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WHO: The Office of the Federal Register.

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

[Docket No. FM-89-001]

Revision of Delegation of Authority

AGENCY: Office of the Secretary, USDA.
ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department by delegating to the Assistant Secretary for Marketing and Inspection Services and the Administrator, Agricultural Marketing Service (AMS), the authority to establish and collect user fees for the recovery of costs involved in providing, on request, copies of software programs, pamphlets, reports or other publications prepared in carrying out any of the missions or programs otherwise delegated to them.

EFFECTIVE DATE: January 24, 1989.

FOR FURTHER INFORMATION CONTACT: Richard Hooper, Financial Management Division, Agricultural Marketing Service, Department of Agriculture, Washington, DC (202) 447-6981.

SUPPLEMENTARY INFORMATION: This document amends the delegations of authority of the Department of Agriculture in 7 CFR Part 2 by delegating to the Assistant Secretary for Marketing and Inspection Services, and the Administrator, AMS, the responsibility and the authority for establishing and collecting user fees under section 1121 of the Agriculture and Food Act of 1981, as amended by section 1769 of the Food Security Act of 1985. Section 1121 (7 U.S.C. 2242a) authorizes the furnishing, on request, of copies of software programs, pamphlets, reports or other publications prepared in carrying out any of the missions or programs otherwise delegated to them; and the charging of such fees as are determined to be reasonable.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment thereon are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this subject is not a rule as defined by Pub. L. No. 96-354, the Regulatory Flexibility Act, and thus, is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, 7 CFR Part 2 is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for Part 2 continues to read:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small and Rural Development, and Assistant Secretaries

2. Section 2.17 is amended by adding new paragraph (a)(4) to read as follows:

§ 2.17 Delegations of Authority to the Assistant Secretary for Marketing and Inspection Services.

* * * * *

(a) * * *

(4) Furnish, on request, copies of programs, pamphlets, reports, or other publications for missions or programs as may otherwise be delegated or assigned to the Assistant Secretary, and charge user fees therefor, as authorized by section 1121 of the Agriculture and Food Act of 1981, as amended by section 1769 of the Food Security Act of 1985, 7 U.S.C. 2242a.

* * * * *

Subpart F—Delegations of Authority by the Assistant Secretary for Marketing and Inspection Services

(3) Section 2.50 is amended by adding new paragraph (a)(4) to read as follows:

§ 2.50 Administrator, Agricultural Marketing Service.

(a) * * *

(4) Furnish, on request, copies of programs, pamphlets, reports, or other publications for missions or programs as may otherwise be delegated or assigned to the Administrator, and charge user fees therefore, as authorized by section 1121 of the Agriculture and Food Act of 1981, as amended by section 1769 of the Food Security Act of 1985, 7 U.S.C. 2242a.

* * * * *

For Subpart C:

Richard E. Lyng,

Secretary of Agriculture.

Date: January 12, 1989

For Subpart F:

Kenneth A. Gilles,

Assistant Secretary of Agriculture, Marketing and Inspection Services.

Date: January 13, 1989.

[FR Doc. 89-1493 Filed 1-23-89; 8:45 am]
BILLING CODE 3410-02-M

Agricultural Marketing Service

7 CFR Part 29

[TB-89-002]

Tobacco; Fees and Charges for Permissive Inspection

AGENCY: Agricultural Marketing Service, USDA.
ACTION: Final rule.

SUMMARY: This final rule would establish separate fees and charges for the permissive inspection and certification of tobacco for export. In addition, the basis for charging these fees would be changed from an hourly rate to a per pound rate. The changes would generate revenues that would meet the costs of operating the export inspection program. This final rule does not affect the permissive inspection fee for tobacco for domestic use or the mandatory inspection fee for tobacco at auction warehouses.

EFFECTIVE DATE: February 23, 1989.

FOR FURTHER INFORMATION CONTACT: Ernest L. Price, Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090–6456, telephone—(202) 447–2567.

SUPPLEMENTARY INFORMATION: Notice was given (53 FR 40069, October 13, 1988) that the Department proposed to amend the regulations to establish separate fees and charges on a per pound basis for permissive inspection and grading services for export tobacco. Interested parties were given an opportunity to comment on the proposed rule.

Two comments were received from companies which export tobacco. Both stated that they favor the proposed rule.

The Department hereby adopts the regulations appearing in the proposed rule which provided for a fee of $.0025 per pound for the voluntary inspection and certification of tobacco for export. Previously, the same hourly fee had applied to both the permissive inspection of tobacco for domestic use and for export.

The Tobacco Inspection Act authorizes permissive inspections which are made available to interested parties on a fee basis sufficient to cover, as nearly as practicable, the costs incurred by the Department for the inspection and certification of tobacco, including administrative and supervisory costs. The Department had determined that the previous fees and charges for permissive inspections did not cover the costs for export inspection and certification. The major factors causing the need for the separate rate are increases in salaries, travel and administrative costs. Different personnel are utilized for the inspection and certification of tobacco for export than for permissive inspection for domestic use because tobacco processed for export in large lots is different in form than tobacco in small lots on a warehouse floor or in a redrying plant.

For the most part, seasonal employees are utilized for permissive inspection for domestic use and the program costs are their salary for the actual time they are conducting permissive inspections, administrative and supervisory costs, travel and per diem. However, personnel assigned to inspection and certification of tobacco for export must be available year-round. The higher costs of personnel with the expertise needed for the inspection and certification of tobacco for export will be attributed to the program that incurs the costs. In addition, the amount of tobacco which will be exported in any given year is more easily estimated than the amount of time which will be necessary for inspection and certification of tobacco for export. Thus, a per pound fee is a more appropriate method of recovering the costs of the inspection and certification of tobacco for export.

The previous fee was $26.60 per hour, plus travel expenses and per diem. Revenues (for export tobacco) for the 12-month period beginning June 1, 1987, were about $43,000, with costs of about $57,400. In FY 1989, it is estimated that approximately $70,000 in revenues would be generated and that program costs would be approximately $69,900.

In order to cover the Department's costs of providing permissive export tobacco inspection and certification, the fee should be $.0025 per pound. In addition, miscellaneous conforming changes are made to various provisions in § 29.123. This final rule is the same as the proposed rule except for changes in punctuation.

The final rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "nonmajor rule" because it does not meet any of the criteria established for major rules under the Executive Order.

Additionally, in conformance with the provisions of Pub. L. 96–354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact upon small business. Most of the firms which would be affected by this final rule do not fall within the confines of "small business," as defined in the Regulatory Flexibility Act. The Administrator, Agricultural Marketing Service, has determined that this action would not have a significant economic impact on a substantial number of small entities. This final rule would not substantially affect the normal movement of the commodity in the marketplace. Compliance with this revision would not impose substantial direct economic costs, recordkeeping, or personnel workload changes on small entities, and it would not alter the market share or competitive positions of small entities relative to large entities. Furthermore, the Department is required by law to fix and collect fees and charges to cover the Department's cost in operating the tobacco inspection program.

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Tobacco.

Accordingly, the Department hereby amends the regulations under the Tobacco Inspection Act contained in 7 CFR Part 29 as follows:

PART 29—TOBACCO INSPECTION

Subpart B—Regulations

1. An authority citation for Subpart B is added to read as follows:

Authority: 7 U.S.C. 511m and 511r.

2. In § 29.123, the introductory text to the section is revised to read as follows:

§ 29.123 Fees and charges.

Fees and charges for tobacco inspection and certification service shall be collected by the Director to cover, insofar as practicable, all costs of the services, including establishment of standards, administrative, and supervisory costs, as follows:

* * * * *

3. In § 29.123, the heading for paragraph (b) is revised to read as follows:

* * * * *

(b) *Domestic permissive inspection and certification.* * * *

* * * * *

4. In § 29.123, paragraph (c) is redesignated as paragraph (d).

5. A new paragraph (c) is added to § 29.123, to read as follows:

* * * * *

(c) *Export permissive inspection and certification.* The inspection and certification fee for export tobacco is $.0025 per pound.

* * * * *

Dated: January 18, 1989.

J. Patrick Boyle,

Administrator.

[FR Doc. 89–1528 Filed 1–23–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Parts 53 and 54

[LS–88–031]

Standards for Grades of Slaughter Cattle and Standards for Grades of Carcass Beef

AGENCY: Agricultural Marketing Service (AMS), USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the official U.S. standards for grades of carcass beef and the related standards for grades of slaughter cattle. The revisions provide for separate application of the quality grade and yield grade for steer, heifer, cow, and bullock carcasses and for slaughter cattle. The revisions do not change either the individual quality grade or

yield grade requirements. These changes should provide more flexibility in using the grading service by permitting the voluntary use of either the beef quality grades and/or the yield grades. These revisions will enable packers to adopt certain advanced production and marketing procedures, and the industry as a whole to choose the procedures which most efficiently meet consumer demands for trimmer beef. The separation of the quality and yield grades enables the industry to trim carcasses before grading and still maintain the option of quality grading. This revision also allows the industry to pursue alternative procurement systems which may benefit producers of cattle with higher lean meat yields by discouraging overproduction of fat in order to maximize selling weights of both cattle and beef.

EFFECTIVE DATE: April 9, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Michael L. May, Chief, Standardization Branch, Livestock and Seed Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Washington, DC 20090–6456, 202–447–4486.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule which revises the beef carcass (7 CFR Part 54) and slaughter cattle (7 CFR Part 53) standards was reviewed under Department procedures established to implement Executive Order 12291 and Departmental Regulation No. 1512–1 and is hereby classified as a non-major rule because (1) it would not have an annual effect on the economy of $100 million or more, (2) it would not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (3) it would not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effect on Small Entities

This action was reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et. seq.). 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 as defined by the RFA because the changes would not change the grade requirements for slaughter cattle or beef carcasses but would provide all users with greater flexibility in using the grade standards to identify quality and/or yield characteristics. Users of the grades would be able to specify the combinations of quality and/or yield grades that best meet their needs. Further, the use of the beef grades is voluntary, and they are applied equally to all size entities covered by these regulations.

Background

Federal grading of beef is a voluntary service, provided under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), which is designed to facilitate the marketing of cattle and beef. Beef grades are intended to segregate the beef supply into groups with similar attributes of palatability and yields of cuts. These criteria are generally of ultimate concern to consumers and the beef industry because they affect the acceptability, price, and consumption of beef. Grades provide a uniform basis for marketing cattle and beef and allow consumer desires to be communicated to the industry so that necessary changes in feeding and production may be made.

Beef grading is provided by the Department for a fee to users who request the service. Beef grading is voluntary, and not all marketed beef is graded. In 1987 approximately 54 percent of commercial beef production was graded. However, approximately 66 percent of the federally inspected steer and heifer slaughter was graded. The steer and heifer slaughter is the portion of the beef supply generally available to consumers as retail cuts.

The official beef grade currently consists of both a quality grade and a yield grade. The quality grades identify differences in the palatability of cooked beef principally through the characteristics of marbling and maturity. The yield grades identify differences in the percentage of product that may be obtained from a carcass. Such yield grades are established by examining the characteristics of external fat cover; percent kidney, pelvic, and heart fat; hot carcass weight; and ribeye area. Yield grades are also useful as predictors of the yield of further subdivisions of carcasses, but yield grade's usefulness diminishes as the size of the cuts lessens, fat is trimmed, and bone is removed.

Yield grades are primarily used as wholesale marketing indicators and are seldom used at retail because retail product receives additional fat trim prior to merchandising. AMS believes that consumers are generally able to differentiate differences in the amount of lean meat and fat and to make value comparisons. Quality grades are also used in wholesale marketing, but unlike yield grades, are used at retail to identify quality differences which are difficult for consumers to differentiate when purchasing beef.

Industry Petition

Although significant progress has been made in production of leaner cattle without sacrificing quality, excess fat and bone must still be removed in order to satisfy consumer demands. The industry recognizes the inefficiency of not trimming excess fat and removing bone at the packer level. Therefore, in order to provide retailers and consumers with the types of beef preferred and to increase efficiency, most packers have either initiated or intend to initiate programs to provide purchasers with more closely trimmed primal and subprimal cuts.

To most efficiently produce these desirable types of cuts, packers have also examined alternative production and marketing procedures. One procedure is to remove external fat from carcasses at the time of slaughter, a process called hot-fat trimming. Although this procedure offers potential economic benefits, two provisions in the current standards prevent packers from using this technology if they desire to have beef officially graded. The first provision is the coupling of the quality and yield grades. The second provision that prevents the grading of carcasses that have had substantial amounts of external fat removed. This prevents the yield grading of carcasses that have been trimmed because accurate yield grade determinations cannot be made on trimmed carcasses. For these reasons, the American Meat Institute and the National Cattlemen's Association petitioned the Department in June 1987 to amend the beef carcass grade standards to permit the voluntary use of either the beef quality grades and/or the beef yield grades.

The petitioners pointed out that under the current standards, plants wishing to produce closely trimmed primals and subprimals have essentially two options: (1) Add personnel and equipment to maintain present processing or production rates or (2) reduce processing rates to match existing personnel and facility restraints. Both options are considered costly and inefficient. The petitioners further stated that hot-fat trimming on the slaughter floor could more efficiently remove most of the excess fat before processing. The industry would benefit if packers were afforded the opportunity to implement cost-effective production systems in a

constantly changing, competitive economic environment.

The petitioners also stated that market demands would dictate use of the grading service. If beef purchasers, whether large or small volume, accept hot-fat trimmed primals and subprimals, they would have no need for yield grade identification. If they do not accept hot-fat trimmed product, they could still choose to use the yield grading system on quality graded or non-quality graded product.

A benefit of uncoupling perceived by the petitioners is the opportunity it gives the industry to adopt hot-fat trimming and allow producers to be paid on lean meat yield. As the difference in amount of external fat on carcasses is narrowed, the differences in composition among carcasses of different yield grades narrows. Carcasses from cattle with less fat would have higher trimmed carcass weights. If producers are paid on a final trimmed carcass weight basis, for two cattle weighing the same live, the leaner animal would have the heavier pay weight. Such a system would encourage beef producers to adopt breeding and feeding technology directed toward the production of leaner cattle.

Proposed Standards

Consideration of all the available data and information indicated that a revision of the beef carcass and slaughter cattle standards to allow either quality grading and/or yield grading appears to offer the potential for improving the effectiveness of the beef grades in meeting the needs of the marketplace. Considerable changes have occurred in the marketing of beef which necessitate the more efficient removal of excess fat and bone. Although the industry retains its goal of eliminating excess waste through improved breeding and feeding technology, the current information suggests that technologies, such as hot-fat trimming, offer considerable promise to the industry as potential methods for more efficient removal of waste fat. There are potential economic benefits associated with these technologies that could assist not only producers and packers, but also beef purchasers and consumers who desire the attributes of trimmer beef. The current provision requires both a quality and a yield grade. These provisions effectively prevent some new technologies from being adopted and the benefits of yield grading to be extended to non-quality graded carcasses. Grades of slaughter cattle are intended to be directly related to the grade of the carcasses they produce. Accordingly, the standards for grades of slaughter cattle would be revised to reflect any changes in the beef carcass grade standards.

Therefore, it was proposed in the February 3, 1988, **Federal Register** (53 FR 3025–3028) that the beef carcass and slaughter cattle standards be amended to allow the application of the quality grade only, the yield grade only, or the application of both the quality and yield grades. As a result of the uncoupling of these grades, it was proposed that carcasses that have had external fat removed for any non-fraudulent or non-deceptive cause may receive a yield grade only if it is determined that an accurate grade evaluation can be made. No changes in the actual grade requirements for either quality or yield grades were proposed. In addition, it was proposed that the standards for grades of slaughter cattle be revised to reflect the changes proposed for the carcass grade standards.

Comments

A 60-day comment period, which was scheduled to close on April 4, 1988, was provided for submission of comments and supporting data. At the request of an industry trade association, the close of the comment period was extended to June 6, 1988 (53 FR 10545). In addition to the period for written comments, a public hearing session was held in Kansas City, Missouri, on March 8, 1988. The official number of written and/or oral comments that were submitted prior to the close of the comment period was 208, of which 207 addressed the proposed changes.

The comments were divided among several sectors representing segments of the production and consumption chain with similar interests. The comments were also classified as individual or organization. The distribution of comments by these categories is shown in Table 1. The percentage support/non-support for the proposed change by sector and classification (i.e., individual or organization) is shown in Table 2. Overall, the majority of both individual and organization comments supported the changes as proposed. A majority of comments from the livestock production, packing, consumer, and academic, government, and health sectors supported the proposed changes. Most of the comments that did not support the proposed changes or favored an alternative to the proposal were received from the purveyor; processor; HRI (hotel, restaurant, and institutional) user; and retailer segments.

TABLE 1—DISTRIBUTION OF COMMENTS

Sector	Classification		
	Individual [1]	Organization [2]	Total
Livestock production	52	18	70
Packing	19	3	22
Purveyor and processor	34	2	36
HRI user	9	1	10
Retailer	4	1	5
Consumer	28	0	28
Academia, government, and health	36	2	38
Total	182	27	170

[1] Includes comments of individuals, comments with multiple signers, and businesses.
[2] Includes comments of state, regional, and national organizations and government agencies.

TABLE 2—PERCENT SUPPORT/NONSUPPORT

[In percent]

Sector	Classification					
	Individual [1]			Organization [2]		
	Favor	Opose	Alternative	Favor	Opose	Alternative
Livestock production	80.8	17.3	1.9	72.2	11.1	16.7
Packing	84.2	10.5	5.3	66.7	33.3	0.0
Purveyor and processor	5.9	82.3	11.8	0.0	50.0	50.0
HRI user	11.1	77.8	11.1	0.0	100.0	0.0
Retailer	25.0	75.0	0.0	0.0	100.0	0.0
Consumer	92.6	7.4	0.0	0.0	0.0	0.0
Academia, Government, and Health	83.3	8.3	8.3	50.0	50.0	0.0
Total	64.6	29.8	5.5	59.3	25.9	14.8

[1] Includes comments of individuals, comments with multiple signers, and businesses.
[2] Includes comments of state, regional, and national organizations and government agencies.

The comments supporting the uncoupling of the yield and quality grades generally saw the uncoupling as a means to provide the industry greater flexibility in determining the point of fat removal and the value determination for livestock and beef. The comments supporting the changes from the livestock and packer segments indicated the changes would allow the industry to determine the most efficient methods of removing fat, including possible adoption of new technologies such as hot-fat trimming, in order to meet the goal of providing trimmer cuts to buyers.

These comments also supported the change as a means to allow the industry to examine new procurement systems for livestock, including potential trimmed hot carcass weight purchasing. The current requirement for coupled yield and quality grades was seen as preventing the industry from adopting the most efficient technologies in order to meet the increased consumer demand for trimmer beef.

In addition to the increased flexibility the proposed changes presented the industry, several comments indicated the uncoupling would allow the benefits of yield grading to be extended to portions of the beef supply that are not currently being graded because of the coupled requirement. It was believed that some purchasers are primarily concerned with yield, and would request yield graded beef only, if available. Many of the commenters who supported the changes, and several of those who favored an alternative to the changes, believe the actual amount of beef that would be yield graded would increase if yield grading only were allowed.

Supply Concerns

Many of the commenters opposed to the proposed changes indicated a concern that if the grades were uncoupled, a supply of yield graded beef would no longer be available. These commenters believed that the potential existed that packers would choose to quit yield grading. Some of the comments from smaller purveyors expressed their concern that only large volume purchasers would be able to specify both quality and yield graded product.

The Department has carefully considered these concerns. While it can be speculated that packers could choose to quit yield grading all beef, there is no evidence to indicate that this would occur. The widespread reliance on yield grades that was indicated in the comments from purveyors, HRI users, and retailers indicates that the utilization of yield grades in beef marketing is deeply entrenched. It is not likely that meat purchasers would abandon the use of yield grades for alternative methods of marketing until the benefits of such alternatives had been successfully demonstrated by packers. Furthermore, with such a widespread demand for yield graded beef, packers should continue to offer it to purchasers until any alternatives have been accepted in the marketplace. It is likely that the amount of beef that is yield graded could be reduced if hot-fat trimmed product proves to be advantageous to both packers and buyers. However, the entire marketplace will determine the use and value of yield grading, not a single sector.

Seam Fat Concerns

Many of the commenters opposed to the proposed changes were concerned about potential problems identifying beef with high levels of seam fat. There was concern that packers would simply not yield grade fatter carcasses and mix them with better yielding carcasses and label them only with the quality grade. There was also concern that it would not be possible to identify fatter beef that was hot-fat trimmed, and such fatter beef could be intermingled with higher yielding beef.

It is recognized that there are differences in the amount of seam fat between carcasses of different yield grades. Generally, the better yield grades will have lower amounts of seam fat. However, it is also recognized that different cutting and trimming procedures can account for up to 80 percent of the difference in seam fat between the yield grades. Because beef purchasers are demanding trimmer product, even if a substantial amount of beef were hot trimmed and not yield graded, it would be expected that packers would use hot trimmed beef in providing the more closely trimmed subprimals to meet his demand. Thus, most of the variation in seam fat that could occur in this beef could be accounted for by using these cutting and trimming specifications. Proponents of uncoupling also believe the potential marketing of beef based on a value based system relying on trimmed carcass weights would further reduce the amount of Yield Grade 4 and 5 beef, thus further reducing the amount of beef that has excessive seam fat.

It is possible that packers could choose not to yield grade fatter beef and commingle it with leaner beef. However, there is nothing that prevents this practice now other than the packer's desire to provide beef that meets their own boxed beef specifications used in their merchandising programs. Even with the severe discounts that are often associated with Yield Grade 4 and 5 beef, packers now grade and separately market this type of beef, even though it could be marketed as subprimals and labeled with the quality designation only or as ungraded beef.

Limited Uncoupling

Many of the commenters opposed to the uncoupling indicated much of their opposition was because no requirements were presented in the proposed changes to require hot-fat trimming in order to quality grade only. Many of these commenters believed packers should only have the option to quality grade only if the carcasses had been trimmed. Some of these commenters indicated a desire that the carcasses would have to be trimmed to a specified maximum fat cover. The commenters wanted to continue to require both quality and yield grading for carcasses that had not been trimmed. However, some of these comments did suggest that packers be allowed to grade carcasses for yield grade only, but not quality grade only.

Allowing the beef grades to be uncoupled only for trimmed carcasses would achieve one of the major objectives of most supporters of the proposed changes; i.e., to allow the industry the opportunity to hot trim carcasses. To allow uncoupling for only hot-fat trimmed carcasses would also provide purchasers with the knowledge that some degree of fat trimming had been done on the carcass if it were quality graded only. This alternative would not jeopardize benefits of coupled yield and quality grades on beef not subjected to trimming.

AMS had carefully considered limited uncoupling prior to proposing the complete uncoupling of the beef quality and yield grades. To allow uncoupling for only trimmed carcasses would require a defined level of trim to qualify the carcass for uncoupling. A determination would have to be made on each carcass presented for grading to determine if it met the required level of trim. A principal hindrance to this type of compliance determination is the extreme difficulty in monitoring levels of trim on carcasses, especially on a

production-line basis. To achieve or approach the levels of accuracy and precision of other grading operations would probably require significant slowing of grading operations and/or significant plant modifications and expenditures in order to make such determinations. In addition to the difficulties associated with creating a satisfactory definition and then determining compliance with the requirement, there is another major concern. A fat trim level implemented on carcasses would provide only limited information on potential variation in yields for boxed beef products, which is the form in which most beef is now marketed. An external fat trim requirement would also not identify or account for any variations in seam fat that could exist between trimmed carcasses.

A few comments were received that supported uncoupling, but expressed a desire to develop a system to grade trimmed carcasses for yield prior to fat removal on the slaughter floor. There is merit for such a system; however, technology in the area of instrument grading is currently not ready for implementation on a production basis. Several commenters supporting uncoupling believed it would place the beef industry at a severe disadvantage to delay implementation of uncoupling until a workable instrument grading system was available. These commenters were concerned that the beef industry must immediately begin providing trimmer products in the most efficient manner in order to meet consumer demands and to compete with other meat species.

Some proponents of uncoupling were concerned that limited uncoupling would not provide as much flexibility to the industry as total uncoupling. It was indicated that limited uncoupling for hot trimmed carcasses only would lock packers into one system, but not provide for adoption of other potential technologies that could become available in the future. There was also concern expressed that monitoring of fat trim levels should not be a function of the grade standards. Instead it was suggested that the certification service offered by AMS could be used to monitor trim specifications, either on carcases or on cuts. The limited uncoupling for trimmed carcasses only would also prevent the industry from having the option to yield grade only. Several commenters favored this as a means of improving marketing information. Accordingly, for the reasons set forth herein, the suggestions concerning limited uncoupling are not adopted in this final rule.

Regulatory Concerns

Several comments took issue with the determinations that the proposed revision was a "non-major" rule, and that it would not have a significant economic impact on a substantial number of small entities. These commenters urged USDA to initiate an economic impact study on the effects of the change. AMS had previously reviewed the proposed revision under Executive Order 12291 and Departmental Regulation No. 1512–1, and classified the rule as "non-major." Also, AMS determined that the change would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Currently, yield and quality grades must be applied together. The change will remove this provision and will provide for the separate application of yield and quality grades. The final rule does not change either the yield grade or the quality grade requirements. Also, it does not change the voluntary nature of the program. Thus, the revision is merely providing more flexibility to the users of the service by permitting the use of the yield grades, the quality grades, or both. This alone does not lead to the conclusion that a significant segment of market participants will change their usage of the grading program. Neither opponents nor proponents of the change offered evidence to the contrary.

Changes in marketing practices and procedures may, however, lead to changes in program usage by market participants. The separation of yield and quality grades allows the beef industry to use new, more efficient technologies available today and in the future. Thus, packers could adopt certain advanced production and marketing techniques, and the industry as a whole could choose those procedures which most efficiently meet consumer needs. With the adoption of new techniques, usage of the grading program could change. However, AMS believes that retailers and others will continue to specify yield grading as a purchasing requirement unless the benefits of new technologies have been successfuly demonstrated.

The principal technology currently under consideration by the industry which would remove external fat from carcasses at the time of slaughter is a process called hot-fat trimming. Research on hot-fat trimming has indicated that beef carcasses could be substantially trimmed of excess subcutaneous fat and most of the kidney, pelvic, and heart fat. However, there has been only limited testing of hot-fat trimming on a production basis, and there is substantial disagreement as to the feasibility of commercial implementation. Thus, while separating the yield and quality grades would remove one hindrance to adopting this new technology, it does not assure that its adoption will occur. Also, there has been no indication from interested parties as to how much hot-fat trimming would be adopted should the yield and quality grades be separated. The level of adoption would depend upon both the acceptance of the product in the marketplace and whether it facilitated packers' processing needs to supply more closely trimmed beef to purchasers.

A few commenters were concerned that if packers were allowed to trim product prior to grading, employees of purveyors, retailers, etc., would not be needed for trimming product and could cause unemployment of these employees. While the Department does believe that some packers may choose to hot-trim product in order to more efficiently provide trimmer products to purchasers, there is evidence to indicate that both packers and buyers have already expressed a need for trimmer product and it will be provided whether the product is trimmed prior to or after grading. The uncoupling of the quality and yield grades would merely provide the packing industry with an option to remove the fat in the most efficient manner for their operations. Because market forces are already in place to provide trimmer product, the uncoupling should not significantly alter the actual location of fat removal, but only possibly the time of such removal at the packing plant.

Based on the above considerations, AMS has concluded that there is no evidence nor was any quantitative data supplied that significant negative changes will occur as a result of separating the yield and quality grades. Any substantive change in usage of the program will only result from changes in marketing practices and procedures. Nothing in the proposal presented by the petitioners nor the comments from interested parties offers any evidence that current marketing practices and procedures will change negatively as a result of separating yield and quality grades.

After thorough review of the comments received and the information available, there is no indication nor was any quantitative data supplied that would alter the prior determination that the revision be classified as "non-major" and that it would not have a significant

economic impact on a substantial number of small entities.

Other Concerns

Proponents of the revision have indicated the change would allow the industry to pursue an alternative procurement system (based on trimmed carcass weights) benefiting producers of cattle with higher lean meat yields. This would discourage the overproduction of fat. Some commenters from the livestock sector were concerned that no specifics for such a program were specified. No party interested in the revision gave any indication as to the specific structure of such a new procurement system, nor did they provide a timetable for the adoption of such a system.

A few comments were received that indicated the commenters believed that AMS intended to yield grade trimmed carcasses. Changes were proposed in 7 CFR 54.104 (g) to allow the quality grading of carcasses that were trimmed to facilitate processing and marketing. However, any carcass fraudulently trimmed would not be eligible for any grade determination. The intent of the proposed change was to allow carcasses with some minor trimming associated with meat inspection or dressing to be yield graded if the grader determines that an accurate yield grade determination could still be made. Provisions for yield grading carcasses with more than minor amounts of fat removed were not intended. A minor rewording of this section has been made to clarify this intent.

In consideration of the public comments submitted in response to the proposed rule of February 3, 1988 (53 FR 3025–3028), and all other available information, USDA adopts the proposed regulations to revise the slaughter cattle and beef carcass standards to allow the application of the quality grade only, or the yield grade only, or both. The standards for grades of slaughter cattle are intended to be directly related to the grades of the carcasses they produce.

List of Subjects

7 CFR Part 53

Livestock, Cattle, Grading and Certification, Standards.

7 CFR Part 54

Beef carcasses, Meat and meat products, grading and certification, Standards.

In consideration of the foregoing, certain sections of the regulations and standards appearing at 7 CFR Part 53 as they relate to livestock and certain sections of the regulations and standards at 7 CFR Part 54 as they relate to meats, prepared meats, and meat products are amended as set forth below.

PARTS 53 AND 54—[AMENDED]

1. The authority citation for Parts 53 and 54 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, secs. 203, 205, as amended; 60 Stat. 1087, 1090, as amended (7 U.S.C. 1622 and 1624).

§ 53.203 [Amended]

2. In 7 CFR 53.203(a), the last sentence is revised to read as follows:

(a) * * * The grades of slaughter cattle may consist of the quality grade only, the yield grade only, or a combination of the quality grade and the yield grade except that slaughter bulls are yield graded only.

* * * * *

3. In 7 CFR Part 54, § 54.104 (a) and (g) are revised to read as follows:

§ 54.104 Application of standards for grades of carcass beef.

(a) The carcass beef grades identify two separate general considerations: The indicated yield of closely trimmed (½ inch fat or less), boneless retail cuts expected to be derived from the major wholesale cuts (round, sirloin, short loin, rib, and square-cut chuck) of a carcass, herein referred to as the "yield grade," and characteristics of the meat which predict the palatability of the lean, herein referred to as the "quality grade." When officially graded, the grade of a steer, heifer, cow, or bullock carcass may consist of the quality grade only, the yield grade only, or a combination of the quality grade and the yield grade. The grade of a bull carcass consists of the yield grade only.

* * * * *

(g) Beveling of the fat over the ribeye, application of pressure, or any other influences which may alter the characteristics of the ribeye or thickness of fat over the ribeye prevent an accurate grade determination. Therefore, carcasses subjected to such influences shall not be eligible for grade determinations, and the presentation of such carcasses for official grade determinations shall be considered a fraudulent or deceptive practice in connection with the services requested for such carcasses. Carcasses that have had more than minor amounts of external fat removed shall not be eligible for a yield grade determination, although carcasses with only minor amounts of external fat removed may be yield graded if the official grader determines that an accurate yield grade determination can be made. Although entire carcasses with more than minor amounts of lean removed from the major wholesale cuts (round, sirloin, short loin, rib, or square-cut chuck) shall not be eligible for grade determinations, the remaining portions of these carcasses which are unaffected by the removal of lean shall remain eligible for grade determinations, provided that a cross section at the 12th-13th rib is available and accurate grade determinations may be made.

* * * * *

Done at Washington, DC, on January 18, 1989.

J. Patrick Boyle,

Administrator.

[FR Doc. 89–1484 Filed 1–23–89; 8:45 am]

BILLING CODE 3410–02–M

Federal Crop Insurance Corporation

7 CFR Part 406

[Docket No. 6401S]

Nursery Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) adds a new Part 406 in Chapter IV of Title 7, Code of Federal Regulations to be known as the Nursery Crop Insurance Regulations (7 CFR Part 406), effective for the 1989 and succeeding crop years. The intended effect of this rule is to: (1) Prescribe procedures for insuring nursery crops in counties approved by the Board of Directors of FCIC; and (2) provide for codification of the Nursery Crop policy of insurance in 7 CFR Part 406 in the Code of Federal Regulations. This rule authorizes the offer of insurance directly through FCIC which previously had been available only through an FCIC reinsured company.

EFFECTIVE DATE: February 23, 1989.

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 for these regulations is June 1, 1993.

John Marshall, 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 and will not have a significant economic impact on a substantial number of small entities.

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.

FCIC herewith adds a new Part 406 in Chapter IV of Title 7, Code of Federal Regulations to be known as the Nursery Crop Insurance Regulations (7 CFR Part 406), effective for the 1989 and succeeding crop years, to provide the provisions for insuring nursery crops. This rule authorizes the offer of insurance directly through FCIC which previously had been available only through an FCIC reinsured company.

On Friday, September 23, 1988, FCIC published a notice of proposed rulemaking in the **Federal Register** at 53 FR 36985, to prescribe procedures for insuring nursery crops in counties approved by the Board of Directors of FCIC, and provide for codification of the Nursery Crop policy of insurance in 7 CFR Part 406 in the Code of Federal Regulations.

The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule. Two comments were received from the American Association of Nurserymen and the Florists' Mutual Insurance Company. In each case the commenters expressed concern that the insurance which currently is offered to prospective insureds through companies under a Reinsurance Agreement with FCIC, was proposed to be offered through companies under an Agency Sales and Service Contract. The major concern in all comments received centers on the ability of the agency sales and service network to properly market a very technical and complicated program. Another concern is the limitation of coverage to 75 percent of average yield as the maximum coverage offered by FCIC.

In direct communication with the commenters, FCIC has assured each that it is aware of the wide differences between nursery crops and other crops it insures. FCIC will train all its personnel in the intricacies of nursery crop production, and will train, test, and certify all agents before that are permitted to sell nursery crop insurance under the agency Sales and Service Contract. With respect to the comment regarding the values of nursery crop acreages as far exceeding the value of other crops insured by FCIC, concern was expressed that the 25 percent loss deductible (expressed as the 75 percent maximum coverage limit on all FCIC programs) is not a viable coverage because of the higher values mentioned above.

The mandate of the Federal Crop Insurance Act of 1980 is that FCIC will not make available to producers any level of coverage in excess of the seventy-five percent level, thus negating the possibility of a higher level of coverage which may be perceived as protection of the profit margin of farming, while undergirding the basic concept of the insurance proposal; to protect the investment made by the insured in producing the crop to enable such producer to keep farming in the face of unavoidable natural disasters.

Further, the expansion of the insurance offer to producers serviced by companies under an Agency Sales and Service Contract fully implements the provisions of the Federal Crop Insurance Act in employing a dual delivery system to better serve all producers.

Finally, one of the commenters referred to three dates in the proposed rule, one of which is the Sunset Review date of June 1, 1993. This date is the 5-year projection under the procedures established by Departmental Regulation 1512-1. These provide that a review as to the need, currency, clarity, and effectiveness of these regulations must be conducted before such date in order to permit them to continue in existence.

The second date referred to, found in § 406.7(b), provides the authority for the extension of the sales closing date for accepting applications beyond the September 30th deadline. This authority is a standard provision used by FCIC under controlled circumstances and is immediately rescinded in the event of the possibility of adverse selectivity.

The final date of concern to this commenter is the June 30th deadline for filing policy changes in the service offices. The commenters expressed concern that this date seriously hampers the activities of agents between June 30 and the September 30 deadline for accepting applications on the basis that, while this period may be adequate for other crops insured by FCIC, it is not sufficient time to consider the enormous variety of different plants grown on a nursery farm.

FCIC considered this question very carefully and verified its findings with the Crop Hail Insurance Actuarial Association. The final determination is that 90 days is a reasonable time in which to allow agents to complete preparations and to sell policies to prospective insureds.

For the reason stated above, FCIC contemplates no changes to the rule as proposed at 53 FR 36985, and herewith adopts such rule as a final rule.

List of Subjects in 7 CFR Part 406

Crop insurance, Nursery crop.

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 adds a new Part 406 in Chapter IV of Title 7, Code of Federal Regulations, to be known as 7 CFR Part 406—Nursery Crop Insurance Regulations, effective for the 1989 and succeeding crop years, to read as follows:

PART 406—NURSERY CROP INSURANCE REGULATIONS

Subpart: Regulations for the 1989 and Succeeding Crop Years

Sec.

406.1 Availability of nursery crop insurance.
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Authority: 7 U.S.C. 1506, 1516.

§ 406.1 Availability of nursery 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.

(b) 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 (hereinafter "Reinsured companies") offer contracts containing substantially the same terms and conditions as the contract set out in this part.

(c) 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 Reinsured company.

(d) 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.

(e) 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.

(f) The person must repay all amounts received in violation of this section with interest at the rate contained in the contract for delinquent premiums.

(g) An insured whose contract with the Corporation or with a Reinsured company 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 Reinsured company 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.

(h) 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.

§ 406.2 Premium rates, amounts of insurance, and coverage levels at which indemnities shall be computed.

(a) The Manager shall establish premium rates, amounts of insurance, and coverage levels, for the insured crop 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 from among those contained in the actuarial table for the crop year.

§ 406.3 OMB control numbers.

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

§ 406.4 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.

§ 406.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the nursery 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 or a Reinsured company:

(1) Is indebted to the Corporation or a Reinsured company 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 (the Manager in cases involving not more than $100,000) or a Reinsured company finds that:

(1) An agent or employee of the Corporation or a Reinsured company 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 or a Reinsured company in writing.

§ 406.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation or a Reinsured company of a duly executed application for insurance on a form prescribed by the Corporation or a Reinsured company and payment of the premium due. The contract shall cover the nursery crop as provided in the policy. The contract shall consist of the application, the policy and any amendments thereto, and the county actuarial table. Changes made in the contract shall not affect its continuity from year to year. No indemnity will be paid unless the insured complies with all terms and conditions of the contract. The forms referred to in the contract are available at the applicable service offices.

§ 406.7 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 nursery crop as owner if the person wishes to participate in the program. The application shall be submitted to the Corporation or a Reinsured company at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation or a Reinsured company 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 come into effect as a continuation of the contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1989 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR

400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Nursery Crop Insurance Policy for the 1989 and succeeding crop years are as follows:

Federal Crop Insurance Corporation

Nursery Crop Insurance

(This is a continuous contract. Refer to Section 15.)

Note: This is a contract with the Federal Crop Insurance Corporation, a United States Government Agency. The terms of the contract are published in the **Federal Register** under the provisions of the **Federal Register** Act (44 U.S.C. 1501), and may not be waived or varied in any way by the crop insurance agent or any other agent or employee of FCIC.

Agreement to Insure: We will provide the insurance described in this policy in return for the premium and your compliance with *ALL* provisions of the crop insurance contract.

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. Unless the context indicates otherwise, use of the plural form of a word includes the singular and use of the singular form of the word includes the plural.

1. Insured Crops

a. The crops insured will be all nursery crops grown in the county in standard nursery containers which are listed on the eligible plant listing located in the actuarial table.

b. We do not insure any nursery crops which:

(1) Are not grown in standard nursery containers;

(2) Are not classified as woody, herbaceous, or foliage landscape plants;

(3) Produce citrus fruit or other edible fruits or berries;

(4) Are grown in the field;

(5) Are not listed on the eligible plant listing located in the actuarial table;

(6) Have not been inspected prior to submission of your application;

(7) Are inspected by us and determined unacceptable;

(8) Are not grown in a hardiness zone listed on the eligible plant listing for those crops; or

(9) Are not grown in accordance with the production practices for which premium rates have been established.

2. Causes of Loss

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

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) 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.

b. We do not insure against any loss caused by:

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

(2) The failure to follow recognized good production practices for nursery crops;

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

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

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

(6) Failure to carry out a good irrigation practice for the nursery crops;

(7) The inability to market the nursery crop as a direct result of quarantine, boycott or refusal of any entity to accept production;

(8) Any loss of production due to fire, where weeds and other forms of undergrowth have not been controlled; or

(9) Any cause not specified in this policy as an insured cause of loss.

c. You must not obtain any other crop insurance under the Federal Crop Insurance Act (Multiple Peril Crop Insurance Policy or Federal Crop Insurance Policy) on the insured crops. More than one policy will result in our voiding the policies and collecting the premium from you unless the violation of this provision is found by us to have been inadvertent. If we determine that the violation was inadvertent, the policy with the earliest date of application will be the one in force and all other policies will be void. Nothing in this paragraph prevents the insured from obtaining other hail and fire insurance not issued under the Act and which is subject to the provisions of section 9 hereof.

d. Although your violation of a number of federal statutes including the Federal Crop Insurance Act may cause cancellation, termination, or voidance of your insurance contract, you are specifically directed to the provisions of Title XII of the Food Security Act of 1985 (Pub. L. 99–198) and the regulations promulgated thereunder, generally referred to as the sodbuster, swampbuster, and controlled substance provisions. Your insurance policy will be cancelled if you are determined to be in violation of these provisions. We will recover any and all monies paid to you or received by you and your premium will be refunded.

3. Nursery Crop Report

a. You must submit an annual crop report to us of all of your eligible nursery crops in the county by unit, type, container size, number of plants and wholesale price of plants for each month of the crop year. This report must be submitted on or before September 30 preceding the crop year.

b. Your crop report may be revised only with our consent.

c. We may determine all losses on the basis of information on your crop report or the inventory as determined by us.

d. You must designate separately any inventory which is not insurable. Your annual crop report will be used as the basis to determine your premium and the amount of insurance for each unit. If you do not submit the report by the reporting date, we may elect to determine the inventory for each unit or we may deny liability on any unit. Errors in reporting units may be corrected by us at the time of adjusting a loss.

4. Amount of Insurance and Coverage Level

a. The amount of insurance and coverage levels are contained in the actuarial table and must be elected on or before September 30 prior to the crop year.

b. You may change the amount of insurance and the coverage level on or before the sales closing date for that crop year.

5. Annual Premium

a. The annual premium is due and payable on or before September 30 preceding each crop year and will be earned in full when the policy becomes effective.

b. Coverage will not begin if the premium due under this policy is not paid when due and payable.

c. The annual premium amount for each unit is computed in accordance with these subsections:

(1) Develop an inventory of all eligible containerized crops, by type of crop and container size, for each month of the proposed policy period.

(2) Apply market values to these inventory numbers using your wholesale price list. If you discount prices published in your wholesale price list, the discounted prices must be used in calculating market values. Record these monthly values by type of crop on your insurance application.

(3) Add the total monthly market values separately for each type of crop and divide that monthly total for each crop by the number of months in the crop year to get the "Average Monthly Market Value".

(4) Add the Average Monthly Market Value for each of the eligible crops in the unit to get the "Yearly Average".

(5) Multiply the Yearly Average by 90% to obtain the "Field Market Value".

(6) Multiply Field Market Value by the coverage level.

(7) Multiply this result by the applicable premium rate contained in the actuarial table.

6. Amounts Due Us

a. 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 balance due us. Interest will start on the date that notice is issued to you for the collection of any amount determined to be due. Interest, penalties and costs will be charged in accordance with 31 U.S.C. 3717 and 4 CFR 102.13. The penalty for accounts more than 90 days past due (31 U.S.C. 3717(e)(2)) is six percent (6%) per annum. Interest on any amount due us found to have been received by you because of fraud or misrepresentation will start on the date you received the amount with the penalty beginning 90 days after the notice of amount due is issued to you.

b. All amounts paid will be applied first to costs and penalties, second to accrued interest, and then to reduction of the principal balance.

c. If we determine that it is necessary to contract with a collection agency or to employ an attorney to assist in collection, you agree to pay all of the expenses of collection. Those expenses will be paid before the application of any amounts to interest, penalties or principal.

d. Any amount due us may be deducted from any indemnity payment due you or from any replanting payment, 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 and from any amounts due you from any other United States Government Agency.

7. Insurance Period

Insurance attaches on October 1 and ends for each unit at the earliest of:

a. Sale or disposal of all or a portion of the crop;

b. Final adjustment of the loss on the part of the insured crop damaged; or

c. September 30 of the crop year.

8. Notice of Damage or Loss

In case of damage or probable loss you must:

a. Provide sufficient care to protect the crop from further damage;

b. Provide us with written notice within 72 hours of your discovery of the loss and obtain our written consent prior to:

(1) Destroying, selling or otherwise disposing of any crop that is damaged; or

(2) Changing or discontinuing your normal growing practices with respect to care and maintenance of the insured crop; and

c. Upon our request, provide complete copies of your nursery crop wholesale price list for the 12-month period immediately preceding the loss and your marketing records for the same period.

9. Claim for Indemnity

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

(1) Your loss; or

(2) September 30 of the crop year.

b. We will not pay any indemnity unless you:

(1) Establish the value of the insured crop on the unit and that any loss of value 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 production to count (containers) will be all plants eligible for insurance in a unit.

d. The indemnity will not exceed the lesser of:

(1) The amount of insurance applicable to the unit less 90% of the value of said damaged crop which is marketable at any time after the loss; or

(2) The amount, calculated for each unit as follows:

(a) Subtract field market value B from field market value A (see section 17) to determine the total amount of loss; and

(b) Subtract therefrom the annual loss deductible.

e. Annual Loss Deductible amounts will be applied on an annual aggregate loss deductible basis for each individual unit insured for the crop year. Individual insured losses occurring on the same unit during the crop year may be accumulated (but each loss must be reported and valued by us). The total amount of insured losses on a unit during the crop year, less the annual aggregate loss deductible applicable to that unit, is the amount payable under this policy for that unit during the crop year, as limited by the amount of insurance for that unit.

f. The value of production of any insured crop may be determined on the basis of our field appraisals conducted after the end of the insurance period.

g. If you elect to exclude hail and fire as insured causes of loss and the insured crop is damaged by hail or fire, appraisals will be made in accordance with the applicable Form FCI–78 or FCI–78–A, "Request To Exclude Hail And Fire."

h. You must not abandon any part of the insured crop to us.

i. 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.

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

k. Under no circumstances will we be liable for the payment of damages (compensatory, punitive, or other), attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. (State and local laws to the contrary are not applicable to this insurance contract). We will pay simple interest computed on the net indemnity ultimately found to be due by us or by the final judgment of a court of competent jurisdiction, from and including the 61st day after the date you sign, date and submit to us the properly completed FCIC claim form. Interest will be paid only if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. 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** semiannually on or about January 1 and July 1 of each year and will vary with each publication.

l. 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 person determined to be beneficially entitled thereto.

m. 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 insurance contract on all crops 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 this or any other contract with us. The 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 the applicable indemnity. The transfer must be on our form and approved by us. Both you and the person to whom you transfer your interest are jointly and severally liable for the payment of the premium. The transferee has all rights and responsibilities under the contract consistent with the transferee's interest.

12. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year. The assignment must be on our form and will not be effective until approved in writing by us. The assignee may submit all notices and forms required to protect the insurance contract and to claim an indemnity.

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 you 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. Access to Nursery

Any person designated by us will have access to the nursery for purposes related to the contract.

15. Contract Term, Cancellation and Termination Dates

a. This contract will be in effect for the crop year specified on the application and may not be cancelled by you for such crop year after insurance attaches. Thereafter, the contract will continue in force for each succeeding crop year unless cancelled or terminated as provided in this section or unless the premium is not paid.

b. This contract may be cancelled by either you or us for any succeeding crop year by giving written notice on or before September 30, preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before September 30 preceding such crop year for the contract on which the amount is due.

d. 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 dissolution. 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.

e. The contract will terminate if no premium is earned for three consecutive years.

16. Contract Changes

We may change any terms and provisions of the contract from year to year. The date by which contract changes will be available in your service office is June 30 preceding the crop year.

17. Meaning of Terms

a. *"Actuarial table"* means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the amount of insurance, coverage levels, premium rates, practices, and related information regarding crop insurance in the county.

b. *"Amount of insurance"* means the value computed by:

(1) multiplying the Yearly Average by .9 to equal field market value; and

(2) multiplying the result by the coverage level.

c. *"Annual loss deductible"* means the value computed by subtracting the maximum limit of liability from the Field Market Value for that unit.

d. *"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.

e. *"Crop year"* means the period beginning October 1 and extending through September 30 of the next calendar year and is designated by the year in which the crop year ends. (The 1988 crop year would be from October 1, 1987 through September 30, 1988).

f. *"Field Market Value "A"* means the total market value of the insured crop for the unit involved (prior to the loss occurrence) had the crop been sold in your markets for the values which would have been reasonably expected in the month which the loss occurred, less 10% of such market value to eliminate costs for packing, shipping and sales commissions or other expenses not insured.

g. *"Field Market "B"* means the total market value of the insured crop for the unit involved in the loss (following the loss occurrence) less 10% of such market value to eliminate costs for packing, shipping and sales commissions or other expenses not insured.

h. *"Insured"* means the person who submitted the application accepted by us and does not extend to any other person unless specifically indicated on the application and accepted by us.

i. *"Insured crops"* means the crops insured under the provisions of this policy.

j. *"Loss ratio"* means the ratio of indemnity to premium.

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

l. *"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.

m. *"Tenant"* means a person who rents land from another person for a share of the crop or a share of the proceeds therefrom.

n. *"Unit"* means all growing locations within a five mile radius of the name insured location designated on your crop report. Growing locations outside of the five mile radius of the name insured location but within the county may be designated in the unit or as a separate unit. If they are not designated in the unit or as a separate unit, they will be included in the closest unit listed.

18. 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.

19. 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 Appeal Regulations (7 CFR Part 400, Subpart J).

20. 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.

21. Dates, Reports, and Notices

To preserve your rights under this insurance contract you are required to file a number of reports and notices with us by certain dates. The actual content requirements and time limits of those reports and notices are set out elsewhere in this contract and you must refer to those sections for those requirements.

As a convenience to you and without limitation on our rights under this contract, a short description of most of the dates, reports and notices have been compiled in this section. Omission of any date, report or notice, or any of the requirements thereof, from this section does not relieve you of the requirement to comply with the terms of this contract.

a. *"Application"*—A form required by Subpart D of Part 400 of 7 CFR and each individual program regulation. The application for insurance form must be completed and filed in the service office prior to the sales closing date (contained in the actuarial table) for the first crop year for which an insurance policy is requested by the insured.

b. *"Assignment of indemnity"*— A transfer of contract rights, made on our form, and effective when approved by us. It is the arrangement whereby you assign your right to an indemnity payment to any party of your choice for the crop year.

c. *"Claim for indemnity"* (See: section 9)— A claim made by the insured for damage or loss to the insured crop.

d. *"Contract change date"* The date by which FCIC makes any contract changes available for inspection in the service office (See: Section 16).

e. *"Crop report"*— A report required by section 3 of this contract. This report contains, in addition to other information, the report of the insured's share of all inventory of nursery crops in the county whether insurable or uninsurable and must be filed on or before September 30 prior to the crop year.

f. *"Damage, notice of"*— (See: Probable loss, Notice of).

g. *"End of insurance period, Date of"*— The date upon which the insured's crop insurance coverage ceases (See: section 7).

h. *"Insurance attaches, Date"*— October 1 of the crop year.

i. *"Intent to abandon, Notice of"*— The written notice to the Corporation by the insured indicating that because of damage from an insured cause, the insured has decided to no longer care for the crop.

j. *"Probable loss, notice of"*—A written notice required to be filed in the service office whenever an insured believes that the nursery crops have been damaged to the extent that a loss is probable (See: section 8).

k. *"Reporting date"*—The crop reporting date (contained in the Actuarial Table) by which you are required to report all your insurable and uninsurable inventory in the county in which you have a share at the time insurance attaches.

l. *"Sales closing date"*—The date contained in the actuarial table on file in the respective service office which sets out the final date when an application for insurance may be filed. The sales closing date of this policy is September 30.

Done in Washington, DC, on January 11, 1989.

David W. Gabriel,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-1425 Filed 1-23-89; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 422

[Amdt. No. 4; Docket No. 6444S]

Potato Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Corp Insurance Corporation (FCIC) hereby amends the Potato Crop Insurance Regulations (7 CFR Part 422), effective for the 1989 and succeeding crop years in all states, the intended effect of which is to: (1) Revise and reissue the Quality Potato Option to make the option continuous and to define "acceptable inspection"; (2) add a

new Frost/Freeze Option to provide coverage against frost and freeze, and (3) add a new Processing Potato Quality Option as a means of providing insurance on potatoes produced under contract with a processor.

EFFECTIVE DATE: December 31, 1988.

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 new sunset review date established for these regulations is August 1, 1993.

John Marshall, 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 and will not have a significant economic impact on a substantial number of small entities.

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.

FCIC hereby revises and reissues the Quality Potato Option (7 CFR 422.9) with the following changes:

1. The Option has been made continuous. The insured no longer has to submit a new application for each crop year. All language regarding annual submission of the form has been removed.

2. Language has been added to indicate that if both this Option and the frost/freeze Option are in effect that only the Option which results in the least production to count will be considered. This language is necessary to prevent the possibility of a separate indemnity for each Option.

3. The definition of "acceptable inspection" and language designating who may make grade determinations has been added. These additions are in response to an Office of Inspector General—Audit (OIG) comment which requested that any grade determination should be made by someone with proper training.

4. Additional minor editorial changes have been made to improve clarity. These changes do not affect the meaning or intent of the provisions.

FCIC also adds two new Options to the Potato Crop Insurance Regulations for the 1989 crop year, as follows:

1. The Frost/Freeze Option (7 CFR 422.10), is a modification of the frost/freeze chart formerly used in conjunction with the 1986 loss adjustment procedures. This Option may be added to a grower's basic policy at an additional premium.

2. The Processing Potato Quality Option (7 CFR 422.11), may also be added to a grower's basic policy for an additional premium. This Option provides quality adjustment specifically for processing potatoes. Its availability will initially be limited to two counties. The current Quality Potato Option will provide quality adjustment for both fresh and processing potatoes in other selected counties. After insuring experience is analyzed, use of this Processing Potato Quality Option may be expanded.

On Friday, October 28, 1988, FCIC published a notice of proposed rulemaking in the **Federal Register** at 53 FR 43719, to (1) revise and reissue the Quality Potato Option to make the option continuous and to define "acceptable inspection"; (2) add a new Frost/Freeze Option to provide coverage against frost and freeze, and (3) add a new Processing Potato Quality Option as a means of providing insurance on potatoes produced under contract with a processor.

The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, FCIC herewith adopts, without change, the proposed rule published at 53 FR 43719 as a final rule.

Section 422.7(d)16 of the Potato Crop Insurance Regulations provides that the earliest date by which any change to the policy must be filed in order to be effective for the 1989 crop year is December 31, 1988. The policy amendments herein were placed on file in all service offices in accordance with this provision. Therefore, good cause is shown for making these regulations effective on December 31, 1988, to coincide with the date such regulations were on file.

List of Subjects in 7 CFR Part 422

Crop insurance, Potatoes.

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 Potato Crop Insurance Regulations (7 CFR Part 422), effective for the 1989 and succeeding crop years, in the following instances:

PART 422—[AMENDED]

1. The authority citation for 7 CFR Part 422 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. Title 7 CFR 422.9 is revised to read as follows:

§ 422.9 Quality Potato Option.

(a) Notwithstanding the provisions of subsection § 422.7(d)9.e. of this part, an insured producer may, upon submission to the Corporation or a reinsured company and subsequent approval of a Quality Potato Option (Option), elect to insure all insurable acreage of potatoes under this option. The Option is continuous and will remain in effect until the underlying potato insurance policy (basic policy) is cancelled or terminated in accordance with the basic policy's terms, or until the Option is cancelled or terminated by the insured or the Corporation in the same manner as the basic policy may be cancelled or terminated.

(b) For those who elect to insure potatoes under this Option, all provisions of the basic policy will apply except those in conflict with this Option. The terms of the Option are:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Potato Crop Insurance Policy, Quality Potato Option

(This is a continuous Option. Refer to section 15 of the Potato Crop Insurance Policy)

Insured's Name _____
Contract No. _____
Address _____
Crop Year _____
Identification No. _____
SSN _____
TAX _____

1. You must have a Federal Crop Insurance Potato Policy (basic policy) in force. This Quality Potato Option (Option) provides guaranteed production on a hundredweight (cwt.) basis only.

2. This Option must be submitted to us on or before the sales closing date for the initial crop year in which you wish to insure your potatoes under this Option.

3. If you elect this Option, all acreage of potatoes insured under the basic policy must be insured under this Option except for any acreage:

a. Specifically excluded by the Actuarial Table;

b. Grown for seed if you elect to exclude the acreage from coverage; or;

c. Insured under the Processing Potato Quality Option.

4. Production to count determined under subsection 9.e. of the basic policy will be further modified as follows:

a. Production to count, unharvested appraised production, production stored after an acceptable inspection, and marketed production containing potatoes that grade less than U.S. No. 2 [1] will be determined by dividing the actual percentage of potatoes grading U.S. No. 2 [1] or better by the percentage factor, and multiplying the result, not to exceed 1.000, by the number of weight (cwt.) of such potatoes; or

b. Production to count of potatoes stored without an acceptable inspection will be 100 percent of the gross cwt. of such potatoes.

5. If you have a Frost/Freeze Potato Option and this Option in effect on the same production, the production to count will be based on the Option which results in the least production to count.

6. All sampling and grade determinations must be made by a potato grader licensed or certified by the applicable State or United States Department of Agriculture. However, if such a grader is not available to sample or grade the potatoes, the sampling or grading for the purposes of this Option will be performed by us.

7. Your premium rate for this Option will be contained in the Actuarial Table.

8. *"Acceptable Inspection"* means that prior to storage the potatoes are evaluated by us and grade determinations are made in accordance with section 6 of this Option.

9. *"Percentage factor"* means the historical average percentage of potatoes grading U.S. No. 2 [1] or better, by type, determined from your records as established by us. If at least four continous years of records are available, the percentage factor will be the simple average of the available records not to exceed 10 years. If less than four years of records are available, the percentage factor will be the one contained in the actuarial table. The Actuarial Table may provide different percentage factors by type.

[1] The actuarial table may provide for U.S. No. 1 in place of U.S. No. 2.

Insured's Signature _____
Date _____
Corporation Representative's Signature and Code Number _____

Date _____

Collection of Information and Data (Privacy Act)

The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. 552(a)). The authority for requesting information to be supplied on this form is the Federal Corp Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), or any of the crop insurance regulations contained in 7 CFR Part 400 *et seq.*

The information requested is necessry for the Federal Crop Insurance Corporation (FCIC) to process this form to provide insurance, determine eligibility, determine the correct parties to the agreement or contract, collect premiums, pay indemnities, or other purposes. Furnishing the Social Security number is voluntary and no adverse action will result from failure to do so.

Furnishing the information required by this form, other than the Social Security number, is also voluntary; however, failure to furnish the correct, complete information requested may result in rejection of this form, rejection of any claim for indemnity, or the ineligibility of any applicant for insurance. Failure to provide certain requested information may result in appropriate action being taken, including suit against the policyholder/debtor to recover an indebtedness. The information contained in this form will be used by Federal Agency Officers and FCIC employees who have a need for such information in the performance of their duties.

The information may be furnished to FCIC contract agencies and contract loss adjusters, reinsured companies, other U.S. Department of Agriculture agencies, Internal Revenue Service, Department of Justice, or other State and Federal law enforcement agencies if litigation becomes necessary, credit reporting agencies and U.S. Government contract collection agencies, and in response to orders of a court, magistrate, administrative tribunal or opposing counsel as evidence in the course of discovery in litigation.

3. A new § 422.10, the Frost/Freeze Potato Option and § 422.11, the Processing Potato Quality Option are added to read as follows:

PART 422—POTATO CROP INSURANCE REGULATIONS

* * * * *

§ 422.10 Frost/freeze option.

(a) Notwithstanding the provisions of § 422.7(d)9.e. of this part, an insured producer may, upon submission to the Corporation or a reinsured company and subsequent approval of a Frost-Freeze Potato Option (Option), elect to insure all insurable acreage of potatoes under this Option. The Option is continuous and will remain in effect until the underlying potato insurance policy (basic policy) is cancelled or terminated in accordance with the basic policy's terms, or until the Option is cancelled or terminated by the insured or the Corporation in the same manner as the basic policy may be cancelled or terminated.

(b) For those who elect to insure potatoes under this Option, all provisions of the basic policy will apply except those in conflict with this Option. The terms of the Option are:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Potato Crop Insurance Policy, Frost/Freeze Potato Option

(This is a continuous Option. Refer to section 15 of the Potato Crop Insurance Policy)

Insured's Name _____
Contract No. _____
Address _____
Crop Year _____
Identification No. _____
SSN _____
TAX _____

1. You must have a Federal Crop Insurance Potato Policy (basic policy) in force. This Frost-Freeze Potato Option (Option) provides guaranteed protection on a hundredweight (cwt.) basis only.

2. This Option must be submitted to us on or before the sales closing date for the initial crop year in which you wish to insure your potatoes under this Option.

3. If you elect this Option, all acreage of potatoes insured under the basic policy must be insured under this Option.

4. If the actuarial table provides a date after which loss of production due to frost or freeze damage is not insurable, this Option will provide coverage only with such date.

5. Production to count for a unit damaged by frost or freeze will be determined by applying the percentage obtained from the following table to the production to count determined under the basic policy:

Percent damage due to frost or freeze	Percent of production to count
0–5	100
6	90
7	80
8	70
9	60
10	50
11	45
12	40
13	35
14	30
15	25
16	20
17	15
18	10
19	5
20	0

The adjusted production to count will then be counted against your production guarantee to determine the amount of loss. We must inspect the production prior to harvest to determine the amount of frost or freeze damage.

If the frost or freeze damage is determined to be 20 percent or more at the time of harvest, you may with our written permission, destroy the crop, (it will be considered a total loss) and you will be indemnified accordingly. You may also elect to market or store the crop and apply the total harvested production minus the frost or freeze damaged potatoes against the guarantee. This decision must be made by you on the day the potatoes are determined to be 20 percent or more frost or freeze damaged.

6. If you have the Potato Quality Option or the Processing Potato Quality Option and this Option in effect, the production to count will be based on the Option which results in the least production to count.

7. Your premium rate for this Option will be established by the actuarial table.

Insured's Signature _____

Date _____

Corporation Representative's Signature and Code Number _____

Date _____

Collection of Information and Data (Privacy Act)

The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. 552(a)). The authority for requesting information to be supplied on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), or any of the crop insurance regulations contained in 7 CFR Part 400 *et seq.*

The information requested is necessary for the Federal Crop Insurance Corporation (FCIC) to process this form to provide insurance, determine eligibility, determine the correct parties to the agreement or contract, collect premiums, pay indemnities, or other purposes. Furnishing the Social Security number is voluntary and no adverse action will result from failure to do so. Furnishing the information required by this form, other than the Social Security number, is also voluntary; however, failure to furnish the correct, complete information requested may result in rejection of this form, rejection of any claim for indemnity, or the ineligibility of any applicant for insurance. Failure to provide certain requested information may result in appropriate action being taken, including suit against the policyholder/debtor to recover an indebtedness. The information contained in this form will be used by Federal Agency Officers and FCIC employees who have a need for such information in the performance of their duties.

The information may be furnished to FCIC contract agencies and contract loss adjusters, reinsured companies, other U.S. Department of Agriculture agencies, Internal Revenue Service, Department of Justice, or other State and Federal law enforcement agencies if litigation becomes necessary, credit reporting agencies and U.S. Government contract collection agencies, and in response to orders of a court, magistrate, administrative tribunal or opposing counsel as evidence in the course of discovery in litigation.

§ 422.11 Processing Potato Quality Option.

(a) Notwithstanding the provisions of § 422.7(d)9.e. of this part, an insured producer may, upon submission to the Corporation or a reinsured company and subsequent approval of a Processed Potato Quality Option (Option), elect to insure all insurable acreage of potatoes contracted with a processor under this option. The Option is continuous and will remain in effect until the underlying potato insurance policy (basic policy) is cancelled or terminated in accordance with the basic policy's terms, or until the Option is cancelled or terminated by the insured or the Corporation in the same manner as the basic policy may be cancelled or terminated.

(b) For those who elect to insure potatoes under this Option, all provisions of the basic policy will apply except those in conflict with this Option. The terms of the Option are:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Potato Crop Insurance Policy, Processing Potato Quality Option

(This is a continuous Option. Refer to section 15 of the Potato Crop Insurance Policy)

1. You must have a Federal Crop Insurance Potato Policy (basic policy) in force. This Processing Potato Quality Option (Option) provides guaranteed production on a hundredweight (cwt.) basic only.

2. This Option must be submitted to us on or before the sales closing date for the initial crop year in which you wish to insure your potatoes under this Option.

3. A written contract must be executed with a processor for the potato types insured under this Option and a copy submitted to us on or before the acreage reporting date for potatoes. If you elect this Option, all insurable acreage of the types of potatoes under contract with a processor must be insured under this Option.

4. This Option does not apply to potatoes damaged by frost or freeze.

5. Production to count, determined in accordance with subsection 9.e. of the policy, will be further modified as follows:

a. Production to count of unharvested appraised potatoes, potatoes stored after an acceptabale inspection, and potatoes marketed (unless the potatoes were marketed to a processor for human consumption) which grade less than U.S. No. 2 [2]:

(1) For factors other than those listed in subsection (2) below, will be determined by dividing the percentage of potatoes grading U.S. No. 2 [2] or better by the percentage factor, and multiplying the result, not to exceed 1.000, by the number of cwt. of such potatoes, or:

(2) Due to internal defects, because of a specific gravity of less than 1.070, or have a fry color of No. 3 or darker due to either sugar exceeding 10% or sugar ends exceeding 19%, production will be:

(i) Zero for unharvested appraised potatoes;

(ii) Twenty five percent (25%) of the gross weight for potatoes stored after an acceptable inspection; or

6. All grade determinations for the purposes of this Option will be made using the United States Standards for Grades of Potatoes for Processing.

7. If you have the Frost/Freeze Potato Option and this Option in effect, the production to count will be based on the Option which results in the least production to count.

8. All sampling and grade determinations must be made by a potato grader licensed or certified by the applicable State or United States Department of Agriculture. However, if such a grader is not available, sampling or grading for the purposes of this Option will be performed by us.

9. Your premium rate for this Option will be established by the actuarial table.

10. "*Acceptable Inspection*" means that prior to storage the potatoes are evaluated by us and grades determined in accordance with section 8 of this Option.

11. "*Percentage Factor*" means the historical average percentage of potatoes grading U.S. No. 2 [2] or better, by type, determined from your records or established by us. If at least four continuous years of records are available, the percentage factor will be the simple average of the available records not to exceed 10 years. If less than four years of records are available, the percentage factor will be the one contained in the actuarial table. The Actuarial Table may provide different percentage factors by type.

Insured's Signature _____

DATE _____

Corporation Representative's Signature and Code Number _____

DATE _____

Collection of Information and Data (Privacy Act)

The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. 552(a)). The authority for requesting information to be supplied on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), or any of the crop insurance regulations contained in 7 CFR Part 400 *et seq.*

The information requested is necessary for the Federal Crop Insurance Corporation (FCIC) to process this form to provide insurance, determine eligibility, determine the correct parties to the agreement or contract, collect premiums, pay indemnities, or other purposes. Furnishing the Social Security number is voluntary and no adverse action will result from failure to do so. Furnishing the information required by this form, other than the Social Security number, is also voluntary; however, failure to furnish the correct, complete information requested may result in rejection of this form, rejection of any claim for indemnity, or the ineligibility of any applicant for insurance. Failure to

[2] The actuarial table may provide for U.S. No. 1 grade in place of U.S. No. 2.

provide certain requested information may result in appropriate action being taken, including suit against the policyholder/debtor to recover an indebtedness. The information contained in this form will be used by Federal Agency Officers and FCIC employees who have a need for such information in the performance of their duties.

The information may be furnished to FCIC contract agencies and contract loss adjusters, reinsured companies, other U.S. Department of Agriculture agencies, Internal Revenue Service, Department of Justice, or other State and Federal law enforcement agencies if litigation becomes necessary, credit reporting agencies and U.S. Government contract collection agencies, and in response to orders of a court, magistrate, administrative tribunal or opposing counsel as evidence in the course of discovery in litigation.

Done in Washington, DC on January 11, 1989.

David W. Gabriel,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-1427 Filed 1-23-89; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV-88-121]

Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Tighter Grapefruit Minimum Size Requirements for Specified Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements tighter minimum size requirements for fresh Texas grapefruit shipments beginning in the 1989–90 shipping season and each season thereafter. Under a proposed rule, the minimum size requirements for grapefruit were to be tightened by prohibiting the shipment of any grapefruit smaller than pack size 96 during the period November 16 through January 31 each season, starting in 1988. However, a one year delay in the effective date reflects current crop and marketing conditions which make implementation this year impractical. When implemented, the change is expected to provide more desirable sizes with more acceptable maturity and flavor during the peak demand period of the shipping season. The change is needed by the Texas grapefruit industry to help it more successfully market its crop.

EFFECTIVE DATE: November 16, 1989.

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

SUPPLEMENTARY INFORMATION: This final rule is issued under the Marketing Agreement and Marketing Order No. 906, as amended (7 CFR Part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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

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

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

There are approximately 78 handlers of Texas oranges and grapefruit subject to regulation under the Texas citrus marketing order, and approximately 2,500 orange and grapefruit producers in Texas. The increase in the number of handlers and the decrease in the number of producers in this final rule from that indicated in the proposed rule reflects more recent industry information. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The Texas Valley Citrus Committee (TVCC), which administers the order locally, unanimously recommended at its meeting on June 29, 1988, that any grapefruit smaller than pack size 96 (3 9/16 inches in diameter) should be prohibited from being shipped to fresh markets during the November 16 through January 31, period each season starting with the 1988–89 season. A proposed rule regarding this recommendation was issued September 26, 1988, and published in the **Federal Register** (53 FR 38295, September 30, 1988). The proposed rule provided that interested persons could file public comments through October 17, 1988. No comments were received.

On November 10, 1988, the TVCC met again and unanimously recommended that implementation of the tighter minimum size requirements be delayed until the 1989–90 season. The TVCC now reports that the crop and marketing situation confronting the Texas grapefruit industry has changed considerably since its June meeting. The Texas grapefruit sizes are unusually small this season and the juice and products markets are extremely weak because there are more than enough supplies to meet needs in those markets. Hence, tightening the minimum size requirements at this time would require handlers to direct additional supplies of small grapefruit to the already oversupplied juice and products markets.

Allowing the use of smaller size 112's in fresh markets this entire season will provide handlers and growers in the production area the opportunity of obtaining greater returns. Although the fruit in Texas in usually small, it has already reached an acceptable level of maturity and flavor.

The TVCC believes that by next season growing and marketing conditions will have returned to normal, and thus, the tighter requirements should become effective during the November 16 through January 31 period during the 1989–90 season and each season thereafter.

Minimum size requirements for Texas grapefruit are currently specified in § 906.365. The current regulation provides that grapefruit in fresh shipments be at least pack size 96 (3 9/16 inches in diameter), except that grapefruit grading at least U.S. No. 1 may be shipped if it is at least pack size 112 (3 5/16 inches in diameter). These requirements are in effect on a continuous basis from season to season unless changed.

The Texas grapefruit shipping season extends from late September through May. The temporary prohibition of shipments to size 112's starting next November 16 is intended to provide more desirable sizes with more acceptable maturity and flavor during the peak demand period. According to the TVCC, more than enough larger-size fruit are usually available during this

period to meet market needs. The TVCC also indicated that this action will provide growers with an incentive to hold the smaller-sized fruit on the trees longer to gain size, maturity, and flavor and to provide the trade with a more acceptable product later in the season when available supplies are diminishing.

Delaying the implementation of the size increase until mid-November will lessen the chances of any grower hardship by allowing the shipment of size 112's until juice plants open. There is no viable economic outlet for small-sizes and cull citrus in the production area other than for juice and products. Reinstituting the shipment of size 122's after January 31 would ensure that there are adequate supplies of flavorful fruit available for fresh market needs for the remainder of the season.

In addition, miscellaneous changes to § 906.365 are made to remove obsolete language and update references to the U.S. Standards For Grades of Oranges and Grapefruit [Texas and States other than Florida, California and Arizona (7 CFR 51.680 through 51.714, and 7 CFR 51.620 through 51.653 respectively). The proposed rule inadvertently specified 2$^{9}/_{16}$ inches as the minimum size requirement for pack size 288. The size should have been 2–6/16 inches in diameter. Section 906.365(a)(2) is changed from the proposal to correctly state a 2–6/16 inch minimum size requirement.

Section 906.365 is issued on a continuing basis subject to modification, suspension, or termination by the Secretary. The TVCC meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Texas grapefruit. TVCC meetings are open to the public and interested persons may express their views at these meetings. The U.S. Department of Agriculture (Department) reviews TVCC recommendations and other information submitted by the TVCC and other available information, and determines whether modification, suspension, or termination of the regulatory requirements will tend to effectuate the declared policy of the Act.

Texas grapefruit shipments to markets in the United States, Canada, and Mexico are regulated under this marketing order. Certain shipments are exempt from the handling requirements effective under the marketing order. Handlers may ship grapefruit within the production area (the counties of Cameron, Hidalgo, and Willacy) exempt from all marketing order requirements. Grapefruit shipped in gift packages of not more than 500 pounds which are individually addressed and not for resale are exempt from handling requirements. Also, grapefruit shipped under the minimum quantity exemption provisions, and for relief, charity, and home use are exempt under certain conditions. In addition, grapefruit shipped to approved processors for conversion into canned or frozen products are not subject to the handling requirements.

These tighter minimum size requirements for Texas grapefruit reflect the TVCC's and the Department's appraisal of the need to issue the rule. Delaying implementation of this rule until the 1989–90 season recognizes current and prospective supply and demand conditions for grapefruit and the TVCC's views of what is needed to strengthen the marketing position of Texas grapefruit growers and handlers.

Therefore, the Department's view is that the impact of this action will be beneficial to producers and handlers because it will enable handlers to better provide grapefruit consistent with buyer requirements. The application of minimum size requirements to Texas grapefruit over the past several years has resulted in fruit of acceptable sizes being shipped to fresh markets.

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

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that the rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 906

Marketing agreements and orders, Texas, Grapefruit, Oranges.

For the reasons set forth in the preamble, 7 CFR Part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR Part 906 continues to read as follows:

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

2. Section 906.365 is amended by revising the introductory text of paragraph (a), and paragraphs (a)(2), (a)(4), and (b), and by removing paragraph (c) to read as follows:

Note.—This action will be published in the Code of Federal Regulations.

§ 906.365 Texas orange and grapefruit grade and size regulations.

(a) No handler shall handle any variety of oranges or grapefruit grown in the production area unless:

* * * * *

(2) Such oranges are at least pack size 288, except that the minimum diameter limit for pack size 288 oranges in any lot shall be 2$^{9}/_{16}$ inches;

* * * * *

(4) Such grapefruit are at least pack size 96, except that the minimum diameter limit for pack size 96 grapefruit in any lot shall be 3$^{9}/_{16}$ inches: *Provided*, That any handler may handle grapefruit, except during the period November 16 through January 31 each season, which are smaller than pack size 96, if such grapefruit grade at least U.S. No. 1 and they are at least pack size 112, except that the minimum diameter limit for pack size 112 grapefruit in any lot shall be 3–5/16 inches;

* * * * *

(b) Terms relating to grade, pack size, and diameter shall mean the same as in the U.S. Standards for Grades of Oranges (Texas and States other than Florida, California, and Arizona) (7 CFR 51.680 through 51.714) or in the U.S. Standards for Grades of Grapefruit (Texas and States other than Florida, California and Arizona) (7 CFR 51.620 through 51.653).

Dated: January 18, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–1490 Filed 1–23–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 907

[Navel Orange Reg. 684]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 684 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period January 20 through January 26, 1989. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

DATES: Regulation 684 (§ 907.984) is effective for the period January 20, 1989, through January 26, 1989.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2528–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 (7 CFR Part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

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 (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

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

There are approximately 125 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order, and approximately 4,065 producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

This action is consistent with the marketing policy for 1988–89 adopted by the Navel Orange Administrative Committee (Committee). The Committee met publicly on January 17, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The Committee reports that demand for navel oranges has improved.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navel oranges.

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Part 907 continues to read as follows:

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

2. Section 907.984 is added to read as follows:

Note.—This section will not appear in the Code of Federal Regulations.

§ 907.984 Navel Orange Regulation 684.

The quantity of navel oranges grown in California and Arizona which may be handled during the period of January 20, 1989, through January 26, 1989, are established as follows:

(a) District 1: 1,479,000 cartons;

(b) District 2: 221,000 cartons;

(c) District 3: unlimited cartons;

(d) District 4: unlimited cartons.

Dated: January 18, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–1520 Filed 1–19–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 910

[Lemon Reg. 649]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 649 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 280,000 cartons during the period January 22 through January 28, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confornting the lemon industry.

DATES: Regulation 649 (§ 910.949) is effective for the period January 22 through January 28, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

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 action 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, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the

lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1988–89. The Committee met publicy on January 17, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and by a 12–1 vote recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that demand for lemons is fair.

Pursuant to 5 U.S.C 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

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

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

2. Section 910.949 is added to read as follows:

Note.—This section will not appear in the Code of Federal Regulations.

§ 910.949 Lemon Regulation 649.

The quantity of lemons grown in California and Arizona which may be handled during the period January 22, 1989, through January 28, 1989, is established at 280,000 cartons.

Dated: January 18, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–1519 Filed 1–19–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1097

[DA–89–009]

Milk in the Memphis, Tennessee Marketing Area; Order Terminating Certain Provision of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of rule.

SUMMARY: This action terminates the portion of the fluid milk plant definition of the Memphis order relating to pool supply plants. The termination was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that is continuing to supply the fluid milk needs of Memphis distributing plants with supplemental shipments of milk supplies that are associated with other Federal order markets. The termination is necessary to allow the reserve milk supplies and supplemental shipments for fluid milk needs to continue to be regulated under the orders with which the milk is currently associated and to facilitate making sufficient supplies of milk available to Memphis distributing plants for fluid use.

EFFECTIVE DATE: January 24, 1989.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Proposed Termination: Issued December 23, 1988; published December 30, 1988 (53 FR 53002).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action will tend to ensure that dairy farmers will continue to have their milk priced under the order for the market which is the primary outlet for their milk and thereby receive the benefits that accrue from such pricing.

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

This order of termination is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and of the order regulating the handling of milk in the Memphis, Tennessee marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on December 30, 1988 (53 FR 53002) concerning a proposed termination of a provision of the order. Interested parties were afforded opportunity to file written data, views, and arguments thereon. No views in opposition were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1097.7, paragraph (b) in its entirety.

Statement of Consideration

This action terminates that portion of the fluid milk plant definition that relates to pool supply plants. The provision has been suspended on three prior occasions: October–December 1986, March–December 1987, and January–December 1988. Such provision under the Memphis order regulates any plant that ships in excess of 70,000 pounds of milk to fully regulated distributing plants during the month.

The termination was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that is making supplemental shipments of milk to meet increased fluid milk needs of plants regulated under the Memphis order.

The most feasible supply that Mid-Am has available to meet the continuing fluid milk needs of Memphis handlers is

located in the heavy milk producing area of southwest Missouri. However, milk in such area is associated with Mid-Am's plants that are regulated under either the Southern Illinois-Eastern Missouri, Southwest Plains, or Texas Federal orders. These plants are qualified for pool status under the respective orders either on the basis of shipments from the plants to distributing plants or on the basis of Mid-Am's marketwide performance in supplying milk to distributing plants. Shipments of milk from any of such plants in excess of 70,000 pounds per month to Memphis distributing plants would result in regulation under the Memphis order. Since the Memphis order provides for individual-handler pooling, minimal shipments that would regulate any of such supply plants would result in a reduction of returns to Mid-Am's producers since all of the receipts of milk at the supply plants, which constitute the reserve milk supplies of other markets, would be regulated under the Memphis order.

Mid-Am has been relying on the southwest Missouri production area to supply Memphis handlers since September 1986. A shift in regulation of its supply plants has been avoided by suspension actions during October–December 1986, March–December 1987 and January–December 1988 and by alternating the plants from which milk is shipped during those months when the provision was not suspended. It is anticipated that a greater and continuing reliance on such milk supplies will be necessary for an extended period of time after the expiration of the current suspension. As a result, Mid-Am requested that the provision be terminated effective January 1, 1989.

The Memphis order provision relating to supply plants has been suspended for all or parts of the last three years. In addition, no supply plant was regulated under the order for a number of years prior to the issuance of the previous suspension actions. Thus, the provision serves no useful purpose and its continuance is not necessary to maintain orderly marketing conditions under the Memphis order. In fact, such provision, if allowed to operate, would result in disorderly marketing conditions by pooling, under the order, the reserve supplies of milk for other markets. This, in turn, would inhibit the movement of sufficient supplies of milk that are necessary to meet the fluid milk needs of Memphis distributing plants. Consequently, the provision should be terminated. Such termination is effective upon publication in the **Federal Register** and is applicable to milk that is marketed on and after January 1, 1989.

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

(a) The termination is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that the action will tend to assure that dairy farmers will continue to have their milk priced under the order covering their primary market outlet and also to facilitate making sufficient supplies of milk available to Memphis handlers for fluid use;

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

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this termination. No comments in opposition were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1097

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the following provision in § 1097.7 of the Memphis, Tennessee order is hereby terminated.

PART 1097—MILK IN THE MEMPHIS, TENNESSEE MARKETING AREA

1. The authority citation for 7 CFR Part 1097 continues to read as follows:

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

§ 1097.7 [Amended]

2. In § 1097.7, paragraph (b) is removed and is reserved.

Signed at Washington, DC, on January 13, 1989.

Kenneth A. Gilles,

Assistant Secretary of Agriculture, Marketing and Inspection Services.

[FR Doc. 89–1494 Filed 1–23–89; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 55

Policy Statement on the Conduct of Nuclear Power Plant Operations

AGENCY: Nuclear Regulatory Commission.

ACTION: Final policy statement.

SUMMARY: This policy statement is being issued to make clear the Commission's expectation of utility management and licensed operators with respect to the conduct of nuclear power plant operations. The Commission believes that it is essential that utility management at each nuclear power reactor facility establish and maintain a professional working environment with a focus on safety in control rooms and throughout the plant. The Commission also believes that each individual licensed by the NRC to operate the controls of a nuclear power reactor must be keenly aware that he or she holds the special trust and confidence of the American people, conferred through the NRC license, and that his or her first responsibility is to assure that the reactor is in a safe condition at all times. This policy statement specifically describes the Commission's expectations of utility management and licensed operators in fulfilling NRC regulations and prior guidance regarding the conduct of control room operations.

The policy statement further provides the Commission's endorsement of industry initiatives to enhance professionalism by both management and plant operators.

EFFECTIVE DATE: January 24, 1989.

FOR FURTHER INFORMATION CONTACT: Jack W. Roe, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–1004.

SUPPLEMENTARY INFORMATION:

Background

It is essential that control room operators are (1) well trained and qualified, (2) physically and mentally fit to carry out their duties, and (3) attentive to plant status relevant to their responsibilities to ensure the continued safe operation of nuclear facilities. It is also essential that management at each nuclear power reactor facility establish and maintain a professional working environment in which the licensed operator may be fully successful in discharging his or her safety responsibilities.

On a number of occasions, the NRC has received reports and has found instances of operator inattentiveness and unprofessional behavior in control rooms of some operating facilities. Reported instances include: (1) Licensed operators observed to be apparently sleeping while on duty in the control room or otherwise being inattentive to their license obligations, (2) operators

using entertainment devices (for example, radios, tape players, and video games) in the control room in a way that might distract their attention from required safety-related duties, and (3) unauthorized individuals being allowed to manipulate reactivity controls. Such conduct is unacceptable and inconsistent with the operators' licensed duties.

The Commission has previously addressed its expectations of operator conduct in Commission regulations and regulatory guidance. Under 10 CFR 50.54(k), "An operator or senior operator licensed pursuant to Part 55 of this chapter shall be present at the controls at all times during the operation of the facility." [1] The continuous presence of a senior operator in the control room to ensure that the operator at the controls is able to perform the actions and/or mitigate an accident is required by § 50.54(m)(2)(iii). Commission regulations in 10 CFR Part 55 establish standards for licensing nuclear power plant operators.

The Commission has addressed operator training and qualifications and fitness-for-duty in policy statements.[2] The policy statement on training and qualifications endorsed the Institute of Nuclear Power Operations (INPO)-managed Training Accreditation Program. The policy statement on fitness for duty endorsed the concept that the workplace at nuclear power plants is to be drug and alcohol free. Fitness-for-duty rulemaking is under consideration by the Commission.[3]

Guidance regarding the conduct of licensed operator and control room operations has been addressed in an NRC Circular and in NRC Information Notices.[4] Specifically, IE Information Notice 79–20, Revision 1, emphasized that only licensed operators are permitted to manipulate controls (10 CFR 50.54(i)) and that a licensed operator is required to be present at the controls during facility operation (10 CFR 50.54(k)). IE Circular 81–02 provided the following guidance: (1) Knowledge of the plant's status must be ensured during shift changes by a formal watch turnover and relief, (2) licensed operators must be alert and attentive to instruments and controls, (3) potentially distracting activities in the control room must be prohibited, (4) access to the control room must be limited, and (5) eating and training activities should not compromise operator attentiveness or a professional atmosphere. Information Notice 85–53 reiterated the guidance of IE Circular 81–02.

In Information Notice 87–21, the NRC informed all nuclear power reactor facilities and licensed operators about certain licensed operators observed to be apparently sleeping while on duty. The notice reaffirmed the necessity for high standards of control room professionalism and operator attentativeness to ensure safe operation of nuclear power facilities. Further, Information Notice 88–20 reiterated the concern about unauthorized individuals manipulating controls and performing control room activities.

The Commission is aware that the industry has taken action to foster the development of professional codes of conduct by operators and has worked toward establishing management principles for enhancing professionalism of nuclear personnel. The Commission believes that such an operator code of conduct developed by operators and supported by utility management can contribute to operator professionalism and commends the industry and especially the operators who contributed to these efforts. The Commission encourages and supports the prompt and effective implementation of these industry initiatives at each licensed power reactor.

The Commission has decided to issue this policy statement to help foster the development and maintenance of a safety culture at every facility licensed by the NRC, and to make clear its expectations of utility management and licensed operators in fulfilling NRC regulations and prior guidance regarding the conduct of control room operations.

Policy Statement

The Commission believes that the working environment provided for the conduct of operations at nuclear power facilities has a direct relationship to safety. Management has a duty and obligation to foster the development of a "safety culture" at each facility and to provide a professional working environment, in the control room and throughout the facility, that assures safe operations. Management must provide the leadership that nurtures and perpetuates the safety culture. In this context, the term "safety culture" is defined as follows:

> The phrase 'safety culture' refers to a very general matter, the personal dedication and accountability of all individuals engaged in any activity which has a bearing on the safety of nuclear power plants. The starting point for the necessary full attention to safety matters is with the senior management of all organizations concerned. Policies are established and implemented which ensure correct practices, with the recognition that their importance lies not just in the practices themselves but also in the environment of safety consciousness which they create. Clear lines of responsibility and communication are established; sound procedures are developed; strict adherence to these procedures is demanded; internal reviews are performed of safety related activities; above all, staff training and education emphasize the reasons behind the safety practices established, together with the consequences for safety of shortfalls in personal performance.
>
> These matters are especially important for operating organizations and the staff directly engaged in plant operation. For the latter, at all levels, training emphasizes the significance of their individual tasks from the standpoint of basic understanding and knowledge of the plant and the equipment at their command, with special emphasis on the reasons underlying safety limits and the safety consequences of violations. Open attitudes are required in such staff to ensure that information relevant to plant safety is freely communicated; when errors of practice are committed, their admission is particularly encouraged. By these means, an all pervading safety thinking is achieved, allowing an inherently questioning attitude, the prevention of complacency, a commitment to excellence, and the fostering of both personal accountability and corporate self-regulation in safety matters.[5]

Nuclear power plant operators have a professional responsibility to ensure that the facility is operated safely and within the requirements of the facility's license, including its technical specifications and the regulations and orders of the NRC. Mechanical and electrical systems and components required for safety can and do fail. However, the automated safety features of the plant, together with the operator, can identify at an early stage degradation in plant systems that could

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[1] Copies of *Title 10, Code of Federal Regulations, Parts 0 to 50 and Parts 51 to 199* (revised January 1, 1988), may be purchased from the Superintendent of Documents, U.S. Government Printing Office, by calling (202) 275–2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies may also be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy of 10 CFR is available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street NW., Washington, DC.

[2] Policy Statement on Training and Qualification of Nuclear Power Plant Personnel (50 FR 11147, March 20, 1985; and amended 53 FR 46603, November 18, 1988) and Policy Statement on Fitness for Duty of Nuclear Power Plant Personnel (51 FR 27921, August 4, 1986).

[3] Proposed Rule on 10 CFR Part 26 Fitness-for-Duty Programs (53 FR 36795, September 22, 1988).

[4] IE Circular 81–02, dated February 9, 1981; Information Notice 79–20, Revision 1, dated September 7, 1979; Information Notice 85–53, dated July 12, 1985; Information Notice 87–21, dated May 11, 1987; and Information Notice 88–20, dated May 5, 1988 (available at the NRC Public Document Room at 2120 L Street, NW., Washington, DC).

[5] International Nuclear Safety Advisory Group (INSAG)-3, Basic Safety Principles for Nuclear Power Plants.

affect reactor safety. The operator can take action to mitigate the situation. Therefore, nuclear power plant operators on each shift must have knowledge of those aspects of plant status relevant to their responsibilities, maintain their working environment free of distractions, and using all their senses, be alert to prevent or mitigate any operational problems. Each individual licensed by the NRC to operate the controls of a nuclear power reactor must be keenly aware that he or she holds the special trust and confidence of the American people, conferred through the NRC license, and that his or her first responsibility is to assure that the reactor is in a safe condition at all times.

The following criteria reflect the Commission's expectations concerning the conduct of operations in control rooms and licensed operators at nuclear reactors consistent with 10 CFR 50.54 and guidance provided in an NRC Circular and Information Notices:

—Conduct within the control room should always be professional and proper, reflecting a safety-minded approach to routine operations. The operator "at the controls" and the immediate supervisor must never relinquish their safety responsibilities unless properly relieved, including a thorough turnover briefing, by a qualified operator.

—Activities within the control room should be performed with formality. Operator actions must be in accordance with approved procedures. Verbal communications should be clear and concise. Appropriate consideration should be given to the need for acknowledgment and verification of instructions received.

—The control room of a nuclear power plant, and in particular the area "at the controls", must be secure from intrusion. Access should be strictly controlled by a designated authority; only authorized personnel should be permitted to be present in the control room; and regulatory restrictions concerning manipulation of the controls must be meticulously observed.

—The operator at the controls, and the immediate supervisor, must be continuously alert to plant conditions and ongoing activities affecting plant operations, including conditions external to the plant such as grid stability, meteorological conditions, and change in support equipment status; operational occurrences should be anticipated; alarms and off-normal conditions should be promptly responded to; and problems affecting reactor operations should be corrected in a timely fashion.

—Activities within the control room should be limited to those necessary for the safe operation of the plant. Management should provide the direction, facilities, and resources needed to accommodate activities not directly related to plant operations.

—Activities outside the control room with the potential to affect plant operations, such as on-line maintenance and surveillance, should be fully coordinated with the control room. Effective methods for communication with or notification of the operator at the controls should be established and maintained throughout each evolution.

—Written records of plant operations must be carefully prepared and maintained in accordance with requirements for such records and in sufficient detail to provide a full understanding of operationally significant matters.

—The working environment in the control room should be maintained to minimize distractions to the operators. Management should act to remove distractions that would interfere with the operator's ability to monitor the plant either audibly or visually, including work activities that are not related to the operator's immediate responsibility for safe plant operation. Consideration should be given to reducing environmental distractions such as lighted alarms that are not operationally significant, or alarms that signify normal operating conditions.

—Foreign objects and materials not necessary for plant operations, ongoing maintenance, or surveillance testing should be restricted from the area "at the controls" to preclude inadvertent actuation of the controls or contamination of control devices.

Implementation of Policy

The Commission intends this Policy Statement to make clear the Commission's expectations and to provide guidance to licensees in improving and assessing the conduct of operations in the control rooms of nuclear power plants. The Commission believes that utility management should routinely monitor the conduct of operations at the plant, particularly in the control room, and review their procedures and policies on the conduct of operations, considering the guidance of this policy statement, to assure they support an environment for professional conduct.

Nothing in this policy statement limits the authority of the NRC to take appropriate enforcement action for violations of Commission requirements or on matters otherwise affecting the safe operation of the plant and thus the public health and safety.

Dated at Rockville, Maryland, this 17th day of January 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89-1498 Filed 1-23-89; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-35; Special Conditions No. 25-ANM-22]

Special Conditions: CASA CN-235-100, Lightning and Radio Frequency (RF) Energy Protection

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: This special conditions are issued for the CASA Model CN-235-100 airplane. This airplane will have novel or unusual design features associated with engine electronic controllers. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of the engine electronic controllers from the effects of lightning and the susceptibility to external radio frequency (RF) energy sources. This notice contains the additional safety standards which the Administrator finds necessary to ensure that the critical and essential functions these controllers perform are maintained.

EFFECTIVE DATE: December 13, 1988.

FOR FURTHER INFORMATION CONTACT: Gene Vandermolen, Flight Test and Systems Branch, ANM-111, Transport Airplane Directorate, Aircraft Certification Service, FAA, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, telephone (206) 431-2157.

SUPPLEMENTARY INFORMATION:

Background

On May 12, 1987, Construcciones Aeronauticas S.A. (CASA) applied for an amendment to their Type Certificate No. A21NM to include the Model CN-235-100 airplane. The CN-235-100 airplane, which is a derivative version of the CN-235 airplane, is modified to incorporate a new version of the General Electric CT7-7A engine (CT7-9C), new engine nacelles, relocation of

the right forward door, and an increased passenger capacity.

Under the provisions of § 21.101 of the Federal Aviation Regulations (FAR), CASA must show that the Model CN-235-100 meets the applicable provisions of the regulations incorporated by reference in Type Certificate A21NM, or the applicable regulations in effect on the date of application for the Model CN-235-100. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis."

The type certification basis for the CASA CN-235-100 airplane includes Part 25 of the FAR, effective February 1, 1965, including Amendments 25-1 through 25-54, and the requirements of § 25.904 concerning an automatic takeoff power control system (ATPCS); Part 36 of the FAR effective December 1, 1969, including Amendments 36-1 through current amendment; Special Federal Aviation Regulation 27, dated February 1, 1974, including Amendments 27-1 through 27-6 (Fuel Venting and Exhaust Emissions); and the special conditions contained herein.

If the Administrator finds that the applicable airworthiness regulations (i.e., Part 25 as amended) do not contain adequate or appropriate safety standards for the Model CN-235-100 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

Lightning Protection

The CASA CN-235-100 airplane is designed with engine electronic controllers which perform critical and essential engine functions, such as the engine power turbine (Np) overspeed-protection, minimum power turbine speed during ground operation (bottoming governing system), and constant torque takeoff system. These controllers are susceptible to disruption to both the command/response signals and the operational mode logic as a result of electrical and magnetic interference. This disruption of signals could result in dual engine shutdown due to opening of the engine ultimate overspeed fuel cutoff solenoids. To ensure that a level of safety is achieved equivalent to that of existing operating airplanes, special conditions are needed which require that the controllers will be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning. To provide a means of compliance with the special conditions, a clarification on the threat definition for lightning is needed.

The following "threat definition", based on SAE Report AE4L-87-3, may be used as a basis for demonstrating compliance with the lightning protection special conditions.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in Advisory Circular (AC) 20-53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon the systems' installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analysis need to be conducted in order to obtain the resultant internal threat to the installed systems. The propulsion control systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level;

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as a multiple-stroke. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps), all within 2 seconds. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation; and

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause direct (physical damage) effects, it is possible that indirect effects resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is required that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes within a period of 2 seconds. Each set of 20 strokes is made up of 20 "Multiple Burst" waveforms randomly distributed within a period of one millisecond. The individual "Multiple Burst" waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H). These components are defined by the following double exponential equations:

$$i(t) = I_o(e^{-at} - e^{-bt})$$

where;

t = time in seconds,

i = current in amperes, and

	Severe strike (component A)	Restrike (component D)	Multiple stroke (½ component D)	Multiple burst (component H)
I_o, amp	=218,810	109,405	54,703	10,572
a, sec^{-1}	=11,354	22,708	22,708	187,191
b, sec^{-1}	=647,265	1,294,530	1,294,530	19,105,100
This equation produces the following characteristics:				
peak	=200 KA	100 KA	50 KA	10 KA
and				
$(di/dt)_{max}$ (amp/$_{sec}$)	$=1.4\times10^{11}$ @t=0+sec	$=1.4\times10^{11}$ @t=0+sec	$=0.7\times10^{11}$ @t=0+sec	$=2.0\times10^{11}$ @t=0+sec
di/dt, (amp/sec)	$=1.0\times10^{11}$ @t=.5 us	$=1.0\times10^{11}$ @t=.25 us	$=0.5\times10^{11}$ @t=.25 us	
Action Integral (amp^2 sec)	$=2.0\times10^{6}$	$=0.25\times10^{6}$	$=.0625\times10^{6}$	

Protection From Unwanted Effects of Radio Frequency (RF) Energy

Airplane designs which utilize metal skins and mechanical command and control means have traditionally been shown to be immune from the effects of RF energy from ground-based transmitters. With the trend toward increased power levels from these sources, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of the airplane to RF energy must be established. No universally accepted guidance to define the maximum energy level in which civilian airplane system installations must be capable of operating safely has been established.

It is not possible to precisely define the RF energy to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for RF energy. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing RF emitters, an adequate level of protection exists when compliance with the RF special condition is shown with paragraph 1 or 2 below:

1. A minimum RF threat of 100 volts per meter average electric field strength from 10 KHz to 20 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. An RF threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Average (V/m)	Peak (V/m)
10 KHz-3 MHz	100	100
3 MHz-30 MHz	1,000	1,000
30 MHz-100 MHz	100	100
100 MHz-200 MHz	200	3,000
200 MHz-1 GHz	2,000	6,000
1 GHz-2 GHz	2,000	14,000
2 GHz-8 GHz	600	14,000
8 GHz-10 GHz	2,000	14,000
10 GHz-40 GHz	1,000	8,000

To establish the values in paragraph 2 above, an analysis was performed using a model of U.S. airspace and the Electromagnetic Compatibility Analysis Center (ECAC) data base, which contains the characteristics of all U.S. emitters. This analysis assumed a minimum separation distance between the airplane and emitters as follows: in the airport environment, 250 ft. for fixed emithers and 50 ft. for mobile emitters; for the air-to-air environment, 50 ft. from interceptor aircraft and 500 ft. from non-interceptor aircraft; for the ground-to-air environment, 500 ft.; and for the ship-to-air environment, 1,000 ft. The results of this analysis were then combined with the results of a study of emitters in European countries. The above values are therefore believed to represent the worst case external threat levels to which an airplane would be exposed in the operating environment.

Discussion of Comments

Notice of Proposed Special Conditions No. SC-88-8-NM for the CASA Model CN-235-100 airplane was published in the **Federal Register** on November 14, 1988 (53 FR 45771). Comments received were of a clarifying nature and have been incorporated as appropriate.

Under standard practice, the effective date of these final special condition would be 30 days after publication in the **Federal Register**; however, as the intended type certification date for the CN-235-100 airplane is approximately December 15, 1988, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the CASA Model CN-235-100 airplane.

1. The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. *Lightning Protection.*

a. Each electronic system which performs critical functions must be designed and installed to ensure that these critical functions are not affected when the airplane is exposed to lightning.

b. Each essential function of an electronic system must be protected to ensure that the essential function can be recovered after the airplane has been exposed to lightning and prior to the time at which the loss of that function would have a significant impact on safety.

c. for the purpose of these special conditions, the following definitions apply:

(1) *Critical Functions.* Functions whose failure would contribute to or cause a condition which would prevent the continued safe flight and landing of the airplane.

(2) *Essential Functions.* Functions whose failure would contribute to or cause a condition which would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

3. *Protection from Unwanted Effects of Radio Frequency (RF) Energy.* Each engine and propeller control system which performs critical functions must be designed and installed to ensure that these critical functions are not adversely affected when the airplane is exposed to high energy RF fields.

Issued in Seattle, Washington, on December 13, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-1472 Filed 1-23-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 21 and 25

[Docket No. NM-34; Special Conditions No. 25-ANM-24]

Special Conditions; Boeing Model 747-400, Flight Deck Displays and Propulsion Control Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Boeing Model 747-400 airplane. This airplane will have novel or unusual design features associated with the display of certain airplane system information that are not addressed in the existing regulations. In addition, the propulsion installation requirements of Part 25 do not contain adequate standards by which to determine an acceptable level of safety for a full authority digital electronic control system installed on a transport category airplane. These special conditions contain additional safety standards which will require proper displays and alerts of sufficient capacity to enable the crew to identify and perform required remedial action and will also require full authority digital electronic control systems (FADEC) to have the level of integrity and reliability of current hydromechanical systems. The Administrator finds these special conditions necessary to establish a level of safety equivalent to that established by the airworthiness standards of Part 25.

EFFECTIVE DATE: December 21, 1988.

FOR FURTHER INFORMATION CONTACT: Gene Vandermolen, Flight Test and Systems Branch, ANM-111, Transport Airplane Directorate, Aircraft Certification Service, FAA, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, telephone (206) 431-2157.

SUPPLEMENTARY INFORMATION:

Background

On May 17, 1985, the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207, submitted an application to amend Type Certificate A20WE to include the Boeing Model 747-400 series airplane. This airplane is a derivative version of the existing Model 747-300 series airplane. The 747-400 will be delivered with PW4000, CF6-80C2, or RB211-524G engines with full authority digital engine controls. Maximum takeoff gross weight will be increased to 870,000 lbs. Cockpit controls will be simplified and automated for operation by a crew of two. Appropriate hydraulics, avionics, pneumatic, and environment control system changes will be made. An optional fuel tank is being offered in the horizontal tail section. Scheduled completion date for certification is December 1988.

Discussion

1. The Boeing Model 747-400 uses six Cathode Ray Tubes (CRT) to display all flight, navigation, powerplant, and systems information. The lower center CRT is shared by displays of secondary engine parameters, fuel system, hydraulic system, and electrical system information. The use of shared display space for displaying various system parameters and schematics is being used on Boeing transport airplanes for the first time. It is not covered by the current regulations

Part 25 of the FAR was written prior to the development of multipurpose cockpit displays. Sections 25.1303, 25.1305, and 25.1307 list only the required instruments because individual gauges were all that existed at that time. With the introduction of CRT displays, it became possible to display the operating information from many different systems on a single CRT. This display allows the operating information to be centralized and displayed in many different formats. Some of the operating parameters presented on these displays share the display space with others or are not permanently displayed. When displays are shared or inhibited, means to alert the crew of parameter exceedances or other information requiring crew awareness must be provided so the crew can take corrective action. In addition to alerting the crew that corrective action is required, the display must have sufficient capacity so that all the information needed by the crew to conduct safe operation of the airplane can be simultaneously displayed. In the event of a failure condition, the data presented to the crew must be arranged and displayed in a manner so as not to cause confusion. The displayed parameters or alerts need to be arranged and edited in a form that effectively communicates to the flightcrew information necessary for selection of the appropriate corrective actions following a single event, condition, or combination of events.

2. The proposed Propulsion Control System for the Boeing Model 747-400 airplane is made up of: (1) A dual channel FADEC mounted on each engine's fan case; (2) an array of interfacing aircraft computers which provide data necessary for thrust management, data validation and reversion modes; (3) power levers in the aisle stand; (4) the hydromechanical interfaces on the engines; (5) the power supplies; and (6) the interconnecting wiring. While the software function contained in the engine's FADEC has been validated to a "critical" level, the overall level of integrity and reliability of the installed propulsion control system has not been evaluated to satisfy Part 25 requirements. Unlike conventional hydromechanical controls, the electronic control does not exhibit a "wear out" characteristic but rather exhibits an in-service failure rate which may be somewhat random with time. Therefore, endurance tests or other "mechanical" type evaluations and subsequent tear downs do not establish any significant degree of implied or inherent system design integrity as has been the case with mechanical systems previously evaluated in accordance with Part 25. Therefore, current regulations do not provide an adequate level of safety for proposed 747-400 FADEC propulsion control systems, and special conditions are necessary to provide system safety levels equivalent to those that would be provided by a hydromechanical system. These special conditions would require that the components of the propulsion control system that are directly associated with setting thrust and continued safe operation of each engine must demonstrate a level of system integrity and reliability commensurate with

current standards for transport category airplanes.

Discussion of Comments

Notice of proposed special conditions No. SC–88–9–NM for the Boeing Model 747–400 airplane was published in the **Federal Register** on November 18, 1988 (53 FR 46622). Comments were received from two commenters.

One commenter is concerned that insufficient simplification and automation exists in the 747–400 cockpit, and that "an *extensive* Quick Reference Handbook" would be required to aid the flightcrew during normal and emergency operations.

The FAA does not agree that the special conditions call for such a handbook. Airplane system parameters and procedures will be automatically displayed on the CRTs to assist and guide the flightcrew. The requirements set forth in the special conditions ensure that this information will be presented clearly and correctly.

The other commenter is concerned that the operation of the 747–400 with a crew of two may not be safe based on workload demands.

The 747–400 cockpit controls and displays are highly automated to reduce pilot workload. A determination is made by the FAA flight test pilots during the certification program as to whether this reduction in workload is sufficient to ensure safe operation with only two crewmembers. It is based on the cockpit design as presented by the manufacturer.

Type Certification Basis

The type certification (TC) basis for the Boeing Model 747–400 series airplane is proposed to be Part 36 of the Federal Aviation Regulations (FAR); Special Aviation Regulation (SFAR) No. 27–6; and Part 25 of the FAR, as amended by Amendments 25–1 through 25–59, except that the applicable amendment numbers for the following sections are those indicated as follows: § 25.571 through Amendment 25–9; §§ 25.251; 25.305, 25.607, 25.657, and 25.683 through Amendment 25–22; § 25.1401 through Amendment 25–26; §§ 25.787 and 25.812 through Amendment 25–31; § 25.675 through Amendment 25–37; § 25.1438 through Amendment 25–40; §§ 25.107, 25.109 and 25.149 through Amendment 25–41; §§ 25.331, 25.351, 25.789, and 25.809 through Amendment 25–45; § 25.772 through Amendment 25–46; and § 25.785 through Amendment 25–50 and §§ 25.365 and 25.783 through Amendment 25–53. As proposed, the requirements of the following sections do not apply to this type design because the original certification basis, which did not include these sections, has been determined to be adequate: §§ 25.631, 25.832, 25.858, and 25.1529. The TC basis includes special conditions, exemptions, and equivalent safety findings which are part of the Model 747–300 series certification basis. These exceptions, existing exemptions and the noise and environmental requirements are not pertinent to these special conditions. Special conditions concerning flight deck electronic displays, overhead crew rest accommodations, and the reliability of electronic engine controls and thrust management systems are also being considered.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and may become part of the type certification basis in accordance with § 21.101.

Under the standard practice, the effective date of these final special conditions would be 30 days after publication in the **Federal Register**. As the intended type certification date for the Boeing Model 747–400 is December 1988, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Boeing Model 747–400 series airplane.

1. The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. The required displays and alerts for each phase of flight must be provided in a timely manner and form that enables the crew to identify and carry out necessary remedial actions.

3. Sufficient display capacity should be provided so that any parameter display or alerting will not suppress another display or alerting that also requires immediate crew awareness necessary for continued safe flight and landing.

4. Displays of a parameters or alerts that could cause the subsequent activation of other displays or alerts must be presented in a manner and form to ensure appropriate identification of the most significant hazards and required crew actions.

5. In addition to the requirements of §§ 25.901(c) and 25.903(b) of the FAR, the components of the propulsion control system for each engine, both airframe and engine furnished, that affect thrust in either the forward or reverse direction and are required for continued safe operation, must at least have the level of integrity and reliability of a hydromechanical system meeting current airworthiness standards.

Issued in Seattle, Washington, on December 21, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–1299 Filed 1–23–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–NM–94–AD; Amdt. 39–6120]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which requires periodic freeplay checks of the elevator, and replacement of worn elevator power control actuator (PCA) reaction link rod end bearings and the PCA rod end bearing, if necessary. This amendment is prompted by reports of excessive wear of elevator PCA rod end and reaction link rod end bearings. This condition, if not corrected, could lead to unacceptable airframe vibration during flight.

EFFECTIVE DATE: March 6, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, 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 Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM-120S; telephone (206) 431-1919. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 757 series airplanes, which requires periodic freeplay checks of the elevator, and replacement of worn elevator power control actuator (PCA) reaction link rod end bearings and the PCA rod end bearings, if necessary, was published in the **Federal Register** on August 8, 1988 (53 FR 31016). The period for public comment closed on September 23, 1988.

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

The manufacturer suggested that the wording of the final rule be changed to clarify that terminating action consists of replacing the old design *PCA reaction link rod end* bearings. The FAA concurs and has incorporated this change in paragraph D. of the final rule.

The Air Transport Association (ATA) of American advised that, based on recommendations in Boeing Service Letter 757-SL-27-26, dated April 1, 1988, its member operators have revised their bearing lubrication schedule from 3,000 hours ("C-check") to 1,000 hours. ATA requested that the proposed compliance period be changed so that if lubrication of the subject bearings is being conducted at intervals of 1,000 flight hours or less, then the initial check of the subject bearings may be accomplished within the next 90 days after the effective date of the AD, or prior to the accumulation of 4,000 flight hours, whichever occurs later; and repetitive inspections may be accomplished thereafter at 4,000 flight hour intervals. This would permit inspections to be accomplished during "C-check." The FAA has considered the request and concurs that extension of the compliance time will provide an acceptable level of safety if the bearings are lubricated at 1,000-hour intervals; extending the repetitive inspection interval to 4,000 hours for these airplanes will have no adverse impact on safety. The final rule has been revised by adding a new paragraph A. to address airplanes upon which this schedule of maintenance has been followed. The FAA has determined that this change will not increase the scope of the AD, nor will it increase the economic burden on any operator.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule, with the changes previously noted.

There are approximately 134 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 90 airplanes of U.S. registry will be affected by this AD, that it will take approximately 30 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $108,000.

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

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT 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 rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 757 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes listed in Boeing Alert Service Bulletin 757-27A0086, dated June 9, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent unacceptable airframe vibrations during flight, accomplish the following:

A. For airplanes on which the elevator power control actuator (PCA) rod end and reaction link rod end bearings are lubricated at intervals of 1,000 flight hours or less, in accordance with Boeing Service Letter 757-SL-27-26, dated April 1, 1988: Within the next 90 days after the effective date of this AD or prior to the accumulation of 4,000 flight hours total time-in-service, whichever occurs later, and thereafter at intervals not to exceed 4,000 flight hours, perform an elevator freeplay check in accordance with Boeing Alert Service Bulletin 757-27A0086, dated June 9, 1988.

B. For all other airplanes: Within the next 90 days after the effective date of this AD or prior to the accumulation of 3,000 flight hours total time-in-service, whichever occurs later, and thereafter at intervals not to exceed 3,000 flight hours, perform an elevator freeplay check in accordance with Boeing Alert Service Bulletin 757-27A-0086, dated June 9, 1988.

C. If freeplay exceeds the limits specified in the service bulletin, before further flight, replace elevator PCA reaction link rod end bearings and PCA rod end bearings, as necessary, in accordance with Boeing Alert Service Bulletin 757-27A0086, dated June 9, 1988.

D. Terminating action for the repetitive inspection requirements of paragraph A. and B. of this AD consists of replacing all old design PCA reaction link rod end bearings with improved bearings and subsequent successful completion of freeplay inspection, in accordance with Boeing Alert Service Bulletin 757-27A0086, dated June 9, 1988.

E. 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.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, 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 Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 6, 1989.

Issued in Seattle, Washington, on January 11, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-1474 Filed 1-23-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-144-AD; Amdt. 39-6122]

Airworthiness Directives; Fokker Model F-27 Series Airplanes in Mark 500 Configuration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Fokker Model F-27 series airplanes in Mark 500 configuration, which requires a one time inspection of the upper fuselage cableloom for chafing and insufficient clamping, and repair, if necessary. This amendment is prompted by reports of chafing of the electrical wiring due to insufficient clamping of the cableloom and interference between the cableloom and the cable ducting. This condition, if not corrected, could lead to loss of electrical power and could create a potential fire hazard.

EFFECTIVE DATE: March 6, 1989.

ADDRESSES: The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. 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. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations, to include a new airworthiness directive, applicable to Fokker Model F-27 series airplanes in Mark 500 configuration, which requires a one-time inspection of the upper fuselage cableloom for chafing and insufficient clamping, and repair, if necessary, was published in the **Federal Register** on October 20, 1988 (53 FR 41190).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 14 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $6,720.

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

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT 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 rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($480). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended—

2. By adding the following new airworthiness directive:

Fokker: Applies to Model F-27 series airplanes, Serial Numbers 10623 through 10692, in Mark 500 configuration, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of electrical power and eliminate a potential fire hazard, due to chafing wire bundles, accomplish the following:

A. Within 60 days after the effective date of this AD, perform a one-time inspection of the upper fuselage cableloom for chafing and insufficient clamping, and repair, if necessary, in accordance with Fokker Service Bulletin F27/24-77, dated June 7, 1988.

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, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

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 inspections and/or modifications 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 Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 6, 1989.

Issued in Seattle, Washington, on January 11, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 89-1475 Filed 1-23-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-137-AD; Amdt. 39-6121]

Airworthiness Directives; Fokker Model F-28 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Fokker Model F-28 series airplanes, which requires relocation of the instrument panel lighting ballast transformers. This amendment is prompted by reports of the transformers overheating due to inadequate ventilation. This condition, if not corrected, could lead to the transformers overheating, causing smoke in the cockpit and creating a potential fire hazard.

EFFECTIVE DATE: March 6, 1989.

ADDRESSES: The applicable service information may be obtained from Fokker Aircraft, USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. 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. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations, to include a new airworthiness directive, applicable to Fokker Model F-28 series airplanes, which requires relocation of the instrument panel lighting ballast transformers, was published in the **Federal Register** on October 20, 1988 (53 FR 41191).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 51 airplanes of U.S. registry will be affected by this AD, that it will take approximately 24 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The estimated cost for parts is $600. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $79,560.

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

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT 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 rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model F-28 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Fokker: Applies to Model F-28 series airplanes, Serial Numbers 11003 through 11231, 11991, and 11992, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent a potential fire hazard in the cockpit, accomplish the following:

A. Within 60 days after the effective date of this AD, relocate the instrument lighting ballast transformers from the glareshield panel and the right hand cockpit sidewall to the left-hand cockpit sidewall, in accordance with Fokker Service Bulletin No. F28/33-34, dated June 1, 1988.

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, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

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 Fokker Aircraft, USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 6, 1989.

Issued in Seattle, Washington, on January 11, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-1476 Filed 1-23-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-107-AD; Amdt. 39-6115]

Airworthiness Directives; Garrett Model GTCP331-200A, -200AC, -200C, -200ER, -250F, -250H, and -200P Auxiliary Power Units Installed in, but Not Limited to, Boeing Model 757 and 767 Series Airplanes, Airbus Model A310 and A300-600 Series Airplanes, and Certain Boeing Model 747 Series Airplanes with Dual Units

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to Garrett Model GTCP331 series Auxiliary Power Units (APU) with a certain fan assembly, which currently requires incorporation of a new fan assembly with an improved fan containment housing. This amendment requires revision to the modified fan assembly configuration. This amendment is prompted by three

uncontained failures of the modified fan assembly. This condition, if not corrected, could lead to additional failures and potential inflight or ground fires.

EFFECTIVE DATE: February 22, 1989.

ADDRESSES: The applicable service information may be obtained from Garrett Airline Service Division, a Division of the Allied-Signal Aerospace Company, Technical Publications, Dept. 65–70, P.O. Box 29003, Phoenix, Arizona 85038. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Roy McKinnon, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5247.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to revise AD 85–14–02, Amendment 39–5571 (52 FR 5945; February 27, 1987), to require installation of an improved fan containment housing on Garrett Model GTCP331 Series APU's, was published in the **Federal Register** on September 13, 1988, (53 FR 35320).

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

The commenter suggested the rule be revised to reflect the initial compliance time as 12 months after the effective date of the AD, instead of 6 months, as proposed, in order that this commenter may accomplish the subject retrofit within its existing scheduled maintenance times. The FAA does not concur. The proposed compliance time of 6 months was determined based on the safety implications of this action, as well as parts availability. The FAA has determined that 6 months represents the maximum interval of time allowable for all affected airplanes to continue to operate prior to the installation of the required modification without compromising safety.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 800 APU's installed on airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 manhours per APU to accomplish the required actions, and that the average labor cost will be $40 per manhour. The manufacturer has indicated that it will supply required parts at no charge to operators. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $128,000.

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

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT 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 rule will not have a significant economic effect, positive or negative, on a substantial number of small entities, because of the minimal cost of compliance per APU ($160). A final evaluation has been prepared for this regulation and has been placed in the docket .

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By revising AD 85–14–02, Amendment 39–5571 (52 FR 5945; February 27, 1987), as follows:

Garrett Auxiliary Power Division (Formerly Garrett Turbine Engine Company and the Airesearch Manufacturing Company of Arizona): Applies to all GTEC Models GTCP331–200A, –200AC, –200C, –200ER, –250F, –250H, and –200P Auxiliary Power Units (APU) with fan assembly, Garrett Part Number 3862160–3, –4, or –5, installed; as installed in, but not limited to, Boeing Model 757 and 767 series airplanes, Airbus Model A310 and A300–600 series airplanes, and certain Boeing Model 747 series airplanes with dual units; certificated in any category. Compliance is required as indicated, unless already accomplished.

To prevent an uncontained APU cooling fan failure, accomplish the following:

A. Upon removal of the cooling fan assembly, Garrett Part Number 3862160–3 or –4, from an affected GTCP331 series Auxiliary Power Unit (APU) for any reason; or within 1,000 airplane hours time-in-service after August 15, 1985, or prior to September 15, 1985, whichever comes first, for the Boeing Model 757 and 767 series airplanes; and within 1,000 airplane hours time–in–service after April 2, 1987 (the effective date of Amendment 39–5571), for all other airplanes with a GTC331 series APU installed; incorporated the new fan assembly with the improved fan containment housing as specified in Section 2.A., "Accomplishment Instructions," of Garrett Service Bulletin GTCP331–49–5546, dated August 9, 1984.

B. Upon removal of the modified cooling fan assembly, Garrett Part Number 3862160–5, from an affected GTCP331 series APU for any reason, or within six (6) months after the effective date of this AD, whichever occurs first, for all airplanes with GTCP331 series APU installed, incorporate the latest improved fan containment configuration in accordance with the Accomplishment Instructions of Garrett Service Bulletin 3862160–49–5716, dated November 19, 1987.

C. 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, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a maintenance base in order to comply with the requirements of 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 Garrett Airline Service Division, A Division of the Allied-Signal Aerospace Company, Technical Publications, Dept. 65–70, P.O. Box 29003, Phoenix, Arizona 85038. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at

3229 East Spring Street, Long Beach, California.

This amendment becomes effective February 22, 1989.

Issued in Seattle, Washington, on January 4, 1989.

Leroy A. Keith, Manager,

Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-1473 Filed 1-23-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM88-25-000]

18 CFR Part 37

Generic Determination of Rate of Return on Common Equity for Public Utilities

January 13, 1989

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of benchmark rate of return on common equity for public utilities.

SUMMARY: In accordance with § 37.5 of its regulations, the Federal Energy Regulatory Commission, by its designee, the Director of the Office of Economic Policy, issues the update to the "advisory" benchmark rate of return on common equity applicable to rate filings made during the period February 1, 1989 through April 30, 1989. This benchmark rate is set at 12.38 percent.

EFFECTIVE DATE: February 1, 1989.

FOR FURTHER INFORMATION CONTACT: Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8283.

SUPPLEMENTARY INFORMATION:

Benchmark Rate of Return on Common Equity for Public Utilities

On December 19, 1988, the Federal Energy Regulatory Commission (Commission) issued a final rule (Order No. 510) concerning the generic determination of the rate of return on common equity for public utilities.[1] In several earlier rulemaking proceedings, the Commission established a discounted cash flow (DCF) formula to determine the average cost of common equity and a quarterly indexing procedure to calculate benchmark rates of return on common equity for public utilities and codified the formula and procedure at § 37.9 of its Regulations.[2] In Order No. 510, the Commission determined that 4.3 percent is an appropriate expected annual dividend growth rate for use in the quarterly indexing procedure during the 12 months beginning February 1, 1989 and that 0.03 percent is an appropriate flotation cost adjustment factor for that period.

The Commission, by its designee, the Director of the Office of Economic Policy, uses the quarterly indexing procedure to determine that the benchmark rate of return on common equity applicable to rate filings made during the period February 1, 1989 through April 30, 1989 is 12.38 percent.

Section 37.9 of the Commission's regulations requires that the quarterly benchmark rate of return be set equal to the average cost of common equity for the jurisdictional operations of public utlities. This average cost is based on the average of the median dividend yields for the two most recent calendar quarters for a sample of 99 utilities. The average yield is used in the following formula with fixed adjustment factors (determined in the most recent annual proceeding) to determine the cost rate:

$$k_t = 1.02\ Y_t + 4.33$$

where k_t is the average cost of common equity and Y_t is the average dividend yield.

The attached appendix provides the supporting data for this update. The median dividend yields for the 99-company sample of utilities for the third and fourth quarters of 1988 are 7.92 and 7.85 percent, respectively. The average yield for those two quarters is 7.89 percent. Use of the average dividend yield in the above formula produces an average cost of common equity of 12.38 percent.

This notice supplements the generic rate of return rule announced in Order No. 510, issued December 19, 1988 and effective on February 1, 1989.

List of Subjects in 18 CFR Part 37

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 37, Chapter I, Title 18 of the Code of Federal Regulations, as set forth below, effective February 1, 1989.

Richard P. O'Neill,

Director, Office of Economic Policy.

PART 37—GENERIC DETERMINATION OF RATE OF RETURN ON COMMON EQUITY FOR PUBLIC UTILITIES

1. The authority citation for Part 37 continues to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a-825r (1982); Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982).

2. In § 37.9, paragraph (d) is revised to read as follows:

§ 37.9 Quarterly indexing procedure.

* * * * *

(d) *Table of Quarterly Benchmark Rates of Return.* The following table presents the quarterly benchmark rates of return on common equity:

Benchmark applicability period (t)	Dividend increase adjustment factor (a)	Expected growth adjustment factor (b)	Current dividend yield (Y_t)	Cost of common equity (k_t)	Benchmark rate of return
February 1, 1986 to April 30, 1986	1.02	4.54	9.03	13.75	13.75
May 1, 1986 to July 31, 1986	1.02	4.54	8.37	13.08	13.25
August 1, 1986 to October 31, 1986	1.02	4.54	7.49	12.18	12.75
November 1, 1986 to January 31, 1987	1.02	4.54	6.75	11.43	12.25
February 1, 1987 to April 30, 1987	1.02	4.63	6.44	11.20	11.20
May 1, 1987 to July 31, 1987	1.02	4.63	6.54	11.30	11.30
August 1, 1987 to October 31, 1987	1.02	4.63	6.97	11.74	11.74
November 1 1987 to January 31, 1988	1.02	4.63	7.49	12.27	12.27
February 1, 1988 to April 30, 1988	1.02	4.36	7.90	12.42	12.42
May 1, 1988 to July 31, 1988	1.02	4.36	7.99	12.51	12.51
August 1, 1988 to October 31, 1988	1.02	4.36	7.84	12.36	12.36

[1] Generic Determination of Rate of Return on Common Equity for Public Utilities, Order N. 510, 53 FR 51,752 (Dec. 23, 1988), 45 FERC ¶ 61,452 (Dec. 19, 1988).

[2] 18 CFR 37.9 (1988). The most recent adoption of the DCF formula and quarterly indexing procedure came in Order No. 489, 53 FR 3342 (Feb. 5, 1988).

Benchmark applicability period (t)	Dividend increase adjustment factor (a)	Expected growth adjustment factor (b)	Current dividend yield (Y_t)	Cost of common equity (k_t)	Benchmark rate of return
November 1, 1988 to January 31, 1989	1.02	4.36	7.92	12.44	12.44
February 1, 1989 to April 30, 1989	1.02	4.33	7.89	12.38	12.38

Note: The Appendix will not be published in *Code of Federal Regulations.*

Appendix

Exhibit No. and Title

1 Initial sample of utilities
2 Utilities excluded from the sample for the indicated quarter due to either zero dividends or a reduction in dividends for this quarter or the prior three quarters
3 Annualized dividend yields for the indicated quarter for utilities retained in the sample

Source of Data: Standard and Poor's Compustat Services, Inc., Utility COMPUSTAT II Quarterly Data Base.

EXHIBIT 1—SAMPLE OF UTILITIES

Utility	Ticket symbol	Industry code
ALLEGHENY POWER SYSTEM.	AYP	4911
AMERICAN ELECTRIC POWER.	AEP	4911
ATLANTIC ENERGY INC	ATE	4911
BALTIMORE GAS & ELECTRIC.	BGE	4931
BLACK HILLS CORP	BKH	4911
BOSTON EDISON CO	BSE	4911
CAROLINA POWER & LIGHT.	CPL	4911
CENTERIOR ENERGY CORP.	CX	4911
CENTRAL & SOUTH WEST CORP.	CSR	4911
CENTRAL HUDSON GAS & ELEC.	CNH	4931
CENTRAL ILL PUBLIC SERVIC.	CIP	4931
CENTRAL LOUISIANA ELECTRI.	CNL	4911
CENTRAL MAINE POWER CO.	CTP	4911
CENTRAL VERMONT PUB SERV.	CV	4911
CILCORP INC	CER	4931
CINCINNATI GAS & ELECTRIC.	CIN	4931
CMS ENERGY CORP	CMS	4931
COMMONWEALTH EDISON	CWE	4911
COMMONWEALTH ENERGY SYSTE.	CES	4931
CONSOLIDATED EDISON OF NY.	ED	4931
DELMARVA POWER & LIGHT.	DEW	4931
DETROIT EDISON CO	DTE	4911
DOMINION RESOURCES INC-VA.	D	4931
DPL INC	DPL	4931
DUKE POWER CO	DUK	4911
DUQUESNE LIGHT CO	DQU	4911
EASTERN UTILITIES ASSOC.	EUA	4911
EMPIRE DISTRICT ELECTRIC.	EDE	4911
FITCHBURG GAS & ELEC LIGH.	FGE	4931
FLORIDA PROGRESS CORP.	FPC	4911
FPL GROUP INC	FPL	4911
GENERAL PUBLIC UTILITIES.	GPU	4911
GREEN MOUNTAIN POWER CORP.	GMP	4911
GULF STATES UTILITIES CO.	GSU	4911
HAWAIIAN ELECTRIC INDS	HE	4911
HOUSTON INDUSTRIES INC.	HOU	4911
I E INDUSTRIES INC	IEL	4931
IDAHO POWER CO	IDA	4911
ILLINOIS POWER CO	IPC	4931
INTERSTATE POWER CO	IPW	4931
IOWA RESOURCES INC	IOR	4911
IOWA-ILLINOIS GAS & ELEC.	IWG	4931
IPALCO ENTERPRISES INC	IPL	4911
KANSAS CITY POWER & LIGHT.	KLT	4911
KANSAS GAS & ELECTRIC	KGE	4911
KANSAS POWER & LIGHT	KAW	4931
KENTUCKY UTILITIES CO	KU	4911
LONG ISLAND LIGHTING	LIL	4931
LOUISVILLE GAS & ELECTRIC.	LOU	4931
MAINE PUBLIC SERVICE	MAP	4911
MIDDLE SOUTH UTILITIES	MSU	4911
MIDWEST ENERGY CO	MWE	4931
MINNESOTA POWER & LIGHT.	MPL	4911
MONTANA POWER CO	MTP	4931
NECO ENTERPRISES INC	NPT	4911
NEVADA POWER CO	NVP	4911
NEW ENGLAND ELECTRIC SYST.	NES	4911
NEW YORK STATE ELEC & GAS.	NGE	4931
NIAGARA MOHAWK POWER.	NMK	4931
NIPSCO INDUSTRIES INC	NI	4931
NORTHEAST UTILITIES	NU	4911
NORTHERN STATES POWER-MN.	NSP	4931
OHIO EDISON CO	OEC	4911
OKLAHOMA GAS & ELECTRIC.	OGE	4911
ORANGE & ROCKLAND UTILITI.	ORU	4931
PACIFIC GAS & ELECTRIC	PCG	4931
PACIFICORP	PPW	4931
PENNSYLVANIA POWER & LIGH.	PPL	4911
PHILADELPHIA ELECTRIC CO.	PE	4931
PINNACLE WEST CAPITAL COR.	PNW	4911
PORTLAND GENERAL CORP.	PGN	4911
POTOMAC ELECTRIC POWER.	POM	4911
PSI HOLDINGS INC	PIN	4911
PUBLIC SERVICE CO OF COLO.	PSR	4931
PUBLIC SERVICE CO OF N H.	PNH	4911
PUBLIC SERVICE CO OF N ME.	PNM	4931
PUBLIC SERVICE ENTERPRISE.	PEG	4931
PUGET SOUND POWER & LIGHT.	PSD	4911
ROCHESTER GAS & ELECTRIC.	RGS	4931
SAN DIEGO GAS & ELECTRIC.	SDO	4931
SCANA CORP	SCG	4931
SCECORP	SCE	4911
SIERRA PACIFIC RESOURCES.	SRP	4931
SOUTHERN CO	SO	4911
SOUTHERN INDIANA GAS & EL.	SIG	4931
ST JOSEPH LIGHT & POWER.	SAJ	4931
TECO ENERGY INC	TE	4911
TEXAS UTILITIES CO	TXU	4911
TNP ENTERPRISES INC	TNP	4911
TUCSON ELECTRIC POWER CO.	TEP	4911
UNION ELECTRIC CO	UEP	4911
UNITED ILLUMINATING CO	UIL	4911
UNITIL CORP	UTL	4911
UTAH POWER & LIGHT	UTP	4911
UTILICORP UNITED INC	UCU	4931
WASHINGTON WATER POWER.	WWP	4931
WISCONSIN ENERGY CORP.	WEC	4931
WISCONSIN PUBLIC SERVICE.	WPS	4931
WPL HOLDINGS INC	WPH	4931

N = 99.

EXHIBIT 2.—UTILITIES EXCLUDED FROM THE SAMPLE FOR THE INDICATED QUARTER DUE TO EITHER ZERO DIVIDENDS OR A CUT IN THE DIVIDENDS FOR THIS QUARTER OR THE PRIOR THREE QUARTERS

[Year=88 Quarter=4]

Ticker symbol	Utility	Reason for exclusion
CX	CENTERIOR ENERGY CORP	Dividend rate was reduced for the quarter CALENDAR 88Q2.
CNH	CENTRAL HUDSON GAS & ELEC	Dividend rate was reduced for the quarter CALENDAR 88Q1.
CMS	CMS ENERGY CORP	Dividend rate was zero for quarter CALENDAR 88Q4.
GSU	GULF STATES UTILITIES CO	Dividend rate was zero for quarter CALENDAR 88Q4.
LIL	LONG ISLAND LIGHTING	Dividend rate was zero for quarter CALENDAR 88Q4.
MSU	MIDDLE SOUTH UTILITIES	Dividend rate was zero for quarter CALENDAR 88Q3.
NGE	NEW YORK STATE ELEC & GAS	Dividend rate was reduced for the quarter CALENDAR 88Q1.
PCG	PACIFIC GAS & ELECTRIC	Dividend rate was reduced for the quarter CALENDAR 88Q3.
PIN	PSI HOLDINGS INC	Dividend rate was zero for quarter CALENDAR 88Q4.
PNH	PUBLIC SERVICE CO OF N H	Dividend rate was zero for quarter CALENDAR 88Q4.
PNM	PUBLIC SERVICE CO OF N ME	Dividend rate was reduced for the quarter CALENDAR 88Q2.

N=11.

EXHIBIT 3.—ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR UTILITIES RETAINED IN THE SAMPLE

Year = 88 Quarter = 4

Ticker symbol	Price, 1st month of quarter-high	Price, 1st month of quarter-low	Price, 2nd month of quarter-high	Price, 2nd month of quarter-low	Price, 3rd month of quarter-high	Price, 3rd month of quarter-low	Average price	Dividends annual rate	Annualized dividend yield
AEP	28.125	26.750	28.500	26.125	27.875	26.625	27.333	2.370	8.671
ATE	34.000	33.375	33.875	33.000	34.500	32.750	33.583	2.760	8.218
AYP	39.000	37.875	38.625	37.125	38.250	37.000	37.979	3.080	8.110
BGE	32.750	31.125	32.375	30.750	31.625	30.625	31.542	2.000	6.341
BKH	27.500	26.250	27.750	25.750	26.125	24.500	26.312	1.400	5.321
BSE	17.000	15.250	17.250	15.125	16.875	15.500	16.167	1.820	11.258
CER	33.375	31.750	33.375	30.750	33.000	31.500	32.292	2.400	7.432
CES	30.750	29.375	32.125	30.125	32.000	30.375	30.792	2.800	9.093
CIN	27.750	26.375	27.000	25.500	26.500	25.875	26.500	2.240	8.453
CIP	22.375	21.375	22.500	21.375	22.375	21.500	21.917	1.760	8.030
CNL	33.750	32.500	33.625	32.750	33.000	31.625	32.875	2.320	7.057
CPL	36.250	35.000	36.500	35.000	37.625	35.625	36.000	2.760	7.667
CSR	32.500	30.875	31.875	30.125	32.000	30.500	31.312	2.440	7.792
CTP	18.375	17.250	18.500	17.125	18.875	17.500	17.937	1.480	8.251
CV	26.000	24.125	25.750	24.250	24.625	23.500	24.708	1.980	8.013
CWE	32.375	30.375	32.500	31.125	33.375	30.875	31.771	3.000	9.443
D	45.000	43.000	44.875	42.375	44.000	42.000	43.542	3.200	7.349
DEW	17.750	17.000	17.375	16.875	17.750	17.125	17.312	1.460	8.433
DPL	27.000	25.125	27.125	24.750	25.875	25.000	25.812	2.160	8.368
DQU	16.875	15.750	17.875	16.625	18.875	17.500	17.250	1.280	7.420
DTE	16.625	14.375	16.750	15.750	17.500	16.000	16.167	1.680	10.392
DUK	47.625	45.375	47.500	44.625	46.875	45.250	46.208	2.960	6.406
ED	46.000	44.500	46.750	44.000	46.625	44.500	45.396	3.200	7.049
EDE	29.125	28.500	29.000	27.500	28.125	27.500	28.292	2.220	7.847
EUA	29.375	27.625	33.125	29.000	32.750	31.500	30.562	2.400	7.853
FGE	28.000	25.375	29.250	27.250	30.750	29.250	28.312	1.800	6.358
FPC	35.875	34.250	36.125	33.625	35.375	33.625	34.812	2.560	7.354
FPL	31.875	30.375	32.000	30.000	32.000	30.500	31.125	2.200	7.068
GMP	25.875	24.875	25.250	23.000	23.875	22.000	24.146	1.920	7.952
GPU	38.500	35.250	37.250	36.125	38.000	36.750	36.979	1.800	4.868
HE	30.000	28.125	29.250	28.500	29.750	28.625	29.042	2.040	7.024
HOU	30.000	28.625	30.000	27.250	28.125	26.625	28.437	2.960	10.409
IDA	22.625	21.375	22.250	21.250	23.750	22.125	22.229	1.800	8.097
IEL	23.750	23.000	24.000	23.250	24.000	22.625	23.438	2.040	8.704
IOR	18.125	17.250	18.625	17.000	17.875	17.000	17.646	1.660	9.407
IPC	19.625	18.375	19.625	19.000	20.000	19.250	19.312	2.640	13.670
IPL	23.375	22.375	23.375	22.500	23.250	22.500	22.896	1.640	7.163
IPW	23.125	21.375	22.625	21.000	22.875	21.250	22.042	1.960	8.892
IWG	40.500	38.250	39.375	37.875	39.125	37.625	38.792	3.180	8.198
KAN	24.375	23.375	24.125	22.750	23.500	22.250	23.396	1.720	7.352
KGE	20.125	19.000	21.250	19.750	21.750	20.125	20.333	1.600	7.869
KLT	32.000	29.500	32.250	29.750	32.000	30.000	30.917	2.440	7.892
KU	19.125	17.750	19.000	17.500	19.125	18.125	18.437	1.340	7.268
LOU	34.875	32.750	34.875	34.000	35.375	33.750	34.271	2.720	7.937
MAP	38.375	36.125	40.750	37.500	41.625	40.000	39.063	3.000	7.680
MPL	25.500	24.375	25.250	23.500	24.375	23.125	24.354	1.720	7.062
MTP	37.000	34.750	36.250	34.250	35.875	34.625	35.458	2.680	7.558
MWE	19.625	19.000	19.625	18.750	19.375	18.625	19.167	1.560	8.139
NES	24.875	23.500	25.500	24.250	25.125	23.875	24.521	2.040	8.319
NI	13.875	12.000	13.750	13.250	14.125	13.375	13.396	0.600	4.479
NMK	14.250	13.375	14.000	12.500	13.875	13.000	13.500	1.200	8.889
NPT	18.000	17.625	18.250	17.250	20.250	18.000	18.229	1.500	8.229
NSP	34.125	32.125	34.250	31.875	33.625	32.250	33.042	2.120	6.416
NU	21.250	19.875	21.500	20.000	21.000	19.750	20.562	1.760	8.559

EXHIBIT 3.—ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR UTILITIES RETAINED IN THE SAMPLE—Continued

Year = 88 Quarter = 4

Ticker symbol	Price, 1st month of quarter-high	Price, 1st month of quarter-low	Price, 2nd month of quarter-high	Price, 2nd month of quarter-low	Price, 3rd month of quarter-high	Price, 3rd month of quarter-low	Average price	Dividends annual rate	Annualized dividend yield
NVP	20.500	19.625	20.750	19.625	20.500	20.000	20.167	1.520	7.537
OEC	19.250	18.250	19.250	18.000	19.000	18.000	18.625	1.960	10.523
OGE	33.000	32.000	33.250	31.625	33.250	32.000	32.521	2.280	7.011
ORU	30.625	29.125	30.375	28.875	29.875	28.875	29.625	2.260	7.629
PE	20.250	18.500	20.250	19.125	20.250	19.250	19.604	2.200	11.222
PEG	25.375	24.250	25.250	24.000	24.875	24.000	24.625	2.040	8.284
PGN	21.750	20.625	22.625	21.250	22.625	20.875	21.625	1.960	9.064
PNW	23.000	16.375	17.500	15.000	16.500	15.250	17.271	2.800	16.212
POM	22.375	20.875	22.000	20.750	21.250	19.250	21.083	1.380	6.545
PPL	36.750	35.250	37.000	35.375	36.500	35.000	35.979	2.760	7.671
PPW	36.875	34.625	36.875	35.000	36.125	34.875	35.729	2.640	7.389
PSD	19.625	18.750	19.000	18.250	19.375	18.250	18.875	1.760	9.325
PSR	21.750	20.250	20.875	19.750	21.875	20.750	20.875	2.000	9.581
RGS	17.875	16.750	17.875	17.000	17.750	16.875	17.354	1.500	8.643
SAJ	23.000	21.500	22.000	20.750	21.000	19.750	21.333	1.400	6.563
SCE	34.000	32.250	34.500	32.000	33.000	31.750	32.917	2.480	7.534
SCG	32.000	30.625	31.875	30.750	32.250	30.375	31.312	2.400	7.665
SDO	35.750	34.500	39.375	34.375	39.500	36.875	36.729	2.600	7.079
SIG	28.250	27.375	28.375	26.250	29.625	26.500	27.729	1.700	6.131
SO	22.625	21.250	22.250	20.875	22.750	21.500	21.875	2.140	9.783
SRP	22.750	21.625	23.000	22.375	23.750	22.875	22.729	1.800	7.919
TE	24.875	23.125	24.500	23.500	24.625	23.250	23.979	1.420	5.922
TEP	54.500	52.125	53.500	49.750	51.625	48.750	51.708	3.900	7.542
TNP	19.875	19.250	20.000	18.500	19.875	18.875	19.396	1.470	7.579
TXU	29.250	27.500	29.375	28.000	28.875	27.875	28.479	2.880	10.113
UCU	19.975	18.750	19.730	19.000	19.875	19.125	19.409	1.098	5.657
UEP	24.750	23.375	25.000	23.625	24.375	23.625	24.125	2.000	8.290
UIL	24.625	23.250	27.375	23.750	27.500	25.125	25.271	2.320	9.181
UTL	30.000	29.125	30.875	29.125	30.250	28.500	29.646	2.080	7.016
UTP	32.125	29.500	31.875	30.375	32.125	30.625	31.104	2.320	7.459
WEC	27.875	26.125	27.750	26.500	27.750	26.875	27.146	1.540	5.673
WPH	23.750	22.250	23.500	22.250	23.250	22.250	22.875	1.620	7.082
WPS	23.250	21.125	23.375	22.125	22.875	21.625	22.396	1.580	7.055
WWP	27.750	26.750	28.375	26.625	28.125	26.750	27.396	2.480	9.052

N = 88.

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 89-13]

Interpretation of the Coastwise Laws

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final interpretive rule.

SUMMARY: This document gives notice that a Customs Service Decision (C.S.D.) which held that the movement of a vessel on another vessel from a coastwise point to a point on the high seas where the vessel is removed from the carrying vessel and then towed to another coastwise point is considered coastwise trade, will remain unchanged. The C.S.D., in accord with the coastwise laws which provide that no foreign vessel may transport merchandise between points in the U.S., either directly or via a foreign port, or for any part of the transportation, held that the carrying vessel in this kind of movement must be coastwise qualified, i.e., U.S. owned, built and properly documented. The changing of the C.S.D., as requested in a petition for an interpretive ruling, would have permitted, insofar as the coastwise laws were concerned, the carriage by a foreign-built launch barge or an outer continental shelf platform jacket from a point in the U.S. to a point outside U.S. territorial waters where the jacket would be unloaded from the barge and then towed to an installation site on the U.S. outer continental shelf.

The petitioner, in its submission, had contended that towing is not "transportation" and a vessel is not "merchandise" for the purposes of the coastwise laws. It noted that qualified barges capable of launching a deepwater jacket are nonexistent and it is economically impracticable for anyone to build such a barge in the U.S. because of competitive pressures from foreign marine fabricators. Additionally, the petitioner stated that the previous ruling does not serve to promote the American merchant marine or domestic shipbuilding industry insofar as it prevents the domestic fabrication industry from participating in deepwater projects.

This document, after consideration of the comments submitted in response to a proposed interpretive rule published in the **Federal Register** less on June 29, 1987 (52 FR 24169), affirms Customs existing position.

FOR FURTHER INFORMATION CONTACT: Paul G. Hegland, Carrier Rulings Branch, (202-566-5706).

SUPPLEMENTARY INFORMATION:

Background

By notice published in the **Federal Register** on June 29, 1987 (52 FR 24169), it was announced that Customs was inviting public comments on the issues raised in a petition requesting that Customs reconsider its ruling in C.S.D. 85-9, published in 19 Cust. Bull. 508, January 20, 1985. Customs held in C.S.D. 85-9, that the movement of a vessel on another vessel from a coastwise point to a point on the high seas where the vessel is removed from the carrying vessel and then towed to another coastwise point is considered coastwise trade. The carrying vessel in that kind of movement must be U.S. owned, built,

and properly documented pursuant to 46 U.S.C. App. 883. The notice specified that if the previous ruling were changed, it would permit, insofar as the coastwise laws were concerned, the carriage by a foreign-built launch barge of an outer continental shelf (OCS) platform jacket from a point in the U.S. to a point outside U.S. territorial waters where the jacket would be unloaded from the barge and then towed to an installation site on the U.S. outer continental shelf. It further noted that the petitioner contended that towing is not "transportation" and a vessel is not "merchandise" for the purposes of the coastwise laws. In addition, the petitioner stated that qualified barges capable of launching a deepwater jacket are nonexistent and it is economically impracticable for anyone to build such a barge in the U.S. because of competitive pressures from foreign marine fabricators. The petitioner also stated that the previous Customs ruling did not serve to promote the American merchant marine or domestic shipbuilding industry and that it tended to prevent the domestic fabrication industry from participating in deepwater projects. Petitioner's arguments were fully set out in the notice.

Public Law 100–329

Since publication of the notice, Congress has recognized the lack of coastwise-qualified launch barges capable of launching deepwater jackets in Pub. L. 100–329. Under Pub. L. 100–329, transportation on certain launch barges of large platform jackets between points in the United States at one of which there is an installation or other device within the meaning of the Outer Continental Shelf Lands Act (OCSLA) would not be deemed transportation subject to section 883. A launch barge with a carrying capacity of 12,000 long tons or more which was built or under construction as of the date of enactment of Pub. L. 100–329 and was documented under the laws of the United States could be used to transport a platform jacket which could not be transported on and launched from a barge of lesser capacity.

Part of the motivation for the launch barge provision in Pub. L. 100–329 was C.S.D. 85–9 (January 28, 1988, Hearings of the Subcommittee on Merchant Marine, U.S. Senate Committee on Commerce, Science, and Transportation). However, passage of Pub. L. 100–329 does not make moot the issue considered in this interpretive ruling. The question of the applicability of the coastwise laws to dual-mode movements still exists with regard to the movement of platform jackets between points other than sites on the OCS, as well as to the movement of articles other than platform jackets not exempted from the provisions of section 883 by Pub. L. 100–329.

Analysis of Comments

Seventeen comments were submitted in response to the proposed interpretative rule published on June 29, 1987. An analysis of the comments follows:

Comments Agreeing with Petitioner that C.S.D. 85–9 Should be Modified

All of the commenters agreeing with the petitioner that C.S.D. 85–9 should be modified gave economic or practical, non-legal reasons for doing so. These arguments include the claim that C.S.D. 85–9 promotes the exportation of the jacket fabricating industry and the jobs associated therewith.

Also included in these arguments is the claim that there are no coastwise-qualified launch barges capable of launching the jackets required for deepwater sites. Such arguments contend that there is too much uncertainty in the market to promote construction of coastwise-qualified barges.

Another such contention is that because the use of transportation alternatives not requiring coastwise-qualified barges, such as the fabrication of jackets abroad or the modification of OCS development plans, could increase project costs and risks, development of the OCS may be deferred. This consequence, according to the argument, could damage the domestic fabrication industry, ship building and offshore supply industries as well as overall United States national energy security and the domestic oil industry.

Three of the commenters agreeing with the petitioner that C.S.D. 85–9 should be modified have submitted virtually identical substantial legal arguments on the issue. These commenters claim that the position of Customs before C.S.D. 85–9 was a correct interpretation of the relevant laws and should continue to be the position of Customs. Because a violation of 46 U.S.C. App. 883 calls for a severe penalty, the commenters state that it is well established that section 883 should be construed strictly.

The commenters recount the history and evolution of the applicable statutes, 46 U.S.C. App. 883 (enacted in 1920 as the Jones Act and amended many times since, although its antecedents can be traced back to 1817) and section 316(a) (enacted in 1940 and recently amended by the Act of May 19, 1986 (Pub. L. 99–307, 100 Stat. 447), although its antecedents can be traced back to 1866). The commenters state that the two statutes are somewhat similar, although the prohibition in section 316(a) is directed against the towing vessel and that of section 883 is against the merchandise transported.

The commenters use an Opinion of the Attorney General (30 Op. Att'y Gen. 3 (1919)) to trace the evolution of the language of section 883. The commenters contend that this Opinion of the Attorney General makes it clear that the "transportation" which was prohibited by the predecessor of section 883, when it refers to transportation by water, means transportation by water *in vessels*. The commenters contend that this interpretation is buttressed by a word-by-word and phrase-by-phrase analysis of section 883.

The commenters state that there were no changes in sections 883 and 316(a) between 1940 and the issuance of C.S.D. 85–9 warranting or necessitating the change in Customs position made by C.S.D. 85–9. There were many consistent rulings with regard to dual-mode transportation issued by Customs during this period, according to the commenters. Further, there were no decisions by any courts interpreting the statutes or these rulings, although the commenters describe an order, subsequently vacated, of the United States District Court for the Eastern District of Texas, Beaumont Division (concerning the movement of a floating drydock from Hawaii to Texas which was described in the **Federal Register** Notice) which held that the dual-mode transportation in that case would not violate 46 U.S.C. App. 316(a) or 883.

The commenters note that although Customs concluded in C.S.D. 85–9 that the so-called "mystical transformation" theory underlying the dual-mode exception from applicability of the coastwise laws made no sense, Customs also recognized that the key to determining the applicability of section 883 to such movements was whether the vessel or article was *transported* between coastwise points. The commenters state that the error of C.S.D. 85–9 was the omission of the words "in a vessel" after "transportation" as the key in determining the applicability of section 883. Contending that the key word in the phrase "or for any part of the transportation" in the statute is the word "transportation," the commenters conclude that "transportation" in this phrase includes "merchandise transported *by water between points in the United States in any vessel.*"

The commenters contend that the whole to which "any part" in the above

phrase refers is "the transportation" which the commenters claim means "transported *by water between points in the United States in a vessel.*" The commenters state that the substitution in the 1920 Act of "transportation" for "voyage" was made because the addition of the phrase "or by land and water" meant that some transportation could be done other than by water in a vessel but that, where only water transportation is involved, transportation has the same meaning as voyage previously had, "transported by water in a vessel." Thus, the commenters contend, for section 883 to apply to an all-water movement, there must be a loading of merchandise in a vessel at one United States coastwise point and a transportation in that or another vessel to another United States coastwise point where the cargo is offloaded from the vessel.

The commenters note that Customs has indicated that sections 883 and 316(a) are to be construed *in pari materia* but that each statute has its own application and operates to the exclusion of the other. The transportation of merchandise *in* a vessel and the towing of a vessel *by* another vessel are two different modes of transportation as, the commenters state, Congress has recognized by enacting separate statutes. Further, these commenters contend, there is no legislative history to indicate that the statutes should not be considered and treated separately (i.e., there is no legislative history indicating that transportation between coastwise points via a non-coastwise point *in* a vessel should be linked to towing *by* a vessel).

In examining Customs rulings to illustrate the applicability and interpretation of sections 316(a) and 883, the commenters cite Customs rulings holding that "for there to be a coastwise transportation subject to (section 883), there must be a lading of merchandise at one coastwise point and a transportation of the merchandise to another coastwise point where it is unladen," or similar words to the same effect. The commenters note that Customs has held that "a towing operation is not such a transportation *in* a vessel as will give rise to a penalty under the first portion of section 883 Title 46" and that "[t]he prohibition in section 883 is applicable to merchandise transported in the coastwise trade *in* a non-coastwise-qualified vessel." There is no such transportation by the tug when towing a vessel, according to the commenter, citing C.S.D. 82–74. Since in the dual-mode movement described by the petitioner there is no loading and unloading of the platform jacket on and from the tug, but only on and from the transporting vessel, the commenters contend that section 883 does not apply to such a movement.

In the dual-mode movement described by the petitioner, the commenters reiterate, merchandise will only be carried between the point in the United States at which the platform jacket will be loaded *in* the carrying vessel to a point outside the territorial waters of the United States where the platform jacket will be unloaded from that vessel. Because a towing operation is not transportation *in* a vessel, the entire transportation *in* a vessel is between a coastwise point and a non-coastwise point.

The commenters offer several scenarios to help trace the evolution and application of section 883 and to illustrate the "absurdity" of C.S.D. 85–9. The commenters state that in a dual-mode movement in which a platform jacket is transported in a coastwise-qualified vessel from a coastwise point to a non-coastwise point and is towed by a non-coastwise-qualified vessel from the latter point to another coastwise point, the towing segment of the movement would be prohibited by 46 U.S.C. App. 883, even though it would not be prohibited by 46 U.S.C. App. 316(a) and the carriage segment of the movement would not be prohibited by 46 U.S.C. App. 883. This, the commenters state, is an absurd result which follows from failing to recognized the presence of the phrase "in any vessel" and its effect on the meaning of the term "transportation."

These commenters on the legal aspects of this issue also contend that Customs failed, in its issuance of C.S.D. 85–9, to follow its established (see 19 CFR Part 177) procedures for issuance of a ruling which has the effect of changing a position of the Customs Service which results in a restriction or prohibition. The commenters cite 19 CFR 177.10(c)(2) which requires publication in the **Federal Register** of notice that such a change in position is under review and that interested parties be given an opportunity to comment on the correctness of the contemplated change.

The commenters state that by the issuance of C.S.D. 85–9, changing its position on the subject of that C.S.D. and treating the position adopted in the C.S.D. as the current Customs position, Customs improperly places the burden of modifying or changing the positon back to the one existing before C.S.D. 85–9 on the petitioner or others who would seek a ruling permitting a movement which would be prohibited under C.S.D. 85–9. The commenters submit that comments on this matter should address the issue of whether the position of Customs before C.S.D. 85–9 was correct or, if not, should be modified, and the position of the petitioner should be approved based on the long-standing interpretations of Customs.

Comments Opposing Modification of C.S.D. 85–9

Several of the commenters opposing modification of C.S.D. 85–9 concede that there may not be coastwise-qualified launch barges capable of launching deepwater platforms on the OCS. Another commenter states that permitting the petitioner's proposed movement would not result in any benefit to United States shipbuilders or owners; the only benefit would be to United States manufacturers of platform jackets and foreign manufacturers of launch barges and tugs.

Most of the commenters opposing the modification of C.S.D. 85–9 took the position that the economic arguments, including the possible absence of coastwise-qualified launch barges capable of launching deep-water platforms, are irrelevant to Customs determination of the applicability of the coastwise laws. These commenters contend that the proper forum for consideration of such factors is the United States Congress. Customs responsibility with regard to the coastwise laws, according to these commenters, is to enforce those laws as written, regardless of the economic effect of such enforcement.

In this regard, several of these commenters point out that there are existing waiver mechanisms, both administrative and legislative, which could allow foreign-built launch barges to be used for the launching of United States origin platforms on the OCS. These commenters refer to the provision for waiver of the coastwise laws in the interest of national defense under the Act of December 27, 1950 (64 Stat. 1120), and special legislation granting particular vessels the right to engage in the coastwise trade. Granting the petitioner's request by means of an interpretative ruling instead of using one of these waiver mechanisms would, according to one of these commenters, set a harmful precedent.

Legally, most of the commenters opposing modification of C.S.D. 85–9 contend that the dual-mode movement which the petitioner proposes should be permitted, is a violation of the coastwise laws and the intent of those laws which is, to protect and develop the American

merchant marine. In this regard, one commenter refers to the case of *Port Royal Marine Corp. v. United States*, 378 F. Supp. 345 (S.D. Ga. 1974), *aff'd*, 420 U.S. 901 (1975), as an illustration of its contention that 46 U.S.C. App. 883 should be construed broadly in the face of technological advances so as to continue to fulfill its Congressional purpose.

Several of the commenters opposing modification of C.S.D. 85–9 state that the petitioner's argument that a dual-mode movement is not within the coastwise laws, would result in a loophole in the coastwise laws. One of these commenters states that a dual-mode movement is not different than the transportation in a vessel of cargo from a United States point to a foreign point where the cargo is unloaded and laden onto another vessel and transported to another United States port. Another of these commenters points out that under the dual-mode interpretation advocated by the petitioner, a rig could be towed on a non-coastwise-qualified vessel 99⁹⁄₁₀ miles to a platform installation site 100 miles from the United States mainland and launched to be towed on its own bottom the remaining ¹⁄₁₀ mile. A third commenter states that the petitioner's construction of 46 U.S.C. App. 316(a) and 883 requires a narrow reading of those statutes which is inconsistent with Congressional intent.

Several commenters contend that the petitioner's argument is faulty in the assumption that the towage of a platform does not constitute "transportation" of merchandise under 46 U.S.C. App. 883. One of these commenters cites *Cornell Steamboat Co. v. U.S.A.*, 321 U.S. 634 (1944), in which the Supreme Court held that towage was included within the term "transportation," as that term is utilized in the Interstate Commerce Act.

Another of these commenters, citing *Borough of Brielle v. Zeigler*, 179 A. 2d 789 (1962), and *In the Matter of the Application of Newton Creek Towing Company*, 199 N.Y.S. 866 (1923), states that "transportation" is generally defined as the system or modes of conveyance of persons or goods from one place to another and has been interpreted to include movement by towing vessels, i.e., tugs.

One commenter contends that since 46 U.S.C. App. 883 provides that "no merchandise shall be transported by water, or by land and water, * * * or *for any part of the transportation* in any other vessel than a [coastwise qualified vessel]" (emphasis supplied by commenter), the statute contemplates that its provisions will apply where part of the transportation is effected by modes of conveyance other than a carrier vessel without exclusion of conveyance by towing for a portion of the movement.

Citing *American Maritime Association v. Blumenthal, supra*, 32 Op. Att'y Gen. 350 (1920), 34 Op. Att'y Gen. 355 (1924), and *The Bermuda*, 70 U.S. 514, 553 (1865), the commenter states that 46 U.S.C. App. 883 applies where goods are loaded at a coastwise point, unloaded at a foreign point, and reloaded on another vessel for a coastwise destination. The commenter recognizes that in *Blumenthal*, 46 U.S.C. App. 883 was held not to be applicable because there was no continuity of movement of cargo between two United States coastwise points. The commenter states that the inference drawn from *Blumenthal* and set forth in a final rule of Customs in its amendment of 19 CFR 4.80b at 44 FR 42177 (19/9), that where merchandise being transported by vessel between coastwise points does not undergo substantial change at an intermediate non-coastwise point, but is merely transshipped, the shipper's intent should control, supports the interpretation in C.S.D. 85–9.

The commenter states that in the situation described in the proposed interpretive rule, the shipper intends the drilling jacket to move from a United States coastal point to a point on the OCS which is subject to the coastwise law. The commenter states that the intended intermediate stop on the high seas is not a break in the continuity of the voyage that would create two separate non-coastwise voyages. According to the commenter, the lowering of the drilling jacket from the barge to the water for tow is analogous to a transshipment where two modes of transportation are employed to achieve a single coastwise movement subject to 46 U.S.C. App. 883 and, as a result, a violation would occur where a non-coastwise-qualified vessel was used for the carrying portion of the transportation.

Several commenters dispute the petitioner's arguments that the coastwise laws do not apply to dual-mode movements of the kind described in the notice because a drilling jacket should be treated as merchandise when carried on another vessel and as a vessel, not "merchandise," for purposes of 46 U.S.C. App. 883, when being towed. One commenter argues that the launching of the jacket does not "miraculously" convert the jacket from merchandise to a vessel in such a way to avoid application of 46 U.S.C. App. 883, nor is the launching of the jacket from the launch barge enough of an interruption of the transportation to remove the movement from the confines of that statute (citing *American Maritime Association v. Blumenthal, supra*). Another commenter states that it agrees with Customs position, which the commenter states is apparent from C.S.D. 85–9, that the drilling jacket described in the proposed interpretive rule would be "merchandise," for purposes of 46 U.S.C. App. 883, during its entire movement, both while aboard the carrying barge and while under tow. A third commenter contends that this argument is faulty because the drilling jacket is not a "vessel," as that term is utilized in 46 U.S.C. App. 316(a), citing the definitions of "vessel" in 1 U.S.C. 3 and 46 U.S.C. App. 801 and a number of court decisions, as well as other authorities. Because the drilling jacket is not a "vessel," the commenter states, it is not within the scope of 46 U.S.C. App. 316(a).

One commenter disagrees with the petitioner's contention that maintenance of Customs current position under C.S.D. 85–9 would have "mischievous" consequences because of a conflict between 46 U.S.C. App. 883 and the "vessel in distress" provision of 46 U.S.C. App. 316(a). Because the intent of the coastwise laws is not to impede the protection of life and property at sea, the commenter finds it impossible to believe that a tug operator, obligated by United States and international law to come to the aid of a vessel in distress, would be penalized for doing so.

One commenter states that C.S.D. 85–9 was a proper exercise of Customs powers as an administrative agency. The commenter recognizes that Customs, as part of the Department of the Treasury, is an administrative agency charged with, among other things, the interpretation and enforcement of the coastwise laws. Further, the commenter states that Customs, in the exercise of its rulemaking powers, is subject to the principles of administrative law. Citing several court cases in support, including two of the Supreme Court, the commenter states that an administrative agency may abandon precedent in certain situations. If an agency does decide to depart from precedent, the commenter notes, it is required to explain its reasoning in doing so. The commenter contends that Customs adequately explained its decision to modify its prior decisions in C.S.D. 85–9 and that that decision is therefore valid.

Analysis

With regard to the contention that Customs failed to follow its procedures in issuing C.S.D. 85–9 and improperly

shifted the burden of modifying or changing that position back to the position taken by Customs before C.S.D. 85–9, we recognize that the issuance of C.S.D. 85–9 may not have been in accordance with the Customs procedures set forth in § 177.10(c)(2), Customs Regulations (19 CFR 177.10(c)(2)). We disagree with the argument that C.S.D. 85–9 shifted the burden of modifying or changing Customs position. In our reconsideration of C.S.D. 85–9 and our consideration of the petition, we have carefully considered all evidence submitted to us on the matter as well as any other pertinent evidence or considerations on the proper interpretation of the coastwise laws with regard to the issues considered in C.S.D. 85–9 and raised by the petitioner. We have not presumed that our position before the issuance of C.S.D. 85–9 was correct or incorrect, nor have we presumed that the position taken in C.S.D. 85–9 is correct or incorrect. Whether or not C.S.D. 85–9 was issued in accordance with Customs procedures, we believe that these rulemaking procedures meet the Customs requirements set forth in Part 177.

With regard to the various economic arguments advanced, there is no provision in the coastwise laws under which movements which would otherwise be subject to those laws may be exempt or waived because of the economic effect on the shipbuilding or merchant marine industries, or any other industries. Nor is there any provision for exception or waiver of those laws because United States coastwise-qualified vessels are not or will not be available to perform such movements. Accordingly, considerations such as the lack of coastwise-qualified launch barges and the economic infeasibility of building such barges in the United States, as well as the direct and indirect effect on the United States jacket fabricating and related industries, cannot control our interpretation of the coastwise laws.

As noted by several commenters, there is a statute under which waivers of the coastwise laws can be granted, but only if necessary in the interest of national defense (see the Act of December 27, 1950 (64 Stat. 1120)). At least one such waiver has been granted under this law for the transportation of a large drilling and production jacket from the United States to a site on the OCS. We are aware of special legislative provisions permitting specifically named vessels to be documented for the coastwise trade. Also, a considerable number of general provisos have been added to the coastwise laws under which non-coastwise-qualified vessels may be used to engage in activities which would otherwise be considered coastwise trade. As noted above, Pub. L. 100–329, enacted on June 7, 1988, permits the use of certain non-coastwise-qualified launch barges to transport large platform jackets from U.S. points to OCS sites and launch them at those sites. We believe that the proper mechanisms for consideration of the economic and other factors described in the previous paragraph are legislation by the Congress and/or the waiver provision.

We concur with the contention that 46 U.S.C. App. 883 should be construed strictly because it imposes a severe penalty, that of forfeiture of the merchandise transported or a monetary amount up to the value thereof. We also recognize that under the immediate predecessor to the 1920 Jones Act (46 U.S.C. App. 883) (section 1 of the Act of February 17, 1898 (30 Stat. 248)), the movement described by the petitioner *might* not have been prohibited (because the 1898 Act prohibited the transportation of merchandise by water between ports of the United States, "or for any part of the *voyage*," in any vessel not of the United States), depending on the definition given to the word "voyage" (but see, 29 Op. Att'y Gen. 572, 576 (1912), discussed *infra*).

Section 27 of the Act of June 5, 1920 (46 U.S.C. App. 883; 41 Stat. 999, often called the Jones Act), now provides, in pertinent part, that:

> No merchandise shall be transported by water, or by land and water, on penalty of forfeiture of the merchandise (or a monetary amount up to the value thereof * * *), between points in the United States * * * embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States * * *.

Our interpretation of the parts of this provision which are applicable to a dual-mode movement is that they apply to merchandise transported by water, or land and water, between points in the United States embraced within the coastwise laws in any vessel, or to any part of transportation of merchandise by water, or land and water, between points in the United States embraced within the coastwise laws when that part of the transportation is in any vessel (regardless of whether or not all of the transportation between points in the United States embraced within the coastwise laws is *in* a vessel). To interpret the statute to apply to merchandise transported by vessel between points in the United States embraced within the coastwise laws in any vessel, or to any part of transportation between points in the United States only when *all* of the transportation is *in* a vessel ignores the changes made to the 1898 Act in 1920.

Clearly, transportation by land is not transportation "*in* any vessel." Yet, just as clearly, transportation by land from a point in the United States to a foreign or other non-coastwise point and by water in a non-coastwise-qualified vessel from that point to a second point in the United States would be prohibited by 46 U.S.C. App. 883 as a result of the addition of the words "or by land and water" in the 1920 Act. Thus, it is clear that not all of the transportation referred to in the phrase "or for any part of the transportation" in the statute need be *in* a vessel for the statute to be applicable.

Another change made in the 1898 Act by the 1920 Act was the substitution of the word "transportation" for the word "voyage" in the phrase "or for any part of the voyage." Even if the word "voyage" is defined narrowly, to include only movements *in* a vessel, so that the pre-1920 Act would not apply to the movement described by the petition, it must be conceded that the word "transportation" has a broader coverage than that narrow definition of the word "voyage" (see *Webster's New International Dictionary of the English Language*, 2d Ed. 1953; see also the court cases cited by the commenters opposing modification of C.S.D. 85–9 in which towage is included within the term "Transportation"). Thus, the 1920 Act broadened the "or for any part of the transportation" clause. It is not apparent that, as contended by three of the commenters supporting modification of C.S.D. 85–9, this broadening change was intended only with regard to transportation by land and water and not with regard to transportation by water only, nor is this apparent from the current statutory provision.

With regard to the *United States* v. *1,500 Cords, More or Less, Jackpine Pulpwood*, 108 F.Supp. 224 (W.D. Wis. 1952), *aff'd*, 204 F. 2d 760 (7th Cir. 1953), Customs has taken the position that the *1,500 Cords* decision should be limited to the facts of the case in view of the limitation in the case on the application of 46 U.S.C. App. 883 to transportation in interstate commerce. In any event, however, the *1,500 Cords* case is clearly a court decision indicating that a "transportation" of merchandise, within the terms of 46 U.S.C. App. 883, may occur even though the merchandise transported is not actually "in" the

vessel (as noted *supra*, the Attorney General, in 29 Op. Att'y Gen. 572, so stated with regard to the predecessor of 46 U.S.C. App. 883).–

In our view, the "whole" to which the phrase, "or for any part of the transportation" refers is simply defined by the words preceding it (i.e., "no merchandise shall be transported by water, or by land and water * * * between points in the United States * * * embraced within the coastwise laws, either directly or via a foreign port"). Thus, what is prohibited by virtue of this clause of the statute is any part of the transportation described previously by the statute, including any part of transportation by water between points in the United States embraced within the coastwise laws when, in the words of the statute following this clause, that part of the transportation is "in any vessel other than a [coastwise-qualified] vessel."

This interpretation does not, as stated by three of the commenters contending that C.S.D. 85–9 should be modified, bring about the "absurd" result that a towing vessel would be subject to 46 U.S.C. App. 883 whenever it engages in a dual-mode movement, even if the carrying part of the movement was performed by a coastwise-qualified vessel and/or the towed vessel was in distress. What is prohibited by virtue of the "or for any part of the transportation" clause is a part of transportation by water or by land and water, when the part of the transportation is "*in* any vessel other than a [coastwise-qualified] vessel." In a dual-mode movement, in the segment of the movement in which the merchandise is towed in the water, the merchandise obviously is not transported *in* a vessel although, as discussed above, that segment of the movement does constitute "transportation."

The intention of 46 U.S.C. App. 883 is "to protect the American shipping industry already engaged in the coastwise trade, to provide work for American shipyards, and to improve and enhance the American Merchant Marine" (*Marine Carriers Corp. v. Fowler*, 429 F. 2d 702, 708 (2d Cir. 1970), *cert. den.*, 400 U.S. 1020 (1971)). Our interpretation of the coastwise laws with regard to the dual-mode movement under consideration, as described above and as applied in C.S.D. 85–9, is consistent with this intention.

Several of the commenters supporting modification of C.S.D. 85–9 limit their arguments to the practical, economic side and state that they concur with the legal and technical rationale offered by the petitioner. This rationale was summarized in the Notice. The only argument in the petition which is not addressed above is that in order for there to be a coastwise transportation within the terms of 46 U.S.C. App. 883, there must be a lading of merchandise onto a vessel at one coastwise point and an unlading of the merchandise from the vessel at another coastwise point. Since, in the dual-mode movement described in the Notice, the jacket is unladen from the carrying vessel at a non-coastwise point, the petitioner contends that there can be no coastwise transportation within the terms of 46 U.S.C. App. 883.

As pointed out above in the discussion of the "or for any part of the transportation" clause of 46 U.S.C. App. 883, § 883 applies to the transportation of merchandise by water, "or by land and water." In transportation by land and by water (e.g., by vessel from a point in the United States to a point in Canada and by land from that point to another point in the United States), there would not be a lading of the merchandise onto the vessel at one coastwise point and an unlading of the merchandise from the vessel at another coastwise point. Thus, it is clear that a lading of merchandise onto a vessel at one coastwise point and an unlading of the merchandise from the vessel at another coastwise point is not always necessary in order for transportation of merchandise to be subject to 46 U.S.C. App. 883.

Several of the commenters opposing modification of C.S.D. 85–9 analogize the dual-mode movement described in the proposed interpretive rule to transportation of merchandise in one vessel from a United States point to a foreign port or to a point on the high seas where the merchandise is landed and then loaded onto another vessel, or transshipped to another vessel, and from which port or point the merchandise is transported in the second vessel to a second United States point. Although this transportation may be somewhat similar to the dual-mode movement described in the proposed interpretive rule, such transportation via a foreign port is actually subject to 46 U.S.C. App. 883 by virtue of a different clause of that statute ("either directly or via a foreign port"). Such transportation involving a transshipment on the high seas concerns statutory interpretive issues which are different from those raised by the dual-mode movement described in the proposed interpretive rule.

Some of the commenters opposing modification of C.S.D. 85–9 contend that permitting the dual-mode movement described in the proposed interpretive rule would create a loophole in the coastwise laws which was not intended by the Congress, one comparing the percentage of carriage and towing in such a movement. This may or may not be so. Our determination as to the applicability of the coastwise laws to the dual-mode movement described in the proposed interpretive rule must, however, be based on a clear reading and thorough consideration of the laws involved, not a mechanical weighing of the respective proportions of the carrying and towing segments in a dual-mode movement or an evaluation of whether a movement is intended to evade the coastwise laws. We believe that our interpretation reflects just such a reading and consideration of the coastwise laws.

Action

After careful analysis of the comments and following further review of the matter, we find that the ruling in C.S.D. 85–9 should stand. That ruling modified C.S.D. 80–96 and similar rulings so that the movement of a vessel on another vessel from a coastwise point to a foreign point or a point on the high seas where the vessel is removed from the carrying vessel and then towed onward to another coastwise point is considered coastwise trade. Accordingly, the carrying vessel in this kind of movement must be coastwise-qualified.

Authority

This document is issued under the authority of 19 U.S.C. 66, 1624; 46 U.S.C. App. 13, 316(a), 319, 802, 808, 883, 883–1, and 46 U.S.C. 12106.

Drafting Information

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

Michael H. Lane,

Acting Commissioner of Customs.

Approved: December 5, 1988.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 89–1451 Filed 1–23–89; 8:45 am]

BILLING CODE 4820–02–M

19 CFR Part 152

Dutiability of Quota Charges; Solicitation of Comments

AGENCY: U.S. Customs Service, Treasury.

ACTION: Extension of comment period.

SUMMARY: This notice extends the period of time within which interested members of the public may submit

comments concerning the dutiability of quota charges. Customs proposed, in a notice published in the **Federal Register** (53 FR 46626) on November 18, 1988, that all quota charges paid as a prerequisite to the exportation of foreign merchandise to the United States will be dutiable, regardless of to whom they are paid. Comments were invited from the public on this proposal. Comments were to be received on or before January 17, 1989. A request has been received to extend the period of time for comments an additional 30 days. In view of the complexity of the issues involved, the request is being granted.

DATE: Comments will now be accepted if received on or before February 17, 1989.

ADDRESS: Comments should be submitted to and may be inspected at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229.

All comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days, at the address above.

FOR FURTHER INFORMATION CONTACT: Thomas L. Lobred, Commercial Rulings Division, (202–566–2938).

Dated: January 13, 1989.

R. Rosettie,

Acting Assistant Commissioner, Commercial Operations.

[FR Doc. 89–1447 Filed 1–23–89; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Enrofloxacin Tablets

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 new animal drug application (NADA) filed by Mobay Corp., Animal Health Division. The NADA provides for use of Baytril® (enrofloxacin) Tablets for the treatment of susceptible bacterial infections in dogs.

EFFECTIVE DATE: January 24, 1989.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: Mobay Corp., Animal Health Division, P.O. Box 390, Shawnee Mission, KS 66201, filed NADA 140–441 providing for use of Baytril® (enrofloxacin) Tablets. The product is used to treat bacterial dermal, respiratory, and urinary tract infections of dogs. The NADA is approved and the regulations are amended by adding new 21 CFR 520.812 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

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

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

List of Subjects in 21 CFR Part 520

Animal drugs.

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, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Part 520 is amended by adding a new § 520.812 to read as follows:

§ 520.812 Enrofloxacin tablets.

(a) *Specifications.* Each tablet contains either 5.7, 22.7, or 68.0 milligrams of enrofloxacin.

(b) *Sponsor.* See No. 000859 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount* 2.5 mg/kg (1.13 mg/lb) of body weight twice daily.

(2) *Indications for use.* Dogs for treatment of the following bacterial infections: dermal infections (wounds and abscesses) caused by susceptible strains of *Escherichia coli, Klebsiella pneumoniae, Proteus mirabilis,* and *Staphylococcus aureus;* respiratory infections (pneumonia, tonsilitis, rhinitis) caused by susceptible strains of *Escherichia coli* and *Staphylococcus aureus;* and urinary cystitis caused by susceptible strains of *Escherichia coli, Proteus mirabilis,* and *Staphylococcus aureus.*

(3) *Limitations.* Treatment should be continued for 2 to 3 days beyond cessation of clinical symptoms. Do not use for more than 10 days. Safe use in breeding female dogs has not been established. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: January 12, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89–1444 Filed 1–23–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 207 and 255

[Docket No. R–89–0953; FR–2511]

Revisions Relating to the Full Insurance and Coinsurance of Existing Cooperatives

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule revises certain overly restrictive provisions contained in HUD regulations authorizing FHA full insurance or coinsurance of existing cooperative housing projects. The provisions relate to cooperative mortgagor eligibility, secondary financing limitations and the maximum refinancing mortgage allowable. The purpose of the rule is to remove unnecessarily restrictive program participation requirements.

EFFECTIVE DATE: March 6, 1989.

FOR FURTHER INFORMATION CONTACT: James Hamernick, Office of Multifamily Housing Development, Room 6132, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755–6500. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

On June 24, 1985 at 50 FR 25940, HUD revised its regulations concerning FHA insurance of mortgages covering existing multifamily housing projects (24 CFR 207.32a) to expressly include cooperative housing projects. In doing so, language was included which, while perhaps workable in connection with mortgages covering newly constructed or substantially rehabilitated cooperative projects, has been shown to be inappropriate for the insurance of existing projects. Without the clarifying revisions contained in this rule, a significant number (perhaps a majority) of existing projects which would normally be expected to utilize this type of FHA insurance to refinance their cooperative mortgage debt might not be able to do so. The revisions proposed herein are more technical than substantive in nature and are intended to remedy this situation. They reflect no new policies of the Department but rather, are designed to carry out existing policy more effectively.

The intent of the 1985 revision was to improve the availability of section 223(f) mortgage insurance and coinsurance for refinancing existing cooperative projects and for financing the purchase of an existing rental project involving conversion to cooperative ownership. In doing so, reference was made to a "cooperative mortgagor", which was described as a nonprofit cooperative ownership housing corporation or nonprofit cooperative ownership housing trust, *where permanent occupancy of the dwellings is restricted to members of such corporations or to beneficiaries of such trusts.* This description was inadvertently carried over from definitions used in HUD's other programs for cooperative projects (*e.g.*, 24 CFR Parts 213, 221 and 236). The restrictive nature of the italicized language tracks statutory language found in section 213 of the National Housing Act. Insurance of mortgages covering existing multifamily projects are insured under section 207 of the Act, which contains no such restrictive language, rather than section 213. During the development of handbook instructions for insurance and coinsurance of existing cooperatives, HUD found that this language could be interpreted in such a way as to render many existing cooperative projects ineligible because they contain some units held by non-occupant owners. To make clear that such projects are eligible, this rule revises § 207.32a(m) of the current regulation.

Another potential problem that came to light during dvelopment of handbook instructions concerns certain limitations on secondary financing under the existing regulations. The transfer of an individual cooperative unit often involves financing (share loans) outside of the project mortgage financing undertaken by the cooperative (corporation) mortgagor. In many states, these individual unit or share loans are considered personal property loans, as opposed to real property financing, and as such would not present a problem in terms of the limitations on secondary financing under Parts 207 or 255 of HUD's regulations. However, in some states (*e.g.*, California and Florida), these loans made to individual cooperative members may be treated as debt against the property (project) and, therefore, the existence of such loans could be in violation of the current program regulations. This rule amends Parts 207 (§ 207.32a[])(6)) and 255 (§ 255.504(g)) to exclude "share" or "membership" loans by individual cooperative members from limitations on secondary financing applicable to the project as a whole.

Finally, the rule adds a provision to § 207.32a(d) requiring that the maximum mortgage on a cooperative project be based solely on the cost to finance the existing indebtedness. (This provision was inadvertently omitted in the 1985 revision but appears, correctly, in the current coinsurance regulation at § 255.203(d)(2).)

Procedural Requirements

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule 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 the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

The catalog of Federal Domestic Assistance program numbers are 14.135 and 14.137.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule makes it feasible for a limited number of cooperatives to obtain the benefits of FHA mortgage insurance not otherwise available to them.

This rule was listed as item # 985 in the Department's Semiannual Agenda of Regulations published on October 24, 1988 (53 FR 41974, 41995) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 207

Mobile homes, Mortgage insurance, Solar energy.

24 CFR Part 255

Mortgage insurance, Coinsurance of multifamily mortgages.

Accordingly, 24 CFR Parts 207 and 255 are amended as follows:

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

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

Authority: Secs. 207, 211, National Housing Act (12 U.S.C. 1713, 1715b); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Sections 207.258 and 207.258b are also issued under section 203(e), Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z–11(e)).

2. Section 207.32a is amended by revising paragraph (j)(1) introductory text, by adding a new paragraph (j)(6) and by revising paragraphs (d) and (m) to read as follows:

§ 207.32a Eligibility of mortgages on existing projects.

* * * * *

(d) *Maximum mortgage amounts-property to be refinanced.* If property is to be refinanced by the insured mortgage without a change of ownership, or if property is sold to a purchaser who has an identity of

interest with the seller and the purchase is to be financed with the insured mortgage, then the maximum mortgage amount shall not exceed:

(1) In the case of a rental project, the greater of—

(i) 70 percent of the Commissioner's estimate of value of the property; or

(ii) The cost to refinance the existing indebtedness, which will consist of the following items, the eligibility and amounts of which must be determined by the Commissioner:

(A) The amount required to pay off the existing indebtedness;

(B) The amount of the initial deposit for the reserve fund for replacements;

(C) Reasonable and customary legal, organizational, title, and recording expenses, and fees including discounts charged by the mortgagee;

(D) The estimated repair costs, if any;

(E) Architect's and engineer's fees, municipal inspection fees, and any other required professional or inspection fees.

(2) In the case of a cooperative project, the cost to refinance the existing indebtedness as defined in paragraph (d)(1)(ii) of this section.

* * * * *

(j) *Secondary financing.* (1) Except as provided in paragraphs (j)(5) and (j)(6) of this section, when a loan is made to finance the purchase of an existing multifamily housing project, the mortgagor may not have any additional obligations in connection with the transaction that exceed the lesser of:

* * * * *

(6) The limitations on secondary financing described in this paragraph (j) do not apply to loans taken by individual cooperative members to finance "share" or "membership" purchases or unit transfers.

* * * * *

(m) *Additional eligibility requirements for cooperative projects.* For those projects in which the mortgagor is a nonprofit cooperative ownership housing corporation, the mortgagor must require membership eligibility and transfer of membership in the cooperative in a manner approved by the Commissioner:

(1) The mortgagor must be regulated or supervised under State laws or by a political subdivision of a State, or agencies thereof;

(2) A General Operating Reserve must be established and maintained, in accordance with standards established by the Commissioner, throughout the period that the mortgage insurance is in force; and

(3) In the case of the conversion of a property to cooperative ownership, the mortgage will be accepted for insurance only where the Commissioner determines that:

(i) The conversion of the property to cooperative ownership is sponsored by a bona fide tenants' organization representing a majority of the households in the project;

(ii) Continuation of the property as rental housing is unnecessary to assure adequate rental housing opportunities for low and moderate income people in the community; or

(iii) Continuation of the property as rental housing would have an undesireable and deleterious effect on the surrounding neighborhood.

PART 255—COINSURANCE FOR THE PURCHASE OR REFINANCING OF EXISTING MULTIFAMILY HOUSING PROJECTS

3. The authority citation for Part 255 continues to read as follows:

Authority: Secs. 211, 244, National Housing Act (12 U.S.C. 1715b, 1715z–9), sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. Paragraph (b) of § 255.3 is revised to read as follows:

§ 255.3 Definitions.

* * * * *

(b) "Cooperative Mortgagor" means a nonprofit cooperative ownership housing corporation regulated under State law and by the lender under a regulatory agreement, and which requires membership eligibility and transfer of membership in a manner approved by the Commissioner.

* * * * *

5. Section 255.504 is amended by adding at the end thereof the following new paragraph (g) to read as follows:

§ 255.504 Mortgage lien and other obligations.

* * * * *

(g) The limitation on secondary financing described in this section does not apply to loans taken by individual cooperative members to finance "share" or "membership" purchases or unit transfers.

Date: January 17, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 89–1511 Filed 1–23–89; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Supplemental List of Specially Designated Nationals (Cuba)

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice of additions to the list of specially designated nationals.

SUMMARY: This notice provides the names of firms that have been added to the list of Specially Designated Nationals under the Treasury Department's Cuban Assets Control Regulations (31 CFR Part 515).

ADDRESS: Copies of the list of Specially Designated Nationals are available upon request at the following location: Office of Foreign Assets Control, 1331 G Street NW., Room 300, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Richard J. Hollas, Chief, Enforcement Division, Office of Foreign Assets Control, Tel: (202) 376–0400.

SUPPLEMENTARY INFORMATION: Under the Cuban Assets Control Regulations, persons subject to the jurisdiction of the United States are prohibited from engaging, directly or indirectly, in transactions with any nationals or specially designated nationals of Cuba, or involving any property in which there exists an interest of any national or specially designated national of Cuba, except as authorized by the Treasury Department's Office of Foreign Assets Control by means of a general or specific license.

Section 515.302 of Part 515 defines the term "national," in part, as (a) a subject or citizen domiciled in a particular country, or (b) any partnership, association, corporation, or other organization owned or controlled by nationals of that country, or that is organized under the laws of, or that has had its principal place of business in that foreign country since the effective date (for Cuba, 12:01 a.m., e.s.t., July 8, 1963), or (c) any person that has directly or indirectly acted for the benefit or on behalf of any designated foreign country. Section 515.305 defines the term "designated national" as Cuba or any national thereof, including any person who is a specially designated national. Section 515.306 defines "specially designated national" as any person who has been designated as such by the Secretary of the Treasury; any person who, on or since the effective date, has either acted for or on behalf of the government of, or authorities exercising

control over any designated foreign country; or any partnership, association, corporation or other organization that, on or since the applicable effective date, has been owned or controlled directly or indirectly by such government or authorities, or by any specially designated national. Section 515.201 prohibits any transaction, except as authorized by the Secretary of the Treasury, involving property in which there exists an interest of any national or specially designated national of Cuba. The list of Specially Designated Cuban Nationals is a partial one, since the Department of the Treasury may not be aware of all the persons located outside Cuba that might be acting as agents or front organizations for Cuba, thus qualifying as specially designated nationals of Cuba. Also, names may have been omitted because it seemed unlikely that those persons would engage in transactions with persons subject to the jurisdiction of the United States. Therefore, persons engaging in transactions with foreign nationals may not rely on the fact that any particular foreign national is not on the list as evidence that it is not a specially designated national. The Treasury Department regards it as incumbent upon all U.S. persons engaging in transactions with foreign nationals to take reasonable steps to ascertain for themselves whether such foreign nationals are specially designated nationals of Cuba, or other designated countries (at present, Cambodia, North Korea, and Vietnam). The list of Specially Designated Nationals was last published on December 10, 1986, in the **Federal Register** (51 FR 44459), and was amended on November 3, 1988 (53 FR 44397).

Please take notice that section 16 of the Trading with the Enemy Act (the "Act"), as amended, provides in part that whoever willfully violates any provision of the Act or any license, rule or regulation issued thereunder:

> Shall, upon conviction, be fined not more than $50,000, or, if a natural person, imprisoned for not more than ten years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by a like fine, imprisonment, or both, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, concerned in such violation shall be forfeited to the United States.

In addition, persons convicted of an offense under the Act may be fined a greater amount than set forth in the Act, as provided in 18 U.S.C. 3623.

Authority: 50 U.S.C. App. 5(b) and 18 U.S.C. 3623.

Specially Designated Nationals of Cuba

Acefrosty Shipping Co., Ltd., 171 Old Bakery St., Valletta, Malta
Ace Indic Navigation Co., Ltd., Malta
Aimoros Shipping Co., Valletta, Malta
Caribbean Princess Shipping, Ltd., Limassol, Cyprus
Caribbean Queen Shipping, Ltd., Limassol, Cyprus
Edyju, S.A., Panama
Elshippers, Inc., Monrovia, Liberia
Global Marine Overseas Inc., Panama
Guamar Shipping Co., S.A., Panama
Lopez, Quirino Gutierrez, c/o Anglo Caribbean Shipping Co., Ltd., 7th Floor, Ibex House, Minories, London, EC3N, UK
Manzper Corp., Panama
Naviera Maritima de Arosa, S.A., Paseo de Pereda 36, Apartado 141, 39004, Santander, Spain
Pioneer Shipping Ltd., Valletta, Malta
Pocho Navigation Co., Ltd., Limassol, Cyprus
Shipley Shipping Corp., Panama
Temis Shipping Co., Panama
United Fair Agencies, Ltd., 1202 Carrian Center, 151 Gloucester Rd., Wanchai, Hong Kong
Violet Navigation Co., Ltd., Limassol, Cyprus

Property in which Designated Nationals of Cuba Have an Interest

For purposes of the prohibitions in 31 CFR Part 515, there is reasonable cause to believe that the following vessels constitute property in which a designated national of Cuba has an interest:

ACECHILLY (Acechilly Navigation Co., Malta)
ACEFROSTY (Acefrosty Shipping Co., Malta)
ALEGRIA DE PIO (Naviera Maritima de Arosa, Spain)
CARIBBEAN PRINCESS (Caribbean Princess Shipping, Cyprus)
CARIBBEAN QUEEN (Caribbean Queen Shipping, Cyprus)
CICLON (Senanque Shipping Co., Cyprus)
COTTY (Heywood Navigation Corp., Panama)
CRIOLLO (Senanque Shipping Co., Cyprus)
FLYING DRAGON (Flight Dragon Shipping Ltd., Malta)
FRIGO HISPANIA (Ace Indic Navigation Co., Malta)
GRACE L. (Elshippers, Inc., Liberia)
HERMANN (Guamar Shipping Co., S.A., Panama)
HURACAN (Senanque Shipping Co., Cyprus)
LAS COLORADOS (Naviera Maritima de Arosa, Spain)
LAURA (Aimoros Shipping Co., Malta)
MAR AZUL (Senanque Shipping Co., Cyprus)
PALMA MOCHA (Naviera Maritima de Arosa, Spain)
PINO DEL AGUA (Naviera Maritima de Arosa, Spain)
RAHIM 3 (Pioneer Shipping Ltd., Malta)
ROSE ISLANDS (Shipley Shipping Corp., Panama)
TIFON (Senanque Shipping Co., Cyprus)
TULIP ISLANDS (Pocho Navigation Co., Cyprus)
VIOLET ISLANDS (Violet Navigation Co., Cyprus)

Date: January 5, 1989.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: January 11, 1989.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 89-1558 Filed 1-19-89; 11:05 am]
BILLING CODE 4810-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13 88-19]

Drawbridge Operation Regulations; Isthmus Slough, OR

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Oregon Department of Transportation (ODOT), the Coast Guard is changing the regulations governing the bascule bridge across Isthmus Slough, mile 1.0, at Coos Bay, Oregon, by requiring that 24 hours advance notice be given for bridge openings. This change is being made because of a steady decrease in requests for opening the draw. This action will allow ODOT to change the locking mechanism from electrical to manual, resulting in a more economical, but slower operation of the draw while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on February 23, 1989.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch, (Telephone: (206) 442-5864).

SUPPLEMENTARY INFORMATION: On November 1, 1988, the Coast Guard published a proposed rule (53 FR 44038) concerning this amendment. The Commander, Thirteenth Coast Guard District, also published the proposal in a public notice dated November 10, 1988.

In each notice interested persons were given until December 16, 1988, to submit comments.

Drafting Information

The drafters of this notice are: Austin Pratt, project officer, and Lieutenant Deborah R. Schram, project attorney.

Discussion of Comments

No objections to the proposed rule were received in response to either notice. The U.S. Fish and Wildlife Service, the sole respondent, expressed no objection to the rule change.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal has been found to be so minimal that a full regulatory evaluation is unnecessary. Navigation and marine related interests will not be significantly affected by this final rule because the subject bridge is opened infrequently for vessels. The reasonable needs of these interests will still be met by the changed regulations. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.879 is revised to read as follows:

§ 117.879 Isthmus Slough.

The draw of the Oregon State secondary highway bridge, mile 1.0, at Coos Bay, shall open on signal if at least 24 hours notice is given.

Dated: January 11, 1989.

D.C. O'Donovan, Capt., USCG,

Acting Commander, 13th Coast Guard District.

[FR Doc. 89–1539 Filed 1–23–89; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Part 233

Essential Persons; Eligibility Coverage and Conditions

AGENCY: Family Support Administration, HHS.

ACTION: Final rule.

SUMMARY: This regulation precludes States from considering individuals who do not provide an essential benefit or service to a family from being considered to be essential persons under the Aid to Families with Dependent Children (AFDC) program. Current regulations do not limit the individuals whom States may include as "essential persons" in payments under the AFDC program. This clarification would ensure that only those individuals who are actually providing an essential benefit or service to the family could receive AFDC payments, if not otherwise eligible.

EFFECTIVE DATE: January 24, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Diann Dawson, Director, Division of Policy, OFA, Family Support Administration, 5th Floor, 370 L'Enfant Promenade SW., Washington, DC 20447, telephone 202–252–5116.

SUPPLEMENTARY INFORMATION:

Timing and Form of Regulation

On October 5, 1987, a Notice of Proposed Rulemaking for the Aid to Families and Dependent Children program was published in the **Federal Register** (52 FR 37183–37185). It stated that in order to be considered an essential person the individual must provide an essential benefit or service.

Background

The Social Security Act at sections 402 and 406 and the implementing regulation at § 233.20(a)(2)(vi) permit States, at their option, to include in the AFDC grant benefits for "essential persons." Such individuals are not eligible for AFDC in their own right, but their needs are taken into account in determining the benefits payable to the AFDC family because they are considered "essential to the well-being" of an AFDC recipient in the family.

Twenty-four States currently include the option as part of their respective State Plans. A wide variety of individuals are included as essential persons. The definition and categories of essential persons vary from State to State, including the following:

—Unemployed or incapacitated stepparents living in the home with eligible children and the natural parent;
—Individuals age 18–21 who are not attending school;
—A relative necessary to provide child care or other services because the caretaker is incapacitated or employed;
—A second natural or adoptive parent living in the home;
—The needy spouse of the caretaker relative;
—Stepparents who work fewer than 100 hours per month;
—An unmarried individual who has a child in common with the caretaker relative.

Since 1943, Federal policy has recognized the concept of the essential person in the AFDC program. Such benefit or service may be provided directly to a recipient, or provided to someone else in the home so long as the well-being of the recipient is thereby promoted.

The Social Security Amendments of 1967 (Pub. L. 90–248) amended sections 402 and 406 of the Act to provide a specific statutory base for an essential person policy. The implementing regulations permit States to specify those individuals considered essential. States are also required to provide recipients with the final decision as to whether individuals are in fact essential. Accordingly, in implementing this provision, the Department has allowed States to simply identify the categories of individuals considered to be essential in their State plans without requiring them to identify the benefits or services that such individuals specifically have to provide in order to be considered essential.

In light of recent Congressional amendments to title IV–A of the Act, and subsequent changes which States have made in their State plans, we have re-evaluated the current regulation. For example: In 1981, Congress amended section 406(a)(2) of the Act to exclude students age 19 to 21 from the definition of a dependent child. Some States then included such children categorically as essential persons, without regard to such individual's provision of an essential benefit or service. This is an indication that some States are using the essential person provision to circumvent and/or avoid Congressional intent.

Three States, in particular, seem to be using the essential person provision to extend benefits to 19 and 20 year-olds. These States account for an estimated 55 percent of all AFDC essential persons nationwide, but 72 percent of all AFDC

essential persons aged 19 and 20 live in these three States.

From another perspective, in these same three States, we estimate that 45 percent of the 19 and 20 year-olds living in AFDC households who are not otherwise receiving AFDC benefits as eligible adults, are included as essential persons. This is in contrast to five other States that explicitly require the provision of essential services, where only an estimated 3 percent of 19 and 20 year-olds in AFDC households are included as essential persons.

Data from the years 1981 and 1982 very strongly suggest that States did in fact shift older children made ineligible by the Omnibus Budget Reconciliation Act of 1981 (OBRA) onto the AFDC rolls as essential persons. In 1981, our data showed 4,500 cases with individuals over the age limit (for a dependent child) who were not classified as adult recipients. In 1982, this figure was 23,000 cases—a fivefold increase. Further evidence that 18 to 21-year-old recipients previously considered dependent children were apparently converted to essential person status in order to obtain additional Federal funds comes from examining data from two large States. There, the 1982 figure for the total number of individuals over 18 who were not adult recipients was very similar to the 1981 number of 18 to 21-year-old dependent children. These two States accounted for about 18,000 of the 23,000 cases nationwide. Today they continue to carry a large number of 18 to 21 year-olds as essential persons.

These same two States are using the essential person provision to directly shift the financial burden of State assistance programs to the Federal government. For example, one State specifies that a minor child ineligible for AFDC in his own right, but who is eligible for General Assistance, may be considered to be essential. The other State includes eligibility for public assistance other than AFDC as a factor in determining essential person status. These two States account for approximately 45% of the total expenditures for essential persons.

In addition to the problems which we identified regarding the categorical inclusion of broad groups of individuals, the Office of Inspector General, in a recent review, discovered other individual situations where persons who were in no position to provide essential benefits or services to an AFDC family were classified as essential. These individuals included a two-year-old and a drug addict. In another case, seven individuals were classified as essential persons for a single AFDC household.

Discussion of Regulation

Based on these experiences, it is clear that the needs of non-essential persons are being covered under the AFDC program as essential persons. Therefore, we are amending the regulation to emphasize that in order to be considered an essential person, an individual must provide an essential benefit or service. In the proposed rule, essential benefits and services were limited to two specific services. We have now expanded the list as a result of public comment to include three other services in addition to the two which were previously listed in the **Federal Register** on October 5, 1987, at 52 FR 37184. The complete list of benefits or services which are considered essential are as follows:

(1) The provision of child care which enables a caretaker relative to work on a full-time paid basis outside the home;

(2) Care for an incapacitated family member in the home;

(3) The provision of child care that enables a caretaker relative to receive training full-time;

(4) The provision of child care that enables a caretaker relative to attend high school (or General Education Development (GED) classes) full-time; and

(5) The provision of child care for a period not to exceed two months that enables a caretaker relative to participate in Employment Search or another AFDC work program.

For purposes of (1), (3), and (4) above, the State is free to define "full-time." However, the definition, applicable both to minor and adult caretaker relatives, must be consistent with the definition of full-time that the State uses for purposes of the earned income disregards at 45 CFR 233.20(a)(11).

With regard to (2) above, we note that the requirements for determining incapacity are similar to those set out at § 233.90(c)(1)(iv) for a State to find that a parent is incapacitated for AFDC purposes. Thus, we expect that States would have little difficulty in making incapacity determinations.

Moreover, to assure the likelihood of success of these policies, we are also modifying the regulation to require that a member of the State agency supervisory staff affirm the recipient's choice of essential person and agree, based on the evidence, that the designated individual does in fact meet the definitional requirements of an essential person. For purposes of this determination, a member of the State agency supervisory staff is a person of a higher position or authority than the first line caseworker or income maintenance intake employee. Since the AFDC and Adult Assistance programs are administered in a similar manner, we have added that change to the Adult Assistance regulation at § 233.20(a)(2)(vi) as well.

While we are not proposing any additional reporting or recordkeeping requirements, we would expect States, pursuant to 45 CFR 205.60(a) and 206.10(a)(9)(iii), to continue to make periodic determinations that individuals included as essential persons meet the definitional requirements for an essential person, and maintain appropriate written documentation in the AFDC case record of the essential person determination. Appropriate documents might include items such as the recipient's request that the individual be included as an essential person, the basis under which the individual was determined to be an essential person, and information necessary to support the determination (such as information on the nature, regularity, and length of service and on the capacity of the individual to provide such an essential benefit or service). In a case where more than one individual was to be classified as an essential person, such as in a case of severe incapacity, the documentation would have to include justification of the need for more than one essential person.

In the proposed rule, we solicited comments as to whether a specific regulatory change to further clarify this policy would be of value. We did not receive any comments on this issue. As a consequence, no regulatory changes have been made to further describe this documentation requirement.

Finally, States would still be free to limit essential person status to categories of individuals, such as grandparents or the needy spouse of a caretaker, but only if such individuals are actually providing an essential benefit or service. Likewise, States may specify a minimum age for classification of an individual as an essential person.

Discussion of Comments

Comments were received from 18 interested parties regarding the proposed rule on the essential person provision. The commenters include 12 State welfare agencies, 3 County and City welfare agencies, and 3 welfare rights and legal groups. These comments are discussed below:

Comment: In the proposed rule, the essential benefits or services are limited to (1) the provision of child care which enables a caretaker relative to work on a full-time paid basis outside the home, and (2) care for an incapacitated family

member in the home. Several commenters made suggestions for expanding the list of services. Most of their suggestions focused on the inclusion of child care so that a caretaker could participate in a work program or attend school.

Response: Having considered the many services that were recommended for inclusion, we have determined that the list of essential services should be expanded. (See "Discussion of Regulation" above.) In reviewing the suggestions for additional services, we considered an important goal of the AFDC program; i.e., to promote recipient self-sufficiency by encouraging family members to seek employment. As a consequence, we are adding three additional services to the two that were listed in the proposed rule which will assist AFDC families in achieving that goal. The additional services are: (1) The provision of child care that enables a caretaker relative to attend training full-time, (2) the provision of child care that enables a caretaker relative to attend high school full-time or attend General Education Development (GED) classes on a full-time basis, and (3) the provision of child care for a period not to exceed two months that enables a caretaker relative to participate in Employment Search or work programs.

We have determined that the inclusion of an essential person in the AFDC grant is permissible in situations (1) and (2) above only when a caretaker is in training or in high school on a full-time basis. This is consistent with the Notice of Proposed Rulemaking that proposed considering a person who provides child care which enables a caretaker relative to work on a full-time paid basis outside the home to be an essential person. In addition, the full-time requirement encourages family members to become self-sufficient as quickly as possible. For this latter reason, we have also limited the period of time during which an essential person can be included in situation (3) above to two months. We believe that this allows sufficient time to secure employment, yet discourages extending periods of participation in Employment Search or a work program indefinitely.

Other suggestions for expanding the essential person provision were: (a) To include categorically as essential persons certain groups of individuals (such as stepparents) without documenting that they are providing a specific benefit or service, (b) to consider as an essential service the provision of child care that enables the caretaker relative to attend school, training, or work on a part-time basis, and (c) to include individuals who provide intangible benefits (e.g., individuals who by their mere presence in the home represent family models, promote family unity, provide emotional support, or provide psychological benefits) as essential persons. After due consideration, we reject these suggestions for the following reasons.

A determination that a specific benefit or service is being provided by the essential person must be made in every case. The determination involves two parts: (1) The family identifies the person and benefit or service being provided and (2) a member of the State agency supervisory staff concurs by affirming the assistance unit's choice of the essential person, and by determining if the individual is needy and if the provision of the benefit or service is essential (i.e., it is included in the list of five essential benefits or services identified in "Discussion of Regulations" above.)

Therefore, to permit states to designate certain categories, such as stepparents, to be eligible as essential persons without documentation that they are providing a specific benefit or service would negate much of the effect of this regulation and allow individuals who live in the home but who do not provide any benefit or service to be eligible as essential persons.

States will continue to be permitted to limit essential persons to categories of individuals. Within such categories, those individuals may be included only if they provide an essential benefit or service. For example, a State may limit essential persons to only grandparents. However, the grandparent would still have to perform at least one of the essential benefits or services in order to be an essential person.

With regard to work, school attendance, and training on a part-time basis, there are already other mechanisms available for child care. For example, child care could be provided through Head Start and school-based programs, programs funded under the Social Services Block Grant, services provided through a specific education or training program such as the Job Training Partnership Act (JTPA) program, or the child care disregard under 45 CFR 233.20(a)(11). At the same time, one of the AFDC program's major goals is to foster independence from welfare. Consistent with that goal, we are providing additional support to those recipients who are making a full commitment toward self-sufficiency in terms of training, high-school attendance or GED equivalent on a full-time basis. That additional support is evidenced by including as an essential service the provision of child care.

Finally, in view of the extreme difficulty of measuring whether a particular individual provides emotional or psychological benefits, we believe that including such "intangible benefits" in the list of benefits and services would result in the same abuses of the essential person provision as are currently taking place.

Comment: One commenter asked if the State would be free to define the term "full-time" for purposes of the essential benefit or service.

Response: The definition of full-time in essential benefits and services as in "attendance in high school (or GED) full-time", "work full-time", and "training full-time" is left to the States. However, the definition, applicable to both minor and adult caretaker relatives, must be consistent with the definition of full-time as used by the State for purposes of the earned income disregards at 45 CFR 233.20(a)(11) because States have had to establish definitions of full-time work and school attendance for comparable purposes. Accordingly, any work, high school (or GED) attendance, or training that does not meet the State's definition of full-time, would not meet the requirement to permit the inclusion of an essential person.

Comment: One commenter asked if the AFDC grant included payment for an essential person who provides child care which enables the caretaker relative to work full-time, could child care expenses also be deducted from the caretaker relative's earnings?

Response: If the AFDC grant includes payment for an essential person as described above, then the State may not deduct a child care allowance from the caretaker relative's earnings. The basis for including the essential person in the grant is the provision of services—i.e., child care. To then permit a deduction based on the caretaker paying for the same service would clearly be duplicative.

Comment: Two commenters asked if the essential person must be related to the AFDC child.

Response: There is no requirement that the essential person be related to the AFDC child. However, States may choose to limit essential persons to certain categories of relatives, such as grandparents or stepparents.

Comment: One commenter cited SSA-AT-80-32 (OFA), which transmitted the AFDC final rule on continued absence, and asked about the impact the Essential Persons regulation would have on the convicted offender provision. The preamble to that final rule (45 FR 58125)

states that "the parent living at home but serving a court imposed sentence may be considered an essential person * * *"

Response: The parent who is living at home but serving a court-imposed sentence may be considered an essential person if the State agency determines that he/she provides one of the five essential benefits or services described under the heading "Discussion of Regulation" above.

Comment: One commenter stated that the definition of incapacity included in the regulation was too strict, and suggested that we allow verification from third parties or a simple note from a physician regarding the incapacitated person's condition and the expected duration of the condition.

Response: The definition of incapacity in the essential person provision is consistent with the definition of incapacity used for determining deprivation at 45 CFR 233.90(c)(1)(iv). We are adopting the evidentiary requirements for a finding of deprivation due to incapacity as well. This should ease the administrative burden and reduce the chance of error. Therefore, if an individual cannot establish incapacity based upon eligibility for OASDI or SSI benefits due to disability or blindness, then the medical evidence must meet State policy requirements for establishing incapacity which are consistent with provisions at 45 CFR 233.90(c)(1)(iv).

Comment: Two States raised an issue regarding Federal Financial Participation (FFP) in the following situation. An alcoholic parent lives with but does not care for his/her children and the caretaker relative who is not the other parent. Currently, both States provide for such a parent as an essential person. Since the parent does not provide services yet must be included in the unit, they asked how to include the parent and receive FFP as well.

Response: The current regulation at 45 CFR 206.10(a)(1)(vii) requires that all parents of AFDC dependent children must be included in the assistance unit. The situtation in the comment above occurs when someone other than a parent is considered the caretaker relative even though a parent resides in the household. In this situation, if the State has determined that the parent is prevented from functioning as the caretaker relative because of a physical or mental condition, both the parent and caretaker may be included in the AFDC grant without applying the essential person provision.

Comment: Two commenters requested that we retain the current regulatory language at 45 CFR 233.20(a)(2)(vi). These commenters state that, pursuant to the current regulation, when both parents live in the home but are not married to each other and have a child in common living with them, the second parent could be included as an essential person.

Response: Both parents could be included in the following case:

The household consists of two unmarried parents with one common child and three other children from the mother's previous marriage. The mother and her three children from the previous marriage are receiving AFDC benefits; the man and their commoon child are ineligible for AFDC because there is an intact family and the father is not disabled or unemployed. However, if the father is providing one of the five essential benefits or services, he could be included as an essential person.

Regulatory Procedures

Executive Order 12291

This final regulation has been reviewed under Executive Order 12291 and does not meet any of the criteria for a major regulation. A regulatory impact analysis is not required because the regulation will not:

(1) Have an annual effect on the economy of $100 million or more;

The Federal annual savings of these regulatory provisions are estimated to be:

Year	Savings in millions
1988	$13 (last quarter only).
1989	54.
1990	55.
1991	57.
1992	59.

(2) Impose a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Result in significant adverse effects on competition, employment, investment, innovation, or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

There will be no new reporting or recordkeeping requirements imposed on the public or the States which would require clearance by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

We certify that this regulation, if promulgated, will not have a significant impact on a substantial number of small entities because it primarily affects State governments and individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

Family and Federalism

We certify that this action has been assessed using the criteria and principles set forth in Executive Orders 12606 and 12612.

While this regulation does not have any significant Federalism effects, it may have a significant monetary effect on certain families currently receiving AFDC benefits supplemented by the inclusion of an essential person in the grant. We estimate that 86,000 families will be affected by this regulation. The AFDC grants to these families will be reduced or, in some cases, terminated.

The focus of this regulation is upon the exclusion of individuals who are not providing an essential benefit or service, as essential persons. For example, some States have shifted 19 and 20 year-olds, who were made ineligible by the Omnibus Budget Reconciliation Act of 1981, onto the AFDC rolls as essential persons without any determination as to whether they are providing an essential benefit or service.

This regulation in no way precludes individuals, who are providing one of the designated benefits or services, from being included as essential persons. As a consequence, we believe that this regulation will not have a negative impact on family stability. Moreover, because this regulation follows Congressional intent in limiting eligibility under the AFDC program to individuals under 19, we believe that any negative impact on families with 19 and 20 year-olds is justified. Finally, although AFDC will no longer cover the needs of individuals who are not performing an essential benefit or service, many of these individuals will be eligible for assistance from State-only programs.

In summary, then, we believe that the language in the Final Rule strikes an appropriate balance which will prevent abuse, yet allow States the flexibility to include those individuals who actually strengthen the family by assisting family members in becoming self-sufficient.

(Catalog of Federal Domestic Assistance Programs 13.780, Assistance Payments Maintenance Assistance)

List of Subjects in 45 CFR Part 233

Aliens, Grant programs-social programs, Public assistance programs, Reporting and recordkeeping requirements.

Dated: August 2, 1988.

Wayne A. Stanton,

Administrator of the Family Support Administration.

Approved: September 12, 1988.

Otis R. Bowen,

Secretary of the Department of Health and Human Services.

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY

1. The authority citation for Part 233 is revised to read as follows and all other authority citations which appear throughout Part 233 are removed:

Authority: Sections 1, 402, 406, 407, 1002, 1102, 1402, and 1602 of the Social Security Act (42 U.S.C. 301, 602, 606, 607, 1202, 1302, 1352, and 1382 note), and Section 6 of Pub. L. 94–114, 89 Stat. 579 and Part XXIII of Pub. L. 97–35, 95 Stat. 843, and Pub. L. 97–248, 96 Stat. 324, and Pub. L. 99–603, 100 Stat. 3359.

2. Section 233.20 is amended by revising paragraph (a)(2)(vi) and adding paragraph (a)(2)(vii) to read as follows:

§ 233.20 Need and amount of assistance.

(a) * * *

(2) * * *

(vi) For OAA, AB, APTD, or AABD, if the State chooses to establish the need of the individual on a basis that recognizes, as essential to his well-being, the presence in the home of other needy individuals, (*a*) specify the persons whose needs will be included in the individual's need, and (*b*) provide that the decision as to whether any individual will be recognized as essential to the recipient's well-being shall rest both with the recipient, and be supported and concurred in by the agency supervisory staff—a person of a higher position or authority than the first line caseworker or income maintenance intake employee.

(vii) For AFDC, if the State chooses to establish the need of the individual on a basis that recognizes, as essential to his/her basic well-being, the presence in the home of other needy individuals, (*a*) specify the persons whose needs will be included in the individual's need, but limited to those individuals who regularly provide at least one of the following benefits or services: (*1*) child care which enables a caretaker relative to work on a full-time basis outside the home, (*2*) care for an incapacitated family member in the home, (*3*) child care that enables a caretaker relative to receive training on a full-time basis (*4*) child care that enables a caretaker relative to attend high school (or General Education Development (GED) classes) on a full-time basis, (*5*) child care for a period not to exceed two months that enables a caretaker relative to participate in Employment Search or another AFDC work program; and (*b*) provide that the decision as to whether any individual will be recognized as essential to the recipient's well-being shall rest both with the recipient, and be supported and concurred in by the agency supervisory staff—a person of a higher position or authority than the first line caseworker or income maintenance intake employee. A person will be considered incapacitated for purposes of the previous sentence when he has a physical or mental defect, illness, or impairment. The incapacity shall be supported by medical evidence and/or recorded testimony of a licensed medical health care professional, and must be of such a debilitating nature as to reduce substantially or eliminate his/her ability to support or care for himself/herself and be expected to last for a period of at least thirty (30) days. A finding of eligibility for OASDI or SSI benefits, based on disability or blindness, is acceptable proof of incapacity. The definition of the term "full-time," applicable to both minor and adult caretaker relatives, as used above in paragraph (a)(2)(vii)(*a*) (*1*), (*3*), and (*4*) of this section shall be consistent with the definition used by the State for purposes of the earned income disregards at § 233.20(a)(11).

* * * * *

[FR Doc. 89–1469 Filed 1–19–89; 8:45 am]

BILLING CODE 4150–04–M

Office of Human Development Services

45 CFR Part 1336

Native American Programs; Assistance to Native Hawaiians and Native American Pacific Islanders

AGENCY: Administration for Native Americans (ANA), Office of Human Development Services, HHS.

ACTION: Final rule.

SUMMARY: The Administration for Native Americans is hereby providing notice that the interim final rule with comment period amending 45 CFR Part 1336 which was published at 53 FR 23964–23973 on June 24, 1988, is adopted as a final rule without change. The interim final rule amended the regulations for the Administration for Native Americans to: (1) Establish the procedures and criteria by which ANA will make a five-year demonstration grant to an agency in Hawaii to manage a Revolving Loan Fund to promote economic development for Native Hawaiians; and (2) extend eligibility for ANA financial assistance to include Native American Pacific Islanders (including American Samoan Natives).

EFFECTIVE DATE: July 25, 1988.

FOR FURTHER INFORMATION CONTACT: Jan Phalen, Administration for Native Americans, Office of Human Development Services, Department of Health and Human Services, Hubert H. Humphrey Building, Room 344F, 200 Independence Avenue SW., Washington, DC 20201–0001, (202) 245–7730.

SUPPLEMENTARY INFORMATION: On June 24, 1988, the Department published an interim final rule with a 60 day comment period amending 45 CFR Part 1336 (53 FR 23964). No comments were received, and no changes have been made in the final rule.

The Office of Management and Budget has approved the information collection requirements of this final rule in accordance with the Paperwork Reduction Act. The control number is OMB No. 0980–0201.

List of Subjects in 45 CFR Part 1336

Native American Pacific Islander, Native Hawaiian revolving loan fund, Economic development.

PART 1336—NATIVE AMERICAN PROGRAMS

Accordingly, the interim final rule amending 45 CFR Part 1336 which was published at 53 FR 23964–23973 on June 24, 1988, is adopted as a final rule without change.

Dated: December 21, 1988.

Sydney Olson,

Assistant Secretary for Human Development Services.

Approved: January 5, 1989.

Otis R. Bowen,

Secretary.

[FR Doc. 89–1513 Filed 1–23–89; 8:45 am]

BILLING CODE 4130–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 88–2, Phase II; FCC 88–382]

Furnishing of Enhanced Services by Communications Common Carriers; AT&T's Open Network Architecture Plan

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Acting pursuant to the regulatory policies established in its Third Computer Inquiry (*Computer III*), the Commission approved, with a minor condition, AT&T's Open Network Architecture plan. The effect of full ONA implementation should be more competition in the provisions of enhanced services, lower prices, and more choices for consumers.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Charles Oliver, Policy and Program Planning Division, Common Carrier Bureau (202) 632–4047.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order (FCC 88–382), adopted November 17, 1988, and released December 22, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Office of Public Affairs (Room 202), 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.

Summary of Memorandum Opinion and Order

1. The Memorandum Opinion and Order, adopted November 17, 1988, approved, with a minor condition, the AT&T Open Network Architecture (ONA) plan filed on February 1, 1988. The Commission established AT&T's ONA plan filing requirement in its reconsideration order in Phase I of the *Computer III* proceeding. AT&T's ONA requirements differ from those for the BOCs, in part because AT&T, unlike the BOCs, participates in the competitive market for interexchange basic services.

2. The Commission found that AT&T's ONA plan adequately described the manner in which it planned to respond to the needs of competing enhanced service providers (ESPs) for equal and efficient access to its basic services. The Commission also approved AT&T's description of: (1) Its capabilities available to transport unbundled basic service functions; (2) its arrangements for providing such transport in a nondiscriminatory manner; and (3) its procedures for responding to requests of the Bell Operating Companies (BOCs) and other local exchange carriers (LECs) for new forms of transport for other basic functions. In addition, the Commission approved AT&T's description of its implementation of Comparably Efficient Interconnection (CEI) and the other nonstructural safeguards for the enhanced services it now offers using facilities that are not collocated with basic service facilities.

3. The Commission approved AT&T's treatment of its basic Accunet Packet Service (APS) as a "building block" for a number of its enhanced services. In addition, the Commission approved AT&T's proposal to use a password identification system, as well as administrative and managerial procedures, to comply with the Commission's rules regarding customer proprietary network information (CPNI).

4. As a condition of approval of AT&T's ONA plan, the Commission required AT&T to comply with the CEI requirements for noncollocated enhanced services for a specific service known as REDI-ACCESS that AT&T co-markets with Control Data Corporation or, alternatively, file a statement with the Common Carrier Bureau within 60 days of the release of this order explaining why AT&T should not be required to comply with these requirements for REDI-ACCESS.

Ordering Clauses

5. It is hereby ordered, that pursuant to sections 1, 2(a), 4(i) and (j), 201, 202, 203, 205, 218, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i) and (j), 201, 202, 203, 205, 218, and 405, and 5 U.S.C. 553, AT&T's ONA plan is approved, subject to the conditions described herein.

6. It is further ordered, that DYTEL's motion for leave to file late comments is granted.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–1121 Filed 1–23–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 64

[CC Docket No. 88–2; FCC 88–381]

Furnishing of Enhanced Services by Communications Common Carriers; Bell Operating Companies' Open Network Architecture Plans

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Acting pursuant to the policies established in its Third Computer Inquiry (*Computer III*), the Commission approved in part and rejected in part the Bell Operating Companies' (BOCs') Open Network Architecture plans and required the BOCs to amend their plans by May 19, 1989. The effect of full ONA implementation should be more competition in the provisions of enhanced services, lower prices, and more choices for consumers.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William F. Maher, Policy and Program Planning Division, Common Carrier Bureau (202) 632–9342.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order (FCC 88–381), adopted November 17, 1988, and released December 22, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Office of Public Affairs (Room 202), 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.

Summary of Memorandum Opinion and Order

1. The Memorandum Opinion and Order, adopted November 17, 1988, conditionally approved the Open Network Architecture (ONA) plans that the Bell Operating Companies filed on February 1, 1988. Among other things, the BOCs ONA plans described unbundled basic services for use by enhanced service providers (ESPs), and also described BOC compliance with other nonstructural safeguards that the Commission's established in its *Computer III* proceeding. Upon implementation by a BOC of an approved ONA plan, the existing separate subsidiary requirements for the BOC's enhanced service operations will be removed. However, the Commission identified a number of areas in which the plans are deficient, and ordered the BOCs to amend their plans accordingly by May 19, 1989. Until the Commission approves those amendments and the BOCs implement their amended ONA plans, the existing separate subsidiary rules for BOC provision of enhanced services will remain in place.

2. The Commission approved the BOC's methods of obtaining ESP input in designing their ONA plans. For future input on further development of ONA, the Commission found the Information Industry Liaison Committee (IILC) to be an appropriate inter-industry forum and

directed the BOCs to work through the IILC on a number of issues requiring further inter-industry effort.

3. The Commission generally approved use of the "common ONA model" offered by the BOCs in their plans. Under that model, ESPs obtain access to optional ONA services, which the BOCs call Basic Service Elements (BSEs), through BOC-provided access links, which the BOCs call Basic Serving Arrangements (BSAs). The Commission did not require BOCs to allow ESPs to connect their own loops or trunks to BOC switching facilities. The Commission also clarified that its nondiscrimination rules apply to all basic ONA services regardless of their classification.

4. The Commission found that the BOCs have done a generally acceptable job of identifying initial ONA services that they feasibly can provide in the short term, using the existing capabilities of their networks. However, because some BOCs have not proposed to offer some initial ONA services that others offer, propose, the Commission directed the BOCs to examine each other's plans to determine whether they can augment their initial sets of ONA services.

5. The Commission directed the BOCs to continue working to achieve greater uniformity in the nomenclature, technical characteristics, availability and deployment of ONA services, and noted topics that the ILLC could consider in this area.

6. The Commission, pursuant to section 410(b) of the Communications Act, established a joint conference with state regulatory commissions from the seven BOC regions to act as a forum for cooperation and coordination among the FCC and the states on specific ONA issues of common interest.

7. The Commission also preserved the existing exemption from federal access charges for ESPs, ensuring that ESPs will continue to have the option of using state-tariffed access arrangements to provide interstate enhanced service offerings.

8. The Commission generally approved those portions of the BOCs' plans that provide for state-tariffed ONA services to be used for intrastate enhanced services or, pursuant to the federal access charge exemption, for interstate enhanced services. However, the Commission did not approve that portion of the BellSouth state tariffing proposal that deprived ESPs of existing state access arrangements.

9. The Commission required the BOCs to establish a federally tariffed BSA option for ESPs to use for interstate enhanced services, which will include unbundled interstate BSEs provided pursuant to full federal tariffing principles. Because the Commission's existing Part 69 rules for access tariffs must be modified to implement this requirement, the Commission announced its intention to initiate a separate rulemaking to amend Part 69. Complementary Network Services (CNSs), those basic services used by consumers in connection with enhanced services, will continue to be tariffed at the state level, subject to existing nondiscrimination requirements.

10. The Commission required the BOCs to provide three-year projected deployment schedules for their ONA services and to explain the manner in which they will offer advanced ONA services through new technologies such as Signalling System #7, Integrated Services Digital Network (ISDN), and Intelligent Network/2. The Commission also required the BOCs to incorporate ESP input on these issues into their network planning processes. In addition, the Commission required the BOCs to provide geographic deployment schedules, where feasible, for advanced ONA services that BOCs will begin placing in service within three years.

11. The Commission also required the BOCs to make certain changes in their implementation of the Customer Proprietary Network Information (CPNI) requirements to protect the interests of competing ESPs. The Commission permitted all BOCs except US West to file installation and maintenance reports in a simplified format, because those BOCs have provided adequate assurances that their internal procedures precluded discrimination in the timing of installation and maintenance of ONA services. The Commission lifted the quality reporting requirement for all BOCs except Bell Atlantic, because those BOCs have demonstrated that they lack the ability to discriminate in the quality of their ONA services. Finally, the Commission approved all of the BOCs' proposed treatment of network information disclosure.

Ordering Clause

12. It is hereby ordered, that pursuant to section 1, 4(i) and (j), 201, 202, 203, 205, 218, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 201, 202, 203, 205, 218, and 405, and 5 U.S.C. 553, the ONA plans of Ameritech, Bell Atlantic, BellSouth, NYNEX, Pactel, SWBT, and US West are approved in part and rejected in part, subject to the conditions described herein.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-1122 Filed 1-23-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 69

[CC Docket No. 87-113; FCC 88-400]

Amendment of Part 69 of the Commission's Rules; Access Charge Rules; Allocation Procedures

AGENCY: Federal Communication Commission.

ACTION: Final rule.

SUMMARY: In this Order, the Commission generally affirms its decision regarding the new allocation procedures established in the Part 69 Access Charge rules. Part 69 has been recently revised to conform to the Uniform System of Accounts and to the Separations Manual. This Order grants, to a limited extent, the petitions for reconsideration and clarification of Part 69 by revising the procedures applicable to the local switching access element. The Commission also revised the procedures applicable to property Held for Future Telecommunications Use and Telecommunications Plant Under Construction—Short Term.

DATE: The modifications of Part 69 of the Commission's Rules will become effective April 1, 1989.

ADDRESS: Federation Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Diane Shaw-Gill, Accounting and Audits Division, Common Carrier Bureau, at (202) 632-7500.

SUPPLEMENTARY INFORMATION: This is a summary of the petitions for reconsideration and clarification of Part 69, Amendment of Part 69 of the Commission's Rules and Regulations, Access Charges, To Conform It With Part 36, Jurisdictional Separations Procedures, CC Docket No. 87-113, FCC 88-400, adopted December 9, 1988, and released December 12, 1988.

The full text of Commission decisions are 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 Order may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street NW., Suite 140, Washington, DC 20037 (202) 857-3800.

Summary of Order on Reconsideration

1. In this Order, the Commission addresses a number of issues. It revises its prescribed phase-out schedule for the discounted Local Switching 1 rate element. The former Part 69 rules required carriers to apportion costs between three end office elements. Local Switching is one of the three end office elements. Those rules also provided the division of Local Switching into subelements, Local Switching 1 (LS1) and Local Switching 2 (LS2). The new Part 69 rules phases-out LS1, the discount subelement which reflects a 35 percent discount. This phase-out begins in April, 1989 and ends in June, 1993. On reconsideration, the Commission revised the schedule for phasing out the LS1 subelement.

2. The Commission declined to revise the allocation procedures for the General Support Facilities (GSF). The new Part 69 rules, combine Land, Buildings, and Vehicles and apportion the investment portion of each category among the Interexchange and Billing and Collection categories and the access elements on the basis of the combined investment in COE, Information Origination/Termination Equipment (IOT), and Cable and Wire Facilities (C&WF), excluding Category 1.3 C&WF (subscriberline). The Commission affirms its original decision that the inclusion of Category 1.3 C&WF would apportion excessive GSF costs to the Carrier Common Line Element. The Commission also declined to adopt other approaches suggested by two parties for the allocation of GSF costs.

3. The Commission declined to revise the new allocation procedures for computer expenses related to Billing and Collection. The new Part 69 rules assign the interstate portion of the Revenue Accounting Expenses in the Customer Services Account to the Billing and Collection category. The computer expenses related to Billing and Collection are included in two computer accounts. The new rules allocate General Purpose Computer Expenses on the basis of the allocation of GSF. Those rules also allocate the Information Management Expenses on the basis of the Big Three Expenses. The Commission found that any modifications of the current apportionment procedures for computer expenses related to billing and collection would add undue complexities to those procedures.

4. The Commission clarified the allocation procedures for Category 4.23 Central Office Equipment (COE), All Other Interexchange Circuit Equipment. Circuit Equipment that is used in conjunction with a particular cable or wire facility will be assigned or allocated in the same manner as the associated facility. Circuit Equipment that is used with an ordinary subscriber line is assigned to the Common Line element. Circuit Equipment that is used with a WATS access line or a private line is assigned to the Special Access Element. Circuit Equipment that is used with trunks that connect end office switches or that connect end office and interexchange switches is assigned to Transport. Circuit Equipment uses with trunks that are not classified as "origination" or "termination" for purposes of the Part 69 access charge rules are assigned to the interexchange category.

5. The Commission declined to adopt alternative proposals for the allocation of COE direct expenses. Under the new Part 69 rules, COE direct expenses are allocated on the basis of total COE investment. The Commission found that this is in conformance with the Part 36, separations rules which allocate COE expenses between the jurisdictions on the basis of total COE investment.

6. The Commission declined to exclude equal access investment from the allocation factor for Other Investment. The Commission found that the proposed modification of these two accounts would not have a significant impact upon the charges for the other elements.

7. The Commission revised the allocation procedures for Property Held for Future Telecommunications Use and Telecommunications Plant Under Construction—Short term. The new Part 69 rules require that the investment in these accounts be apportioned among the Interexchange and Billing and Collection categories and the appropriate access elements in the same proportion as the associated investment. The Commission modified these procedures to allow the allocation of these accounts on the basis of Total Plant In Service instead of associated investment.

8. The Commission declined to include Telecommunications Plant Under Construction—Long Term, in the definition of net investment. It allowed investment in Telecommunications Plant Adjustment to be included in the definition of net investment in those limited cases in which the Common Carrier Bureau has granted a waiver to allow the inclusion of this account in the rate base. The Commission found that such an approach will ensure that Part 65 and Part 69 policies are consistent.

9. The Commission declined to allocate gross receipts taxes on the basis of taxable receipts, finding that the allocation of gross receipts taxes on the basis of net income is consistent with the Part 36 separations procedures which allocate these taxes on the basis of net plant.

10. The Commission declined to change the annual access tariff filing period from annual to biennial, finding that such a modification is outside the scope of this proceeding.

Regulatory Flexibility Act

11. The Commission certified that the Regulatory Flexibility Act[1] is not applicable to the rule changes it adopted in this proceeding. In accordance with the provisions of section 605 of that Act, a copy of this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration at the time of publication of a summary of this Notice in the **Federal Register**. As part of its analysis of the new rules adopted in this Order, the Commission considered the impact of proposals on small telephone companies, *i.e.*, those serving 50,000 or fewer access lines.[2] The action adopted herein will have a beneficial economic impact on all such telephone companies because the new procedures will reduce administrative burdens and will better reflect cost-causation principles. The carriers will therefore be able to develop rates that better reflect their actual costs.

Paperwork Reduction Act

12. The Commission analyzed the new rules contained herein with respect to the Paperwork Reduction Act of 1980[3] and concluded that they will not impose new or modified information collection requirements on the public. Therefore, implementation of the new rules will not be subject to approval by the Office of Management and Budget as prescribed by the Paperwork Reduction Act.

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[1] 5 U.S.C. 601.

[2] Because of the nature of local exchange and access service, this Commission has concluded that small telephone companies are dominant in their fields of operation and, therefore, are not small entities as defined by the Regulatory Flexibility Act, *See* MTS and WATS Market Structure, 93 FCC 2d 241, 338–39 (1983). Thus, the Commission is not required by the terms of the Regulatory Flexibility Act to apply the formal procedures set forth therein. It is nevertheless committed to reducing the regulatory burdens on small telephone companies whenever possible consistent with its other public interest responsibilities. Accordingly, it has chosen to utilize, on an informal basis, appropriate Regulatory Flexibility Act procedures to analyze the effect of proposed regulations on small telephone companies.

[3] 44 U.S.C. 501.

Ordering Clause

13. Accordingly, it is ordered, That the Petitions for Reconsideration or Clarification filed in these proceedings ARE GRANTED to the extent provided herein and otherwise ARE DENIED.

List of Subjects in 47 CFR Part 69

Communications common carrier, Telephone, Uniform system of accounts, Access charges, Jurisdictional separations procedures.

Authorizing Provisions

This action is taken pursuant to sections 47 U.S.C. 154(i), 154(j), 201, 202, 203, 205, 218, and 221(c).

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Appendix A

Part 69 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 69 continues to read:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Sec. 69.205 is amended by revising para. (d) to read to as follows:

§ 69.205 Transitional premium charges.

* * * * *

(d) During each of the following years the LS1 transition factor shall be:

(1) From April 1, 1989 to June 30, 1990—.877

(2) From July 1, 1990 to June 30, 1991—.921

(3) From July 1, 1991 to June 30, 1992—.960

(4) From July 1, 1992 to June 30, 1993—.995

3. Sec. 69.302 is amended by revising para. (b) to read as follows:

§ 69.302 Net investment.

* * * * *

(b) Investment in Accounts 2002, 2003 and to the extent such inclusions are allowed by this Commission, Account 2005 shall be apportioned on the basis of the total investment in Account 2001, Telecommunications Plant in Service.

In addition, the following changes are made to the *Access Charge Rules*, 52 FR 37,308 (October 6, 1987):

§ 69.2 [Amended]

In § 69.2(g), add "and included in Account 2410" after "Manual."

In § 69.2(i), add "and included in Accounts 2210, 2220 and 2230" after "Manual."

In § 69.2(l)(1), change "6223" to "6230."

In § 69.2(q), add "and included in Account 2110" after "Manual."

In § 69.2(r), add "and in Account 2310" after "Manual."

In § 69.2(dd), add ", WATS" after "FX."

§ 69.302 [Amended]

In § 69.302(b)(3), change "2001" to "2110."

§ 69.408 [Amended]

In § 69.408, change "69.403" to "69.404."

[FR Doc. 89-1123 Filed 1-23-89; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 54, No. 14
Tuesday, January 24, 1989

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

Schedule B Appointment Authority for Professional and Administrative Career Positions

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management published a proposed regulation on May 11, 1982 (47 FR 20264). That regulation established a new appointing authority in the excepted service made pursuant to Schedule B authority at 5 CFR 213.3202(1). Following the receipt of comments from interested members of the public, the final rule was published on August 31, 1982 (47 FR 38257). The regulation provided for the filling of professional and administrative career (PAC) positions at the GS–5 and GS–7 levels during the period when the Office of Personnel Management did not have a register of competitive eligibles to fill vacancies in those occupations. The new Schedule B authority applied only when agencies used external recruiting and hiring procedures to fill such positions. Since that time, one union has challenged the absence of competitive, job-specific examinations for all of the approximately 118 PAC occupations which were formerly examined under the PACE and which were subject to the Schedule B authority. The United States Court of Appeals for the DC Circuit (*NTEU* v. *Horner*, Nos. 87–5102 & 87–5191) and the United States District Court for the District of Columbia (Civil Action No. 84–2573) have directed that OPM conduct a notice and comment rulemaking proceeding in order to supplement the rulemaking record which was developed in 1982 to include the publication of the cost data upon which OPM relied in making its decision in 1982 to permit agencies to use Schedule B in those occupations where alternative examinations had not been developed. The reasons, based on various cost factors, for OPM's decision not to develop examinations in all of the PAC occupations are stated below under "Supplementary Information." The purpose of this publication of the proposed rule is to provide an opportunity for comment by interested members of the public.

DATE: Comments must be received on or before February 24, 1989.

ADDRESS: Written comments may be sent to Donald L. Holum, Chief, Staffing Policy Division, Career Entry and Employee Development Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20451 or delivered to Room 6355, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: James S. Green, Associate General Counsel, Office of General Counsel, (202) 632–5087.

SUPPLEMENTARY INFORMATION: Pursuant to the terms of a consent decree which was entered by the U.S. District Court for the District of Columbia on November 18, 1981 (*Luevano* v. *Devine*, Civil Action No. 79–271), OPM agreed to eliminate the Professional and Administrative Career Examination (PACE), a general abilities test, and the register of eligibles derived therefrom and to replace that examination with job-specific, alternative examinations for approximately 118 job series. Those jobs are in Professional and Administrative Career (PAC) occupations at the GS–5 and GS–7 levels.

OPM considered a number of factors relating to cost when it arrived at its decision to permit agencies to use a Schedule B authority until OPM could develop alternative examinations to replace the PACE. In 1981, OPM anticipated little outside hiring due to a government-wide, employment freeze which had been imposed by the President of the United States. Reductions-in-force (RIGs), due to severe budget reductions, were also declared and conducted at that time and in 1982. For those reasons, cost considerations were a prominent feature in OMP's cost-analysis in determining when and for which occupations new competitive examinations should be developed.

The emphasis in 1981 and 1982 was in placement of Federal employees who had been the subject of RIFs into any upcoming Federal vacancies. That was accomplished through programs such as the Displaced Employees Program (DEP) and the Voluntary Inter-Agency Placement Program (VIPP) wherever possible. Thus, in 1982, OPM anticipated that there would be substantially reduced external hiring in most Federal occupations, including those which had been formerly filled through the use of the PACE. It was believed that most hiring in the PACE occupations would be accomplished through internal means, including promotions, transfers, and reassignments, and that few agencies would use Schedule B to hire from external sources.

In arriving at its decision to develop examinations in only those occupations where the Federal government had the largest number of vacancies instead of examining in all the approximately 118 occupations, OPM considered a number of factors. Among those were historical trends based on the annual number of hires from the PACE register in each occupation over a six-year period (1975 to 1981), the overall hiring figures and anticipated hiring trends throughout the Federal government in all occupations, the actual cost for development and implementation of the PACE which were based on OPM's previous experience with the PACE, and the legislative budget allocated for examination development.

Between 1975 and 1981, the annual hiring figures from the PACE register appeared to be steadily declining. For example, in FY 1978, over 7,000 applicants had been selected from the PACE register. By FY 1980, however, selections had decreased to 4,674. Based on the hiring freeze mandated by the President in 1981, OPM anticipated hiring less than 2,000 employees per year after 1982 into all of the PAC occupations. In 1983, external hiring through Schedule B amounted to 2,059, and, in 1984, it increased to 4,020. The unexpected increase was due to a subsequent Presidential emphasis on hiring at the Department of Defense and the Department of the Treasury.

Known costs for PACE research and development amounted to $320,000 plus an additional $800,000 for four criterion-related validation studies, all related to the single PACE examination. Those

costs were expended for the PACE between 1973 and 1975. In other words, during that period, OPM spent approximately $1.2 million on the development of the single PACE examination.

Based on the developmental costs for the PACE, OPM estimated in 1981 that it would have to allocate at least $5 million over a four-year period (1982–1985) to develop job-specific examinations for seven of the large-fill occupations which had been covered by the PACE. That figure took into account an average cost of $520,000 per examination in 1973 to 1975 dollars which had to be augmented by inflation. Thus, it was anticipated that a single examination would cost somewhere between $550,000 to $800,000 to develop, depending upon the nature of the examination required by that specific occupation. Start-up costs alone for the development of examinations for those seven occupations were estimated to be $1.5 million out of the $5 million projected expenditure. Actual start-up costs amounted to $1.8 million.

The Office of Personnel Research and Development (OPRD) at the Office of Personnel Management was responsible for the development of competitive examinations. OPM's total operating budget for the OPRD was $855,249 in FY 1981 and $962,623 in FY 1982. Although, on average, approximately one-third of the budget of OPRD has been devoted since 1981 to the development of alternative examinations for the PAC occupations, it could not possibly have absorbed the enormous costs which would have been required to develop and implement 100 examinations. Furthermore, in 1981, OPM knew that the OPRD staff would be reduced by 50% early in 1982 as a result of the reduction-in-force at the OPM. All programs, including the effort to develop alternative examinations, suffered by those reductions.

Thus, the decision was made to use Schedule B as an appointing authority while OPM initially pursued the development of competitive alternatives in those seven occupations which historically had the largest number of hires and for which OPM anticipated significant hiring would continue. OPM concentrated its limited resources on seven occupations which, in conjunction with the competitive examinations which had been developed prior to November 1981 in nine other former PACE occupations, accounted for 55% to 60% of all hires in the PAC occupations. The remaining 100 occupations historically have accounted for no more than 40% to 45% of all such hires.

In the three year period between January 1, 1983, and December 31, 1985, of the 108 occupations for which no competitive alternatives had been developed, eighty-seven of those occupations had an annual average of 20 or fewer external PAC hires under Schedule B throughout the Federal government. Of those eighty-seven occupations, forty occupations had no external PAC hires under Schedule B during that three year period. Seven occupations had an annual average of between 21 to 50 total external PAC hires throughout the Federal government during that entire period. Six occupations had an annual average of between 51 to 100 total external PAC hires; three occupations had an annual average of between 101 to 200 total external PAC hires; and only five occupations had over 200 total external PAC hires during all of that same period in all Federal agencies. Of those five occupations, four are now covered by a new competitive examination and the fifth is scheduled to be in the next group for examination development.

Those figures must be compared with the total number of all PAC selections and the total number of employees in the Federal workforce at that time. The average total for external PAC hires under Schedule B during that three year period amounted to only 3,396 out of an average total of 15,280 for all PAC selections and represented only a small fraction of the total Federal workforce which, between 1983 and 1985, averaged 2.25 million employees, excluding postal workers.

OPM estimated, in 1981, that it would have cost approximately $71.4 million to develop examinations (excluding operational costs) in the remaining 100 occupations where OPM had traditionally done little hiring from the PACE register. That cost projection, too, was based on prior PACE expenditures. OPM had neither the financial nor staff resources to commit those expenditures.

The following represent OPM's actual costs for test development between FY 1981 and FY 1987 for seven PAC occupations: Computer Specialist ($742,900); Tax Technician ($744,400); Internal Revenue Officer ($547,300); Customs Inspector ($554,200); Contract Specialist ($1,038,550), and Social Insurance Claims Examiner and Social Insurance Representative ($884,100). Additional operating costs during this same period range from $100,000 to $300,000 for each examination. Accordingly, total costs actually expended by OPM for development and implementation for competitive examinations in those seven occupations amounted to $5,461,450 between FY 1981 and FY 1987.

It is the intention of OPM to re-adopt its final rule previously adopted by OPM on August 31, 1982 (47 FR 38257), as amended on July 6, 1987 (52 FR 25193). OPM intends to continue to seek the appropriate means of examining so that examination development is accomplished on an overall cost-productive basis. OPM will continue to permit Federal agencies to utilize Schedule B as an appointing authority while it develops competitive examinations for the remaining PAC occupations.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities becasue it pertains solely to procedures for appointment of employees by Federal agencies.

List of Subjects in 5 CFR Part 213

Government employees.

Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is republishing its final regulation under 5 CFR Part 213, originally published on August 31, 1982 (47 FR 38257) and amended on July 6, 1987 (52 FR 25193), as a proposed regulation with opportunity for comments, as set forth below:

PART 213—EXCEPTED SERVICE

1. The authority citation for Part 213 continues to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; Section 213.101 also issued under 5 U.S.C. 2103; Section 213.102 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec. 3(5); Section 213.3102 also issued under 5 U.S.C. 3301, 3302 (E.O. 12364, 47 FR 22931), 3307, 8337(h), and 8457.

2. Paragraph (l) of 5 CFR 213.3202 is republished without change to read as follows:

§ 213.3202 Entire Executive Civil Service.

* * * * *

(l) Professional and administrative career (PAC) positions at the GS–5 or GS–7 grade level which are subject to the decree entered on November 19, 1981, by the United States District Court for the District of Columbia in the civil action known as *Luevano* v. *Devine* and numbered as No. 79–271, which were not removed from coverage of the Professional and Adminstrative Career Examination (PACE) prior to the effective date of the consent decree, and which are to be filled, under the conditions described below, by appointment of individuals other than those who at the time of such appointment already have competitive status in the Federal civil service. When a Federal agency needs to fill a PAC position that was not removed from PACE coverage before the consent decree became effective, and the agency has made maximum use of priority placement sources and has given appropriate consideration to available and qualified status applicants, then OPM may authorize the agency to make a new appointment under this paragraph. Such appointments shall be authorized and made pursuant to such Schedule B requirements for PAC positions as shall be prescibed in the Federal Personnel Manual. Terms of use of this appointment authority shall be established by an appointment authority agreement to be executed for each position excepted from the competitive service pursuant to this authority. The appointment authority agreement will remain in effect with respect to particular GS–5 and GS–7 PAC positions only so long as there is no competitive examination available to fill those positions. Establishment of a register under an alternative competitive examination for any PAC position(s) at grades GS–5 and GS–7 will immediately terminate all agreements permitting new Schedule B appointments to such position(s) under this authority. Individuals appointed before termination of the agreements may, however, continue to serve under those appointments at grades GS–5 and GS–7 until they are appointed to a competitive position in accordance with applicable civil service laws, rules, and regulations. An incumbent of a Schedule B PAC position may be converted to a career or career-conditional appointment under the provisions of Executive Order 12596, subject to the conditions set out in § 315.710 of this chapter.

[FR Doc. 89–1467 Filed 1–18–89; 11:57 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 907 and 908

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish assessment rates under Marketing Order Nos. 907 and 908 for the 1988–89 fiscal year established for each order. Funds to administer these programs are derived from assessments on handlers.

DATES: Comments must be received by February 3, 1989.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Volume Control Programs, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order Nos. 907 (7 CFR Part 907) and 908 (7 CFR Part 908), regulating the handling of California-Arizona navel and Valencia oranges. Both orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

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

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

There are approximately 125 handlers of navel oranges and 115 handlers of Valencia oranges subject to regulation under the navel and Valencia orange marketing orders, and approximately 4,065 producers of navel oranges and 3,500 producers of Valencia oranges in their respective production areas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of California-Arizona navel and Valencia orange producers and handlers may be classified as small entities.

Marketing orders require that assessment rates for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the Department of Agriculture for approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

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

The Navel Orange Administrative Committee (NOAC) met on December 6, 1988, and unanimously recommended 1988–89 fiscal year expenditures of $1,247,455 and an assessment rate of $0.025 per carton of navel oranges. In

comparison, 1987–88 fiscal year budgeted expenditures were $1,114,790 and the assessment rate was $0.026 per carton. Expenditure castegories in the 1988–89 budget are $338,630 for program administration, $151,020 for compliance activities, $583,155 for the field department, $171,300 for direct expenses, and $3,350 for a salary reserve. Assessment income for 1988–89 is expected to total $1,087,500, based on shipments of 43.5 million cartons of oranges. Interest and incidental income is estimated at $50,000. The NOAC may expend operational reserve funds of $109,955 to meet budgeted expenses. Additional reserve funds may be used to meet any other unanticipated deficit in assessment income.

The Valencia Orange Administrative Committee (VOAC) met on December 6, 1988, and unanimously recommended 1988–89 fiscal year expenditures of $694,840 and an assessment rate of $0.028 per carton of Valencia oranges. In comparison, 1987–88 fiscal year budgeted expenditures were $526,590 and the assessment rate was $0.029 per carton. Expenditure categories in the 1988–89 budget are $166,785 for program administration, $74,380 for compliance activities, $287,225 for the field department, $164,800 for direct expenses, and $1,650 for a salary reserve. Assessment income for 1988–89 is expected to total $588,000 based on shipments of 21 million cartons of oranges. Interest and miscellaneous income is estimated at $30,000. The VOAC may expend operational reserve funds of $76,840 to meet budgeted expenses. Additional reserve funds may be used to meet any other unanticipated deficit in assessment income.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

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

List of Subjects in 7 CFR Parts 907 and 908

Arizona, California, Marketing agreements and orders, Navel, Oranges, Valencia.

For the reasons set forth in the preamble, it is proposed that new §§ 907.226 and 908.228 be added as follows:

1. The authority citation for both 7 CFR Parts 907 and 908 continues to read as follows:

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

2. New §§ 907.226 and 908.228 are added to read as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

§ 907.226 Expenses and assessment rate.

Expenses of $1,247,455 by the Navel Orange Administrative Committee are authorized, and an assessment rate of $0.025 per carton of navel oranges is established for the fiscal year ending October 31, 1989. Unexpended funds from the 1988–89 fiscal year may be carried over as a reserve.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

§ 908.228 Expenses and assessment rate.

Expenses of $694,840 by the Valencia Orange Administrative Committee are authorized, and an assessment rate of $0.028 per carton of Valencia oranges is established for the fiscal year ending October 31, 1989. Unexpended funds from the 1988–89 fiscal year may be carried over as a reserve.

Dated: January 18, 1989.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–1491 Filed 1–23–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 982

[FV–88–133]

Filberts/Hazelnuts Grown in Oregon and Washington; Proposed Establishment of Final Free and Restricted Percentages for the 1988–89 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action proposes the establishment of final free and restricted percentages for domestic inshell filberts/hazelnuts for the 1988–89 marketing year under the Federal marketing order for filberts/hazelnuts grown in Oregon and Washington. The proposed percentages would specify the amounts of domestically produced filberts/hazelnuts which may be marketed in domestic, export and other outlets. The percentages are intended to stabilize the supply of domestic inshell filberts/hazelnuts in order to meet the limited domestic demand for such filberts/hazelnuts and provide reasonable returns to producers. This proposal was recommended by the Filbert/Hazelnut Marketing Board (Board), the agency responsible for local administration of the order.

DATE: Comments must be received by February 23, 1989.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, Room 2085–S, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the date and page number of his issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Tom Jacobs, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–5120.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order and Agreement No. 982 (7 CFR Part 982), as amended, regulating the handling of filberts/hazelnuts grown in Oregon and Washington. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly

or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities action on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 26 handlers of filberts/hazelnuts subject to regulation under the filbert/hazelnut marketing order, and approximately 1,300 producers in the Oregon and Washington production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,00, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of filberts/hazelnuts may be classified as small entities.

The Board is required to meet prior to September 20 of each marketing year to computer an inshell trade demand and preliminary free and restricted percentages, if the use of volume regulation is recommended during the season. The order prescribes formulas for computing the inshell trade demand, as well as preliminary, interim final, and final precentages. The inshell trade demand establishes the amount of inshell filberts/hazelnuts the market can support throughout the season and the percentages release the inshell trade demand. The preliminary percentages release 80 percent of the inshell trade demand in order to protect against underestimates of the crop. On or before November 15, the Board must meet to recommend to the Secretary final percentages which release 100 percent of the inshell trade demand and 15 percent of the three year average trade acquisition. The additional 15 percent above the 100 percent of the inshell trade demand is released to provide for an adequate carryover into the following season. The Board's recommendation and this proposed rule are based on requirements specified in the order.

This proposed rule would restrict the amount of domestic inshell filberts/hazelnuts that can be marketed in domestic markets. The domestic outlets for this commodity are characterized by limited demand, and the establishment of free and restricted percentages would benefit the industry by promoting stronger marketing conditions and stabilizing prices and supplies, thus improving grower returns.

As provided in § 982.40 of the order, the Board meets prior to September 20 of each marketing year for the purpose of formulating its marketing policy for that year and submitting its recommendations for regulation. If the Board recommends volume regulation, it must compute and announce an inshell trade demand for that year prior to September 20. The inshell trade demand, rounded to the nearest whole number, equals the average of the preceding three "normal" years' trade acquisitions of inshell filberts/hazelnuts, with the provision that the Board may increase such estimate by no more than 25 percent, if market conditions warrant such an increase.

On August 30, 1988, the Board reviewed and adopted its marketing policy and unanimously recommended the use of volume control regulations for the 1988–89 season. The Board computed and announced an estimated inshell trade demand and preliminary percentages which were calculated to release 80 percent of the inshell trade demand to the domestic inshell market.

The preliminary free and restricted percentages make available portions of the filbert/hazelnut crop which may be marketed in domestic inshell markets (free) and exported, shelled, or disposed of in noncompetitive inshell outlets (restricted) early in the 1988–89 season. The preliminary free percentage is 80 percent of the established inshell trade demand, expressed as a percentage of the total supply subject to regulation, and is based on preliminary crop estimates. The Board computed and announced at its August 30, 1988, meeting, preliminary free and restricted percentages of 16 and 84 percent, respectively, to release 80 percent of the inshell trade demand. The reason only 80 percent of the inshell trade demand is releasable under the preliminary percentage is to guard against underestimates of the crop. The preliminary restricted percentage is 100 percent minus the free percentage.

The Board is required to meet prior to November 15 to formally review and approve its marketing policy and recommend to the Secretary for approval, the establishment of interim final and final free and restricted percentages. The Board uses current crop estimates to calculate the interim final and final percentages. The interim percentages are calculated in the same way as the preliminary percentages and release 100 percent of the inshell trade demand previously computed by the Board for the marketing year. The final free and restricted percentages release an additional 15 percent of the average of the preceding three years' trade acquisitions which is used to ensure an adequate carryover into the following season. The final free and restricted percentages must be effective at least 30 days prior to the end of the marketing year (July 1 through June 30), or earlier, if recommended by the Board and approved by the Secretary. In addition, revisions in the marketing policy can be made until February 15 of each marketing year. However, the inshell trade demand can only be revised upward.

The Board met on November 15, 1988, reviewed and approved an amended marketing policy and recommended the establishment of final free and restricted percentages. The Board decided that market conditions were such that immediate release of the additional free tonnage will not adversely affect the 1988–89 domestic inshell market. Accordingly, no interim final free and restricted percentages were recommended. The proposed marketing percentages are based on the industry's final production estimates and release 4,069 tons to the domestic inshell market. The Oregon Agricultural Statistics Service provided an early estimate of 18,000 tons total production for the Oregon and Washington area. However, a handler survey conducted by the Board provided a more current estimate of 15,500 tons total production for the area. Therefore, the Board voted to unanimously accept the more current estimate of 15,500 tons.

In addition to complying with the provisions of the marketing order, the Board also considers the U.S. Department of Agriculture's Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell filberts available for sale in domestic markets. The Guidelines require this primary market to have available a quantity equal to 100 percent of recent years' sales in those outlets before secondary market allocations are approved. This is to provide for plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations. In order to meet expected needs of the trade and to comply with the Guidelines, an increase of 10 percent (417 tons) has been included in the calculations used in determining the inshell trade demand. The proposed final percentages, which would release 100 percent of the inshell trade demand and 15 percent of the three year average trade acquisition, would make available 125 percent of prior years' sales, thus exceeding the requirements of the Guidelines.

The marketing percentages are based on the industry's initial production estimates and the following supply and demand information for the 1988–89 marketing year:

Inshell supply	Tons
(1) Total production (Filbert/Hazelnut Marketing Board Handler survey estimate)	15,500
(2) Less substandard, farm use (disappearance)	866
(3) Merchantable production (the Board's adjusted crop estimate)	14,634
(4) Plus undeclared carryin as of July 1, 1988, subject to regulation	0
(5) Supply subject to regulation (Item 3 plus Item 4)	14,634
(6) Average trade acquisition based on three prior years' domestic sales	4,172
(7) Increase to encourage increased sales (10 percent)	417
(8) Less declared carryin as of July 1, 1988, not subject to regulation	1,146
(9) Inshell Trade Demand	3,443
(10) 15 percent of the average trade acquisitions based on three years domestic sales	626
(11) Inshell Trade Demand plus 15 percent (Item 9 plus Item 10)	4,069

Percentages	Free	Restricted
(12) Final percentages (Item 11 divided by Item 5) x 100	28	72

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

List of Subjects in 7 CFR Part 982

Filberts/hazelnuts, Marketing agreements and orders, Oregon, and Washington.

For the reasons set forth in the preamble, 7 CFR Part 982 is proposed to be amended as follows:

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

Subpart—Grade and Size Regulation

1. The authority citation for 7 CFR Part 982 continues to read as follows:

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

2. Section 982.238 is added to read as follows:

§ 982.238 Final free and restricted percentages—1988–89 marketing year.

The final free and restricted percentages for merchantable filberts/hazelnuts for the 1988–89 marketing year shall be 28 and 72 percent, respectively.

Dated: January 18, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–1492 Filed 1–23–89; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Parts 1006, 1012 and 1013

[Docket Nos. AO–356–A26, AO–347–A29 and AO–286–A36; DA–88–102]

Milk in the Upper Florida, Tampa Bay and Southeastern Florida Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision would amend provisions of the three Florida milk orders to reflect current marketing conditions. The propose changes are based upon industry proposals considered at a public hearing held January 26, 1988, in Orlando, Florida.

Each of the three orders would be amended to provide a two-month "lock-in" provision for pool distributing plants, seasonal diversion limits, and an increase in the charges on overdue accounts. Shrinkage on other source milk receipts would be limited to bulk fluid milk products.

The Upper Florida and Tampa Bay orders would be amended to permit a pool plant and a manufacturing plant under a single roof to operate as separate facilities.

The Southeastern Florida order would be changed to require that a dairy farmer must deliver 10 days' production to a pool plant in order for such dairy farmer's milk to be diverted to nonpool plants as producer milk. Other miscellaneous amendments would delete the $6 maximum on partial payments to producers and make other changes to conform the Southeastern Florida order to other Federal milk orders.

These changes are needed to reflect current marketing conditions and to insure orderly marketing. Cooperative associations will be polled to determine whether producers favor issuance of the proposed amended orders.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2089.

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

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended order will promote more orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceeding:

Notice of Hearing: Issued January 12, 1988; published January 15, 1988 (53 FR 1035).

Recommended Decision: Issued September 2, 1988; published September 8, 1988 (53 FR 34766).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Upper Florida, Tampa Bay and Southeastern Florida marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice (7 CFR Part 900), at Orlando, Florida, on January 26, 1988. Notice of such hearing was issued on January 12, 1988 and published January 15, 1988 (53 FR 1035).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator on September 2, 1988, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the revision of the seventh paragraph of issue No. 4 and the addition of two new paragraphs at the end of such issue.

The material issues on the record of hearing relate to:

1. Two-month "lock-in" for distributing plants under the three Florida milk orders;

2. Diversion of producer milk to nonpool plants under the three Florida milk orders;

3. Classification of shrinkage on milk receipts under the three Florida milk orders;

4. Charges on overdue accounts under the three Florida milk orders;

5. Amendments to the pool plant provisions of the three Florida milk orders;

6. Miscellaneous amendments to the three Florida milk orders.

7. Regulatory treatment under Upper Florida and Tampa Bay milk orders of a pool plant and a manufacturing plant under a single roof.

8. Regulatory status of an exempt distributing plant under the Upper Florida order; and

9. Miscellaneous amendments to the Southeastern Florida order.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Two-month "lock-in" for distributing plants under the three Florida orders.* The orders should be amended to provide that a pool distributing plant will not shift regulation to another Federal order until the third month of greater fluid milk sales in the marketing area of the other order.

The three Florida orders currently provide that a distributing plant which qualifies as a pool shall be regulated under the order for the market in which the plant's distribution in the marketing area is the greatest.

A representative of the Florida Dairy Farmers' Association and Tampa Independent Dairy Farmers' Association proposed that a distributing plant continue to be pooled under the order for the market in which it had been previously regulated until the third month that the plant's sales in the marketing area of another order exceeded its fluid milk sales in the marketing area of the order in which the plant had been regulated. The cooperatives indicated that since 1983, four distributing plants have shifted regulation among the three Florida orders 28 times. Such shifts have caused distortions in the monthly market data published by the market administrator. In addition, such shifts often reveal confidential information regarding the plant that switches regulation from one order to another order. When a plant shifts regulation, the handler is identified as the source of increased route sales by pool handlers in the marketing area of the new order. Route sales in the marketing area of the prior milk order by the handler are reflected in increased out-of area sales by pool handlers when the plant shifts regulation.

The shifting in plant regulation from one order to another order on a month-to-month basis serves no useful purpose and can cause a number of administrative problems for the handler involved in such shifts. For example, a shift in regulation of the plant can cause a handler to have problems in pooling milk diverted to nonpool plants for Class II use.

Requiring that a plant continue to be regulated under an order until the third month that it has more sales in the marketing area of another order will minimize the number of times that a plant will shift regulation. Such change will insure that a plant which has greater sales in another order area due to some aberration in sales for a relatively short period will not shift to another order immediately. Instead, the plant will continue to be regulated by the order under which the plant was previously regulated until the third month in which the plant has greater sales in the marketing area of another order.

2. *Diversion of producer milk to nonpool plants under the three Florida milk orders.* Seasonal diversion limits should apply on producer milk diverted to nonpool plants for Class II use. Cooperative associations and proprietary plant operators should be permitted to divert producer milk in amounts up to the following percentages of milk physically received at pool plants for which they are the responsible handler: 40 percent in March–June, 25 percent in December–February and 20 percent in July–November.

Under the three Florida orders, cooperative associations and proprietary plant operators are permitted currently to divert an amount equivalent to 25 percent of the aggregate quantity of milk physically received from producers at a pool plant. Proponents indicated that current provisions allow up to 50 percent of producer milk physically received at pool plants to be diverted to nonpool plants. In this regard, they noted that while cooperative associations are limited to diverting only the milk of member producers, the order provisions also permit a proprietary plant operator to divert up to 25 percent of the milk of producers received at a pool pant. A representative of Southern Milk Sales, Inc., likewise pointed out that the proposed limits are less than now permitted under the separate orders.

The seasonal diversion limits adopted herein are identical to the modified diversion limits proposed at the hearing by proponent cooperatives. In the proposals contained in the notice of hearing, the proponent cooperative had specified the following diversion limits: 40 percent in April, May and June, 30 percent in March and 20 percent in all other months.

An exhibit presented at the hearing by proponent cooperatives identified the percent of producer milk that such cooperatives had diverted on a month-by-month basis from 1983 through 1987. The months of March–June were the months when the greatest amount of milk was diverted and the months of July-November were the months when the least amount of milk was diverted. The months of December–February are months of somewhat greater diversion than the months of July–November.

The cooperatives pointed out that the exhibit represents the combined diversions of proponent cooperatives for the three Florida milk orders. Their spokesman pointed out that the individual cooperatives' diversions from specific plants varied greatly from the percentages shown on the exhibit.

Monthly average diversions to nonpool plants by proponent cooperatives in the three Florida orders for the years 1983 through 1987 as a percentage of producer milk pooled by proponent cooperatives ranged from a low of 0 in August 1987 to a high of 7.7 in December 1983. On the basis of prior diversions, the percentage limitations adopted herein will facilitate the handling of milk that is in excess of the fluid needs of handlers. Furthermore, proponent cooperatives modified at the hearing the diversion limits set forth in the hearing notice after consulting with other cooperative associations serving the Florida markets. Such modified limits are the percentage diversion limits adopted herein.

The seasonal monthly limits on diversions provided herein represent a monthly average of 27.5 percent on a year-round basis. This is only 2.5 percentage points greater than the limit now provided for a cooperative under the order. It is concluded, therefore, that the diversion limits requested by proponent cooperatives of 40 percent in March–June, 25 percent in December–February and 20 percent in July–November are reasonable limits and should be adopted.

Any milk diverted by a handler in excess of the quantity limitations should not be producer milk. The diverting handler should be permitted to designate the dairy farmer deliveries to nonpool plants that would not be producer milk.

In the event that the diverting handler fails to designate which producer's milk was over-diverted, the market

administrator shall make such determination. In this regard, milk last diverted during such month in lots of an entire day's production, should be excluded first in determining which milk would not be producer milk.

Proponent cooperatives suggested that the market administrator should determine whose milk was over-diverted in the event that the diverting handler fails to make such determination. Proponents, however, gave no indication how the market administrator should make such determination. Accordingly, this decision adopts a method that has been used in other Federal orders to make such choice.

In conjunction with the seasonal diversion limits, proponent cooperatives asked that the minimum monthly delivery of 10 days' production of each producer to a pool plant under the Upper Florida and Tampa Bay milk orders and the proposed 10-day requirement for the Southeastern Florida milk order (discussed later in this decision) be modified. Proponents indicated that the producer whose milk is diverted may not be able to meet the 10-day requirement if a pool plant switches regulation to another Federal order. In such case, the cooperatives proposed that milk delivered to an other order plant regulated by the order that had regulated such pool plant in the prior month shall be counted towards meeting the 10-day production requirement.

The proposed change is an appropriate modification and is adopted herein. Unless such change is adopted, a dairy farmer who delivered 10 days' production to two pool plants might not be able to qualify the milk that was diverted to a nonpool plant as producer milk if one of the two pool plants became regulated under another order during the month. Under the change adopted herein, the producer could use the milk delivered to the pool plant and the other order plant to qualify the milk diverted for manufacturing use as producer milk. In the event that a cooperative is the diverting handler, the cooperative should be permitted to elect under which order the diverted milk is to be pooled as producer milk.

3. *Classification of shrinkage on other source milk receipts under the three Florida milk orders.* Shrinkage on receipts of producer milk and bulk milk receipts that is classified as Class II milk should be more effectively limited to one and one-half percent of such receipts. In prorating total plant shrinkage between receipts of fluid milk products that are generally intended for Class I use and other receipts of fluid milk products and fluid cream products intended for Class II use (including milk products that are utilized in the plant's processing operations to produce other milk products), only receipts that are in bulk should be used in such proration.

Under the current provisions of the three orders, shrinkage is assigned to both packaged fluid milk products and bulk fluid milk products that are received at a pool plant. Proponent cooperatives requested that plant shrinkage not be assigned to packaged receipts of fluid milk products.

The shrinkage provisions or orders recognize that losses do occur in the processing of raw milk into packaged fluid milk products. Processing losses do not occur in the handling of packaged fluid milk products that are transferred between plants. In most cases, there is no shrinkage or loss in the handling of packaged fluid milk products transferred between plants. Under usual circumstances, the quantity of packaged fluid milk products that is received at a pool plant is disposed of on routes without any loss. Consequently, the orders should be changed so that shrinkage losses are not attributed to packaged fluid milk products transferred to a pool plant. This will assign plant shrinkage to those milk receipts for which a handler is more likely to incur shrinkage as well as better effect the limit on the Class II classification of shrinkage.

4. *Charges on overdue accounts under the three Florida orders.* Late payment charges should apply on all funds due to the market administrator (Sections 71, 76, 77, 85, and 86—Payments to the producer-settlement fund, payments by handlers operating a partially regulated distributing plant, adjustment of accounts, assessment for order administration and deductions for marketing services, respectively) and on payments due to producers and cooperative associations (Section 73—Payments to producers and to cooperative associations). The charge for late payments should be one percent for each month or portion thereof that such payment is overdue. The order should also provide that the amounts payable on overdue accounts shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously computed on such overdue accounts. Any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due. Also, all monies collected on overdue accounts shall be paid to the administrative fund maintained by the market administrator.

The Upper Florida and Tampa Bay milk orders currently provide for late payment charges on accounts due the market administrator. The Southeastern Florida milk order applies a late payment charge only on funds due to the producer-settlement fund. In each of the three orders, the charge for late payments is one-half of one percent for each month the payment is overdue. The representative for the two Florida cooperative associations requested that late payment charges apply on all accounts due the market administrator and on payments due producers and cooperative associations. The cooperatives requested that the charges on overdue accounts be one percent for the first month the account is overdue, one and one-half percent the second month the account is overdue, and two percent per month for each succeeding month that the account is overdue.

The cooperatives' representative indicated that he was not aware of any handler who is habitually tardy in making payments required under the order. However, he believed that the individual orders should not encourage late payments as temporary short-term sources of funds by the imposition of relatively low charges on late payments. Also, the cooperatives indicated that producers and cooperative associations should not be expected to become sources of operating funds for handlers. If a handler fails to make payments as required, cooperative associations would have to borrow short-term capital to pay member producers or reduce the payment that they make to producers.

Charges on overdue accounts should apply on the unpaid obligation of a handler pursuant to Sections 71, 73, 76, 77, 85 and 86 in each of the three Florida milk orders. As indicated by proponents, none of the Federal milk orders provide for late payment charges as high as those proposed for the three Florida orders. The Alabama-West Florida order provides for a charge of one and one-half percent per month on overdue accounts. All of the other Federal milk orders that have late payment charges have rates that range from one-half of one percent to one percent per month.

The effectiveness of the late payment charges that currently apply under the three Florida orders is nullified to a large extent by the relatively small charge (½ of 1 percent of the unpaid obligation) and the fact that the charge does not apply until the first of the month following the due date. If the charge on overdue accounts is to have an impact on encouraging prompt

payments, it should be an amount that is more nearly what a delinquent handler would be charged by commercial banks for money borrowed for short-term purposes. Otherwise, handlers who may have financial problems would be encouraged to delay their payments, knowing that the charge under the order is cheaper than borrowing money commercially at a higher loan rate.

The late-payment charge should be established at the rate of one percent per month of the unpaid balance. This charge is only one-half the rate proposed by proponents. The rate that cooperatives proposed was based upon the rate of interest charged by certain credit card companies for loans extended to their customers. The rate of 1 percent per month on the unpaid balance is more nearly representative of the cost of borrowing money commercially and should tend to encourage the payment of an obligation.

In the event that the 1-percent-per-month charge on overdue accounts fails to encourage prompt payment of accounts by handlers, further modification of the late payment charge provisions could be considered at a hearing. For example, such charge could be applied more promptly. Currently, late payment charges are not applied until the first day of the month after the account is due. The regulatory provisions in certain other Federal milk orders specifically provide that the charge shall apply immediately after the account is due.

Late-payment charges on all overdue accounts should accrue to the administrative expense fund maintained by the market administrator. In the event a handler is delinquent in the payment of an obligation, money must be spent by the market administrator in determining the amount of the late-payment charges and in collecting such payments. The money to cover the cost of these activities comes from the administrative assessment fund. Thus, the competitors of the noncomplying handlers who pay assessments to this fund are bearing the administrative costs of dealing with the delinquent handler. Therefore, it is reasonable that the late-payment charges assessed on noncomplying handlers be used to help defray these administrative costs.

Proponent cooperatives excepted to the proposed amendment which provides that charges on overdue accounts payable to producers and cooperative associations shall accrue to the administrative expense fund of the market administrator. The cooperative associations pointed out that in the event producers are not paid on a timely basis, the producers are the "shorted" party. For this reason, the cooperative associations believed that the charges on accounts that are overdue producers and cooperatives should be remitted to the producer-settlement fund. According to the cooperative associations, this would allow funds collected on such overdue accounts to be returned to the producers who were the ones foregoing timely payment.

If the order were amended to specify that charges on accounts overdue producers and cooperatives be paid to the producer-settlement fund, in these markets where virtually all of the milk received by handlers is from cooperatives, it would tend to reduce the incentive for cooperatives to insist on timely payment from handlers. This would detract from the basic intent of the late payment charge. More importantly, as previously noted, money must be spent by the market administrator in determining the amount of the late-payment charges and in collecting such payments. The money to cover the cost of these activities comes from the administrative expense fund. Accordingly, cooperative associations' exception to having charges on accounts overdue producers and cooperatives accrue to the administrative expense fund is hereby denied.

5. *Amendments to the pool plant provisions of the three Florida milk orders.* The pool distributing plant and the pool supply plant provisions should be amended to provide that the performance standards for such plants are based upon the fluid milk products physically received at the plant and diverted from such plant to a nonpool plant as producer milk.

The current provisions of the three orders base the performance standards for pool distributing plants and pool supply plants upon the fluid milk products received at a plant. Proponent cooperatives requested that diversions to a nonpool plant be counted in computing the qualification percentage of the plant from which such milk is diverted during the month.

As noted by proponents, milk pooled on the Florida markets must move a significant amount of time to handlers regulated under the orders to fill the needs of the marketplace. This is evident from the high Class I utilization of producer milk in the three markets.

The proposed change is appropriate for the three Florida orders because the State is deficit in milk production. Such change clarifies the pool plant qualification standards and will tend to assure that sufficient quantities of fluid milk products are available to meet the fluid milk requirements of regulated handlers.

As provided herein, milk diverted from a pool plant to a nonpool plant for Class II use would be included in the pool plant's receipts for the purpose of determining whether or not the plant meets the applicable pooling standards. It is necessary under this procedure to safeguard against a plant not meeting the pooling standards because too much milk was diverted from the plant, perhaps without timely knowledge of this by the plant operator. Accordingly, whatever quantity of milk diverted by a cooperative from a pool plant that would cause such plant to become a nonpool plant should not be considered as producer milk. In such event, the cooperative should be permitted to designate the dairy farmer deliveries to nonpool plants that would not be producer milk. Otherwise, the milk last diverted by the cooperative from the pool plant, in lots of an entire day's production, should be excluded first in determining the milk of dairy farmers that would not be producer milk.

6. *Miscellaneous amendments to the three Florida milk orders.* The provisions of the three Florida orders should also be amended as follows:

(1) The basic formula price section of the orders should be amended to delete a provision that establishes a floor price of $4.33 for the basic formula price;

(2) The section of the orders dealing with the handler's value of milk for computing the uniform price should be amended by removing the last paragraph in such section. Such paragraph provided during a temporary period a transportation credit for bulk fluid milk products received from an other order plant.

(3) The plant location adjustments for handlers in section 52 of the orders should provide that the Class I price applicable to producer milk and other source milk when adjusted by location pricing shall not be less than the Class II price for the month; and

(4) The plant location adjustments on nonpool milk should be amended to provide that the uniform price when adjusted to the location of the nonpool plant from which the milk was received shall not be less than the Class II price for the month.

The basic formula section of the three orders should be amended to delete an inappropriate floor price for the basic formula price. The $4.33 floor price is no longer an appropriate price since the basic formula price at the present time is more than twice the floor price. Accordingly, the $4.33 floor price should be deleted.

The paragraph to be removed from Section 60 of the orders, handler's value

of milk for computing uniform price, was made a provision of the orders for a temporary period. The paragraph was added to provide a transportation credit through February 1985. Since the period in which the transportation credit was available has expired, the paragraph should be removed from each of the three orders.

In the plant location adjustments for handlers section of the orders, a limit should be placed on the amount that the Class I price applicable to producer milk and other source milk shall be adjusted downward. Likewise, in the plant location adjustments for the uniform price to producers and on nonpool milk, a limit should be placed on the amount that the uniform price on nonpool milk shall be adjusted downward. In each instance, the price shall not be less than the Class II price for the month. Such limit is appropriate since the Class II price represents the minimum value of producer milk in a manufacturing use. Furthermore, such change brings these provisions of the three Florida orders in conformity with changes made in other Federal milk orders at the time of the uniform classification changes.

7. *Regulatory treatment under the Upper Florida and Tampa Bay milk orders of a pool plant and a manufacturing plant under a single roof.* The Upper Florida and Tampa Bay milk orders should be amended to provide that the term pool plant shall not apply to any building, premises, or facilities, the primary function of which is to hold or store bottled milk or milk products (including filled milk) in finished form, nor shall it include any part of a plant in which the operations are entirely separated (by wall or other partition) from the handling of producer milk.

The current provisions of the Upper Florida and Tampa Bay orders do not provide for two facilities under a single roof to operate as separate facilities. Proponent cooperatives pointed out that the Southeastern Florida milk order permits a manufacturing plant to be operated as a separate facility if it is separated by a wall from a facility that is handling producer milk. The cooperatives requested that such provision be incorporated in the Upper Florida and Tampa Bay milk orders.

When the provision was adopted in the Southeastern Florida order, the findings and conclusions stated:

> A minimum requirement for treating the manufacturing facilities as a nonpool plant would be that a separate receiving plant or platform is maintained for nonproducer milk and that the equipment for manufacturing be in a room entirely separated from the fluid milk handling equipment, such separation to be by a solid partition without communicating doorway. It would, of course, be necessary that handlers keep adequate records as to transfers of milk and milk products between the two parts of the plant. (Official notice is taken of the final decision for the Southeastern Florida order issued July 11, 1957 (22 FR 5588).)

Such provision has been included in the Southeastern Florida order since September 1, 1957. The provision should be adopted in the Upper Florida and Tampa Bay milk orders to provide uniformity among the three orders. Thus, a pool plant that has a separate manufacturing facility will be treated the same when shifting regulatory status among the three Florida orders.

8. *Regulatory status of an exempt distributing plant under the Upper Florida milk order.* The pool plant definition of the Upper Florida milk order should be modified to conform to the nonpool plant definition of the order. Such definition provides that an exempt distributing plant shall not be a pool plant. Accordingly, the pool plant definition should specify that the term "pool plant" shall not apply to an exempt distributing plant.

The nonpool plant definition of the order identifies one category of nonpool plant as an "exempt distributing plant". Such plant is defined as a distributing plant operated by a governmental agency.

The pool plant modification adopted herein was proposed by proponent cooperatives. The adoption of the change will conform the pool plant definition to the nonpool plant definition. Accordingly, the pool plant definition should be changed to specify that the term "pool plant" shall not apply to an exempt distributing plant.

9. *Miscellaneous amendments to the Southeastern Florida milk order.*

(a) The producer definition of the order should be revised to specify that milk of a dairy farmer must be received at a pool plant during the month in order for the dairy farmer to be a producer under the order.

Proponent cooperatives requested the modification of the producer definition that is adopted herein.

The proposed modification is appropriate and should be adopted herein. In the absence of the proposed change, any dairy farmer who produces Grade A milk could be qualified as a producer under the Southeastern Florida milk order. The proposed change provides specificity as to which dairy farmers are to be identified as producers under the order. Obviously, only those dairy farmers whose milk is received at a pool plant regulated by the Southeastern Florida order should be producers under such order. It is appropriate that the order be modified accordingly.

(b) The Class III price shall be computed by multiplying the butterfat differential for the month by 35 and rounding the result to the nearest cent. The net result of such computation is that the value of skim milk classified as Class III is effectively zero.

Under the current provisions of the order, the Class III price is determined by multiplying the Chicago butter price by 1.25, adding 4 cents and multiplying the result by 3.5. This formula results in a Class III price that is about 60 cents above the value of Class II butterfat in a hundredweight of milk testing 3.5 percent butterfat. This is largely because the butterfat differential under the order is based on a yield factor of 1.15 compared to the 1.25 yield factor in this formula. Since the value of butterfat as reflected through the butterfat differential adjustment to the uniform price is about 60 cents per 3.5 pounds lower than the Class III price, the current formula effectively results in a handler being charged about 60 cents per hundredweight for Class III skim milk.

Proponent cooperatives requested that the computation for the Class III price be amended to provide a zero value for skim milk classified as Class III.

In the Southeastern Florida order, Class III milk is all milk of which the skim milk portion is disposed of for fertilizer or livestock feed or dumped after such prior notification as the market administrator may require. It is obvious that skim milk classified as Class III is of no value to the handler. Accordingly, the order should be amended to provide for a zero value for skim milk in a Class III use. The butterfat differential is the amount that the value of a tenth of a pound of butterfat exceeds the value of a tenth of a pound of skim milk. Thus, to effect a zero value for a hundredweight of skim milk in Class III, the Class III price needs to be established at the butterfat differential value in a hundredweight of milk containing 3.5 percent butterfat.

(c) The provision providing that the partial payment to producers shall not exceed $6 per hundredweight should be deleted.

The current provisions of the order provide that a handler shall make a partial payment to a producer on or before the 20th day of the month for milk received during the first 15 days of the month. On or before the 5th day of the following month, a handler is required to make a partial payment to a producer

for milk received from the 16th day of the month until the last day of the month. The amount of the partial payment is the uniform price for the preceding month less ten percent, but not to exceed $6, multiplied by the hundredweight of milk received during the two periods of the months.

Proponent cooperatives requested that the $6 maximum be deleted. They noted that such rate is no longer appropriate in today's market. Handlers in the market have been paying in excess of the maximum rate provided under the order for a long period of time.

As noted by proponent, the $6 maximum is no longer appropriate in today's market in which the uniform price under the Southeastern Florida Federal milk order ranges from $14 to $15 per hundredweight. Accordingly, the $6 maximum should be deleted.

(d) Ten days' milk production must be received from a producer in order for milk of such producer to be diverted to a nonpool plant for Class II use.

The current order provisions define producer milk as skim milk and butterfat contained in milk diverted from a pool plant to a nonpool plant, other than a producer-handler plant subject to certain limitations. It is not clear from the order language whether milk of a producer must be received once a month at a pool plant to be eligible for diversion to a nonpool plant or whether such milk may be diverted to a nonpool plant every day after being received once at a pool plant.

Proponent cooperatives requested that the Southeastern Florida milk order be modified to require that at least 10 days' production must be received at a pool plant in order for milk of a producer to be eligible for diversion as Class II milk to a nonpool plant. The cooperatives noted that the Upper Florida and Tampa Bay milk orders currently contain such requirement.

Only that milk genuinely associated with the market should be eligible to be diverted to nonpool plants. A requirement that at least 10 days' production of a producer must be physically received at a pool plant during the month to qualify any of such producer's production in the same month for diversion to a nonpool plant as producer milk should provide assurance that such milk is genuinely associated with the market and still permit the necessary flexibility in diverting milk not needed for fluid use. Such limitation has been in effect under the Upper Florida and Tampa Bay milk orders for a number of years and has served to identify that milk associated with such markets. The 10-day production requirement under the Southeastern Florida order adopted herein should provide assurance that the milk of such producer is associated with the Southeastern Florida market.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Upper Florida, Tampa Bay, and Southeastern Florida orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the orders regulating the handling of milk in the Upper Florida, Tampa Bay and Southeastern Florida marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register**.

Determination of Producer Approval and Representative Period

September 1988 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Upper Florida, Tampa Bay and Southeastern Florida marketing areas is approved or favored by producers, as defined under the terms of the orders as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

List of Subjects in 7 CFR Parts 1006, 1012 and 1013

Milk marketing orders, Milk Dairy products.

Signed at Washington, DC, on January 13, 1989.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

Order Amending the Orders Regulating the Handling of Milk in the Upper Florida, Tampa Bay and Southeastern Florida Marketing Areas

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were

amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Upper Florida, Tampa Bay and Southeastern Florida marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing areas; and the minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the Upper Florida, Tampa Bay and Southeastern Florida marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreements and order amending the orders contained in the recommended decision issued by the Administrator on September 2, 1988 and published in the **Federal Register** on September 8, 1988 (53 FR 34766), shall be and are the terms and provisions of this order, amending the orders, and are set forth in full herein.

PART 1006—MILK IN THE UPPER FLORIDA MARKETING AREA

1. The authority citation for 7 CFR Parts 1006, 1012 and 1013 continues to read as follows:

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

2. Revise § 1006.7 to read as follows:

§ 1006.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant that has route distribution, except filled milk, during the month of not less than 50 percent of the total Grade A fluid milk products, except filled milk, that are physically received at such plant or diverted as producer milk to a nonpool plant pursuant to § 1006.13, and that has route disposition, except filled milk, in the marketing area during the month of not less than 10 percent of such receipts.

(b) A supply plant from which not less than 50 percent of the total quantity of Grade A fluid milk products that are physically received from dairy farmers at such plant or diverted as producer milk to a nonpool plant pursuant to § 1006.13 during the month is shipped as fluid milk products, except filled milk, to pool plants meeting the requirements of § 1006.7(a).

(c) A plant, other than a distributing plant, that is located in the marketing area and is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and 50 percent or more of the producer milk of members of the cooperative association is received at pool distributing plants either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested, subject to the following conditions:

(1) The plant is approved by a duly constituted health authority for the disposition of Grade A milk in the marketing area; and

(2) The plant does not qualify as a pool plant under paragraph (b) of this section or under the provisions of another Federal order applicable to a supply plant.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt distributing plant;

(3) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as route disposition in the marketing area regulated by the other order than as route disposition in this marketing area: *Provided,* That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order; and

(4) Any building, premises, or facilities, the primary function of which is to hold or store bottled milk or milk products (including filled milk) in finished form, nor shall it include any part of a plant in which the operations are entirely separated (by wall or other partition) from the handling of producer milk.

3. In § 1006.13, paragraph (b) is revised to read as follows:

§ 1006.13 Producer milk.

* * * * *

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Such milk shall be deemed to have been received by the diverting handler at the plant to which diverted;

(2) Not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant: Provided, That any delivery during the current month from such producer to an other order plant regulated by the order that regulated such pool plant in the prior month shall be counted towards meeting the 10-day production requirement;

(3) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(4) A cooperative association may divert for its account the milk of a producer. The total quantitiy of such milk so diverted by a cooperative that exceeds the following specified applicable percentage of producer milk that the cooperative association caused to be delivered to and physically received at pool plants during the month shall not be producer milk:

(i) 40 percent in March-June,

(ii) 25 percent in December-February, and

(iii) 20 percent in July-November;

(5) The operator of a pool plant other than a cooperative association may divert for its account any milk of producers that is not under the control of a cooperative association that is diverting milk during the month pursuant to paragraph (b)(4) of this section. The total quantity so diverted by the operator of the pool plant that exceeds the following specified applicable percentage of milk physically received at such plant during the month that is eligible to be diverted by the plant operator shall not be producer milk:

(i) 40 percent in March-June,

(ii) 25 percent in December-February, and

(iii) 20 percent in July-November;

(6) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to paragraph (b) (4) and (5) of this section. If the handler fails to make such designation, milk diverted on the last day of the month, then the second-to-last day of the month, and so on, shall be excluded until all diversions in excess of the prescribed limit are accounted for.

4. In § 1006.40, paragraph (b)(6) is revised to read as follows and paragraph (b)(7) is removed:

§ 1006.40 Classes of utilization.

* * * * *

(b) * * *

(6) Skim milk and butterfat in shrinkage assigned pursuant to § 1006.41(a) to the receipts specified in § 1006.41(a)(2) and in shrinkage specified in § 1006.41 (b) and (c).

* * * * *

5. Revise § 1006.41 to read as follows:

§ 1006.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1006.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat;

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraphs; and

(2) In other source milk not specified in paragraphs (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product.

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1006.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1006.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, the applicable percentage under this paragraph shall be two percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is diverted purchases such milk on the basis of weights determined from its measurement on the farm, the applicable percentage under this paragraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II classification is requested by the operator of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective quantities of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5) and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1006.9 (b) and (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1006.51 [Amended]

6. Amend § 1006.51 by removing the last sentence which reads "For the purpose of computing the Class I price, the resulting price shall not be less than $4.33."

7. Amend § 1006.52 by adding a new paragraph (c) to read as follows:

§ 1006.52 Plant location adjustments for handlers.

* * * * *

(c) The Class I price resulting from such adjustments specified in this section shall not result in a price less than the Class II price for the month and the Class I price applicable to other source milk shall be adjusted at the rates specified in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class II price for the month.

§ 1006.60 [Amended]

8. In § 1006.60, paragraph (h) is removed.

9. In § 1006.75, revise paragraph (b) to read as follows:

§ 1006.75 Plant location adjustments for producers and on nonpool milk.

* * * * *

(b) For purposes of computations pursuant to §§ 1006.71 and 1006.72, the uniform price shall be adjusted at the rates set forth in § 1006.52 applicable at the location of the nonpool plant from which the milk was received, except that the resulting adjusted price shall not be less than the Class II price for the month.

10. Revise § 1006.78 to read as follows:

§ 1006.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1006.71, 1006.73, 1006.76, 1006.77, 1006.85 or 1006.86 shall be increased by 1 percent for each month or portion thereof that such obligation is overdue, subject to the following conditions:

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously computed pursuant to this section;

(b) For the purposes of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due; and

(c) All monies collected pursuant to this section shall be paid to the administrative assessment fund maintained by the market administrator.

PART 1012—MILK IN THE TAMPA BAY MARKETING AREA

11. Revise § 1012.7 to read as follows:

§ 1012.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A distributing plant that has route distribution, except filled milk, during the month of not less than 50 percent of the total Grade A fluid milk products, except filled milk, that are physically received at such plant or diverted as producer milk to a nonpool plant pursuant to § 1012.13, and that has route disposition, except filled milk, in the marketing area during the month of not less than 10 percent of such receipts.

(b) A supply plant from which not less than 50 percent of the total quantity of Grade A fluid milk prodcuts that is physically received from dairy farmers at such plant or diverted as producer milk to a nonpool plant pursuant to § 1012.13 during the month is shipped as fluid milk products, except filled milk, to pool plants meeting the requirements of § 1012.7(a).

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as route disposition in the marketing area regulated by the other order than as route disposition in this marketing area: *Provided,* That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order; and

(3) Any building, premises, or facilities, the primary function of which is to hold or store bottled milk or milk products (incluing filled milk) in finished form, nor shall it include any part of a plant in which the operations are entirely separated (by wall or other partition) from the handling of producer milk.

12. In § 1012.13, paragraph (b) is revised to read as follows:

§ 1012.13 Producer milk.

* * * * *

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Such milk shall be deemed to have been received by the diverting handler at the plant to which diverted;

(2) Not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant: *Provided,* That any delivery during the current month from such producer to an other order plant regulated by the order that regulated such pool plant in the prior month shall be counted towards meeting the 10-day production requirement;

(3) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(4) A cooperative association may divert for its account the milk of a producer. The total quantity of such milk so diverted by a cooperative that exceeds the following specified applicable percentage of producer milk that the cooperative association caused to be delivered to and physically received at pool plants during the month shall not be producer milk:

(i) 40 percent in March–June,

(ii) 25 percent in December–February, and

(iii) 20 percent in July–November;

(5) The operator of a pool plant other than a cooperative association may divert for its account any milk of producers that is not under the control of a cooperative association that is diverting milk during the month pursuant to paragraph (b)(4) of this section. The total quantity so diverted by the operator of the pool plant that exceeds the following specified applicable percentage of milk physically received at such plant during the month that is eligible to be diverted by the plant operator shall not be producer milk:

(i) 40 percent in March–June,

(ii) 25 percent in December–February, and

(iii) 20 percent in July–November;

(6) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to paragraphs (b) (4) and (5) of this section. If the handler fails to make such designation, milk diverted on the last day of the month, then the second-to-last day of the month, and so on, shall be excluded until all diversions in excess of the prescribed limit are accounted for.

13. In § 1012.40, paragraph (b)(6) is revised to read as follows and paragraph (b)(7) is removed:

§ 1012.40 Classes of utilization.

* * * * *

(b) * * *

(6) Skim milk and butterfat in shrinkage assigned pursuant to § 1012.41(a) to the receipts specified in § 1012.41(a)(2) and in shrinkage specified in § 1012.41 (b) and (c).

* * * * *

14. Revise § 1012.41 to read as follows:

§ 1012.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1012.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraphs; and

(2) In other source milk not specified in paragraphs (b)(1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product.

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1012.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1012.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, the applicable percentage under this paragraph shall be two percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is diverted purchases such milk on the basis of weights determined from its measurement on the farm, the applicable percentage under this paragraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II classification is requested by the operator of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective quantities of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5) and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1012.9 (b) and (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1012.51 [Amended]

15. Amend § 1012.51 by removing the last sentence which reads "For the purpose of computing the Class I price, the resulting price shall not be less than $4.33."

16. Amend § 1012.52 by adding a new paragraph (c) to read as follows:

§ 1012.52 Plant location adjustments for handlers.

* * * * *

(c) The Class I price resulting from such adjustments specified in this section shall not result in a price less than the Class II price for the month and the Class I price applicable to other source milk shall be adjusted at the rates specified in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class II price for the month.

§ 1012.60 [Amended]

17. In § 1012.60, paragraph (h) is removed.

18. In § 1012.75, revise paragraph (b) to read as follows:

§ 1012.75 Plant location adjustments for producers and on nonpool milk.

(a) * * *

(b) For purposes of computations pursuant to §§ 1012.71 and 1012.72, the uniform price shall be adjusted at the rates set forth in § 1012.52 applicable at the location of the nonpool plant from which the milk was received, except that the resulting adjusted price shall not be less than the Class II price for the month.

19. Revise § 1012.78 to read as follows:

§ 1012.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1012.71, 1012.73, 1012.76, 1012.77, 1012.85 or 1012.86 shall be increased 1 percent for each month or portion thereof that such obligation is overdue, subject to the following conditions:

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously computed pursuant to this section;

(b) For the purposes of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due; and

(c) All monies collected pursuant to this section shall be paid to the administrative assessment fund maintained by the market administrator.

PART 1013—MILK IN THE SOUTHEASTERN FLORIDA MARKETING AREA

20. Revise § 1013.7 to read as follows:

§ 1013.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A distributing plant that has route distribution, except filled milk, during the month of not less than 50 percent of the total Grade A fluid milk products, except filled milk, that are physically received at such plant or diverted as producer milk to a nonpool plant pursuant to § 1013.13, and that has route disposition, except filled milk, in the marketing area during the month of not less than 10 percent of such receipts.

(b) A supply plant from which not less than 50 percent of the total quantity of Grade A fluid milk products that is physically received from dairy farmers at such plant or diverted as producer milk to a nonpool plant pursuant to § 1013.13 during the month is shipped as fluid milk products, except filled milk, to pool plants meeting the requirements of § 1013.7(a).

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as route disposition in the marketing area regulated by the other order than as route disposition in this marketing area: *Provided*, That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order; and

(3) Any building, premises, or facilities, the primary function of which is to hold or store bottled milk or milk products (including filled milk) in finished form, nor shall it include any part of a plant in which the operations are entirely separated (by wall or other partition) from the handling of producer milk.

21. Revise § 1013.12 to read as follows:

§ 1013.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the inspection requirements of a duly constituted health authority, which milk is received at a pool plant or diverted pursuant to § 1013.13 from a pool plant to a nonpool plant.

(b) The term "producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act; or

(2) Any person with respect to milk produced by such person that is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I milk under the provisions of such other order.

22. In § 1013.13, paragraph (b) is revised to read as follows:

§ 1013.13 Producer milk.

* * * * *

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Such milk shall be deemed to have been received by the diverting handler at the plant to which diverted;

(2) Not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant: *Provided*, That any delivery during the current month from such producer to an other order plant regulated by the order that regulated such pool plant in the prior month shall be counted towards meeting the 10-day production requirement;

(3) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(4) A cooperative association may divert for its account the milk of a producer. The total quantity of such milk so diverted by a cooperative that exceeds the following specified applicable percentage of producer milk that the cooperative association caused to be delivered to and physically received at pool plants during the month shall not be producer milk:

(i) 40 percent in March–June,

(ii) 25 percent in December–February, and

(iii) 20 percent in July–November;

(5) The operator of a pool plant other than a cooperative association may divert for its account any milk of producers that is not under the control of a cooperative association that is diverting milk during the month pursuant to paragraph (b)(4) of this section. The total quantity so diverted by the operator of the pool plant that exceeds the following specified applicable percentage of milk physically received at such plant during the month that is eligible to be diverted by the plant operator shall not be producer milk:

(i) 40 percent in March–June,

(ii) 25 percent in December–February, and

(iii) 20 percent in July–November;

(6) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to paragraph (b) (4) and (5) of this section. If the handler fails to make such designation, milk diverted on the last day of the month, then the second-to-last day of the month, and so on, shall be excluded until all diversions in excess of the prescribed limit are accounted for.

23. In § 1013.40, paragraph (b)(6) is revised to read as follows and paragraph (b)(7) is removed:

§ 1013.40 Classes of utilization.

* * * * *

(b) * * *

(6) Skim milk and butterfat in shrinkage assigned pursuant to § 1013.41 (a) to the receipts specified in § 1013.41 (a)(2) and in shrinkage specified in § 1013.41 (b) and (c).

* * * * *

24. Revise § 1013.41 to read as follows:

§ 1013.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1013.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraphs; and

(2) In other source milk not specified in paragraphs (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product.

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1013.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1013.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, the applicable percentage under this paragraph shall be two percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is diverted purchases such milk on the basis of weights determined from its measurement on the farm, the applicable percentage under this paragraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II classification is requested by the operator of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective quantities of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5) and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1013.9 (b) and (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, the applicable percentage under this paragraph for the cooperative association shall be zero.

25. In § 1013.50, revise the introductory text and paragraph (c) as follows:

§ 1013.50 Class prices.

Subject to the provisions of § 1013.52, the Class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

* * * * *

(c) *Class III price.* The Class III price shall be computed as follows: Multiply the butterfat differential pursuant to § 1013.74 for the month by 35 and round the result to the nearest cent.

§ 1013.51 [Amended]

26. Amend § 1013.51 by removing the last sentence which reads: "For the purpose of computing the Class I price, the resulting price shall not be less than $4.33."

27. Amend § 1013.52 by adding a new paragraph (c) to read as follows:

§ 1013.52 Plant location adjustments for handlers.

* * * * *

(c) The Class I price resulting from such adjustments specified in this section shall not result in a price less than the Class II price for the month and the Class I price applicable to other source milk shall be adjusted at the

rates specified in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class II price for the month.

§ 1013.60 [Amended]

28. In § 1013.60, paragraph (h) is removed.

§ 1013.73 [Amended]

29. Amend § 1013.73(a) (1) and (2) by removing the phrase "but not to exceed $6,".

30. In § 1013.75, revise paragraph (b) to read as follows:

§ 1013.75 Plant location adjustments for producers and no nonpool milk.

* * * * *

(b) For purposes of computations pursuant to §§ 1013.71 and 1013.72, the uniform price shall be adjusted at the rates set forth in § 1013.52 applicable at the location of the nonpool plant from which the milk was received, except that the resulting adjusted price shall not be less than the Class II price for the month.

31. Revise § 1013.78 to read as follows:

§ 1013.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1013.71, 1013.73, 1013.76, 1013.77, 1013.85 or 1013.86 shall be increased 1 percent for each month or portion thereof that such obligation is overdue, subject to the following conditions:

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously computed pursuant to this section;

(b) For the purposes of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due; and

(c) All monies collected pursuant to this section shall be paid to the administrative assessment fund maintained by the market administrator.

Marketing Agreement Regulating the Handling of Milk in the Upper Florida, Tampa Bay and Southestern Florida Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ [1] to , all inclusive, of the order regulating the handling of milk in the ( ) marketing area (7 CFR Part [2]) which is annexed hereto; and

II. The following provisions:

§ [3] Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of September 1988, hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ [3] Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with § 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

(Signature)

By _____

(Name) (Title)

(Address)

Attest _____

Date _____

[FR Doc. 89-1526 Filed 1-23-89; 8:45 am]

BILLING CODE 3410-02-M

[1] First and last sections of the respective orders.

[2] Appropriate part number.

[3] Next consecutive section number.

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 88-047]

Ports Designated for Exportation of Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning inspection and handling of livestock for exportation by adding Stevedoring Service of America as an operator of an export inspection facility at the port of Seattle, Washington. We have determined that the facility of Stevedoring Service of America meets the requirements of the regulations for inclusion in the list of export inspection facilities. This action would add an additional facility through which animals may be exported. We are also proposing to correct the telephone number of the operator of Seattle's existing export facility, S&W Export Ltd.

DATE: Consideration will be given to comments postmarked or received on or before February 6, 1989.

ADDRESSES: Send an original and two copies of written comments to Helene R. Wright, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 88-047. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. George Winegar, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, Room 761, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8383.

SUPPLEMENTARY INFORMATION:

Background

We are proposing to amend the regulations in 9 CFR Part 91 concerning inspection and handling of livestock for exportation (referred to below as the regulations). Pursuant to a request by Stevedoring Service of America, we are proposing to amend § 91.14 by adding its facility as an animal export inspection facility at the port of Seattle, Washington.

The regulations provide that inspection facilities, to be approved, must meet the specified requirements in § 91.14(c) concerning materials, size, inspection implements, cleaning and disinfection, feed and water, access, testing and treatment, location, disposal of animal wastes, lighting, and office and rest room facilities.

The facility being operated by Stevedoring Service of America has been inspected by representatives of Veterinary Services, and meets the requirements contained in § 91.14(c).

Therefore, we are proposing to add the facility operated by Stevedoring Service of America, located at 3615 11th Avenue SW., Seattle, WA 98134, as an animal export inspection facility at the port of Seattle, Washington.

Miscellaneous

The telephone number of Seattle's existing animal export inspection facility, operated by S&W Export Ltd., is incorrectly listed in § 91.14 as (206) 248–2360. We are proposing to correct the number to read (206) 241–1837.

Public Comment Period

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that this rulemaking procedure should be expedited by allowing a 15-day comment period on this proposal. Stevedoring Service of America meets the requirements contained in § 91.14(c) for approval as an animal export inspection facility. The addition of this facility should be made promptly in order to inform exporters so that they can make appropriate plans to export their animals, and avoid unnecessary restrictions on the exportation of animals.

Executive Order 12291 and Regulatory Flexibility Act

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

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The addition of another animal export inspection facility at the port of Seattle, Washington, would facilitate the export of livestock from the United States. However, we believe the addition of this facility would have little or no economic impact on animal exporters, the majority of whom are small businesses. The primary impact would be the increased convenience of having two animal export facilities from which to choose.

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

Paperwork Reduction Act

The regulations in this proposal contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR 3015, Subpart V.)

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Humane animal handling, Livestock and livestock products, Transportation.

Accordingly, 9 CFR Part 91 would be amended as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

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

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

§ 91.14 [Amended]

2. In § 91.14, the telephone number in paragraph (a)(15)(ii)(A), "(206) 248–2360", would be corrected to read "(206) 241–1837".

3. Section 91.14 would be amended by adding a new paragraph (a)(15)(ii)(B) to read as follows:

§ 91.14 Ports of embarkation and export inspection facilities.

(a) * * *

(15) * * *

(ii) * * *

* * * * *

(B) Stevedoring Service of America, 3615 11th Avenue, SW., Seattle, WA 98134, (206) 623–0304.

* * * * *

Done in Washington, DC, this 18th day of January 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–1489 Filed 1–23–89; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–185–AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which currently requires inspection of the elevator tab inboard hinge support structure to detect fatigue cracking which could result in vibration and possible flutter. The FAA has determined that additional airplanes were manufactured to the same design and are subject to the same failure. This action would expand the applicability of the existing AD to require inspection of additional affected airplanes.

DATES: Comments must be received no later than March 17, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 88–NM–185–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, 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 Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Fox, Airframe Branch, ANM–120S; telephone (206) 431–1923. 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, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-185-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On May 24, 1976, FAA issued AD 76-11-05, Amendment 39-2630 (41 FR 22343; June 3, 1976), to require inspection of the elevator tab inboard hinge support structure on certain categories of Boeing Model 737 airplanes to detect fatigue cracking which could cause vibration and possible flutter.

As a result of recent routine inspections, it has been reported that additional Boeing Model 737 airplanes have the same type design and are subject to the same failure conditions as those identified in AD 76-11-05.

The FAA has reviewed and approved Boeing Alert Service Bulletin 737-55A1020, Revision 1, dated August 20, 1976, which describes inspection of the elevator tab inboard hinge support structure for certain categories of Model 737 airplanes.

Since this condition is likely to exist or develop on other airplanes of this same type design, a revision to AD 76-11-05 is proposed which would require the inspection of the elevator tab inboard hinge support structure on 5 additional (U.S.-registered) Model 737 airplanes. In addition, this proposal contains several editorial changes to conform with current FAA standards.

There are approximately 491 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 5 additional airplanes of U.S. registry would be affected by this AD, that it would take approximately 98 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $19,600.

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

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, positive or negative, on a substantial number of small entities because few, if any, Model 737 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

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:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By revising AD 76-11-05, Amendment 39-2630 (41 FR 22343; June 3, 1976), as amended by Amendments 39-2667 and 39-2708, as follows:

Boeing: Applies to all Boeing Model 737 series airplanes, line number 001 through 491, certificated in any categories. Compliance required as indicated, unless previously accomplished.

To prevent hazardous flutter of the elevator/horizontal stabilizer, accomplish the following:

A. Upon receipt of a pilot report of vibration in the longitudinal control system, prior to further flight, accomplish the inspection required by paragraph C., below. If the relative deflections are less than specified in paragraph C., below, prior to further flight, investigate for the cause of vibration, in accordance with existing procedures.

B. In addition to paragraph A., above, within the next 300 hours time-in-service after the effective date of this AD, unless accomplished within the last 700 hours time-in-service, and at intervals thereafter not to exceed 1,000 hours time-in-service, conduct the inspection required by paragraph C., below.

C. Inspect for excessive deflection of the elevator tab, right and left hand, in accordance with the inspection procedures specified in Section III, Part I, paragraphs C. and D., of Boeing Alert Service Bulletin 737-55A1020, Revision 1, dated August 20, 1976. If the elevator tab-to-elevator relative defection exceeds $\frac{1}{10}$ inch, prior to further flight, modify the elevator in accordance with paragraph D., below.

D. Installation of one of the modifications specified in Boeing Alert Service Bulletin 737-55A1020, Section III, Part II, dated August 20, 1976, including installation of the bolt retainer clips, is considered terminating action for the inspection requirements of this AD.

E. 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.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

F. Special flight permits may be issued in accordance with FAR 21.97 and 21.199 to operate airplanes having cracked parts to a base in order to comply with the requirements of this AD. The application for a special flight permit must contain a limitation stating that the airplane must be operated within the limits specified in Boeing Operation Manual Bulletin 76-2.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, 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 Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 9, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-1477 Filed 1-23-89; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 240

Guides for Advertising Allowances and Other Merchandising Payments and Services

AGENCY: Federal Trade Commission.

ACTION: Extension of time for public comment on staff recommendations.

SUMMARY: The Federal Trade Commission has extended the closing date for comments on the Guides for Advertising Allowances and Other Merchandising Payments and Services ("Guides") from January 24, 1989 to February 15, 1989. The National Grocers Association ("NGA") requested an extension until March 15, 1989, representing that its annual meeting would begin on January 30, 1989, and that it wished to defer submitting its comments until it could complete a post-meeting survey of its members. The Commission has determined to grant the request in part by extending the public comment period until February 15, 1989. See 53 FR 43233, October 26, 1988.

DATE: Comments must be submitted on or before February 15, 1989.

ADDRESS: Comments should be addressed to the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580. All comments should be labeled "Guides for Advertising Allowances".

FOR FURTHER INFORMATION CONTACT: Federal Trade Commission, Washington, DC 20580, A. Roy Lavik, [202] 326–3334.

List of Subjects in 16 CFR Part 240

Robinson-Patman Act, Promotional allowances and services.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89–1479 Filed 1–23–89; 8:45 am]

BILLING CODE 6750–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, 31, 145, and 147

Leverage Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing amendments to its rules relating to leverage transactions to permit additional participation in the leverage business, as directed by Congress in section 19(c)(2) of the Commodity Exchange Act ("Act"). Futures Trading Act of 1986, Pub. L. 99–641, section 109, 100 Stat. 3556 (1986). The substance of the current regulatory framework would be retained. Most of the proposed rule amendments and the few proposed new rules would be of a procedural nature and would be designed to provide for a regulatory structure of direct supervision by a registered futures association under Commission oversight. Such a structure would be consistent with the other regulatory programs administered by the Commission under the Commodity Exchange Act.

Each leverage transaction merchant ("LTM") would be required to be a member of a registered futures association, and the registered futures association would be required to adopt rules establishing minimum financial, cover, segregation and sales practice requirements, and related reporting requirements. With respect to each area, these rules would have to be at least as stringent as the Commission's standards set forth in Part 31 of the rules promulgated under the Act. The registered futures association also would be required to have an arbitration procedure to settle leverage customer claims or grievances.

The Commission would authorize the National Futures Association ("NFA") to perform the function of processing the registration of an LTM and its associated persons ("APs"). The Commission has previously authorized NFA by a series of delegation orders to perform the function of processing the registration applications for all other persons that must register under the Act. LTMs would be required to file monthly reports of leverage contract trading volume and pricing, and quarterly reports of closed-out leverage contracts, with the NFA instead of with the Commission. The NFA would prepare summaries of those reports for the Commission.

The specific exemption procedure currently set forth in Rule 31.24 would be deleted, and the provisions of exemptions already granted under Rule 31.24 to the existing LTMs which are of general applicability would be incorporated into the rules as appropriate. The only major function with respect to leverage contracts for which the Commission would retain sole authority would be the registration of leverage commodities.

DATE: Comments must be submitted on or before March 27, 1989.

ADDRESS: Comments should be sent to the Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, Attention: Office of the Secretariat. Reference should be made to "Amendments to Rules Relating to Leverage Transactions."

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Assistant Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone (202) 254–8955; David R. Merrill, Senior Assistant General Counsel, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone (202) 254–9880; or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone (202) 254–6990.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Notice

The annual public reporting burden for this collection of information is estimated to average 49 hours per LTM, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This includes the time necessary to maintain the various records, and to prepare and file the appropriate reports required by the Part 31 rules promulgated under the Act. Of course, this burden will vary from firm to firm based on the number of leverage contracts offered and sold, the number of employees, the firm's financial condition and other factors. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Joseph G. Salazar, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581; and to Office of Management and Budget, Paperwork Reduction Project (3038–0029), Washington, DC 20503.

II. Proposed Rule Amendments

1. Registration

The principal rules governing the registration of LTMs and their APs are Rules 3.17 and 3.18, respectively (17 CFR 3.17 and 3.18 (1988)). Most of the proposed amendments to those rules would change references from the Commission to the NFA because the Commission would authorize NFA to perform the function of processing the

registration applications of LTMs and their APs.[1] NFA would therefore assume the registration processing function for all persons who must register under the Act. Since NFA would be specifically authorized to perform the registration processing function, NFA would be specifically named in Rules 3.17 and 3.18, as it is throughout the Part 3 registration rules.[2]

The other proposed amendments to the Part 3 rules would eliminate the references to the Commission in those rules where there are currently references to both the NFA and the Commission. The Commission proposes to amend Rules 3.2 (notification of registration), 3.21 (fingerprinting exemption), 3.31 (updates), 3.32 (new registration requirements), 3.33 (withdrawal), and 3.40 and 3.43 (temporary licensing of APs). *See also* proposed amendments to Rule 31.6(b)(1) and the introductory text of Rule 31.13(a). Deletions are proposed to Rule 3.3, since NFA would set registration fees for LTMs and their APs instead of the Commission, and Rule 3.20, since there are no more registration renewals. Recent changes to the rules provide for perpetual registration of firms and annual information update filings. 53 FR 8428 (March 15, 1988).

2. Part 31 Rules

a. Moratoria Rules

The Commission proposes to delete Rules 31.1 and 31.2 (17 CFR 31.1 and 31.2 (1988)), which impose moratoria on the entry of new firms into the leverage business unless a firm was so engaged on June 1, 1978 (with respect to leverage contracts involving gold and silver bullion and bulk coins) or February 2, 1979 (with respect to leverage contracts involving all other commodities upon which leverage contracts could have been offered at that time, *i.e.*, all but the agricultural commodities enumerated in the Act), respectively. Other provisions of the rules which relate to the moratoria and their treatment of "grandfathered" firms, *i.e.*, those firms which were engaged in a leverage business on the dates specified in the moratoria rules, would also be deleted. These provisions include paragraphs (c), (d) and (e) of Rule 31.5, and paragraphs (a)(1) and (b)(1) of Rule 31.6. *See also* proposed amendment to Rule 31.22. Accordingly, the regulatory framework for an applicant for registration as an LTM or an AP of an LTM would be comparable to the framework for any other applicant for registration. Such applicant would not be permitted to engage in business requiring registration until registration had been granted.

b. Status of Copper and Foreign Currency Leverage Contracts

The amendments to section 19 of the Commodity Exchange Act enacted by Congress in 1986 made it unlawful for any person to offer to enter into, to enter into, or to confirm the execution of, any leverage contract to or with a leverage customer involving any leverage commodity other than gold and silver bullion, bulk gold and silver coins and platinum. These amendments had the effect of prohibiting new leverage contracts involving copper, which had been offered by International Precious Metals Corporation ("IPMC"), and our foreign currencies (British pound, Deutsche mark, Japanese yen and Swiss franc), which had been offered by Monex International, Ltd. ("Monex"), on and after the date of enactment of the Futures Trading Act of 1986, November 10, 1986. Congress also provided that its ban on new copper and foreign currency leverage contracts did not affect any rights or obligations arising out of any leverage contract involving any of those commodities that was entered into prior to November 10, 1986. The Commission sent letters to IPMC and Monex in November 1986 to inform them of these amendments to the law and to remind them of their obligations to service leverage contracts involving copper and foreign currencies, respectively, entered into prior to November 10, 1986, including providing cover for such open contracts. The Commission proposes to codify the statutory provision and its November 1986 letter to IPMC and Monex in a new paragraph 31.5(c).

Because of the reference to November 10, 1986 in that provision, the Commission also proposes to make technical amendments to the introductory text of paragraph (a) and to paragraph (b) of Rule 31.5 to make clear that the current reference to the "effective date of this section" means the *original* effective date of the section, April 13, 1984. *See also* proposed technical amendments to Rules 31.13(b)(2) and 31.21. Another proposed technical amendment to Rule 31.5 would be the deletion of paragraph (g), which relates to the denial, suspension or revocation of registration of an LTM or an AP of an LTM. The Commission adopted Subpart C of Part 3 of its rules, which applies to the denial, suspension of registration for all registrants, subsequent to the adoption of the leverage contract rules in 1984. Because of that and in light of the proposal to authorize NFA to perform the registration processing function for LTMs and their APs, the Commission proposes to delete Rule 31.5(g).

c. Definitions

The Commission proposes to amend the definition of "leverage commodity" in Rule 31.4(g), which currently includes references to copper and four foreign currencies.[3] IPMC closed out its last copper leverage contract in November 1987, and Monex closed out its last foreign currency leverage contract in August 1988. The proposed amendment to the leverage commodity definition reflects the amendment to Section 19 of the Act limiting the offer and sale of leverage contracts to those involving gold and silver bullion, bulk gold and silver coins and platinum. The Commission has reviewed all of the other definitions in Rule 31.4 and believes that changes thereto are neither necessary nor appropriate.

d. Leverage Commodity Registration

The Commission proposes to retain for itself the function of processing applications for and granting leverage commodity registration under Rule 31.6. This is the only function which the Commission would reserve completely; as experience is gained and leverage commodity registration becomes more standardized, the Commission would consider amending the rules to authorize NFA to register leverage commodities. The Commission also proposes to add a new paragraph (a)(6) to Rule 31.6 which would provide an additional condition for leverage commodity registration. This additional condition would be that the leverage contracts based on the leverage commodity do not include substantial characteristics of other interests such as options, certificates of deposits or other regulated instruments. The Commission required an extended period of time to resolve two leverage commodity registration applications,

[1] The Commission is exploring the feasibility of authorizing NFA to perform the registration processing function for the existing three LTMs and their APs, most of whom are also APs of affiliated futures commission merchants, without regard to whether the leverage moratoria are repealed.

[2] Proposed amendments to Part 31 would generally refer to a registered futures association, rather than to NFA specifically, because it is possible that there could be another registered futures association for the futures industry as a whole, or for a segment thereof such as the leverage business. However, we would not anticipate another futures association being registered in the foreseeable future (no applications are pending), so most of the direct regulatory responsibility will rest with NFA, under Commission oversight.

[3] The Commission also proposes to delete the reference to leverage contracts on foreign currencies in Rule 31.25(b), which governs the treatment of carrying charges.

which were subsequently withdrawn, because the leverage contracts contained an option component. Such instruments may be extremely complex and may raise additional issues regarding customer protection. Moreover, such hybrid leverage instruments are not readily included under the present regulatory program. Of course, the Commission may further consider inclusion of such instruments in its leverage rules as the Commission gains greater experience regulating an expanded leverage business.

An noted above, the cross-references to current Rule 31.5(c) and "grandfathered" LTMs are proposed to be deleted from paragraphs (a)(1) and (b)(1) of Rule 31.6. No leverage commodity registration would be granted to a person that was not a registered LTM. The Commission would endeavor to coordinate with the NFA so that the first leverage commodity registration would be granted simultaneously with the granting of registration as an LTM.[4]

e. Financial Early Warning System

The Commission proposes to amend Rule 31.7(c) to delete the exception that persons who have applied for registration as LTMs are not required to send early warning notices to the NFA. Such applicants should be required to send such notices to the NFA since the NFA, and not the Commission, will be processing applications for registration as an LTM. However, an LTM or an applicant for registration as an LTM would still be required to file financial early warning notices with the Commission also. FCMs and IBs, and applicants for registration in either category, must do so under Rule 1.12 (17 CFR 1.17 (1988)), the relevant provisions of which are incorporated by reference in Rule 31.7(c). Paragraphs (a) and (b) of Rule 31.7 already contain references to the capital, cover and segregation rules of a designated self-regulatory organization ("DSRO"), and these provisions would become operative under the Commission's proposed regulatory framework for an expanded leverage business.

f. Cover and Segregation

The basic cover requirements would remain the same. Under these requirements, at least 90 percent of the amount of physical commodities subject to open long leverage contracts and, separately, at least 90 percent of the amount of physical commodities subject to open short leverage contracts, must be covered by the LTM. In addition, at least 25 percent of the amount of physical commodities subject to open long leverage contracts must be covered with physicals.[5] Such physical cover may be subject to a loan not exceeding 70 percent of current market value.

The Commission remains concerned about cover being held outside of the United States, and therefore it would retain the requirement that permissible cover consisting of futures contracts or commodity options be limited to those futures contracts or commodity options which are traded on or subject to the rules of a contract market.[6] Although the Commission has adopted rules to govern foreign futures and option transactions (52 FR 28980 (August 5, 1987), most of which are codified at 17 CFR Part 30 (1988)), foreign futures or foreign options to *not* constitute permissible cover for leverage contracts and the Commission does not propose to amend Rule 31.8 in that area.

The Commission proposes three substantive amendments to its cover requirements to incorporate the provisions of exemptions granted to the current LTMs. Rule 31.8(a)(2)(ii) would be amended to provide that permissible cover could also include one type of bulk gold coins for leverage contracts involving another type of bulk gold coins on an ounce-for-ounce basis if each type of bulk gold coins used as cover is the subject of a leverage contract offered by the LTM. Similar treatment also would be allowed for different types of bulk silver coins. As noted, this is consistent with current Commission policy. The Commission's cover rules currently permit bullion to be used as cover for leverage contracts involving bulk coins and vice versa. Since the bulk coins are valued based upon their metallic content rather than their numismatic value, the Commission believes that it is appropriate to allow some fungibility between bullion and bulk coins for cover purposes.

The Commission also proposes to codify two other exemptions which have been granted with respect to permissible physical cover for long leverage contracts. These codifications would appear as new paragraphs (a)(2)(iii) and (a)(2)(iv) of Rule 31.8. The current paragraph (a)(2)(iii), which contains the permissible futures cover for long leverage contracts, would be redesignated as paragraph (a)(2)(v).

One of the proposed additional forms of permissible physical cover of a long leverage contract would be purchase of the leverage commodity subject to the leverage contract under a two-day settlement procedure, which is the normal cash market procedure. The LTM would be considered covered from the time the purchase order is confirmed, even though the LTM does not get possession or control of a warehouse receipt until settlement on the second following business day. Such a purchase could not be made from an affiliated firm of the LTM.

The other proposed additional form of permissible physical cover of a long leverage contract would be a long spot futures contact on the leverage commodity subject to the leverage contract, if the LTM has stopped a non-transferable delivery notice with respect to that futures contract and has otherwise complied with any procedures, including payment, necessary for taking delivery. If those conditions are met, the LTM would be considered to have covered his commitments to leverage customers with physical cover, even though the LTM does not have possession or control of a warehouse receipt for two business days. The Commission notes that simply holding a spot futures position is considered to be futures cover rather than physical cover, since the futures position could be liquidated by an offsetting transaction prior to the beginning of the delivery process.

In the cases referred to in the three preceding paragraphs, the alternative forms of cover set forth in paragraph (a)(2)(ii) (bullion for coins and vice versa, as well as certain cross-coin cover) would be allowed, and the LTM would be required to maintain records of the transactions subject to inspection, copying and audit by the Commission and a DSRO. Also, the Commission would limit the amount of cover which could consist of purchases under a two-day settlement procedure or spot futures contracts on which a delivery notice has

[4] The current fee for processing a leverage commodity registration application is $4,500.

[5] The Commission granted an exemption to Monex with respect to cover of long foreign currency leverage contracts which permitted Monex to cover all of its commitments on such leverage contracts with futures or option contracts traded on or subject to the rules of a contract market, rather than requiring 25 percent physical cover. A special net capital haircut applied to such cover in excess of 75 percent of Monex' leverage contract obligations. This petition was granted because maintaining physical foreign currency in United States depositories would prevent Monex from earning interest thereon, and because the Commission did not want to permit such cover to be held in the country of origin where it could earn interest, but may be beyond the reach of United States jurisdiction and thus of little benefit to leverage customers. This exemption is now moot with respect to Monex, and it is unnecessary to codify this exemption in the rules because no new LTM could offer leverage contracts on foreign currencies.

[6] *See also* Rule 31.12(a)(2) (17 CFR 31.12(a)(2) (1988)), which requires leverage customer funds to be kept in the United States.

been stopped to 10 percent of the LTM's obligations on long leverage contracts in each case. As noted, the Commission has granted exemptions in these areas so these proposed new provisions of the cover rule, Rule 31.8, are consistent with existing Commission policy.

The Commission is also proposing two technical amendments to the cover rule. Paragraph (b) would be amended to provide that a DSRO could take action against a member LTM for not maintaining adequate cover in accordance with the DRSO's rules. Paragraph (e) would be amended to include a specific reference to Rule 31.28, which is proposed to be the new rule that would require any self-regulatory organization with member LTMs to adopt and enforce minimum cover requirements for its member LTMs at least as stringent as those of the Commission.[7]

g. Minimum Financial and Related Reporting Requirements

The only amendments which the Commission proposes to Rule 31.9, the minimum capital requirements for an LTM, are of a procedural nature. Paragraph (a)(2) of Rule 31.9 would be amended in a manner similar to the proposed amendment to Rule 31.8(e). The proposed amendment would include a specific reference to Rule 31.28, which is the proposed new rule that would require any self-regulatory organization with member LTMs to adopt and enforce minimum financial requirements for its member LTMs that are at least as stringent as those of the Commission. Paragraph (a)(4) of Rule 31.9 would be amended in a manner similar to the proposed amendment to Rule 31.8(b). The proposed amendment provides that a DSRO could take action against a member LTM for non-compliance with the DSRO's minimum financial requirements.

The third proposed amendment to Rule 31.9 would make paragraph (d) thereof conform to Rule 1.18 (17 CFR 1.18 (1988)), the comparable provision for FCMs. Rule 31.9(d) requires an LTM or an applicant therefor to make a formal monthly capital computation. That rule currently requires that the computation be made available for inspection by any representative of the Commission, the DSRO of the United States Department of Justice. The proposed amendment would maintain that required availability of the monthly capital computation for an LTM, but an applicant for registration as an LTM would only be required to make its monthly capital computation available to any representative of the NFA, which will be processing LTM registration applications.

The Commission has determined to maintain the current $2.5 million minimum adjusted net capital requirement for an LTM even if a regulatory structure with direct supervision by a self-regulatory organization were adopted. As the Commission noted when it adopted the rules relating to leverage transactions, "if an LTM were to join the exisitng registered futures association, the National Futures Association, or any other such association which may be established, the LTM's minimum financial requirement or its minimum cover requirement would not necessarily be lowered." 49 FR 5498, 5512 (February 13, 1984).

The Commission considered whether there should be an adjustment to the LTM capital requirement, but determined not to propose any such adjustment based on its regulatory experience and the off-exchange environment in which leverage contracts are traded. The Commission believes that any increase in supervision afforded by membership in a self-regulatory organization does not affect the reasons why the Commission set financial requirements for an LTM substntially higher than those for an FCM, which were stated as follows:

> The leverage market is essentially a principals' market, and the purchaser of a leverage contract is solely dependent on the LTM for performance in the contract. Because leverage contracts are not a traded on boards of trade designated as contract markets by the Commission, there is no clearing organization to take the other side of every trade, no FCM guarantee of variation margin to the clearing organization and no clearing organization guaranty fund and assessment power, nor is there any established secondary market for leverage contracts.
>
> Because the LTM takes the other side of every leverage contract entered into by a leverage customer and because the LTM is the sole guarantor of performance on the leverage contract, an LTM may properly be viewed as comparable to the clearing organization of a contract market.[8]

The proposed amendments to the financial reporting requirements in Rule 31.13 are also of a procedural and conforming nature. As noted above, the reference in the introductory text of paragraph (a) as to where to file an application for registration as an LTM would be changed from the Commission to NFA. Paragraph (b)(2) would be amended to include a specific reference to Rule 31.28, for the same reasons that a similar amendment is proposed to Rules 31.9(a)(2) and 31.8(e). Paragraph (c) would be amended to conform to a recent amendment to Rule 1.16, which is cross-referenced in Rule 31.13(c). *See* 53 FR 4606, 4612 (February 17, 1988).

Paragraph (g)(2) would be amended to conform to a recent amendment to Rule 1.10(d)(2)(ii) to accommodate the recently issued Financial Accounting Standards Board Statement No. 95 which requires companies to file a statement of cash flows as part of a full set of financial statements in place of the statement of changes in financial position. *See* 53 FR 4606, 4609, 4611.[9] Various amendments also are proposed to paragraphs (j), (k), (l) and (m) of Rule 31.13 to refer to the NFA or the DSRO, as appropriate, in lieu of the Commission. Those provisions relate to an LTM's choice of fiscal year, extensions of time to file fianancial reports, and the availability of financial reports.

h. Disclosure

The Commission is proposing certain amendments to its disclosure requirements for an LTM, which are set forth in Rule 31.11, to take account of the fact that new leverage contracts are now limited to those involving gold and silver bullion, bulk gold and silver coins, and platinum. The reference to foreign currencies in the first paragraph of the bold-faced risk disclosure statement would be deleted. The cross-reference to Rule 31.4(g) in Rule 31.11(a)(2)(ii) would refer to the revised Rule 31.4(g) (1)–(4).

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[7] A similar amendment is proposed as a new Rule 31.12(h) regarding segregation rules of a self-regulatory organization. That is the only amendment to Rule 31.12.

[8] 49 FR 5498, 5512. Congress has also recognized the need for a high net capital requirement for LTMs. Indeed, in proposing the 1982 amendments to section 19 of the Act directing the Commission to promulgate regulations governing leverage transactions, which amendments were adopted by Congress essentially as proposed, Congressman Glickman stated: "I think the CFTC has to set regulatory standards and high net capital requirements to keep bad operators out of business." Excerpt from Unofficial Transcript of Mark-Up Session, Subcommittee on Conservation, Credit and Rural Development, House Committee on Agriculture, at 59, April 1, 1982, with the permission of Congressman Dan Glickman. *Id.* at n.32.

[9] There would also be conforming amendments proposed to Form 2–FR, the basic financial reporting form for LTMs, and to Rules 145.5(d)(1)(i)(H) and 147.3(b)(4)(i)(A)(*8*) so that the statement of cash flows would receive confidential treatment to the same extent as the statement of changes in financial position. Other minor, technical changes would be made to Form 2–FR to conform to certain of the proposed rule changes discussed herein. Due to the nature of these changes, and the fact that Form 2–FR does not appear in the Code of Federal Regulations, the proposed amendments in further information on this aspect of the proposals should contact Mr. Patent at the telephone number listed above.

Paragraph (a)(2)(viii) would also be amended to delete the specific reference to metal or coins in the provision referring to the possible need for an inspection or assay at the customer's expense. The reference to metal or coins presumes that there can be other types of leverage commodities, such as foreign currencies. Since new leverage contracts involving such other types of leverage commodities are now prohibited, a specific reference to metal or coins in Rule 31.11(a)(2)(viii) is unnecessary.

The Commission also proposes to amend Rule 31.11(e) to require LTMs to file their Disclosure Documents with the NFA for review. A copy of the Disclosure Document would also need to be filed with the Commissoin, but NFA would be authorized to perform the review function.

The other proposed amendments to Rule 31.11 would codify exemptions previously granted by the Commission. Rule 31.11(h) would be amended by adding a proviso that no notification to leverage customers is required if the LTM changes its carrying charge rate by less than one percent from the rate charged at the prior month-end and the new rate is made available to leverage customers by means of a toll-free telephone call, and such availability is set forth in the LTM's Disclosure Document. However, a carrying charge rate change which amounts cumulatively to one percent or more as compared to the prior month-end would continue to require an LTM to notify leverage customers of such a change within 24 hours of such a change by first class mail or other at least equivalent means of communication.

The other proposed amendments to Rule 31.11 would be set forth in a new paragraph (1) and would codify another exemption granted by the Commission. Proposed Rule 31.11(1) would allow those LTMs which offer only long leverage contracts to delete various specific references to short leverage contracts in their Disclosure Documents that are otherwise required by Rule 31.1[10] Rule 31.11(1)(2) would provide that any LTM using a Disclosure Document that deletes or disregards references to short leverage contracts would have to file a new Disclosure Document meeting all of the requirements of Rule 31.11 at least 30 calendar days before it begins to offer any short leverage contract.

i. Monthly Reports of LTMs

Rule 31.16 requires each LTM to file a written report each month stating the total number of open leverage contracts as of the end of the month and the total number of leverage contracts entered into during the month. (These are to be shown separately for all customers and for commercial interests, but to date no commercial interests have appeared in these reports.) The monthly report must also show the total number of leverage contracts repurchased, resold, and liquidated by the LTM, as well as the number of deliveries and rescissions. The Commission proposes to amend Rule 31.16 to require the LTM to file its monthly reports with the NFA instead of with the Commission, in accordance with the instructions and in the format specified. NFA would prepare summaries of these reports for the Commission.[11]

j. Separate LTM Entity

The Commission proposes to retain the substance of Rule 31.22, which prohibits an FCM from offering to enter into, entering into, or confirming the execution of, or soliciting or accepting orders for, any leverage contract. The Commission would retain this provision and proposes to extend it to include introducing brokers ("IBs") as well.[12] As noted above, the proviso to Rule 31.22 which applies which applies to "grandfathered" firms would be deleted since it is no longer relevant.

Rule 31.22 therefore would require any FCM or IB seeking to enter the leverage business to set up a separate firm to conduct LTM business.[13] The Commission believes that a separate entity requirement is appropriate based on the disparate nature of the financial requirements applicable to FCMs and IBs and LTMs. The Commission also believes that this structure is necessary to pervent financial difficulties of the LTM from having a direct impact on the adjusted net capital of the FCM or the IB.

The Commission notes that Rules 3.12(f)(2) (ii) and (iii) and 3.18(f)(1) (ii) and (iii) prohibit an AP from being associated simultaneously with an FCM or IB and an LTM. The Commission further notes, however, that both Rules 3.12 and 3.18, in paragraphs (g) of each rule, contain a procedure whereby any person adversely affected by the operation of each rule can file a petition for exemption from the requirements of the rule.

k. Petitions for Exemption

The Commission proposes to delete the specific petition for exemption provision currently set forth in Rule 31.24. The Commission adopted such a rule as part of its original rules relating to leverage transactions because it was establishing a major addition to the existing regulatory structure under the Act, it was aware that in certain instances the new rules might require an ongoing firm to alter or amend its current business practices, and the Commission believed it would be dealing with a small number of firms due to the moratoria rules. If the leverage business is allowed to expand, there would be no "grandfathered" firms and there could be a significant number of new firms.

The Commission now has some experience with the rules relating to leverage transactions and proposes to codify petitions for exemption already granted which are of general applicability. The Commission therefore does not beleive that it would be necessary or appropriate to maintain the extremely time-consuming special exemption procedure for an expanded leverage business. The Commission would expect to see greater uniformity if the leverage business is expanded than has been the case with the "grandfathered" firms. However, any person involved in the leverage business would have whatever petition rights are afforded by the Administrative Procedure Act.

l. Carrying Charges

The Commission proposes to amend Rule 31.25(b) regarding carrying charges to take into account another exemption granted by the Commission. The proposed amendment would permit the compounding of carrying charges on long leverage contracts, *i.e.*, including in the base upon which carrying charges are assessed previously assessed but unpaid carrying charges. If an LTM compounded carrying charges on long leverage contracts, it would be compelled to pay compound interest on short leverage contracts. As noted above, the reference to leverage

[10] Of the forty-six affirmative respondents to the survey which Congress directed the Commission to conduct with the assistance of a registered futures association regarding interest in entering the leverage business, two respondents indicated that they would offer long leverage contracts only and ten others reported that they were undecided on the long leverage/short leverage issue.

[11] As in the case of the proposed amendments to Part 3 and other reference to applications for LTM or AP of an LTM registration, there would be a specific reference to NFA in Rule 31.16. The Commission believes that this is appropriate because the monthly report data should be centralized and maintained with a single custodian, even if multiple self-disciplinary organizations for the leverage business are established.

[12] One IB responded affirmatively to the leverage survey.

[13] Twenty-one FCMs responded affirmatively to the leverage survey.

contracts on foreign currencies would be deleted.

m. Quarterly Reporting Requirement

Rule 31.26 provides that each LTM must file a quarterly report setting forth various information on each leverage contract which was either repurchased, resold or settled by delivery during the quarter, including, with respect to each contract repurchased or resold, the profit or loss incurred by the leverage customer.[14] The Commission proposes to amend Rule 31.26 to require an LTM to file its quarterly report with the NFA, instead of with the Commission, in accordance with the instructions and in the format specified by the NFA. NFA would be delegated the function to review and analyze those reports.[15]

n. Mandatory Membership

The Commission proposes a new Rule 31.27 to provide that each person required to register as an LTM must become and remain a member of a registered futures association which provides for member LTMs, unless no such futures association is so registered. This rule would be one of the key provisions necessary to establish a regulatory structure for LTMs and their APs similar to that for other registrants under the Act, which is direct supervision by a DSRO under Commission oversight. Under current conditions, the Commission anticipates that NFA would have the direct supervisory responsibility for LTMs, although it is conceivable that another futures association could be registered with a broad self-regulatory mandate over the futures industry or one which is limited only to the leverage business.

o. DSRO Plan

The Commission also proposes to add a new Rule 31.28, which would be a counterpart to Rule 1.52 (17 CFR 1.52 (1988)) that is applicable to FCMs and IBs. The most important provision of Rule 31.28 would require each self-regulatory organization with member LTMs to adopt and enforce rules prescribing minimum financial, cover, segregation and sales practice, and related reporting requirements for its member LTMs. These self-regulatory organization requirements would have to be the same as, or more stringent than, the rules set forth in Part 31. This proposed rule, taken together with proposed Rule 31.27, forms the basis for the self-regulatory structure of LTMs under Commission oversight.

The sales practice requirements of the self-regulatory organization would be required to encompass several of the Part 31 rules: 31.3 (general antifraud); 31.10 (repurchase and resale of leverage contracts by LTMs); 31.11 (disclosure and confirmation statements); 31.14 (recordkeeping); 31.15 (purchase-and-sale and monthly statements to leverage customers); 31.17 (records of leverage transactions); 31.18 (margin calls); 31.19 (unlawful representations); 31.20 (prohibitions of guarantees against loss); and 31.23 (limited right to rescind first leverage contract). All of those Part 31 rules would remain unchanged, except for rule 31.11, as noted above. The self-regulatory organization would be expected to assure that all LTM oral solicitations and promotional material adequately disclose the risks involved with respect to leverage contracts.

The self-regulatory organizations would be allowed to set their own fees for conducting financial and sales practice audits, and the Commission proposes to delete its schedule of fees for audits of LTMs set forth in Appendix B to Part 31.

Rule 31.28 would provide for a situation where there is more than one self-regulatory organization for LTMs. If such a situation arises, which the Commission does not presently foresee, the self-regulatory organizations could develop a joint auditing arrangement to provide for a DSRO to conduct the auditing and monitoring for compliance with minimum financial, cover, segregation and sales practice, and related reporting requirements. These provisions are also modelled on those in Rule 1.52 applicable to DSRO plans for FCMs and IBs.

p. Arbitration

The third new rule which the Commission is proposing would be Rule 31.29. The rule would require each self-regulatory organization with member LTMs to provide an arbitration or other dispute settlement procedure consistent with the standards set forth in Part 180 of the Commisson's rules.

III. Related Matters

1. Paperwork Reduction Work

The Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. 3501 *et seq.* (1982), imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission has submitted these proposed rule amendments, and their associated information collection requirements, to the Office of Management and Budget ("OMB"). This information collection contains an average response burden of 49 hours by 24 respondents for a total of 9,726.09 burden hours. The frequency of response would be daily, weekly, quarterly and annually.

Persons wishing to comment on the information which would be required by these proposed rule amendments should contact Gary Waxman, Office of Management and Budget, Paperwork Reduction Project (3038–0029) Room 3228, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joseph G. Salazar, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581, (202) 254–9735.

2. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.* (1982), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments being proposed herein would affect LTMs. The Commission has previously determined that with respect to FCMs, based upon the fiduciary nature of FCM/customer relationships, as well as the requirements that FCMs meet minimum financial requirements, FCMs should be excluded from the definition of a small entity.[16] Since LTMs have a somewhat similar relationship with their customers as do FCMs, and since LTMs have a higher minimum financial requirement

[14] The calculation of the profit or loss incurred on each closed-out leverage contract must include, among other things, the carrying charges associated with each leverage contract. Monex and IPMC were granted exemptions with respect to this rule so that they only are required to include contract-by-contract carrying charges in the profit and loss calculations for those contracts which were already open when Rule 31.26 because effective from that point until the contract was closed out, since those firms had not previously calculated carrying charges in that manner. Since there would be no similar problems for new LTMs, the Commission would not propose to amend Rule 31.26 regarding the inclusion of contract-by-contract charges in the profit and loss calculation. Monex and IMPC would, of course, be permitted to continue to operate pursuant to the exemptions previously granted by the Commission with respect to Rule 31.26. However, Monex and IPMC will be required to be in full compliance with Rule 31.26 when the exemptions are no longer applicable, *i.e.*, after all the pre-1986 leverage contracts are closed out.

[15] As in the case of the proposed amendments to part 3 and other references to applications for LTM or AP of an LTM registration, there would be a specific reference to NFA in Rule 31.26. The Commission believes that this is appropriate because a computerized database would be involved, as in the case of registration, and the data should be centralized and maintained with a single custodian, even if multiple self-regulatory organizations for the leverage business are established.

[16] *See* 47 FR 18618, 18619 (April 30, 1982).

than FCMs, LTMs should likewise be excluded from the definition of a small entity. Therefore, pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman certifies that these proposed rule amendments will not have a significant economic impact on a substantial number of small entities. Nonetheless, the Commission specifically requests comment on the impact these proposed rule amendments may have on small entities.

List of Subjects

17 CFR Part 1

Reporting and recordkeeping requirements.

17 CFR Part 3

Reporting and recordkeeping requirements, Registration.

17 CFR Part 31

Gold, Silver, Reporting and recordkeeping requirements, Leverage transactions.

17 CFR Part 145

Freedom of information, Commission records.

17 CFR Part 147

Sunshine Act, Commission records.

In consideration of the foregoing, and pursuant to the authority contained in sections 8a(5) and 19 of the Commodity Exchange Act, as amended, 7 U.S.C. 12a(5) and 23 (1982), *as amended by* Pub. L. No. 99-641, 100 Stat. 3556 (1986), and pursuant to the authority contained in 5 U.S.C. 552 and 552b (1982), the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: Sections 2(a)(1), 4, 4a, 4b, 4c, 4d, 4e, 4f, 4g, 4h, 4i, 4k, 4m, 4n, 4o, 5, 5a, 6(a), 6(b), 6b, 6c, 8, 8a, 8c, 12, 15, 17, and 20 of the Commodity Exchange Act, 7 U.S.C. 2, 2a, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a-l, 16, 19, 21 and 24.

2. Section 1.3 is proposed to be amended by revising paragraph (ff) to read as follows:

§ 1.3 Definitions.

* * * * *

(ff) *Designated self-regulatory organization.* This term means:

(1) A self-regulatory organization of which a futures commission merchant, an introducing broker or a leverage transaction merchant is a member; or

(2) If a futures commission merchant or an introducing broker is a member of more than one self-regulatory organization and such futures commission merchant or introducing broker is the subject of an approved plan under §1.52, then a self-regulatory organization delegated the responsibility by such a plan for monitoring and auditing such futures commission merchant or introducing broker for compliance with the minimum financial and related reporting requirements of the self-regulatory organizations of which the futures commission merchant or introducing broker is a member, and for receiving the financial reports necessitated by such minimum financial and related reporting requirements from such futures commission merchant or introducing broker; or

(3) If a leverage transaction merchant is a member of more than one self-regulatory organization and such leverage transaction merchant is the subject of an approved plan under §31.28 of this chapter, then a self-regulatory organization delegated the responsibility by such a plan for monitoring and auditing such leverage transaction merchant for compliance with the minimum financial, cover, segregation and sales practice, and related reporting requirements of the self-regulatory organizations of which the leverage transaction merchant is a member, and for receiving the reports necessitated by such minimum financial, cover, segregation and sales practice, and related reporting requirements from such leverage transaction merchant.

* * * * *

PART 3—REGISTRATION

Subpart A—Registration

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

Authority: 7 U.S.C. 2, 4, 4a, 6c, 6d, 6e, 6f, 6k, 6m, 6n, 6p, 12a, 13c, 16a, unless otherwise noted.

4. Section 3.2 is proposed to be amended by revising paragraph (c) to read as follows:

§ 3.2 Registration processing by the National Futures Association; notification of registration.

* * * * *

(c) The National Futures Association will notify the registrant, or the sponsor in the case of an applicant for registration as an associated person, if registration has been granted under the Act. If an applicant for registration as an associated person receives a temporary license in accordance with §3.40 of this part, the National Futures Association may notify the sponsor only that a temporary license has been granted.

* * * * *

5. Section 3.3 is proposed to be amended by revising paragraph (a) to read as follows:

§ 3.3 Registration fees; form of remittance.

(a) *Amount of fees—Floor brokers.* Each application for registration, or for renewal thereof, as a floor broker must be accompanied by a fee of $25.

* * * * *

6. Section 3.17 is proposed to be amended by revising paragraphs (a) and (c) to read as follows: § 3.17 Registration of leverage transaction merchants.

(a) *Initial registration.* (1) Application for initial registration as a leverage transaction merchant must be on Form 7-R, completed and filed with the National Futures Association in accordance with the instructions thereto and the provisions of § 31.13 of this chapter.

(2) Each Form 7-R filed in accordance with the requirements of paragraph (a)(1) of this section must be accompanied by a Form 8-R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the applicant, and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the National Futures Association for that purpose. The provisions of this paragraph (a)(2) do not apply to any principal who has a current Form 8-R or Form 94 on file with the Commission or the National Futures Association.

* * * * *

(c) *Annual filing.* Any person registered as a leverage transaction merchant in accordance with paragraph (a) of this section must file with the National Futures Association a Form 7-R, completed in accordance with the instructions thereto, annually on a date specified by the National Futures Association. The failure to file the Form 7-R within thirty days following such date shall be deemed to be a request for withdrawal from registration. On at least thirty days written notice, and following such action, if any, deemed to be necessary by the Commission or the National Futures Association, the National Futures Association may grant the request for withdrawal from registration.

7. Section 3.18 is proposed to be amended by revising paragraphs (c)(3),

(c)(4), (d)(1), (d)(3), (d)(4) and (d)(5) to read as follows:

§ 3.18 Registration of associated persons of leverage transaction merchants.

* * * * *

(c) * * *

(3) Each Form 8–R filed in accordance with the requirements of paragraph (c) of this section must be accompanied by the fingerprints of the applicant on a fingerprint card provided for that purpose by the National Futures Association.

(4) When the National Futures Association determines that an applicant for registration as an associated person is not unfit for such registration, it will provide notification in writing to the sponsor which has made the certifications required by paragraph (c)(1) of this section that the applicant's registration as an associated person is granted contingent upon the sponsor hiring or otherwise employing the applicant as such within thirty days.

(d) *Special temporary licensing and registration procedures for certain persons*—(1) *Registration terminated within the preceding sixty days.* Except as otherwise provided in paragraphs (d)(4) and (f) of this section, any person whose registration as an associated person in any capacity has terminated within the preceding sixty days and who becomes associated with a new sponsor will be granted a temporary license to act in the capacity of an associated person of such sponsor upon the mailing by that sponsor to the National Futures Association of a Form 8–R, completed in accordance with the instructions thereto, which includes written certifications stating:

* * * * *

(3) *Registration still in effect.* Except as provided for in paragraphs (d)(4) and (f) of this section, any person whose registration as an associated person in any capacity is still in effect and becomes associated with a sponsoring leverage transaction merchant will be registered as an associated person of such sponsor upon mailing by that sponsor to the National Futures Association of a Form 8–R, completed in accordance with the instructions thereto, containing the written certifications required by paragraph (d)(1) of this section.

(4) An applicant will not be registered or granted a temporary license upon mailing of a properly completed Form 8–R pursuant to paragraph (d) of this section unless such form is accompanied by the fingerprints of the applicant on a fingerprint card provided by the National Futures Association for that purpose, and a Supplemental Sponsor Certification Statement signed by the new sponsor if the applicant's prior registration as an associated person was subject to conditions or restrictions.

(5) A temporary license granted in accordance with paragraph (d) of this section will terminate five days after service upon the applicant of a notice by the National Futures Association that such person may be found subject to a statutory disqualification from registration.

* * * * *

§ 3.20 [Amended]

8. Section 3.20 is proposed to be amended by removing and reserving paragraph (d)(2).

9. Section 3.21 is proposed to be amended by revising paragraph (a)(1) to read as follows ((a) introductory test is republished):

§ 3.21 Exemption from fingerprinting requirement in certain cases.

(a) Any person who is required by this part to submit a fingerprint card may file, or cause to be filed, in lieu of such card:

(1) A legible, accurate and complete photocopy of a fingerprint card which has been submitted to the Federal Bureau of Investigation for identification and appropriate processing and of each report, record, and notation made available by the Federal Bureau of Investigation with respect to that fingerprint card if such identification and processing has been completed satisfactorily by the Federal Bureau of Investigation not more than ninety days prior to the filing with the National Futures Association of the photocopy; or

* * * * *

10. Section 3.31 is proposed to be amended by revising paragraph (c)(1) introductory text and (c)(2) to read as follows:

§ 3.31 Deficiencies, inaccuracies, and changes, to be reported.

* * * * *

(c)(1) After the filing of a Form 8–R or a Form 3–R by or on behalf of any person for the purpose of permitting that person to be an associated person of a futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker, or a leverage transaction merchant, that futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker or leverage transaction merchant must, within twenty days after the occurrence of either of the following, file a notice thereof with the National Futures Association indicating:

* * * * *

(2) Each person registered as, or applying for registration as, a futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker or leverage transaction merchant must, within twenty days after the termination of the affiliation of a principal with the registrant or applicant, file a notice thereof with the National Futures Association.

* * * * *

11. Section 3.32 is proposed to be amended by revising paragraphs (b), (c), (d)(2), (d)(3), (e), (f) and (h) to read as follows:

§ 3.32 Changes requiring new registration; addition of principals.

* * * * *

(b) Application for a new registration required under paragraph (a) of this section must be on Form 7–R, completed and filed with the National Futures Association in accordance with the instructions thereto.

(c) Notwithstanding any other provision of this part, each Form 7–R filed in accordance with paragraph (b) of this section must be accompanied by a Form 8–R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the registrant and who was not listed on the registrant's initial application for registration or any amendment thereto. The Form 8–R for each such principal must be accompanied by the fingerprints of that principal on a fingerprint card provided by the National Futures Association for that purpose.

(d) * * *

(2) Notification by the National Futures Association of the granting of the new registration; or

(3) Five days after service upon the registrant of a notice by the National Futures Association that the registrant may be found subject to a statutory disqualification from registration.

(e)(1) Except where a registrant chooses to file an application pursuant to paragraph (d) of this section, if applicable, in the event of a change as described in paragraphs (a)(4) or (a)(5) of this section, a new registration will not be required if the registrant submits a written notice on Form 3–R to the National Futures Association prior to the date of such change in control (and such change does not occur until the registrant receives written approval from the National Futures Association) and includes with such notice a Form 8–R, completed in accordance with the instructions thereto and executed by each natural person who will become a

principal of the registrant. The Form 8–R for each such individual must be accompanied by the fingerprints of that individual on a fingerprint card provided for that purpose by the National Futures Association: *Provided, however,* That a fingerprint card need not be provided under this paragraph for any individual who currently is registered with the Commission as an associated person or floor broker, or is a principal of a Commission registrant from whom the filings required by this part have been made.

(2) No person who submits written notification in accordance with the provisions of paragraph (e)(1) of this section may become a principal of such registrant until that registrant receives a written confirmation from the National Futures Association that such affiliation has been approved.

(f) All documents submitted pursuant to this section shall be filed with the National Futures Association.

* * * * *

(h) Except as otherwise provided in this section, within twenty days after any natural person becomes a principal of an applicant or registrant subsequent to the filing of a Form 7–R in accordance with the requirements set forth in §§ 3.10(a), 3.13(a), 3.14(a), 3.15(a), or 3.17(a) of this part, the applicant or registrant must file a Form 8–R with the National Futures Association. The Form 8–R must be completed by such prinicpal in accordance with the instructions thereto and must be accompanied by the fingerprints of that principal on a fingerprint card provided for that purpose by the National Futures Association. This filing need not be made for any such prinicpal who has a current Form 8–R or Form 94 on file with the Commission or the National Futures Association: *Provided,* That within twenty days the applicant or registrant must notify the National Futures Association of the name of such added principal on Form 3–R.

* * * * *

12. Section 3.33 is proposed to be amended by revising paragraphs (b) introductory text, (e), and (f) introductory text to read as follows:

§ 3.33 Withdrawal from registration.

* * * * *

(b) A request for withdrawal from registration under this section must be made on a Form 7–W completed and filed with the National Futures Association in accordance with the instructions thereto. The request for withdrawal must be made by the sole proprietor if the registrant is a sole proprietorship, by a general partner if a partnership, or by the president or chief executive officer if a corporation, and must specify:

* * * * *

(e) A request for withdrawal from registration as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant must be sent to the National Futures Association, Registration Office, 200 West Madison Street, Chicago, Illinois 60606 and a copy of such request must be sent by the registrant, and by the National Futures Association within three business days of the receipt of such withdrawal request, to the Commodity Futures Trading Commission, Division of Trading and Markets, Registration Unit, 2033 K Street, NW., Washington, DC 20581. Within three business days of any determination by the National Futures Association under §§ 3.10(d), 3.13(c), 3.14(c), 3.15(c) or 3.17(c) of this part to treat the failure by a registrant to file an annual Form 7–R as a request for withdrawal, the National Futures Association shall send the Commission notice of that determination.

(f) Except as otherwise provided in §§ 3.10(d), 3.13(c), 3.14(c), 3.15(c) and 3.17(c) of this chapter, a request for withdrawal from registration will become effective on the thirtieth day after receipt of such request by the National Futures Association, or earlier upon written notice from the National Futures Association (with the written concurrence of the Commission) of the granting of such request, unless prior to the effective date:

* * * * *

13. Section 3.40 is proposed to be amended by revising the introductory paragraph and paragraph (b) to read as follows:

§ 3.40 Temporary licensing of applicants for associated person registration.

Notwithstanding any other provision of these regulations and pursuant to the terms and conditions of this subpart, the National Futures Association may grant a temporary license to any applicant for registration as an associated person upon the contemporaneous filing with the National Futures Association of:

* * * * *

(b) The fingerprints of the applicant on a fingerprint card provided by the National Futures Association for that purpose; and

* * * * *

14. Section 3.43 is proposed to be amended by revising paragraph (b)(1) to read as follows:

§ 3.43 Relationship to registration.

* * * * *

(b) * * *

(1) A determination by the National Futures Association that the applicant is qualified for registration as an associated person; or

* * * * *

PART 31—LEVERAGE TRANSACTIONS

15. The authority citation for Part 31 continues to read as follows:

Authority: 7 U.S.C. 12a and 23, unless otherwise noted.

§ 31.1 [Removed and reserved]

16. Section 31.1 is proposed to be removed and reserved.

§ 31.2 [Removed and reserved]

17. Section 31.2 is proposed to be removed and reserved.

18. Section 31.4 is proposed to be amended by revising paragraph (g) to read as follows:

§ 31.4 Definitions.

* * * * *

(g) "Leverage commodity" means a commodity (gold bullion, silver bullion, bulk gold coins, bulk silver coins, or platinum) which is the subject of a leverage contract offered for purchase or sale, or purchased or sold, by a particular leverage transaction merchant, the value of which is reflected in a widely accepted and broadly disseminated commercial or retail cash price series for cash market transactions, which price series reasonably reflects the price for the leverage commodity which the customer can except to pay or receive in normal commercial or retail market channels, including, if applicable, specified premiums or discounts; each leverage commodity is defined by reference to the following distinguishing characteristics:

(1) The nominal size, composition and tolerable ranges of the delivery pack or the actual size, composition and tolerable range of the component of the delivery pack;

(2) Minimum guaranteed quality, deliverable countries of origin, deliverable markings or imprints, and deliverable refiners or mints;

(3) The method of pricing; and

(4) The delivery specifications or alternatives including type and location of delivery facilities, packaging, transportation, registration and associated costs.

* * * * *

19. Section 31.5 is proposed to be amended by revising paragraph (a) introductory text and paragraph (b), by removing paragraphs (c), (d), (e), and (g), by adding a new paragraph (c) and by redesignating paragraph (f) as paragraph (d) to read as follows:

§ 31.5 Unlawful conduct.

(a) On and after April 13, 1984, it shall be unlawful for any person:

* * * * *

(b) On and after April 13, 1984, it shall be unlawful for any leverage transaction merchant to permit any natural person to become or remain associated with it as a partner, officer or employee (or in any similar status or position involving similar functions) in any capacity which involves the offering to enter into, the entry into, or the conformation of the execution of a leverage contract with a leverage customer, or the solicitation or acceptance of a leverage customer's order (other than in a clerical capacity) for a leverage contract, or the supervision of any person or persons so engaged, if the leverage transaction merchant knew or should have known that the person was not registered with the Commission in accordance with § 3.18 of this chapter or that the person's registration had expired, been suspended (and the period of suspension had not expired) or been revoked.

(c) On and after November 10, 1986, it shall be unlawful for any person to offer to enter into, enter into or confirm the execution of a leverage contract to or with a leverage customer, or to solicit or accept a leverage customer's order for a leverage contract, or to accept any leverage customer funds from a leverage customer to enter into or maintain a leverage contract, unless the leverage commodity which is the subject of the leverage contract has been registered with the Commission in accordance with § 31.6 and involves silver bullion, gold bullion, bulk silver coins, bulk gold coins, or platinum. This paragraph shall not affect any rights or obligations arising out of any leverage contract involving any other leverage commodity that was entered into, or the execution of which was confirmed, before November 10, 1986.

* * * * *

20. Section 31.6 is proposed to be amended by revising paragraphs (a)(1), (a)(4) and (a)(5), by adding a new paragraph (a)(6) and by revising paragraph (b)(1) to read as follows:

§ 31.6 Registration of leverage commodities.

(a) * * *

(1) The person requesting registration of a leverage commodity is a registered leverage transaction merchant;

* * * * *

(4) The commodity can be readily purchased or sold in normal commercial or retail channels by leverage customers making or taking delivery on a leverage contract;

(5) The terms and conditions of the leverage contracts based on the leverage commodity are consistent with the Act and the regulations thereunder, and are not contrary to the public interest; and

(6) The terms and conditions of the leverage contracts based on the leverage commodity do not include substantial characteristics of other interests, such as options, certificates of deposit, or other regulated instruments.

(b) * * *

(1) Provide evidence that the person applying for registration of the leverage commodity is registered or has applied to the National Futures Association for registration as a leverage transaction merchant;

* * * * *

21. Section 31.7 is proposed to be amended by revising paragraph (c) to read as follows:

§ 31.7 Maintenance of minimum financial, cover and segregation requirements by leverage transaction merchants.

* * * * *

(c) The requirements of §§ 1.12(c), 1.12(d), 1.12(e) and 1.12(g) of this chapter shall apply to registered leverage transaction merchants and to persons who have applied for registration as leverage transaction merchants, as if in those paragraphs the term "leverage transaction merchant or applicant therefor" were substituted for the phrase "applicant or registrant."

22. Section 31.8 is proposed to be amended by revising paragraph (a)(2)(ii), by redesignating paragraphs (a)(2)(iii)(A) and (a) (2)(iii)(B) as paragraphs (a)(2)(v)(A) and (a)(2)(v)(B), by adding new paragraphs (a)(2)(iii) and (a)(2)(iv), and by revising paragraphs (b) and (e) to read as follows:

§ 31.8 Cover of leverage contracts.

(a) * * *

(2) * * *

(ii) Warehouse receipts for gold bullion in the case of leverage contracts for bulk gold coins, bulk gold coins in the case of leverage contracts for gold bullion, silver bullion in the case of leverage contracts on bulk silver coins, bulk silver coins in the case of leverage contracts on silver bullion, one type of bulk gold coins for leverage contracts involving another type of bulk gold coins on an ounce-for-ounce basis if each type of bulk gold coins used as cover is the subject of a leverage contract offered by the leverage transaction merchant pursuant to registration under § 31.6, and one type of bulk silver coins for leverage contracts involving another type of bulk silver coins on an ounce-for-ounce basis if each type of bulk silver coins used as cover is the subject of a leverage contract offered by the leverage transaction merchant pursuant to registration under § 31.6, which are held in commercial banks located in the United States or in approved contract market depositories: *Provided*, That the balance of the principal and accrued interest on any loans against such warehouse receipts does not exceed 70 percent of the current market value of the commodity for which it represents cover.

(iii) Purchase, in physical form, of the leverage commodity subject to the leverage contract, or of the same alternative commodities provided for in paragraph (a)(2)(ii) of this section, with settlement within two business days shall be considered permissible cover from the time the purchase order is confirmed, even though the leverage transaction merchant does not have possession or control of a warehouse receipt until settlement: *Provided, however*, That such purchases are not made from an affiliated firm, and such purchases at no time constitute more than 10 percent of the amount of physical commodities subject to open long leverage contracts entered into with leverage customers: *And, provided further*, That the leverage transaction merchant maintains, in accordance with § 31.14, detailed records of these transactions which will be subject to inspection, copying and audit by the Commission and a designated self-regulatory organization.

(iv) A long spot futures contract on the leverage commodity subject to the leverage contract, or of the same alternative commodities provided for in paragraph (a)(2)(ii) of this section, if the leverage transaction merchant has stopped a delivery notice which is non-transferable with respect to that futures contract and has otherwise complied with any procedures, including payment, necessary for taking delivery, even though the leverage transaction merchant does not have possession or control of a warehouse receipt for two business days: *Provided, however*, That the amount of physical commodities subject to such long spot futures contracts at no time constitutes more than 10 percent of the amount of physical commodities subject to open long leverage contracts entered into

with leverage customers: *And, provided further,* That the leverage transaction merchant maintains, in accordance with § 31.14, detailed records of its deliveries on futures contracts, which will be subject to inspection, copying and audit by the Commission and a designated self-regulatory organization.

* * * * *

(b) Such leverage transaction merchant must be in compliance with paragraph (a) of this section at all times and must be able to demonstrate such compliance to the satisfaction of the Commission and/or the designated self-regulatory organization. A leverage transaction merchant who is not in compliance with paragraph (a) of this section or is unable to demonstrate such compliance must immediately cease engaging in the business of offering to enter into, entering into, or confirming the execution of, any leverage contract until such time as the leverage transaction merchant is able to demonstrate such compliance. Nothing in this paragraph (b) shall be construed as preventing the Commission or the designated self-regulatory organization from taking action against a leverage transaction merchant for non-compliance with any of the provisions of this section.

* * * * *

(e) The requirements of paragraphs (a) through (d) of this section shall not be applicable if the leverage transaction merchant is a member of a designated self-regulatory organization and conforms to minimum cover standards and related reporting requirements set by such designated self-regulatory organization in its bylaws, rules, regulations or resolutions approved by the Commission pursuant to Section 19 of the Act and § 31.28.

23. Section 31.9 is proposed to be amended by revising paragraphs (a)(2), (a)(4) and (d) to read as follows:

§ 31.9 Minimum financial requirements.

(a) * * *

(2) The requirements of paragraph (a) of this section shall not be applicable if the applicant or registrant is a member of a designated self-regulatory organization and conforms to minimum financial standards and related reporting requirements set by such designated self-regulatory organization in its bylaws, rules, regulations or resolutions approved by the Commission pursuant to section 19 of the Act and § 31.28.

* * * * *

(4) A leverage transaction merchant who is not in compliance with this section, or is unable to demonstrate such compliance as required by paragraph (a)(3) of this section, must immediately cease engaging in the business of offering to enter into, entering into, or confirming the execution of, any leverage contract until such time as the leverage transaction merchant is able to demonstrate such compliance. Nothing in this paragraph shall be construed as preventing the Commission or the designated self-regulatory organization from taking action against a leverage transaction merchant for non-compliance with any of the provisions of this section. Any leverage transaction merchant required immediately to cease doing business under this paragraph shall remain liable on all leverage contracts previously entered into until all rights of and obligations owing to the customers thereunder have been fulfilled.

* * * * *

(d) Each registered leverage transaction merchant, and each person who has applied for registration as a leverage transaction merchant, must make and keep as a record in accordance with § 31.14 formal computations of its adjusted net capital and of its minimum financial requirements pursuant to this section as of the close of business each month. Such computations must be completed and made available for inspection by any representative of the National Futures Association, in the case of an applicant, or of the Commission, the designated self-regulatory organization, if any, or the United States Department of Justice in the case of a registrant, within 30 days after the date for which the computations are made, commencing the first month-end after the date the application for registration is filed.

24. Section 31.11 is proposed to be amended by revising the first sentence of paragraph (a)(1), paragraphs (a)(2)(ii), (a)(2)(viii), (e) and (h), and by adding a new paragraph (m) to read as follows:

§ 31.11 Disclosure.

(a) * * *

(1) The following bold-faced risk disclosure statement in at least ten-point type on the first page of the Disclosure Document:

BECAUSE OF THE UNPREDICTABLE NATURE OF THE PRICES OF PRECIOUS AND OTHER METALS, LEVERAGE CONTRACTS INVOLVE A HIGH DEGREE OF RISK AND ARE NOT SUITABLE FOR MANY MEMBERS OF THE PUBLIC. * * *

(2) * * *

(ii) The distinguishing characteristics of the contract and of the leverage commodity, including, in particular, those characteristics of the leverage commodity enumerated in § 31.4(g)(1)–(4);

* * * * *

(viii) A statement to the effect that other persons may be unwilling to buy from the leverage customer the leverage commodity that is deliverable on the leverage contract without first requiring an inspection or assay at the expense of the leverage customer; a statement to the effect that the leverage transaction merchant may be unwilling to accept delivery and pay for such leverage commodity without first requiring an inspection or assay at the expense of the leverage customer; and a description of any other requirements for the delivery of a leverage commodity by a leverage customer to a leverage transaction merchant in connection with a short leverage contract;

* * * * *

(e)(1) The leverage transaction merchant must file with the National Futures Association three copies and with the Commission at its Washington, DC headquarters, Attn: Secretariat, one copy of the document for each leverage contract that it offers or that it intends to offer not less than 21 calendar days prior to the date the leverage transaction merchant first intends to furnish the document to a prospective leverage customer. The leverage transaction merchant must specify with the filing the date it first intends to deliver the document to a prospective leverage customer;

(2) Subject to paragraphs (h) and (m) of this section, the leverage transaction merchant must file with the National Futures Association three copies and with the Commission at its Washington, D.C. headquarters, Attn: Secretariat, one copy of all subsequent amendments to the document for each leverage contract that it offers or that it intends to offer within 30 calendar days after the date upon which the leverage transaction merchant first knows or has reason to know of the defect requiring the amendment.

* * * * *

(h) A leverage transaction merchant must transmit a notification to each leverage customer within 24 hours of making any change not otherwise permitted under the contract terms set forth in accordance with paragraph (a)(2) of this section. A notification of any change in the interest rate charged by the leverage transaction merchant must also be transmitted to each leverage customer within twenty-four hours of each change: *Provided, however,* That no notification is required if the change in interest rate is

less than one percent from the rate charged at the prior month-end and the new interest rate is made available to customers by means of a toll-free telephone call, and such availability is set forth in the Disclosure Document. The notification required by this paragraph must be transmitted by first class mail or other, at least equivalent, means of communication.

* * * * *

(m)(1) Notwithstanding any other provision of this section, if a leverage transaction merchant is not offering to enter into, entering into or confirming the execution of, soliciting or accepting a leverage customer's order for, or accepting any leverage customer funds from a leverage customer to enter into or maintain any short leverage contract, the leverage transaction merchant may delete or disregard references to short leverage contracts in its Disclosure Document as follows:

(i) The third sentence of the first paragraph of the required bold-faced risk disclosure statement in paragraph (a)(1) of this section;

(ii) The words "and a short leverage transaction" in the fourth sentence of the first paragraph of the required bold-faced risk disclosure statement in paragraph (a)(1) of this section;

(iii) The words "and leverage contracts sold to a leverage transaction merchant are re-established at the then prevailing ask price" in the fifth sentence of the third paragraph of the required bold-faced risk disclosure statement in paragraph (a)(1) of this section;

(iv) The second sentence of the fifth paragraph of the required bold-faced risk disclosure statement in paragraph (a)(1) of this section;

(v) The words "or resold to" in the first sentence of the sixth paragraph of the required bold-faced risk disclosure statement in paragraph (a)(1) of this section;

(vi) The words "or resell," "and must also offer to resell any short leverage contract previously sold by a leverage customer," and "or short" in the second sentence of the sixth paragraph of the required bold-faced risk disclosure statement in paragraph (a)(1) of this section;

(vii) The words "or resold" and "or resale" (twice) in paragraph (a)(2)(vii) of this section;

(viii) All of the words following the first semicolon in paragraph (a)(2)(viii) of this section;

(ix) The words "and a representative single short leverage contract" in paragraph (a)(3) of this section; and

(x) The words "or short" in paragraphs (a)(5)(i) and (a)(5)(ii) of this section.

(2) Any leverage transaction merchant using a Disclosure Document that deletes or disregards references to short leverage contracts as permitted by paragraph (n)(1) of this section must file, in accordance with the provisions of paragraph (e)(2) of this section, a new Disclosure Document meeting all of the requirements of paragraphs (a) through (i) of this section at least 30 calendar days before it begins to offer any short leverage contract.

25. Section 31.12 is proposed to be amended by adding a new paragraph (h) to read as follows:

§ 31.12 Segregation.

* * * * *

(h) The requirements of paragraphs (a) through (g) of this section shall not be applicable if the leverage transaction merchant is a member of a designated self-regulatory organization and conforms to minimum segregation standards and related reporting requirements set by such designated self-regulatory organization in its bylaws, rules, regulations or resolutions approved by the Commission pursuant to section 19 of the Act and § 31.28.

26. Section 31.13 is proposed to be amended by revising paragraphs (a) introductory text, (b)(2), (c), (g)(2), (j), (k), (1)(l) introductory text, (l)(1)(vii), (l)(2), (l)(3), and (m) to read as follows:

§ 31.13 Financial reports of leverage transaction merchants.

(a) Each leverage transaction merchant who files an application for registration with the National Futures Association under § 3.17 of this chapter shall submit concurrently with the filing of such application either:

* * * * *

(b) * * *

(2) The provisions of paragraph (b)(1) of this section may be met by any person registered as a leverage transaction merchant who is a member of a designated self-regulatory organization and conforms to minimum financial standards and related reporting requirements set by such designated self-regulatory organization in its bylaws, rules, regulations, or resolutions and approved after April 13, 1984 by the Commission pursuant to Section 19 of the Act and § 31.28: *Provided, however,* That each such registrant shall promptly file with the Commission a true and exact copy of each financial report which it files with such designated self-regulatory organization.

(c) Each Form 2–FR which must be certified by an independent public accountant in accordance with the provisions of paragraphs (a)(1), (a)(2) and (b)(1) of this section, must be certified in accordance with § 1.16 of this chapter, and must be accompanied by the accountant's report on material inadequacies in accordance with the provisions of § 1.16(c)(5) of this chapter. In all other respects, the independent public accountant shall act in accordance with the provisions of § 1.16 (except paragraph (f)): *Provided, however,* That the term "Form 2–FR" shall be substituted for "Form 1–FR" in § 1.16(c)(5), the term "§ 31.9" shall be substituted for the term "§ 1.17," the term "leverage transaction merchant" shall be substituted for the term "futures commission merchant," and "the segregation requirements of § 31.12" shall be substituted for "the segregation requirements of Section 4d(2) of the Act and these regulations and the secured amount required of the Act and these regulations."

* * * * *

(g) * * *

(2) Statements of: income (loss); cash flows; changes in ownership equity; and changes in liabilities subordinated to claims of general creditors, for the period between the date of the most recent statement of financial condition filed with the Commission and the date for which the report is made: *Provided, however,* That for an applicant filing pursuant to paragraph (a) of this section, the period must be the year ending as of the date of the statement of financial condition;

* * * * *

(j) Any leverage transaction merchant wishing to establish a fiscal year other than the calendar year may do so by notifying the National Futures Association of its election of such fiscal year in writing, concurrently with the filing of Form 2–FR pursuant to paragraph (a) of this section or within 90 days of the effective date of this section, but in no event may such fiscal year end more than one year from the date of the Form 2–FR filed pursuant to paragraph (a) of this section or more than one year from the effective date of this regulation. A leverage transaction merchant which does not so notify the National Futures Association will be deemed to have elected the calendar year as its fiscal year. A leverage transaction merchant must continue to use its elected fiscal year, calendar or otherwise, unless a change in such fiscal year is approved upon written application to the designated self-regulatory organization.

(k) In the event any leverage transaction merchant finds that it cannot file its report for any period within the time specified in paragraphs (b) or (d) of this section without substantial undue hardship, it may file with the designated self-regulatory organization an application for an extension of time to a specified date which may not be more than 90 days after the date as of which the financial report was to have been filed. The application must state the reasons for the requested extension and must contain an agreement to file the report on or before the specified date. The application must be received by the designated self-regulatory organization before the time specified in paragraphs (b) or (d) of this section for filing the report. Within 10 calendar days after receipt of the application for an extension of time, the designated self-regulatory organization shall: (1) Notify the leverage transaction merchant of the grant or denial of the requested extension; or (2) indicate that additional time is required to analyze the request, in which case the amount of time needed will be specified.

(l)(1) In the event a leverage transaction merchant finds that it cannot file its certified financial report and schedules for any year within the time specified in paragraph (b) of this section without substantial undue hardship, it may file with the designated self-regulatory organization an application for an extension of time to a specified date not more than 90 days after the date as of which the certified financial report and schedules were to have been filed. The application must be submitted by the leverage transaction merchant and must:

* * * * *

(vii) Be received by the designated self-regulatory organization prior to the date on which the report is due; and

* * * * *

(2) Within 10 calendar days after receipt of an application for extension of time, the designated self-regulatory organization shall: (i) Notify the leverage transaction merchant of the grant or denial of the requested extension; or (ii) indicate that additional time is required to analyze the request, in which case the amount of time needed will be specified.

(3) On the written request of a leverage transaction merchant, or on its own motion, the designated self-regulatory organization may grant an extension of time or an exemption from any of the certified financial reporting requirements of this section either unconditionally or on specified terms and conditions.

(m) All of the Forms 2–FR filed pursuant to this section will be public: *Provided, however,* That if the statement of financial condition, the computation of the minimum capital requirements pursuant to § 31.9, the schedule of coverage requirements and cover provided, and the schedule of segregation requirements and funds on deposit in segregation are bound separately from the other financial statements (including the statement of income (loss)), footnote disclosures and schedules of Form 2–FR, trade secrets and certain other commercial or financial information on such other statements and schedules, then such other statements and schedules will be treated as nonpublic for purposes of the Freedom of Information Act and the Government in the Sunshine Act and Parts 145 and 147 of this chapter. All information on such other statements, footnote disclosures and schedules will, however, be available for official use by any official or employee of the United States or any State, by any self-regulatory organization of which the person filing such report is a member, by the National Futures Association in the case of an applicant, and by any other person to whom the Commission believes disclosure of such information is in the public interest. The independent public accountant's opinion filed pursuant to this section will be deemed to be public information.

* * * * *

27. Section 31.16 is proposed to be amended to read as follows:

§ 31.16 Monthly reporting requirements.

(a) *Monthly activity.* Each leverage transaction merchant shall file written monthly reports with the National Futures Association in the format specified by the National Futures Association, by the tenth business day of the month following the month covered by the report and shall include the following information separately for each leverage commodity and each long and short leverage contract:

(1) The total number of leverage contracts that are open as of the close of business on the last business day of the month for:

(i) All customer accounts, and

(ii) Separately for commercial leverage accounts.

(2) The total number of leverage contracts entered into by leverage customers during the month for:

(i) All customer accounts, and

(ii) Separately for commercial leverage accounts.

(3) The total number of leverage contracts which were repurchased or resold by the leverage transaction merchant during the month.

(4) The total number of leverage contracts which were liquidated by the leverage transaction merchant during the month (*i.e.*, as a result of overdue or unanswered margin calls).

(5) The total number of deliveries on leverage contracts during the month.

(6) The total number of leverage contracts which were rescinded during the month.

(b) *Prices.* The monthly report shall also show the following information separately for each leverage commodity and each long and short leverage contract: the leverage transaction merchant's last bid price offered and last ask price offered as of the close of the business on each business day.

28. Section 31.21 is proposed to be revised to read as follows:

§ 31.21 Leverage contracts entered into prior to April 13, 1984; subsequent transactions.

Nothing contained in these regulations shall be construed to affect any lawful activities that occurred prior to April 13, 1984. All leverage contracts offered or entered into on or after April 13, 1984 shall be subject to the terms and conditions of these regulations.

29. Section 31.22 is proposed to be revised to read as follows:

§ 31.22 Prohibited trading in leverage contracts.

No futures commission merchant or introducing broker shall offer to enter into, confirm the execution of, or solicit or accept orders for any leverage contract.

30. Section 31.25 is proposed to be amended by revising paragraph (b) to read as follows:

§ 31.25 Bid and ask prices; carrying charges.

* * * * *

(b) A leverage transaction merchant must apply a carrying charge rate on a short leverage contract that is within one percent per annum of the carrying charge rate that it applies to a long leverage contract. In the case of a short leverage contract, the leverage customer must be credited with carrying charges computed on the total initial value of the contract, using the bid price when the contract was executed, plus any margin deposits made by the leverage customer in connection with the contract, and the same carrying charge rate must be applied to the total initial value of the contract and to the margin deposits. In the case of a long leverage contract, the

leverage customer must be assessed carrying charges only on the unpaid balance of the contract, which is the total initial value of the contract, using the ask price when the contract was executed, minus any margin deposits made in connection with the contract: *Provided, however,* That in the case of a long leverage contract, interest on unpaid carrying charges may be assessed at the same rate as the interest rate component of the carrying charges and, if such an assessment were made and if the leverage transaction merchant offers short leverage contracts, payment of interest on carrying charges that have been credited to the leverage customer's account and not withdrawn must be made at the same rate as the interest rate component of the carrying charges.

31. Section 31.26 is proposed to be amended by removing paragraph (b) and the designation for paragraph (a), redesignating former (a)(1) through (12) as (a) through (l), and revising the introductory text, to read as follows:

§ 31.26 Quarterly reporting requirement.

Each leverage transaction merchant must file, in accordance with the instructions of, and in the format specified by, the National Futures Association a quarterly report with the National Futures Association by the fifteenth business day of the month following the quarter covered by the report. The report must list all leverage contracts which were either repurchased, resold, liquidated or settled by delivery by or to the leverage transaction merchant during the quarter and, with respect to each leverage contract, must include the following information:

* * * * *

32. Section 31.27 is proposed to be added to read as follows:

§ 31.27 Registered futures association membership.

Each person required to register as a leverage transaction merchant must become and remain a member of at least one futures association which is registered under section 17 of the Act and which provides for the membership therein of such leverage transaction merchant, unless no such futures association is so registered.

33. Section 31.28 is proposed to be added to read as follows:

§ 31.28 Self-regulatory organization adoption and surveillance of minimum financial, cover, segregation and sales practice requirements.

(a) Each self-regulatory organization must adopt, and submit for Commission approval, rules prescribing minimum financial, cover, segregation and sales practice, and related reporting requirements for all its members who are registered leverage transaction merchants. Each self-regulatory organization shall submit for Commission approval any modification or other amendments to such rules. Such requirements must be the same as, or more stringent than, those contained in this Part 31 and the definition of adjusted net capital must be the same as that prescribed in § 31.9(b)(4).

(b) Each self-regulatory organization which has members who are registered leverage transaction merchants shall have in effect and enforce rules submitted to the Commission pursuant to paragraph (a) of this section and approved by the Commission.

(c) Any two or more self-regulatory organizations may file with the Commission a plan for delegating to a designated self-regulatory organization, for any registered leverage transaction merchant which is a member of more than one such self-regulatory organization, the responsibility of:

(1) Monitoring and auditing for compliance with the minimum financial, cover, segregation and sales practice, and related reporting requirements adopted by such self-regulatory organizations in accordance with paragraph (a) of this section; and

(2) Receiving the reports necessitated by such minimum financial, cover, segregation and sales practice, and related reporting requirements.

(d) Any plan filed under this section may contain provisions for the allocation of expenses reasonably incurred by the designated self-regulatory organization among the self-regulatory organizations participating in such a plan.

(e) A plan's designated self-regulatory organization must report to that plan's other self-regulatory organizations any violation of such other self-regulatory organizations' rules and regulations for which the responsibility to monitor, audit or examine has been delegated to such designated self-regulatory organization under this section.

(f) The self-regulatory organizations may, among themselves, establish programs to provide access to any necessary information.

(g) After appropriate notice and opportunity for comment, the commission may, by written notice, approve such a plan, or any part of the plan, if it finds that the plan, or any part of it:

(1) Is necessary or appropriate to serve the public interest;

(2) Is for the protection and in the interest of leverage customers;

(3) Reduces multiple monitoring and auditing for compliance with the minimum financial, cover, segregation and sales practice, and related reporting requirements of the self-regulatory organizations submitting the plan for any leverage transaction merchant which is a member of more than one self-regulatory organization;

(4) Reduces multiple reporting of the information necessitated by such minimum financial, cover, segregation and sales practice, and related reporting requirements by any leverage transaction merchant which is a member of more than one self-regulatory organization;

(5) Fosters cooperation and coordination among the self-regulatory organizations; and

(6) Does not hinder the development of a registered futures association under section 17 of the Act.

(h) After the Commission has approved a plan or part of one under paragraph (g) of this section, a self-regulatory organization relieved of responsibility must notify each of its members which is subject to such a plan:

(1) Of the limited nature of its responsibility for such a member's compliance with its minimum financial, cover, segregation and sales practice, and related reporting requirements; and

(2) Of the identity of the designated self-regulatory organization which has been delegated responsibility for such a member.

(i) The Commission may at any time, after appropriate notice and opportunity for hearing, withdraw its approval of any plan or part of one established under this section, if such plan or part of one ceases to effectuate adequately the purposes of section 19 of the Act or of this section.

(j) Whenever a registered leverage transaction merchant holding membership in a self-regulatory organization ceases to be a member in good standing of that self-regulatory organization, such self-regulatory organization must, on the same day that event takes place, give telegraphic notice of that event to the principal office of the Commission in Washington, D.C. and send a copy of that notification to such leverage transaction merchant.

(k) Nothing in this section shall preclude the Commission from examining any leverage transaction merchant for compliance with the minimum financial, cover, segregation and sales practice, and related reporting requirements to which such leverage transaction merchant is subject.

(l) In the event a plan is not filed and/or approved for each registered leverage transaction merchant which is a member of more than one self-regulatory organization, the Commission may design and, after notice and opportunity for comment, approve a plan for those leverage transaction merchants which are not the subject of an approved plan (under paragraph (g) of this section), delegating to a designated self-regulatory organization the responsibilities described in paragraph (c) of this section.

34. Section 31.29 is proposed to be added to read as follows:

§ 31.29 Arbitration or other dispute settlement procedures.

Each self-regulatory organization which has members who are registered as leverage transaction merchants must be able to demonstrate its capability to promulgate rules and to conduct proceedings which provide a fair, equitable and expeditious procedure, through arbitration or otherwise, for the voluntary settlement of a leverage customer's claim or grievance brought against any member leverage transaction merchant or any employee of a member leverage transaction merchant. Such rules shall be consistent with the rules set forth in Part 180 of this chapter governing contract market arbitration and dispute settlement procedures.

Appendix B to Part A—[Removed]

35. Appendix B to Part 31 is proposed to be removed.

PART 145—COMMISSION RECORDS AND INFORMATION

36. The authority citation for Part 145 continues to read as follows:

Authority: Pub. L. 89-554, 80 Stat. 383, Pub. L. 90-23, 81 Stat. 54, Pub. L. 93-502, 88 Stat. 1561-1564 (5 U.S.C. 552); Sec. 101(a), Pub. L. 93-463, 88 Stat. 1389 (7 U.S.C. 4a(j)); Pub. L. 99-570.

37. Section 145.5 is proposed to be amended by revising paragraph (d)(1)(i)(H) to read as follows:

§ 145.5 Disclosure of nonpublic records.

* * * * *

(d) * * *
(1) * * *
(i) * * *

(H) The following portions, and footnote disclosures thereof, of the Form 2-FR, provided the procedure set forth in § 31.13(m) of this chapter is followed: The Statement of Income (Loss), the Statement of Cash Flows, the Statement of Changes in Ownership Equity, the Statement of Changes in Liabilities Subordinated to the Claims of General Creditors Pursuant to a Satisfactory Subordinate Agreement and the accountant's report on material inadequacies filed under § 1.16(c)(5) of this chapter;

* * * * *

PART 147—OPEN COMMISSION MEETINGS

38. The authority citation for Part 147 continues to read as follows:

Authority: Sec. 3(a), Pub. L. 94-409, 90 Stat. 1241 (5 U.S.C. 552b); Sec. 101(a)(11), Pub. L. 93-463, 88 Stat. 1391 (7 U.S.C. 4a(j)).

39. Section 147.3 is proposed to be amended by revising paragraph (b)(4)(i)(A)(*8*) to read as follows:

§ 147.3 General requirement of open meetings; grounds upon which meetings may be closed.

* * * * *

(b) * * *
(4) * * *
(i) * * *
(A) * * *

(*8*) The following portions, and footnote disclosures thereof, of the Form 2-FR provided the procedure set forth in § 31.13 of this chapter is followed: The Statement of Income (Loss), the Statement of Cash Flows, the Statement of Changes in Ownership Equity, the Statement of Changes in Liabilities Subordinated to the Claims of General Creditors Pursuant to a Satisfactory Subordination Agreement and the accountant's report on material inadequacies filed under § 1.16(c)(5) of this chapter;

* * * * *

Issued in Washington, DC on January 17, 1989 by the Commission

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-1294 Filed 1-23-89; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 122

Overflight Exemptions for Private Aircraft

AGENCY: U.S. Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations concerning the overflight exemption program for private aircraft. If exempted, private aircraft arriving in the U.S. from foreign countries in the Western Hemisphere south of the U.S. may overfly a Customs designated airport along the southern U.S. border and proceed to another, typically more interior, airport where Customs inspectional services are available. T.D. 87-42, published in the **Federal Register** on March 30, 1987 (52 FR 10047), set forth interim regulations in § 6.14(f), Customs Regulations (19 CFR 6.14(f)), modifying the overflight exemption program by creating more stringent procedures. Those interim regulations were drafted to close a loophole in narcotic interdiction efforts involving a large volume of air traffic traveling from the direction of narcotic source countries. The interim regulations have not yet been finalized. This document proposes to amend the interim regulations by providing for a fingerprint requirement as part of the application process for all usual and anticipated pilots and crewmembers seeking overflight exemptions for flights that do not involve air ambulance operations or the non-emergency transport of persons seeking medical treatment in the U.S. If adopted, this amendment will allow Customs to conduct more thorough background investigations on applicants and thus better provide control over air traffic arriving from the direction of countries that are major sources of illegal drugs.

DATE: Comments must be received on or before March 27, 1989.

ADDRESS: Written comments (preferably in triplicate) must be submitted to and may be inspected at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229. Comments relating to the information collection aspects of the proposal should be addressed to Customs, as noted above, and also to the Office of Information and Regulatory Affairs, Attention: Desk Officer for U.S. Customs Service, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Glenn Ross, Office of Passenger Enforcement and Facilitation (202-566-5607).

SUPPLEMENTARY INFORMATION:

Background

As part of Customs effort to combat the problem of drug smuggling by air, in 1975 the Customs Regulations were amended to add a new § 6.14 (19 CFR 6.14), that provides in part that private aircraft arriving in the U.S. via the U.S.-Mexican border must provide a notice of intended arrival with Customs (T.D. 75-201, 40 FR 33203). The section further provided that these private aircraft must

land at any one of the designated airports near the U.S.-Mexican border, Gulf Coast, or Florida coast areas. The purpose of this regulation was to provide Customs with increased enforcement efficiency by providing tight control over air traffic arriving from the direction of countries that are major sources of illegal drugs destined for the U.S.

Section 6.14 provided, however, for exemptions under certain circumstances from the requirement of landing at one of the designated airports. These exemptions, called overflight exemptions, allow private aircraft arriving in the U.S. from foreign countries in the Western Hemisphere south of the U.S. to overfly a Customs-designated airport along the southern border and proceed to another, typically more interior, airport where Customs inspectional services are available if Customs approves of the application to do so.

In our diligence to fight the national epidemic of illegal drugs, Customs recently concluded that the overflight exemption program constituted a loophole in our drug interdiction program, allowing smugglers to engage in "touch and go" or air drop smuggling of illegal drugs and contraband. "Touch and go" smuggling involves aircraft crossing the U.S. border and landing and quickly unloading illegal drugs or contraband before flying to the airport at which they report for inspection. Air drop smuggling involves flying very low over some point between the border and the airport at which they will report for inspection, pushing illegal drugs or contraband out of the aircraft to be retrieved on the ground, and continuing on to the airport. Accordingly, Customs published in the **Federal Register** (52 FR 10047), on March 30, 1987, Treasury Decision 87–42, that set forth interim regulations modifying the overflight exemption program, making it more stringent. The interim regulations, which allow only U.S. based companies or individuals to apply for overflight exemptions and require individual applications from each pilot or crewmember intended to participate in an overflight, have not yet been finalized. Treasury Decision 88–12, published in the **Federal Register** on March 22, 1988 (53 FR 9285), which revised the Customs Regulations relating to air commerce, removed § 6.14(f), and set forth the interim regulation in a new § 122.25.

While the interim regulations have been in effect, Customs has determined that requiring the fingerprints of those seeking overflight exemptions would improve the overflight exemption program. Customs ability to investigate the background of all overflight applicants would be greatly enhanced by requiring fingerprints of applicants as part of the application process. Accordingly, Customs is proposing that § 122.25, Customs Regulations be amended to state that except for flights involving air ambulance operations and the non-emergency transport of persons seeking medical treatment, all usual and anticipated pilots and crewmembers on flights applying for overflight exemptions must submit fingerprints. Fingerprinting of applicants will give Customs another tool by which to check the background of applicants and thereby prevent smuggling.

Customs believes that the increasing use of general aviation aircraft to smuggle narcotics warrants that this fingerprinting requirement be instituted.

Comments

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) timely submitted. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 a.m. to 4:30 p.m. at the Regulations and Disclosure Law Branch, Customs Service Headquarters, Room 2119, 1301 Constitution Avenue, NW., Washington, DC 20229.

Executive Order 12291

This document does not meet the criteria of a "major rule" as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified, that if adopted, this proposed amendment will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for U.S. Customs Service, with copies to Customs at the address previously specified.

The collection of information in this regulation is in § 122.25(c)(5), Customs Regulations (19 CFR 122.25(c)(5)). This information is required by Customs as a means of controlling the use of general aviation aircraft to smuggle narcotics from countries south of the U.S. The information will be used to enable Customs to perform more thorough background investigations of those seeking overflight exemptions. The likely respondents are individuals or households, business or other for-profit institutions or small businesses or organizations.

Estimated total annual arrival reporting and/or recordkeeping burden: 750 hours.

Estimated average annual burden per respondent and/or recordkeeper: 2 hours.

Estimated number of respondents: 375.

Estimated annual frequency of responses: 4.

List of Subjects in 19 CFR Part 122

Customs duties and inspection, Imports, Air carrier, Aircraft, Airports.

Proposed Amendments to the Regulations

It is proposed to amend Part 122, Customs Regulations (19 CFR Part 122) as set forth below.

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for Part 122 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. 1509.

2. It is proposed to revise § 122.25(c)(5) to read as follows:

§ 122.25 Exemption from special landing requirements.

* * * * *

(c) *Content of request.* * * *

(5) Individual signed applications and fingerprints from each usual or anticipated pilot or crewmember for aircraft for which an overflight exemption is sought except for flights involving air ambulance operations and the non-emergency transport of persons seeking medical treatment. Applications must state name, address, Social Security number, Federal Aviation Administration certificate number, and place and date of birth. Fingerprints must be submitted on Standard Form 87;

* * * * *

Drafting Information

The principal author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

William von Raab,

Commissioner of Customs.

Approved: October 18, 1988.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 89-1448 Filed 1-23-89; 8:45 am]

BILLING CODE 4820-02-M

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19 CFR Parts 141, 143, 145

Proposed Customs Regulations Amendments Changing the Maximum Amount for Informal Entries to $1250

AGENCY: U.S. Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: Under current Customs Regulations, a shipment must generally be valued at $1000 or less to qualify for informal entry procedures. This document amends various parts of the Customs Regulations to raise the $1000 ceiling to $1250.

Pub. L. 98-573, dated October 30, 1984, amended 19 U.S.C. 1498(a)(1) by granting the Secretary of the Treasury the authority to increase the informal entry limit from $250 to $1250. When the Customs Service originally implemented the statutory change in 1985, it decided to set the maximum for informal entry at $1000, reserving the option to raise the limit to the statutory maximum at a subsequent time. Customs has now determined that in order to devote its resources to higher priority, higher valued shipments, it is appropriate to raise the limit for informal entry to the statutory maximum.

DATE: Comments must be received on or before March 27, 1989.

ADDRESS: Comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, Customs Service Headquarters, 1301 Constitution Ave., NW., Room 2119, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: William G. Rosoff, Chief, Entry Rulings Branch, (202) 566-5856.

SUPPLEMENTARY INFORMATION:

Background

All merchandise which is imported into the customs territory of the United States is subject to entry and clearance procedures. Section 484(a), Tariff Act of 1930, (19 U.S.C. 1484(a)), provides that the consignee of imported merchandise or his agent shall make entry by filing such documentation as is necessary to enable the Customs officer to determine whether the merchandise may be released from Customs custody and to ascertain properly the duties on the merchandise as well as whether other legal requirements are met. Part 142, Customs Regulations (19 CFR Part 142), implements section 484, and prescribes procedures applicable to most Customs entry transactions. These procedures, known as formal entry procedures, generally require the filing of Customs forms as well as commercial documents pertaining to the transaction.

Section 498, Tariff Act of 1930 (19 U.S.C. 1498), as originally enacted, authorized the Secretary to prescribe rules and regulations for, among other things, the declaration and entry of shipments the aggregate value of which did not exceed $250. Regulations setting forth procedures for such shipments were issued in Subpart C of Part 143, Customs Regulations (19 CFR Part 143, Subpart C), entitled "Informal Entries". Informal entry procedures are less burdensome than their formal counterparts. For example, with the assent of the district director of Customs, merchandise eligible for informal entry may be entered simply by means of a commercial invoice which contains a signed declaration by the importer.

Section 206 of Pub. L. 98-573, dated October 30, 1984, amended section 498 by granting, with certain exceptions, the Secretary of the Treasury the authority to raise to $1250 the maximum amount for informal entry status. On July 23, 1985, Customs published a number of conforming amendments in the **Federal Register** (50 FR 29949), including one raising the limit for which informal entries could be filed. However, Customs raised the limit to only $1000 and preserved the option of raising the ceiling further until after it could evaluate the operational effect of this increase.

On December 16, 1987, Customs published a proposal in the **Federal Register** (52 FR 47729), to change the procedures for the clearance of cargo carried by express consignment operators or carriers. One purpose of this proposal was to provide more expedited clearance procedures for the processing of such cargo. In this document we proposed to increase from $1000 to $1250 the ceiling for which informal entry procedures could be used for cargo carried by express consignment operators or carriers.

After examining the comments received in response to the December 16, 1987, notice, and upon further evaluation of the operational benefits of raising the informal entry limits, Customs now deems it appropriate to increase the maximum amount for informal entry eligibility to $1250 for all transactions to which the $1000 limit applied. Customs experience indicates that the revenue collected on informal entries is very small. Customs believes that increasing the ceiling to $1250 will allow Customs Service personnel to focus their attention on higher valued commercial transactions, which tend to be more import sensitive. In addition, this change will lessen the burden on importers by allowing them to file informal entries for an additional group of transactions.

Proposal

In order to make the less burdensome informal entry procedures available for a greater number of import transactions, Customs proposes to amend various sections of the regulations to conform them to the satutory limit for informal entries.

Comments

Before adopting the proposed regulations, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m., at the Regulations and Disclosure Law Branch, Room 2119, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) it is certified that, if adopted, the proposed 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 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

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

List of Subjects

19 CFR Part 141

Imports.

19 CFR Part 143

Imports.

19 CFR Part 145

Postal Service.

Proposed Amendments

It is proposed to amend Parts 141, 143, and 145 (19 CFR Parts 141, 143, and 145) as set forth below.

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for Part 141 and the specific authority for the affected subpart continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624. Subpart F also issued under 19 U.S.C. 1481.

§ 141.82 [Amended]

2. It is proposed to amend § 141.82(d) by removing "$1000" and inserting in its place "$1250".

PART 143—CONSUMPTION APPRAISEMENT AND INFORMAL ENTRIES

1. The general authority citation for Part 143 remains as follows:

Authority: 19 U.S.C. 66, 1481, 1484, 1484, 1498, 1624.

§ 143.21 [Amended]

2. It is proposed to amend § 143.21, paragraphs (a), (b), (c), (f), (g) and (l), by removing "$1000" and inserting in its place "$1250".

§ 143.22 [Amended]

3. It is proposed to amend § 143.22(c) by removing "$1000" and inserting in its place, "$1250".

§ 143.23 [Amended]

4. It is proposed to amend § 143.23(d) by removing "$1000" and inserting in its place "$1250".

§ 143.29 [Amended]

5. It is proposed to amend the introductory text and paragraph (b) of § 143.29 by removing "$1000" and inserting in its place "$1250".

PART 145—MAIL IMPORTATIONS

1. The general authority citation for Part 145 and the specific authority for the affected sections continue to read as follows:

Authority: 19 U.S.C. 66, 1202, 1624. Section 145.12 also issued under 19 U.S.C. 1315, 1484, 1498; section 145.35 also issued under 19 U.S.C. 1498.

§ 145.12 [Amended]

2. It is proposed to amend § 145.12, paragraphs (a)(2), (a)(3), (b) and (c) by removing "$1000" and inserting in its place "$1250".

§ 145.35 [Amended]

3. It is proposed to amend § 145.35 by removing "$1000" and inserting in its place "$1250".

§ 145.41 [Amended]

4. It is proposed to amend § 145.41 by removing "$1000" and inserting in its place "$1250".

William von Raab,

Commissioner of Customs.

Approved: January 12, 1989.

Gerald Hilsher,

Acting Assistant Secretary of the Treasury.

[FR Doc. 89-1446 Filed 1-23-89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing on Amendments

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing receipt of proposed amendments to the Kentucky permanent regulatory program [hereinafter referred to as the Kentucky program] under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments are intended to make the Commonwealth's regulations consistent with revised Federal regulations contained in 30 CFR Chapter VII.

This notice sets forth the times and locations that the proposed amendments are available for public inspection, the comment period during which interested persons may submit written comments, and the procedures that will be following during a public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on February 23, 1989, to ensure consideration in the decision process. If requested, a public hearing on the proposed amendments will be held at 10:00 a.m. on February 21, 1989. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on February 8, 1989.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand delivered to: W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

Copies of the Kentucky program, the proposed amendments, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the OSMRE Lexington Field Office and at the office of the Department for Surface Mining Reclamation and Enforcement listed below, during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendments by contacting the OSMRE Lexington Field Office.

Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504, Telephone: (606) 233-7327.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5315 A, 1100 "L" Street, NW., Washington, DC 20240, Telephone: (202) 343-5492.

Office of Surface Mining Reclamation and Enforcement, Eastern Field Operations, Ten Parkway Center, Pittsburgh, Pennsylvania 15220, Telephone: (412) 937-2828.

Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564-6940.

If a public hearing is held, its location will be: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: Mr. W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Background

The Kentucky program was conditionally approved by the Secretary of the Interior on May 18, 1982. Information pertinent to the general

background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of appoval of the Kentucky program can be found in the May 18, 1982, **Federal Register** (47 FR 21404–21435). Subsequent actions concerning the conditions of approval and program amendments are identified in 30 CFR 917.11, 917.15, 917.16, and 917.17.

II. Discussion of Amendments

By letter dated June 9, 1987, OSMRE notified Kentucky of State regulations that must be amended to be consistent with revised Federal regulations. OSMRE's letter, pursuant to 30 CFR 732.17, identified 5 changes needed in the Kentucky regulatory program for cultural and historic resources.

In response to the OSMRE letter Kentucky submitted on December 21, 1988, (Administrative Record No. KY–841) proposed program amendments to the cultural and historic resource regulations contained in the Kentucky program.

The proposed amendments modify portions of the Kentucky Administrative Regulations (KAR) Title 405 Chapters 8 and 24. Specifically, the proposed amendments revise 405 KAR 8:010 by including information on the nature and location of archaeological resources on public and Indian lands as confidential information, and by adding a requirement for a new written findings by the Cabinet relating to properties listed or eligible for listing on the National Register of Historic Places. The proposed amendments revise 405 KAR 8:020 to require the inclusion of information on cultural, historic, and known archaeological resources in the narrative description of each exploration and reclamation operations plan. The proposed amendments revise the permit requirements at 405 KAR 8:030 and 405 KAR 8:040 to specify that Kentucky may require the applicant to identify and evaluate important historic and archaeological resources. In addition, the proposed regulations require that each plan contain a description of measured to be used to prevent adverse impacts to public parks or places listed on the National Register of Historic Places and allows the cabinet to require the applicant to utilize appropriate mitigation and treatment measures. The proposed amendments also revise the Kentucky Regulations at 405 KAR 24:040 to permit the relocation of cemeteries if authorized by applicable State law or regulations.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comments on whether the amendments proposed by Kentucky fully satisfy the criteria of 30 CFR 732.15 for the approval of State program amendments. If the amendments are deemed adequate, they will become part of the Kentucky program.

Written Comments

Written comments should be specific, pertain only to those issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Lexington Field Office, Lexington, Kentucky, will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to testify at a public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business on February 8, 1989. If no one requests an opportunity to testify at a public hearing, a hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specific date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. A summary of the meeting will be included in the Administrative Record.

Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE, Lexington Field Office listed under "**ADDRESSES**" by contracting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under "ADDRESSES." A written summary of each public meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subject in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 89–1486 Filed 1–23–89; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13 89–01]

Drawbridge Operation Regulations; Umpqua River, OR

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Oregon Department of Transportation (ODOT), the Coast Guard is considering a change to the regulations governing the

swingspan bridge across the Umpqua River, mile 11.1, at Reedsport, Oregon, by requiring that two hours advance notice be given for bridge openings at all times. The current regulations require the span to open on signal between 8 a.m. and 4 p.m. Monday through Friday. At all other times, at least four hours notice is required for openings. This proposal is being made because of a steady decrease in requests for opening the draw. This action should allow the bridge to be operated in a more economical fashion and still provide for the reasonable needs of navigation.

DATE: Comments must received on or before March 10, 1989.

ADDRESSES: Comments should be mailed to Commander (ob), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174–1067. The comments and other materials referenced in this notice will be available for inspection and copying at 915 Second Avenue, Room 3410. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch, (Telephone (206) 442–5864).

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with, or any recommended changes in the proposal. Persons desiring acknowledgement that their comments have been received should include a stamped, self-addressed postcard or envelope. The Commander, Thirteenth Coast Guard District, will evaluate all communications and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Austin Pratt, project officer, and Lieutenant Deborah K. Schram, project attorney.

Discussion of the Proposed Regulations

The Oregon Department of Transportation has asked the Coast Guard to approve a change to the operating regulations which would require that vessels request openings at least two hours in advance of the time when they wish to pass the Umpqua River Bridge. Records show a decline in openings since 1982. In that year the total number of openings was 367. Since 1982, the average annual number of openings has been sixty. This corresponds to only five openings per month. The proposed regulation change would enable the bridge owner to maintain the bridge without a draw tender in attendance yet still serve the reasonable needs of navigation.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 1291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Navigation and marine related interests will not be significantly affected by this proposed rule because the subject bridge is opened infrequently for vessels. The reasonable needs of these interests would still be met by the proposed operating regulation. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.893, paragraph (a) is revised to read as follows:

§ 117.893 Umpqua River

(a) The draw of the U.S. 101 bridge, mile 11.1, at Reedsport, shall open on signal if at least two hours notice is given.

* * * * *

Dated: January 12, 1989.

D.C. O'Donovan,

Capt, USCG, Acting Commander, 13th Coast Guard District.

[FR Doc. 89–1538 Filed 1–23–89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3507-8]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA is proposing to disapprove a revision to the Ohio State Implementation Plan (SIP) for ozone. The requested revision for Steel City Corporation in Youngstown, Ohio consists of a proposal to meet the current requirements for surface coating of miscellaneous metal parts and products as contained in Ohio Administrative Code (OAC) Rule 3745–21–09(U) (3.5 pounds of volatile organic compounds per gallon of coating, excluding water, limitation) using an alternative emission control program (bubble) between a spray coating line and two dip tanks located at the facility. This revision request also includes a monthly volume-weighted average for the source. Ohio's rule currently requires that this limit be met as a daily volume-weighted average for each applicator.

USEPA is proposing to disapprove this revision because there is insufficient documentation to support that complying coatings for Steel City Corporation are unavailable, and because there is no documentation provided that demonstrates that the 30-day averaging period provision, in the requested SIP revision, is as short as practicable. As a result of this action, the source remains subject to the control requirements of OAC Rule 3745–21–09(U) and OAC Rule 3745–21–04(C)(28) which requires compliance with OAC Rule 3745–21–09(U) by December 31, 1982.

DATE: Comments on the requested SIP revision and on the proposed USEPA action must be received by February 23, 1989.

ADDRESSES: Copies of the requested SIP revision are at the following addresses for review: (It is recommended that interested parties telephone Debra Marcantonio, at (312) 886–6088, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216.

Copies of the Technical Support Document for this proposed rulemaking are also available from the Region V Office. Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Air and Radiation Branch (5AR–26),l U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6088.

SUPPLEMENTARY INFORMATION: On November 20, 1985, the Ohio Environmental Protection Agency (OEPA) submitted a site-specific SIP revision request for the miscellaneous metal coating lines at the Steel City Corporation in Youngstown, Ohio. Steel City is a steel products manufacturer specializing in small consumer products such as mailboxes, fence posts, metal shelves and storage parts. Steel City paints these products using three surface coating lines: a brown dip tank (K006), a green dip tank (K005) and an electrostatic spray both (K004), known as the mailbox line.

All three lines are subject to the requirements of OAC Rule 3745–21–09(U) for surface coating of miscellaneous metal parts and products. This rule limits the VOC content of any extreme performance coating used on these lines to 3.5 pounds of VOC per gallon of coating, excluding water. These lines are also subject to OAC Rule 3745–21–09–04(C)(28) that requires compliance with Rule 3745–21–09(U) by December 31, 1982. Additionally, OAC Rule 3745–2–1–09(B) requires that this limit be met as a daily volume-weighted average for each applicator. USEPA approved these rules as meeting the reasonably available control technology (RACT) [1] requirement of the Clean Air Act on October 31, 1980 (45 FR 72122), and June 29, 1982 (47 FR 28097).

Through the use of water-based coatings, the green and brown dip tanks are in compliance with this limit. The average VOC content of coatings used in these lines since July 1985 is 2.2 pounds of VOC per gallon of coating, excluding water. However, Steel City has been unsuccessful in developing complying coatings for the mailbox line.

OEPA requested an alternative mission control program (bubble) for Steel City because the source does not have complying coatings for its mailbox line. This bubble would allow Steel City to offset the excess emissions from this line with the surplus emission reductions from the green and brown dip tanks. The average coating used on the mailbox line has a VOC content of 4.5 pounds of VOC per gallon of coating, excluding water. Because more paint is used on each dip line than on the mailbox line on an average day, under normal operations, the average VOC content of paint used in this facility overall will be less than 3.5 pounds of VOC per gallon of coating, excluding water.

Therefore, OEPA requested the site-specific RACT determination for Steel City to allow the source to meet the limitation of 3.5 pounds of VOC per gallon of coating, excluding water, on a plant-wide, monthly, volume-weighted average basis in lieu of the daily basis specified in OAC Rule 3745–21–09(B).

The OEPA proposes to specify the following allowable VOC emission limitations for Steel City's coating lines in lieu of the requirements of OAC Rules 3745–21–09(B) and 3745–21–09(U)(1)(a)(iii):

1. For K004 (the electrostatic spray, or mailbox, line):

(a) The VOC content of any coating employed in this coating line shall not exceed 4.8 pounds of VOC per gallon of coating applied, excluding water; and

(b) The VOC content of all coatings applied in sources K004, K005, and K006 shall not exceed 3.5 pounds of VOC per gallon of coating applied, excluding water, on a monthly volume-weighted average basis.

2. For K005 and K006 (the green dip tank and brown dip tank):

(a) The VOC content of any coating employed in this coating line shall not exceed 3.0 pounds of VOC per gallon of coating applied, excluding water; and

(b) The VOC content of all coatings applied in sources K004, K005, and K006 shall not exceed 3.5 pounds of VOC per gallon of coating applied, excluding water, on a monthly volume-weighted average basis.

OEPA issued a variance and permits to operate to Steel City Corporation, which include the above emission limits. In addition, the variances contain recordkeeping and reporting requirements.

On April 10, 1986, USEPA notified OEPA that its November 20, 1985, submittal for Steel City was deficient as discussed in USEPA's technical support document dated March 4, 1986. OEPA submitted supplemental information on June 13, 1986 and August 18, 1986. USEPA subsequently wrote three technical support document addenda dated July 7, 1986; September 23, 1986; and December 12, 1986.

This notice identifies two major deficiencies which cause the revision to be unapprovable. However, if the State corrects these major deficiencies, it should also ensure conformance with USEPA requirements specified in the following documents before submitting the revision for approval by USEPA: (1) Appendix D of the Post-1987 ozone policy, titled "Discrepancies and Inconsistencies found in Current SIP's, (2) a May 25, 1988, clarification to Appendix D titled "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," and (3) the "SIP Approvability Checklist-Enforceability" which is attached to a September 23, 1987, policy memorandum titled "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency." These documents contain USEPA requirements (largely dealing with SIP approvability and enforceability) which must be met for a site-specific SIP revision to be approved.

Alternative Emission Control Program (Bubble) Criteria

Criteria for evaluating emissions trades (bubbles) are contained in the USEPA's Emission Trading Policy Statement dated December 4, 1986 (51 FR 43813). This policy requires that any emission reductions used in trades be surplus, permanent, quantifiable and enforceable.

The use of the weighted-average emission limitation specified in the OEPA's variance and permits to operate ensures that all of the reductions used for the bubble are surplus, quantifiable, and permanent. The reductions are surplus because only the reductions below the SIP allowable are used for credit and the reductions did not occur prior to 1984 (which is after the monitoring data was collected for use in the approved ozone attainment demonstration). This trade would also be enforceable because SIP-approved compliance methods are contained in the variance. Therefore, the emission trading policy requirements have been satisfied.

Extended Averaging Time Criteria

USEPA's January 20, 1984, policy memorandum, subject "Averaging Times for Compliance with VOC Emission Limits", contains the following criteria

[1] A definition of RACT is contained in a December 9, 1976, memorandum from Roger Strelow, former Assistant Administrator for Air and Waste Management. RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.

for evaluating VOC requests for extended averaging times. Also included below is USEPA's evaluation of the Steel City Corporation revision with respect to each requirement.

Criterion 1

Extended averaging can be permitted where the source operations are such that daily VOC emissions cannot be determined, or where the application of RACT for each emission point is not economically or technically feasible on a daily basis.

USEPA's Evaluation

The Steel City revision has not met this requirement because it did not document that it is infeasible to achieve the RACT limit on a daily basis through the use of complying coatings.

Although OEPA's June 13, 1986, letter lists eight coating suppliers contacted by Steel City, it does not document why these suppliers were unable to provide complying coatings. The source must document that it contacted all suppliers that could reasonably be expected to provide coatings for the mailbox line and that any complying coatings that were developed were tested.

The revision did, however, document that the cost effectiveness of add-on control for this source is higher than what USEPA has considered reasonable in the miscellaneous metals control technique guidelines. Nevertheless, USEPA cannot approve this revision without adequate documentation that the use of complying coatings is not a reasonably available option for Steel City. Further discussion of the type of demonstration required can be found in the Appendix A to the notice of proposed rulemaking on the Easco Aluminum action published oin November 9, 1988 at (53 FR 45285). If an adequate demonstration is made that complying coatings are not available to Steel City, USEPA would consider a request for a site-specific RACT determination for this source.

Criterion 2

The area must not lack an approved SIP and there must not be any measured violations of the ozone standard.

USEPA's Evaluation

Steel City is located in Mahoning County which is part of the Youngstown demonstration area. This is a nonattainment area for ozone. USEPA approved the Ohio ozone SIP on October 31, 1980 (45 FR 72122). The Mahoning County ozone moniter did not record any violations for any three-year period between 1982 and 1987. Thus, when the request for redesignation was submitted, this criterion had been met. However, based on 1986–1988 monitoring data, there was a violation of the ozone standard in this area. Hence, the area may be a candidate for a SIP call under section 110(a)(2)(H), and if the State resubmits this request to correct the other problems identified in this notice, that submittal must address these exceedances of the ozone standard.

Criterion 3

A demonstration must be made that the use of long-term averaging (greater than 24-hour averaging) will not jeopardize either ambient standards attainment or the reasonable further progress (RFP) plan for the area. This must be accomplished by showing that the maxium daily increase in emissions associated with monthly averaging is consistent with the approved ozone SIP.

USEPA's Evaluation

OEPA has demonstrated that the use of monthly averaging by this source will not jeopardize the RFP plan for the area. The 1983 RFP chart for the Youngstown demonstration area indicates a growth cushion of 42,247 pounds of VOC per day. This is more than sufficient to cover Steel City's needs of 470 pounds of VOC per day, which is based on maximum operation of all three lines. Thus, when the request for redesignation was submitted, this criterion had been met. However, as stated previously, there has been a recent violation of the ozone standard in this area. Thus, the previously approved control strategy demonstration may be inadequate, and the existence of a growth cushion is now questionable. If the State resubmits to correct the other problems identified in this notice, that submission must also address how the long-term average will not jeopardize either attainment of the ambient air quality standard or RFP for the area in light of the questionable status of the control strategy demonstration.

Criterion 4

Averaging times must be as short as practicable and in no case longer than 30 days.

USEPA's Evalution

Steel City Corporation has not submitted documentation to demonstrate that it is not possible to comply with the limit-contained in the proposed revision using a shorter averaging time than 30 days (e.g. 7 days, 15 days, etc.). USEPA cannot approve a SIP revision that includes a 30-day averaging period without such a demonstration.

Conclusion

USEPA is proposing to disapprove this revision to the Ohio ozone SIP for the Steel City Corporation in Mahoning County because there is insufficient documentation to support that complying coatings for this source are unavailable and because there is no documentation provided that demonstrates that a 30-day averaging period is as short as practicable.

Pursaunt to the provisions of 5 U.S.C. 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities, because it affects only one source. In addition, this action imposes no new requirements on the source.

Under Executive Order 12291, today's action is not "major". It has been submitted to the Office of Management and Budget for review.

Authority: 42 U.S.C. 7401–7642.

Dated: February 6, 1987.

Valdas V. Adamkus,

Regional Administrator.

Note: This document was received by the Office of the Federal Register January 18, 1989.

[FR Doc. 89–1481 Filed 1–23–89; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine Lesquerella congesta and Physaria obcordata To Be Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine two plants, *Lesquerella congesta* (Dudely Bluffs bladderprod and *Physaria obcordata* (Dudley Bluffs twinpod), both members of the mustard family from Rio Blanco County, Colorado, to be threatened species under the Endangered Species Act of 1973, as amended (Act). Both species grow on oil shale outcrops that are primarily over a range of approximately 15 miles along two adjacent drainages, Piceance and Yellow Creeks, in Piceance Basin. The twinpod also occurs on two localities on Calamity Ridge 12 miles to the west of these two drainages. They are known from five populations each, two of which occur together. Most of these sites are on public land administered by the Bureau of Land

Management, with portions of three twinpod sites along Piceance Creek and Calamity Ridge on private and one one bladderpod site along Yellow Creek on Colorado Division of Wildlife land. No Federal or State laws protect the two species on these sites. Within the oil shale rich Piceance Basin, the Dudley Bluffs bladderpod and twinpod occur in the multimineral oil shale zone, an area containing rich deposits of oil shale in the mahogany zone and sodium minerals, nahcolite (sodium bicarbonate) and dawsonite (a potential source of alumina) in the saline zone. If project designs for development of these deposits do not include planning for conservation of these two mustards, which only occur here, both species could be significantly impacted. This proposal, if made final, would implement Federal protection provided by the Act for *Lesquerella congesta* and *Physaria obcordata*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by March 27, 1989. Public hearing requests must be received by March 10, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to the State Supervisor, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, 529–25 ½ Road, Suite B113, Grand Junction Colorado 81505. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John Anderson at the Grand Junction address above (303/243–2778 or FTS 322–0351).

SUPPLEMENTARY INFORMATION:

Background

Two new species of wild mustards, *Lesquerella congesta* (Dudley Bluffs bladderpod) and *Physaria obcordata* (Dudley Bluffs twinpod), were discovered in 1982 during a floristic inventory of the Piceance Basin conducted by the Colorado Natural Heritage Inventory for the Bureau of Land Management (Bureau; The Nature Conservancy 1982, Colorado Natural Areas Program 1987). They were subsequently described by Dr. Reed Rollins, an expert on the mustard family, who visited Piceance Basin and observed them at Dudley Bluffs in 1983 (Rollins 1983, Rollins 1984). These two herbaceous perennials are the rarest of several oil shale plant species in the Piceance Basin.

L. congesta is an extremely small cushion plan only 1–3 centimeters (0.4–1.2 inches) in diameter with fruiting stems up to 1.5 centimeters (0.6 inches) tall. The cushion growth habit is an adaptation to erosive badland soils which has independently evolved in several unrelated taxa in this area. It has small linear, entire, silvery leaves 8–13 millimeters (0.3–.5 inches) long; bright yellow flowers; and rounded, pubescent fruits, 2.5–3.5 millimeters (0.10–0.14 inches) wide. *P. obcordata* is 12–18 centimeters (4.8–7.2 inches) tall with oblanceolate, entire leaves 1.0–1.5 centimeters (0.4–0.6 inches) wide and 4.0–8.0 centimeters (1.6–3.8 inches) long, with a silvery sheen due to a dense covering of overlapping, dish-shaped trichomes. It has yellow flowers, 7–9 millimeters (0.3–0.4 inches) long, and slightly inflated, heart-shaped (obcordata) fruits.

These two rare mustards grow on steep, barren outcrops derived from a mixture of calcareous sandstone and shale strata which are exposed along drainages through erosion from downcutting of streams in the Piceance Basin. The surrounding hills and mesas which support pinyon-juniper woodlands also contain scattered outcrops of habitat tht support *L. congesta*. These strata are derived from the Eocene Green River and Unita Formations (Cashion and Donnell 1974). The rich oil shale bearing Green River Formation formed as a lacustrine deposit in Lake Uinta, forming fine textured shale. Later, Lake Uinta filled with sand and silt deposits which are the coarser grained Uinta Formation. At the interface of these two formations, the lakebed Green River Formation shale intertongues with the deltaic and fluvial sandstones and siltstones of the Uinta Formation. For instance, at the type locality of the two species, the hillside with the bladderpod and twinpod is formed by strata of the Uinta Formation on the top and the base with the Thirteen Mile Creek Tongue of the Green River Formation on the slope (where most of the mustards grow at this site). Along Yellow Creek, the Dudley Bluffs bladderpod and twinpod grow primarily on outcrops of the Uinta Formation, whereas at Calamity Ridge the twinpod grows on outcrops of the Parachute Creek Member of the Green River Formation. Elevational ranges for these species are 1860–2010 meters (6140–6644 feet) for *L. congesta* and 1806–2255 meters (5960–7440 feet) for *P. obcordata*.

In 1986 the Colorado National Areas Program conducted field work on *P. obcordata* to determine its rarity and range (Colorado Natural Areas Program 1987). Sites of *L. congesta* were delineated at the same time. During this survey, populations of both species were found for the first time along Yellow Creek, the next drainage west of Piceance Creek and about 5 miles away. The largest known populations of both species, approximately 10,000 individuals each, were discovered growing together at the junction of Piceance Creek and Ryan Gulch, 2 miles north of Dudley Bluffs. Also mapped were the previously discovered sites of *P. obcordata* at Calamity Ridge, the western boundary of the Piceance Basin and approximately 15 miles west of Piceance Creek. These sites differ from those along Piceance and Yellow Creeks by occurring along ridges at the heads of two drainages and on a different stratum. No *L. congesta* was found at Calamity Ridge. All major drainages in the Piceance Basin were surveyed, and these two species were found only along Piceance and Yellow Creeks and the twinpod at Calamity Ridge.

L. congesta has five populations on approximately 50 total acres over a range of 10 miles. *P. obcordata*, which occurs on outcrops farther upstream on Piceance Creek and downstream on Yellow Creek, has a range of 15 miles, plus the two populations on Calamity Ridge, with a total of five populations on approximately 250 acres. However, the Dudley Bluffs and Ryan Gulch sites, which are only 2 miles apart, contain a majority of both species.

The Dudley Bluffs bladderpod and twinpod occur mostly on land administered by the Bureau, with the exception of portions of the Dudley Bluffs site on private land and a portion of the Yellow Creek sites on Colorado Division of Wildlife land. The Bureau has designated the Federal portions of the Dudley Bluffs site and one of the Calamity Ridge sites as Areas of Critical Environmental Concern (Bureau of Land Management 1987a).

L. congesta and *P. obcordata* grow either on outcrops of the oil shale bearing Green River Formation or the overlying Uinta Formation, which is considered overburden to the oil shale. Except for the Calamity Ridge sites, all the occurrences are within the multimineral oil shale area. This area at the center of the Piceance Basin contains thick, rich sections of oil shale in the mahogany zone (and thick overburden of the Uinta Formation) and also, in the underlying saline zone, the sodium minerals nahcolite (sodium bicarbonate) and dawsonite (a potential source of alumina). *L. congesta* and *P. obcordata* are vulnerable to impacts resulting from the development and extraction of these oil shale minerals and associated activities.

Federal action involving these species began on September 27, 1985, when the Service published a notice of review in the **Federal Register** (45 FR 39526) covering plants being considered for classification as endangered or threatened. *L. congesta* and *P. obcordata* were included in this notice as category 2 species. Unfortunately, *L. congesta* was erroneously listed as *L. condensata*, a common species. Category 2 comprises taxa for which information now in possession of the Service indicates that proposing to list them as endangered or threatened species is possibly appropriate, but for which substantial data on biological vulnerability and threats are not currently known or on file. The present proposal is based on more current biological data from the Colorado Natural Areas Program (1987).

Section 4(b)(3)(B) of the Endangered Species Act (Act), as amended in 1982, requires the Secretary of the Interior to make findings on certain petitions within 1 year of their receipt. All taxa contained in the 1985 notice, including *L. congesta* and *P. obcordata*, were treated as being petitioned on October 11, 1985. In October 1986, October 1987, and October 1988, the Service made the 12-month finding that the petition to list *L. congesta* and *P. obcordata* was warranted, but precluded by other listing actions of higher priority. The present proposal constitutes the final 1-year finding requirement of section 4(b)(3)(B) of the Act for this species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Lesquerella congesta* Rollins (Dudley Bluffs bladderpod) and *Physaria obcordata* Rollins (Dudley Bluffs twinpod) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Portions of the multimineral oil shale area, including Dudley Bluffs, Ryan Gulch, and Yellow Creek, overlay oil shale deposits that are potentially recoverable by open-pit mining (Bureau of Land Management 1984). The rest of the area is suitable for underground mining of oil shale. A pilot project for a nahcolite solution mine has been constructed on Bar D Mesa between Piceance Creek, Yellow Creek, and Ryan Gulch, and a 120,000 tons per year commercial mine, including evaporation pounds and a pipeline, has been proposed which would cover 254 acres (Bureau of Land Management 1986; Bureau of Land Management 1987b). Currently, the Bureau is reserving the multimineral area from commercial leasing until improved multimineral recovery technology is developed. However, leases for noncommercial research tracts not exceeding 2,000 acres will still be considered (Bureau of Land Management 1986; Bureau of Land Management 1987a). Because of the massive scale of potential development in the limited area in which *L. congesta* and *P. obcordata* occur, a significant portion of the habitat of these two wild mustards would be destroyed and/or modified and their range possibly curtailed if development occurs. Up to 100 and 72 percent of the acreages on which *L. congesta* and *P. obcordata* occur, respectively, could be developed. There is already a designated linear utility corridor for pipelines, transmission lines, and roads along Ryan Gulch (Bureau of Land Management 1987a), and potential corridors exist along Dudley Gulch, Piceance Creek, and Yellow Creek (Bureau of Land Management 1984). One of the Calamity Ridge sites has been bisected by a road (Colorado Natural Areas Program 1987).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* No detrimental uses of these plants are known.

C. *Disease or predation.* No threats are known.

D. *The inadequacy of existing regulatory mechanisms.* There are no Federal or State laws protecting *L. congesta* and *P. obcordata* on Federal, State, or private lands. The Bureau's designation of one area each at Dudley Bluffs and Calamity Ridge as Areas of Critical Environmental Concern provides for priority management of *L. congesta* and *P. obcordata)* at these sites. However, these areas only protect about 20 percent of the already limited habitat (about 50 acres for *L. congesta* and 250 acres for *P. obcordata* for these two species. The Act would provide additional protection and encourage active management through the "Available Conservation Measures" discussed below.

E. *Other natural or manmade factors affecting its continued existence.* These species' pattern of rarity, being locally abundant on small areas of specialized habitat, makes them particularly vulnerable to surface disturbances despite their high densities.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Lesquerella congesta* and *Physaria obcordata* as threatened. These species are restricted endemics with threats from oil shale development which could cause the two species to become endangered within the foreseeable future throughout all or a significant portion of their range; thus they are threatened species as defined by the Act. The Bureau has designated two of the areas as Areas of Critical Environmental Concern, which will provide for priority management, but neither species is currently protected by any State or Federal legislation. For reasons given below, it is not considered prudent to propose designation of critical habitat.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The designation of critical habitat is not considered to be prudent when such designation would not be of net benefit to the species. The Service finds that designation of critical habitat is not prudent for these species at this time because no additional benefits would be provided by the critical habitat designation that would not already be provided by listing under 50 CFR 424.12. Any impacts to the plants' habitat also would affect the plants as rooted organisms and, consequently, would be addressed through consultation under section 7 of the Act as a result of their listing. Protection of these species' habitat also will be addressed through the recovery process. The Bureau is aware of the occurrences on their land and of its obligation under section 7 of the Act. The designation of critical habitat for these species would not increase the Bureau's obligation under the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition

through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

L. congesta and *P. obcordata* occur primarily on Federal land administered by the Bureau. The Bureau's involvement could include Section 7 consultation on multimineral development and land exchanges with energy companies to bring the privately owned sites into Federal ownership and protection (since listed plants are not protected on private land). On both Federal and private land, the Service expects that listing would elevate the awareness of these plants' status and foster efforts aimed toward their conservation.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. Seeds from cultivated specimens are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. With regard to *L. congesta* and *P. obcordata*, it is anticipated that few, if any, trade permits would ever be sought or issued since these species are not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Washington, DC 20038–7329 (202/343–4955).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Lesquerella congesta* and *Physaria obcordata*;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

Final promulgation of the regulation on *Lesquerella congesta* and *Physaria obcordata* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the State Supervisor, Fish and Wildlife Enhancement, Grand Junction, Colorado (see ADDRESSES above).

National Environmental Policy Act

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

References Cited

Bureau of Land Management. 1984. Draft Piceance Basin resource management plan/environmental impact statement. U.S. Government Printing Office. Washington, DC 270p.

Bureau of Land Management. 1986. Draft environmental impact statement. Wolf Ridge Corporation mine plan for a nahcolite solution mine. Meeker, Colorado. 149p.

Bureau of Land Management. 1987a. Piceance Basin resource management plan record of decision. U.S. Government Printing Office. Washington, DC 57p.

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Cashion, W.B. and J.R. Donnell. 1974. Revision of nomenclature of the upper part of the Green River Formation, Piceance Creek Basin, Colorado, and Eastern Uinta Basin, Utah. U.S. Geological Survey Bulletin 1394–G. 9p.

Colorado Natural Areas Program. 1987. Status report for *Physaria obcordata*. Denver, Colorado. 53p.

Rollins, R.C. 1983. Studies in the Cruciferae of western North America. Journal of the Arnold Arboretum 64:494–496.

Rollins, R.C. 1984. Studies in the Cruciferae of western North America II. Contributions from the Gray Herbarium 214:7–9.

The Nature Conservancy. 1982. Inventory of the Piceance Basin, Colorado: threatened and endangered plants, plant associations, and the general flora. 5 Volumes. Colorado Natural Heritage Inventory. Bureau of Land Management Contract No. YA–553–CTI–116. Denver, Colorado.

Author

The primary author of this proposed rule is John L. Anderson, Botanist, U.S. Fish and Wildlife Service, Grand Junction, Colorado (303/243–2778, FTS 322–0351; see **ADDRESSES** above.)

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 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 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following in alphabetical order, under the family Brassicaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species—scientific name—common name	Historic range	Status	When listed	Critical habitat	Special rules
Brassicaceae—Mustard family:					
Lesquerella congesta—Dudley Bluffs bladderpod	U.S.A. (CO)	T		NA	NA
Physaria obcordata—Dudley Bluffs twinpod	U.S.A. (CO)	T		NA	NA

Dated: December 22, 1988.

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–1487 Filed 1–23–89; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 54, No. 14
Tuesday, January 24, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Other Tobacco; National Marketing Quotas for Maryland (Type 32) Tobacco, Cigar-Filler (Type 41) and Cigar Binder (Types 51 & 52) Tobacco

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture, (USDA).

ACTION: Notice of Proposed Determination.

SUMMARY: The Secretary of Agriculture is required by the Agricultural Adjustment Act of 1938, as amended, to proclaim by March 1, 1989, national marketing quotas for Maryland (type 32) cigar-filler (type 41), and cigar binder (types 51 & 52) tobaccos for the 1989–90, 1990–91, and 1991–92 marketing years and the amounts of the quotas for such kinds of tobacco for the 1989–90 marketing year. The public is invited to submit written comments, views and recommendations concerning the determination of the national marketing quotas, the conduct of referenda, and other related matters which are discussed in this notice.

DATE: Comments must be received on or before February 10, 1989, to be assured of consideration.

ADDRESS: Send comments to the Director, Commodity Analysis Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013, (202) 447–3391. All written submissions made pursuant to this notice will be made available for public inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday, in Room 3741, USDA South Building, 14th and Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, USDA, Room 3736-South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–5187.

Maryland tobacco growers have not had marketing quotas since 1965 and cigar binder tobacco growers have not had marketing quotas since 1983; cigar-filler tobacco growers have never approved marketing quotas. Since none of these tobacco growers are expected to approve quotas for the next three marketing years, a Preliminary Regulatory Impact Analysis has not been prepared. If growers of any kind of these tobacco should approve quotas, a Final Regulatory Impact Analysis describing the options considered in developing the final notice and the impact of implementing each option would be made available on request from Robert Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established to implement Executive Order 12291 and Department Regulation 1512–1 and has been classified as "not major." The matters under consideration will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs for consumers, individual industries, Federal, State or local governments, or geographical regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program that this notice applies to are: Title—Commodity Loan and Purchases, Number—10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

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

The Agricultural Adjustment Act of 1938, as amended (hereinafter referred to as the "Act"), requires that, with respect to Maryland tobacco, cigar-filler, and cigar-binder tobacco, the Secretary of Agriculture must, by March 1, 1989, proclaim marketing quotas for the 1989–90, 1990–91, and 1991–92 marketing years and determine, announce the amount of the national marketing quota in effect for the 1989–90 marketing year.

In addition, the Secretary is required to conduct, within 30 days after the proclamation of such national marketing quotas, referenda of farmers engaged in the 1988 production of each such kinds of tobacco in order to determine whether they favor or oppose marketing quotas for such years. Section 312(a) of the Act (7 U.S.C. 1312(a)) provides that the Secretary shall, not later than March 1 of any marketing year with respect to these kinds of tobacco, proclaim a national marketing quota for each of the next three succeeding marketing years whenever the Secretary determines with respect to such kinds of tobacco—

(1) That a national marketing quota has not previously been proclaimed and the total supply as of the beginning of such marketing year exceeds the reserve supply level therefor;

(2) That such marketing year is the last year of three consecutive years for which marketing quotas previously proclaimed will be in effect;

(3) That amendments have been made in provisions for establishing farm acreage allotments which will cause material revision of such allotments before the end of the period for which quotas are in effect; or

(4) That a marketing quota previously proclaimed for such marketing year is not in effect because of disapproval by producers in a referendum: *Provided*, That if such producers have disapproved national marketing quotas for three successive years subsequent to 1952, thereafter a national marketing quota shall not be proclaimed in accordance with section 312(a) which would be in effect for any marketing year within the three-year period for which national marketing quotas previously proclaimed were disapproved by producers, unless prior to November 10 of the marketing year one-fourth or more of the farmers

engaged in the production of the crop of tobacco harvested in the calendar year in which such marketing year begins petition the Secretary, in accordance with such regulations as may be prescribed, to proclaim a national marketing quota for each of the next three succeeding marketing years.

Producers of Maryland (type 32), cigar-filler (type 41), and cigar-binder (types 51 & 52) tobaccos have disapproved national marketing quotas for three successive years subsequent to 1952. Quotas for these kinds of tobacco were last proclaimed for the 1986–87, 1987–88, and 1988–89 marketing years (51 FR 21004, 22958). Producers of Maryland (type 32), cigar-filler (type 41) and cigar-binder (types 51 & 52) tobaccos disapproved marketing quotas in separate referenda held during February 24–27, 1986, (51 FR 16575).

Section 312(b) of the Act (7 U.S.C. 1312(b)) provides that the Secretary shall determine and announce, not later than the first day of March 1989, with respect to the kinds of tobacco specified in this notice of proposed determinations, the amount of the national marketing quota which will be in effect for the 1989–91 marketing year in terms of the total quantity of tobacco which may be marketed which will make available during such marketing year a supply of each kind of tobacco equal to the reserve supply level. Section 312(b) provides further that the amount of such 1989–90 national marketing quota may, not later than March 1, 1989, be increased by not more than 20 percent if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restrictions of marketings in adjusting the total supply to the reserve supply level.

Section 312(c) of the Act (7 U.S.C. 1312(c)) provides that within 30 days after national marketing quotas are proclaimed in accordance with section 312(a) for a kind of tobacco, the Secretary shall conduct a referendum of farmers engaged in the production of the crop of such kind of tobacco harvested immediately prior to the holding of the referendum to determine whether such farmers are in favor of or opposed to such quotas for the next three succeeding marketing years. If more than one-third of the farmers voting in a referendum for a kind of tobacco oppose the quotas, such results shall be proclaimed by the Secretary and the national marketing quotas so proclaimed shall not be in effect but the results shall in no way affect or limit the subsequent proclamation and submission to a referendum of national marketing quotas as otherwise authorized by section 312.

Section 313(g) of the Act (7 U.S.C. 1313(g)) authorizes the Secretary to convert the national marketing quota into a national acreage allotment by dividing the national marketing quota by the national average yield for the five years immediately preceding the year in which the national marketing quota is proclaimed, and to apportion the national acreage allotment, less a reserve not to exceed 1 percent thereof for new farms and for making corrections and adjusting inequities in old farm allotments.

Proposed Determination

Accordingly, the Secretary proposes to make the following determinations with respect to Maryland (type 32), tobacco cigar-filler (type 41), and cigar-binder (types 51 & 52) tobacco:

1. The amount of the national marketing quota for each kind of tobacco for the 1989–90 marketing year. With respect to Maryland (type 32) tobacco, a national marketing quota within a range of 25 million to 40 million pounds is proposed. With respect to cigar-filler (type 41) tobacco, a national marketing quota within a range of 15 million to 25 million pounds is proposed. With respect to cigar-binder (types 51 & 52) tobacco, a national marketing quota within a range of 1 million to 3 million is proposed;

2. The conversion of the national marketing quotas into national acreage allotments and apportionment of the national acreage allotments, less a reserve of not to exceed 1 percent, among old farms;

3. The amounts of the national acreage allotments to be reserved for new farms and for making corrections and adjusting inequities in old farm allotments; and

4. The date(s) or period(s) of the referenda on quotas for determining whether marketing quotas will be in effect for the 1989–90, 1990–91, and 1991–92 marketing years for Maryland (type 32), cigar-filler (type 41) and cigar-binder tobacco, and whether the referenda should be conducted at polling places rather than by mail ballot (See 7 CFR Part 717).

Signed at Washington, DC on January 19, 1989.

Milton Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 89-1643 Filed 1-19-89; 3:38 pm]

BILLING CODE 3410-05-M

National Marketing Quotas for Fire-Cured (Type 21), Fire-Cured (Types 22-23), Dark Air-Cured (Types 35-36), Virginia Sun-Cured (Type 37), and Cigar-Filler and Cigar-Binder (Types 42-44; 53-55) Tobaccos

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of proposed determinations.

SUMMARY: The Secretary of Agriculture is required by the Agricultural Adjustment Act of 1938, as amended, to proclaim by March 1, 1988, national marketing quotas for Virginia sun-cured tobacco for the 1989–90, 1990–91, and 1991–92 marketing years and to determine and announce the amounts of the national marketing quotas for fire-cured (type 21), fire-cured (types 22–23), dark air-cured (Types 35–36), Virginia sun-cured (typed 37), and cigar-filler and cigar-binder (types 42–44; 53–55) kinds of tobacco for the 1989–90 marketing year. The public is invited to submit written comments, views and recommendations concerning the determination of the national marketing quotas for such kinds of tobacco, the conduct of the referendum, and other related matters which are discussed in this notice.

DATE: Comments must be received on or before February 10, 1989, in order to be assured of consideration.

ADDRESSES: Send comments to the Director, Commodity Analysis Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013. All written submissions made pursuant to the notice will be made available for public inspection from 8:15 a.m. to 4:45 p.m. Monday through Friday, in Room 3741-South Building, 14th and Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, Room 3736 South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–5187. The Preliminary Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major." The matters under consideration will not result in: (1) An annual effect on the

economy of $100 million or more; (2) increases in cost for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment or on the ability of the United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loan and Purchases; Number—10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This activity 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).

The Agricultural Adjustment Act of 1938, as amended (hereinafter referred to as the "Act"), requires that, with respect to Virginia sun-cured tobacco, the Secretary of Agriculture must proclaim by March 1, 1989, the respective national marketing quotas for the 1989–90, 1990–91, and 1991–92 marketing years. In addition, the Secretary is required to conduct, within 30 days after proclamation of such national marketing quotas, a referendum of farmers engaged in the 1988 production of this kind of tobacco to determine whether they favor or oppose marketing quotas for such years. For Virginia sun-cured tobacco the 1988–89 marketing year is the last year of the three consecutive marketing years for which marketing quotas previously proclaimed will be in effect for this kind of tobacco.

The Secretary is also required: (1) To determine and announce the amounts of the national marketing quotas with respect to fire-cured (type 21), fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured, and cigar-filler and cigar-binder (types 42–44, 53–55) tobaccos for the 1989–90 marketing year; (2) to convert such marketing quotas into national acreage allotments and announce the allotments; (3) to apportion such allotments, less reserves of not to exceed 1 percent of each kind of tobacco respectively, through county ASCS committees among old farms; and (4) to apportion the reserves for use in (a) establishing acreage allotments for new farms and (b) making corrections and adjusting inequities in old farm allotments. The five kinds of tobacco to which this notice applies account for approximately 3 percent of the total U.S. tobacco production.

Section 312(b) of the Act (7 U.S.C. 1312(b)) provides that the Secretary shall determine and announce, not later than the first day of March 1989, with respect to kinds of tobacco specified in this notice of proposed determination, the amount of the national marketing quota which will be in effect for the 1989–90 marketing year in terms of the total quantity of tobacco which may be marketed which will make available during such marketing year a supply of each kind of tobacco equal to the reserve supply level. Section 312(b) provides further that the amount of such 1989–90 national marketing quota may, not later than March 1, 1989, be increased by not more than 20 percent if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restrictions of marketings in adjusting the total supply to the reserve supply level.

The aggregate reserve supply level for the 1988–89 marketing year for the 5 kinds of tobacco discussed in this notice was determined to be 217 million pounds (53 FR 18109). The proposed reserve supply level for the 1988–89 marketing year will range between 180 million and 250 million pounds. The aggregate total supply for the 1988–89 marketing year is 212 million pounds based on carryover of 172 million and production of 40 million pounds.

Section 312(c) of the Act (7 U.S.C. 1312(c)) provides that, within 30 days after a national marketing quota is proclaimed in accordance with section 312(a) of the Act for a kind of tobacco, the Secretary shall conduct a referendum of farmers engaged in the production of the crop of such kind of tobacco harvested immediately prior to the holding of the referendum to determine whether such farmers are in favor of or opposed to such quotas for the next three succeeding marketing years. If more than one-third of the farmers voting in a referendum for a kind of tobacco oppose the quotas, such results shall be proclaimed by the Secretary and the national marketing quotas so proclaimed shall not be in effect, but the results shall in no way affect or limit the subsequent proclamation and submission to a referendum of a national marketing quota as otherwise authorized in section 312.

Section 313(g) of the Act (7 U.S.C. 1313(g)) authorizes the Secretary to convert the national marketing quota into a national acreage allotment by diviing the national marketing quota by the national average yield for the five years immediately preceding the year in which the national marketing quota is proclaimed. In addition, the Secretary is authorized to apportion through county committees the national acreage allotment to tobacco producing farms (less a reserve not to exceed 1 percent thereof for new farms, and for making corrections and adjusting inequities in old farm allotments) among old farms.

Proposed Determinations

Accordingly, comments are requested on the following proposed determinations for the kinds of tobacco listed for the 1989–90 marketing year:

1. With respect to fire-cured (type 21), fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured, and cigar-filler and binder (types 42–44; 53–55) tobaccos:

a. The amount of the reserve supply level, within the aggregate range of 180 and 250 million pounds;

b. The amount of the national marketing quota for each kind of tobacco for the 1989–90 marketing year, within an aggregate range of 30 million-60 million pounds; and

c. The amounts of the national acreage allotments to be reserved for new farms, and for making corrections and adjusting inequities in old farm allotments, within the aggreate range of 100 and 500 acres.

2. With respect to Virginia sun-cured tobacco:

a. The date(s) or period(s) of the referenda for determining whether quotas will be in effect for the 1989–90, 1990–91, and 1991–92 marketing years for such kinds of tobacco; and

b. Whether the referenda should be conducted at polling places rather than by mail ballot (See 7 CFR Part 717).

Authority: Secs. 301, 312 and 313, 52 Stat. 38, as amended, 46, as amended, and 47, as amended (7 U.S.C. 1301, 1312 and 1313).

Signed at Washington, DC on January 19 1989.

Milton Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 89–1644 Filed 1–19–89; 3:38 pm]

BILLING CODE 3410–05–M

Forest Service

Aircraft Flights Over Wilderness; Public Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: On January 27, 1989, the Forest Service will host a meeting to present its plans for conducting an assessment of the impacts of aircraft overflights on wilderness resources of the National Forest System. The assessment is required by the National Parks Overflights Act of 1987. The public is invited to attend.

DATE: The meeting will be held on January 27, 1989, from 9:00 a.m. to 12:00 p.m.

ADDRESS: The meeting will be held in the Club Room at the Rosslyn Westpark Hotel, 1900 North Fort Myer Drive, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: William J. Makel, National Coordinator, Wilderness Overflight Sound Project, San Dimas Technology Development Center, (714) 599–1267 or Anne S. Fege, Recreation Management Staff, Forest Service, USDA, (202) 447–2422.

SUPPLEMENTARY INFORMATION: Section 5 of the National Parks Overflights Act of 1987 (16 U.S.C. 1a–1) directs the Chief of the Forest Service to conduct an assessment to determine what, if any, adverse impacts to wilderness resources are associated with aircraft flights over National Forest System wilderness areas. The assessment excludes Alaska and applies only to overflight of wilderness areas. It does not apply to aircraft flights or landings adjacent to National Forest System wilderness units. As required by the Act, the Chief will report the results of the assessment to Congress for its consideration.

On January 27, 1989, the Forest Service will present its proposed plans for conducting the assessment. Items to be covered include the legislative history of the Overflights Act, the composition and role of the technical steering committee that has been established to help guide the assessment, plans for obtaining public input in the assessment, and the time schedule for conducting and completing the assessment. While questions from participants will be answered, the purpose of the meeting is not to receive formal statements or testimony on the impacts of flights over wilderness. Opportunities for substantive input to the assessment will occur during the assessment and will be fully explained at this meeting. Interested and affected organizations and persons have been invited to attend the meeting, which is also open to attendance by the general public. It is not necessary for those who plan to attend to notify the agency in advance.

Date: January 17, 1989.

Larry Henson,

Associate Deputy Chief.

[FR Doc. 89–1527 Filed 1–23–89; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation—1987 Panel Wave 8 Employer Questionnaire and Authorization Form

Form Number: EPB–7814 Employer Questionnaire and Authorization Form; EPB–16, EPB–17, EPB–18 Business Letter; EPB–19 Respondent Letter; Questionnaire Insert for SIPP 7800.

Type of Request: New.

Burden: 1,344 hours.

Number of Respondents: 8,064.

Avg Hours Per Response: 10 minutes.

Needs and Uses: This survey provides information, not previously available, on employer contributions to the respondents' medical insurance plans, pension plans, and life insurance plans.

Affected Public: Individuals or households; state or local governments,; farms; business or other for-profit; Federal agencies or employees; non-profit institutions; small businesses or organizations.

Frequency: One time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Francine Picoult—395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 18, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–1536 Filed 1–23–89; 8:45 am]

BILLING CODE 3510–07–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation—1987 Panel Wave 8.

Form Number: SIPP–7800 Wave 7 Questionnaire, SIPP–85/7803 Reminder Card, and SIPP–85/7805(L) Introductory Letter.

Agency Approval Number: 0607–0425 (87 Panel).

Type of Request: Revision.

Burden: 11,760 hours.

Number of Respondents: 23,520.

Avg Hours Per Response: 30 minutes.

Needs and Uses: This survey provides statistics not previously available, for the Executive and Legislative Branches, such as multiple recipiency of benefits of major government programs and monthly program participation to support policy analyses. The data requirements include income, employment and household composition, taxes, assets, in-kind income, and related subjects to estimate the effects of Executive and Legislative decisions.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Francine Picoult—395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 18, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–1537 Filed 1–23–89; 8:45 am]

BILLING CODE 3510–07–M

Bureau of Export Administration

[Docket No. 6679-01]

Actions Affecting Export Privileges: Data Systems Engineering, Inc.

Summary

Pursuant to the November 23, 1988 Recommended Decision and Order of the Administrative Law Judge and the modification thereof by this Decision and Order, Data Systems Engineering, Inc., aka DSE, Inc., with an address of 1108 Pollack Avenue, Ocean, New Jersey 07712 is denied for a period of two years from the date hereof, all privileges of participating in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the regulations (14 CFR Parts 768–700); however, that one hundred eighty (180) days from the date hereof the denial period shall be suspended for the balance of the two year term, and shall be terminated at the end of such term, provided that the Respondent has committed no violations of the Act, the Regulations, or the final Order entered in this proceeding.

Background and Discussion

The ALJ originally made his Recommended Decision and Order in this case on September 23, 1988. The matter was remanded to the ALJ on October 21, 1988 in order that he might answer questions posed by the Remand. The questions posed and the ALJ's answers to them appear in the attached Recommended Decision and Order of the ALJ. The questions posed by the Remand sought to explore certain apparent inconsistencies between certain findings made by the ALJ and the Record, some inconsistencies apparent within the Recommended Decision and Order itself, and to solicit legal authority to support certain statements made by the ALJ in support of his original Recommended Decision and Order. On December 23, the ALJ submitted a Recommended Decision and Order identical to that originally filed, adding only the questions posed on Remand and the ALJ's answers to them. Generally speaking, I find the ALJ's answers to the questions non-responsive and argumentative. Too often, instead of legal authority or careful analysis, only conclusory statements are provided. The ALJ's answer to the posed questions have done little to assist the Under Secretary in making a just, final decision in this matter.

The crucial question I address in this Decision and Order is whether the Respondent committed one violation of the Act and Regulation as the ALJ concludes on page 28 of his Recommended Decision and Order, or multiple separate violations of the Act and Regulation as the ALJ finds on page 27 of his Recommended Decision and Order. For the reasons set out below, I find that there were fifteen separate violations.

The ALJ's pique with Departmental Counsel relates to the failure by Departmental Counsel to set out in a form acceptable to the ALJ the specific violations charged. Specifically, the ALJ calls "an unusual manner of pleading" the following charge: "The Department alleges that DSE committed twelve violations each of §§ 387.4, 387.5, and 387.6 of the Regulations, for a total of thirty-six violations of the Regulations * * *" Contrary to the ALJ's opinion, this simple English sentence is not one subject to gross misinterpretation. The Department has alleged that each of the sections cited has been violated twelve times. Twelve plus twelve plus twelve equals thirty-six. Obviously the allegations are subject to proof with respect to each of the thirty-six counts. The filings by the Department during the proceeding, and especially at the close of the proceeding, amply and clearly detail the violations claimed.

Whether it is legally proper that one particular shipment constitute multiple (in this case three) violations is another question. However, there can be no doubt that the Regulations so provide, and that the Department believes that each shipment in the instant case contained three violations: one for acting with knowledge (§ 787.4); one for misrepresentation (§ 787.5); and one for exporting without proper authorization (§ 787.6). Even though the ALJ goes to lengths in his Recommended Decision and Order to deal with six separate and distinct transactions, (identified as shipments 2, 5, 7, 8, 10 and 12 respectively), eventually finding five of those to have been made in violation of the Regulations relating to Temporary Exports, he concludes that the five shipments constitute a single overall or comprehensive violation. In view of the ALJ's indicated bias regarding the possibility of multiple violations for a single shipment, it is certainly understandable if the ALJ were to argue that with respect to each of the five shipments there was only one violation per shipment. However, it is a *non sequitur* for the ALJ, after finding specifically that there were five separate, unrelated shipments, to conclude that the five represent one transaction. To do so, the ALJ would have had to cite facts connecting the five shipments together as a series of shipments related to one transaction. There is no such finding in the ALJ's Recommended Decision and Order—indeed the findings are contrary—and there are no facts in the record to support such a finding. At the very least, I am faced with a Respondent who has committed five separate violations of the Act and Regulations as found by the ALJ, and possibly as many as fifteen violations, again with support by the findings of the ALJ.

It is clear that multiple violations of the Regulations are possible for an individual transaction. Certainly there can be a diversion without authorization which involves neither misrepresentation or acting with specific knowledge that authorization is required. If a person completely unknowledgeable concerning the Act and the Regulations carries a controlled product on his body to a prescribed destination and delivers at that point, he has neither acted with specific knowledge nor has he misrepresented. However, he has diverted. So too, hypotheticals may be constructed involving other combinations. The ALJ may not like it, but that is the law. In most instances, the practical effect of the multiple violations is most apparent upon consideration of appropriate penalties. The ALJ would do well to enforce the law and the regulations as they are written rather than to strain to construe them in such a manner as to achieve what he considers a more reasoned result.

His stretch in the instant case is a perfect example of the danger of this type of approach: It leads to internally inconsistent decisions. Note that the ALJ did find that the Respondent acted not as a novice, but with knowledge of the Regulations (ALJ page 25), and that the exports were not of a temporary nature (ALJ page 25); thus rendering the use by the Respondent of its GTE license number D90918 on shipping documentations a misrepresentation. Thus the ALJ's own findings support fifteen violations, not five, and certainly not one. Notwithstanding this fact, I cannot say for certain that the totality of circumstances mandates a significantly greater penalty than that imposed by the ALJ. The ALJ has found specifically that the Respondent cooperated with the authorities with respect to another investigation, and took this into account in setting his recommended penalty. However, a period of greater than two

months is appropriate for the ultimate denial of export privileges. I find that the appropriate period in this case should be six months. Hence, the ALJ's opinion will be modified to that extent.

Finding

1. I find that Respondent committed three violations each with respect to shipments numbered 2, 5, 7, 8, and 12, for a total of fifteen violations.

2. With respect to each shipment identified above the Respondent

a. Made shipments that were not authorized, in violation of then § 387.6 of the Regulations;

b. Acted with knowledge that the shipments were in violation of the Regulations, in violation of then § 387.4 of the Regulations; and

c. Misrepresented facts on shipping documents, in violation of then § 387.5 of the Regulations.

3. The findings are supported by the Record and by the specific findings of the ALJ.

4. The unsuspended period of denial of export privileges is more properly set at 180 days rather than 60 days.

Order

On November 23, 1988, the ALJ entered his Recommended Decision and Order in the captioned matter. That Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. In keeping with the Discussion and Findings above, I hereby modify the Recommended Decision and Order of the ALJ as follows:

A. The first sentence of paragraph II of the ALJ's Order (ALJ page 40) is hereby modified to read as follows: "Commencing 180 days from the date that this Order becomes effective, the denial of export privileges set forth above shall be suspended, in accordance with § 388.16 of the Regulations, for the remainder of the two year period set forth in paragraph 1 above and shall be terminated at the end of that period, provided the Respondent has committed no further violations of the Act, the Regulations, or the final Order entered in this proceeding."

B. The last sentence of paragraph III of the ALJ's Order (ALJ page 42) is hereby modified to read as follows: "Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and Regulations."

This constitutes final agency action in this matter.

Date: January 13, 1989.

Paul Freedenberg,

Under Secretary for Export Administration.

Preliminary Statement

Appearance for Respondent: Michael W. Beasley, Esq., Bequai & Beasley, 1634 Eye Street NW., Suite 900, Washington, DC 20006.

Appearance for Agency: Daniel C. Hurley, Jr., Esq., Attorney-Advisor, Office of Export Enforcement, Room No. 3845, U.S. Department of Commerce, Washington, DC 20230.

On August 1, 1986, the then Office of Export Administration, International Trade Administration, U.S. Department of Commerce ("the Agency"), issued a charging letter against Respondent Data Systems Engineering, Inc. ("DSE"). This letter was issued under the authority of the Export Administration Act (50 U.S.C.A.App. 2412(c)(1) and Part 388 of the Export Administration Regulations (codified at 15 CFR Parts 368–399) (the "Regulations").[1] The letter asserts that Respondent DSE had violated §§ 387.4, 387.5, and 387.6 of the Regulations for each of six exports, four to Greece and two to Switzerland,[2] of U.S.-origin computer equipment as temporary exports under general license GTE.[3] The charging document did not clearly lay out the acts which are claimed to constitute each of the violations charged.

Agency Counsel has stated that the number of violations charged here is now eighteen, this is not clear from the charging document, nor was it adequately addressed in Agency Counsel's Post-Hearing Brief. It is also the subject of critical comment by Respondent's Counsel in his Post Hearing Reply Brief at pp. 4–5. A serious problem in these proceedings is that Agency Counsel refuses to adequately lay out to Responsends or this Tribunal just what the violations are.

The charging letter, in one paragraph, asserts "The Department alleges that DSE committed 12 violations each of §§ 387.4, 387.5 and 387.6 of the Regulations, for a total of 36 violations of the Regulations, each of which involves U.S.-origin commodities controlled under section 5 of the Act for national security reasons."

Because of the confusion generated by such unusual manner of pleading and presentation at the hearing, Agency Counsel was informed that "I would also like to remind you that in the post-hearing briefs submissions, Agency Counsel, I want you to present each and every violation separately. I want you to lay out in clear detail what constituted each and every violation, the separate elements, proposed findings, whatever have you on all of them. I want you to know that as I look at these inadequate charging letters, I see a possibility of two violations" (Tr. 302–303).

I am aware that in administrative proceedings it is not required that there be a precision of language similar to that utilized in criminal or other judicial proceedings. There must, however, be some limit on how general and non-specific the Agency and its Counsel may be. The Respondent is, of course, entitled to know the nature and number of charges. In addition, this Tribunal must be informed on what is charged. The Tribunal should not be required to ascertain the numbers and contentions through some Rubic's Cube or other puzzle solving approach. I advised Counsel that I saw the possibility of two violations and asked for clarification. Whether it is because of his obstinate nature or because he cannot lay out the total number of charges he contends remain in the charging letter, I know not. However since he has not explained each of the charges which he contends are laid, I address a single charge since I no longer perceive the basis for the two which I saw at the time of the hearing.

This is not to say that I cannot construct less, more and or different possibilities. However that is not my function. I am also not certain that they are what the Agency intends to charge. In no case do they add up to the number which Agency Counsel contends are alleged here.

As already ordered, from and after July 1, 1988, charging letters which do not separately set forth each alleged violation and the applicable individual section of the Regulations or law violated will be subject to dismissal.

The Agency also asserts that these shipments were intended to satisfy existing sales contracts, that DSE knew that these shipments actually required

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[1] Pursuant to the provisions of section 15 of the Export Administration Amendments Act of 1985 (15 U.S.C.A.App. 2414), the position of Under Secretary for Export Administration was established effective October 1, 1987. Proceedings are now initiated on behalf of the Bureau of Export Administration within the Department of Commerce. The one year period for the processing of these cases fixed by those amendments applies to this case. The complexity of this record and the delay caused by the appeal to the U.S. District Court, in combination, constitutes good cause for the delay involved here.

[2] A number of shipments which were the basis for charged violations in the original charging letter were listed in an attached Schedule. There are only six shipments remaining in issue. The charges stemming from sequentially the first, third, fourth, sixth and ninth shipments on that Schedule were withdrawn. The eleventh shipment was withdrawn at the hearing. The fact that the shipments are not numbered on the schedule adds to the confusion.

[3] According to the Regulations, a General License designated "GTE" was established to authorize only temporary exports which met specified designated conditions (15 CFR 371.22).

export licenses, did not obtain such licenses, and filed false and/or misleading information with the Agency relating to these shipments. On October 4, 1986, Respondent answered the charging letter and requested a hearing pursuant to the Regulations, which subsequently took place on September 17, 1987 before the undersigned Administrative Law Judge. The record in this matter closed on November 30, 1987.

The Decision was issued on September 23, 1988. On October 24, 1988, the proceeding was remanded. Nine questions were posed to which responses are provided.

Procedural Issues

Agency Counsel attempted to file and serve an amended charging letter on December 22, 1986. This Tribunal denied the request to do so because that device, which restarts the proceeding, was simply unnecessary. Charges may be dropped without such a filing. The charges, as presented, were already stale. The Agency had over four years to investigate them. In the past, Agency Counsel have explained such delays with representations of complicated investigations and late receipt of information respecting the violations. Here that certainly was not the case. The actions were known at the time of, or shortly after the violations. This is clear from the advice given by the investigating Agent while the transactions were ongoing. Unfortunately this case has become a Serbonian Bog of bureaucratic delay into which even this Tribunal has become mired. The Agency may not be permitted to change direction, obfuscate or delay further the processing of the case.[4]

For over one full year from the time the Agency issued the original charging letter, Counsel for the Agency and Respondent engaged in discovery. After notice to this Tribunal, Respondent initiated an action in the United States District Court in an attempt to obtain judicial resolution of the Agency's refusal to comply with the Discovery Order issued pursuant to the Agency Regulation which states "* * * enforcement by a district court of the United States may be sought* * *" (15 CFR 388.9(d)). The matter was remanded to this Tribunal by the District Court without a substantive disposition.[5]

In consequence of Agency Counsel's refusal to comply with the Administrative Law Judge's discovery order, and after the ruling of the District Court, this Tribunal issued an Order on June 15, 1987, citing the above regulation, directing that, as to any information that Agency Counsel refused to disclose to opposing Counsel, this Tribunal would "take particular facts * * * as being established" at the hearing. This Order was issued in order to enforce this Tribunal's previous orders to cooperate in the discovery process.[6]

The Agency has objected to the consequences of that order, asserting that "serious procedural error" was committed by not allowing the Agency to present the testimony of a Special Investigative Agent for the limited purpose of rebutting testimony of one of Respondent's witnesses. This is a blatant misstatement, ignoring the facts surrounding the ruling.

Agency Counsel was fully aware, as early as December 12, 1987, that the Respondent intended to present DSE's president as a witness. Agency Counsel cannot come to the hearing nine months later, and expect to present a witness to rebut this testimony without giving opposing Counsel notice of such an intent. To allow such action would be to give Agency Counsel an unfair advantage of surprise due to the relative availability of such investigative agents to Agency Counsel, particularly in light of the unavailability of such witnesses to Respondent's Counsel in the discovery process. Such advantage is unjustified, since it was Agency Counsel's failure to comply with previous discovery orders which led to the sanctioning order. He cannot now complain that the testimony of the Agent should have been permitted at the hearing.

Facts

Summary

Between August 13, 1981 and October 3, 1982 Respondent is alleged to have exported four shipments of controlled U.S.-origin computer equipment to Greece and two shipments of U.S.-origin computer equipment to Switzerland as temporary exports under general license GTE when the shipments were asserted to be permanent exports requiring validated licenses.

In connection with each of the shipments, Respondent filed Shipper's Letters of Instruction (SLI) or Shipper's Export Declarations (SED) representing that computer equipment could be exported under General License GTE.

The four shipments to Greece were made in response to orders placed by Alan Simmons who at the time was Respondent's sales agent in Greece. Respondent terminated that relationship in February, 1982, at the suggestion of an Agency Special Agent investigating Simmons.

The Particular Shipments

Shipment No. 2 [7]

DSE Invoice No. 275 (Agency Exh. 4B), Air Waybill dated August 13, 1981 (Agency Exh. 4A), reflects the export of U.S.-origin computer equipment to Greece. According to the schedule on the invoice, "Buyer must provide DSE,

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[4] Respondent's Counsel argued that the six remaining separate export transactions which underpin Respondent's alleged violations of the Regulations occurred more than five years prior to the administration of punitive sanctions against the Respondent, and enforcement should thus be barred under 28 U.S.C. 2462, citing *United States v. Core Laboratories, Inc.* 759 F.2d 480 (5th Cir. 1985) (Resp. Brief at 14), and that is true.

Respondent argues that the statute should not be tolled following the issuance of the original charging letter due to Agency's disobedience of the Administrative Law Judge's discovery orders (Resp. Brief at 14, *citing* 759 F.2d 480 at 484). I do not find this argument compelling. Under the Agency interpretation, which finds support in the construction of other Circuit Courts of Appeal Decisions (*U.S. v. Meyer*, 808 F.2d 912 (1st Cir. 1987)) to which I must defer, the statute was tolled from the filing of the charging letter.

[5] *See Data Systems Engineering, Inc. v. Baldrige, et al.*, Misc. No. 87-0017 (D.D.C., April 28, 1987). In denying Respondent DSE's motion to compel discovery, Judge Gesell declared that the District Court had no jurisdiction over the matter, and further stated that the Regulations promulgated pursuant to the Export Administration Act authorized the Administrative Law Judge to issue discovery orders and take "reasonable and appropriate" action for failure to comply with such orders 15 CFR 388.9(d) (1986). The court also stated that it was barred by 50 U.S.C.A.App. 2412(c)(1) from judicial review of this matter, limiting its review power to enforcing administrative subpoenas of Agency, 50 U.S.C. 2411(a), in discovery disputes, unless perhaps important procedural rights of the Respondent were affected. The 1988 revision to the Act providing for judicial review may alter this holding (Omnibus Trade and Competitiveness Act of 1988, Pub.L.No. 100-418, 102 Stat. 1107).

The agency regulation (15 CFR 388.9(d)) appears to provide some substantial opportunity for discovery. In practice this has been rather one-sided, for unlike other bureaus in the Department, Counsel for BXA as here, refuse to permit respondent, or even in camera, access to the statements, reports and the like of expected or noticed witnesses. Nor is the result here an exception or aberration. Agency Counsel who prepared the regulations, 50 FR 53130, citing the Federal Rules of Civil Procedure as the model, is the same Senior Attorney who appeared on behalf of the Agency here.

[6] The Agency was on notice that such action would be taken after the Pre-hearing Conference of December 9, 1986, the decision of the District Court and Order of this Tribunal of December 18, 1986, all of which indicated that the Administrative Law Judge should and would use available sanctions for Agency Counsel's failure to comply with the discovery order. See also Respondent's Post Hearing Reply Brief at 16-17, which I adopt.

[7] The shipments are numbered in accordance with the sequence in which they appeared in the Agency's charging letter. The missing numbers of the original eleven were dropped.

Inc. with a valid Import certificate covering the above goods within 90 days." The price of the goods is listed as $5,300.00, with a bank draft submitted for this amount (Agency Exh. 4C), dated August 12, 1981, one day before the date of shipment shown on the Air Waybill. Further evidence indicated that DSE's bank notified DSE just one week later that collection had been requested (Agency Exh. 4).

DSE's "Shipper's Letter of Instructions" ("SLI") [8] (Agency Exh. 4D), which accompanied this shipment at the time of export, shows the full amount as $5,300.00 and notes in the "Special Instructions" block that the shipment is "CAD", meaning "cash against documents", and asks the freight forwarding agent to notify DSE of the Air Waybill number, flight number and estimated time of arrival.

Shipment No. 5

DSE Invoice No. 331 (Agency Exh. 7B), Air Waybill dated September 24, 1981 (Agency Exh. 7A), to Greece reflects a full purchase price of $111,450.00 at the time of shipment, and that payment was requested within 30 days ("Net 30"). DSE received payment less than one month later, the invoice having been stamped "PAID" on October 23, 1981. The record also includes a DSE credit memo to Digital Resources, LTD, dated December 7, 1981, providing a price adjustment in the amount of $6,996.00 (Agency Exh. 7).[9]

Shipment No. 7

DSE Invoice No. 332 (Agency Exh. 9B), Air Waybill dated December 14, 1981 (Agency Exh. 9A), reflects, on the invoice, the purchase price of $41,600.00. The invoice shows that DSE requested payment within 30 days, and received such payment within three weeks. It was stamped "PAID" on December 30, 1981.[10] DSE's SLI reflects the full dollar amount and contained Special Instruction to the freight forwarding agent "Notify shipper of AWB#, FLT# and ETA* * *. This is important as buyer will collect upon arrival, and must be notified" (Agency Exh. 9E). The buyer was Digital Resources, LTD.

Shipment No. 8

DSE Invoice No. 332 (Agency Exh. 10B), Air Waybill dated December 15, 1981 (Agency Exh. 10A), indicates the full purchase price of $30,400.00 was sought within 30 days of the shipment. The evidence reflects that such payment was received within three weeks of this shipment, the invoice being stamped "PAID" on December 30, 1981.[11] DSE's worksheet for this transaction reflects a "SALES ORDER NO.", the purchase price and the date shipped (Agency Exh. 10E). The invoice did not indicate that the shipment was temporary, the SLI indicates the full dollar amount and states the Special Instructions to the freight forwarding agent "Notify shipper of AWB#, FLT# and ETA * * *. This is important as buyer will collect upon arrival, and must be notified" (Agency Exh. 10G).

Shipment No. 10

DSE Invoice No. 362 (Agency Exh. 12B), Air Waybill dated March 24, 1982 (Agency Exh. 12A), shows that the invoice requested a full purchase price of $2,375.00. Again, the invoice reflects that payment was sought within 30 days. The invoice is further stamped "PAID," with a line drawn through the word. The president of DSE testified that payment was not received. There was no evidence refuting the fact that the shipments requested payment. The invoice also states "Demo—two weeks" and was annotated as shipped as demonstration items to Switzerland (Tr. 214–215). Respondent Exhibit A is the manufacturer's (DATARAM Corporation) invoice which states that the equipment was being sent to DSE for a "30 day evaluation". A telex was presented from DSE stating that the unit in question was being sent to Switzerland under GTE License as a "demo unit" (Resp. Exh. B). A message from DSE to the consignee asking for return of the demo unit was also presented (Resp. Exh. C). Further evidence indicates that the items were returned to the manufacturer (Resp. Exh. E, F, G, H, I). The Respondent presented testimony from one of it's employees concerning the details of the return of these items (Tr. 290–291).

Shipment No. 12

DSE Invoice No. 443 (Agency Exh. 14A), Air Waybill dated October 3, 1982 (Agency Exh. 14), and invoices for several pieces of equipment, DSE Invoice Nos. 440, 441, and 432, (Agency Exh. 14J, 14M, 14P) which were not included in the August 1, 1981 charging letter.[12] Respondent's SED for this shipment (Agency Exh. 14D) and other related invoices for this shipment indicated that U.S.-origin commodities valued at $23,079.00 were being shipped to Switzerland. The evidence also reflects that DSE requested payment within 30 days and in fact received payment three weeks later on October 26, 1982. Invoice No. 443 is stamped "PAID" but the date is illegible (Agency Exh. 14A). On September 16, 1982, DSE applied for a validated license (Agency Exh. 14E) for the equipment exported on October 3, 1982 under general licenses GTE (Agency Exh. 14A, 14D). A letter from Respondent to the Agency, dated September 16, 1982, requested expedited action on its permanent license application (Agency Exh. 14R) due to the fact the president of DSE needed to take this equipment (Agency Exh. 14A, 14J) with him for installation at that time, which he, in fact, did prior to obtaining the required validated license. The four invoices introduced were also stamped "Goods for demonstration. Import Certificate required for purchase."

The Regulations

Section 387.4 of the regulations in effect at the time of the alleged violations read as follows:

Acting with knowledge of a violation. No person may order, buy, receive, conceal, store, use, sell, loan, dispose of, transfer, transport, finance, forward, or otherwise service, in whole or in part, any commodity or technical data exported or to be exported from the United States or which is otherwise subject to the Export Administration Regulations, with knowledge or reason to know that a violation of the Export Administration Act or any regulation, order, or license has occurred, is about to occur, or is intended to occur with respect to the whole or any part of such transaction.

Section 387.5 of the regulations read:

Misrepresentation and Concealment of Facts

(a) *Misrepresentation and concealment.* No person may make any false or misleading

[8] A Shipper's Letter of Instruction is a multiple-copy document formatted and used by the freight forwarder as a Shipper's Export Declaration.

[9] Digital Resources, Ltd. was a company operated by Alan Simmons. The company and Mr. Simmons were found to have violated §§ 387.2, 387.4, 387.5 and 387.6 of the Regulations. They were and are subject to an export denial order. However this listing was subsequent to all of these transactions. Docket Nos. 2636–01, 2636–02, (Order, February 26, 1986, 52 FR 7476, March 4, 1986).

[10] The invoice is stamped "December 30, 1982" which DSE's president testified was apparently a mistake, and should have been stamped with the year "1981".

[11] *See* footnote 6, *supra*.

[12] The Agency was not allowed to add these exports as separate charges to its case. All of these were included in one shipment made on or about October 3, 1982, as indicated in the Shipper's Export Declaration (Agency Exh. 14D). DSE further stamped each invoice "Paid October 26, 1982". The Agency properly treats these invoices as one single shipment.

With respect to Shipment No. 12, a qualified export licensing officer testified that a validated license was required for export of the commodities shown on the "Request for Licensing Determination" (Tr. 102, Agency Exh. 14X). That conclusion is accepted.

representation, statement, or certification, or falsify or conceal any material fact, whether directly to the Office of Export Administration, the Office of Antiboycott Compliance, any customs office, or an official of any other United States agency, or indirectly to any of the foregoing through any other person or foreign government agency or official—

(1) In the course of an investigation or other action instituted under the authority of the Export Administration Act;

(2) In connection with the preparation, submission, issuance, use, or maintenance of any export control document, as defined in § 370.2, or restrictive trade practice or boycott request report, as defined in § 369.6;

(3) For the purpose of or in connection with effecting an export from the United States, or the reexport, transshipment, or diversion of any such export.

(b) *Scope.* Paragraph (a) applies to all representations, statements, and certifications made to, and material facts concealed from, the Office of Export Administration, the Office of Antiboycott Compliance, and the U.S. Customs Service, or other agencies with respect to matters within the jurisdiction of these agencies under the statutes, Executive Orders, and regulations, relating to export control, restrictive trade practices or boycotts, and orders or licenses issued or established under the Act.

(c) *Representations to be continuing in effect; notification.* All representations, statements, and certifications made by any person are deemed to be continuing in effect. Every person who has made any representation, statement, or certification must notify, in writing, the Office of Export Administration or the Office of Antiboycott Compliance, as well as any other cognizant agency(ies), of any change of any material fact or intention from that previously represented, stated, or certified. Such notification shall be made immediately upon receipt of any information which would lead a reasonably prudent person to believe that a change of material fact or intention has occurred or may occur in the future.

Section 387.6 of the regulations read:

Export, Diversion, Reexport, Transshipment

Except as specifically authorized by the Office of Export Administration, no person may export dispose of, divert, direct, mail or otherwise ship, tranship, or reexport commodities or technical data to any person or destination or for any use in violation of or contrary to the terms, provisions, or conditions of any export control document, any prior representation, any form of notification of prohibitation against such action, or any provision of the Export Administration Act or any regulation, order, or license issued under the Act.

Section 371.22 of the Regulations governs the use of general license GTE and, during the period relevant to this proceeding, read in part:

(b) *Temporary exports subject to general license GTE.* Export described in §§ 371.22(b)(1) through (5) intended for temporary use abroad (including exports for use in international waters) and prompt return, in no case later than 1 year after the date of export, to the United States may be made under the provisions of this general license, unless restricted by the exceptions set forth in § 371.22(c):

(1) Usual and reasonable kinds and quantities of commodities for use by the exporter or his representative, agent or employee in an enterprise or undertaking of the exporter approved by the Office of Export Administration.

(2) Commodities for exhibition or demonstration in Country Group T or V only. (Through July 21, 1981).

(2) Commodities for exhibition or demonstration in Country Group T or V, provided the U.S. exporter retains title. The SED for this type of transaction shall show the U.S. exporter as ultimate consignee, in care of the person who will have custody of the commodities abroad.

(*Export Administration Bulletin*, No. 222, August 9, 1982).[13]

(3) Commodities to be inspected, tested, or calibrated, or repaired abroad.

(c) *Exceptions.** * *

(3) *Use or disposition.* No commodity may be exported under this general license with the intent to change the registration, sell, or otherwise dispose of the commodity abroad.

Discussion

Agency Counsel argues that each of the respondent's exports failed to qualify for use of general license GTE, and were shipped in violation of §§ 387.4 and 387.6 of the Regulations. The Agency alleges that Respondent DSE improperly used general license GTE to export these six shipments of U.S.-origin computer equipment because Respondent DSE intended these shipments to be sales and knew that this equipment was not being exported temporarily, a prerequisite for using this general license. It is argued that Respondent, knowing this, intentionally made false and misleading statements to the Agency and other Governmental bureaus.[14]

Respondent DSE argues that the exports in question were not intended as sales, but were all properly shipped as temporary exports under general license GTE for testing and evaluation purposes. Respondent contends that the Agency's case must fail because it did not show that Respondent did not intend its exports of computer equipment to be temporary at the time of export under provisions of GTE license authority. Respondent contends that they acted appropriately and that Agency's own witness stated that the Regulations call for, and recognize the need to change a temporary licensing status to provide for permanent export when one was not originally contemplated (Tr. 61–62).

First Four Shipments

Respondent does not dispute that following customer testing and acceptance, some of the equipment shipped required a change in license status to provide for validated licenses (Resp. Brief at 2–3). Respondent claims, however, that an investigative field agent for the Department of Commerce directed the Respondent not to submit necessary changes to license status concerning the first four shipments. The Respondent contends that this agent, then investigating Alan Simmons, directed DSE not to submit necessary changes to license status because of sensitive national security considerations. That assertion is accepted as true. However, I do not find that there was credible evidence offered by the Respondent at the hearing further indicating when any of the final sales of these shipments occurred, other than relying on the original shipment documents which indicate that final sales were contemplated at the time of shipment. The president's testimony rather reflects his misunderstanding of what constitutes a temporary export.

As to Shipment No. 2, the president of DSE, testified under oath regarding Respondent's conversations with the consignee, and his agent in Greece, Alan Simmons of Amber Company (Tr. 180–190). The president claims that the annotations made on the export documentation (e.g. "PAID") pertained to invoice costs, not the costs of the commodities [15] (Tr. 184). Respondent

[13] This change to the regulations governing General License GTE is explained as clarifying the requirements on commodities exported temporarily for exhibition or demonstration (*Export Administration Bulletin No. 222*, at 7).

[14] For each of the shipments under review in this proceeding, the commodities were controlled for national security reasons under Commodity Control List (CCL) entry 1565A and required validated licenses for export to Greece and Switzerland, except where certain general licensing provisions would be applicable (Tr. 98–103). Except for the shipment No. 12, it was stipulated by the parties that validated licenses were required for the U.S.-origin computer equipment during the period when shipments were made (Tr. 100).

[15] Respondent attempts to make much of the fact that the shipment, then valued at $5,300 would now be worth under $5,000 and thus not require a validated export license for a permanent shipment. This is irrelevant to the acts charged here, which constituted a violation at the time it was committed.

stands by the documentation annotations which indicate that there is a need for additional documentation in the event of final export (Tr. 188).

There is nothing on the record indicating that a separate decision was to be made by the ultimate consignee or notification made to the Respondent, that this shipment was to be purchased by the consignee (Tr. 189). Finally, Respondent claims that DSE never applied for a validated export license on this shipment because the Investigative Agent told him to discontinue dealing with Simmons due to national security reasons (Tr. 189; Resp. Brief at 8). Though this assertion is accepted, it does not alter the conclusion that the facts reflect a sales transaction from the outset.

As to Shipment No. 5, the Respondent stands by the marking on the DSE invoice indicating that the commodities shipped were done so for demonstration purposes (Tr. 192–194; Agency Exh. 7B). The company president testified that the agent in Greece, had to advance Respondent's cost for the demonstration equipment before it could be shipped to Greece because the Respondent could not afford to obtain it from the manufacturer before that time (Tr. 195–196). The circumstances do not support a conclusion other than that this was in fact a sale financed by the buyer.

According to DSE's president, Shipment No. 7, was also for test and demonstration purposes, thus Respondent contends that these items were for temporary export (Tr. 199; Resp. Brief at 10). The witness contended that the language on Invoice 307, "The above goods sent and invoiced * * *" did not really mean that commodities were sent and payment demanded, but instead were used simply to satisfy a Greek customs formality (Tr. 255–256).

Shipment No. 8 is also claimed to have been for demonstration purposes only (Tr. 200–201). The president of DSE testified that the cost-related invoice information annotations on the shipment documents demonstrated that he relied on the GTE temporary license (Tr. 202–203). Again, the witness testified that the investigative agent informed Respondent DSE that it was to terminate all contacts with Simmons because of national security reasons, and DSE complied fully (Tr. 203, 207–208).

The Respondent's arguments for each of the annotations on the different documentation are simply not convincing when considered in the context of the transactions. It appears, from a preponderance of the evidence, that the Respondent did in fact violate the regulations as charged with respect to these shipments because the transactions were in fact meant to be sales with some right of return.

The Respondent claims that Shipment No. 10 was returned to the U.S. vendor after testing overseas, and thus it was an entirely appropriate GTE-licensed transaction not requiring validated export license. Respondent's arguments concerning this shipment are convincing. This shipment involved goods that were claimed to be for temporary purposes and subsequently returned to the United States. The documentation and evidence presented indicate that the parties intentions were to demonstrate the equipment. This was properly documented. The evidence does not support a conclusion that they were already sold. I conclude that the equipment was properly exported under the temporary license.[16]

The last shipment in question, Shipment No. 12, was covered by an export license subsequently approved and validated by the Department. Respondent argues that this was appropriate because it was covered by an approved Agency validated export license upon being accepted by the customer after demonstration and testing.

The Respondent's president testified that the shipping documentation stated that the item covered by Invoice 443, was exported *for demo purposes* (Tr. 232–233). Further, Respondent claims that Validated Export License Nos. 64087 and 64088 subsequently covered any permanent export of the item listed in Invoice 443. The Respondent claims that the demo model was approved for purchase later by the consignee, therefore he properly obtained the validated export license for permanent export of this equipment (and other related equipment shipped along with it).

The evidence indicates that, as to this computer eqipment, a validated export license was asked for and yet the equipment was sent under a GTE license. Thus, Respondent knew what the intentions was and chose to misrepresent it in order to expedite his shipment (Tr. 233–234).[17] The mere fact that the shipment would have been valid if made under the appropriate Export License does not excuse Respondent's conduct in circumventing the law. Nor would the shipment have been proper under GLV as is now argued for it was Respondent who elected to make one shipment under a number of invoices which in combination were not "de minimus" in value. This shipment made under Invoice No. 443, was improper. The fact that Respondent attempted in the course of the transaction to acquire the proper license, indicates that the Respondent knew that the actions were violations. Further, this shipment was made after the Respondent was aware of the investigations into some of its previous transactions.

The Agency also contends generally that the export control documents, including SLIs and SEDs, prepared by the Respondent contain false representations, due to the fact that DSE knew that these exports were intended to be shipped to complete sales. Respondent provided its general license number as GTE D90918 for the first four questioned shipments, Shipments Nos. 2, 5, 7, and 8. The fifth and sixth shipments, Shipments Nos. 10 and 12 listed general license number GTE D90918 on the SEDs. By listing these license numbers, the Agency contends that DSE falsely represented that these shipments were eligible for export under these temporary licenses, knowing that these shipments were ineligible for such treatment were as part of sales transactions.

Conclusion

The evidence indicates that a permanent exports were in fact made for Shipments Nos. 2, 5, 7, 8 and 12, although Respondent's witness testified to the contrary. The totality of the circumstances and evidence produced on behalf of the Respondent does not rebut the documents presented by the Agency which support the conclusion that sales were intended and made. there has not been credible evidence produced that any of the equipment shipped in the above numbered exports was intended to be returned.[18]

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[16] While the Respondent further claims that the Agency purposely overlooked this evidence. The record does not support that assertion. I see it as a disagreement respecting the interpretation of the acts.

[17] Testimony was given to the effect that this order was for demonstration purposes, in that if there was a defect in the product, it could be returned.

It was clear from the testimony of Respondent's president that this shipment was for final sale. As with most final sales, a defect in the product allows the buyer to return it within a reasonable time. This general consideration in commercial transactions is insufficient to classify the transaction as "temporary for demonstration purposes" under § 371.22 of the Regulations, which clearly does *not* cover exports "* * * with the intent to change the registration, sell, or otherwise dispose of the commodity abroad" 15 CFR 371.22(c)(3).

[18] As Agency counsel points out in his Reply Brief, evidence that contemporaneously and objectively attests to DSE's export activities is entitled to greater weight than subjective explanations by an interested party. Respondent ignores the documentary evidence introduced by the

Continued

The record reflects that DSE was not a novice respecting the use of general license GTE and/or validated licenses. DSE had reason to know what § 371.22 of the regulations required, since it applied for registration as an exporter of commodities for temporary use abroad under the provisions of Section 371.22 of the Regulations on September 5, 1979, certifying that it "underst[oo]d and will comply fully with the provisions of General License GTE." Respondent even received a warning letter from the Department in May of 1980 in connection with its voluntary disclosure of the sale in Switzerland of two disc controllers exported under general license GTE.

The evidence is clear and uncontested that the export of the commodities involved required validated licenses.[19] The real and singular issue is whether the exports were "temporary"—I conclude that they were not. A mere right of refusal or to cancel and return is not sufficient grounds for labelling the export as temporary. The record here reflects all the common aspects of a sale including delivery. That there may have been some ability to negate the sale does not qualify to make the transfer temporary. With respect to Shipment No. 10, the evidence shows an export for demonstration. The details support the contention that this was a true demonstration activity and no violation is found incident to that export.

Though I find that Respondent "knowingly" exported the five items improperly, I do not find that the violation was deliberate or willful. Rather the kind of knowledge and or intent found (and that which applies generally in these cases), is that described by the Supreme Court in *United States v. International Minerals and Chemicals Corp.*, 402 U.S. 558 (1971). It was held there that even where the requirement was that the individual "knowingly" violated the statute, the quality of the knowledge involved related to a knowledge of the facts, not the law, and reiterated the general rule that ignorance of the law is no excuse. *See also United States v. Jonas Brothers of Seattle, Inc.*, 368 F.Supp. 783 (COURT, 1974) and *Newell*, 2 Ocean Resources and Wildlife Reporter (O.R.W.) 111, (NOAA 1979), 2 O.R.W. 368 (NOAA App. 1981).

Findings

1. Respondent Data Systems Engineering (DSE) is a United States corporation and person within the meaning of the Export Administration Act, as amended, and the regulations promulgated thereunder, 50 U.S.C.A.App. 2412(c)(1), 15 CFR Part 300.

2. Between August 1, 1981, and October 3, 1982, Respondent exported, on five occasions, (the charged Shipment Nos. 2, 5, 7, 8 and 12) Shipments of U.S.-origin equipment to Greece and Switzerland as temporary exports under GTE licenses.

3. The five exports were to fulfill existing sales contracts requiring validated licenses at the time of shipment.

4. The existence of a right to reject or return equipment with or without trial or test by the purchaser does not constitute a "temporary" export. A sale on approval or with a right to refuse and return does not constitute a "temporary" export. Shipment for test, evaluation, demonstration and the like incident to or in contemplation of a sale is not a "temporary" export.

5. The five exports were not temporary exports within the meaning of the regulations particularly 15 CFR 371.22. The five shipments were not made principally for demonstration, test or evaluation.

6. The use of GTE licenses for such shipments under the circumstances was improper.

7. Respondent exported the five shipments which it had reason to know required a validated export license in violation of the regulations.

8. The evidence presented does not establish that the export of Shipment No. 10 under the GTE License was improper. That aspect of the charge is DISMISSED with prejudice.

Conclusion

I conclude that a violation of the Export Administration regulation § 371.22 and incident thereto, of §§ 387.4, 387.5 and 387.6 occurred. The failure of the Agency to spell out with some clarity what acts constitute which violations leads me to find a single overall or comprehensive violation. Contrary to Agency Counsel's assertions, his Post Hearing submission was not responsive to my request. I share Respondent's Counsel's assertion of a lack of clarity and disclaim the representation that it is "self-inflicted". Upon examination of the charging letter and the evidence it appears that there may well be multiple violations inherent in the alleged misconduct recited, however it is for Agency Counsel to clearly state what they are rather than for this Tribunal to decipher equivocal and confusing messages. It is also probable that the approach attempted is substantially multiplicious and the sanction would be the same regardless of the tally.

I conclude that this company in what appears to have been an attempt to avoid the delays which bedeviled routine export licenses, some years ago improperly used its GTE Temporary License to promptly fill its purchase orders, fully intending to follow up with a validated license in due course. That was not permissible.

I specifically disapprove of a civil penalty in this case because the costs borne by this company in business, legal expenses, reputation and personal apprehension has substantially exceeded what would otherwise be appropriate by way of civil penalty here.[20] It is also the basis for the substantial suspension of the denial period.

In arriving at the penalty set forth in the Order that follows I have given particular credit to the cooperation Respondent and its president gave in the larger Simmons investigation, Respondent understanding of the credit he would receive for such participation; the unconscionable and unexplainable delay in initiating and completing these proceedings, the Respondent's precarious small business status and the lack of willful intent. Nevertheless, some sanction is appropriate for the GTE license process was abused. Had the proper validated licenses been timely sought the identification and sanction of Mr. Simmons might have been made sooner.

Remand Questions and Responses

1. If the charging letter was "inadequate" (Recommended Decision and Order, page 3), why were the charges not dismissed?

Ans. Not every inadequacy warrants dismissal. The deficiencies in the style and content are fully discussed in the Decision.

2. In light of the Department's post-hearing brief, pages 4 through 18, how is

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Agency showing that it received payment for three shipments and a portion of a fourth shipment out of the six shipments in question. (Agency Reply Brief at 2–3). With respect to Shipment No. 12, I find that the sale was final prior to shipment.

[19] Respondent did not concur or stipulate to the need for a validated license with respect to Shipment No. 12, as with the other shipments. However, the attempt to question that determination was not convincing. No showing was made respecting why the items involved was not a properly controlled commodity as was his burden since the question respecting whether matters are properly on the list is a matter for determination in a separate process.

[20] The lack of standards for civil penalties in these cases despite the specific authorization in section 11(c)(4) of the 1985 Amendments, the Administrative Conference reports and adopted recommendations as well as the example of other agencies, even within this Department, complicate such impositions.

it not clear that the Department was charging three separate violations of the regulations for each of six shipments? Please refer to the specific language of the Department's post-hearing brief which fails to make this method of alternative pleading clear.

Ans. The charging document which initiates the proceeding is where the separate and sufficient allegations must be stated. In the charging letter of August 1, 1986, the Respondent is alleged to have committed thirty six violations which are not sufficiently set forth. In the course of the proceedings some of the alleged violations were withdrawn. The problem in understanding just which alleged violations were dropped and the effect on what might be termed the cross violations was most confusing. This cross-referencing to sections of the regulations omits allegations as to the particular violative actions. The absence of specific separate charging language renders the process confusing and uncertain. The direction at the conclusion of the hearing to Agency Counsel to the effect that: "* * * I want you to present each and every violation separately. I want you to lay out in clear detail what constituted each and every violation, the separate elements, proposed findings, whatever have you on all of them", was clear, unequivocal and proper. The post-hearing submissions on behalf of the Bureau did not confirm to that reasonable request. The decision clearly reflects the facts found. The Agency did not lay out each charge separately in the charging documents, as it should have done. Nor did its counsel do so even when offered the opportunity to do so after the hearing, which in retrospect constituted an inappropriate deference to the Agency. The only alternative reasonably available was to announce findings of facts consistent with the allegations and the evidence of record. It is for the Agency to articulate each separate charge, if it chooses to lump multiple acts in a single charge that is one of its options. It is not proper or appropriate for this Tribunal to parse the record and select which violations may be separately found. Because the Administrative Law Judge's decision appears to lay out what maybe considered as multiple violations it is not appropriate to conclude that the charging letter was sufficient to support any particular number of violations more than one. It must stand by itself. As issued, it fails to separately and insufficiently set forth the sixteen or so violations now claimed.

3. On page 26 and 27 of the Recommended Decision and Order, five specific shipments are found to have violated Export Administration Regulations. In view of this fact, how can the conclusion be drawn that there was one, "single overall or comprehensive violation" of the Regulations? Specifically, were the five sales separate and distinct transactions, or were they all part of one transaction which would support, possibly, the conclusion reached on page 28?

Ans. There were construed to have been so charged by virtue of the failure of the Agency to: specifically identify each charge at the outset; identify the proof relative to each separate charge in the evidentiary presentation and to therefore provide the requested identification and correlation for each of the remaining charges. The decision respecting whether to consolidate or separate charges is to be made at the time the proceeding is initiated, the generalized approach utilized in this case has led to "garbage can" records from which findings and conclusions are extracted without the connection between pleadings and proof that is necessary for proper initial adjudication and subsequent review. The conclusion on page 28 is reiterated and reaffirmed. If the Agency wishes to charge multiple separate violations they must be so stated in the charging document so that this Tribunal, the Respondent and appellate reviewers, administrative and judicial, may track the pleadings and proof.

4. Of what relevance is the following statement on page 28 of the Recommended Decision and Order: "I conclude that this company in what appears to have been an attempt to avoid the delays which be bedeviled routine export licenses, some years ago improperly used its GTE temporary license to promptly fill its purchase orders, fully intending to follow-up with a validated license in due course."? Specifically, did the ALJ take into consideration any facts which suggest "delays which be bedeviled routine export licenses" in making his Recommended Decision and Order?

Ans. It is my recollection that in the initial meetings with Mr. Beasley and Mr. Reed before Mr. Hurley intervened, there was some such allusion. It was also referenced and common knowledge that there had been lengthly delays in the licensing process during the relevant period. Another contributing circumstrance was, that part of the license appeal process had been transferred to this office without adjudication responsibility in 1986. The "leave them swinging in the breeze" attitude apparent in the handling of those cases which was even more dilatory than that previously observed as the Hearing Commissioner and Appeals advisor over a decade ago. It further reflected the Agency attitude and practice on license processing matters, the observation was considered relevant because it reflected a probable motivation, albeit an inappropriate one, for the Respondent's conduct and was consistent with the known practice of the Agency.

5. Assuming, *arguendo*, that there were five specific and separate violations of the Export Administration Act, would the ALJ's recommended penalties have been greater than those found in the Recommended Decision and Order?

Ans. No. (*see infra* p. 26), where it is stated "It is also probable that the approach attempted is substantially multipicious and the sanctions would be the same regardless of the tally."

6. The ALJ has characterized the Department's action as one of "unconscionable and unexplainable delay in initiating and completing these proceedings." (Page 29) What specific rules, statutes or orders were violated by the Department in its handling of this case? Please be specific and indicate the amount of time that each act added to the conduct of the case. Did the Department ever act outside its legal rights? Ans. The quote is plural. No score or time card is maintained on the problems with delays, Agency Counsel appeared to initially complicate and drag out these relatively simple proceedings. The records in this and other proceedings speak for themselves. The congressional imposition of the one-year period for adjudication manifests the attitude and action of that legislative body. "Justice delayed is Justice denied" is not a trite remark, in these international activities the frequent three to five year unexplained delays in initiating proceedings seriously inhibit the ability to develop a complete and accurate record. Not charging this Respondent at the same time as Alan Simmons, who was charged nearly four years prior to the issuance of this charging letter, shows the Agency's lack of diligence, when it is apparent that the evidence used relating to the Respondent's transactions with Mr. Simmons were available at that time. The Agency acted outside its "legal" rights in refusing to comply with the discovery order and in contending that multiple violations were charged when the pleadings did not sufficiently identify each of the separate allegations

and Counsel obdurately refused to describe them as directed.[21]

7. Of what legal relevance in setting penalties is the fact that the business involved is a small business or the fact that it has borne legal expenses and other subjective costs in defending its extra legal activity? Ans. As the late Justice Benjamin Cardozo put it, it is the duty of Judges "to weigh the effect of the default and adjust the rigor of the remedy to the gravity of the wrong." All of the circumstances surrounding the incident are for consideration including the nature and size of the business, the full range of costs incurred, and other adverse social consquences. The failure of the Bureau to establish standards for determining appropriate penalties as it's predecessor Administration indicated it would do almost a decade ago (Agency Assessment and Mitigation of Civil Penalties, 1 CFR 305.79–3) constitutes a substantial defeat in the process (79 Colum. L. Rev. 1435 (1979)).

8. Since the Recommended Decision and Order finds five separate violations with knowledge, how can it be said that there was no willful intent to violate the Export Administration Regulations?

Ans. A single consolidated charge was found to have been made, nevertheless, the premise, either as posed or as more accurately stated, bears little relevance to the "willful intent" questions. Willful violations are cognizable under sec. 11(b) of the statute and are criminally actionable. Whether there were one or one hundred separate acts may, has little relevance to whether they were willful. The test to be applied in these cases is discussed in the full paragraph on Page 26 and again at page 29 of the decision, as well as in a number of other cases. The bare assertion, in a post hearing submission by Agency Counsel, constitutes neither a legal or factual basis for such a finding.

9. What legal authority exists for excluding or disallowing the proposed testimony of a witness to be called for the limited and specific purpose of impeaching a prior witness' statement with respect to a particular matter of fact?

Ans. The drawing of inferences and the exclusion of witnesses are but two of the routine types of sanctions invoked for failure to comply with discovery orders. The sanctions imposed here were reasonable and appropriate under the circumstances (*see infra* pp. 7–8).

[21] Senate Comm. on Governmental Affairs, Study on Federal Regulation, Volume Four, Delay in the Regulatory Process, S.Doc. No. 72, 95th Cong., 1st Sess. (IX) (1977) ("Ribicoff Report, Volume Four").

The situation which developed in this case was foreseeable and foreseen.

Section 788.9 of the Regulations (15 CFR 788.9) provides for discovery. The history of that provision over the past fifteen or so years is documented in Agency records. A decision was consciously made in about 1977 to reject the hardline approach of denying discovery in favor of the approach contained in the above cited rule which suggests that the Federal Rules of Civil Procedures shall apply subject to a consistency test. Rule 37 is particularly pertinent to the situation presented here. The cases cited in note 61–Sanctions and 39–Order of Preclusion in Title 28 of the United States Code Annotated, Federal Rules of Civil Procedure are particularly pertinent. The subject of discovery is also treated in an Administrative Conference Recommendation (Discovery in Agency Adjudication, 1 CFR 305.70–4) as well as in numerous other Civil and Administrative Law texts. The comments in Underwood, *A Guide To Federal Discovery Rules* (2d ed.), in para. 1.08 "The Use Of Issue Oriented Sanctions", which is summarized as follows, is particularly germane:

> If a party violates a court order regarding discovery, the court can fashion and issue-preclusive order, directing that a certain issue be considered resolved in favor of the party requesting the sanction. The impact of this order will depend on the issues it covers and can range from the harsh equivalent of a dismissal to the chastening but less severe preclusion of a minor issue.

When Agency Counsel refused to comply with the discovery order he was informed he would not be permitted to call the particular witness. The Respondents explanation of the events, including the representations made to him, is the credible evidence in the record which was considered in assessing an appropriate penalty. To have allowed the Agency to call the sanctioned witness in the circumstances would have been improper. Particularly since Agency Counsel well knew from Respondents Counsel assertions the precise nature of the testimony to be offered on behalf of the Respondents. Before its president testified! (*McAlpine* v. *U.S. Dept. of Commerce*, U.S. DCAK No. A83–214 Civil, April 21, 1983)

Order

I. For a period of two years from the date of the final Agency action, Respondent—Data Systems Engineering, Inc., 1108 Pollack Ave., Ocean, New Jersey 07712 and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Commencing sixty days from the date that this order becomes effective, the denial of export privileges set forth above shall be suspended, in accordance with Section 388.16 of the Regulations, for the remainder of the two year period set forth in Paragraph I above, and shall be terminated at the end of that period, provided that Respondent has committed no further violations of the Act, the Regulations, or the final Order entered in this proceeding. During the suspension period, Respondent may participate in transactions involving the export of U.S.-origin commodities or technical data from the United States or abroad in accordance with the requirements of the Act and the Regulations. The provisions of paragraph VI of this Order are also suspended during the suspension period.

III. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(1) As a party or as a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to matters which are subject to the Act and the Regulations.

IV. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

V. All outstanding individual validated export licenses in which Respondent appears or participates, in

any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

VI. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure and specific authorization from the Office of Export Licensing, shall, with respect to U.S.—origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(b) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VII. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.App. 2412(c)(1)).

Date: November 23, 1988.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 89–1515 Filed 1–23–89; 8:45 am]

BILLING CODE 3510-DT-M

The MCTL Implementation, Technical Advisory Committee; Partially Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held February 8, 1989, 9:30 a.m., Herbert C. Hoover Building, Room 1617F, 14th Street and Constitution Avenue NW., Washington, DC. The Committee advises and assists the Office of Technology and Policy Analysis in the implementation of the Militarily Critical Technologies List (MCTL) into the Export Administration Regulations and provides for continuing review to update the Regulations as needed.

Agenda: Open Session

1. Opening Remarks by the Chairman.
2. Introduction of Members & Public Attendees.
3. Introduction of Invited Guests.
4. Presentation of Papers or Comments by the Public.
5. Department of Defense Report on Current Status of MCTL.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 13, 1989, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended that the series of meetings or portions of meetings of the committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes contact Betty Ferrell, 202–377–2583.

Date: January 17, 1989.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 89–1529 Filed 1–23–89; 8:45 am]

BILLING CODE 3510-DT-M

Transportation and Related Equipment, Technical Advisory Committee; Partially Closed Meeting

A meeting of the Transportation and Related Equipment Technical Advisory Committee will be held February 16, 1989, 9:30 a.m. Room 1617–F, U.S. Department of Commerce, 14th & Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology & Policy Analysis with respect to technical questions which affect the level of export controls applicable to transportation and related equipment or technology.

General Session

1. Opening Remarks by the Chairman.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Discussion of Agenda and Work Plan for 1989.
5. Presentation on Recent Changes to the Export Administration Regulations.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 13, 1989, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Betty Anne Ferrell 202–377–4959.

Date: January 17, 1989.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 89-1530 Filed 1-23-89; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Order No. 424]

Approval of Revised Plan and Extension of Zone Status for Foreign-Trade Zone No. 84, Harris County, Texas, Houston Customs Port of Entry

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the Port of Houston Authority (PHA), Grantee of Foreign-Trade Zone No. 84, has applied to the Board for authority to revise the plan and extend the authority for its foreign-trade zone located in Harris County, Texas, within the Houston Customs port of entry;

Whereas, the application was accepted for filing on February 8, 1988, and notice inviting public comments was given in the **Federal Register** on February 18, 1988 (Docket No. 8–88, 53 FR 4865);

Whereas, after the application was filed the Board conditionally approved three petroleum and chemical terminal sites, which were processed as separate applications (Docket Nos. 20–86, 41–85, 7–87);

Whereas, an examiners committee has investigated the application and PHA's request to include the three foregoing terminal sites in its revised zone plan in accordance with the Board's regulations and recommends approval with restrictions; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied if approval is given subject to the following conditions:

1. FTZ 84 sites shall be designated for identification in accordance with Appendix I of the examiners report.

2. The private manufacturing sites (formerly D–5, D–8) are redesignated subzones (SZ 84A, SZ 84B) and approved for a period of five years, subject to extension.

3. The zone will continue to operate under a centralized inventory control system approved by Customs, subject to exceptions allowed by Customs.

4. Manufacturing operations involving steel or steel products are restricted to items produced for export, otherwise formal entries shall be made on any foreign steel items prior to their use in a manufacturing process, and all steel mill products admitted to the zone shall be licensed under the President's Steel Program, while the program or a substitute program is in effect.

5. Full zone benefits for blending and processing at petroleum and chemical storage and blending sites shall be available for export only.

6. Privileged foreign status (19 CFR 146.65) shall be elected for any foreign merchandise prior to any blending or processing operations at petroleum and chemical storage and blending sites.

7. The FTZ Board's Executive Secretary shall be notified for approval prior to the commencement of any new manufacturing operations.

8. The District Director of Customs shall be notified for approval prior to the activation of any zone site.

9. Because of the nature of the project, PHA, as grantee, should play an active and continous role as overseer to ensure that the zone project is operated in the public interest and consistent with FTZ public utility principles.

10. Any further changes to the Houston zone plan should be presented and reviewed under conventional requirements.

Now, therefore, the Board hereby orders:

That the extension and revised zone plan requested by the Grantee, including the three petroleum and chemical terminals, is approved subject to the conditions listed above. The grant does not include authority for manufacturing operations not covered in the application, and the Grantee shall notify the Board for approval prior to the commencement of any new manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC this 12th day of January 1989.

Jan W. Mares,

Assistance Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-1531 Filed 1-23-89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-588-809]

Initiation of Antidumping Duty Investigation: Certain Small Business Telephone Systems and Subassemblies Thereof From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of certain small business telephone systems and subassemblies thereof from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before February 13, 1989. If that determination is affirmative, we will make a preliminary determination on or before June 6, 1989.

EFFECTIVE DATE: January 24, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–1769.

SUPPLEMENTARY INFORMATION:

The Petition

On December 28, 1988, we received a petition filed in proper form by American Telephone and Telegraph Company and Comdial Corporation on behalf of the domestic industry engaged in the production of certain small business telephone systems and subassemblies thereof. In compliance with the filing requirements of 19 CFR 353.36, petitioners allege that imports of certain small business telephone systems and subassemblies thereof from Japan are being, or are likely to be, sold in the United States to less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

If any interested party as described under paragraphs (C), (D), (E), or (F) of

section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the "For Further Information Contact" section of this notice.

United States Price and Foreign Market Value

United States price was based on U.S. list prices to supply houses or interconnects. Petitioners deducted discounts, U.S. import duties, ocean freight, and marine insurance. In an exporter's sales price (ESP) situation, a deduction was also made for indirect selling expenses.

Petitioners based foreign market value on Japanese retail prices. A distributor's margin was deducted to arrive at the first arm's length price. Adjustments were made, as appropriate, for differences in circumstances of sale. In an ESP situation, a deduction was also made for indirect selling expenses. In certain cases, foreign market value was also adjusted to reflect differences in physical characteristics in the merchandise being compared.

Based on a comparison of United States price and foreign market value, petitioners allege dumping margins ranging from 27.3 percent to 157.3 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioners supporting the allegations.

We examined the petition on certain small business telephone systems and subassemblies thereof from Japan and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of certain small business telephone systems and subassemblies thereof from Japan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by June 6, 1989.

Scope of Investigation

The products covered by this investigation are certain small business telephone systems and subassemblies thereof, currently classifiable under *Harmonized Tariff Schedule* item numbers 8517.30.2000, 8517.30.2500, 8517.30.3000, 8517.10.0020, 8517.10.0040, 8517.10.0050, 8517.10.0070, 8517.10.0080, 8517.90.1000, 8517.90.1500, 8517.90.3000, 8518.30.1000, 8504.40.0004, 8504.40.0008, 8504.40.0010, 8517.81.0010, 8517.81.0020, 8517.90.4000, and 8504.40.0015.

Certain small business telephone systems are telephone systems, whether complete or incomplete, assembled or unassembled, with intercom or internal calling capability and total non-blocking port capacities of between 2 and 256 ports, and discrete subassemblies thereof designed and dedicated for use in such systems. These subassemblies include:

(1) Telephone sets and consoles, consisting of dedicated, proprietary, corded telephone sets or consoles. A console has the ability to perform certain functions including: answer all lines in the system; monitor the status of other phone sets; and transfer calls. The term telephone sets and consoles is defined to include units having any two or more of the following items, when imported or shipped in the same container, with or without additional apparatus: housing; hand set; cord (line or hand set); power supply; and telephone set or console circuit cards.

(2) Control and switching equipment, whether denominated as a key service unit, control unit, or cabinet/switch. Control and switching equipment includes units consisting of one or more circuit cards/modules (including backplane circuit cards) and connectors to accept circuit cards/modules and/or building wiring, when imported or shipped in the same container, with or without additional apparatus.

(3) Circuit cards and modules, including power supplies. These may be incorporated into control and switching equipment or telephone sets and consoles, or they may be imported or shipped separately. A power supply converts or divides input power of not more than 2400 watts into output power of not more than 1800 watts supplying DC power of approximately 5 volts, 24 volts, and 48 volts, as well as 90 volt AC ringing capability.

The following merchandise has been excluded from this investigation: (1) Nonproprietary industry-standard ("tip/ring") telephone sets and other subassemblies that are not specifically designed and dedicated for use in a covered system, even though a system may be adapted to use such nonproprietary equipment to provide some system functions; (2) telephone answering machines or facsimile machines integrated with telephone sets; and (3) adjunct software.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under Administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by February 13, 1989, whether there is a reasonable indication that imports of certain small business telephone systems and subassemblies thereof from Japan materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89-1532 Filed 1-23-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-803]

Initiation of Antidumpintg Duty Investigation: Certain Small Business Telephone Systems and Subassemblies Thereof From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of certain small business telephone systems and subassemblies thereof from Korea are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before February 13, 1989. If that

determination is affirmative, we will make a preliminary determination on or before June 6, 1989.

EFFECTIVE DATE: January 24, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–1769.

SUPPLEMENTARY INFORMATION:

The Petition

On December 28, 1988, we received a petition filed in proper form by American Telephone and Telegraph Company and Comdial Corporation on behalf of the domestic industry engaged in the production of certain small business telephone systems and subassemblies thereof. In compliance with the filing requirements of 19 CFR 353.36, petitioners allege that imports of certain small business telephone systems and subassemblies thereof 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 Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the "For Further Information Contact" section of this notice.

United States Price and Foreign Market Value

United States price was based on U.S. list prices to supply houses or interconnects. Petitioners deducted discounts, U.S. import duties, ocean freight and marine insurance. In an exporter's sales price (ESP) situation, a deduction was also made for indirect selling expenses.

Petitioners based foreign market value on Korean retail prices. A distributor's margin was deducted to arrive at the first arm's length price. Adjustments were made, as appropriate, for differences in circumstances of sale. In an ESP situation, a deduction was also made for indirect selling expenses. In certain cases, foreign market value was also adjusted to reflect differences in physical characteristics in the merchandise being compared.

Based on a comparison of United States price and foreign market value, petitioners allege dumping margins ranging from 5.8 percent to 93.0 percent.

Initiation of Investigation

Under section 732(c) of this Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioners supporting the allegations.

We examined the petition on certain small business telephone systems and subassemblies thereof from Korea and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of certain small business telephone systems and subassemblies thereof from Korea are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by June 6, 1989.

Scope of Investigation

The products covered by this investigation are certain small business telephone systems and subassemblies thereof, currently classifiable under *Harmonized Tariff Schedule* item numbers 8517.30.2000, 8517.30.2500, 8517.30.3000, 8517.10.0020, 8517.10.0040, 8517.10.0050, 8517.10.0070, 8517.10.0080, 8517.90.1000, 8517.90.1500, 8517.90.3000, 8518.30.1000, 8504.40.0004, 8504.40.0008, 8504.40.0010, 8517.81.0010, 8517.81.0020, 8517.90.4000, and 8504.40.0015.

Certain small business telephone systems are telephone systems, whether complete or incomplete, assembled or unassembled, with intercom or internal calling capability and total non-blocking port capacities of between 2 and 256 ports, and discrete subassemblies thereof designed and dedicated for use in such systems. These subassemblies include:

(1) Telephone sets and consoles, consisting of dedicated, proprietary, corded telephone sets or consoles. A console has the ability to perform certain functions including: answer all lines in the system; monitor the status of other phone sets; and transfer calls. The term telephone sets and consoles is defined to include units having any two or more of the following items, when imported or shipped in the same container, with or without additional apparatus: housing; hand set; cord (line or hand set); power supply; and telephone set or console circuit cards.

(2) Control and switching equipment, whether denominated as a key service unit, control unit, or cabinet/switch. Control and switching equipment includes units consisting of one or more circuit cards/modules (including backplane ciruit cards) and connectors to accept circuit cards/modules and/or building wiring, when imported or shipped in the same container, with or without additional apparatus.

(3) Circuit cards and modules, including power supplies. These may be incorporated into control and switching equipment or telephone sets and consoles, or they may be imported or shipped separately. A power supply converts or divides input power of not more than 2400 watts into output power of not more than 1800 watts supplying DC power of approximately 5 volts, 24 volts, and 48 volts, as well as 90 volt AC ringing capability.

The following merchandise has been excluded from this investigation: (1) Nonproprietary industry-standard ("tip/ring") telephone sets and other subassemblies that are not specifically designed and dedicated for use in a covered system, even though a system may be adapted to use such nonproprietary equipment to provide some system functions; (2) telephone answering machines or facsimile machines integrated with telephone sets, and (3) adjunct software.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by February 13, 1989, whether there is a reasonable indication that imports of certain small business telephone systems and subassemblies thereof from Korea materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

January 17, 1989.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89-1533 Filed 1-23-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-806]

Initiation of Antidumping Duty Investigation: Certain Small Business Telephone Systems and Subassemblies Thereof From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of certain small business telephone systems and subassemblies thereof from Taiwan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before February 13, 1989. If that determination is affirmative, we will make a preliminary determination on or before June 6, 1989.

EFFECTIVE DATE: January 24, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1769.

SUPPLEMENTARY INFORMATION:

The Petition

On December 28, 1988, we received a petition filed in proper form by American Telephone and Telegraph Company and Comdial Corporation on behalf of the domestic industry engaged in the production of certain small business telephone systems and subassemblies thereof. In compliance with the filing requirements of 19 CFR 353.36, petitioners allege that imports of certain small business telephone systems and subassemblies thereof from Taiwan 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 Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

United States Price and Foreign Market Value

United States price was based on a U.S. list price to an end user. Petitioners then deducted a supply house and interconnect distributor's margin to arrive at the first arm's length price. Deductions were then made for U.S. import duties, ocean freight, and insurance.

Petitioners based foreign market value on manufacturers' list price to dealers. An end user discount and distributor's margin was deducted to arrive at the first arm's length price. Adjustments were made for differences in circumstances of sale to arrive at the foreign market value.

Based on a comparison of United States price and foreign market value, petitioners allege a dumping margin of 45.9 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioners supporting the allegations.

We examined the petition on certain small business telephone systems and subassemblies thereof from Taiwan and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of certain small business telephone systems and subassemblies thereof from Taiwan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by June 6, 1989.

Scope of Investigation

The products covered by this investigation are certain small business telephone systems and subassemblies thereof, currently classifiable under *Harmonized Tariff Schedule* item numbers 8517.30.2000, 8517.30.2500, 8517.30.3000, 8517.10.0020, 8517.10.0040, 8517.10.0050, 8517.10.0070, 8517.10.0080, 8517.90.1000, 8517.90.1500, 8517.90.3000, 8518.30.1000, 8504.40.0004, 8504.40.0008, 8504.40.0010, 8517.81.0010, 8517.81.0020, 8517.90.4000, and 8504.40.0015.

Certain small business telephone systems are telephone systems, whether complete or incomplete, assembled or unassembled, with intercom or internal calling capability and total non-blocking port capacities of between 2 and 256 ports, and discrete subassemblies thereof designed and dedicated for use in such systems. These subassemblies include:

(1) Telephone sets and consoles, consisting of dedicated, proprietary, corded telephone sets or consoles. A console has the ability to perform certain functions including: answer all lines in the system; monitor the status of other phone sets; and transfer calls. The term telephone sets and consoles is defined to include units having any two or more of the following items, when imported or shipped in the same container, with or without additional apparatus: housing; hand set; cord (line or hand set); power supply; and telephone set or console circuit cards.

(2) Control and switching equipment, whether denominated as a key service unit, control unit, or cabinet/switch. Control and switching equipment includes units consisting of one or more circuit cards/modules (including backplane circuit cards) and connectors to accept circuit cards/modules and/or building wiring, when imported or shipped in the same container, with or without additional apparatus.

(3) Circuit cards and modules, including power supplies. These may be incorporated into control and switching equipment or telephone sets and consoles, or they may be imported or shipped separately. A power supply converts or divides input power of not more than 2400 watts into output power of not more than 1800 watts supplying DC power of approximately 5 volts, 24 volts, and 48 volts, as well as 90 volt AC ringing capability.

The following merchandise has been excluded from this investigation: (1) Nonproprietary industry-standard ("tip/ring") telephone sets and other subassemblies that are not specifically designed and dedicated for use in a covered system, even though a system may be adapted to use such nonproprietary equipment to provide some system functions; (2) telephone answering machines or facsimile machines integrated with telephone sets, and (3) adjunct software.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by February 13, 1989, whether there is a reasonable indication that imports of certain small business telephone systems and subassemblies thereof from Taiwan materially injure, or threaten material injury to, a U.S industry. If its determination is negative, the investigation will be terminated; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

January 17, 1989.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89-1534 Filed 1-23-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-401]

Certain Valves and Connections, of Brass, for Use in Fire Protection Systems From Italy; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on certain valves and connections, of brass, for use in fire protection systems from Italy. The review covers one manufacturer/exporter and one third-country reseller of this merchandise to the United States and the period March 1, 1986, through February 28, 1987. The review indicates the existence of dumping margins during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value from the previous final results of administrative review as best information otherwise available.

We used the best information available for these firms because Rubinetterie A. Giacomini, the only manufacturer, provided an inadequate response to our request for information.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 24, 1989.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601/2923.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 8354) an antidumping duty order on certain brass fire protection equipment from Italy. The petitioner requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review for the period March 1, 1986, through February 28, 1987. We published a notice of initiation of the antidumping duty administrative review on April 22, 1987 (52 FR 13268). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s). HTS items are provided for convenience and Customs purposes. The written description remains dispositive.

Imports covered by the review are shipments of certain valves and connections, of brass, suitable for use in interior fire protection systems from Italy. This merchandise consists of single and double clapper siamese fire department connections and pressure restricting valves. During the review period, such merchandise was classifiable under items 680.1420 and 680.1440 of the Tariff Schedules of the United States Annotated. The merchandise is currently classifiable under HTS item numbers 8481.80.1050 and 8481.80.1070.

The review covers one manufacturer/exporter and one third-country reseller of this merchandise to the United States and the period March 1, 1986, through February 28, 1987.

The manufacturer, Rubinetterie A. Giacomini ("Giacomini"), provided an inadequate response to our request for information. Specifically, Giacomini failed to provide a narrative on certain variables listed in its submission relative to the Canadian and United States prices; failed to provide model match information for each model sold to the United States; failed to provide cost differences (material, direct labor and factory overhead) between models sold to the United States and the Canadian models; provided incomplete and inadequate constructed value information which did not include a description of its accounting system, direct labor, factory overhead, selling, general and administrative (SG&A) expenses, profit, export packing, a listing of all materials and the amounts of each, and the purchase price and quantity of each material used in the production of the merchandise; and provided no explanation as to why some shipment dates preceded sale dates in its sales data submission. Therefore, we used the best information otherwise available.

During the previous administrative review, the Department found no margins for Giacomini and an 85.54 percent margin for Giacomini's sales to the United States through Ganbrook Limited ("Ganbrook"). Since information on the record for this review indicates that Ganbrook acted as an agent of Giacomini, the best information available for these firms is 85.54 percent.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist:

Manufacturer/ Exporter/Third-Country Reseller (Country)	Time period	Margin (percent)
Rubinetterie A. Giacomini S.p.A.	3/1/86-2/28/87	85.54
Giacomini/ Ganbrook Limited (Great Britain)	3/1/86-2/28/87	85.54

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice, and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication or the first workday thereafter. Prehearing briefs and written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall continue to be required for these firms. For any future entries of this merchandise from a new exporter, not covered in this or the prior administrative review, whose first shipments of Italian brass fire protection equipment occurred after February 28, 1987, and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 85.54 percent shall be required. These cash deposit requirements are effective for all shipments of Italian brass fire protection equipment entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: January 12, 1989.

[FR Doc. 89-1535 Filed 1-23-89; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of a Negotiated Settlement on Import Limits and Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

January 17, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: January 26, 1989 and February 1, 1989.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); President's February 20, 1986 announcement of a Special Access Program.

During negotiations held between the Governments of the United States and Costa Rica, agreement was reached, effected by a Memorandum of Understanding dated December 21, 1988, to establish a new bilateral textile agreement for cotton and man-made fiber textile products in Categories 342/642 beginning on June 1, 1988, and extending through May 31, 1991. The United States Government will control imports in Categories 342/642 at the agreed level for the first agreement period June 1, 1988 through May 31, 1989.

The agreement also establishes Guaranteed Access Levels for Categories 342/642 for the periods June 1, 1989 through May 31, 1990 and June 1, 1990 through May 31, 1991.

Beginning on February 1, 1989, for goods to be exported from Costa Rica to the United States during the period June 1, 1989 through May 31, 1990, U.S. Customs will start signing the first section of the form ITA-370P for shipments of U.S. formed and cut parts in Categories 342/642 that are destined for Costa Rica and subject to the Guaranteed Access Level established for Categories 342/642. These products, which are assembled in Costa Rica from parts cut in the United States from fabric formed in the United States, are governed by Harmonized Tariff item number 9802.00.8010. Interested parties should be aware that shipments of cut parts in Categories 342/642 must be accompanied by a form ITA-370P, signed by a U.S. Customs officer, prior to export from the United States for assembly in Costa Rica in order to qualify for entry under the Guaranteed Access Level.

A formal exchange of notes between the Governments of the United States and Costa Rica will follow.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 47241, published on November 22, 1988.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 17, 1989

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on November 17, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of cotton and man-made fiber textile products in Categories 342/642, produced or manufactured in Costa Rica and exported during the period which began on May 27, 1988 and extends through May 26, 1989.

Effective on January 26, 1989, you are directed to amend to 247,000 dozen the limit for Categories 342/642 for the new restraint period beginning on June 1, 1988 and extending through May 31, 1989.

Textile products in Categories 342/642 which have been exported to the United States during the period May 27, 1988 through May 31, 1988 shall not be subject to this directive and are being deducted from charges for goods imported during the period October 1-31, 1988 (342—2,637 dozen; 642—2,786 dozen). As a result, you are directed to deduct 2,061 dozen from charges already made to Category 342 and charge 1,673 to Category 642. This includes complete charges for the import period October 1-31, 1988.

Beginning on February 1, 1989, U.S. Customs is directed to start signing the first section of the form ITA-370P for shipments of U.S. formed and cut parts in Categories 342/642 that are destined for Costa Rica and re-export to the United States during the period June 1, 1989 through May 31, 1990.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs

exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-1506 Filed 1-23-89; 8:45 am]

BILLING CODE 3510-DR-M

Amendment of Export Visa and Certification Requirements Under the Special Access Program for Certain Woven Apparel Products From Haiti

January 17, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending export visa and certification requirements.

EFFECTIVE DATE: January 27, 1989.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); President's February 20, 1986 announcement of the Special Access Program.

The Governments of the United States and Haiti reached agreement to amend the existing visa and certification requirements to extend coverage to woven apparel products assembled in Haiti from fabric parts formed and cut in the United States which are subject to bleaching, acid-washing, stone-washing or permapressing after assembly.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 52 FR 6053, published on February 27, 1987.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 17, 1989

Commissioner of Customs
Department of the Treasury
Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on February 19, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, establishing visa and certification requirements for certain cotton and man-made fiber textile products, produced, manufactured or assembled in Haiti.

Effective on January 27, 1989, you are directed to permit entry under the Special Access Program of woven apparel products assembled in Haiti from fabric parts formed and cut in the United States and then subjected to bleaching, acid-washing or permapressing in Haiti after assembly and exported to the United States on and after January 1, 1989.

These products shall be entered under the Special Access Program, even though they may not be classified under NTS number 9802.00.8010 of the Harmonized Tariff Schedules.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-1504 Filed 1-23-89; 8:45 am]

BILLING CODE 3510-DR-M

Amendment of Export Visa and Certification Requirements Under the Special Access Program for Certain Woven Apparel Products From Jamaica

January 17, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending export visa and certification requirements.

EFFECTIVE DATE: January 27, 1989.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and Jamaica reached agreement to amend the existing visa and certification requirements to extend coverage to woven apparel products assembled in Jamaica from fabric parts formed and cut in the United States which are subject to bleaching, acid-washing, stone-washing or permapressing after assembly.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. State Department, (202) 647-1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 52 FR 6049, published on February 27, 1987.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 17, 1989

Commissioner of Customs
Department of the Treasury
Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on February 19, 1987, as amended, by the Chairman, Committee for the Implementation of Textile Agreements, extablishing visa and certification requirements for certain cotton, man-made fiber and other vegetable fiber textiles and textile products, produced, manufactured or assembled in Jamaica.

Effective on January 27, 1989, you are directed to permit entry under the Special Access Program of woven apparel products assembled in Jamaica from fabric parts formed and cut in the United States and then subjected to bleaching, acid-washing, stone-washing or permapressing in Jamaica after assembly and exported to the United States on and after January 1, 1989.

These products shall be entered under the Special Access Program, even though they may not be classified under HTS number 9802.00.8010 of the Harmonized Tariff Schedules.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-1505 Filed 1-23-89; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP87-554-001]

Intent To Prepare an Environmental Assessment for the APEC Project and Request for Comments on Environmental Issues; Algonquin Gas Transmission Co. et al.

In the matter of: Algonquin Gas Transmission Company, Docket No. CP87-554-001; CNG Transmission Corporation, Docket No. CP87-5-002 *et al.*; Texas Eastern Transmission Corporation and CNG Transmission Corporation, Docket No. CP87-5-003 *et al.*; and Transcontinental Gas Pipe Line Corporation, Docket No. CP89-6-000.

January 19, 1989.

Summary

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) on the facilities proposed in the above-referenced dockets for the *Associated PennEast Customer Group (APEC) Project.*

Texas Eastern Transmission Corporation (Texas Eastern), CNG Transmission Corporation (CNG), Transcontinental Gas Pipe Line Corporation (Transco), and Algonquin Gas Transmission Company (Algonquin) are seeking certificates of public convenience and necessity under section 7(c) of the Natural Gas Act to construct and operate a total of 217.37 miles of replacement pipeline, 100.56 miles of pipeline loop, 4.98 miles of new pipeline, 27,990 horsepower (HP) of compression at 5 new compressor stations, an additional 40,600 HP at 4 existing compressor stations, 10 new injection/ withdrawal wells and 3 existing wells to be reworked at 2 existing storage fields. The proposed facilities would be used to transport natural gas through the Texas Eastern and CNG pipeline systems and interconnections with Transco and Algonquin to provide service to customers in Pennsylvania, New Jersey, New York, Massachusetts, Rhode Island, Connecticut, Maryland, and the District of Columbia.

By this notice the FERC staff is requesting comments on the scope of the analysis that should be conducted for the EA. All comments will be reviewed prior to publication of the EA and significant issues will be addressed. Comments should focus on potential environmental effects, alternatives to the proposal (including alternative routes), and measures to mitigate impact. Written comments must be submitted by February 21, 1989 in accordance with the instructions identified at the end of this notice.

Proposed Action

In the Commission's *Order Finding Additional Discrete Projects*, issued September 16, 1988, the pending applications encompassed by the APEC settlement proposal were determined to be discrete, and therefore can be processed independently from the consolidated Northeast open-season proceedings. In severing certain projects or portions of projects for this settlement, the Commission consolidated the pending applications into four new projects for processing as separate and discrete projects. Further, the Commission required the projects' sponsors to modify the consolidated applications to reflect all changes in facilities and services.

On October 3, 1988, Texas Eastern and CNG filed a joint application with the FERC in Docket No. CP87-5-003, *et al.* to: remove 215.01 miles of 20- and 24-inch-diameter pipeline and replace it with 36-inch-diameter pipeline along its mainline pipeline system in southern Pennsylvania; place 344.73 miles of 20- and 24-inch-diameter pipeline in idle service; construct 62.23 miles of 8- to 42-inch-diameter pipeline loops; construct 4.0 miles of new 36-inch-diameter pipeline; add 28,000 HP of compression to 3 existing compressor stations; and construct a new 4,000 HP compressor station. All of the above-identified facilities will be owned and operated by Texas Eastern except for 107.43 miles of the replacement pipeline which will be in joint ownership with CNG. The estimated cost of facilities for both Texas Eastern and CNG is $455,699,000. This project represents a major component of facilities formerly proposed by Texas Eastern and PennEast Gas Services Company in Docket No. CP87-92-000. On February 25, 1987, the Commission issued a "Notice of Intent to Prepare an Environmental Assessment for the Capacity Restoration and Expansion Program and Request for Comments on Environmental Issues," for facilities proposed in Docket Nos. CP87-92-000 and 001.

On October 3, 1988, CNG filed in Docket No. CP87-5-002 *et al.* to construct 7.6 miles of 30-inch-diameter pipeline loop, and 3 new compressor stations totaling 22,890 HP. CNG also proposed Phase I storage facilities previously filed in Docket No. CP87-314-000 to construct 10 new injection/ withdrawal wells in the Greenlick Storage Pool, to rework 3 existing wells at the Sharon Storage Pool, to construct 0.98 mile of new connecting pipeline, to replace 2.36 miles of connecting pipeline, and to construct a new 1,100 HP compressor station. Phase II and III storage services and facilities will be analyzed in a later EA. The estimated cost of facilities by CNG is $37,271,130.

On October 3, 1988, Algonquin filed in Docket No. CP87-554-001 to construct 4.3 miles of 12- to 20-inch-diameter pipeline loop in 4 segments. The proposed facilities for Algonquin are estimated to cost $8,031,000. The facilities are identical to those proposed in Docket No. CP87-554-000.

On October 3, 1988, Transco filed in Docket No. CP90-6-000 to construct 26.43 miles of 20- to 36-inch-diameter pipeline loop, and to install 12,600 HP of compression at an existing compressor station. The proposed facilities are estimated to cost $44.9 million. A portion of these facilities had been proposed in Docket No. CP88-177-000.

The purpose of the APEC expansion proposal is to provide long-term service that would commence in the 1989-90 winter season and meet the peak day and winter season requirements of the APEC customers. Under the APEC project, Texas Eastern would restore the capacity of its deteriorating Lines Nos. 1 and 2 to its certification capacity of 554,282 dekatherms per day (Dtd) under its Capacity Restoration Program. The application by Texas Eastern and CNG would provide CNG with capacity rights totaling 225,000 Dtd in the joint ownership of a segment of Texas Eastern's pipeline. This capacity would be utilized by CNG to provide 45,000 Dtd for seasonal sales to APEC customers, 100,000 Dtd for firm storage service of natural gas owned by the APEC and other customers, and a second phase sales of 80,000 Dtd to Washington Gas Light and Baltimore Gas and Electric. CNG would additionally provide seasonal sales of 170,000 Dtd of natural gas, transported by Transco to APEC customers. Transco would then render firm, long-term winter season transportation service of natural gas of up to 170,000 Dtd for 6 distribution customers.

Proposed Facilities

The general locations of the proposed pipeline and compression facilities are identified in figures 1 and 2.[1] Table 1

[1] Figures 1 and 2 are not being printed in the Federal Register, but copies are available from the Commission's Public Reference Branch at (202) 357-8118.

identifies the proposed pipeline loop segments, replacement pipeline, and new pipeline. The major construction features of the APEC project are the removal and replacement of pipeline segments on Texas Eastern's uncoated Lines Nos. 1 and 2 in southern Pennsylvania. Texas Eastern and CNG propose to abandon and remove 168.03 miles of Texas Eastern's 20-inch-diameter pipeline and 46.98 miles of its 24-inch-diameter pipeline, and to install 215.01 miles of 36-inch-diameter pipeline in the same pipeline trench. The deterioration of the unprotected Texas Eastern pipeline and encroachment of population has required a reduction in operational pipe pressures resulting in the loss of 157,745 Dtd certified throughput capacity in its system. No new permanent right-of-way would be required, although a 75-foot-wide temporary working right-of-way would be disturbed during construction. Some of this temporary right-of-way would extend beyond the edge of the previously disturbed right-of-way.

In addition, Texas Eastern, Algonquin and Transco propose to construct 17 pipeline loop segments from 8- to 42-inch diameter, totaling 100.50 miles. The pipeline loop segments would require a 75- to 100-foot-wide disturbed construction right-of-way with a 25- to 39-foot-wide permanent operational right-of-way. Texas Eastern proposes to construct one new 4.0-mile pipeline segment and CNG proposes to construct 10 new segments of gathering lines totaling 0.98 mile. New pipeline segments would require a 75- to 100-foot-wide disturbed construction right-of-way with 50 feet remaining as a permanent operational right-of-way.

Table 2 identifies the locations of the proposed new compressor station sites and the additions to existing compressor stations. Texas Eastern and CNG propose to construct 5 new compressor stations adjacent to their existing pipeline systems on 20- to 70-acre sites. Texas Eastern proposes to construct a 4,000 HP compressor station on approximately 20 acres adjacent to its pipeline and State Highway 188 near Waynesburg, in Greene County, Pennsylvania. CNG would construct three new compressor stations in Pennsylvania and one in West Virginia. In Pennsylvania, the Ardell Compressor Station would be located on a 37.5-acre site in the Moshannon State Forest, adjacent to Lincoln Highway, 6 miles east of the town of Medix Run, in Elk County; the Crayne Compressor Station would be located on a 22-acre site north of State Route 188 near the town of Waynesburg, in Green County; and the Stateline Compressor Station would be located near CNG's existing Sharon Storage Pool in Potter County. In West Virginia, the L.L. Tonkin Compressor Station would be located on a 70-acre site west of Middle Island Creek and State Road 18, near the town of West Union, in Doddridge County. Texas Eastern and Transco would expand capacity at four existing compressor stations with no additional land requirements. CNG would drill and connect 10 new storage injection/withdrawal wells at their existing Greenlick Storage Pool located in Clinton County, Pennsylvania and rework three existing storage wells at their existing Sharon Storage Pool located in Potter County, Pennsylvania. Both of the areas are dedicated to underground natural gas storage.

TABLE 1.—APEC PROJECT PIPELINE FACILITIES

Segment	Diameter	Miles	Right-of-way (feet)		County and State
			Construction	New permanent	
Texas Eastern/CNG:					
Crooksville	36" Loop	27.50	75	25	Perry, Muskingum, OH
Sarahsville to Berne	36" New/loop	4.00	75	25/50	Noble, Monroe, OH
Sarahsville	20" Loop	5.61	75	25	Monroe, OH
Berne	36" Loop	9.68	75	25	Marshall, WV Greene, PA
Wind Ridge	8" Loop	1.41	75	25	Greene, PA
Holbrook	36" Loop	12.53	75	25	Fayette, PA
Connelsville	36" Replacement	58.17	75	0	Fayette, Somerset, Bedford, PA
Bedford	36" Replacement	49.26	75	0	Bedford, Fulton, Franklin, PA
Chambersburg	36" Replacement	60.60	75	0	Franklin, Adams, York, Lancaster, PA
Marietta	36" Replacement	46.98	75	0	Lancaster, Chester, PA
Lambertville	42" Loop	5.50	75	25	Somerset, NJ
CNG:					
TL-474	30" Loop	7.60	80-100	39	Westmoreland, PA
Sharon Pool	4"-14" Replacement	2.36	75	35	Potter, PA
Greenlick Pool	6" New	0.98	75	35	Clinton, Potter, PA
Algonquin:					
G-4 Loop	16" Loop	1.30	75	20	Newport, RI
G-5 Loop	16" Loop	0.60	75	20	Bristol, MA
G-8 Loop	20" Loop	1.20	75	35	Plymouth, MA
1-4 Loop	12" Loop	1.20	75	20	Norfolk, MA
Transco:					
Leidy Line	30" Loop	5.15	75	25	Clinton, PA
Leidy Line	36" Loop	12.48	75	25	Monroe, PA
Caldwell Lateral	36" Loop	4.13	75	25	Morris, Essex, NJ
Caldwell Lateral	36" Loop	0.86	75	25	Morris, Essex, NJ

TABLE 2.—APEC PROJECT COMPRESSOR STATIONS AND OTHER FACILITIES

Location	New HP	Added HP	Size (acres)	County and State
Texas Eastern/CNG:				
Sarahsville		11,000		Noble, OH
Berne		6,000		Monroe, OH
Holbrook		11,000		Greene, PA

TABLE 2.—APEC PROJECT COMPRESSOR STATIONS AND OTHER FACILITIES—Continued

Location	New HP	Added HP	Size (acres)	County and State
Waynesburg	4,000		20	Greene, PA
CNG:				
L. L. Tonklin	4,390		70 [1]	Doddridge, WV
Crayne	5,900		22	Greene, PA
Ardell	12,600		37.5	Elk, PA
State Line	1,100		25	Potter, PA
Sharon Pool		([3])		Potter, PA
Greenlick Pool	([2])			Clinton, PA
Transco:				
Salladasburg		12,600		Lycoming, PA

[1] Site of a former compressor station.
[2] 10 new wells.
[3] Rework 3 wells.

Construction Timing and Techniques

The applicants propose to begin construction of facilities in the spring of 1989 and continue through November 1989. Texas Eastern would construct its compression and pipeline facilities west of the Connellsville Compressor Station in 1990. Pipeline construction would begin with the clearing and grading of a right-of-way approximately 75 to 100 feet wide to prepare a relatively level strip to accommodate construction equipment. Rotary-wheel ditching machines, backhoes, or rippers, would then excavate a trench deep enough to provide the minimum depth of cover, normally 36 inches, required by the U.S. Department of Transportation. Blasting would be required when areas of consolidated rock are encountered. Texas Eastern, CNG, and Algonquin would remove and conserve topsoil in all cropland areas in Ohio, West Virginia, Pennsylvania, Massachusetts, Rhode Island, and all areas in New Jersey. However, Transco proposes to segregate topsoil only in farmland actually under cultivation when required by landowners, if feasible and appropriate.

After trenching, pipe segments would be strung along the right-of-way, bent to conform to the contours of the trench, welded together, coated, and lowered into the trench. Backfilling of the trench would use previously excavated materials. Topsoil that was conserved would be replaced at its original horizon. The right-of-way would be restored to its original contours as much as practicable, and reseeded, limed, fertilized, and mulched in accordance with erosion and sedimentation control plans filed with appropriate state agencies and reviewed by the staff.

Comment Procedures

Based on a review of the comments to the February 25, 1987 notice, preliminary analyses of the applications for new facilities, and the environmental information provided by the applicants, the staff has identified several issues which will be specifically addressed in the EA. Comments are solicited on the following issues:

(1) Alternatives, route deviations, or special construction techniques in areas where residential development has encroached on the right-of-way of the existing pipeline segments proposed for replacement or looping;

(2) Alternatives to proposed compressors where new compressor station sites may create visual, noise or land use impacts;

(3) Mitigation, route deviations, and/or compensation in areas where the proposed replacement segments or other construction activities cross orchards; and

(4) Restoration of agricultural lands crossed by the proposed project.

Comments are also solicited on any additional topics of environmental concern to residents and others in the project area.

A copy of this notice and request for comments on environmental issues has been sent to Federal, state and local environmental agencies, parties in this proceeding, and the public. All counties in the project area, and all local jurisdictions which have experienced residential development adjacent to the pipelines or compressor stations, have been provided copies of detailed maps which identify the location of the proposed project in their respective areas. Comments on the scope of the EA should be filed as soon as possible but no later than February 21, 1989. All written comments must reference Docket No. CP87–5–001 and be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of the comments should also be sent to Mr. Chris Zerby, Project Manager, Federal Energy Regulatory Commission, Room 7312, 825 North Capitol Street, NE., Washington, DC 20426. Comments recommending that the FERC staff address specific environmental issues should be supported with a detailed explanation of the need to consider such issues.

The EA will be based on the staff's independent analysis of the proposal and, together with the comments received, will comprise part of the record to be considered by the Commission in this proceeding. The EA will be sent to all parties in this proceeding, to those providing comments in response to this notice, to Federal and state agencies, and to interested members of the public. The EA may be offered as evidentiary material if an evidentiary hearing is held in this proceeding. In the event that an evidentiary hearing is held, anyone not previously a party to this proceeding and wishing to present evidence on environmental or other matters must first file with the Commission a motion to intervene, pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

Additional information about the proposal, including detailed route maps for specific locations, is available from Mr. Chris Zerby, telephone (202) 357–9111.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–1556 Filed 1–23–89; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 7534–002]

Edwards Energy System, Inc.; Surrender of Preliminary Permit

January 18, 1989.

Take notice that Edwards Energy System, Inc., permittee for the proposed

Inglis Dam Hydro Project No. 7534, has requested that its preliminary permit be terminated. The permit was issued on July 31, 1986, and would have expired June 30, 1989. The project would have been located on the Withlacoochee River in Levy County, Florida. The permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The permittee filed the request on January 3, 1989, and the preliminary permit for Project No. 7534 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-1557 Filed 1-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-603-000]

CNG Transmission Corp.; Request Under Blanket Authorization

January 13, 1989.

Take notice that on January 12, 1989, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia, 26302-2450, filed in Docket No. CP89-603-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for various shippers under CNG's blanket certificate issued in Docket No. CP86-311-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CNG proposes to transport gas for shippers on an interruptible basis from various receipt points on its system to various interconnections between CNG and certain local distribution companies and pipelines. CNG lists for each shipper the receipt and delivery points, the maximum daily, average daily, and annual volumes, as well as the docket number related to the 120-day transportation services initiated by CNG (see attachment appendix).

Any person or the Commission's staff may, within 45 days after 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.

Lois D. Cashell,

Secretary.

Docket No.	Shipper customer	Commence date	Max. daily dt; Avg. daily dt; Est. annual dt	Receipt point	Delivery point or LDC
ST89-1692	Pentex Petroleum Inc	11-2-88	2,000 488 178,120	B	Transco
ST89-1694	North Atlantic Utilities, Inc	11-1-88	20,000 615 224,475	A	NFG
ST89-1690	Appalachian Gas Sales, Inc	11-1-88	1,000 220 80,300	B	PNG
ST89-1685	Chemtech Industries	11-1-88	3,000 300 109,500	C	NIMO
ST89-1686	Phoenix Diversified Ventures, Inc	11-9-88	5,000 1,364 497,860	B	NIMO

LDC or Delivery Points
PNG—Peoples Natural Gas Company.
NIMO—Niagara Mohawk Power Corp.
NFG—National Fuel Gas Supply Corp.
Transco—Transcontinental Gas Pipeline Corporation.
Receipt Points:
A—Various interconnects between Tennessee Gas Pipeline Company and CNG.
B—Various receipt points in WV/PA/NY.
C—Various interconnects between Texas Gas Transmission Corporation and CNG.

[FR Doc. 89-1548 Filed 1-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2436, Michigan]

Consumers Power Co.; Intent To File an Application for a New License

January 18, 1989.

Take notice that on December 16, 1988, Consumers Power Company, the existing licensee for the Foote Plant Hydroelectric Project No. 2436, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2436 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Au Sable River in Iosco County, Michigan. The principal works of the Foote Plant Porject include an earthfill dam, 40 feet high and 4000 feet long, with a 214-foot-long concrete spillway; a reservoir of 1,570 acres at water surface elevation 639.17 feet m.s.l.; a powerhouse at the dam with an installed capacity of 9,000 kW; a 46-kV transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained

from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 1945 West Parnall Road, Jackson, MI 49201, Attn: Mr. R.J. Ford, telephone (517) 788–0156.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Linwood A. Watson Jr.,

Acting Secretary.

[FR Doc. 89–1549 Filed 1–23–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G–16679–000]

Jupiter Corp. and Tennessee Gas Pipeline Co.; Proposed Settlement

January 18, 1989.

On January 9, 1989, Jupiter Industries, Inc., successor to Jupiter Corporation (Jupiter) filed a proposed settlement agreement (settlement) between Jupiter and Tennessee Gas Pipeline Company (Tennessee). The proposed settlement stems from a 1966 order by the Federal Power Commission [1] that required Jupiter to deposit in an escrow account a certain percentage of the Louisiana Severance Tax it had collected from Tennessee between 1958 and 1965, together with interest at 7 percent from the date of collection, and other monies refunded to Jupiter. The order directed that the amounts deposited in the escrow account "together with accumulated interest" be retained subject to further order in Docket No. G–16679 which would direct disposition of the funds. 35 FPC at 1095.

The escrow account has continued since 1966 and Jupiter and Tennessee desire to conclude this matter and terminate the escrow account. The proposed settlement provides that Jupiter will receive the funds in the escrow account and pay Tennessee the sum of one million nine hundred one thousand three hundred and ninety-eight dollares ($1,901,398.000). Tennessee agrees to waive any claim it might have to retain any of the escrow money it receives and to pass on such refunds to its customers by crediting such amounts to its Unrecovered Purchased Gas Cost Account. The settlement is subject to a final non-appealable Commission order (1) specifying the amount to be paid by Jupiter to Tennessee in satisfaction of Jupiter's escrow obligation; (2) limiting Tennessee's refund liability to its customers to the amounts specified to be paid by Jupiter to Tennessee and (3) approving the flow through to Tennessee's customers of the amounts received by Tennessee by crediting Tennessee's Unrecovered Purchased Gas Cost Account.

Any person desiring to be heard or to make any protest concerning the settlement should file a protest or petition to intervene in accordance with the requirements of Rules 211 or 214 of the Commission's rules of practice and procedure (18 CFR 385.211 or 385.214). All such filings should be made not later than 15 days following publication of this notice in the **Federal Register** and should be addressed to Federal Energy Regulatory Commission, 825 North Capitol St. NE., Washington, DC 20426. Protests will be considered by the Commission in determining the 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 petition to intervene in accordance with Rule 214.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–1555 Filed 1–23–89; 8:45 am]

BILLING CODE 6717-01-M

[1] *See* The Jupiter Corp. and Tennessee Gas Pipeline Co., 35 FPC 1091 (1966).

[Project No. 2506, Michigan]

Mead Corp.; Intent To File an Application for a New License

January 18, 1989.

Take notice that on December 20, 1988, Mead Corporation, Publishing Paper Division, the existing licensee for the Escanaba Hydroelectric Project No. 2506, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project No. 2506 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Escanaba River in Delta and Marquette Counties, Michigan. The principal works of the Escanaba Project include Boney Falls Dam (Dam No. 4), a reservoir of 170 acres, and a powerplant; Dam No. 3, a reservoir of 146 acres, and a powerplant; Dam No. 2 and a reservoir of 45 acres; and Dam No. 1, a reservoir of 125 acres, and a powerplant. The total installed capacity of the three powerplants is 9,200 kW, and each has transmission line connections and appurtenances.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE, Washington, DC 20426. The above information as described in the rule is now available from the licensee at County Road 426, Escanaba, MI 49829.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–1550 Filed 1–23–89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2334, Massachusetts]

Western Massachusetts Electric Co., Intent To File an Application for a New License

January 18, 1989.

Take notice that on December 20, 1988, Western Massachusetts Electric Company, the existing licensee for the Gardners Falls Hydroelectric Project No. 2334, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project No. 2334 was issued effective March 1, 1962, and will expire December 31, 1993.

The project is located on the Deerfield River in Franklin County, Massachusetts. The principal works of the Gardners Falls Project include a concrete gravity dam constructed to elevation 332.79 feet NGVD; a 1,300-foot-long power canal to the penstock headgates; a powerhouse with an installed capacity of 3,580 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the license is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street,

NE., Washington, DC 20426. The above information as described in the rule will be available from the licensee after January 31, 1989, at WMECO Hadley Service Center, 55 Russell Street, Hadley, MA 01035.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–1551 Filed 1–23–89; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2486, Wisconsin]

Wisconsin Electric Power Co.; Intent To File an Application for a New License

January 18, 1989.

Take notice that on December 19, 1988, Wisconsin Electric Power Company, the existing licensee for the Pine Hydroelectric Project No. 2486, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project No. 2486 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Pine River in Florence County, Wisconsin. The principal works of the Pine Project include a 146-foot-long concrete gravity dam, a 124-foot-long concrete spillway, and a 358-foot-long earth dike; a reservoir of 170 acres; a 1,530-foot-long channel to two steal penstocks; a powerhouse with an installed capacity of 3,600 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426 The above information as described in the rule is now available from the licensee at Real Estate Department, Public Service Building Room 452, 231 West Michigan Street, Milwaukee, WI 53201.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–1552 Filed 1–23–89; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2373, Illinois]

Wisconsin Power & Light Co.; Intent To File an Application for a New License

January 18, 1989.

Take notice that on December 27, 1988, Wisconsin Power & Light Company, the existing licensee for the Rockton Hydroelectric Project No. 2373, filed a notice of intent to file an application for a new license pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project No. 2373 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Rock River in Winnebago County, Illinois. The principal works of the Rockton Project include a rock-filled, concrete-capped diversion dam; a control structure with five Taintor gates at the head of a power canal; a powerhouse with an installed capacity of 1,100 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at the Valley Bank Building, 6th floor, 222 West Washington Avenue, Madison, WI 53701.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–1553 Filed 1–23–89; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2546, Wisconsin]

Wisconsin Public Service Corp.; Intent To File an Application for a New License

January 18, 1989.

Take notice that on December 15, 1988, Wisconsin Public Service Corporation, the existing licensee for the Sandstone Rapids Hydroelectric Project No. 2546, filed a notice of intent to file an applicaiton for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project No. 2546 was issued effective May 1, 1965, and expires December 31, 1993.

The project is located on the Peshtigo River in Marinette County, Wisconsin. The principal works of the Sandstone Rapids Project include a 46-foot-high, 349-foot-long concrete dam and spillway section and a 28-foot-high, 420-foot-long earthfill section; a reservoir of 150 acres at water surface elevation 724.1 feet NGVD datum; a powerhouse with an installed capacity of 3,840 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 700 North Adams Street, Green Bay, WI 54307–9002.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–1554 Filed 1–23–89; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3508–1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collection and their expected cost and burden; where appropriate, they include the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202 382–2740).

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Notification of Hazardous Waste Activity (EPA ICR #0261; OMB #2050–0028). This is a renewal of a currently approved collection.

Abstract: The notification form contains owner and operator information for facilities that handle hazardous wastes. An owner or operator must submit this form to EPA prior to handling hazardous wastes or prior to handling new hazardous waste streams. EPA uses this information to maintain an inventory of all hazardous waste activities throughout the nation.

Burden Statement: The estimated average public reporting burden for this collection of information is 3 hours per respondent per year. This estimate includes all aspects of the information collection including time for reviewing instructions, gathering the data needed, and submitting the notification form.

Respondents: Owners and operators of facilities that handle hazardous wastes.

Estimated No. of Respondents: 850.

Estimated Total Annual Burden on Respondents: 2550.

Frequency of Collection: One time.

Title: RCRA Hazardous Waste Permit Application Part A (ICR #0262; OMB #2050–0034). This is a renewal of a currently approved collection.

Abstract: The RCRA permit application is used by owners and operators of hazardous waste treatment, storage, and disposal facilities in applying for permits as required by RCRA Section 3005. The permit application is also used to define the processes and the wastes that can be managed at the facility in interim status. The application must be revised if certain changes are made to an interim status facility.

Burden Statement: The estimated average public reporting burden for this collection of information is 7.5 hours per respondent. This estimate includes all aspects of the information collection including time for reviewing instructions, gathering and maintaining the data needed, and submitting the forms.

Respondents: Owners and operators of facilities that handle hazardous waste.

Estimated No. of Respondents: 765.

Estimated Total Annual Burden on Respondents: 5745.

Frequency of Collection: On occasion.

Title: Accidental Release Information Program (EPA ICR #1331; OMB #2050–0028). This is a renewal of a currently approved collection.

Abstract: The Accidental Release Information Program (ARIP) applies trigger criteria (death/injury, large releases, and frequent releases of chemicals above the RQ) to select certain hazardous substance releases reported to the National Response Center. Facilities responsible for the selected releases are required to complete and return a questionnaire which asks for more detailed information on the causes, consequences and prevention practices in place at the time of the releases.

Burden Statement: The estimated public reporting burden for this collection of information is 27 hours per respondent. This estimate includes time to read the instructions, gather existing information, and prepare and submit the final questionnaire.

Respondents: Owners/operators of facilities with accidental releases.

Estimated No. of Respondents: 1425.

Estimated Total Annual Burden on Respondents: 38,475 hours.

Frequency of Collection: On occasion.

Public comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, must be received by January 25, 1989.

Office of Administration and Resource Management

Title: Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs (ICR #1245; OMB #2030–0021). This is a reinstatement of a previously approved collection.

Abstract: State and local governments receiving EPA assistance will collect information concerning needs for replacement housing and replacement business locations from persons whose real property is being acquired or who are being relocated. Information will be collected as acquisition and relocation progresses, to ensure compliance with Pub. L. 91–646.

Burden Statement: The estimated average public reporting and recordkeeping burden for this collection of information is between 1 and 2 hours per respondent, per year. This estimate includes all aspects of the information collection, including time for reviewing instructions, gathering and maintaining the data needed, carrying out and analyzing tests, and submitting applications.

Respondents: Persons whose real property is acquired and/or relocated from dwellings, businesses, or farms as a result of an EPA award of financial assistance to a State or local government.

Estimate No. of Respondents: 200.

Estimated Total Annual Burden on Respondents: 300.

Frequency of Collection: 1 response per year.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street, SW., Washington, DC 20460.

and

Marcus Peacock, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, (Telephone (202) 395–3084).

OMB Responses to Agency PRA Clearance Requests

EPA ICR #1135; New Sources Performance Standards for the Magnetic Tape Manufacturing Industry; was approved 9/23/88; OMB #2060–0170; expires 9/30/91.

EPA ICR #1051; NSPS—Portland Cement Plant Monitoring Provisions; was approved 12/9/88; OMB #2060–0025; expires 12/31/91.

EPA ICR #0597; Amendment to Existing ICR 2070–0024 for Tolerance Petitions and New Inert Ingredients; was approved 12/12/88; OMB #2070–0024; expires 5/31/89.

EPA ICR #0193; NESHAP for Beryllium (Subpart C)—Information Requirements; was approved 12/16/88; expires 12/31/91; OMB #2060–0092.

EPA ICR #1058; NSPS Municipal Incinerator Reporting and Recordkeeping Provisions; was approved 12/16/88; expires 12/31/91; OMB #2060–0040.

EPA ICR #0801.06; Uniform Hazardous Waste Manifest; was approved 12/16/88; expires 6/30/89; OMB #2050–0039.

Dated: January 12, 1989.

David Schwarz,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 89-1482 Filed 1-23-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3508-2; PSD-FL-007]

PSD Permit Modification for the Florida Power Corp.; Citrus County, FL

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that a modification to the Prevention of Significant Deterioration (PSD) permit (PSD-FL-007) was issued to Florida Power Corporation, Citrus County, Florida on November 30, 1988. This modification became effective on November 30, 1988. The PSD permit was modified for the purpose of allowing the company to make changes to the two natural draft cooling towers serving units 4 and 5, and to remove the natural draft cooling tower salt drift limits from the National Pollutant Discharge Elimination System (NPDES) permit No. FL 0036366 issued on April 3, 1981, and reissued on June 26, 1986 and incorporate these changes into the PSD permit.

DATE: This action is effective as of November 30, 1988, the date of issuance of the PSD permit modification.

ADDRESSES: Copies of the permit application, preliminary determination, and final determination and modified PSD permit are available for public inspection upon request at the following locations:

U.S. Environmental Protection Agency, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

Bureau of Air Quality Management, Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400.

FOR FURTHER INFORMATION CONTACT: Lewis Nagler or Wayne Aronson of the EPA Region IV, Air Programs Branch at the Atlanta address given above, telephone (404) 347-2864; (FTS) 257-2864.

SUPPLEMENTARY INFORMATION: On May 11, 1988, the Florida Power Corporation submitted an application to EPA for a permit modification to their Crystal River Plant located in Citrus County, Florida. Specifically, the permit modification allows the company to make changes to the natural draft cooling towers serving units 4 and 5. In addition, this modification removes the salt drift limits from the NPDES permit and incorporates them into the PSD permit. The preliminary determination was made by the EPA Region IV Air Programs Branch on October 5, 1988. Comment letters were received from Florida Power Corporation, Hollins Corporation and the Florida Department of Environmental Regulations (DER) during the public comment period. Subsequent to the public comment period, Florida Power Corporation and Hollins Corporation withdrew their comments submitted regarding Public Notice No. 88 FL149. The Florida DER concurred with the BACT analysis and had no other comments regarding the preliminary determination and draft permit.

On November 30, 1988 EPA prepared the Final Determination and Permit Conditions. These conditions require that each of the two natural draft cooling towers not exceed a total suspended particulate emissions rate of 175 lb/hr and that each tower be tested once every five years. Unit 4 is to be tested initially no later than Februasry 17, 1989, and Unit 5 is to be tested by May 1, 1992. Also, the permittee is required to continue salt drift monitoring and expand and modify the existing monitoring program.

The modification to the PSD permit (PSD-FL-007) was issued on November 30, 1988, and became effective on the date of issuance pursuant to § 124.15(b)(3) of the Consolidated Permit Regulations (45 FR 33290, May 19, 1980). The effective date of this permit constitutes final agency action under 40 CFR 124.19(f)(1) and section 307 of the Clean Air Act, for purpose of judicial review. Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 27, 1989. This action may not be challenged later in proceedings to enforce its requirements (see § 307(b)(2)).

Date: January 10, 1989.

Lee A. DeHihns, III,

Acting Regional Administrator

[FR Doc. 88-1483 Filed 1-23-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Existing Collection in use without an OMB Control Number.

Title: Behavioral Analysis Survey in Support of Hurricane Evacuation Studies.

Abstract: The information collected from the bahavioral analysis survey will be used to develop reliable data concerning the expected evacuation response of the public vulnerable to hurricane hazards. The data is needed to estimate the time necessary to evacuate the public in the face of various hurricane scenarios.

Type of Respondents: Individuals or households.

Estimate of Total Annual Reporting and Recordkeeping burden: 600.

Number of Repsondents: 3,600.

Estimated Average burden Hours Per Response: 17.

Frequency of Response: One-Time.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235, NEOB, Washington, DC 20503 within two weeks of this notice.

Date: January 11, 1989.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 89-1485 Filed 1-23-89; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL HOME LOAN BANK BOARD

[No. 89-5]

Applications for Unlisted Trading Privileges and Opportunity for Hearing; Midwest Stock Exchange, Inc.

Date: January 9, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice of application.

SUMMARY: The Midwest Stock Exchange, Inc. has filed, pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, applications ("Applications") with the Federal Home

Loan Bank Board ("Board") for unlisted trading privileges in the following securities:

The Dime Savings Bank of New York, Brooklyn, New York (FHLBB No. 7837), Common Stock, $1.00 Par Value

Home Owners Federal Savings and Loan Association, Boston, Massaschusetts (FHLBB No. 3696), Common Stock, $.01 Par Value.

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Comments: Any interested person may inspect the Applications at the Board, and, within 15 days of publication of this notice in the **Federal Register**, submit to the Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, written data, views and arguments bearing upon whether the extensions of unlisted trading privileges pursuant to the Applications are consistent with the maintenance of fair and orderly markets and the protection of investors. Following this opportunity for hearing, the Board will approve the Applications after the date mentioned above if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to the Applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

FOR FURTHER INFORMATION CONTACT: John P. Harootunian, Assistant General Counsel for Securities Policy, Corporate and Securities Division, Office of General Counsel, at (202) 377–6415 or at the above address.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–1471 Filed 1–23–89; 8:45 am]

BILLING CODE 6720–01–M

[No. 89–4]

Approval of Applications for Unlisted Trading Privileges; Philadelphia Stock Exchange

Date: January 9, 1989.

AGENCY: Federal Home Loan Board.

ACTION: Notice of application.

SUMMARY: The Philadelphia Stock Exchange filed with the Federal Home Loan Bank ("Board") applications ("Applications"), pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f–1 (17 CFR 240.12f–1) thereunder, for unlisted trading privileges in the following securities which are listed on one or more national securities exchanges:

Downey Savings and Loan Association, Costa Mesa, California (FHLBB No. 6189), Comon Stock, No Par Value

Mercury Savings and Loan Association, Huntington Beach, California (FHLBB No. 6649), Common Stock, $1.00 Par Value.

Notice of the Applications and opportunity for hearing was published in the **Federal Register** on July 7, 1988, and interested persons were invited to submit written data, views and arguments within 15 days. *See* Board Resolution No. 88–539, dated June 29, 1988, 53 FR 25541 (July 7, 1988). The Board received no comments with respect to the Applications. Notice is hereby given that the Office of General Counsel for the Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the Applications for unlisted trading privileges in these securities on December 26, 1988.

SUPPLEMENTARY INFORMATION: The Board finds that the approval of the Applications for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Securities and Exchange Commission ("Commission") pursuant to Section 6 of the Act, the Philadelphia Stock Exchange is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under sections 17 and 19 of the Act and the rules and regulations thereunder. Transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3–1 under the Act. 17 CFR 240Aa3–1. The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the Philadelphia Stock Exchange are executed at prices which are reasonably related to those occurring in other markets. Further, the approval of the Applications will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system. Finally, the Board received no comments indicating that the granting of the Applications would not be consistent with the maintenance of fair and orderly markets and the protection of investors.

Accordingly, pursuant to section 12(f)(1)(B) of the Act, the Office of General Counsel for the Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the Applications for unlisted trading privileges in the above named securities on December 26, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–1470 Filed 1–23–89; 8:45 am]

BILLING CODE 6720–01–M

[No. AC–761; FHLBB No. 2690]

First Federal Savings and Loan Association of Russellville, Russellville, KY; Final Action; Approval of Conversion Application

Date: January 11, 1989.

Notice is hereby given that on December 13, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of Russellville, Russellville, Kentucky for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Cincinnati, 2000 Atrium Two, 221 E. 4th Street, Cincinnati, Ohio 45202.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc 89–1462 Filed 1–23–89; 8:45 am]

BILLING CODE 6720–01–M

[No. AC–763]

Fountain Federal Savings Bank, Bloomington, IN; Final Action; Approval of Conversion and Holding Company Applications

Date: January 11, 1989.

Notice is hereby given that on December 23, 1988, the General Counsel, and the Executive Director of the Office of Regulatory Activities (or their respective designees), acting pursuant to delegated authority, approved the application of Fountain Federal Savings Bank, Bloomington, Indiana (the "Association") for permission to convert to the stock form of organization pursuant to a voluntary supervisory

conversion, the applicaiton of Greencastle Federal Savings Bank, Greencastle, Indiana, to merge with the Association.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-1463 Filed 1-23-89; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-762]

Glen Ridge Savings and Loan Association, Glen Ridge, NJ; Final Action; Approval of Conversion and Holding Company Application

Date: January 11, 1988.

Notice is hereby given that on December 27, 1988, the General Counsel, and the Executive Director of the Office of Regulatory Activities (or their respective designees), acting pursuant to delegated authority, approved the application of Glen Ridge Savings and Loan Association, Glen Ridge, New Jersey for permission to convert to the stock form of organization pursuant to a voluntary supervisory conversion, and the application of Collective Bancorp, Inc., Egg Harbor City, New Jersey, to acquire control of Glen Ridge Savings and Loan Association.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-1464 Filed 1-23-89; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-762; FHLBB No. 1239]

Midland Financial Savings and Loan Association, Des Moines, IA; Final Action; Approval of Conversion Application

Date: January 11, 1989.

Notice is hereby given that on December 30, 1988, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to authority, delegated to the General Counsel or his designee, approved the application of Midland Financial Savings and Loan Association, Des Moines, Iowa, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent, at the Federal Home Loan Bank of Des Moines, 907 Walnut Street, Des Moines, Iowa 50309.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-1465 Filed 1-23-89; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-760]

United Federal Savings Bank, State College, PA; Final Action; Approval of Conversion Application

Date: January 11, 1989.

Notice is hereby given that on January 6, 1989, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of United Federal Savings Bank, State College, Pennsylvania for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Pittsburgh, One Riverfront Center, 20 Stanvix Street, Pittsburgh, Pennsylvania 15222-4893.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-1466 Filed 1-23-89; 8:45 am]
BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Request for Additional Information

Agreement No.: 203-011223
Title: Transpacific Stabilization Agreement
Parties: American President Lines, Ltd.; Evergreen Marine Corp. (Taiwan) Ltd.; Hanjin Shipping Co., Ltd.; Hyundai Merchant Marine Co., Ltd.; Kawsaki Kisen Kaisha, Ltd.; A.P. Moller-Maersk Line Mitsui O.S.K. Lines, Ltd.; Neptune Orient Lines, Ltd.; Nippon Liner System, Ltd.; Nippon Yusen Kaisha Orient Overseas Container Line, Inc.; Sea-Land Service, Inc.; Yangming Marine Transport Corp.
Synopsis: Notice is hereby given that the Federal Maritime Commission, pursuant to section 6(d) of the Shipping Act of 1984 (46 U.S.C. app. 1701-1720) ("the Act"), has requested additional information from the parties to the Agreement in order to complete the statutory review of Agreement No. 203-011223 as required by the Act. This action extends the review period under section 6(c) of the Act.

By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
Dated: January 18, 1989.
[FR Doc. 89-1507 Filed 1-23-89; 8:45 am]
BILLING CODE 6730-01-M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212-011227
Title: The NYK/K Line/NLS Rationalization Agreement in the Far East (including Japan)-Puerto Rico/Virgin Islands Trades
Parties: Nippon Yusen Kaisha; Kawasaki Kisen Kaisha, Ltd.; Nippon Liner System, Ltd.
Synopsis: The proposed Agreement would authorize the parties to charter space, rationalize sailings, and pool revenues on cargo carried by the parties in the trades from ports and points in the Far East (including Japan) to ports and points in Puerto Rico and the U.S. Virgin Islands.

By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
Dated: January 18, 1989.
[FR Doc. 89-1508 Filed 1-23-89; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; Gene A. Baughman, et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and section 225.41 of the Board's Regulation

Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 3, 1989.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Gene A. Baughman*, Paulding, Ohio; to acquire an additional 0.55 percent of the voting shares of Oakwood Deposit Bank, Oakwood, Ohio.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303: .

1. *Dr. Salvador Bonilla-Sosa and Salvador Bonilla-Mathe*, both of Miami, Florida, to acquire up to 29.9 percent of the voting shares of Gulf Bank, Miami, Florida.

2. *S.J. St. Martin, M.D.*, LaPlace, Louisiana; to acquire up to 14.41 percent of the voting shares of LaPlace Bancshares, Inc., LaPlace, Louisiana, and thereby indirectly acquire Bank of LaPlace of St. John the Baptist Parish, LaPlace, Louisiana.

3. *Harold V. Willis*, Manchester, Tennessee; to acquire up to 13.7 percent of the voting shares of Peoples Bancorp, Inc., Manchester, Tennessee, and thereby indirectly acquire Peoples Bank & Trust Company, Manchester, Tennessee.

Board of Governors of the Federal Reserve System, January 13, 1989.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 89-1433 Filed 1-23-89; 8:45 am]

BILLING CODE 6210-01-M

Drake-Lyman Bancshares, Inc.; Application to Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 10, 1989.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoeing, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Drake-Lyman Bancshares, Inc.*, Sheridan, Wyoming; to engage *de novo* in selling any type of insurance except life insurance or annuities unless any life insurance is credit related as permitted bank holding companies with total consolidated assets of less than $50 million under § 225.25(b)(8)(vi) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 17, 1989.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 89-1434 Filed 1-23-89; 8:45 am]

BILLING CODE 6210-01-M

First State Bancorp, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 10, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First State Bancorp, Inc.*, Harwood Heights, Illinois; to acquire 100 percent of the voting shares of PB State Bank, Harwood Heights, Illinois, a *de novo* bank.

2. *Union Bancorporation*, Defiance, Iowa; to beome a bank holding company by acquiring 99.7 percent of the voting shares of Defiance State Bank, Defiance, Iowa.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Banks, Inc.*, St. Louis, Missouri; to acquire at least 80.42 percent of the voting shares of The Salem National Bank, Salem, Illinois.

2. *South Gasconade Investment Corporation*, Owensville, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Eagle Bank of Gasconade County, Owensville, Missouri.

Board of Governors of the Federal Reserve System, January 17, 1989.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 89-1435 Filed 1-23-89; 8:45 am]

BILLING CODE 6210-01-M

Agency Forms Under Review

January 13, 1989.

Background

Notice is hereby given of the submission of proposed information collection(s) to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR Part 1320). A copy of the proposed information collection(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the OMB desk officer listed in the notice. OMB's usual practice is not to take any action on a proposed information collection until at least ten working days after notice in the **Federal Register**, but occasionally the public interest requires more rapid action.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Frederick Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822).

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7340)

Request for OMB approval to revise the following report

1. *Report Title:* Reports of Condition and Income.

Agency Form Number: FFIEC 031–034.

OMB Docket Number: 7100–0036.

Frequency: Quarterly.

Reporters: State member banks.

Annual Reporting Hours: 149,900.

Estimated Average Hours per Response: 34.667.

Number of Respondents: 1,081.

Small businesses are affected.

General Description of Report: This information collection is mandatory (12 U.S.C. 324) and is given partial confidential treatment.

State member banks are required to file detailed schedules of assets, liabilities, and capital accounts in the form of a condition report and summary statement; detailed schedule of operating income and expense, sources and disposition of income, and changes in equity capital in the form of an income statement; and a variety of supporting schedules. Data are used for supervisory and monetary policy purposes. The proposed revisions for March 1989 affect several Call Report schedules and are being made primarily to aid the banking agencies in identifying and monitoring risks for which adequate data have not been available. These risks emanate in part from the ongoing expansion of bank powers, especially at the state level, which allow banks to make investments that were previously not permissible. Memorandum items covering an area of off-balance sheet exposure for which no data are currently collected would be added at this time to fill the void prior to the anticipated adoption of other refinements to off-balance sheet item reporting in conjunction with risk-based capital. If approved, the proposed revisions would be effective as of the March 31, 1989, report date.

Board of Governors of the Federal Reserve System, January 13, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–1439 Filed 1–23–89; 8:45 am]

BILLING CODE 6210–01–M

Madison Bancshares Group, Ltd., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 9, 1989.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Madison Bancshares Group, Ltd.*, Blue Bell, Pennsylvania.; to become a bank holding company by acquiring 100 percent of the voting shares of the Madison Bank, in organization, Blue Bell, Pennsylvania, a *de novo* bank.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Peoples Community Bancorporation, Inc.*, Bloomsdale, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Bloomsdale, Bloomsdale, Missouri.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Hansen Minnesota, Inc.*, Freeborn, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank, Freeborn, Minnesota.

Board of Governors of the Federal Reserve System, January 13, 1989.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 89–1436 Filed 1–23–89; 8:45 am]

BILLING CODE 6210–01–M

Northern Trust Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition,

conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 9, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Northern Trust Corporation*, Chicago, Illinois; to acquire IDA Asset Management Systems, Inc., San Jose, California, and thereby engage in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 13, 1989.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 89-1437 Filed 1-23-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies; W.E. Schreiber

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 7, 1989.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minmneapolis, Minnesota 55480:

1. *W.E. Schreiber*, Bigfork, Montana; to acquire 1.48 percent of the voting shares of Flathead Holding Company of Bigfork, Bigfork, Montana, and thereby indirectly acquire Flathead Bank of Bigfork, Bigfork, Montana.

Board of Governors of the Federal Reserve System, January 17, 1989.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 89-1438 Filed 1-23-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

New Techniques Small Grants for Alcohol Researchers

AGENCY: National Institute on Alcohol Abuse and Alcoholism.

ACTION: Notice of limited competition.

SUMMARY: The National Institute on Alcohol Abuse and Alcoholism (NIAAA) announces a request for applications entitled, "New Techniques Small Grants for Alcohol Researchers." Due to the rapid emergence of new research technology, the ability of some established investigators in the alcohol community to pursue new directions has been impaired by the lack of experience in the most current technology. The purpose of this small grant program is to provide an opportunity for established alcohol researchers to acquire personal expertise in the utilization of specialized techniques applicable to alcoholism research. The award is for 3 to 6 months and a maximum of $35,000. This is a one time announcement. About 5 to 10 awards will be made in FY 1989. The awards will be made under the authority of sections 301 and 510 of the Public Health Service Act (42 U.S.C. 241 and 290bb). The Catalog of Federal Domestic Assistance Number is 13.273.

NIAAA is limiting competition to current grantees and investigators who have had NIAAA grants within the past 3 years. This restriction will enable active alcohol researchers to update their research skills and will increase the likelihood of the techniques being applied to alcohol research.

CONTACT: Additional information may be obtained from: Helen M. Chao, Ph.D., Chief, Biomedical Research Branch, Division of Basic Research, National Institute on Alcohol Abuse and Alcoholism, Parklawn Building, Room 14C-20, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4223.

Joseph R. Leone,

Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 89-1524 Filed 1-23-89; 8:45 am]

BILLING CODE 4160-20-M

Health Resources and Services Administration

Pediatric Acquired Immune Deficiency Syndrome (AIDS) Health Care Demonstration Projects

AGENCY: Health Resources and Services Administration.

ACTION: Notice of extension of application due date.

SUMMARY: This notice extends the application due date for Pediatric Acquired Immune Deficiency Syndrome Health Care Demonstration Project grants published in the **Federal Register**, December 19, 1988 (53 FR 51011). The application due date is extended from February 22, 1989 to March 22, 1989. The address where completed applications are to be mailed remains the same as the address published in the December 19, 1988 **Federal Register** (53 FR 51011).

Dated: January 17, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-1445 Filed 1-23-89; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

Division of Research Resources; Meeting of the General Clinical Research Centers Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the General Clinical Research Centers (GCRC) Committee, Division of Research Resources (DRR), February 21-22, 1989, at the National Institutes of Health, Conference Room 6, Building 31, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public on February 21 from 8:30 a.m. to 9:30 a.m. during which time there will be comments by the Acting Director, DRR; and an update on the General Clinical Research Centers Program by Dr. Judith L. Vaitukaitis, Director, GCRC Program, DRR. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to

the public on February 21 from 9:30 a.m. to 6:00 p.m., and on February 22 from 8:00 a.m. to approximately 4:00 p.m., for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Michael Fluharty, Public Affairs Specialist, DRR, NIH, Westwood Building, Room 857, 5333 Westbard Avenue, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of the meeting, and a roster of the committee members upon request. Dr. Bela J. Gulyas, Executive Secretary, General Clinical Research Centers Committee, (301) 496–6595, will furnish program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.333, Clinical Research, National Institutes of Health)

Dated: January 12, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–1458 Filed 1–23–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Notice of Meeting of Allergy and Clinical Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Allergy and Clinical Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee, National Institute of Allergy and Infectious Diseases, on February 21–22, 1989, at the Hyatt Regency Bethesda Hotel, One Bethesda Metro Center, Bethesda, Maryland 20814.

The meeting will be open to the public from 8:30 a.m. to 9:30 a.m. on February 21, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting of the Allergy and Clinical Immunology Subcommittee will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9:30 a.m. until recess on February 21, and from 8:30 a.m. until adjournment on February 22. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Kamal K. Mittal, Executive Secretary, Allergy, Immunolgoy and Transplantation Research Committee, NIAID, NIH, Westwood Building, Room 3A07, Bethesda, Maryland 20892, telephone (301–496–3528), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: January 12, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–1454 Filed 1–23–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Notice of Meeting of Microbiology and Infectious Diseases Research Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Microbiology and Infectious Diseases Research Committee, National Institute of Allergy and Infectious Diseases, on February 15, 16, and 17, 1989, in Building 31C, Conference Room 9, at the National Institutes of Health, Bethesda, Maryland 20892.

The meeting will be open to the public from 8:30 a.m. to 10:30 a.m. on February 15, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting of the Microbiology and Infectious Diseases Research Committee will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 10:30 a.m. until recess on February 15, from 8:30 a.m. until recess on February 16, and from 8:30 a.m. until adjournment on February 17. These applications, proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Olivia T. Preble, Executive Secretary, Microbiology and Infectious Diseases Research Committee, NIAID, NIH, Westwood Building, Room 3A10, Bethesda, Maryland 20892, telephone (301–496–8208), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: January 12, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–1455 Filed 1–23–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Meeting of Transplantation Biology and Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Transplantion Biology and Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee, National Institute of Allergy and Infectious Diseases, on March 1, 1989, in Conference Room 9, Building 31C, at the National Institutes of Health, Bethesda, Maryland 20892.

The meeting will be open to the public from 8:30 a.m. to 9 a.m. on March 1, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in secs. 552b(c)(4) and 552(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting of the Transplantation Biology and Immunology Subcommittee

will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9 a.m. on March 1 until adjournment. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Kamal K. Mittal, Executive Secretary, Allergy, Immunology and Transplantation Committee, NIAID, HIH, Westwood Building, Room 3A07, Bethesda, Maryland 20892, telephone (301–496–3528), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: January 12, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–1456 Filed 1–23–89; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the following study sections for January through March 1989, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–496–7534 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each study section. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the executive secretary to confirm the exact date, time and location. All times are a.m. unless otherwise specified.

Study section	January–March 1989 meetings	Time	Location
Allergy & Immunology, Dr. Eugene Zimmerman, Rm. 320, Tel. 301–496–7380	Feb. 23–25	8:30	Hyatt Regency, Bethesda, MD.
Bacteriology & Mycology–1, Dr. Timothy J. Henry, Rm. 304, Tel. 301–496–7340	Feb. 15–17	8:30	University Center Hospital, Gainesville, FL.
Bacteriology & Mycology–2, Dr. William Branche, Jr., Rm. 306, Tel. 301–496–7682	Feb. 15–17	8:30	University Center Hospital, Gainesville, FL.
Behavioral Medicine, Dr. Joan Rittenhouse, Rm. 438, Tel. 301–496–7109	Feb. 8–10	9:00	Omni Georgetown Hotel, Washington, DC.
Biochemical Endocrinology, Dr. Michael Knecht, Rm. 226, Tel. 301–496–7430	Feb. 14–16	8:30	Hyatt Regency, Bethesda, MD.
Biochemistry–1, Dr. Adolphus P. Toliver, Rm. 318B, Tel. 301–496–7516	Feb. 22–25	8:30	Crowne Plaza, Rockville, MD.
Biochemistry–2, Dr. Alex Liacouras, Rm. 318A, Tel. 301–496–7517	Feb. 22–24	8:30	Holiday Inn, Chevy Chase, MD.
Bio-Organic & Natural Products Chemistry, Dr. Michael Rogers, Rm. 5, Tel. 301–496–7107.	Feb. 23–25	9:00	Holiday Inn, Georgetown, DC.
Biophysical Chemistry, Dr. John B. Wolff, Rm. 236B, Tel. 301–496–7070	Feb. 9–11	8:30	NIH, Room 6, Bldg. 31C, Bethesda, MD.
Bio-Psychology, Dr. A. Keith Murray, Rm. 220, Tel. 301–496–7058	Feb. 6–9	8:30	The Savoy Suites Hotel, Washington, DC.
Cardiovascular & Pulmonary, Dr. Gordon L. Johnson, Rm. 439A, Tel. 301–496–7316	Mar. 1–3	8:00	Crowne Plaza, Rockville, MD.
Cardiovascular & Renal, Dr. Rosemary Morris, Rm. 321, Tel. 301–496–7901	Feb. 28–Mar. 2	8:30	Holiday Inn, Georgetown, DC.
Cellular Biology and Physiology–1, Dr. Gerald Greenhouse, Rm. 336, Tel. 301–496–7396.	Feb. 22–24	7:00 p.m.	Conference Rm. B119, Federal Building, Bethesda, MD.
Cellular Biology and Physiology–2, Dr. Gerhard Ehrenspeck, Rm. 304, Tel. 301–496–7681.	Feb. 20–22	8:30	Holiday Inn, Georgetown, DC.
Chemical Pathology, Dr. Edmund Copeland, Rm. 353, Tel. 301–496–7078	Feb. 22–25	8:00	Hacienda Del Sol, Tucson, AZ.
Diagnostic Radiology, Dr. Catharine Wingate, Rm. 219B, Tel. 301–496–7650	Mar. 1–3	8:30	Omni Georgetown Hotel, Washington, DC.
Endocrinology, Dr. Harry Brodie, Rm. 333, Tel. 301–496–7346	Feb. 6–8	8:00	Hyatt Regency, Bethesda, MD.
Epidemiology & Disease, Control–1, Dr. Sooja Kim, Rm. 203C, Tel. 301–496–7246	Feb. 8–10	8:30	Guest Quarters, Bethesda, MD.
Epidemiology & Disease, Control–2, Dr. Horace Stiles, Rm. 340, Tel. 301–496–7246	Feb. 8–10	8:30	Guest Quarters, Bethesda, MD.
Experimental Cardiovascular Sciences, Dr. Richard Peabody, Rm. 234,, Tel. 301–496–7940.	Feb. 14–16	8:00	One Washington Circle Hotel, Washington, DC.
Experimental Immunology, Dr. Calbert Laing, Rm. 222B, Tel. 301–496–7238	Feb. 22–24	8:00	Hyatt Regency, Crystal City, VA.
Experimental Therapeutics–1, Dr. Faye Calhoun, Rm. 221, Tel. 301–496–7839	Feb. 7–9	8:00	Hyatt Regency, Bethesda, MD.
Experimental Therapeutics–2, Dr. Marcia Litwack, Rm. 2A03, Tel. 301–496–8848	Mar. 2–3	8:30	Holiday Inn, Bethesda, MD.
Experimental Virology, Dr. Garrett V. Keefer, Rm. 206, Tel. 301–496–7474	Feb. 27–Mar. 1	8:30	NIH, Room 8, Bldg. 31C, Bethesda, MD.
General Medicine A–1, Dr. Harold Davidson, Rm. 354A, Tel. 301–496–7797	Feb. 22–24	8:30	Ramada Inn, Downtown, Tucson, AZ.
General Medicine A–2, Dr. Mushtag Khan, Rm. 354B, Tel. 301–496–7140	Mar. 1–3	8:30	NIH, Room 6, Bldg. 31C, Bethesda, MD.
General Medicine B, Dr. Daniel McDonald, Rm. 322, Tel. 301–496–7730	Feb. 3–6	8:00	Sir Francis Drake, San Francisco, CA.
Genetics, Dr. David Remondini, Rm. 349, Tel. 301–496–7271	Feb. 16–18	9:00	Holiday Inn, Bethesda, MD.
Hearing Research, Dr. Joseph Kimm, Rm. 1A03, Tel. 301–496–7494	Feb. 15–17	8:30	Guest Quarters, Bethesda, MD.
Hematology–1, Dr. Clark Lum, Rm. 355A, Tel. 301–496–7508	Feb. 17–19	8:00	Tamarron Resort Hotel, Tamarron, CO.
Hematology–2, Dr. Jerrold Fried, Rm. 355B, Tel. 301–496–7508	Feb. 17–19	8:00	Tamarron Resort Hotel, Tamarron, CO.
Human Development & Aging–1, Dr. Teresa Levitin, Rm. 303, Tel. 301–496–7025	Feb. 15–17	9:00	Omni Shoreham Hotel, Washington, DC.
Human Development & Aging–2, Dr. Louis Quatrano, Rm. 305, Tel. 301–496–7640	Feb. 8–10	8:30	Governor's House, Washington, DC.
Human Development & Aging–3, Dr. Anita Sostek, Rm. 203A, Tel. 301–496–9403	Feb. 20–22	8:30	JW Marriott Hotel, Washington, DC.
Human Embryology & Development, Dr. Arthur Hoversland, Rm. 319A, Tel. 301–496–7597.	Feb. 21–22	8:30	Crowne Plaza, Rockville, MD.
Immunological Sciences Dr. William Stylos, Rm. 222A, Tel. 301–496–7780	Feb. 15–17	8:30	Hyatt Regency, Bethesda, MD.

Study section	January-March 1989 meetings	Time	Location
Immunobiological Sciences, Dr. Anita Corman Weinblatt, Rm. 233A, Tel. 301-496-7179	Feb. 22-24	8:30	Holiday Inn, Bethesda, MD.
Mammalian Genetics, Dr. Jerry Roberts, Rm. 349, Tel. 301-496-7271	Feb. 16-18	8:30	Holiday Inn, Bethesda, MD.
Medicinal Chemistry, Dr. Ronald Dubois, Rm. 5, Tel. 301-496-7107	Feb. 22-24	8:30	Crowne Plaza, Rockville, MD.
Metabolic Pathology, Dr. Marcelina Powers, Rm. 435, Tel. 301-496-5251	Feb. 14-16	8:30	The Savoy Suites Hotel, Washington, DC.
Metabolism, Dr. Krish Krishnan, Rm. 339A, Tel. 301-496-7091	Feb. 22-24	8:00	Holiday Inn, Bethesda, MD.
Metallobiochemistry, Dr. Edward Zapolski, Rm. 310, Tel. 301-496-7733	Jan. 28-31	9:00	Doubletree Hotel, Ventura, CA.
Microbial Physiology, & Genetics-1, Dr. Martin Slater, Rm. 238, Tel. 301-496-7183	Feb. 22-24	8:30	Guest Quarters, Bethesda, MD.
Microbial Physiology, & Genetics-2, Dr. Gerald Liddel, Rm. 357, Tel. 301-496-7130	Feb. 15-17	8:30	Hyatt Regency, Bethesda, MD.
Molecular & Cellular Biophysics, Dr. Patricia Jost, Rm. 236A, Tel. 301-496-7060	Feb. 9-11	8:30	One Washington Circle Hotel, Washington DC.
Molecular Biology, Dr. Zain Abedin, Rm. 328, Tel. 301-496-7830	Feb. 16-18	8:30	Congressional Park Days Inn, Rockville, MD.
Molecular Cytology, D. Ramesh Nayak, Rm. 233B, Tel. 301-496-7149	Feb. 3-5	8:00	Hotel Californian, San Francisco, CA.
Neurological Sciences-1, Dr. Allen C. Stoolmiller, Rm. 437B, Tel. 301-496-7279	Feb. 11-13	8:00	Hyatt Regency, Miami, FL.
Neurological Sciences-2, Dr. Stephen Gobel, Rm. 1A05, Tel. 301-496-8808	Feb. 14-16	8:30	Holiday Inn, Bethesda, MD.
Neurology A, Dr. Catherine Woodbury, Rm. 303A, Tel. 301-496-7506	Feb. 15-17	8:00	The Savoy Suites Hotel, Washington, DC.
Neurology B-1, Dr. Jo Ann McConnell, Rm. 152, Tel. 301-496-7846	Feb. 14-17	8:00	Hotel Washington, Washington, DC.
Neurology B-2, Dr. Herman Teitelbaum, Rm. 152, Tel. 301-496-7422	Feb. 21-24	8:30	The Savoy Suites Hotel, Washington, DC.
Neurology C, Dr. Kenneth Newrock, Rm. 232, Tel. 301-496-5591	Feb. 15-17	8:30	Omni Georgetown Hotel, Washington, DC.
Nursing Research, Dr. Gertrude McFarland, Rm. A18, Tel. 301-496-0558	Feb. 28-Mar. 2	9:00	Holiday Inn, Chevy Chase, MD.
Nutrition, Dr. Ai Lien Wu, Rm. 204, Tel. 301-496-7178	Feb. 13-15	8:30	NIH, Room 8, Bldg. 31C, Bethesda, MD.
Oral Biology & Medicine-1, Dr. J. Terrell Hoffeld, Rm. 325, Tel. 301-496-7818	Feb. 13-16	8:30	Capital Holiday Inn, Washington, DC.
Oral Biology & Medicine-2, Dr. J. Terrell Hoffeld, Rm. 325, Tel. 301-496-7818	Feb. 6-9	8:30	Capital Holiday Inn, Washington, DC.
Orthopedics & Musculoskeletal, Ms. Ileen Stewart, Rm. 350, Tel. 301-496-7581	Mar. 1-3	8:30	Crowne Plaza, Rockville, MD.
Pathobiochemistry, Dr. John Mathis, Rm. A26, Tel. 301-496-7820	Feb. 3-5	8:30	Lombard Hotel, San Francisco, CA.
Pathology A, Dr. Martin Padarathsingh, Rm. 337, Tel. 301-496-7305	Feb. 28-Mar. 3	7:00 p.m.	Guest Quarters, Bethesda, MD.
Pathology B, Dr. Martin Padarathsingh, Rm. 352, Tel. 301-496-7244	Feb. 15-17	8:30	Ramada Inn, Bethesda, MD.
Pharmacology, Dr. Joseph Kaiser, Rm. 206, Tel. 301-496-7408	Feb. 14-16	8:30	American Inn, Bethesda, MD.
Physical Biochemistry, Dr. Gopa Rakhit, Rm. 218B, Tel. 301-496-7120	Feb. 27-Mar. 1	8:30	Crowne Plaza, Rockville, MD.
Physiological Chemistry, Dr. Stanley Burrous, Rm. 339B, Tel. 301-496-7837	Feb. 23-25	8:00	Holiday Inn, Bethesda, MD.
Physiology, Dr. Michael A. Lang, Rm. 209, Tel. 301-496-7878	Feb. 22-24	8:30	Crowne Plaza, Rockville, MD.
Radiation, Dr. John Zimbrick, Rm. 219A, Tel. 301-496-7073	Jan. 28-31	8:30	Keystone Village, Keystone, CO.
Reproductive Biology, Dr. Dharam Dhindsa, Rm. 307, Tel. 301-496-7318	Feb. 13-16	8:30	Holiday Inn, Bethesda, MD.
Reproductive Endocrinology, Dr. Abubakar A. Shaikh, Rm. 325B, Tel. 301-496-8857	Feb. 8-10	8:30	Holiday Inn, Bethesda, MD.
Respiratory & Applied Physiology, Dr. Clyde Watkins, Rm. 218A, Tel. 301-496-7320	Feb. 12-15	8:30	Crowne Plaza, Rockville, MD.
Safety & Occupational Health, Dr. Richard Rhoden, Rm. 154, Tel. 301-496-6723	Feb. 22-24	8:30	Marbury House, Georgetown, DC.
Sensory Disorders & Language, Dr. Michael Halasz, Rm. 3A-07, Tel. 301-496-7550	Feb. 15-17	8:30	Capitol Holiday Inn, Washington, DC.
Social Sciences & Population, Ms. Carol Campbell, Rm. 210, Tel. 301-496-7906	Feb. 9-11	9:00	Embassy Square Suites, Washington, DC.
Surgery & Bioengineering, Dr. Paul F. Parakkal, Rm. 322, Tel. 301-496-7027	Feb. 6-7	8:30	Crowne Plaza, Rockville, MD.
Surgery, Anesthesiology & Trauma, Dr. Keith Kraner, Rm. 319B, Tel. 301-496-7771	Feb. 22-24	2:p.m.	Holiday Inn, Bethesda, MD.
Toxicology, Dr. Alfred Marozzi, Rm. 205, Tel. 301-496-7570	Feb. 15-17	8:00	Crowne Plaza, Rockville, MD.
Tropical Medicine & Parasitology, Dr. Jean Hickman, Rm. 334, Tel. 301-496-1190	Feb. 14-16	8:00	Holiday Inn, Georgetown, DC.
Virology, Dr. Bruce Maurer, Rm. 309, Tel. 301-496-7605	Feb. 23-25	8:00	Hyatt Regency, Bethesda, MD.
Visual Sciences A-1, Dr. Luigi Giacometti, Rm. 207, Tel. 301-496-7000	Feb. 9-11	8:30	Hyatt Regency, Miami, FL.
Visual Sciences A-2, Dr. Jane Hu, Rm. 439A, Tel. 301-496-7795	Feb. 21-24	8:30	Hotel Washington, Washington, DC.
Visual Sciences B, Dr. Earl Fisher, Jr., Rm. 325, Tel. 301-496-7251	Feb. 22-25	8:30	Marriott Hotel, Bethesda, MD.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, 13.333, 13.337, 13.393–13.396, 13.837–13.844, 13.846–13.878, 13.892, 13.893, National Institutes of Health, HHS)

Dated: January 12, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-1457 Filed 1-23-89; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

National Commission on Orphan Diseases; Public Meeting

AGENCY: Office of the Assistant Secretary for Health.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary for Health are announcing a meeting of the National Commission on Orphan Diseases scheduled on January 26–27, 1989.

DATE: Date, time and place: Open Public Meeting, January 26, 1989, 9:00 a.m.–12:00 noon and 2:00–5:00 p.m.; Open Public Session, January 26, 1989, 1:00–2:00 p.m.; Monroe West Room; January 27, 1989, 9:00 a.m.–12:00 noon, Jefferson East Room; Washington Hilton, 1919 Connecticut Avenue, NW., Washington, DC 20009. The entire meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate in the Open Public Session should be sent to: Mary C. Custer, Ph.D., Executive Secretary, National Commission on Orphan Diseases, 5600 Fishers Lane, Park Building, Room 1–20, Rockville, MD 20857, 301–443–6156.

Agenda: Open Public Session

Interested persons may present data, information or views, orally or in writing, on issues pending before the Commission or on any of the duties and responsibilities of the Commission on January 26 from 1:00 p.m. to 2:00 p.,m. Those desiring to make oral presentations should notify the contact person before January 20, 1989 and submit a brief statement of the information they wish to present to the Commission. The request should include the names and addresses of proposed participants and an indication of the approximate time required to make their comments. Any person attending the open public session who does not request prior approval to speak may make an oral presentation at the conclusion of the session, if time permits, at the chairperson's discretion.

Agenda: Open Commission Meeting

The Commission will review the final draft of their report to Congress and approve and release the report. Copies of the Executive Summary will be available at the meeting. Written requests for copies of the Executive Summary should be directed to the Executive Secretary.

SUPPLEMENTARY INFORMATION: The Commission meeting will be conducted in accordance with the agenda

published in this **Federal Register** notice. Any changes in the agenda will be announced at the beginning of the meeting.

Persons interested in specific agenda itmes to be discussed in the open meeting may ascertain from the contact person the approximate time of discussion.

A list of Commission members and the charter of the Commission will be available at the meeting. Interested persons who are unable to attend the meeting may request this information from the contact person. In addition, summary minutes of the meeting will be available upon request from the contact person.

This notice is issued under 10(a) (1) and (2) of the Federal Advisory Committee Act, Pub. L. 92–463 (5 U.S.C. Appendix I).

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 89–1468 Filed 1–23–89; 8:45 am]

BILLING CODE 4160–17–M

[NTP–88–200, NTP–88–201]

National Toxicology Program; Fiscal Year 1988 Annual Plan

The National Toxicology Program (NTP) announces the availability of the *NTP Annual Plan for Fiscal Year 1988*, solicits comments on it, and urges all interested persons to propose chemicals for possible toxicological evaluation.

The tenth NTP Annual Plan consists of two parts. First, the *NTP Annual Plan for Fiscal Year 1988* [NTP–88–200] describes current year NTP research, applied studies, methods development and validation efforts, resources and past year program accomplishments (Table of Contents follows this announcement). Second, the *Review of Current DHHS, DOE and EPA Research Related to Toxicology* [NTP–88–201] lists chemicals being studied by the various DHHS agencies, the Department of Energy, and the Environmental Protection Agency, and describes toxicology research and toxicology methods currently being developed by these agencies.

Background

The National Toxicology Program (NTP) was established within the Public Health Service of the Department of Health and Human Services (DHHS) in November 1978. The continuing broad goals of the NTP are to coordinate and strengthen DHHS basis and applied toxicology research and methods development and validation, and to provide toxicological information for use by health research and regulatory agencies and others in protecting the public health. Specific goals are to:

- Broaden the spectrum of toxicologic information obtained on selected chemicals;
- Increase the numbers of chemicals studied within funding limits;
- Develop and validate a series of tests and protocols responsive to regulatory needs;
- Communicate program plans and results to governmental agencies, the medical and scientific communities, and the public.

The NTP coordinates selected toxicology activities of the National Institute of Environmental Health Sciences, National Institutes of Health; the National Center for Toxicological Research, Food and Drug Administration; and the National Institute for Occupational Safety and Health, Centers for Disease Control.

Primary program oversight is provided by the NTP Executive Committee which links DHHS health research institutes with Federal health regulatory agencies to ensure that the basis and applied toxicology research and development activities are responsive to regulatory and public health needs. Agencies represented on the Executive Committee are:

- Agency for Toxic Substances and Disease Registry.
- Consumer Product Safety Commission.
- Environmental Protection Agency.
- Food and Drug Administration.
- National Cancer Institute.
- National Institute for Occupational Safety and Health.
- National Institute of Environmental Health Sciences.
- National Institute of Health.
- Occupational Safety and Health Administration.

The NTP Board of Scientific Counselors provides scientific oversight, advising the NTP Director and the NTP Executive Committee on scientific content and policy and evaluating the scientific merit and overall quality of NTP science. The members (listed in the 1988 Annual Plan) are appointed by the Secretary, DHHS. For the purposes of the Program, the NTP Director, Dr. David P. Rall, reports to the Assistant Secretary for Health.

Scientific activities are divided into four major program areas: Carcinogenesis; cellular and genetic toxicology; reproductive and developmental toxicology; and toxicological characterization. The latter area covers activities in cardiac, cutaneous, immunologic, neurobehavioral, pulmonary and renal toxicologies, and includes programs in chemical disposition and chemical pathology. Program and project leaders, along with addresses and telephone numbers, are identified in the 1988 Annual Plan.

The chemical nomination and selection process is integral to the effective long-term operation of the NTP with respect to toxicological studies of chemicals using modern techniques and to the development and validation of new assay methods. Thus, the NTP welcomes nominations of chemicals for study from everyone. At a minimum, the nominator should give the name of the chemical or substance, the rationale for the nomination, and recommend the type study(ies) to be considered. In addition, it is desirable, but not essential, to supplement each nomination with the following information, if known:

I. Chemical and physical properties.
II. Production, use, occurrence, and analysis data.
III. Toxicology information.
IV. Chemical disposition and structure-activity-relations.
V. Planned or ongoing or recently completed toxicological and environmental studies.

To receive the *NTP Annual Plan for Fiscal Year 1988*, and the *FY 1988 Review of Current DHHS, DOE, and EPA Research Related to Toxicology*, please write or telephone the NTP Public Information Office, P.O. Box 12233, Research Triangle Park, NC 27709 (telephone: (919) 541–3991 or FTS 629–3991).

Comments on the FY 1988 NTP Annual Plan are requested and welcome. These should be addressed to Dr. Larry Hart, National Toxicology Program, P.O. Box 12233, Research Triangle Park, NC 27709 (telephone: (919) 541–3971 or FTS 629–3971).

Dated: January 17, 1989.

David P. Rall,

Director, National Toxicology Program.

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[FR Doc. 89–1459 Filed 1–23–89; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–89–1925]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (20) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required: (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Office for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: January 10, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Comprehensive Improvement Assistance Program (CIAP): Survey Instrument.

Office: Housing.

Description of the Need for the Information and its Proposed Use: The PHAs, in performing the required physical needs assessments on projects proposed for comprehensive modernization, will use the Survey Instrument to collect data on project conformance within the modernization standards.

Form Number: HUD–52827.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden: Survey Instrument—
Number of respondents, 400 X Frequency, of response, 1 X Hours per response, 24= Burden, hours, 9,600.

Total Estimated Burden Hours: 9,600.

Status: Extension.

Contact: Pris Buckler, HUD, (202) 755–6640, John Allison, OMB, (202) 395–6880.

Date: January 10, 1989.

[FR Doc. 89–1512 Filed 1–23–89; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–89–1914; FR–2605]

Establishment of an Advisory Committee on Housing for Handicapped Families

AGENCY: Office of the Assistant for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of intent to establish an Advisory Committee.

SUMMARY: HUD is establishing a Committee on Housing for Handicapped Families pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App 2). The Committee will participate in developing standards and procedures for the revised section 202 program for housing for handicapped families as authorized by section 162 of the Housing and Community Development Act of 1987.

The Committee will continue in existence for a period of 12 months from the date its charter becomes effective unless the charter is sooner amended or revoked.

DATE: The charter of the Committee on Housing for Handicapped Families shall become effective on the date the Secretary of Housing and Urban Development files it with the Senate Committee on Banking, Housing and Urban Affairs, and the House Committee on Banking, Finance and Urban affairs, which are the standing committees of Congress having legislative jurisdiction over the Department.

FOR FURTHER INFORMATION CONTACT: Barbara Capozzola, Committee Management Officer, Room 5168, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone: (202) 755–5123.

Margaret Milner, Office of Housing, Room 9106, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone: (202) 755–6490. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committtee Act (5 U.S.C. App 2), HUD has determined that the establishment of a Committee on Housing for Handicapped Families is necessary, appropriate, and in the public interest. The Committee's charter is being published with this notice.

The Committee shall participate in developing distinct standards and procedures for the section 202 program for housing for handicapped families that reflect the differences between such housing and the housing for elderly families that is also developed under section 202.

The membership of the Committee is planned to consist of no more than nine people. Members will include representatives of the disability community and persons with experience in providing housing for handicapped persons.

The Committee will continue in existence for a period of 12 months from the date its charter becomes effective as provided in the Federal Advisory Committee Act, unless the charter is amended or revoked sooner. All the meetings of the Committee will be open to the public.

The time, place, and agenda for the first Committee meeting and for each subsequent meeting, will be published in the **Federal Register** at least 15 days prior to the meeting. At the time the first meeting is announced, the names of the members of the Committee will be published.

Dated: January 17, 1989.

Thomas T. Demery,

Assistant Secretary for Housing-Federal Housing Commissioner.

Advisory Committee on Housing for Handicapped Families

Section 1. *Purpose.* The purpose of this document is to establish a Charter for an Advisory Committee on Housing for Handicapped Families, as required under the provisions of the Federal Advisory Committee Act (FACA).

Section 2. *Authority.* The Committee is established by the Secretary pursuant to section 162 of the Housing and Community Development Act of 1987 (P.L. 100–242, 101 Stat. 1815; 42 U.S.C. 5301) in furtherance of § 202 of the Housing Act of 1959 (Pub. L. 86–372, 73 Stat. 654, 667; 12 U.S.C. 1701q), and implements the determination of the Secretary of Housing and Urban Development to establish an Advisory Committee pursuant to section 9(a)(2) of the FACA.

Section 3. *Objectives, Scope of Activities, and Duties.* The Committee shall participate in developing distinct standards and procedures for the allocation of funds and the processing of applications for loans and assistance payments under the new program, as the Secretary determines such standards and procedures to be appropriate due to differences between housing for handicapped families and other housing assisted under section 202.

Section 4. *Membership.* The Committee shall be composed of no more than 9 members, and shall include members of the disability community and persons who have been involved in the provision of housing for handicapped persons. The members will be selected on the basis of personal experience and expertise.

Section 5. *Appointments.* The Committee members shall be appointed by the Secretary to serve a term of 12 months from the effective date of the charter. Members shall serve at the pleasure of the Secretary.

Section 6. *Chairperson.* The Chairperson shall be appointed by the Secretary. The Chairperson is responsible for:

a. Establishing the informal organization of the Committee and appointing such subcommittees as deemed necessary;

b. Developing, with the advice and consent of the Committee, procedures for its effective and efficient operation;

c. Ensuring that procedures for public participation in Committee meetings are established in accordance with the FACA:

d. Taking such other actions as may be required to facilitate the discharge of Committee duties.

Section 7. *Committee Organization.* The organization and agenda of the Committee will be established at the first full meeting of the Committee on Housing for Handicapped Families. Once established, the organization of the Committee may be modified when deemed appropriate by the Chairperson. Any subcommittees appointed by the Chairperson shall be subordinate and advisory to the full Committee. Such subcommittees may meet at such times and places as the subcommittee Chairperson has approved for the performance of Committee business. The results of all subcommittee meetings shall be reported to the full Committee for its review.

Section 8. *Meetings.* The Committee will meet at least twice during its term. The Committee Chairperson may call special meetings as needed. The Committee and any of its subcommittees shall convene under the following conditions:

a. A notice of each Committee or subcommittee meeting shall be published in the **Federal Register** at least 15 days in advance of the meeting. Shorter notice is permissible in cases of emergency, but the reason for such emergency must be reported in the notice.

b. Detailed minutes of each meeting of the Committee shall be kept, and their accuracy certified to by the Committee Chairperson and submitted to the Secretary of HUD and filed with the Departmental Committee Management Officer. The minutes shall include:

(1) The time and place of the meeting;

(2) A list of Committee members and staff and agency employees present at the meeting;

(3) A complete summary of matters discussed and the conclusions reached;

(4) Copies of all reports received, issued or approved by the Committee;

(5) A description of the extent to which the meeting was open to the public;

(6) A description of public participation, including a list of members of the public who attended the meeting.

c. In accordance with the FACA, an employee designated by the Secretary will attend every meeting of the Advisory Committee. The designated employee, or his designee, must call or approve the calling of each meeting, and is authorized to adjourn any Committee meeting whenever he determines that adjournment is in the public interest.

Section 9. *Support Services.* The Assistant Secretary for Housing-Federal Housing Commissioner shall, to the extent permitted by law and subject to the availability of funds, provide the Committee with such administrative services, funds, facilities, staff and other support as may be necessary for the effective performance of its functions.

Section 10. *Estimated Support and Cost.* The Department estimates that the operating cost of the Committee will not exceed $21,600, including staff support costs.

Section 11. *Travel and Compensation.* Members of the Committee will serve without compensation, but are entitled to be paid for travel and subsistence in the performance of duties on an actual expense basis, as authorized by 5 U.S.C. 5703(b).

Section 12. *Reports.* The Committee shall submit a written report to the Secretary, describing its membership, functions and actions prior to its termination. The Committee shall submit other written reports from time to time to the Secretary containing its recommendations and findings.

Section 13. *Expiration.* The Committee established under this Charter shall terminate 12 months after the charter is filed, unless sooner extended.

Date: October 19, 1988.

Approved:

Samuel R. Pierce, Jr.,

Secretary, Department of Housing and Urban Development.

[FR Doc. 89–1509 Filed 1–23–89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-020-08-4320-12]

Meetings: Kingman Resource Area Grazing Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting—Kingman Resource Area Grazing Board.

SUMMARY: The Kingman Resource Area Grazing Advisory Board will hold a meeting on Tuesday, March 7, 1989. The meeting will start at 9:00 a.m. in the Kingman Resource Area Conference Room, 2475 Beverly Avenue, Kingman, Arizona 86401.

The agenda for the meeting will include:

1. Update of the Bureau's Exchange Program.
2. Status of the Bureau's Planning and Environmental Impact Statements.
3. Status of Wilderness Program.
4. Report on Range Improvements for FY 89.
5. Range Policy Update.
6. Request for Advisory Board Expenditures.
7. Arrangements for Future Meetings.

The meeting is open to the public. Anyone wishing to make oral or written statements to the Board is requested to do so through the office of the District Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027, at least seven days prior to the meeting date.

Summary minutes of the Board meeting will be maintained in the District Office and be made available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Henri R. Bisson,

District Manager.

Date: January 13, 1989.

[FR Doc. 89–1440 Filed 1–23–89; 8:45 am]

BILLING CODE 4310-32-M

[AZ-020-08-4320-12]

Meeting: Phoenix/Lower Gila Resource Areas Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting—Phoenix/Lower Gila Resource Areas Grazing Advisory Board.

SUMMARY: The Phoenix/Lower Gila Resource Areas Grazing Advisory Board will hold a meeting on Thursday, March 9, 1989. The meeting will start at 9:00 a.m. in the Phoenix District Office Conference Room, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

The agenda for the meeting will include:

1. Update of the Bureau's Exchange Program.
2. Status of the Bureau's Planning and Environmental Impact Statements.
3. Status of Wilderness Program.
4. Report on Burro Captures in Arizona.
5. Report on Range Improvements for FY 89.
6. Range Policy Update.
7. Request for Advisory Board Expenditures.
8. Arrangements for Future Meetings.

The meeting is open to the public. Anyone wishing to make oral or written statements to the Board is requested to do so through the office of the District Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027, at least seven days prior to the meeting date.

Summary minutes of the Board meeting will be maintained in the District Office and be made available

for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Henri R. Bisson,

District Manager.

Date: January 13, 1989.

[FR Doc. 89-1441 Filed 1-23-89; 8:45 am]

BILLING CODE 4310-32-M

[NM-010-4212-13/GP9-0105; NM NM 68419]

Issuance of Exchange Conveyance Document and Order Providing for Opening of Public Land in Rio Arriba County; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States issued two exchange conveyance documents. One to Wayne G. Wallace, Barbara J. Wallace, and James B. Mocho on October 17, 1988, for the surface and mineral interests in the following described land in Dona Ana County, New Mexico, pursuant to section 206 of the Act of October 21, 1986 (43 U.S.C. 1716):

New Mexico Principal Meridian

T. 23 S., R. 3 E.,
Sec. 28, E½, E½W½, and NW¼NW¼.
Containing 520.00 acres.

A second patent was issued to Wayne G. Wallace and Barbara J. Wallace on October 18, 1988, after the payment of an equalization fee of $126,000.00, for the surface and mineral interests in the following described land in Dona Ana County, New Mexico, pursuant to section 206 of the Act of October 21, 1976 (43 U.S.C. 1716):

New Mexico Principal Meridian

T. 23 S., R. 3 E.,
Sec. 28, SW¼NW¼ and W½SW¼.
Containing 120.00 acres.

In exchange for the 520.00 acres of land described above, Wayne G. Wallace and Barbara J. Wallace reconveyed to the United States the surface estate in 7,26.96 acres, in Rio Arriba County, New Mexico. The reconveyed land is described in the Notice of Realty Action published in the **Federal Register** on August 19, 1988, 53 FR 31764.

The purpose of the exchange was to enable BLM to consolidate public land on Superior and Delgadito Mesas in Rio Arriba County, enhancing the opportunities to improve wildlife, range, recreation and cultural management. The 640.00 acres of selected land are located in the designated disposal area in Dona Ana County. The exchange was consistent with the Bureau's land use plans in both areas. The public interest was served through completion of this exchange.

The values of Federal public land and the non-Federal land in the exchange were appraised at $605,600.00 and $479,600.00, respectively. An equalization payment of $126,000.00 was paid to the United States.

At 9:00 a.m. on February 6, 1989, the land reconveyed to the United States shall be open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All applications received at or prior to 9:00 a.m. on February 6, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: January 6, 1989.

Larry L. Woodard,

State Director.

[FR Doc. 89-1442 Filed 1-23-89; 8:45 am]

BILLING CODE 4310-FB-M

National Park Service

Farmington Wild and Scenic River Study; MA and CT; Farmington River Study Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App. 1 10), that a meeting of the Farmington River Study Committee will be held Thursday, February 9, 1989.

The Committee was established pursuant to Pub. L. 99-590. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of two segments of the Farmington River.

The meeting will convene at 7:30 p.m. at the Barkhamsted Elementary School, Barkhamsted, Connecticut, for the following reasons:

1. Approval of minutes of 12/15/88 meeting.
2. Report from Budget Working Group.
3. Discussion of Resource Assessment.
4. Report from Water Resources Subcommittee.
5. Report from River Conservation Planning Subcommittee.
6. Opportunity for Public Comment.
7. Other business.

It is anticipated that about 100 people will be able to attend the session in addition to the Committee members.

Interested persons may make oral/written presentations to the Committee or file written statements. Such requests should be made to the official listed below prior to the meeting.

Further information concerning this meeting may be obtained from the Public Affairs Officer, National Park Service, North Atlantic Region, 15 State St., Boston, MA 02109 (617) 565-8887.

Herbert S. Cables, Jr.,

Regional Director.

[FR Doc. 89-1496 Filed 1-23-89; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 14, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by February 8, 1989.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

San Francisco County

Federal Reserve Bank of San Francisco, 400 Sansome St., San Francisco, 89000009

COLORADO

Arapahoe County

Delaney Barn, 200 S. Chambers Rd., Aurora, 89000010

Montezuma County

Southern Hotel, 101 S. Fifth St., Dolores, 89000018

CONNECTICUT

Hartford County

Southington Public Library, 239 Main St., Southington, 89000015

Woodruff, Capt. Samuel, House, 23 Old State Rd., Southington, 89000014

Middlesex County

Haddam Center Historic District, Roughly 2.5 mi. along Walkley Rd. and CT 154/ Saybrook Rd., Haddam, 89000012

New Haven County

Shelly House, 248 Boston Post Rd., Madison, 89000017

DELAWARE

New Castle County

Kingswood Methodist Episcopal Church, Fourteenth and Claymont Sts., Wilmington, 89000008

Vansant, John C., House, 110 Possum Hollow Rd., Newark vicinity, 89000007

Sussex County

Lightship WLV 539, Lewes—Rehoboth Canal between Shipcarpenter and Mulberry Sts., Lewes, 89000006

FLORIDA

Lee County

Buckingham School, Buckingham and Cemetery Rds., Buckingham, 89000011

KENTUCKY

Bath County

Kirtley House (Boone County MRA), 2451 Second Creek Rd., Petersburg vicinity, 89000013

MASSACHUSETTS

Suffolk County

Mount Pleasant Historic District, Roughly bounded by Forest St. and Mount Pleasant Ave., Boston, 89000004

WISCONSIN

Dane County

Hoff Department Store, 101–103 Main St., Mount Horeb, 89000005

The following property was erroneously listed as pending on the list dated January 10, 1989:

KENTUCKY

Mercer County

US Post Office—Harrodsburg, (Mercer County MRA) 105 N. Main St. Harrodsburg

[FR Doc. 89–1501 Filed 1–23–89; 8:45 am]

BILLING CODE 4310–70–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identity records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before March 10, 1989. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Air Force (N1–AFU–89–3). Routine supply and inventory records for Air Force commissaries.

2. Department of the Army (N1–AU–89–4). Routine and facilitative records of the U.S. Army Intelligence and Security Command relating to physical security equipment.

3. Department of the Army (N1–338–87–4). Routine and facilitative records of U.S. Army Stations, ca. 1945–65 (records relating to significant policies, procedures, and operations are permanent).

4. Central Intelligence Agency (N1–263–88–1). The CIA schedule is classified in the interest of national security pursuant to Executive Order 12356 and is further exempt from public disclosure pursuant to the National Security Act of 1947, 50 U.S.C. 403(d)(3), and the CIA Act of 1949, 50 U.S.C. 403g.

5. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–88–2). Medical examination files maintained for members of the NOAA Uniformed Corps. Significant medical information incorporated into an individual's official personnel folder (OPF) has been identified for permanent retention.

6. Farm Credit Administration, Records and Projects Division (N1–103–88–1). Supervisory Division administrative action files which include general correspondence, cease and desist orders, and compliance reports.

7. Federal Emergency Management Agency, State and Local Programs Support Directorate (N1–311–89–1). Summer Shelter Survey Technician Course student records.

8. National Archives and Records Administration, Office of the National Archives, Pacific Southwest Region (N2–75–89–1 and –2). Accessioned records of the Department of the Interior, Bureau of Indian Affairs, Pima and Fort Apache Indian Agencies. Routine financial and administrative correspondence, 1903–51.

9. Department of Health and Human Services, Public Health Service, Alcohol, Drug Abuse and Mental Health Administration, National Institute of Mental Health (NIMH) (N1–90–88–8). Forms, mostly unanswered, from the 1961 NIMH survey of foundation support for mental health.

10. National Security Agency (N1–457–89–5). This NSA schedule is classified in the interest of national security pursuant to Executive Order 12356 and is further exempt from public disclosure pursuant to the National Security Act of 1947, 50 U.S.C. 403(d)(3), and Public Law 86–36.

11. Nuclear Regulatory Commission, Advisory Committee on Nuclear Waste (N1–431–88–1). Program and project records of the committee, including

copies of Waste Management Licensing Files.

12. President's Commission on American Outdoors (N1–220–89–4). Administrative and facilitative records of the commission.

13. Tennessee Valley Authority, Office of Corporate Services, Division of Medical Services (N1–142–88–5). Report of known or suspected occupation-related condition or disease (TVA Form 2275).

14. Department of the Treasury, Office of the Secretary, Office of Tax Policy (N1–56–88–2). Legislative history files for legislation of prime interest to agencies other than Treasury.

15. United States Information Agency (N1–306–88–6). Records concerning USIA exhibits in foreign countries.

16. United States Information Agency (N1–306–88–7). Housekeeping and routine administrative records of the Press and Publications Service.

17. United States Information Agency, Bureau of Educational and Cultural Affairs, Office of the Associate Director (N1–306–89–4). Routine facilitative records and chronological files. Policy materials are scheduled for permanent retention.

18. Veterans Administration, Department of Veterans Benefits (N1–15–89–2). VA Form 28–0521, Application for Certified Rehabilitation Counselor Maintenance.

19. Veterans Administration, Office of Information Management and Statistics (N1–15–89–3). Typescript copies of Veterans Administration regulations and procedures and VA Federal Register publications. (VA regulations in printed form are already scheduled for permanent retention.)

Dated: January 18, 1989.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 89–1546 Filed 1–23–89; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Report; Section 208 Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) has published and issued another periodic report to Congress on abnormal occurrences (NUREG–0090, Vol. 11, No. 2).

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "an unscheduled incident or event which the Commission (NRC) determines is significant from the standpoint of public health or safety." The NRC has made a determination, based on criteria published in the **Federal Register** (42 FR 10950) on February 24, 1977, that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and by-product material are abnormal occurrences.

The report to Congress is for the second calendar quarter of 1988. The report identifies the occurrences or events that the Commission determined to be significant and reportable; the remedial actions that were undertaken are also described. For the reporting period, there were no abnormal occurrences at nuclear power plants licensed to operate. There were two abnormal occurrences under other NRC-issued licenses: a significant breakdown in management and procedural controls at a medical facility and a medical diagnostic misadministration.

There was one abnormal occurrence reported by an Agreement State (Texas) involving radioactive material released during a transportation accident.

A copy of the report is available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street NW., (Lower Level), Washington DC 20555, or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies of NUREG/0090, Vol. 11, No. 2 (or any of the previous reports in this series), may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082. A year's subscription to the NUREG/0090 series publication, which consists of four issues, is also available.

Copies of the report may also be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

Dated at Rockville, MD this 17th day of January 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89–1500 Filed 1–23–89; 8:45 am]

BILLING CODE 7590–01–M

Northeast Nuclear Energy Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

[Docket No. 50–336]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–65, issued to Northeast Nuclear Energy Company (the licensee), for operation of the Millstone Nuclear Power Station, Unit 2, located in New London County, Connecticut.

The proposed amendment would allow operation of Millstone Unit 2 for Cycle 10. The changes to the Technical Specifications (TS) are required to reflect a revised safety analysis that includes the use of fuel designed and fabricated by Advanced Nuclear Fuels Corporation (ANF). Fuel designed and fabricated by ANF has not been previously utilized for Millstone Unit 2.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

As part of the licensee's submittal dated November 15, 1988, the licensee/(or NNECO) has addressed the various technical issues related to the "No Significant Hazards Consideration" criteria of 10 CFR 50.92. The licensee has stated that the proposed changes to the TS would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

ANF reviewed all SRP Chapter 15 accidents and transients to determine which events need to be reanalyzed for Cycle 10, assuming a mixed core or a core containing only ANF fuel. As a result, ANF reanalyzed all of the nonradiological events currently in Chapter 14 of the Millstone Unit No. 2 FSAR. On the basis of this review, NNECO concludes that there is no significant increase

in the probability or consequences of any of these events.

With respect to calculated consequences, ANF specifically reanalyzed the impact of the events on relevant key parameters associated with the plant response to the event (i.e., assessments of consequences were not restricted to dose assessments). The parameters analyzed all relate to the boundary performance during the accident. In all cases, the values of the relevant parameters remain below applicable acceptance criteria and there are no impacts on the protective boundaries. NNECO therefore concludes that the proposed amendment does not involve a significant increase in consequences of any event previously analyzed.

Specifically, both large- and small-break LOCA safety analyses were performed to support the proposed amendment. The results of the large-break ECCS analysis indicated that the limiting break size is the 0.6 [double ended cold leg guillotine (DECLG)] break. The maximum peak clad temperature (PCT) for the DECLG, including consideration of end-of-cycle coastdown, is 2176°F. This PCT value remains within the ECCS acceptance criteria of 10 CFR 50, Appendix K.

The small-break LOCA analysis indicated the limiting break size, with symmetric steam generator tube plugging, is the 1.9% break. The PCT for this case was calculated to be 1811°F with a maximum local cladding oxidation of 4.17%. The results for asymmetric steam generator tube plugging at the limiting break size are similar to the results for symmetric tube plugging, with the PCT being slightly higher for the symmetric tube plugging case. Again, these values remain well within the Appendix K ECCS acceptance criteria.

The steamline break analysis involved a calculation of the expected asymmetric thermal hydraulic and neutronic core characteristics resulting from this accident. Specifically, fuel response was evaluated against fuel failure criteria for four scenarios, assuming both availability of off-site power and loss of off-site power. The hot zero power (HZP) scenario with loss of off-site power was determined to be the most limiting in this analysis from an MDNBR standpoint. In no scenario evaluated, however, does fuel failure occur as a result of penetration of the MDNBR safety limit. An HZP scenario with off-site power available was determined to be the most limiting in the analysis from the standpoint of centerline melt. However, again this case does not represent a significant increase in consequences as there remains margin to the fuel centerline melt limit (maximum LHGR).

Finally, a non-LOCA transient event analysis was also performed in support of Millstone Unit No. 2 operation with ANF reload fuel, and a disposition of events for Cycle 10 provided in the SAFETY ASSESSMENT. All anticipated operational occurrences were shown to result in no significant increase in either DNB, fuel centerline melt, deposited enthalpy, or radiological consequences. The postulated accidents were also shown to meet all appropriate acceptance criteria. With respect to the fuel centerline melt, deposited enthalpy and radiological consequences, the rod ejection and rod withdrawal from subcritical accidents show increases in consequences due to the increase in rod worth related to the increase in shutdown margin and also due to the increase in the allowable radial peaking factor. However, ... these increases are not significant in that they do not challenge the acceptance criteria for deposited enthalpy, fuel centerline melt, or off-site doses due to fuel failure. With respect to DNB, the increases are not significant in that they do not violate the 95/95 acceptance criteria. In total, therefore, NNECO concludes that the proposed change does not involve a significant increase in consequences of any accident previously analyzed.

With respect to probability of an accident previously analyzed, there is no change in the probability of occurrence of any design basis accident. Further, there are no changes or failure modes associated with the proposed amendment that will increase the probability of an accident to the point where it should be considered within the design basis. Therefore, in this respect, no significant hazard consideration is involved.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

As a result of the proposed use of ANF fuel and the proposed amendment, there will be no change to plant response. The plant will respond for all events in a manner similar to that previously analyzed. . . . The only changes identified in the reanalysis of Chapter 14 events relate to the impact of certain transients on parameters related to boundary performance. There are no changes to the basic trends the transients follow.

Thus, there are no failure modes associated with the proposed change that could represent a new unanalyzed accident.

In addition, there is no change in the probability of occurrence of any design basis accident. There are also no changes or new failure modes associated with the changes that will increase the probability of an accident or transient to the point where it should be considered to be within the design basis. Therefore, NNECO concludes that the proposed changes do not create any new or different kind of accident from those previously analyzed.

3. Involve a significant reduction in any margin of safety.

As discussed above, the accident reanalysis performed to support the proposed change included all nonradiological events currently in Chapter 14 of the Millstone Unit 2 FSAR. The analysis specifically focused on the impact of these accidents and transients on key parameters related to protective boundary performance. On the basis of this review, NNECO is able to conclude that the proposed amendment does not involve a significant reduction in any margin of safety.

Specifically, as discussed above, the proposed changes do involve some nonsignificant changes in consequences. This is reflected in the change in some parameters relative to Technical Specification bases. However, these changes are largely due to (a) methodology differences between the accident analyses performed by the previous vendor, Westinghouse, and that of the new vendor, ANF; (b) changes to or deletion of an LCO or LSSs, resulting in a corresponding change in Technical Specification bases; and (c) minor clarifications. However, in all cases where there are increases in the limiting value of a parameter, the value remains below the applicable safety limit and therefore does not affect the ability of the boundary to perform its function.

The changes in boundary parameters, discussed above, may be summarized as follows:

- The limiting large break LOCA resulted in a PCT of 2163 °F. The PCT for a 12 °F reduction in primary coolant temperature resulted in a PCT of 2176 °F. These values do not involve a significant reduction in margin for any acceptance criterion.
- The limiting small break LOCA resulted in a PCT of 1811 °F, with symmetric steam generator tube plugging. The PCT with asymmetric plugging was slightly lower. These values do not involve a reduction in any acceptance limit.
- Fuel response was evaluated for the steam line break events. In no scenario evaluated was fuel failure calculated to occur as a result of exceeding the MDNBR acceptance limit or the maximum LHGR.
- The rod ejection and rod withdrawal from subcritical accidents result in increases in relevant parameters due to the proposed increase in rod worth and the increase in the allowable radial peaking factor. However, as discussed above, there is no reduction in margin of safety because the parameters do not exceed existing acceptance criteria for deposited enthalpy, fuel centerline melt, or for off-site doses due to fuel failure.
- Accidents with DNB criteria may show consequence increase due to the need to rely on statistical methodologies. However, there is no reduction in the margin of safety because the 95/95 acceptance criteria is met in all cases.

In summary, the proposed amendment does not involve any significant reduction in a margin of safety and, therefore, does not involve a significant hazard consideration.

The NRC staff has reviewed and concurs in the licensees "No Significant Hazard Consideration" findings; therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources

Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene are discussed below.

By February 23, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards considerations. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards considerations, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and Gerald Garfield, Esquire, Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 15, 1988, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Dated at Rockville, Maryland, this 18th day of January 1989.

For the Nuclear Regulatory Commission.

David H. Jaffe,

Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–1499 Filed 1–23–89; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Small Business Competitiveness Demonstration Program; Policy Directive; Correction

AGENCY: Office of Federal Procurement Policy (OFPP) Small Business Administration (SBA).

ACTION: Interim policy directive correction.

SUMMARY: In the Federal Register of December 29, 1988, (53 FR 52889) OFPP and SBA published an interim policy directive implementing Title VII of the "Business Opportunity Development Reform Act of 1988", which establishes the Small Business Competitiveness Demonstration Program. In several places in the document, errors were made. This corrects those errors.

FOR FURTHER INFORMATION CONTACT: Karen Maris, Deputy Associate Administrator, (202) 395-3300; or William Coleman, Deputy Associate Administrator, (202) 395-3501.

1. On page 52890, in the first column, in the paragraph entitled **ADDRESSES**, in the fifth line, delete "Director" and insert "Administrator".

2. On page 52890, in the third column, in the third line, delete "categories" and insert "groups".

3. On page 52892, in the first column, delete "4. The Department of Health and Human Services," the second time it appears.

4. On page 52893, in the third column, in the third paragraph ("IV A. 3."), in the fifth line, after "as", and before "goals" insert the following: "specified in paragraph IV.B. Any necessary modifications to agency solicitation practices for the purpose of achieving the agency's 40 percent".

5. On page 52894, in the first column, delete lines 19–25, beginning with the heading "1. Refuse and Related Systems" and ending with "services, SICs 4212".

Allan V. Burman,

Deputy Administrator and Acting Administrator, Office of Federal Procurement Policy.

[FR Doc. 89-1545 Filed 1-23-89; 8:45 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-26464; File No. SR-NASD-89-2]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc. Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Membership Application Fee

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on January 12, 1989, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A)(ii) of the Act, which renders the fee effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of The Terms of Substance of The Proposed Rule Change

The proposed rule change to section 2(h) of Schedule A to the NASD's By-Laws raises the membership application fee from $500 to $1,500.

II. Self-Regulatory Organization's Statement of The Purpose of, And Statutory Basis For, The Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change to section 2(h) of Schedule A to the NASD's By-Laws raises the membership application fee from $500 to $1,500. The fee has not been changed since it was set at $500 in 1974, and has been raised at this time to help defray the increased administrative costs of processing membership applications.

The proposed rule change is consistent with the provisions of section 15A(b)(5) of the Act, which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that this rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of The Proposed Rule Change And Timing For Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act and subparagraph (e) of Rule 19b-4 thereunder in that it affects assessments and fees imposed by the NASD.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Soliciation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All

submissions should refer to the file number in the caption above and should be submitted by February 14, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: January 17, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1521 Filed 1-23-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16757; 812-7141]

January 17, 1989.

Agency: Securities and Exchange Commission ("SEC").

Action: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Sears Mortgage Funding Corporation ("Applicant" or the "Company").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant seeks a conditional order, on behalf of itself and certain trusts ("Issuer Trusts") to be created by the Company, exempting the Company and the Issuer Trusts from all provisions of the 1940 Act in connection with the proposed issuance of collateralized mortgage obligations and the sale of beneficial ownership interests in the Issuer Trusts.

Filing Date: The application was filed on October 4, 1988, and amended on November 14, 1988, December 30, 1988 and January 9, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on February 6, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

Addresses: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 2500 Lake Cook Road, Riverwoods, Illinois 60015.

For Further Information Contact: Jeremy N. Rubenstein, Staff Attorney, at (202) 272-2847, or Stephaine M. Monaco, Branch Chief, at (202) 272-3030 (Office of Investment Company Regulation, 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 Company is a wholly-owned, limited purpose finance subsidiary of Sears Mortgage Securities Corporation, a wholly-owned indirect subsidiary of Sears Roebuck and Company. The Company was organized as a Delaware corporation on April 23, 1986 to facilitate the financing of mortgage loans, and is not empowered to engage in any business or investment activities unrelated to such purpose. The requested relief is sought to permit the Company, directly or through one or more Issuer Trusts, to issue evidences of indebtedness ("Bonds") in one or more series ("Series").

2. The Bonds will be collateralized primarily by mortgage pass-through certificates ("Mortgage Certificates") consisting of either Agency Certificates or Non-Agency Certificates (together, "Mortgage Collateral"). "Agency Certificates" are defined as (1) fully-modified pass-through mortgage-backed certificates guaranteed by the Government National Mortgage Association ("GNMA Certificates"), (2) mortgage participation certificates issued by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates"), and (3) guaranteed mortgage pass-through securities issued by the Federal National Mortgage Association ("FNMA Certificates"). "Non-Agency Certificates" are defined as pass-through certificates and participation certificates which are neither issued nor guaranteed by an agency or instrumentality of the United States and which evidence the entire undivided interest in pools of mortgage loans secured by single family (one-to-four unit) residences. All or a portion of the Agency Certificates securing a Series of Bonds may be backed by mortgage loans that provide for payments during the initial portion of their term that are less than the actual amount of principal and interest payable thereon on a level debt service basis ("GPM GNMA Certificates"). In addition to the Mortgage Collateral directly securing the Bonds, a Series may have additional collateral which may include certain collection accounts and reserve funds as specified in the related Indenture.

3. Each Series of Bonds will be issued under the terms of a separate Trust Indenture (the "Indenture") between the Company, if the Bonds are issued directly by the Company, or a bank, trust company or other fiduciary acting on behalf of an Issuer Trust (the "Owner Trustee"), and the Indenture Trustee (the "Indenture Trustee"). The Indentures will be qualified under the Trust Indenture Act of 1939 unless an appropriate exemption is available.

4. In the case of each Series of Bonds: (a) The Company or the Owner Trustee (with respect to an Issuer Trust) will hold no substantial assets other than Mortgage Collateral and cash; (b) the Bonds will be secured by Mortgage Collateral or cash having a collateral value determined under the Indenture, at the time of issuance and following each payment date for such Bonds, equal to or greater than the outstanding principal balance of the Bonds; (c) distributions of principal and interest received on the Mortgage Collateral securing the Bonds and any applicable reserve funds, plus reinvestment income thereon, will be sufficient to pay all interest on the Bonds and to retire each class of Bonds by its stated maturity; and (d) the Mortgage Collateral will be assigned to the Indenture Trustee and will be subject to the lien of the related Indenture.

5. Without the consent of the holder of each outstanding Bond affected thereby, no party may (a) change the stated maturity of the principal of, or any installment of interest on, any Bond or reduce the principal amount thereof, the interest rate specified thereon, the redemption price with respect thereto or the earliest date on which such Bonds may be redeemed at the option of the Company or the Owner Trustee (with respect to an Issuer Trust), or change any place of payment where, or the coin or currency in which, such Bond or any interest thereon is payable, or impair the right to institute suit for the enforcement of certain provisions of the Indenture regarding payment, (b) reduce the percentage of the aggregate amount of the outstanding bonds of such Series, the consent of the holders of which is required for any such change, or the consent of the holders of which is required for any waiver of compliance with certain provisions of the Indenture or of certain defaults thereunder and their consequences as provided for in the Indenture, (c) modify the provisions of the Indenture specifying the circumstances under which the provisions of the Indenture may not be changed without the consent of each outstanding Bondholder affected

thereby, or the provisions of the Indenture with respect to certain remedies available in the event of default, except to increase any percentage specified therein or to provide that certain other provisions of the Indenture cannot be modified or waived without the consent of the holder of each outstanding Bond affected thereby, (d) modify or alter the provisions of the Indenture regarding the voting of Bonds held by the Company or the Owner Trustee, if any, the manager of the Bonds, any owner of the Company or an affiliate of any such party, (e) permit the creation of any lien ranking prior to, or on a parity with, the lien of the Indenture with respect to any part of the property subject to the lien under the Indenture, or terminate the lien of the Indenture on any property at any time subject thereto or deprive the holder of any Bond of the security afforded by the lien of the Indenture, or (f) modify any of the provisions of the Indenture in such manner as to affect the calculation of the debt service requirement for any Bond or the rights of the Bondholders to the benefits of any provisions for the mandatory redemption of Bonds of such Series contained therein.

6. Subject to the conditions contained in the application, the Company may sell or assign its beneficial interests (the "Beneficial Interests") in an Issuer Trust. The interests of the Bondholders will not be compromised or impaired by the sale of Beneficial Interests in any Issuer Trust. The sale of Beneficial Interests in any Issuer Trust will not alter the payment of cash flows under the Indenture, including the amounts to be deposited in the collection account or any reserve fund created under the Indenture to support the payment of principal and interest on the Bonds.

7. Except to the extent permitted by the limited right to substitute collateral, it will not be possible for the Company, its parent, Sears Mortgage Securities Corporation, the Beneficial Interest holders, or the Owner Trustee, if any, to alter the collateral initially pledged to secure a Series of Bonds, and in no event will such right to substitute collateral result in a diminution in the value or qualify of such collateral. Although it is possible that any collateral substituted for collateral initially pledged may have a different prepayment experience than the original collateral, the interests of the Bondholders will not be impaired because: (a) the prepayment experience of any collateral will be determined by market conditions beyond the control of the Company, its parent, Sears Mortgage Securities Corporation, or the Owner Trustee, if any, which market conditions are likely to affect all mortgage certificates of similar payment terms and maturities in a similar fashion; and (b) the interests of the Company, its parent, Sears Mortgage Securities Corporation, or the Owner Trustee, if any, are not likely to be greatly different from those of the Bondholders with respect to collateral prepayment experience. No Mortgage Certificates may be released from the lien of the Indenture prior to retirement in full of all Bonds of any Series except to the extent permitted by the limited right to substitute collateral as described herein.

8. Subject to the conditions in the application, the Company may issue Bonds of a Series which bear interest at rates which vary in relation to an index specified in the related prospectus supplement for a Series of Bonds.

Applicant's Conditions

Applicant agrees that if an order is granted it will be expressly conditioned on the following:

A. Conditions Relating to the Bonds

1. Each Series of Bonds will be registered under the Securities Act of 1933 ("1933 Act"), unless offered in a transaction exempt from registration under section 4(2) of such 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 underlying the Bonds will be limited to GNMA Certificates, FNMA Certificates, FHLMC Certificates or Non-Agency Certificates as described herein.

3. New Mortgage Collateral will not be substituted for more than 40% of the aggregate face amount of the Mortgage Collateral initially pledged to secure the Bonds. If new Mortgage Collateral is substituted, the substitute collateral will: (i) Be of equal or better quality than the collateral replaced; (ii) have similar payment terms as, and a cash flow not less than, the collateral replaced; (iii) be sufficient to satisfy all interest and principal obligations on the Bonds when due; (iv) be insured or guaranteed to the same extent as the collateral replaced; (v) be similar in kind to the substituted for Mortgage Certificates; and (vi) meet the conditions set forth in Conditions A(2), A(4) and A(6). In addition, a substitution will be made only if the Bonds will continue to be rated in the rating category which they originally rated by the rating agency rating such Bonds. In no event will any right to substitute Mortgage Collateral result in a diminution in the value or quality of such Mortgage Collateral. New Non-Agency Certificates may be substituted for Non-Agency Certificates initially pledged as Mortgage Collateral only in the event of a default, late payment or other defect in the Mortgage Collateral being replaced.

4. The Company or the Owner Trustee (in the case of an Issuer Trust) will pledge all Mortgage Collateral, funds, accounts or other collateral securing a Series of Bonds to the Indenture Trustee under the related Indenture in order to secure the Bonds and such collateral will be held at all times by the Indenture Trustee, or a custodian on behalf of the Indenture Trustee. Neither the Indenture Trustee, the custodian, if any, nor the Owner Trustee (in the case of an Issuer Trust) will be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405) of the Company or of the master servicer or originating lender of any mortgage underlying the Mortgage Collateral. The Indenture Trustee will be provided with a first priority perfected security or lien interest in and to all collateral securing the Series of Bonds.

5. Each Series of Bonds will be rated in at least the second highest bond rating category by at least one nationally recognized statistical rating organization that is not affiliated with the Company or the Owner Trustee (in the case of an Issuer Trust). The Bonds will not be "redeemable securities" within the meaning of section 2(a)(32) of the 1940 Act.

6. The master servicer of any mortgages underlying Non-Agency Certificates that are pledged as collateral will not be an affiliate of the Indenture Trustee, and, in the event that there is no master servicer, no servicer of such mortgages will be an affiliate of the Indenture Trustee. The master servicer and servicer of such mortgages will be approved by FNMA or FHLMC as an "eligible seller/servicer" of conventional, residential mortgage loans. The agreement governing the servicing of such mortgages shall obligate the servicer to provide substantially the same services with respect to those mortgages as it is then currently required to provide in connection with the servicing of mortgage loans insured by FHA, guaranteed by the United States Veterans Administration or eligible for purchase by FNMA or FHLMC.

7. No less often than annually, an independent public accountant will audit the books and records of the Company and each Issuer Trust (including the books and records of each Indenture Trustee as such relate to each Series of Bonds) and will report that it

has no exceptions to the calculations as set forth in any statements made by the Company, each Issuer Trust and each Indenture Trustee to the Bondholders, or that all such exceptions are set forth in such report, and in addition will report on whether the anticipated payments of principal and interest on the Mortgage Collateral relating to each Series of Bonds continues to be adequate to pay the principal and interest on such Bonds in accordance with their terms. Upon completion, copies of the auditor's reports will be provided to the Indenture Trustee.

8. Beneficial and legal ownership of all Mortgage Collateral deposited with the Indenture Trustee will not be transferred until such time as the Indenture Trustee releases such Mortgage Collateral from the Indenture.

B. Conditions Relating to Variable Rate Bonds

1. Bonds bearing interest at a variable rate will be subject to maximum interest rates ("interest rate caps") and may or may not have minimum interest rates (interest rate floors). The maximum and minimum interest rates may vary from period to period, and always will be specified in the related prospectus supplement. The cash flow generated by the related Mortgage Collateral securing such Series of Bonds (together with other collateral) plus income received thereon at the assumed reinvestment rate specified in the related prospectus supplement will be sufficient to provide for the full and timely payment of the Bonds of such Series (even if the interest rates on variable rate Bonds were the maximum applicable interest rates for each specified period).

2. In addition to those mechanisms referred to in the application, the Company or an Issuer Trust may utilize additional mechanisms to ensure the adequacy of the Mortgage Collateral notwithstanding the issuance of Bonds bearing interest at variable rates. The Company will give the staff of the SEC notice by letter of any such additional mechanisms before they are utilized to give the staff an opportunity to raise any questions as to their appropriateness.

C. Conditions Relating to REMIC Election

1. If the Company elects to have a Series of Bonds treated as a REMIC, it will provide for the payment of administrative fees and expenses incurred in connection with the issuance of the Bonds and the administration of the Bonds by one of the following methods or a combination of one or more of such methods:

(a) A third party, whose credit is acceptable to the agency rating the Bonds and the Indenture Trustee, will guaranty the payment of such fees and expenses;

(b) One or more reserve funds will be established to provide for the payment of fees and expenses. In establishing such fund or funds, maximum fees typically will be projected, assuming current inflation scenarios required by the rating agency at the time of the issuance of the Bonds and the establishment of such reserve funds. Thereafter, the Indenture Trustee will look solely to such reserve funds for the payment of certain fees and expenses. The procedure used to calculate the anticipated level of fees and expenses will be reasonable and will have been successfully used in the past by other issuers to calculate the amount of available funds sufficient to pay administrative fees and expenses and to ensure that such funds will be adequate to cover future administrative fees and expenses;

(c) The Bonds will be secured by Mortgage Collateral, the value of which is in excess of the amount necessary to make payments of principal and interest on the Bonds. Such excess or a portion thereof will be applied to the payment of administrative fees and expenses and may be used in combination with any of the other methods described herein; and

(d) The owners of the beneficial or residual interests of each Series will be personally liable pursuant to the provisions of the Indenture for the fees and expenses of the issuer with respect to such Series not otherwise payable from one of the sources described above.

The Company will insure that the anticipated level of fees and expenses will be more than adequately provided for regardless of which of the methods described above (which methods may be used in combination) are selected by the Company to provide for the payment of such fees and expenses.

2. The election by the Company to be treated as a REMIC will not increase the level of the expenses that would be incurred by the Company. Furthermore, should the Company elect for a Series of Bonds to be treated as a REMIC, all administrative fees and expenses in connection with the administration of the Series will be paid or provided for in a manner satisfactory to the agency rating the Bonds.

D. Conditions Relating to the Transfer of Beneficial Interests

1. Applicant will sell or assign Benefical Interests only in Issuer Trusts in which the Mortgage Collateral is limited to Agency Certificates. Beneficial Interests will be sold to no more than 100 investors who are either institutional investors or non-institutional investors who are "accredited investors" as defined in Rule 501(a) under the 1933 Act. Institutional investors will have such knowledge and experience in financial and business matters as to be able to evaluate the risks of purchasing Beneficial Interests and to understand the volatility of interest rate fluctuations as they affect the value of mortgages, mortgage-related securities and beneficial interests therein. Non-institutional investors will be limited to not more than 15, be required to purchase at least $200,000 of such Beneficial Interests and will have a net worth at the time or purchase that exceeds $1,000,000 (exclusive of their primary residence). Non-institutional investors will have such knowlege 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 Beneficial Interests and will have direct, personal and significant experience in making investments in mortgage-related securities. Owners of Beneficial Interests will be limited to mortgage lenders, thrift institutions, commerical and investment banks, savings and loan associations, pension funds, employee benefit plans, insurance companies, real estate investment trusts, open-end management investment companies or other institutional or non-institutional investors as described above which customarily engage in the purchase or origination of mortgages and mortgage-related securities. Each open-end management investment company will be required to satisfy itself that any purchase of a Beneficial Interests will be incompliance with the provisions of section 12(d)(1) of the 1940 Act.

2. Each sale of a Beneficial Interest will be in a transaction exempt from the registration requirements of the 1933 Act under section 4(2) thereof.

3. Each purchase of a Beneficial Interest will be required to represent that it is purchasing such Beneficial Interest for investment purposes and not for distribution, and that it will hold such Benefical Interest in its own name and not as nominee for undisclosed investors.

4. Each purchaser of a Beneficial Interest will agree that it will not resell such interest unless (i) the subsequent purchase would have been eligible to purchase the Beneficial Interest directly under the terms of Condition D(1), (ii) after the sale there would be no more

than 100 holders of Beneficial Interests, and (iii) the subsequent purchaser agrees to be subject to the same representations and undertakings as are applicable to the reselling purchaser. In addition, the Indenture relating to each Issuer Trust will prohibit the transfer of any Beneficial Interests in any Issuer Trust if there would be more than 100 owners of Beneficial Interests at any time.

5. No owner of a Beneficial Interest will be affiliated with the Indenture Trustee, any custodian of the Mortgage Certificates, or any agency rating the Bonds of the relevant Series.

6. No holder of a controlling interest in Applicant (as the term "control" is defined in Rule 405 under the 1933 Act) will be affiliated with any custodian of the Mortgage Certificates or any agency rating the Bonds of the relevant Series.

7. If the sale of Beneficial Interests results in the transfer of control of an Issuer Trust (as the term "control" is defined in Rule 405 under the 1933 Act), the relief afforded by any order granted on the application would not apply to any subsequent offerings of securities by such Issuer Trust.

8. Applicant will not deposit in any Issuer Trust Mortgage Collateral with a collateral value, as determined under the Indenture, in excess of 120% of the aggregate principal amount of the related Bonds.

E. Special Condition

1. If any of the equity interests in the Company are sold and such sale results in the transfer of control (as the term "control" is defined in Rule 405 under the 1933 Act) of the Company, the relief afforded by any order granted on the application would not apply to subsequent Bond offerings by the Company or any Issuer Trust.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1522 Filed 1-23-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 89-001]

The Boat Safety Account of the Aquatic Resources Trust Fund; Availability of Fiscal Year 1989 Financial Assistance

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability of FY 89 financial assistance.

SUMMARY: Pursuant to Title 46 United States Code section 13103(c), the Coast Guard is seeking to enter into financial assistance agreements with national nonprofit public service organizations for national boating safety activities. The Coast Guard has fiscal year 1989 funds available to subsidize selected national boating safety activities. This announcement seeks proposals for all types of projects that will promote boating safety on a national level.

DATES: Proposals must be submitted to the following address by 1 April 1989.

ADDRESSES: Specific information on organization eligibility, proposal requirements, award procedures, financial administration procedures and application forms (SF 424) may be obtained from Commandant (G-NAB-5), U.S. Coast Guard, 2100 Second Street, SW. Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: Mr. Ladd Hakes by telephone at (202) 267-0954 or at U.S. Coast Guard Headquarters (C-NAB-5), 2100 Second Street, SW. Washington, DC 20593-0001.

SUPPLEMENTARY INFORMATION: Title 26, United States Code, Section 9504 establishes the Boat Safety Account of the Aquatic Resources Trust Fund. The Coast Guard may award annually up to 5 percent of the available funds to national nonprofit public service organizations for national boating safety activities. Up to $1,500,000 is available for the fiscal year ending September 30, 1989. Twelve awards totaling $1,000,000 were made in fiscal year 1988; awards ranged from $10,000 to $200,000. Nothing in this announcement should be construed as committing the Coast Guard to dividing available funds among all qualified applicants or awarding any specified amount.

It is anticipated that several awards will be made by the Chief, Office of Navigation Safety and Waterway Services, U.S. Coast Guard. Applicants must be responsible, nongovernment, nonprofit public service organizations and must establish that their activities are, in fact, national in scope.

Some areas of particular interest include:

- Projects designed to help boat and engine manufacturers understand and comply with Coast Guard Boating Safety Standards and other manufacturer requirements;
- Projects that would identify and analyze hazards associated with personal watercraft;
- Projects to design and develop boating safety education media and materials, including computer-assisted training modules, for use in elementary, junior high, and high school classroom settings;
- Projects designed to increase boaters' understanding of, and compliance with, national requirements for reporting boating accidents, or which would otherwise promote increased reporting of boating accidents;
- Projects that would produce data and information on the real-world reliability of inflatable personal flotation devices in actual use;
- A project that would provide a consolidated review of boating safety education media currently available from Federal, State, and other safety sources, to determine which media are out-of-date or in need of revision; and
- Projects that would produce needed media on such boating topics as waterskiing and towboat operation, the effects of alcohol on the boat operator, heavy weather/rough water boating, houseboat safety, boating accident rescue techniques for marine police and rescue squads, high-speed boat safety, or other appropriate boating safety/related topics.

This list should not constrain submission of proposals addressing other boating safety concerns. Innovative approaches are welcome.

The Boating Safety Financial Assistance Program is listed in Section 20.005 of the Federal Domestic Assistance Catalog.

Dated: January 18, 1989.

R.T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 89-1540 Filed 1-23-89; 8:45 am]

BILLING CODE 4910-14-M

Urban Mass Transportation Administration

UMTA Section 3 and 9 Grant Obligations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1989, Pub. L. 100-457, signed into law by President Reagan on September 30, 1988, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the **Federal Register** each time a grant is obligated pursuant to sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended.

The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant.

This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Edward R. Fleischman, Chief, Resource Management Division, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street SW., Room 9305, Washington, DC 20590, (202) 366–2053.

SUPPLEMENTARY INFORMATION: The section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to the statute UMTA reports the following grant information:

SECTION 3 GRANTS

Transit property	Grant no.	Grant amount	Obligation date
Connecticut Department of Transportation, New York/SW Connecticut	CT-03-0057	$7,987,500	12-30-88
Connecticut Department of Transportation, New York/SW Connecticut	CT-03-0058	9,937,500	12-30-88
Connecticut Department of Transportation, New York/SW Connecticut	CT-03-0059	47,812,500	12-23-88
Connecticut Department of Transportation, New York/SW Connecticut	CT-03-0060	13,200,00	12-30-88
Connecticut Department of Transportation, New York/SW Connecticut	CT-03-0061	3,750,000	12-23-88
Connecticut Department of Transportation, New York/SW Connecticut	CT-03-0063	1,725,000	12-30-88
Connecticut Department of Transportation, New York/SW Connecticut	CT-03-0064	7,312,500	12-30-88
New Jersey Transit Corporation, Statewide, NJ	NJ-03-0074	7,998,750	12-21-88
New Jersey Transit Corporation, Statewide, NJ	NJ-03-0067	48,639,645	12-21-88
City of Camden, Camden, NJ	NJ-03-0080	7,707,000	12-21-88
South Carolina Department of Highways and Public Transportation, Orangeburg, SC	SC-03-0006	75,000	12-30-88

SECTION 9 GRANTS

Transit property	Grant no.	Grant amount	Obligation date
Tuscaloosa County Parking and Transit Authority, Tuscaloosa, AL	AL-90-X036	$195,830	12-30-88
City of Gadsden, Gadsden, AL	AL-90-X037	43,337	12-30-88
Birmingham-Jefferson County Transit Authority, Birmingham, AL	AL-90-X038	2,748,320	(1)
Montgomery Area Transit System, Montgomery, AL	AL-90-X039	1,675,687	12-30-88
Tucson Transit Authority, Tucson, AZ	AZ-90-X021	6,041,693	(1)
Sacramento Regional Transit District, Sacramento, CA	CA-90-X313	10,457,410	12-30-88
Hub Area Transit Authority, Yuba City, CA	CA-90-X315	709,750	12-30-88
Santa Clara County Transportation Agency, San Jose, CA	CA-90-X320	11,271,086	12-30-88
San Mateo County Transit District, San Francisco, CA	CA-90-X322	2,500,186	12-30-88
City of Napa, Napa, CA	CA-90-X324	387,680	12-30-88
Bay Area Rapid Transit District, San Francisco, CA	CA-90-X326	3,821,072	12-30-88
City of Torrance, Torrance, CA	CA-90-X333	192,000	12-30-88
California Department of Transportation, Sacramento, CA	CA-90-X335	7,860,539	12-30-88
Mesa County, Grand Junction, CO	CO-90-X044	279,438	12-30-88
Greater Hartford Transit District, Hartford, CT	CT-90-X126	1,698,000	12-09-88
Greater New Haven Transit District, New Haven, CT	CT-90-X127	933,600	12-30-88
Meriden-Middletown Midstate Regional Planning Agency, Meriden, CT	CT-90-X128	44,240	12-30-88
Delaware Transportation Authority, Dover, DE	DE-90-X008	2,270,085	12-29-88
Metropolitan Dade Transportation Agency, Miami, FL	FL-90-X101-02	2,920,000	12-30-88
Orange-Seminole-Osceola Transportation Authority, Orlando, FL	FL-90-X117	2,723,240	12-30-88
Metropolitan Dade Transit Agency, Miami, FL	FL-90-X118	20,187,337	12-30-88
Hillsborough Area Regional Transit Authority, Tampa, FL	FL-90-X119	4,887,321	12-30-88
Regional Transit System, Gainesville, FL	FL-90-X120	948,492	12-30-88
Tallahassee Transit Authority, Tallahassee, FL	FL-90-X121	645,286	12-30-88
Sarasota County Area Tranist Authority, Sarasota, FL	FL-90-X122	979,657	12-30-88
East Volusia Transportation Authority, Daytona Beach, FL	FL-90-X123	892,710	12-30-88
City of Augusta, Augusta, GA	GA-90-X044	1,221,976	12-30-88
Cobb County, Atlanta, GA	GA-90-X047	1,701,521	(1)
Des Moines Metropolitan Transit Authority, Des Moines, IA	IA-90-X094-01	1,466,507	12-30-88
Blackhawk County, Waterloo, IA	IA-90-X097-1	497,373	12-30-88
City of Coralville, Iowa City, IA	IA-90-X098	333,579	12-30-88
University of Iowa, Iowa City, IA	IA-90-X099	691,447	12-30-88
Iowa City Transit, Iowa City, IA	IA-90-X100	205,843	12-30-88
Sioux City Transit System, Sioux City, IA	IA-90-X101	454,568	12-30-88
City of Decatur, Decatur, IL	IL-90-X127	818,672	12-30-88
Bloomington-Normal Public Transit System, Bloomington, IL	IL-90-X130	624,247	12-30-88
Loves Park Transit System (LPTS), Rockford, IL	IL-90-X131	87,383	12-30-88
Rockford Mass Transit District, Rockford, IL	IL-90-X132	1,331,573	(1)
Fort Wayne Public Transportation Corp., Fort Wayne, IN	IN-90-X115	1,386,800	12-30-88
Greater LaFayette Public Transportation Corporation, LaFayette, IN	IN-90-X116	1,813,311	12-30-88
City of Terre Haute, Terre Haute, IN	IN-90-X117	452,000	12-30-88
Muncie Public Transportation Corporation, Muncie, IN	IN-90-X118	1,038,611	12-30-88
Wichita Metropolitan Transit Authority, Wichita, KS	KS-90-X035	1,759,835	12-30-88
Johnson County Transit, Kansas City, KS	KS-90-X036	240,000	(1)
Transit Authority of River City, Louisville, KY	KY-90-X040	4,478,517	12-30-88
City of Baton Rouge, Baton Rouge, LA	LA-90-X089	1,873,327	12-30-88

SECTION 9 GRANTS—Continued

Transit property	Grant no.	Grant amount	Obligation date
Lowell Regional Transit Authority, Lowell, MA	MA-90-X070-02	1,100,000	12-30-88
Southeastern Regional Transit Authority, New Bedford, MA	MA-90-X078-01	26,400	12-30-88
Montachusett Regional Transit Authority, Fitchburg, MA	MA-90-X084	337,769	(1)
Berkshire County Regional Planning Commission, Pittsfield, MA	MA-90-X086	20,000	12-30-88
Worcester Regional Transit Authority, Worcester, MA	MA-90-X087	1,917,192	12-30-88
Southeastern Regional Transit Authority, New Bedford, MA	MA-90-X088	3,005,653	12-30-88
Massachusetts Bay Transportation Authority, Boston, MA	MA-90-X090	18,741,886	(1)
Maine Department of Transportation, Lewiston, ME	ME-90-X039	208,347	12-30-88
Ann Arbor Transportation Authority, Ann Arbor, MI	MI-90-X103	1,579,244	12-30-88
Twin Cities Area Transportation Authority, Benton Harbor, MI	MI-90-X105	357,960	12-30-88
Grand Rapids Area Transit Authority, Grand Rapids, MI	MI-90-X107	3,884,646	12-30-88
Southeastern Michigan Transportation Authority, Detroit, MI	MI-90-X108	25,224,160	12-30-88
City of Moorhead, Moorhead, MN	MN-90-X036	236,277	12-30-88
Kansas City Area Transportation Authority, Kansas City, MO	MO-90-X051	4,981,643	12-30-88
Mid-America Regional Council, Kansas City, MO	MO-90-X052	200,000	12-30-88
Gulf Regional Planning Commission, Gulfport, MS	MS-90-X024	113,000	12-30-88
City of Raleigh, Raleigh, NC	NC-90-X075-02	585,195	12-29-88
Durham County, Durham, NC	NC-90-X087	32,000	12-23-88
Omaha Metro Area Transit, Omaha, NE	NE-90-X019	52,000	12-30-88
City of Lincoln, Lincoln, NE	NE-90-X020	2,010,193	12-30-88
New Jersey Transit Corporation, Statewide, NJ	NJ-90-X026	40,650,117	12-30-88
City of Las Cruces, Las Cruces, NM	NM-90-X020-02	161,958	12-30-88
City of Albuquerque, Albuquerque, NM	NM-90-X023	320,000	12-30-88
Washoe County Regional Transportation Commission, Reno, NV	NV-90-X008	1,148,137	12-30-88
Clark County Regional Transportation Commission, Las Vegas, NV	NV-90-X009-01	47,424	(1)
Saratoga County Planning Board, Albany, NY	NY-90-X150	760,000	(1)
City of Poughkeepsie, Poughkeepsie, NY	NY-90-X151	462,080	12-30-88
City of Glen Falls, Glen Falls, NY	NY-90-X152	272,900	12-30-88
Niagara Frontier Transportation Authority, Buffalo, NY	NY-90-X153	7,055,710	12-30-88
Rochester-Genesee Regional Transportation Authority, Rochester, NY	NY-90-X155	4,858,346	12-30-88
Canton Regional Transit Authority, Canton, OH	OH-90-X082-01	557,205	12-30-88
Toledo Area Regional Transit Authority, Toledo, OH	OH-90-X093-01	32,000	(1)
Canton Regional Transit Authority, Canton, OH	OH-90-X101-01	50,000	12-30-88
Portage Area Regional Transportation Authority, Akron, OH	OH-90-X109	281,000	12-30-88
Central Ohio Transit Authority, Columbus, OH	OH-90-X110	670,320	12-30-88
Central Ohio Transit Authority, Columbus, OH	OH-90-X111	4,452,255	12-30-88
Miami Valley Regional Transit Authority, Dayton, OH	OH-90-X112	2,962,627	12-30-88
Southwest Ohio Regional Transit Authority, Cincinnati, OH	OH-90-X113	4,499,874	(1)
Toledo Area Regional Transit Authority, Toledo, OH	OH-90-X114	4,260,787	(1)
Metropolitan Tulsa Transit Authority, Tulsa, OK	OK-90-X027	2,104,917	12-30-88
Central Oklahoma Transportation and Parking Authority, Oklahoma City, OK	OK-90-X028	4,197,962	(1)
Tri-County Metropolitan Transportation District of Oregon, Portland, OR	OR-90-X028	9,152,277	(1)
Lane Transit District, Eugene, OR	OR-90-X029	1,275,741	(1)
County of Lackawanna Transit System, Scranton, PA	PA-90-X147-01	1,251,189	12-23-88
Cumberland-Dauphin-Harrisburg Transit Authority, Harrisburg, PA	PA-90-X150-01	527,426	12-23-88
Luzerne County Transportation Authority, Scranton, PA	PA-90-X154-01	966,853	12-23-88
Southeastern Pennsylvania Transportation Authority, Philadelphia, PA	PA-90-X155	28,005,102	12-29-88
York Area Transportation Authority, York, PA	PA-90-X156	34,400	12-23-88
Port Authority of Allegheny County, Pittsburgh, PA	PA-90-X157	20,673,978	12-29-88
Beaver County Transit Authority, Pittsburgh, PA	PA-90-X158	775,351	12-29-88
Westmoreland County Transit Authority, Pittsburgh, PA	PA-90-X159	266,714	12-23-88
Department of Transportation and Public Works, San Juan, PR	PR-90-X028-01	74,800	12-30-88
Metropolitan Bus Authority, San Juan, PR	PR-90-X044	8,028,026	12-30-88
Department of Transportation and Public Works, San Juan, PR	PR-90-X045	342,700	12-30-88
Rhode Island Department of Transportation, Providence, RI	RI-90-X012	5,744,328	12-30-88
Greenville Transit Authority, Greenville, SC	SC-90-X021-01	91,402	12-23-88
City of Charleston, Charleston, SC	SC-90-X024	3,972,821	12-29-88
Central Midlands Regional Planning Council, Columbia, SC	SC-90-X025	1,165,140	12-29-88
City of Souix Falls, Sioux Falls, SD	SD-90-X013	846,180	(1)
City of Rapid City, Rapid City, SD	SD-90-X014	154,147	12-30-88
Metropolitan Transit Authority, Nashville, TN	TN-90-X068	1,700,926	(1)
Chattanooga Area Regional Transportation Authority, Chattanooga, TN	TN-90-X069	1,566,888	(1)
Knoxville Transportation Authority, Knoxville, TN	TN-90-X070	1,407,244	12-29-88
Memphis Area Transit Authority, Memphis, TN	TN-90-X071	5,031,837	(1)
Dallas Area Rapid Transit, Dallas, TX	TX-90-X122	5,352,640	12-30-88
City of Laredo, Laredo, TX	TX-90-X140	776,800	12-30-88
Regional Transit Authority, Corpus Christi, TX	TX-90-X142	2,544,260	12-30-88
Fort Worth Transportation Authority, Fort Worth, TX	TX-90-X143	4,800,000	12-30-88
City of Arlington, Dallas, TX	TX-90-X144	148,200	12-30-88
City of San Angelo, San Angelo, TX	TX-90-X146	370,614	12-30-88
McAllen-Lower Rio Grande Valley Development Council, McAllen, TX	TX-90-X147	50,000	12-30-88
Utah Transit Authority, Salt Lake City, UT	UT-90-X012	4,421,860	(1)
Peninsula Transportation District Commission, Hampton, VA	VA-90-X055-04	1,045,289	12-23-88
Greater Richmond Transit Company, Richmond, VA	VA-90-X060-01	2,669,016	12-23-88
City of Charlottesville, Charlottesville, VA	VA-90-X061-01	508,266	12-23-88
Tidewater Transportation District Commission, Norfolk, VA	VA-90-X063	6,631,506	12-23-88
Chittenden County Transportation Authority, Burlington, VT	VT-90-X009	392,509	12-30-88
Snohomish County Transportation Authority, Everett, WA	WA-90-X090	180,000	12-30-88
City of Yakima, Yakima, WA	WA-90-X091	1,091,033	12-30-88

SECTION 9 GRANTS—Continued

Transit property	Grant no.	Grant amount	Obligation date
City of Wausau, Wausau, WI	WI-90-X100	304,740	12-30-88
Kanawha Valley Regional Transportation Authority, Charleston, WV	WV-90-X031	902,108	12-23-88

[1] The Section 9 grants shown with no obligation date are awaiting a section 13(c) certification from the Department of Labor After receipt of this certification the grants will be obligated.

Issued On: January 17, 1988.

Alfred A. DelliBovi,

Administrator.

[FR Doc. 89-1460 Filed 1-23-89; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 89-12]

Suspension of Individual Broker's License No. 7355; Lawrence C. Melilli, dba Praise The Lord Customhouse Broker

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

ACTION: General notice.

SUMMARY: Notice is hereby given that the Secretary of the Treasury on December 12, 1988, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and Part 111.74 of the Customs Regulations, as amended (19 CFR 111.74), suspended the individual broker's license No. 7355 issued to Lawrence C. Melilli for a period of 20 days. This action is effective as of February 1, 1989.

Dated: January 17, 1989.

Victor G. Weeren,

Director, Office of Trade Operations.

[FR Doc. 89-1449 Filed 1-23-89; 8:45 am]

BILLING CODE 4820-02-M

[T.D. 89-14]

Conditional approval and accreditation of Bennett Testing Service, Inc., as a commercial gauger and laboratory

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

ACTION: Conditional Approval and Accreditation of Bennett Testing Service, Inc., as a Commercial Gauger and Laboratory.

SUMMARY: Bennett Testing Service, Inc., of Carteret, New Jersey, recently applied under § 151.13 of the Customs Regulations (19 CFR 151.13) for Customs approval to gauge and sample imported petroleum, petroleum products, organic chemicals, and vegetable and animal oils and for Customs accreditation to analyze petroleum and petroleum products for API gravity, sediment and water, and distillation characteristics, and organic chemicals for identity and composition. Customs has determined that Bennett Testing Service meets the requirements for conditional approval and accreditation.

Therefore, in accordance with § 151.13(e), Bennett Testing Service, Inc., P.O. Box 654, Foot of Lafayette Street, Carteret, New Jersey 07008, is conditionally approved and accredited to gauge, sample and analyze the products named above in all Customs districts.

EFFECTIVE DATE: January 17, 1989.

FOR FURTHER INFORMATION CONTACT: Roger J. Crain, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202-566-2446).

Dated: January 17, 1989.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 89-1450 Filed 1-23-89; 8:45 am]

BILLING CODE 4820-02-M

VETERANS ADMINISTRATION

Geriatrics and Gerontology Advisory Committee; Meeting

The Veterans Administration gives notice under Pub. L. 92-463 that a meeting of the Geriatrics and Gerontology Advisory Committee (GGAC) will be held in the Medical Center Directors Conference Room at the Houston VA Medical Center, 2002 Holcombe Blvd., Houston, TX 77211 on February 7, 1989. The purpose of the Geriatrics and Gerontology Advisory Committee is to advice the Administrator and the Chief Medical Director relative to the care and treatment of the aging veterans, and to evaluate the Geriatric Research, Education and Clinical Centers established by the Department of Medicine and Surgery.

The meeting will convene at 8:30 a.m. on February 7 and adjourn at 3 p.m. This will be a working session to discuss future evaluation and to develop strategies to assure that the field of geriatrics, both treatment and education, are placed in the mainstream of all VA medical activities. The meeting is open to the public up to the seating capacity of the room. Because the capacity is limited, it will be necessary for those wishing to attend to contact Jacqueline Holmes, Program Assistant, Office of Assistant Chief Medical Director for Geriatrics and Extended Care, Veterans Administration Central Office (phone 202/233-3781) prior to February 2, 1989.

Dated: Janaury 11, 1989.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 89-1443 Filed 1-23-89; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 14
Tuesday, January 24, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:07 p.m. on Tuesday, January 17, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) matters relating to the possible closing of certain insured banks; (2) matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act; (3) a request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act; and (4) a personnel matter.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: January 18, 1989.

Federal Deposit Insurance Corporation.

M. Jane Williamson,

Assistant Executive Secretary.

[FR Doc. 89-1547 Filed 1-18-89; 5:05 pm]

BILLING CODE 6714-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 23, 30, February 6, and 13, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of January 23

Monday, January 23

2:00 p.m.
Briefing on Accident Management Program (Public Meeting)

Tuesday, January 24

2:30 p.m.
Briefing on the Progress of GE Advanced BWR Standard Plant Review (Public Meeting)

Thursday, January 26

10:00 a.m.
Briefing on Final Report on BWR MARK I Containment Issues (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Rule on Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees (Tentative)

Week of January 30—Tentative

Thursday, February 2

10:00 a.m.
Periodic Briefing on EEO Programs (Public Meeting)

2:00 p.m.
Briefing on Proposed Rulemaking on Substandard Components (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 6—Tentative

Monday, February 6

2:00 p.m.
Briefing on Status of Peach Bottom (Public Meeting)

Tuesday, February 7

2:00 p.m.
Briefing on Final Rule Regarding the High Level Waste Management Licensing Support System (Public Meeting)

Wednesday, February 8

10:00 a.m.
Briefing on Final Rule on Fitness for Duty (Public Meeting)

Thrusday, February 9

10:00 a.m.
Briefing on Final Rule on Early Site Permits; Standard Design Certification; and Combined Licenses for Nuclear Power Reactors (Public Meeting)

2:00 p.m.
Briefing on Safety Goal Implementation Plan (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 13—Tentative

Friday, February 17

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

William M. Hill, Jr.,

Office of the Secretary.

January 19, 1989.

[FR Doc. 89-1645]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 54, No. 14
Tuesday, January 24, 1989

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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1124

[Docket Nos. AO-368-A16 and AO-226-A32; DA-88-108]

Milk in the Oregon-Washington and Puget Sound-Inland Marketing Areas; Order Amending and Merging Orders

Correction

In rule document 88-30074 beginning on page 52975 in the issue of Friday, December 30, 1988, make the following corrections:

§ 1124.2 [Corrected]

1. On page 52976, in the third column, in § 1124.2, under "Washington Counties", in the last line, insert "Whatcom" before "Whitman".

§ 1124.7 [Corrected]

2. On page 52977, in the second column, in § 1124.7(b)(1), in the fourth line, "is" should read "it".

§ 1124.17 [Corrected]

3. On page 52980, in the third column, in § 1124.17, in the second line, "nonmilk" was misspelled.

§ 1124.43 [Corrected]

4. On page 52984, in the second column, in § 1124.43(b), in the second line, insert "from" after "milk".

§ 1124.44 [Corrected]

5. On page 52985, in the third column, in § 1124.44(a)(13)(i), in the second line, "paragraphs" was misspelled.

§ 1124.51a [Corrected]

6. On page 52987, in the first column, in § 1124.51a(a), in the fifth line, "pursuant" was misspelled.

§ 1124.52 [Corrected]

7. On page 52987, in the second column, in § 1124.52(a), in the second line, "determining" was misspelled.

8. On the same page, in the third column, in § 1124.52(c), in the last line, "Class II" should read "Class III".

9. In the same column, in § 1124.52(d), in the second line, "at" should read "to" and in the fifth line, "shall" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement No. 908]

Cooperative Agreements for Minority and Other Community-Based Human Immunodeficiency Virus (HIV) Prevention Projects Program Announcement and Availability of Funds for Fiscal Year 1989

Correction

In notice document 89-395 beginning on page 663 in the issue of Monday, January 9, 1989, make the following corrections:

1. On page 663, in the second column, in the paragraph under **Authority**, in the third line, "301f(a)" should read "301(a)".

2. On page 664, in the second column, in the second complete paragraph, in the fifth line from the bottom, "The" should read "This".

3. On page 665, in the first column, in the third paragraph under **Evaluation Criteria**, in the third line, "with" should read "within".

4. On the same page, in the second column, in the first complete paragraph, in the second line from the bottom, "for" should read "from".

5. On page 666, in the first column, in the ninth line, "messages" was misspelled.

6. On the same page, in the same column, in the fourth complete paragraph, in the second line, "order" should read "other".

7. On page 667, in the first complete paragraph under **Final Application**, in the last line, "March 14, 1989" should read "March 24, 1989".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 888

[Docket No. 78N-2847 et al.]

Medical Devices; Reproposed Classifications of 70 Electromedical Devices

Correction

In proposed rule document 88-26210 beginning on page 46040 in the issue of Tuesday, November 15, 1988, make the following corrections:

§ 888.1500 [Corrected]

1. On page 46046, in the second column the first CFR section number should read as it appears above.

§ 888.5960 [Corrected]

2. On the same page, in the same column the second CFR section number should read as it appears above.

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1141-89]

Direct Mail Program

Correction

In notice document 89-440 beginning on page 861 in the issue of Tuesday, January 10, 1989, make the following corrections:

1. On page 862, in the first page-column, in the table, in the entry for California, the region designation should read "W". In the entry for Colorado, the region designation should read "N".

2. On the same page, in the second page-column, in the table, in the fourth and sixth columns, in the entry for I-130, insert "A" and "X" respectively.

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

Revision of Fee Schedules

Correction

In rule document 88-29767 beginning on page 52632 in the issue of Thursday, December 29, 1988, make the following corrections:

1. On page 52636, in the first column, in the second complete paragraph, in the ninth line, after "§ 171.11" insert a period.

2. On the same page, in the second column, in the second complete paragraph, in the seventh line, "use" should read "used".

3. On page 52639, in Table III at the bottom of the page, the heading is incorrect and should read as follows:
Table III—Part 171 Fee By Reactor Category—Summary
(Fees in Millions)
With Minor Adjustments for Plants West of Rockies or Westinghouse Plants With Ice Condensers the Following Apply to Plant/Containment

4. On the same page, in the same table, in the first table-column, under "Type", remove "**PART 171 FEES BY REACTOR CATEGORY—SUMMARY**".

5. On page 52642, at the top of the page, remove "-42-"

6. On page 52643, at the top of the page, remove "-43-".

7. On page 52646, in the table at the top of the page, in the second table-column, in the fourth line, "475" should read "3975"; and in the first table-column, in the fifth line, "J. NSSS CCE—Large Dry Containments" should read "J. NSSS CE—Large Dry Containments".

§ 170.31 [Corrected]

8. On page 52650, in the 1st page-column, in the 1st table-column, in the 32nd line, after "Inspections:", insert "5"; and in the 46th line, make the same correction.

9. On the same page, in the 3rd page-column, in the 1st table-column, in the 52nd line, after "chapter" insert "; except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally lincensed under Part 31 of this chapter".

10. On page 52652, in § 170.31, in the first column, in footnote 1(a) of the table, in the second line, "of" should read "or".

BILLING CODE 1505-01-D

POSTAL SERVICE

39 CFR Part 265

Amendments to Release of Information Regulations

Correction

In rule document 88-28446 beginning on page 49983 in the issue of Tuesday, December 13, 1989, make the following correction:

On page 49983, in the third column, and continuing on page 49984 in the first column, the form headed *FOR POST OFFICE USE ONLY* should read as follows:

FOR POST OFFICE USE ONLY

[ ] MAIL IS DELIVERED TO ADDRESS GIVEN
[ ] NOT KNOWN AT ADDRESS GIVEN
[ ] MOVED, LEFT NO FORWARDING ADDRESS
[ ] NO SUCH ADDRESS
[ ] OTHER (SPECIFY): _____

NEW ADDRESS
_____
_____

BOXHOLDER'S STREET ADDRESS
_____
_____

Agency return address

Postmark/Date Stamp

BILLING CODE 1505-01-D

federal register

Tuesday
January 24, 1989

Part II

Department of Education

Office of Special Education and Rehabilitative Services

Arbitration Panel Decision Under the Randolph-Sheppard Act; Blind Vending Facilities

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitation Services

Arbitration Panel Decision Under the Randolph-Sheppard Act; Blind Vending Facilities

AGENCY: Department of Education.

ACTION: Notice of Arbitration Panel Decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on December 18, 1987, an arbitration panel rendered a decision in the matter of the State of Kansas, Department of Social and Rehabilitation Services, Division of Services for the Blind v. the United States Department of Transportation, Federal Aviation Administration. The Kansas Department of Social and Rehabilitation Services is a "State Licensing Agency" (SLA) designated by the Secretary of Education. The panel was convened by the Secretary of Education pursuant to 20 U.S.C. 107d–1(b), upon receipt of a complaint filed by the State of Kansas on August 20, 1986 (Docket No. R–S/86–5).

Under this section of the Act, whenever a State Licensing Agency determines that a Federal property managing agency is failing to comply with the Act and implementing regulations, it may file a complaint with the Secretary, who is then required to convene an arbitration panel to resolve the dispute.

FOR FURTHER INFORMATION CONTACT: George F. Arsnow, Chief, Vending Facility Branch, Division for Blind and Visually Impaired, Rehabilitation Services Administration, Room 3230, Mary E. Switzer Building, 330 C Street SW., Washington, DC 20202–2738, Area Code (202) 732–1317 or TTY (202) 732–1298. A synopsis of the panel's decision is appended. The full text of the arbitration panel decision can be obtained from this contact.

Dated: January 17, 1989.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitation Services.

Synopsis of Arbitration Panel Decision

Background

The arbitration record established that in 1982, the Kansas State Licensing Agency (SLA) and the Federal Aviation Administration (FAA) entered into a cafeteria contract at the Air Route Traffic Control Center (Center) in Olathe, Kansas under the Randolph-Sheppard Act (the Act). Pursuant to this contract, the blind vendor assigned by the SLA provided the services through several vending machines located in and adjacent to the cafeteria. In late 1983, after the FAA determined that hot meal service was needed by its employees, the SLA agreed to operate such a service on a trial basis, in addition to the vending machines. However, the original contract was not modified to reflect this additional arrangement.

On May 1, 1985, the SLA notified the FAA that it was terminating the hot meal service because it was unprofitable and caused a reduction in vending machines income. The FAA subsequently solicited bids from outside contractors and on August 1, 1986, awarded a hot-meal cafeteria contract to Breaktime, Inc., which by its terms prohibited Breaktime from using any vending machines in its operation. In making preparation for the new service, the FAA moved three SLA vending machines from the cafeteria to the corridor leading into the cafeteria, where two other SLA machines were located. In addition, the FAA consolidated the blind vendor's storage space from several small rooms to one large room.

Arbitration Panel Decision

The panel first determined that the FAA did not breach its contract with the SLA or violate the Act by relocating the vending machines and consolidating storage space. On this point, the panel found as a fact that the new space assigned to the SLA was a "satisfactory site" [1] under the Act and regulations.

Although it further found that the hot food service provided by Breaktime was in direct competition with the SLA vending machines, resulting in a reduction in profits to the blind vendor, the panel determined that such competition was not proscribed by the contract or by the priority provisions of the statute. The panel specifically held that since Breaktime was precluded from operating vending machines, the provisions of the Act at 20 U.S.C. 107d–3 that require sharing of income from competing vending machines did not apply.

The panel member who represented the SLA dissented. In his opinion, the FAA violated the Act by imposing a "limitation" on the SLA's vending machine operation, within the meaning of 20 U.S.C. 107(b),[2] without prior approval of the Secretary of Education. The dissenting panel member believed that the reduction in blind-vendor sales caused by the Breaktime cafeteria contract constituted a limitation imposed by the FAA, as did the relocation of the vending machines and reduction of storage space.

The views expressed by the panel do not necessarily represent the views and opinion of the Department of Education.

[FR Doc. 89–1541 Filed 1–23–89; 8:45 am]

BILLING CODE 4000–01–M

[1] Satisfactory site means, in pertinent part, an area fully accessible to vending facility patrons and consisting of a minimum of 250 square feet, including storage. 20 U.S.C. 107a(d) and 34 CFR 395.1(q).

[2] Under this section, "[a]ny limitation on the placement or operation of a [blind-operated] vending facility based on a finding that such placement or operation would adversely affect the interests of the United States shall be fully justified in writing to the Secretary [of Education], who shall determine whether such limitation is justified."

federal register

Tuesday
January 24, 1989

Part III

Department of Housing and Urban Development

Office of the Secretary

Request for Mortgagee Applications for Reservations of Home Equity Conversion Mortgage Authority; Notice of Request for Applications

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-89-1924; FR-2602]

Request for Mortgagee Applications for Reservations of Home Equity Conversion Mortgage Authority

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of request for applications.

SUMMARY: HUD-approved mortgagees may now apply for reservations of insurance authority under the Home Equity Conversion Mortgage Insurance Demonstration (also referred to as the reverse mortgage program). Under this demonstration, HUD will insure mortgages on the homes of elderly homeowners, enabling them to turn their home equity into cash. A total of 2,500 mortgages may be insured through September 30, 1991.

DATE: Applications from HUD-approved mortgagees for reservations of insurance authority are now being accepted by HUD Regional Offices. To be eligible for the initial allocation of reservations, a mortgagee must submit an application by 4 p.m. on February 23, 1989.

ADDRESS: Applications should be sent to the Director, Regional Office of Housing, U.S. Department of Housing and Urban Development, in the region in which the mortgages will be originated. Regional Office addresses are listed below:

Region I: 10 Causeway Street, Room 301, Boston, MA 02222-1092, 617-565-5102
Region II: 26 Federal Plaza, New York, NY 10278-0068, 212-264-4771
Region III: 105 South 7th Street, Philadelphia, PA 19106-3392, 215-597-2645
Region IV: 75 Spring Street, Atlanta, GA 30303-3388, 404-331-4127
Region V: 626 West Jackson Boulevard, Chicago, IL 60606, 312-353-6950
Region VI: 1600 Throckmorton, Post Office Box 2905, Fort Worth, TX 76113-2905, 817-885-5531
Region VII: 1103 Grand Avenue, Kansas City, MO 64106-2496, 816-374-6438
Region VIII: 1405 Curtis Street, Denver, CO 80202-2349, 303-844-4959
Region IX: 450 Golden Gate Avenue, Post Office Box 36003, San Francisco, CA 94102-3448, 415-556-0796
Region X: 1321 Second Avenue, Seattle, WA 98101-2058, 206-442-4373

FOR FURTHER INFORMATION CONTACT: Judith V. May, Office of Policy Development and Research, Room 8218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, (202) 755-5426. (This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

1. Introduction

The Home Equity Conversion Mortgage Insurance Demonstration was authorized by section 417 of the Housing and Community Development Act of 1987 (Pub. L. 100-242) which added a new section 255 to the National Housing Act (Act). A proposed rule to implement the program was published in the **Federal Register** (53 FR 43156) on October 25, 1988. This notice arises out of § 206.11 of the proposed rule which will require a mortgagee originating a mortgage under section 255 of the Act to have a reservation of insurance authority. A reservation of insurance authority is an assurance by the Secretary that the Secretary will be able to insure a mortgage which meets the Secretary's requirements.

In the proposed rule, HUD announced its intention to invite lenders to apply for reservations of insurance authority prior to publications of the final rule, so that it could train HUD-approved housing counseling agencies about reverse mortgages and their alternatives in those areas where lenders plan to originate mortgages. The purpose of this notice is to inform mortgagees that applications for reservations are now being accepted by their HUD Regional Office of Housing. Applications will continue to be accepted until all reservations have been used. These reservations can be used to apply for mortgage insurance only after the final rule becomes effective. It is the final rule that will determine the terms and conditions under which HUD will accept applications for insurance, issue commitments, and insure reverse mortgages.

2. Anticipated Changes in the Final Rule

The final rule will be revised to the extent needed to conform to the allocation and reservation procedures announced in this notice. In addition, on the basis of a preliminary review of the comments during the 60-day public comment period and further development of concepts in the proposed rule, the Department expects that the final rule will differ from the proposed rule as follows regarding the terms and conditions of eligible mortgages.

- The definition of "principal limit" will be clarified, and it will be used to calculate all payments to mortgagors, including tenure monthly payments. This change will have little impact upon the size of a tenure monthly payment, but it will greatly increase the simplicity and flexibility of FHA-insured reverse mortgages. The proposed rule could be read to suggest that FHA proposed to insure three different types of mortgages. In fact, any FHA-insured reverse mortgage can be more accurately thought of as a line of credit mortgage under which the pattern of payments may be changed or varied.

- Under this reverse mortgage program, there is a unique principal limit for each mortgage which depends upon: (1) The age of the youngest mortgagor, (2) the expected average mortgage interest rate, and (3) the value of the property, up to the maximum mortgage amount for a section 203(b) mortgage on a one-family residence in the area.

The principal limit at origination is the maximum amount that a mortgagor can receive on the first day of a mortgage and is determined by using a factor table to be provided by the Secretary. Technically, it represents the present value of all future payments that a mortgagor can receive, given the mortgagor's age, interest rate, and house value.

The principal limit increases each month by one-twelfth of the expected average mortgage interest rate plus periodic mortgage insurance premium. The growing maximum principal limit represents the sum of the present values of all past payments made to the mortgagor plus all future payments that the mortgagor may receive.

When the mortgage balance equals the principal limit, the mortgagor cannot receive any more payments, but may remain in the property until the mortgagor moves, sells, or dies.

- A mortgagor will be permitted to receive an initial payment under an FHA-insured reverse mortgage up to the principal limit to pay off an existing mortgage, to pay a contractor who has made repairs in exchange for a lien to be paid off at closing, or for other purposes.

- Within the principal limit, a mortgagor will have flexibility in determining the pattern of payments under a reverse mortgage. For example, a mortgagor will be able to combine a line of credit with a term or tenure mortgage or a lump sum draw with a tenure mortgage. HUD is continuing to consider whether limits should be placed on the borrower's choices, either by rule or at the lender's discretion.

- HUD will permit shared appreciation between the mortgagee and mortgagor for all of the types of reverse mortgages that can be originated under the program, as long as the mortgagee offers a mortgagor a comparable mortgage without shared appreciation.

3. Regional Allocation of Reservations

HUD has allocated its 2,500 reservation of insurance authority in lots of 50 among its 10 Regions in proportion to each Region's share of the Nation's elderly homeowners. The allocations are as follows: Region I, 150; Region II, 200; Region III, 250; Region IV, 500; Region V, 500; Region VI, 300; Region VII, 150; Region VIII, 100; Region IX, 250; and Region X, 100. Reservations may not be transferred among mortgagees or Regions.

4. Eligible Mortgagees

Any mortgagee approved under Part 203 of Title 24, Chapter II of the Code of Federal Regulations, except an investing mortgagee approved under § 203.6, may apply for 50 reservations per Region. A mortgagee approved under § 203.3, 203.4, 203.6, or 203.7 may purchase, hold, and sell mortgages insured under Section 255 of the Act without additional approval. A mortgagee may apply for additional reservations after its initial reservations are used or expire.

5. Applications

To apply for a reservation of insurance authority, a mortgagee must submit a written request stating: (a) The name and address of the mortgagee; and (b) the 10-digit mortgagee identification number confirming that the mortgagee is a HUD-approved mortgagee. Each application will be for 50 units in the Region where the mortgagee applies.

In addition, a loan correspondent approved under section 203.5 must provide evidence that all of the mortgages that it originates under section 255 of the Act will be purchased by the loan correspondent's sponsor or sponsors which have been approved under section 203. For each sponsor, the loan correspondent must provide: (a) The sponsor's name and address; (b) the sponsor's 10-digit mortgagee identification number; and (c) a copy of the purchase agreement which obligates the sponsor to purchase the mortgages. The collective agreements must show that all of the mortgages originated by the loan correspondent will be purchased if all insurance authority reserved by the loan correspondent is used.

6. Initial Distribution of Reservations

Regional Offices of Housing will make initial distributions of reservations 30 days after the publication of this notice and will notify mortgagees of the results of the random drawing. If a Regional Office receives more applications than its allocation of reservations, all mortgagees who have applied during the initial 30-day application period will be placed on a list according to a random drawing. Reservations will be distributed to mortgagees starting at the top of the list. Mortgagees who do not receive reservations will remain on the list. Mortgagees who apply after the 30-day period will be added to the list in the order in which their applications are received. Any further reservations that become available will be distributed according to this list.

7. Expiration and Redistribution of Reservations

A reservation will last for six months, dating from the effective date of HUD's pending final rule implementing the Home Equity Conversion Mortgage Insurance Demonstration Program. If a conditional commitment has been issued, a reservation may be extended until the firm commitment for that application expires. Mortgagees that hold reservations may apply for reverse mortgage insurance on the date that the final rule for the demonstration becomes effective. At the end of six months, the Regional Office will recall reservations for which a conditional commitment has not been issued and will distribute them to the next mortgagees on the list. At the discretion of the Director of the Regional Office of Housing, a mortgagee may receive fewer reservations than requested if fewer than 50 are available for distribution. If a Regional Office does not have a waiting list, HUD Headquarters will reallocate the reservations to Regional Offices with waiting lists.

8. HUD User 800 Number for Mortgagees and Mortgagors

Mortgagees who want the names, addresses, and telephone numbers of the HUD-approved housing counseling agencies in their area may call HUD User—(800) 245-2691. (This is a toll-free number.) About 60 days after the publication of this notice, potential mortgagors may call this number to obtain the names, addresses, and telephone numbers of the participating mortgagees and the HUD-approved housing counseling agencies in their area.

Other Matters

This notice and the rule with which it is associated do not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the notice 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.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the above address.

The rule with which this notice is associated was listed as item 922 in the Department's Semiannual Agenda of Regulations published on October 24, 1988 (53 FR 41974, 41982) under Executive Order 12291 and the Regulatory Flexibility Act. The Home Equity Conversion Mortgage Insurance Demonstration is not listed in the Catalog of Federal Domestic Assistance.

The collection of information requirements contained in this notice have been submitted to OMB along with the proposed rule for review under section 3504(h) of the Paperwork Reduction Act of 1980. The OMB clearance number is 2528-0133.

Date: January 17, 1989.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 89-1510 Filed 1-23-89; 8:45 am]

BILLING CODE 4210-32-M

federal register

Tuesday
January 24, 1989

Part IV

Department of Education

Office of Special Education and Rehabilitative Services

Arbitration Panel Decision Under the Randolph-Sheppard Act; Blind Vending Facilities; Notice

Part IV

Department of Education

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Arbitration Panel Decision Under the Randolph-Sheppard Act; Blind Vending Facilities

AGENCY: Department of Education.

ACTION: Notice of Arbitration Panel Decision Under the Randolph-Sheppard Act.

SUMMARY: Notice is given that on October 20, 1987, an arbitration panel rendered a decision in the matter of James C. Parkman, Vendor v. Florida Department of Education, Division of Blind Services, a "State Licensing Agency" (SLA) designated by the Secretary of Education. This panel was convened by the Secretary of Education pursuant to 20 U.S.C. 107d–1(a), upon receipt of a complaint filed by petitioner James C. Parkman on July 9, 1981, as amended on December 3, 1985. (Docket No. R–S/82–7).

Under this section of the Act, a blind licensee who is dissatisfied with the State's operation or administration of the vending facility program may request a full evidentiary hearing from the SLA. If the licensee is dissatisfied with the State agency decision, the licensee may file a complaint with the Secretary, who is then required to convene an arbitration panel to resolve the dispute.

FOR FURTHER INFORMATION CONTACT: George F. Arsnow, Chief, Vending Facility Branch, Division for Blind and Visually Impaired, Rehabilitation Service Administration, Room 3230, Mary E. Switzer Building, Department of Education, 330 C Street, SW., Washington, DC 20202–2738, Area Code (202) 732–1317 or TTY (202) 732–1298.

The full text of the arbitration panel decision can be obtained from this source.

Dated: January 17, 1989.

Madeleine Will,

Assistant Secretay for Special Education and Rehabilitative Services.

Synopsis of Arbitration Panel Decision

I. Background

Pursuant to a permit entered into between Florida SLA and the National Aeronautics and Space Administration (NASA) under the Randolph-Sheppard Act, the complainant James Parkman began operating a snack bar (vending facility #150) on the third floor of the Kennedy Space Center Headquarters building in 1968. From 1975 to 1981, competing vending facilities were operated by Jet Services, a private corporation, consisting of a cafeteria, vending machines on the first floor, four (4) machines on the second floor, and three (3) machines on the third floor.

In 1981, the SLA obtained a permit from the Space Center to operate all the snack bars and vending machines, including those previously operated by Jet Services. This resulted in the establishment of a new Randolph-Sheppard vending facility #284, a large vending machine route that employed eight blind vendors and eight sighted persons. Shortly thereafter, Mr. Parkman requested that the vending machines on the second and third floors be assigned to his facility #150. The SLA agreed to add the third floor machines to his facility, but left the four (4) (reduced to three (3) since 1984) machines on the second floor under the control of the new Randolph-Sheppard facility #284.

II. Panel Decision

The panel concluded that the SLA did not abuse its discretion by refusing to add the disputed vending machines to complainant's vending facility. In addressing the complainant's claim that the vending machines on the second floor assigned to facility #284 were in competition with him, the panel agreed with the SLA that nothing in the Act prohibits competition *between* blind vendors. Rather, the income sharing provisions of the Act and implementing regulations at 34 CFR 395.1 (f) and (z) apply only to competition existing between commercial vending concerns and blind vendors on Federal property.

Secondly, the panel held that it lies within the discretion of the SLA to determine how many blind-vendor facilities it will establish on a given Federal property, as long as the incomes of the respective vendors are not adversely affected as a result. The panel specifically found that nothing in the Act or implementing regulations guarantees a blind vendor any more than a fair return. The panel determined that the transfer of the disputed machines to the complainant would have disproportionately benefited him at the expense of the other vendors operating facility #284. Furthermore, the SLA had cushioned any negative financial effects the complainant might have suffered from the establishment of facility #284 by assigning to him the income from vending machines near the snack bar on the third floor.

For the reasons cited above, the panel upheld the State hearing that dismissed complainant's grievance. The views expressed by the panel do not necessarily represent the views and opinions of the Department of Education.

[FR Doc. 89–1542 Filed 1–23–89; 8:45 am]

BILLING CODE 4000–01–M

federal register

Tuesday
January 24, 1989

Part V

The President

Memorandum of January 19, 1989—Actions Concerning the Generalized System of Preferences: Thailand

Proclamation 5936—National Day of Prayer and Thanksgiving, 1989

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Federal Register
Vol. 54, No. 14
Tuesday, January 24, 1989

Presidential Documents

Title 3—

The President

Memorandum of January 19, 1989

Actions Concerning the Generalized System of Preferences—Thailand

Memorandum for the United States Trade Representative

Pursuant to sections 502(c)(5), 504(a)(1), and 504(c)(3)(B) and (C) of the Trade Act of 1974, as amended ("Act") (19 U.S.C. 2462(c)(5), 2464(a)(1) and (c)(3)(B) and (C)), I am hereby acting to modify the application of duty-free treatment under the Generalized System of Preferences (GSP) currently being afforded to certain products exported from Thailand and to make findings concerning the extent to which Thailand is providing adequate and effective means under its laws for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property, including patents and copyrights.

After considering two private-sector requests for review concerning the extent to which Thailand provides adequate and effective means of securing exclusive rights in patents and copyrights, and in accordance with section 502(c)(5) of the Act, I have determined that Thailand does not fully provide adequate and effective means to secure, exercise, and enforce exclusive rights in intellectual property. Therefore, pursuant to sections 504(a)(1) and 504(c)(3)(B) and (C) of the Act, I have decided to deny Thailand's request for a competitive need waiver on certain jewelry items. In addition, I revoke four competitive need waivers granted to Thailand as part of the 1986 GSP General Review because I have determined that these waivers are no longer warranted due to changed circumstances. I also have determined that calculation of Thailand's competitive need limit for specified products imported during calendar year 1988 shall be consistent with section 504(c)(2)(B) of the Act and implemented on July 1, 1989. (The products affected by each of these actions are enumerated in the annex to this document.) Finally, future requests for competitive need waivers for Thai products will not be looked upon favorably until Thailand provides adequate and effective intellectual property protection.

These determinations shall be published in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, January 19, 1989.

ANNEX

TSUS NUMBER	HARMONIZED SYSTEM EQUIVALENT	DESCRIPTION
I. DENIAL OF REQUESTED COMPETITIVE NEED WAIVER		
74014	7113.11.50 7113.19.50 7113.20.50	Jewelry of precious metals
II. REVOCATION OF 1986 GSP GENERAL REVIEW COMPETITIVE NEED WAIVERS		
74005	7113.11.20	Jewelry etc. and parts
14014	0713.31.40	Mung beans, dried
13135	1102.30.00	Rice meal and flour
	1103.14.00	
68842	6909.19.10	Other connection apparatus
	8539.90.00	
	8543.20.00	
	8543.30.00	
	8543.80.90	
	8543.90.80	
	8548.00.00	
	9405.10.80	
	9405.20.80	
	9405.40.80	
	9613.80.20	
	9613.90.40	
III. PRODUCTS SUBJECT TO LOWER COMPETITIVE NEED LIMIT		
72735	9401.40.00	Furniture, wood
	9401.61.60	NSPF
	9401.69.80	
	9403.30.80	
	9403.40.90	
	9403.50.90	
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[FR Doc. 89-175C
Filed 1-23-89; 12:06 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5936 of January 20, 1989

National Day of Prayer and Thanksgiving, 1989

By the President of the United States of America

A Proclamation

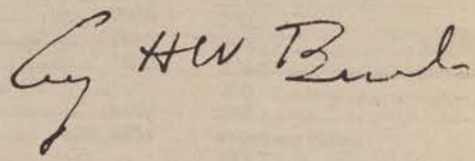
On this Bicentennial of the Presidency of the United States of America, it is fitting to recall our first President, George Washington, who believed in our country's divine destiny. He said, "No people can be bound to acknowledge and adore the invisible hand, which conducts the affairs of men, more than the people of the United States."

As we celebrate this American Bicentennial Presidential Inaugural, we celebrate America's brotherhood—our common ideals, our common kinship, our national unity. We celebrate America as "one nation under God."

As I assume the office of President, I am humbled before God and seek His counsel and favor on our land, and join with our first President who said, ". . .it would be peculiarly improper to omit in this first official act, my fervent supplications to that Almighty Being who rules over the universe. . .that his benediction may consecrate to the liberties and happiness of the people of the United States, a government instituted by themselves for these essential purposes."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by the authority vested in me by the Constitution and laws of the United States, do hereby proclaim January 22, 1989, a National Day of Prayer and Thanksgiving and call upon the citizens of our great Nation to gather together on this day in homes and places of worship to pray in thanksgiving for our blessings of peace, freedom, prosperity, and Independence. Let all Americans kneel humbly before our Heavenly Father in search of His counsel and for His divine guidance and wisdom upon the leaders of the United States of America.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of January, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.



[FR Doc. 89-1751
Filed 1-23-89; 12:07 pm]
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