the March 13, 1987, **Federal Register** (52 FR 7880) which addressed grain handling practices and included proposed definitions for broken corn/kernels and foreign material in the corn and sorghum standards. This final rule together with two other final rules published elsewhere in this issue of the

Federal Register, provide for revisions to 7 CFR Part 810.

The Service received 94 comments on the March 13, 1987, proposed regulations. Individual producers or producer-related groups submitted 17 comments, grain handlers or their representatives submitted 61 comments, foreign buyers of U.S. grain submitted 7 comments, grain inspection agencies 3 comments, and 6 other comments were submitted by various individuals from universities, State governments, and the agricultural community.

A large majority of the comments support efforts to improve U.S. grain quality. However, many expressed concern over whether the proposed regulations would achieve the main objective of improving grain quality. They expressed concern that the proposed regulations would discourage good handling and storage practices and would increase safety and environmental risks by creating disincentives for safe and efficient operational practices.

Standards Changes

"Broken corn and foreign material," commonly referred to as BCFM, is defined in § 810.402 of the U.S. Standards for Corn as "all matter that passes readily through a 12/64-inch round-hole sieve and all matter other than corn that remains in the sieved sample after sieving according to procedures prescribed in FGIS instructions." FGIS proposed to include two distinct definitions, one for broken corn and one for foreign material, in § 810.402 of the U.S. Standards for Corn. The proposed separation procedure would retain the 12/64-inch round-hole sieve in the top sieve carriage of the Carter Dockage Tester and use an 8/64-inch round-hole sieve in the bottom sieve carriage. The proposal defined broken corn as all matter passing through the 12/64-inch sieve and over the 8/64-inch sieve. Foreign material was defined as all matter passing through the smaller sieve and all matter other than corn which remains on top of the 12/64-inch sieve. FGIS also solicited comments on using a 6/64-inch round-hole sieve rather than the 8/64-inch sieve.

"Broken kernels, foreign material, and other grains," commonly referred to as BNFM, is defined in § 810.1402 of the U.S. Standards for Sorghum as "all matter other than dockage that passes through a 5/64-inch triangular-hole sieve after sieving according to procedures prescribed in FGIS instructions and all matter other than sorghum that remains in the sieved sample."

Under current FGIS instructions, BNFM is determined by a two-step procedure. The sample is first sieved using a Number 6 riddle in the riddle carriage of a Carter Dockage Tester and a 5/64-inch triangular-hole sieve in the top carriage. A 2.5/64-inch round-hole sieve is placed in the bottom sieve carriage to remove dockage. Matter which passes over the riddle, except clumps of sorghum and threshed and unthreshed sorghum, and matter which passes through the 5/64-inch sieve and over the 2.5/64-inch sieve is BNFM. Matter passing through the 2.5/64-inch sieve is dockage. After removal of dockage and machine-separated BNFM, a 30-gram portion of the work sample is handpicked for foreign material and other grains. The percentage of machine-separated BNFM is calculated on the dockage-free sample. The percentage of handpicked foreign material and other grains is added to the percentage of machine-separated BNFM to obtain the total percentage of BNFM.

FGIS proposed to include two distinct definitions, one for broke kernels and one for foreign material, in § 810.1402 of the U.S. Standards for Sorghum. The proposal defined broken kernels as all matter which passes through the 5/64-inch triangular-hole sieve and over the 2.5/64-inch round-hole sieve. Foreign material, which would include other grains, was defined as all matter other than sorghum which passes over the Number 6 riddle and all matter other than sorghum which remains on top of the 5/64-inch triangular-hole sieve.

FGIS is conducting a study to determine whether the material currently considered as dockage in sorghum should be redefined as foreign material. Based on the study results, the Service may propose, at a later date, to redefine foreign material in sorghum to include dockage.

FGIS also proposed to retain the original factors, BCFM and BNFM, as grade determining factors under the Official U.S. Standards for Grain. The individual components making up BCFM in corn and BNFM in sorghum would be determined separately during the grading process and the results placed on the inspection log for export shipments and in the "Remarks" section of the official inspection certificate for nonexport inspections.

Fifty-seven commenters addressed the proposed definitions or required reporting procedure for the individual components of BCFM and BNFM. Most of these comments addressed the individual component definitions for BCFM. The large majority of the commenters favored using the 6/64-inch round-hole sieve rather than an 8/64-inch round-hole sieve. However, a number of commenters stated that the material passing through an 8/64- or 6/64-inch sieve is predominantly fine particles of corn and not foreign material. Two commenters preferred a sieve with openings smaller than the 6/64-inch openings, and four commenters advocated additional data be accumulated before deciding on a specific sieve size. Eight commenters indicated that foreign material should be all matter other than corn, including other grains.

As noted in the proposal, a comprehensive study entitled, "Redefining the Grade Factor of Broken Corn and Foreign Material," was performed by the Department of Agricultural Economics, University of Illinois, at Urbana-Champaign, in October 1981. The study (AE–4521) concluded that use of either an $^{8}/_{64}$- or $^{9}/_{64}$-inch sieve would separate most starch dust and weed seeds from corn.

Based upon the comments received and all information available, FGIS has concluded that the use of the $^{9}/_{64}$-inch sieve is the best alternative in defining foreign material in corn. Use of a sieve to define foreign material is essential. Handpicking all non-corn material from corn which has passed through a $^{13}/_{64}$-inch sieve would be impractical as an inspection procedure and impossible to simulate as a grain handling practice. FGIS does not believe a sieve smaller than $^{9}/_{64}$ inch would be more accurate in separating dust and inert material. Material passing through the $^{9}/_{64}$-inch sieve, while predominately small particles of corn, does contain dust and inert material and has a lower intrinsic value.

Accordingly, in this final rule, FGIS is establishing separate factor definitions in the corn standards to define broken corn and foreign material. Broken corn will be defined as all material which passes readily through the $^{13}/_{64}$-inch sieve and over the $^{9}/_{64}$-inch sieve, and foreign material will be all matter which passes readily through the $^{9}/_{64}$-inch sieve and all matter other than corn remaining on top of the $^{13}/_{64}$-inch sieve.

However, several commenters expressed the view that material passing through the $^{9}/_{64}$-inch sieve should be defined as "fines" rather than foreign material since it includes a substantial amount of corn dust and small corn particles. FGIS will continue to gather information and data on how the composition of this material may affect the quality and overall value of corn. The issue will be addressed during the next standards review. In addition,

FGIS anticipates that the review will include examining how the current standards act as an incentive or disincentive for removing from corn the small material passing through the 5/64-inch sieve.

Four comments addressed separation of broken kernels and foreign material in sorghum. Three comments supported the proposal. One comment opposed separation of the BNFM components and stated that the criteria used to determine the factors would be inaccurate and misleading to the industry, increase handling costs, and slow down operations. FGIS does not concur with this comment, particularly since the component determination procedure is exactly the same procedure used to determine BNFM. The individual factor percentages for broken kernels and foreign material will determine the percentage of BNFM. FGIS believes that these results will be accurate and should not be confusing to the industry. Accordingly, FGIS is adopting as final rule the proposed definitions for broken kernels and foreign material in sorghum.

Eight commenters supported placing BCFM and BNFM component results on the inspection log for export shipments and in the "Remarks" section of the official inspection certificate for nonexport inspections. Three commenters supported the proposal but added the suggestion that the information should be placed on all certificates. FGIS is of the opinion that placing this information on export certificates rather than on the inspection log while retaining BCFM and BNFM as grade determining factors could confuse foreign buyers and/or third parties involved in export contract settlements and, therefore, has not adopted the suggestion.

Twenty-eight comments opposed placing component results on the export inspection log and on the nonexport inspection certificate. Twenty-two of these comments were submitted as form letters by employees of one elevator. Three commenters stated that placing the factor results in the "Remarks" section of the certificate would result in undue cost and work for inspection agencies. One commenter also stated that separating foreign material and broken kernels without grade limits on the factors would result in confusion to the applicant for inspection.

FGIS believes the benefits of reporting the individual components on the nonexport certificate support the requirement adopted herein. Reporting the results will promote an awareness in the domestic marketplace as to how much foreign material is included in BCFM and BNFM. This will permit the market to factor in the actual amount of foreign material when establishing pricing and quality requirements. Since reporting on official certificates will be limited to inspections in the domestic market, FGIS does not believe the component results will be confusing to the applicant or other interested parties. Further, recording component information on the export log and nonexport inspection certificate will allow the Service to develop a database for analyzing whether separate grade limits should be established for broken corn and foreign material in corn and broken kernels and foreign material in sorghum.

General Prohibition

The GQIA amends the USGSA to prohibit recombining or adding dockage and foreign material to grain. The GQIA also specifically permits the blending of grain with similar grain of a different quality to adjust the quality of the resulting mixture and permits recombining broken corn or broken kernels, as defined by the Administrator, with grain of the type from which the broken corn or broken kernels were derived.

The proposed regulations provided that no person shall: (1) Recombine or add dockage or foreign material to any grain, (2) blend different kinds of grain, or (3) add broken corn or broken kernels of one grain to a different kind of grain. In addition, the proposed regulations permitted recombining or adding broken corn or broken kernels, free of foreign material and dockage, with whole grain of the same kind.

FGIS received 62 comments addressing the requirement that no person shall recombine or add dockage or foreign material to grain. Twenty-one supported and 41 opposed the requirement. Seven of the 21 supporting comments responded favorably to the overall proposed rule and did not address this specific requirement.

Many commenters opposing the proposed rule expressed the view that the prohibition, as written, would prohibit the current practice of "coring" a grain bin. It would be possible to interpret the proposed rule as prohibiting this grain handling practice. However, this was not the intent of the proposal. Coring a bin removes grain from the center of the bin, commonly referred to as the spoutline, which often contains a higher percentage of foreign material and dockage. Grain handlers core bins as an important step toward preventing mold growth, insect infestation, heating, and general quality deterioration. Grain removed from a bin during coring is often recombined with grain at a later time. This rule will not be interpreted to prohibit the coring of grain bins. Grain removed from a bin during coring may be recombined with the same kind of grain. Grain handlers should of course assess the quality of corings and handle such material in a quality conscious manner. If the grain removed during coring is cleaned, the foreign material or dockage removed during the cleaning process may not be recombined with grain. Accordingly, FGIS is adopting the proposed prohibition on recombining or adding dockage or foreign material to grain.

In general, the commenters either supported the proposal which would prohibit blending different kinds of grain or did not specifically address this change. A question was raised as to whether different grains could be blended to make Mixed grain. FGIS recognizes that parties may contract for Mixed grain. Accordingly, in this final rule, FGIS is modifying the proposal to prohibit blending different grains unless the blending is for the purpose of blending grain which will be designated as Mixed grain in accordance with subpart E of the Official U.S. Standards for Grain.

Eleven commenters recommended that FGIS prohibit the blending of different wheat classes and the blending of wheat that is not substantially similar in quality. Ten of these comments were submitted by individuals in support of a State wheat board's position. FGIS plans to address the issue raised by these comments further during the next review of the Official U.S. Standards for Wheat. FGIS considers amendments, if necessary, to the wheat grading factors "Contrasting Classes" and "Wheat of Other Classes" a more efficient and effective means of addressing this issue than this rulemaking proceeding.

FGIS received 78 comments on the proposed requirement that only broken corn or broken kernels free of foreign material and dockage can be recombined or added to grain of the same kind. Twenty-one commenters supported the proposal and 57 opposed it. Seven of the 21 supporting comments responded favorably to the overall proposed rule and did not specifically address this particular requirement. Those in opposition explained that removing 100 percent of the foreign material or dockage from broken corn or broken kernels could not be achieved. Broken corn in particular would always contain some foreign material, as defined in the proposal, when separated using laboratory sieves. In their view, the proposed regulations would in effect prohibit the recombining of broken corn

and broken kernels, a practice the GQIA specifically stated is permitted.

After careful consideration of this issue, FGIS has concluded that the commenters objection to the proposal in this regard has substantial merit. In addition, care must be taken to ensure that the requirements of these regulations concerning the recombining of broken corn or broken kernels must be within the capability of grain handlers given current technology. Accordingly, the phrase "free of foreign material and dockage" appearing in the proposed § 800.61(d)(1) is deleted in this final rule. Broken corn and broken kernels containing foreign material or dockage may be recombined with grain provided that no foreign material or dockage was added to the broken corn or broken kernels. This final rule would continue the prohibition against the recombining or addition of foreign material or dockage actually removed from whole or broken grain using, for example, a mechanical cleaning process. Thus, broken corn and foreign material passing through the 1%4-inch sieve may be recombined with corn. However, foreign material separated from the whole and broken corn using a %4-inch sieve may not be recombined or added to any grain.

Grain Dust

In enacting the GQIA, one of the principal aims of Congress was to prohibit the recombination or addition of dust at export loading facilities. In order to implement this prohibition, FGIS proposed in a new § 800.61 to amend the definitions of dockage and foreign material to include dust but only as those definitions in the new section apply to export loading facilities (export elevators at export port locations). The proposed rule defined dockage and foreign material at export loading facilities as those terms are defined in 7 CFR Part 810, Official U.S. Standards for Grain, and as dust removed or separated from grain by any means, including a dust collection system or the natural process of settling on floors, equipment, and other areas. At other than export elevators at export port locations, the Service proposed to define dockage and foreign material as set forth in 7 CFR part 810.

Seven commenters addressed the proposed difference in dockage and foreign material definitions between export and domestic elevators. Four supported and three opposed the proposed definitions. One of the commenters questioned the logic behind allowing nonexport facilities to recombine or add dust to grain. The commenter questioned whether it was intended to have all dust eventually end up at an export location, which according to the commenter is the most costly and inefficient location for such material. Another commenter who supported the prohibition on adding dust from a bin to grain opposed having separate rules for domestic versus export elevators. The commenter believes dust from bins should not be added to grain at either export or domestic elevators. Finally, a third commenter simply questioned whether the proposed dust provisions were discriminatory against export elevators. FGIS has interpreted the dust provisions of the GQIA to apply to export elevators only. However, FGIS agrees with the commenter that nonexport elevators should refrain from adding dust from bins to grain. A large majority of the commenters opposed some aspects of the proposed dust provisions because they viewed the proposed requirements as having only a minimal effect on grain quality but a significant impact on operating costs and safety risks. Most commenters addressed the dust provisions as three separate issues: (1) Adding dust from bins to grain, (2) reintroducing dust from a dust collection system, and (3) adding dust sweepings to grain.

Thirty-seven of 38 comments supported the proposal to prohibit recombining or adding dust from bins to grain. It remains FGIS's position that this prohibition is essential to the statutory purpose. Accordingly, this final rule prohibits the recombination or addition of dust from bins or containers to grain. FGIS encourages nonexport elevators to adopt such grain handling practices as will preclude the recombination of dust to grain.

On the second issue, 46 of 50 comments opposed the proposal to prohibit the recirculation of dust from dust collection systems. The commenters explained that dust collection systems were designed to improve elevator safety by minimizing dust in the atmosphere. The systems are not designed to effect grain quality. Further, the commenters emphasized that compliance with this proposed requirement would be a significant economic burden on the grain industry. The proposal would require most export facilities to retrofit their dust collection systems to collect and store dust rather than reintroducing the dust to the grain stream. The Grain Elevator and Processing Society (GEAPS), representing nearly 1,000 grain handling facilities, estimates the average construction cost for retrofitting at $500,000 per export facility. After factoring in 0.2 percent product loss due to the removal of dust, additional housekeeping and maintenance costs, and the expense of dust disposal since no apparent market exists that could handle the increased quantity of dust, the GEAPS estimate a first year total cost of $89 million for 56 export elevators. Based on similar financial assessments, most commenters expressed deep concern with the proposed rule simply because the benefits of removing dust are not economically justified. Further, most commenters were concerned that grain handlers would either discontinue using their dust collection systems and assume the added safety risk; or they would resort to using dust suppressants which, as one commenter explained, is an alternative with too many unknowns at this time to conclude whether it is viable or competitive.

Most export elevators have pneumatic-type dust collection systems which capture dust particles and carry them through duct work to a collector. The two most frequently used collectors are cyclones and bag filters. The collected dust is then conveyed to storage facilities or directly to carriers for shipment or returned to the grain stream. The design and operation of dust collection system including the disposition of collected dust, is based on the specific needs of each grain handling facility. The dust collection system is an integral part of the facility's overall dust control program and must interrelate with all segments of operation. Further, dust control programs focus on preventing dust explosions, meeting air quality standards, and improving working conditions.

Based on available information, it is apparent that many dust collection systems have been designed to achieve safety and air quality objectives. Before establishing regulations that would require significant alterations of the industry's current dust collection systems FGIS believes further study is necessary. In many facilities, the permanent removal of dust occurs only at high safety risk areas and where conveyance of dust to a storage receptacle is practical. At other areas, industry has installed systems premised on the belief that it is safer and more economical to recirculate the dust to the grain stream. The extent of permanent removal or recirculation of dust greatly varies between grain facilities.

Accordingly, FGIS is deleting from the proposal the prohibition against the recirculation of dust to tne grain stream. FGIS plans to continue studying the

possibility and desirability of requiring the permanent removal of dust.

The third issue raised by commenters involves the addition of dust sweepings to grain. Of the 49 comments received on this issue, 44 oppose the proposal because it would greatly impede regular elevator housekeeping practices. FGIS recognizes the concerns of industry but believes elevator housekeeping practices must consider grain quality. Adding dust sweepings to grain is an unacceptable handling practice. In this final rule, FGIS is establishing regulations that specifically prohibit the adding of dust sweepings at export elevators. Elevators other than export facilities are encouraged to adopt similar housekeeping or sanitation practices. The prohibition regarding sweepings does not apply to the cleaning of unloading pits or bins, and it does not apply to grain spills. Several commenters were concerned that this prohibition would prevent them from picking up grain spills that occur during normal operations.

Export Loading Facility

For the purpose of the proposed FGIS regulations, the Service deemed the term "export loading facility" to be identical to the USGSA definition for an export elevator at an export port location. The term "export loading facility" designates which facilities must comply with the GQIA dust prohibitions.

Ten commenters addressed this issue, of which seven opposed the FGIS interpretation of an export loading facility. In general, the seven commenters believe the term "export loading facility," as used in the GQIA, only applied to the export shipping side of an export elevator. Further, they are concerned that if the entire export facility must comply with the dust requirements, it will be at a disadvantage when competing with inland terminal elevators on the domestic grain market. FGIS has concluded that the dust requirement should apply to the entire export facility. In addition, FGIS believes the dust requirements as modified by this final rule will minimize any discrepancy between export and domestic facilities. Consequently, the Service is retaining its initial interpretation of export loading facility.

Three additional commenters did not specifically oppose the FGIS interpretation of an export loading facility but did question whether an export facility must comply with the dust prohibitions if the facility is not operating as an export elevator. FGIS reviewed this issue and decided to establish provisions in its instructions whereby an export elevator may be exempted from the dust prohibition when not operating as an export elevator. FGIS will issue instructions for determining on a case-by-case basis when an export elevator is exempt from the dust requirements.

Exemption

The GQIA authorizes the Secretary to exempt the last handling of grain in the final sale and shipment of such grain to a domestic user or processor from the prohibition against the addition or recombination of dockage and foreign material. FGIS proposed to grant such an exemption only upon the requests submitted through the affected domestic processor or user. Three comments were received regarding the proposed exemption procedures. Two supported the proposal and one opposed. The commenter opposing the proposal considered the exemption process unduly burdensome to both industry and FGIS and recommended a blanket exemption for the last handling of grain in the final sale to a domestic end user or processor. FGIS disagrees and believes the proposed exemption process is an efficient and effective one. Accordingly, the Service is adopting the proposal in this final rule. Grain handlers seeking an exemption will be required to contact their customers and request that the domestic processor or user submit a request for an exemption to FGIS on behalf of the grain handler.

If grain is sold and shipped under an exemption to a domestic end-user or processor, neither the grain nor any product or byproduct (excluding vegetable oils used as dust suppressants) derived from the grain will be permitted reentry into the commercial grain marketing channels. Vegetable oils may reenter the market and be added to grain as a dust suppressant.

Grain Additives

The GQIA does not prohibit: (1) The treatment of grain to control insects or fungi, (2) the addition of a grain dust suppressant, or (3) the identification of grain using confetti or similar material. FGIS proposed establishing provisions specifying that grain handlers and their agents are responsible for using and applying additives in accordance with the Food and Drug Administration regulations, Environmental Protection Agency regulations, and any other applicable laws. No comments were received regarding the proposal. Therefore, the Service is adopting the proposal.

Other Comments

A number of commenters indicated that the United States should ship clean grain to foreign buyers and supported a move for better quality. One commenter stated that U.S. grain should be scalped, and levels of foreign material are too high in sorghum. One commenter stated that the grade limits for test weight, heat damage, total damage, foreign material, contrasting classes, stones, and other factors in the wheat standards should be reviewed. Another comment stated that the Cu-Sum loading plan used to inspect export grain should be modified, and moisture limits should be reintroduced into the standard.

FGIS shares the view that quality concerns should be eliminated, to the extent possible, so the United States can become more competitive in the world grain market. In addition, FGIS periodically reviews the grain standards to assure that the criteria used for official quality determinations is facilitating the marketing of grain. During these reviews, the grading factors may be evaluated to determine if changes should be made to the standards.

The Cu-Sum loading plan has been reviewed by an independent third party and changes recommended to FGIS. These recommendations are currently being studied and discussions will be held with the industry prior to any changes.

Moisture limits were removed as grade determining factors in the corn, sorghum, and soybean standards effective September 9, 1985 (49 FR 35743). Under current procedures, moisture content is always determined and shown on official inspection certificates for grade. The Service considers moisture a condition of the grain rather than a fixed measure of quality and is not considering reintroduction of moisture as a grade determining factor in the standards.

Miscellaneous non-substantive changes for clarity have been made in this final rule to the proposed revisions.

List of Subjects in 7 CFR Parts 800 and 810

Administrative practice and procedure, Grain, Exports.

PART 800—GENERAL REGULATIONS

For the reasons set out in the preamble, 7 CFR Part 800 is amended as follows:

1. The authority citation for Part 800 continues to read as follows:

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

2. The undesignated heading preceding § 800.60, "DECEPTIVE PRACTICES," is revised to read "GRAIN HANDLING PRACTICES."

3. Section 800.61 is added under the heading "GRAIN HANDLING PRACTICES" to read as follows:

§ 800.61 Prohibited grain handling practices.

(a) *Definitions.* For the purpose of this section, dockage and foreign material in grain shall be:

(1) Defined for export elevators at export port locations as set forth in 7 CFR Part 810 and as dust removed from grain and collected in a bin/container and as dust settling on floors, equipment, and other areas, commonly referred to as dust sweepings; and

(2) Defined for other than export elevators as set forth in 7 CFR Part 810.

(b) *Prohibited practices.* Except as permitted in paragraphs (c) and (d) of this section, no person shall:

(1) Recombine or add dockage or foreign material to any grain, or

(2) Blend different kinds of grain except when such blending will result in grain being designated as Mixed grain in accordance with subpart E of the Official United States Standards for Grain.

(c) *Exemption.* (1) The Administrator may grant exemptions from paragraph (b) of this section for grain shipments sent directly to a domestic end-user or processor. Requests for exemptions shall be submitted by grain handlers to the Service through the domestic end-users or processors or their representatives.

(2) Grain sold under an exemption shall be consumed or processed into a product(s) by the purchaser and not resold into the grain market.

(3) Products or byproducts from grain sold under an exemption shall not be blended with or added to grain in commercial channels, except for vegetable oil which may be used as a dust suppressant in accordance with (d)(4) of this section.

(d) *Exceptions.* Paragraph (b) shall not be construed as prohibiting the following grain handling practices. Compliance with paragraphs (d)(1) through (d)(6) of this section does not excuse compliance with applicable Federal, State, and local laws.

(1) *Blending.* Grain of the same kind, as defined by the Official United States Standards for Grain, may be blended to adjust quality. Broken corn or broken kernels may be recombined or added to whole grain of the same kind provided that no foreign material or dockage has been added to the broken corn or broken kernels.

(2) *Insect and fungi control.* Grain may be treated to control insects and fungi. Elevators, other grain handlers, and their agents are responsible for the proper use and applications of insecticides and fungicides. Sections 800.88 and 800.96 include additional requirements for grain that is officially inspected and weighed.

(3) *Marketing dockage and foreign material.* Dockage and foreign material may be marketed separately.

(4) *Dust suppressants.* Grain may be treated to suppress dust during handling. Elevators, other grain handlers, and their agents are responsible for the proper use and application of dust suppressants. Sections 800.88 and 800.96 include additional requirements for grain that is officially inspected and weighed.

(5) *Identification.* Confetti or similar material may be added to grain for identification purposes. Elevators, other grain handlers, and their agents are responsible for the proper use and application of such materials. Sections 800.88 and 800.96 include additional requirements for grain that is officially inspected or weighed.

(6) *Export loading facilities.* Between May 1, 1987, and December 31, 1987, export elevators at export port locations may recombine dockage and foreign material, but not dust, with grain provided such recombination occurs during the loading of a vessel with the intended purpose of ensuring uniformity of dockage and foreign material in the cargo. (Approved by the Office of Management and Budget under control number 0580–0011.)

4. Section 800.162 is amended by redesignating paragraph (b) as (c); adding a new paragraph (b) and revising paragraph (c) to read as follows:

§ 800.162 Certification of grade; special requirements.

* * * * *

(b) *Corn and sorghum.* Each official certificate for grade representing nonexport inspections of corn and sorghum shall show, in addition to the requirements of paragraphs (a) and (c) of this section, the percent of foreign material and broken corn in corn and the percent of foreign material and broken kernels in sorghum. These results shall be placed in the "Remarks" section of the official certificate.

(c) *Cargo shipments.* Each official certificate for grade representing a cargo shipment shall show, in addition to the requirements of paragraphs (a) and (b) of this section, the results of all official factors defined in the Official United States Standards for Grain for the type of grain being inspected.

PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

For reasons set out in the Preamble, 7 CFR Part 810, Subparts C and H, are amended as follows:

1. The authority citation for Part 810 continues to read as follows:

Authority: Sections 3A and 4, United States Grain Standards Act (7 U.S.C. 75a, 76).

Subpart C—United States Standards for Corn

2. Section 810.402 is amended by redesignating paragraphs (a) through (c) as (b) through (d); (d) and (e) as (f) and (g); adding new paragraphs (a) and (e); and revising paragraph (g) to read as follows:

§ 810.402 Definition of other terms.

* * * * *

(a) *Broken corn.* All matter that passes readily through a 12/64 round-hole sieve and over a 6/64 round-hole sieve according to procedures prescribed in FGIS instructions.

* * * * *

(e) *Foreign material.* All matter that passes readily through a 6/64 round-hole sieve and all matter other than corn that remains on top of the 12/64 round-hole sieve according to procedures prescribed in FGIS instructions.

* * * * *

(g) *Sieves*—(1) *12/64 round-hole sieve.* A metal sieve 0.032 inch thick with round perforations 0.1875 (12/64) inch in diameter which are 1/4 inch from center to center. The perforations of each row shall be staggered in relation to the adjacent row.

(2) *6/64 round-hole sieve.* A metal sieve 0.032 inch thick with round perforations 0.0937 (6/64) inch in diameter which are 5/32 inch from center to center. The perforations of each row shall be staggered in relation to the adjacent row.

Subpart H—United States Standards for Sorghum

3. Section 810.1402 is amended by redesignating paragraphs (a) through (d) as (b) through (e); (e) through (i) as (g) through (k); and adding new paragraphs (a) and (f) to read as follows:

§ 810.1402 Definition of other terms.

(a) *Broken kernels.* All matter which passes through a 5/64 triangular-hole sieve and over a 2–1/2/64 round-hole sieve according to procedures prescribed in FGIS instructions.

* * * * *

(f) *Foreign material.* All matter, except sorghum, which passes over the

number 6 riddle and all matter other than sorghum that remains on top of the 5/64 triangular-hole sieve according to procedures prescribed in FGIS instructions.

* * * * *

Dated: June 8, 1987.

W. Kirk Miller,

Administrator.

[FR Doc. 87-14828 Filed 6-29-87; 8:45 am]

BILLING CODE 3410-EN-M

7 CFR Part 810

Insect Infestation in Grain

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS or Service) is revising the Official U.S. Standards for Grain with regard to insect infestation as follows: (1) The special grade "infested" will be removed from the individual grain standards and incorporated into Subpart A—General Provisions. The infested designation will be redefined as it applies to the representative sample, lot as a whole (stationary), and sample as a whole (continuous loading/unloading of shiplots and bargelots). (2) The infested definition of two or more live weevils, or one live weevil and one or more other live insects injurious to stored grain, or two or more other live insects injurious to stored grain will apply to wheat, rye, and triticale. The infested definition of two or more live weevils, or one live weevil and five or more other live insects injurious to stored grain, or ten or more other live insects injurious to stored grain will apply to barley, corn, oats, sorghum, soybeans, sunflower seed, and mixed grain. (3) The Sample grade definition in the wheat standards will be revised to include a limit of 32 insect-damaged kernels per 100 grams of wheat.

EFFECTIVE DATE: May 1, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Information Resources Staff, USDA, FGIS, Room 1661 South Building, 1400 Independence Avenue, SW., Washington, DC 20250, telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

W. Kirk Miller, Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities, because those persons who apply the standards and most users of grain inspection services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities by FGIS employees or licensed persons.

Effective Date

Pursuant to section 4(b) of the United States Grain Standards Act (7 U.S.C. 76(b)) (Act), no standards established or amendments or revocations of standards are to become effective less than 1 calendar year after promulgation unless in the judgment of the Administrator, the public health, interest, or safety requires that they become effective sooner. Pursuant to that section of the Act, it has been determined that in the public interest, the revision should become effective on May 1, 1988, to coincide as nearly as practicable with the beginning of the crop year for the various grains.

Final Action

Section 304 of the Grain Quality Improvement Act of 1986 (GQIA) provided that the Service would issue a final rule that would revise grain inspection procedures and standards established under the United States Grain Standards Act (7 U.S.C. 71 *et seq.*) to more accurately reflect levels of insect infestation. The changes in this final rule will more accurately reflect the levels of insect infestation in grain.

Prior to enactment of the GQIA, the Service began evaluating the current grain standards and inspection procedures with regard to insect infestation in grain. An FGIS task force was appointed by the Administrator in September 1984 to review the issue of insect infestation in grain. In a February 1985 report, the task force made its recommendations. In addition, the Administrator appointed a subcommitee of the FGIS Advisory Committee to review the task force report. A public meeting was held by the subcommittee on September 4, 1985. The FGIS Advisory Committee recommended that the Service invite public comment on insect tolerances and that any changes should be phased in over time.

In response to recommendations from the FGIS Advisory Committee, the Service published a request for public comment in the July 7, 1986, **Federal Register** (51 FR 24532) and comments were solicited during a 60-day period on suggested changes to tolerances and grading factors relating to insect infestation in grain. Subsequent to publication of this request 54 comments were received from nearly all segments of the industry.

In the October 2, 1986, **Federal Register** (51 FR 35224), as supplemented on November 20, 1986 (51 FR 41971) and corrected on December 2, 1986 (51 FR 43495), and as reopened for comment on March 13, 1987 (52 FR 7880), the Service proposed revisions to the Official U.S. Standards for Grain to provide for uniform procedures in the grain standards. One change in another final rule published elsewhere in this issue of the **Federal Register**, provides for the special grade "infested" for each of the individual grain standards with the special grade "weevily" deleted. Further, based on the public comment request of July 7, 1986, and the October 2, 1986, proposal, the Service proposed further changes to the standards which were published in the March 18, 1987, **Federal Register** (52 FR 8455). Many of the proposed changes would remove provisions that currently appear in the FGIS instructions, revise the provisions and include them in the Official U.S. Standards for Grain. The proposed changes were as follows:

1. The Special grade "infested" would be removed from the individual grain standards and incorporated into the General Provisions subpart. Included in the sampling designations were definitions of the term "infested" that would apply to the representative sample, lot as a whole (stationary), and sample as a whole (continuous loading/unloading of shiplots and bargelots);

2. The "infested" definition would be revised to include a live insect tolerance that would give equal value to all insects injurious to stored grain and would make the infested definition of "one or more live insects" per representative sample (zero tolerance) the same for all grains. This tolerance would be phased-in over 4 years; first with a definition of "three or more live insects" beginning in 1988; second, a definition of "two or more live insects" beginning in 1990; and finally, beginning in 1992, a definition of "one or more live insects;"

3. The Sample grade definition in the individual grain standards would be revised to include a limit of 10 live or dead insects per 1,000 grams (600 grams for sunflower seed) of the representative sample; and

4. The Sample grade definition in the wheat standards would be revised to

include a limit of 32 insect-damaged kernels per 100 grams of wheat.

Within the 30-day comment period, 418 written comments were received. An additional 217 comments were received after the closing date. Many of the comments from wheat producers in North Dakota and Colorado and grain handling firms were received as form letters. Over 300 comments were received from representatives of grain cooperatives, elevators, warehousemen, and exporters. Foreign buyers and domestic processors were a source of 10 comments. Over forty comments were received from national and state associations, commissions, and societies involved in grain production, marketing, and inspection. Four comments were received from State Department of Agriculture, universities, and other interested parties.

The large majority of commenters addressed those issues which dealt with live insect tolerances in grain, including the revision of the Sample grade definition to include a limit of 10 live or dead insects. Fewer commenters directly addressed the proposal to include a limit of 32 or more insect-damaged kernels in the Sample grade definition of wheat. An even smaller number of commenters stated that the U.S. grain standards should not be changed but did not address any of the proposals. The comments received, together with all available information, were used to evaluate the proposed changes and to formulate this final rule.

Special Grade "Infested"

It was proposed to remove the special grade "infested" from the individual grain standards and include it under the General Provisions subpart of the standards. This change is a nonsubstantive format change intended to facilitate use of the standards. It was favored by most commenters. Opposition was minimal and was generally connected in a non-specific way with opposition to the other proposals. Therefore, FGIS is adopting the proposal in this final rule.

Live Insect Tolerances

It was also proposed to revise the current live insect tolerances by: (1) Phasing-in zero tolerances for infestation by May 1, 1992, (2) setting the same insect tolerances for all grains, and (3) treating all insects injurious to stored grain with equal value. A majority of the commenters opposed this proposal.

The current tolerances for infestation are defined according to the sampling designations as follows: (1) Representative sample, (2) Lot as a whole (stationary), and (3) Sample as a whole (continuous loading/unloading of shiplots and bargelots). The tolerances themselves are generally expressed in terms of the numbers of weevils alone, or a combination of live weevils and other live insects injurious to stored grain (OLI's), or a number of OLI's alone. For example, wheat would be considered infested if a representative sample contains two or more live weevils, or one live weevil and any other OLI, or five or more OLI's. The tolerances for wheat, rye, and triticale (the primary food grains) are less than for other grains for which infestation tolerances have been established. For example, corn would be considered infested if the representative sample contains two or more live weevils, or one live weevil and five or more OLI's, or fifteen or more OLI's.

The proposed rule would have revised the standards to include provisions phasing-in, by 1992, a zero tolerance of "one or more live insects injurious to stored grain," after beginning in 1988 with "three or more live insects," and following in 1990 with "two or more live insects." A minority of commenters including the flour millers supported the proposal and encouraged FGIS to report the number of live insects on the inspection certificate for lots that grade "infested" under the new, lower proposed tolerances. However, nearly 95 percent of the commenters addressing this proposal, opposed it. Many of the commenters indicated that a zero tolerance would be unattainable. Others noted that the prohibition of or restricted use of effective pesticides, at a time when large surpluses of grain are in storage, prevents this proposal from being operationally or economically feasible. Several commenters who represented the majority viewpoint, offered alternatives to the zero insect tolerance. Most of these were the same or similar to the recommendation submitted by the Grain Quality Workshops. This recommendation is discussed later in this supplementary information section. The workshops were initiated by the trade to study problems related to the quality of grain exported from the United States. Workshop members include representatives from different segments of the industry, including grain handlers, researchers, and trade associations.

With respect to setting the same insect tolerances for all grains, some comments were received supporting this aspect of the proposal from individuals and associations representing wheat farmers and wheat millers. They supported the proposal provided that the existing tolerances for wheat would not be relaxed. However, virtually all grain handlers opposed this proposal. Many believed that the current insect tolerances correctly reflect the greater concern of producers, grain handlers, processors, and the general public over insects in food grain (wheat, rye, and triticale) compared to insects in grain primarily used for feed purposes. Several commenters cited the fact that the Food and Drug Administration (FDA) has established insect defect action levels only for wheat as further evidence that a distinction between food and feed grains is justified. In addition, a majority of the FGIS Advisory Committee members also opposed the same insect tolerances for all grains during an April 13, 1987, committee meeting.

The provision to treat all insects injurious to stored grain with equal value was opposed by the majority of commenters. Most grain handlers including exporters, grain cooperatives, elevator operators, and warehousemen were opposed to the change. The majority of commenters believe that weevils are more damaging than other live insects injurious to stored grain (OLI's), and are more difficult to remove once the insect is inside the kernel. Others are of the opinion that differences in the potential for loss, damage, and reduced storability in grain justify the different tolerances accorded the two insect categories. A majority of the FGIS Advisory Committee members also opposed this proposed change at its April 13, 1987, meeting. Support for this provision was received from wheat farmers, wheat production associations, and the Miller's National Federation, which represents over 96 percent of the domestic U.S. wheat and rye milling capacity.

Comments were received recommending alternatives to the proposed rule. Most of these comments were either the same or similar in that they recommended tightening of the present tolerances. For example, the "infested" condition recommended for wheat by the Grain Quality Workshop and supported by many grain handlers, was defined as a sample which contains two or more live weevils, or one live weevil and one or more OLI's, or three or more OLI's. The "infested" condition recommended for corn and soybeans by the Grain Quality Workshop, was defined as a sample which contains two or more live weevils, or one live weevil and five or more OLI's, or ten or more OLI's. In addition, other commenters recommended the same tolerances for all feed grains. These tolerances would reduce the number of OLI's required to

designate these grains "infested" from the current 15 to 10 OLI's.

Also included as part of the proposal on live insect tolerances, was the requirement that insect tolerances be applied to a minimum 60,000 bushels for on-line inspection purposes. Several exporters and producer organizations expressed concern about this proposed minimum sublot size. In general, they agreed that a substantial tightening of shiplot tolerances is needed. Further, many commenters believed that insect determination should be applied to sublots or components of a sublot. They opposed the minimum 60,000 bushel sublot size requirement because it would not allow a shiploading or barge loading facility the freedom to determine the sublot size most compatible with its loading operations.

Based upon the comments received and all information available, the Service has concluded that it is not appropriate to adopt the proposed provisions concerning live insect tolerances at this time. The Service has determined that the current system of insect infestation tolerances for wheat, rye and triticale and another set of tolerances for all other grains for which infestation limits are established, should be retained. In lieu of the proposals, it is the view of the Service that these tolerances should be tightened to such levels that would more accurately reflect the levels of insect infestation in grain. For wheat, rye, and triticale, the levels will be such that in effect all live insects will be treated with equal value. For all other grains, except flaxseed, the Service is adopting the recommendation of the Grain Quality Workshops. Because the special grade "infested" does not apply to flaxseed, this final rule does not include flaxseed in the provisions relating to all the other grains. In addition, the final rule provides that insect tolerances be applied to components (a portion of a sublot, as defined in FGIS instructions), and not to a minimum 60,000 bushel sublot size as proposed.

In summary, this final rule makes the following changes regarding the special grade "infested", and live insect tolerances.

The Service is removing the Special grade "infested" and the definition as it appears in the Official U.S. Standards for Grain (7 CFR Part 810) for: Barley, § 810.207(d); Corn, § 810.405(c); Mixed Grain, § 810.805(d); Oats, § 810.1005(g); Rye, § 810.1205(c); Sorghum, § 810.1405(a); Soybeans, § 810.1605(b); Sunflower Seed, § 810.1805; Triticale, § 810.2005(c); and Wheat § 810.2205(c), under *Special grades and special grade requirements.* The term "infested" will be incorporated into Subpart A—General Provisions as § 810.107(a) and (b) under *Special grades and special grade requirements.* The sampling designations: representative sample, lot as a whole (stationary), and sample as a whole (continuous loading/unloading or shiplots and bargelots) will be revised to define the levels of live weevils and OLI's applicable to the new infested definitions for (a) wheat, rye, and triticale; and (b) barley, corn, oats, sorghum, soybeans, sunflower seed, and mixed grain.

Accordingly, the representative sample on stationary lots will include the work portion, and the file sample if needed and when available. Wheat, rye, and triticale, will be considered infested if the representative sample (shiplots excluded) contains two or more live weevils, or one live weevil and one or more OLI's, or two or more OLI's. Barley, corn, oats, sorghum, soybeans, sunflower seed, and mixed grain, will be considered infested if the representative sample (shiplots excluded) contains: two or more live weevils, or one live weevil and five or more OLI's; or ten or more OLI's.

For wheat, rye, and triticale, the lot as a whole (stationary) will be infested if two or more live weevils, or one live weevil and one or more OLI's, or two or more OLI's are found in, on, or about the lot (excluding submitted samples and shiplots). For barley, corn, oats, sorghum, soybeans, sunflower seed, and mixed grain, the lot as a whole (stationary) will be infested if two or more live weevils, or one live weevil and five or more OLI's; or ten or more OLI's are found in, on, or about the lot (excluding submitted samples and shiplots).

The "infested" definition for the sample as a whole (continuous loading/unloading of shiplots and bargelots) will be based on the stationary lot tolerances. The minimum sample size to be used in determining insect infestation during continuous loading/unloading will be 500 grams for each 2000 bushels. Further, the tolerance for the infested condition will apply to each component (a portion of a sublot as defined in FGIS instructions).

When a lot contains infested grain, the applicant will be notified of the options available under § 800.86(e)(1) of the regulations. Pursuant to that section, the options include unloading the infested grain, fumigation of the infested grain, or certification of the grain as infested.

Insect Damage in Wheat

FGIS is revising the wheat standards to include in the Sample grade definition a limit equivalent to 32 insect-damaged kernels per 100 grams of representative sample (7 CFR 810.2204(a)).

The current practice of combining insect-damaged kernels of wheat with total damaged kernels allows levels of insect damage in wheat of the various grades to exceed the defect action level (DAL) of 32 insect-damaged kernels in 100 grams of wheat permitted by the FDA. More specific information on insect-damaged kernels in wheat is needed by the Service, the FDA, and the grain industry.

The minority of commenters who were opposed to this change represented grain handlers who expressed general opposition to all proposed rule changes concerning insect infestation in grain and did not state any reasons specifically in opposition to this section.

The majority of commenters who addressed the proposal specifically indicated support or no opposition to the change. Some commenters believe that samples containing 32 insect-damaged kernels per 100 grams of representative sample would probably grade Sample grade anyway due to odor and other factors related to insect damage. In view of the above, § 810.2204(a) in Subpart L—*U.S. Standards for Wheat* (proposed at 51 FR 35224) is amended by revising the portion of the grade chart that defines U.S. Sample grade wheat to include "contains 32 or more insect-damaged kernels per 100 grams of wheat" as a part of the Sample grade definition. The specific damaged-kernel counts and procedures to be used will appear in FGIS instructions.

Limit on Total Insects

The proposed change in the Official U.S. Standards for Grain to expand the Sample grade definition to include 10 or more insects (live or dead) per 1000 grams of representative sample (600 grams for sunflower seed) for each grain affected will not be adopted at this time.

Nearly all of the commenters who addressed this proposal were in opposition to the change. Except for the Millers' National Federation and its member companies, no segment of the grain industry favored the proposed limit on total insects. A few commenters stated that generally foreign buyers have not complained about the levels of dead insects received in cargos of grain. Others noted that the Sample grade designation might discourage the fumigation of heavily infested lots since fumigation would not change the grade result. Some commenters noted that counts of both live and dead insects are presently available as official criteria

and may be requested in any contract. One commenter suggested that as an alternative to the FGIS proposal, a count of dead insects could be automatically provided in the "Remarks" section of official certificates rather than making dead insect counts available on a request basis. Still other commenters believe that the Service should: (1) Develop a method to identify dead insects, (2) list live or dead insect counts on inspection certificates for use in data collection and analysis, and (3) evaluate the effects of making dead insects a grade determining factor in the marketing of grain.

After reviewing the comments and all other available information, the proposed limit on total insects will not be adopted at this time. It is the view of the Service that more information and review would be necessary to make any such change.

List of Subjects in 7 CFR Part 810

Export, Grain.

For reasons set forth in the preamble, 7 CFR Part 810 is amended as follows:

PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

The authority citation for Part 810 continues to read as set forth below:

Authority: Secs. 3A and 4, United States Grain Standards Act (7 U.S.C. 75a, 76)

Subpart A—General Provisions

1. Section 810.107 is revised to read as follows:

§ 810.107 Special grades and special grade requirements.

A special grade serves to draw attention to a special factor or condition present inthe grain and, when applicable, is supplemental to the grade assigned under § 810.106. Except for the special grade "infested," the special grades are identified and requirements are established in each respective grain standards.

(a) *Infested wheat, rye, and triticale.* Tolerances for live insects responsible for infested wheat, rye, and triticale are defined according to sampling designations as follows:

(1) *Representative sample.* The representative sample consists of the work portion, and the file sample if needed and when available. These grains will be considered infested if the representative sample (other than shiplots) contains two or more live weevils, or one live weevil and one or more other live insects injurious to stored grain, or two or more live insects injurious to stored grain.

(2) *Lot as a whole (stationary).* The lot as a whole is considered infested when two or more live weevils, or one live weevil and one or more other live insects injurious to stored grain, or two or more other live insects injurious to stored grain are found in, on, or about the lot (excluding submitted samples and shiplots).

(3) *Sample as a whole (continuous loading/unloading of shiplots and bargelots).* The minimum sample size for bargelots and shiplots is 500 grams per each 2,000 bushels of grain. The sample as a whole is considered infested when a component (as defined in FGIS instructions) contains two or more live weevils, or one live weevil and one or more other live insects injurious to stored grain, or two or more other live insects injurious to stored grain.

(b) *Infested barley, corn, oats, sorghum, soybeans, sunflower seed, and mixed grain.* Tolerances for live insects responsible for infested barley, corn, oats, sorghum, soybeans, sunflower seed, and mixed grain are defined according to sampling designations as follows:

(1) *Representative sample.* The representative sample consists of the work portion, and the file sample if needed and when available. These grains will be considered infested if the representative sample (other than shiplots) contains two or more live weevils, or one live weevil and five or more other live insects injurious to stored grain, or ten or more other live insects injurious to stored grain.

(2) *Lot as a whole (stationary).* The lot as a whole is considered infested when two or more live weevils, or one live weevil and five or more other live insects injurious to stored grain, or ten or more other live insects injurious to stored grain are found in, on, or about the lot (excluding submitted samples and shiplots).

(3) *Sample as a whole (continuous loading/unloading of shiplots and bargelots).* The minimum sample for shiplots and bargelots is 500 grams per each 2,000 bushels of grain. The sample as a whole is considered infested when a component (as defined in FGIS instructions) contains two or more live weevils, or one live weevil and five or more other live insects injurious to stored grain, or ten or more other live insects injurious to stored grain.

Subpart B—United States Standards for Barley

§ 810.207 [Amended]

2. Section 810.207 is amended by removing paragraph (d) and redesignating paragraph (e) as (d).

Subpart C—United States Standards for Corn

§ 810.405 [Amended]

3. Section 810.405 is amended by removing paragraph (c) and redesignating paragraph (d) as (c).

Subpart E—United States Standards for Mixed Grain

§ 810.805 [Amended]

4. Section 810.805 is amended by removing paragraph (d) and redesignating paragraphs (e) and (f) as paragraphs (d) and (e).

Subpart F—United States Standards for Oats

§ 810.1005 [Amended]

5. Section 810.1005 is amended by removing paragraph (g) and redesignating paragraphs (h) and (i) as paragraphs (g) and (h).

Subpart G—United States Standards for Rye

§ 810.1205 [Amended]

6. Section 810.1205 is amended by removing paragraph (c) and redesignating paragraphs (d), (e), (f) and (g) as paragraphs (c), (d), (e) and (f).

Subpart H—United States Standards for Sorghum

§ 810.1405 [Amended]

7. Section 810.1405 is amended by removing paragraph (a) and removing the designation "(b)" from paragraph (b).

Subpart I—United States Standards for Soybeans

§ 810.1605 [Amended]

8. Section 810.1605 is amended by removing paragraph (b) and redesignating paragraph (a) as an undesignated paragraph.

Subpart J—United States Standards for Sunflower Seed

§ 810.1805 [Amended]

9. Section 810.1805 *Special grades and special grade requirements* is removed from Subpart J—United States Standards for Sunflower Seed.

Subpart K—United States Standards for Triticale

§ 810.2005 [Amended]

10. Section 810.2005 is amended by removing paragraph (c) and redesignating paragraphs (d), (e) and (f) as paragraphs (c), (d) and (e).

Subpart L—United States Standards for Wheat

11. In the table, in § 810.2204(a), the entry for U.S. sample grade is amended by redesignating paragraphs (b), (c), and (d) as (c), (d), and (e); and a new paragraph (b) is added as follows:

§ 810.2204 Grade and grade requirements for wheat.

(a) * * *

(b) Contains 32 or more insect-damaged kernels per 100 grams of wheat, or

* * * * *

§ 810.2205 [Amended]

12. Section 810.2205 is amended by removing paragraph (c) and redesignating paragraphs (d), (e), and (f) as paragraphs (c), (d), and (e).

Dated: June 8, 1987.

W. Kirk Miller,

Administrator.

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