5-22-90
Vol. 55 No. 99

federal register

Tuesday
May 22, 1990

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

5-22-90
Vol. 55 No. 99
Pages 20999-21170

federal register

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WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

WASHINGTON, DC

WHEN: May 24, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202–523–5240.

MINNEAPOLIS, MN

WHEN: June 18, at 1:00 p.m.
WHERE: Bishop Henry Whipple Federal Building, Room 570, Ft. Snelling, MN.
RESERVATIONS: 1–800–366–2998

KANSAS CITY, MO

WHEN: June 19, at 9:00 a.m.
WHERE: Federal Building, 601 East 12th Street, Room 110, Kansas City, MO.
RESERVATIONS: 1–800–735–8004

Contents

Federal Register
Vol. 55, No. 99
Tuesday, May 22, 1990

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

6135 20999
6136 21001

7 CFR

915 21003
985 21006

Proposed Rules:

959 21041

9 CFR

Proposed Rules:

92 21042

10 CFR

600 21008

12 CFR

11 21009
304 21010

33 CFR

Proposed Rules:

161 21044
162 21044
163 21044
164 21044
165 21044

38 CFR

36 21015

40 CFR

52 21021
761 21023

44 CFR

64 (2 documents) 21031–21033

47 CFR

73 21035

49 CFR

107 21035
171 21035
172 21035
173 21035
176 21035
177 21035
178 21035
180 21035
571 21038

50 CFR

17 21148
661 21039

Proposed Rules:

17 21154

Federal Register
Vol. 55, No. 99
Tuesday, May 22, 1990

Presidential Documents

Title 3—

The President

Proclamation 6135 of May 17, 1990

National Defense Transportation Day and National Transportation Week, 1990

By the President of the United States of America

A Proclamation

Our Nation's transportation system provides a vital link between different communities and industries. Facilitating the movement of people, goods, and services, its safety and efficiency are essential to our economic productivity and national security.

In peacetime and in times of crisis, our Nation's transportation system serves as a pillar of our national defense. In fact, the civil transportation system provides some 85 percent of Department of Defense transportation needs for the mobilization of military forces. It also plays a vital role in the movement of people and supplies following natural disasters and other nonmilitary emergencies.

The successful operation of this important system depends upon a sound infrastructure: safe and efficient roads, bridges, airports, seaports, railroad tracks, and mass transit facilities. Thus, the National Transportation Policy issued by the Department of Transportation in March includes plans for improving the Nation's transportation infrastructure.

Efforts to strengthen America's transportation infrastructure will have many immediate and long-term benefits for the United States. They will not only help to create jobs while enhancing the safety and convenience of our roads, air routes, and waterways, but also increase our competitive edge in the global market. During an age when our economy and national security can be affected by events around the world, these efforts assume additional urgency and importance.

The United States currently boasts the best transportation system in the world. If it is to remain so, we must pool the energy and resources of both the public and private sectors. We must restructure our transportation system to give State and local governments the tools they need to address critical transportation requirements close to home. We must also harness the creativity and determination of transportation officials, lawmakers, business and community leaders, and concerned citizens in making U.S. transportation safer. Eliminating the dangers posed by the consumption of alcohol and drugs must continue to be a priority.

Since the age of Fulton's steamboat and the Wright Brothers' success at Kitty Hawk, we have seen extraordinary progress in the field of transportation. The need for faster, safer, and more reliable transportation has been the mother of many inventions, from the automobile and jet engine to the swift-moving commuter train. Today, acknowledging its vital role in the Nation's economic development and defense, we remain firmly committed to progress in transportation technology. We also gratefully recognize those dedicated and hard-working men and women—from the highway engineer to the air traffic controller—who serve the travelling public.

In recognition of the importance of transportation and of the millions of Americans who serve and supply our transportation needs, the Congress, by joint resolution approved May 16, 1957 (36 U.S.C. 160), has requested that the third Friday in May of each year be designated as "National Defense Transportation Day" and, by joint resolution approved May 14, 1962 (36 U.S.C. 166), that the week in which that Friday falls be proclaimed "National Transportation Week."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim Friday, May 18, 1990, as National Defense Transportation Day and the week of May 13 through May 19, 1990, as National Transportation Week. I urge the people of the United States to observe these occasions with appropriate ceremonies that will give full recognition to the individuals and organizations that build, maintain, and safeguard our country's transportation system.

IN WITNESS WHEREOF, I have hereunto set my hand this 17 day of May, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 90-12013
Filed 5-18-90; 2:33 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6136 of May 17, 1990

National Trauma Awareness Month, 1990

By the President of the United States of America

A Proclamation

Because all of us are potential trauma victims, it is fitting that we pause to reflect upon the causes of traumatic injuries, their impact, and how to prevent them.

Each year, traumatic injury claims the lives of at least 150,000 Americans. Many thousands more are severely or permanently disabled.

Young Americans are particularly at high risk. Traumatic injuries kill six times as many children as cancer, the next most common cause of death in children. Four out of five deaths among teenagers and young adults are caused by traumatic injuries—injuries most often suffered in motor vehicle collisions.

Even among our older citizens, traumatic injury continues to be a major public health problem. The death rate due to falls among persons 75 years or older is nearly 12 times the rate in the general population.

At any age, death or disability from traumatic injury is tragic and almost always preventable. The vast majority of traumatic injuries result from hazards that can be reduced if we use our common sense and take advantage of current knowledge about how traumatic injuries occur. All Americans should learn more about the circumstances and behaviors that lead to traumatic injuries and how they can be avoided.

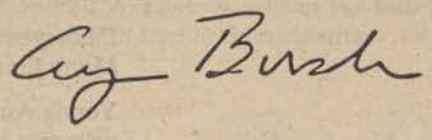
Every citizen should also learn more about the role of trauma care and rehabilitation in reducing deaths and disability associated with traumatic injury. Effective treatment begins with ambulance and rescue services and hospitals that are capable of providing the high level of care needed by trauma victims. Optimal treatment includes rehabilitation programs and follow-up services that enable injured patients to recover as fully as possible.

Premature deaths, disabilities, and economic costs resulting from traumatic injuries impose a high toll on our Nation. The physical and emotional suffering they inflict upon individuals and their families is incalculable. Fortunately, however, through the concerted efforts of concerned citizens, health care professionals, scientists, volunteer groups, and leaders in the public and private sectors, we can reduce the heavy burden of traumatic injury on our society. Trauma is every American's business.

To enhance public awareness of traumatic injury, the Congress, by Senate Joint Resolution 224, has designated the month of May 1990 as "National Trauma Awareness Month" and has authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the month of May 1990 as National Trauma Awareness Month. I urge the people of the United States, their government agencies, health care providers, and schools to take part in efforts to prevent traumatic injuries and to provide the best possible emergency treatment and rehabilitation programs for those that do occur. I also urge all Americans to support public and private traumatic injury prevention programs. We can reduce the devastating impact of traumatic injuries on our Nation by supporting research into new ways to prevent and treat them, and by aiding those Americans who suffer the physical, emotional, or financial consequences of traumatic injury.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of May, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 90-12014
Filed 5-18-90; 2:34 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 55, No. 99
Tuesday, May 22, 1990

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

[Docket No. FV-90-154IR]

Avocados Grown in South Florida; Maturity Requirement Changes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule changes maturity requirements in effect on a continuous basis for Florida grown and imported avocados. The rule relaxes the avocado maturity requirements for the Dr. Dupuis #2, Beta, and Monroe varieties of avocados, based on recent test data on the maturity characteristics of these varieties. This rule also removes varieties no longer shipped from the maturity regulation. In addition, the rule makes calendar date adjustments in several shipping schedules in order to synchronize them with the 1990 and 1991 calendar years. The Avocado Administrative Committee (committee) met April 11, 1990, and unanimously recommended the changes for Florida avocados. This action is designed to ensure that only mature fruit is shipped to the fresh market, thereby promoting orderly marketing conditions.

DATES: Section 915.332 becomes effective May 22, 1990. This section is applicable to avocados imported into the United States under § 944.31 as of May 25, 1990. Comments which are received by June 21, 1990 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. The written comments should reference the docket number, date, and page number of this issue of the **Federal Register.**

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

SUPPLEMENTARY INFORMATION: This interim final rule is issued under the Marketing Agreement and Marketing Order No. 915, both as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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

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

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

There are about 34 handlers of Florida avocados subject to regulation under the marketing order for avocados grown in South Florida, and about 20 importers who import avocados into the United States. In addition, there are about 300 avocado producers in South Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural services firms are defined as those whose annual receipts are less than $3,500,000. The majority of the avocado handlers, importers, and producers may be classified as small entities.

This interim final rule relaxes maturity requirements specified in Table 1 of paragraph (a)(2) of § 915.322 (7 CFR part 915) for three varieties of Florida grown avocados, based on recent maturity test data on the maturity characteristics of these varieties. For the Dr. Dupuis #2 variety, the minimum diameter requirement is reduced by 2/16 of an inch during the first part of its shipping period. For the Beta and Monroe varieties, the seasonal shipping schedules are shifted one week later into the season. In addition, this action removes the Winslowson, Linda, and Wagner varieties from the maturity shipping schedule since they are no longer shipped, and the Buccaneer variety since it was found to be the same variety as the Brooks 1978 variety already cited.

This action also makes calendar date adjustments in the avocado varietal shipping schedule in § 915.332 to synchronize these dates with the 1990 and 1991 years.

The maturity requirements for Florida grown avocados prescribe minimum weights and diameters for specific shipping periods for some 60 varieties of avocados and color specifications for varieties which turn red or purple when mature. These requirements are designed to prevent shipments of immature avocados to the fresh market during the harvest season. Providing fresh markets with mature fruit is an important aspect of creating consumer satisfaction and is in the interest of handlers, producers, and consumers.

A minimum grade requirement of U.S. No. 2 is also currently in effect on a continuing basis for Florida avocados under § 915.306 (7 CFR part 915).

The committee works with the Department in administering the marketing agreement and order. The committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida avocados. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee

recommendations, information submitted by the committee and other information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

The Florida avocado shipping season normally begins in mid-May or early June with light shipments of early varieties and it continues into the following March or April, with the heaviest shipments occurring from July through December. The committee projects fresh Florida avocado shipments at only 700,000 bushels (55 pounds net weight) for the 1990–91 season, 30 percent less than in 1989–90, due to tree damage resulting from severe freezes in December 1989. Florida avocado production over the last five years (1984–1988) has averaged 1.0 million bushels. The 1990 avocado crop in California is projected at 8.2 million bushels, 15 percent above the 1984–88 average.

Some Florida avocado shipments are exempt from the maturity and grade requirements. Handlers may ship up to 55 pounds of avocados during any one day under a minimum quantity exemption provision, and may make gift shipments of up to 20 pounds of avocados in individually addressed containers. Also, avocados utilized in commercial processing are not covered by the maturity and grade requirements.

Section 8e of the Act (7 U.S.C. 608e–1) requires that whenever specified commodities, including avocados, are regulated under a Federal marketing order, imports of that commodity into the United States must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. The Act further provides that the requirements on imports shall not become effective until giving not less than three days notice.

Avocado import maturity requirements are in effect on a continuous basis under § 944.31 (7 CFR part 944), issued under section 8e of the Act. That section provides that minimum weight and diameter maturity requirements for avocados imported into the United States from northern hemisphere countries be the same as such maturity requirements specified in § 915.332 for Florida avocados and that the requirements contained in § 915.332(a)(2) do not apply to imported avocados grown in the southern hemisphere. Since this action changes the minimum weight and diameter maturity requirements for Florida grown avocados, these same changes apply to imported avocados grown in northern hemisphere countries. No change is needed in the text of the import regulation by this action.

Further, avocado import grade requirements are currently in effect on a continuous basis under § 944.28 (7 CFR part 944). Such requirements specify that all avocados imported into the United States must grade at least U.S. No. 2, as specified in § 915.306. This action does not change the grade requirements concerning avocados grown in the production area. Accordingly, § 944.28 of the regulations is not affected.

The avocado maturity and grade import regulations both contain an exemption provision which permits persons to import up to 55 pounds of avocados exempt from such import requirements.

This action reflects the committee's and the Department's appraisal of the need to make the specified changes. The Department's view is that these changes will benefit producers, handlers, and importers. Maturity requirements for both Florida grown and imported avocados over the past several years have helped to assure that only mature avocados were shipped to fresh markets. The committee considers the maturity requirements for Florida grown avocados to be necessary to improve grower returns. Although compliance with these maturity requirements will affect the costs to handlers and importers, these costs would be offset by the benefits of providing the trade and consumers with mature avocados.

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

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

Pursuant to 5 U.S.C. 553, it is also found and determined that, upon good cause, it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) This action relaxes current maturity requirements; (2) Florida avocado handlers are aware of this action which was unanimously recommended by the committee at a public meeting; (3) these changes apply to varieties of avocados which normally begin maturing in mid-May; (4) the avocado import requirement changes are mandatory under section 8e of the Act; and (5) the rule provides a 30-day comment period, and any comments received will be considered prior to issuance of a final rule.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

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

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

PART 915—AVOCADOS GROWN IN SOUTHERN FLORIDA

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

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

2. Section 915.332 is amended by revising Table I in paragraph (a)(2) to read as follows:

§ 915.332 Florida avocado maturity regulation.

(a) * * *

(2) * * *

TABLE I

Avocado variety	Effective period		Minimum size	
	From	Through	Weight (ounces)	Diameter (inches)
Arue	2nd Mon May	4th Sun May	16	
	4th Mon May	1st Sun July	14	3-3/16
Donnie	3rd Mon May	1st Sun June	16	3-3/16
	1st Mon June	1st Sun July	14	3-3/16

TABLE I—Continued

Avocado variety	Effective period		Minimum size	
	From	Through	Weight (ounces)	Diameter (inches)
Dr. Dupuis #2	4th Mon May	2nd Sun June	16	3-7/16
	2nd Mon June	1st Sun July	14	3-5/16
	1st Mon July	3rd Sun July	12	3-5/16
Fuchs	1st Mon June	3rd Sun June	14	3-3/16
	3rd Mon June	1st Sun July	12	3
K-5	2nd Mon June	4th Sun June	18	3-3/16
	4th Mon June	2nd Sun July	14	3-3/16
Pollock	3rd Mon June	1st Sun July	18	3-11/16
	1st Mon July	3rd Sun July	16	3-7/16
	3rd Mon July	5th Sun July	14	3-4/16
Simmonds	3rd Mon June	1st Sun July	16	3-9/16
	1st Mon July	3rd Sun July	14	3-7/16
	3rd Mon July	5th Sun July	12	3-1/16
West Indian Seedling [1]	3rd Mon June	3rd Sun July	18	
	3rd Mon July	3rd Sun Aug	16	
	4th Mon Aug	3rd Sun Sept	14	
Hardee	4th Mon June	1st Sun July	16	3-5/16
	1st Mon July	2nd Sun July	14	2-15/16
	2nd Mon July	4th Sun July	12	
Nadir	4th Mon June	1st Sun July	14	3-3/16
	1st Mon July	2nd Sun July	12	3-1/16
	2nd Mon July	3rd Sun July	10	2-14/16
Gorham	1st Mon July	3rd Sun July	29	4-5/16
	3rd Mon July	2nd Sun Aug	27	4-3/16
Reuhle	1st Mon July	2nd Sun July	18	3-11/16
	2nd Mon July	3rd Sun July	16	3-9/16
	3rd Mon July	5th Sun July	14	3-7/16
	5th Mon July	1st Sun Aug	12	3-5/16
	1st Mon Aug	2nd Sun Aug	10	3-3/16
Biondo	2nd Mon July	2nd Sun Aug	13	
Peterson	2nd Mon July	3rd Sun July	14	3-9/16
	3rd Mon July	4th Sun July	12	3-5/16
	4th Mon July	1st Sun Aug	10	3-3/16
Bernecker	3rd Mon July	5th Sun July	18	3-9/16
	5th Mon July	2nd Sun Aug	16	3-5/16
	2nd Mon Aug	4th Sun Aug	14	3-3/16
Miguel (P)	3rd Mon July	5th Sun July	22	3-13/16
	5th Mon July	2nd Sun Aug	20	3-13/16
	2nd Mon Aug	4th Sun Aug	18	3-19/32
232	3rd Mon July	5th Sun July	14	
	5th Mon July	2nd Sun Aug	12	
Pinelli	3rd Mon July	5th Sun July	18	3-13/16
	5th Mon July	2nd Sun Aug	16	3-10/16
Trapp	3rd Mon July	5th Sun July	14	3-10/16
	5th Mon July	2nd Sun Aug	12	3-7/16
Nesbitt	3rd Mon July	5th Sun July	22	3-12/16
	5th Mon July	1st Sun Aug	16	3-5/16
	1st Mon Aug	3rd Sun Aug	14	3-3/16
Tonnage	5th Mon July	2nd Sun Aug	16	3-5/16
	2nd Mon Aug	3rd Sun Aug	14	3-4/16
	3rd Mon Aug	4th Sun Aug	12	3
Waldin	5th Mon July	2nd Sun Aug	16	3-5/16
	2nd Mon Aug	4th Sun Aug	14	3-3/16
	4th Mon Aug	2nd Sun Sept	12	3-4/16
Tower 2	5th Mon July	2nd Sun Aug	14	3-5/16
	2nd Mon Aug	1st Sun Sept	12	3-4/16
K-9	5th Mon July	3rd Sun Aug	16	
Christina	5th Mon July	3rd Sun Aug	11	2-15/16
Beta	1st Mon Aug	2nd Sun Aug	18	3-5/16
	2nd Mon Aug	1st Sun Sept		3-5/16
Lisa (P)	1st Mon Aug	2nd Sun Aug	12	3-2/16
	2nd Mon Aug	3rd Sun Aug	11	3
Catalina	2nd Mon Aug	4th Sun Aug	24	
	4th Mon Aug	3rd Sun Sept	22	
Black Prince	2nd Mon Aug	4th Sun Aug	28	4-1/16
	4th Mon Aug	2nd Sun Sept	23	3-14/16
	2nd Mon Sept	5th Sun Sept	16	3-5/16
Loretta	4th Mon Aug	2nd Sun Sept	30	4-3/16
	2nd Mon Sept	5th Sun Sept	26	3-15/16
Booth 8	4th Mon Aug	3rd Sun Sept	16	3-5/16
	3rd Mon Sept	5th Sun Sept	14	3-5/16
	1st Mon Oct	2nd Sun Oct	10	3-1/16
Booth 7	4th Mon Aug	2nd Sun Sept	18	3-13/16
	2nd Mon Sept	4th Sun Sept	16	3-10/16
	4th Mon Sept	1st Sun Oct	14	3-5/16

TABLE I—Continued

Avocado variety	Effective period		Minimum size	
	From	Through	Weight (ounces)	Diameter (inches)
Blair	4th Mon Aug	2nd Sun Sept	16	3-5/16
	2nd Mon Sept	5th Sun Sept	14	3-5/16
Booth 5	1st Mon Sept	3rd Sun Sept	14	3-5/16
	3rd Mon Sept	5th Sun Sept	12	3-5/16
Guatemalan Seedling [2]	1st Mon Sept	5th Sun Sept	15	
	1st Mon Oct	1st Sun Dec	13	
Marcus	1st Mon Sept	3rd Sun Sept	32	4-13/16
	3rd Mon Sept	4th Sun Oct	24	4-5/16
Brooks 1978	1st Mon Sept	2nd Sun Sept	12	3-4/16
	2nd Mon Sept	3rd Sun Sept	10	3-1/16
	3rd Mon Sept	1st Sun Oct	8	2-14/16
Rue	2nd Mon Sept	3rd Sun Sept	30	4-3/16
	3rd Mon Sept	5th Sun Sept	24	3-15/16
	1st Mon Oct	2nd Sun Oct	18	3-9/16
Collinson	2nd Mon Sept	1st Sun Oct	16	3-10/16
Hickson	2nd Mon Sept	4th Sun Sept	12	3-1/16
	4th Mon Sept	1st Sun Oct	10	3
Simpson	3rd Mon Sept	1st Sun Oct	16	3-9/16
Chica	3rd Mon Sept	5th Sun Sept	12	3-7/16
	1st Mon Oct	2nd Sun Oct	10	3-9/16
Choquette	4th Mon Sept	2nd Sun Oct	28	4-4/16
	3rd Mon Oct	4th Sun Oct	24	4-1/16
	5th Mon Oct	2nd Sun Nov	20	3-14/16
Hall	4th Mon Sept	1st Sun Oct	26	3-14/16
	2nd Mon Oct	3rd Sun Oct	20	3-9/16
	4th Mon Oct	1st Sun Nov	18	3-8/16
Leona	4th Mon Sept	1st Sun Oct	18	3-10/16
Lula	1st Mon Oct	2nd Sun Oct	18	3-11/16
	3rd Mon Oct	4th Sun Oct	14	3-5/16
	5th Mon Oct	2nd Sun Nov	12	3-3/16
Herman	1st Mon Oct	2nd Sun Oct	16	3-9/16
	3rd Mon Oct	4th Sun Oct	14	3-6/16
Pinkerton (CP)	1st Mon Oct	2nd Sun Oct	13	3-3/16
	3rd Mon Oct	4th Sun Oct	11	3
	5th Mon Oct	2nd Sun Nov	9	
Taylor	2nd Mon Oct	3rd Sun Oct	14	3-5/16
	4th Mon Oct	1st Sun Nov	12	3-2/16
Ajax (B-7)	2nd Mon Oct	4th Sun Oct	18	3-14/16
Booth 3	2nd Mon Oct	2nd Sun Oct	16	3-5/16
	3rd Mon Oct	4th Sun Oct	14	3-5/16
Monroe	2nd Mon Nov	3rd Sun Nov	26	4-3/16
	3rd Mon Nov	2nd Sun Dec	24	4-1/16
	2nd Mon Dec	4th Sun Dec	20	3-14/16
	4th Mon Dec	1st Sun Jan	16	3-9/16
Booth 1	2nd Mon Nov	4th Sun Nov	16	3-12/16
	4th Mon Nov	2nd Sun Dec	12	3-5/16
Zio (P)	2nd Mon Nov	4th Sun Nov	12	3-1/16
	4th Mon Nov	2nd Sun Dec	10	2-15/16
Gossman	4th Mon Nov	4th Sun Dec	11	3-1/16
Brookstate	2nd Mon Dec	3rd Sun Dec	18	3-13/16
	3rd Mon Dec	4th Sun Dec	16	3-10/16
	4th Mon Dec	1st Sun Jan	14	3-5/16
	1st Mon Jan	3rd Sun Jan	12	3-3/16
	3rd Mon Jan	1st Sun Feb	10	
Meya (P)	2nd Mon Dec	4th Sun Dec	13	3-3/16
	4th Mon Dec	1st Sun Jan	11	3
Reed (CP)	2nd Mon Dec	4th Sun Dec	12	3-4/16
	4th Mon Dec	1st Sun Jan	10	3-3/16
	1st Mon Jan	3rd Sun Jan	9	3

[1] Avocados of the West Indian type varieties and seedlings not listed elsewhere in Table I.
[2] Avocados of the Guatemalan type varieties and seedlings, hybrid varieties and seedlings, and unidentified seedlings not listed elsewhere in Table I.

* * * * *

Dated: May 16, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-11781 Filed 5-21-90; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 985

[FV-89-107 IFR]

Spearmint Oil Produced in the Far West; Increase of the Salable Quantity and Allotment Percentage for "Class 3" Native Spearmint Oil for the 1990-91 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule invites comments on increasing the quantity of Native spearmint oil produced in the Far West that may be purchased from or handled for producers by handlers during the 1990-91 marketing year, which begins on June 1, 1990. This action is taken under the marketing order for

spearmint oil produced in the Far West in order to avoid extreme fluctuations in supplies and prices and thus help to maintain stability in the spearmint oil market. This action was unanimously recommended by the Spearmint Oil Administrative Committee (Committee), which is responsible for local administration of the order.

EFFECTIVE DATE: May 22, 1990. Comments which are received by June 21, 1990, will be considered prior to the issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2085, South Building, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2225–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–8139.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Order No. 985, as amended (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

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

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

The Far West spearmint oil industry is characterized by primarily small producers whose farming operations generally involve more than one commodity and whose income from farming operations is not exclusively dependent on the production of spearmint oil. The production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered under the marketing order). Spearmint oil is also produced in the Midwest. The production area covered by the marketing order normally accounts for more than 75 percent of U.S. production of spearmint oil annually.

The Committee reports that there are approximately 9 handlers and 253 producers of spearmint oil under the marketing order for spearmint oil produced in the Far West. Of the 253 producers, 160 producers hold "Class 1" (Scotch) oil allotment base, and 136 producers hold "Class 3" (Native) oil allotment base. As of June 1, 1989, producers' allotment bases ranged from 667 to 181,902 pounds for Scotch oil and from 290 to 124,346 pounds for Native oil. The average total allotment base held is 10,413 pounds and 13,539 pounds for Scotch and Native oils, respectively.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.1) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Far West spearmint oil producers and handlers may be classified as small entities.

The initial salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1990–91 marketing year were unanimously recommended by the Committee at its September 20, 1989, meeting. The salable quantity is the total quantity of each class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is alloted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil. A proposed rule incorporating the Committee's recommendations was published in the November 14, 1989, issue of the Federal Register (54 FR 47366). Written comments were invited from interested persons until December 14, 1989. One comment was received in the form of a recommendation from the Committee.

This recommendation was submitted after a Committee meeting on November 28, 1989. At that meeting, the Committee unanimously recommended an increase in the salable quantity and allotment percentage for Scotch spearmint oil for the 1990–91 marketing year. The Committee indicated that continued strong contracting activity by buyers warranted such an increase. Thus, the Committee recommended that the allotment percentage for Scotch oil be increased from 40 to 52 percent and the salable quantity from 678,800 to 882,440 pounds.

An additional recommendation was submitted to the Department after a teleconference meeting on January 8, 1990. During that meeting, the Committee unanimously recommended an increase in the salable quantity and allotment percentage for Native spearmint oil for the 1990–91 marketing year. The Committee indicated that unusually brisk marketing activity of Native spearmint oil warranted such an increase. Thus, the Committee recommended that the allotment percentage for Native spearmint oil be increased from 43 to 50 percent and the salable quantity from 806,498 to 937,789 pounds.

The Committee therefore unanimously requested the Secretary to revise its September 20 recommendations for Scotch and Native spearmint oils to reflect these increases. Accordingly, based upon analysis of available information, the Committee's recommendations were adopted in an interim final rule published in the March 9, 1990, issue of the Federal Register (55 FR 8905). Thus, this interim final rule established salable quantities of 882,440 pounds and 937,789 pounds, respectively, for Scotch and Native spearmint oils produced in the Far West and allotment percentages of 52 percent and 50 percent, respectively, for Scotch and Native spearmint oils produced in the Far West.

Written comments were invited from interested persons until April 9, 1990. One comment was received in the form of a recommendation from the Committee.

This recommendation was submitted after a Committee meeting on March 7, 1990. At that meeting, the Committee unanimously recommended an increase in the salable quantity and allotment percentage for Native spearmint oil for the 1990–91 marketing year. Since the

Committee's January 8, 1990, meeting, marketing opportunities for Native spearmint oil have increased. The Committee reports that the 1989 crop of Chinese spearmint oil experienced considerable production problems resulting in a substantial reduction in the amount of spearmint oil available on world markets. In addition, markets for spearmint and other mint oils are developing or increasing in a number of "third world" countries. The Committee therefore unanimously requested the Secretary to revise its January 8, 1990, recommendation for Native spearmint oil to reflect this increase in demand. Accordingly, based upon analysis of available information, this Committee recommendation has been adopted in this interim final rule.

This interim final rule modifies the March 9, 1990, interim final rule by increasing the salable quantity of Native spearmint oil from 937,789 to 1,125,347 pounds and the allotment percentage from 50 to 60 percent for the 1990–91 marketing year.

The following table summarizes the computations used in arriving at the Committee's recommendations.

	Recommendation Jan. 8, 1990	Mar. 7, 1990
(1) Carryin	20,000	20,000
(2) Total supply available	957,789	1,145,347
(3) Desirable carryout	0	0
(4) Total allotment base for native oil	1,875,577	1,875,577
(5) Allotment percentage	50	60
(6) Salable quantity	937,789	1,125,347

Thus, the Department has determined that an allotment percentage of 60 percent should be established for Native spearmint oil for the 1990–91 marketing year. This percentage will make available 1,125,347 pounds of Far West Native spearmint oil to handlers of Far West spearmint oil.

Based on available information, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendations submitted by the Committee and other available information, it is found that this interim final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Based upon November 28, 1989, and January 8, 1990, Committee recommendations, an interim final rule, which requested comments and increased the salable quantities and allotment percentages for Scotch and Native oils for the 1990–91 marketing year, was published; (2) one comment was received from the Committee in the form of a recommendation to increase the salable quantity and allotment percentage for Native oil; (3) based upon analysis of available information, this action adopts the subsequent recommendations and provides for a 30-day comment period concerning this action; and (4) handlers and producers should be apprised as soon as possible of the salable quantity and allotment percentage for Native spearmint oil for the 1990–91 marketing year contained in this interim final rule.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, and Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR part 985 continues to read as follows:

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

2. Section 985.210 is amended by revising paragraph (b) to read as follows:

[**Note:** This section will not appear in the annual Code of Federal Regulations].

Subpart—Salable Quantities and Allotment Percentages

§ 985.210 Salable quantities and allotment percentages—1990–91 marketing year.

* * * * *

(b) "Class 3" (Native) oil—a salable quantity of 1,125,347 pounds and an allotment percentage of 60 percent.

Dated: May 16, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–11782 Filed 5–21–90; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF ENERGY

10 CFR Part 600

Deviations for the Small Business Innovative Research (SBIR) Program

AGENCY: Department of Energy.

ACTION: Rule; Class Deviations.

SUMMARY: The Department of Energy (DOE), pursuant to 10 CFR 600.4, hereby announces six deviations from its Financial Assistance Rules for the Small Business Innovative Research (SBIR) program. These deviations have been approved because they are either necessary to achieve program objectives (Numbers 1, 2, 3, 4, 6) or are essential to the public interest (Number 5). The first deviation will ease the record-keeping requirements for recipients; the second deviation will allow the DOE officials, in appropriate circumstances, to make lump-sum payments to Phase I recipients, which will not require minimizing the time span between receipt and expenditure of funds; the third deviation allows Phase II recipients to receive a single award of 24 months; the fourth deviation requires Phase I and Phase II recipients to request DOE approval before no-cost extensions can be approved; the fifth deviation requires Phase I and Phase II recipients to receive prior approval before entering into any sole source or single-bid contracts in excess of $25,000; and the sixth deviation permits the payment of fees to SBIR recipients.

EFFECTIVE DATE: June 6, 1990.

FOR FURTHER INFORMATION CONTACT: Edward F. Sharp, Business and Financial Policy Division, (PR–13), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8192.

SUPPLEMENTARY INFORMATION: In this notice, the DOE announces that, pursuant to 10 CFR Part 600, the Director of Procurement and Assistance Management has made a determination of the need for six deviations to the DOE Financial Assistance Rules. The determination documents, dated February 16, 1990, March 12, 1990, and March 21, 1990, provide for deviations for SBIR recipients as explained below (i.e., a "class deviation").

Deviation Number 1 is a deviation from the requirements of 600.109 concerning compliance with Government record-keeping requirements. This deviation is necessary to allow the Phase I awards to be made on a "fixed obligation" basis. This furthers the program objective (see § 600.4(b)(1)) of reducing

the administrative burden by reducing the amount of recordkeeping the recipient must perform. It is appropriate to authorize this deviation for Phase I grantees since the dollar amount and duration of the awards is limited to $50,000 and 6½ months respectively.

Deviation Number 2 permits the cognizant program official and contracting officer to make lump-sum payments in circumstances they deem appropriate. This is a deviation from § 600.112(b)(2)(i), which requires the timing of cash advances to be as close as feasible administratively to the disbursement of funds. This is a second deviation contributing to the awarding of Phase I grants on a fixed obligation basis, and is necessary to the program objective (see § 600.4(b)(1)) of reducing administrative burden by lessening the frequency that recipients must request payments. If a lump sum payment is made, the award must be conditioned to require recipients to return to the DOE amounts in excess of $500 remaining unexpended at the end of the project.

Deviation Number 3 permits Phase II SBIR awards to be made as single budget periods of 24 months. This is a deviation from § 600.31 and furthers the program objective (see § 600.4(b)(1)) of reducing administrative burdens by reducing the frequency with which the recipient must submit applications. It is appropriate because the Phase II period is considered to be a single, continuous activity under the SBIR program legislation.

Deviation Number 4 requires extensions of budget and project periods beyond and end dates designated on the Notice of Financial Assistance Award to receive the approval of the DOE. This deviation to § 600.31(d) removes the authority of the recipient to approve automatic no-cost extensions. This is necessary to achieve program objectives (see § 600.4(b)(1)) because program officers advise that automatic no-cost extensions would delay completion of projects and receipt of final reports.

Deviation Number 5 requires a grantee or subgrantee to receive the prior approval of the awarding party before entering into a sole source contract, or a contract where only one bid or proposal is received when the value of the contract is expected to exceed $25,000 in the aggregate. This deviation from § 600.103 removes the authority of recipients to enter into sole source or single bid contracts on their own, and is essential to the public interest (see § 600.4(b)(3)) by helping to prevent problems which can arise with those types of contracts.

Deviation Number 6 permits a fee or profit to be paid to SBIR recipients. This deviation to § 600.103(h) is believed to be necessary to achieve program objectives (see § 600.4(b)(1)) by insuring the high quality of the DOE's SBIR program.

Issued in Washington, DC May 16, 1990.

Berton J. Roth,

Deputy Director, Office of Procurement and Assistance Management.

[FR Doc. 90-11854 Filed 5-21-90; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 11

[Docket No. 90-8]

Securities Exchange Act Disclosure Rules; Technical Amendments

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule; technical amendments.

SUMMARY: The Office of the Comptroller of the Currency ("OCC") is publishing technical amendments to its Securities Exchange Act Disclosure Rules codified at 12 CFR part 11. The technical amendments involve minor adjustments or additions to the language of certain sections to conform them to long-standing OCC disclosure requirements regarding directors, executive officers, principal security holders, their families and their related interests.

EFFECTIVE DATE: May 22, 1990.

FOR FURTHER INFORMATION CONTACT: Michael C. Dugas, Securities and Corporate Practices Division, telephone (202) 447-1954, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is publishing technical amendments to its Securities Exchange Act Disclosure Rules, 12 CFR part 11, to clarify the meaning of certain sections of the rule.

On October 30, 1985, the OCC published in the **Federal Register** final amendments to part 11 at 50 FR 45276. These amendments, which became effective on December 30, 1985, included a complete reformatting and reorganization of part 11. As described below, in the process of reformatting the regulation, certain amendments, intended to involve form only, but which could be interpreted to be substantive, were adopted. On October 28, 1988, the OCC published in the **Federal Register** technical amendments at 53 FR 43677, which, as described below, also could be interpreted as causing some unintentional substantive changes. The OCC has continued to interpret the regulation consistently and to require the same disclosures as necessary prior to the 1985 amendments. This amendment will clarify that the affected disclosure requirements were not intended to be changed by the two earlier amendments.

Prior to the 1985 amendments, § 11.51, Item 7(e) required disclosure in the proxy form of a bank's transactions with management involving any of the bank's principal security holders or members of their immediate families. Section 11.51, Item 7(e) also required disclosure of indebtedness of management to a bank by its principal security holders and certain of their specified trusts, family members and corporations ("related interests"). In addition, § 11.51, Item 7(e) contained parallel disclosure requirements for transactions with management and indebtedness of management involving directors, officers and nominees (and their family members or related interests), and disclosure requirements for certain business relationships of directors and nominees.

As part of the 1985 amendments, disclosure information requirements for transactions with management, certain business relationships and indebtedness of management were moved to § 11.844 and cross referenced in § 11.590, Item 6. The 1988 technical amendments, among other things, moved a cross reference to certain information concerning principal security holders from § 11.590, Item 6 to § 11.590, Item 5.

When the OCC moved the disclosure items and cross references in the 1985 and 1988 amendments, an unintended deletion occurred. Disclosure requirements were deleted for (1) indebtedness of management on the part of principal security holders and their related interests, (2) certain business relationships on the part of directors and nominees, and indebtedness of management on the part of directors and nominees and their related interests, and (3) transactions with management on the part of officers and members of their immediate families and indebtedness of management on the part of officers and their related interests. The OCC continues to require such disclosure and considers it material to shareholders or investors.

Accordingly, the OCC is making this technical amendment to § 11.590, Item 5 to require disclosure of indebtedness of management with respect to principal security holders and their related interests. In addition the OCC is amending § 11.590, Item 6 to restore the

disclosure requirements for (1) certain business relationships on the part of directors and nominees, and indebtedness of management on the part of directors and nominees and their related interests, and (2) transactions with management on the part of officers and members of their immediate families and indebtedness of management on the part of officers and their related interests.

Regulatory Impact Analysis

Pursuant to Executive Order 12291, the OCC has determined that these amendments do not constitute a major rule. Therefore, a regulatory impact analysis is not required. These amendments are technical and clarifying in nature and only reflect long-standing policy and procedures.

Regulatory Flexibility Act

A regulatory flexibility analysis is required only for rules issued for notice and comment. Because this final rule is technical in nature, has no substantive effect, and deals with agency practice, it is exempt from notice and comment procedures. Therefore no regulatory flexibility analysis will be prepared.

Adoption Without Notice and Comment and Reason for Immediate Effective Date

The OCC has found that notice and comment procedures and a 30-day delayed effective date concerning this final rulemaking are unnecessary. This final rule is technical in nature and has no substantive effect.

List of Subjects in 12 CFR Part 11

Banking, Securities disclosure rules.

For reasons set out in the preamble, part 11 of chapter I of title 12 of the Code of Federal Regulations is amended to read as follows:

PART 11—[AMENDED]

1. The authority citation for 12 CFR part 11 continues to read as follows:

Authority: 15 U.S.C. 781, 78m, 78n, 78p, 78w.

2. In § 11.590, a new paragraph (i) is added to Item 5, and the introductory text in item 6 is revised and new paragraphs (c) and (d) are added to Item 6 to read as follows:

§ 11.590 Form for proxy and information statement (Form F-5).

* * * * *

Item 5. Voting Securities and Principal Holders Thereof.

* * * * *

(i) Furnish the information required by § 11.844(c) for (1) persons described in § 11.844(c)(1)(iv)(C) and (2) persons having relationships described in § 11.844(c)(1)(iv) (D), (E) or (F) with respect to persons described in § 11.844(c)(1)(iv)(C).

* * * * *

Item 6. Directors and Executive Officers.

If action is to be taken with respect to the election of directors, furnish the following information in tabular form to the extent practicable, with respect to each officer (if applicable) and each person nominated for election as a director and each person whose term of office will continue after the meeting. However, if the solicitation is made on behalf of persons other than the bank, the information required need be furnished only as to nominees of the persons making the solicitation.

* * * * *

(c) Furnish information required by § 11.844(b).

(d) Furnish the information required by § 11.844(c) for (1) persons described in § 11.844(c)(1)(iv) (A) and (B), and for (2) persons having relationships described in § 11.844(c)(1)(iv) (D), (E) or (F) with respect to persons described in § 11.844(c)(1)(iv) (A) or (B).

* * * * *

Dated: May 16, 1990.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 90-11793 Filed 5-21-90; 8:45 am]

BILLING CODE 4810-33-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 304

RIN 3064-AA38

Forms, Instructions, and Reports; Planned Rapid Growth

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

ACTION: Final rule.

SUMMARY: In April of 1989, (54 FR 13693, April 5, 1989) the FDIC published for comment a proposal to substitute for its current regulation on reporting fully insured brokered deposits and fully insured deposits placed directly by other depository institutions (12 CFR 304.6) a new requirement calling more broadly for the reporting of planned rapid growth by whatever means, including the solicitation and acceptance of brokered deposits and direct deposits by other depository institutions. Essentially, the proposal would have required an insured bank to report by means of a check-off question on its Reports of Condition and Income ("Call Reports") any intention to grow rapidly, that is, by more than nine percent during the following three months. Any bank reporting an intention to grow that rapidly would be prohibited from implementing its plans for a period of 30 days from the submission of its Reports of Condition and Income. As an interim measure, unless and until a question regarding planned rapid growth could be included on the Reports of Condition and Income, insured banks would be required to report their intention to grow rapidly by means of a letter or other written communication mailed or otherwise directed to the appropriate FDIC regional director for bank supervision. Moreover, whenever rapid growth occurred that was not planned and covered by a prior notice given through a Reports of Condition and Income submission, separate letter or other written communication, the bank would be required to report promptly the fact of that growth to the appropriate FDIC regional director for supervision.

Based on a review and analysis of the comments received on the proposal, the FDIC believes it was overly broad and could prove difficult to implement and unnecessarily burdensome to many small banks and the FDIC. Consequently, staff has developed a more narrowly focused final rule. The final rule requires 30 days advance notice only when an insured bank plans to grow rapidly through the solicitation, in any combination, of fully insured brokered deposits, fully insured out-of-territory deposits, or secured borrowings, including repurchase agreements. Growth resulting from any other source or means is not covered and will not require any advance notification to the FDIC. Given this narrower focus, the FDIC has also reduced the anticipated growth rate requiring a report from 9 to 7.5 percent over any three-month period. The Call Report option for reporting planned rapid growth has been retained in the event necessary changes to the Call Report can be made. However, the FDIC has eliminated any after-the-fact reporting of rapid growth.

EFFECTIVE DATE: The final rule is effective July 23, 1990 unless the Office of Management and Budget ("OMB") declines to approve the information collection under the Paperwork Reduction Act by that date. Notice of OMB action will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: William G. Hrindac, Examination Specialist, Division of Supervision, (202) 898-6892, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of final rulemaking, which is entitled "Notification of Rapid Growth," 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 the FDIC, with copies to the Assistant Executive Secretary (Administration), room F–400, Federal Deposit Insurance Corporation, Washington, DC 20429.

The information will be collected from insured banks anticipating rapid growth through certain means and is needed to assure appropriate monitoring and supervisory oversight of the loans, investments or other uses of the funds obtained during the course of rapid growth.

The estimated annual reporting burden for the collection of information in this regulation is summarized as follows:

Number of Respondents: 650.

Number of Responses Per Respondent: 1.

Total Annual Responses: 650.

Hours per Response: 2.5.

Total Annual Burden Hours: 1,625.

Regulatory Flexibility Act

The FDIC's Board of Directors hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities because it will simply require occasional reporting by a relatively small percentage of insured banks regarding their activities and plans for future rapid growth through certain limited means. These types of communications have always been a routine part of the bank supervisory process. Moreover, the additional economic impact will be offset by the elimination of explicit reporting requirements for banks that call for the special compilation and periodic reporting of data on fully insured brokered deposits and fully insured direct deposits of other depository institutions. Overall, the regulatory change will likely reduce modestly the cost and burden on small banks. Consequently, the provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603 and 604) are not applicable.

Discussion

A number of instances have developed over the past few years where insured banks have grown very rapidly in a short period of time and have concurrently developed serious asset and/or other problems. In fact, some of these institutions have failed very quickly thereafter, even though these same banks had operated satisfactorily prior to the unwise growth. Various mechanisms have been used to fund that rapid growth, including brokered deposits, direct borrowing from a Federal Home Loan Bank, use of repurchase agreements, direct solicitation of deposits throughout the country by a "money desk" operation, and simply paying above market rates. Based on this experience, the FDIC believes it necessary to enhance its ability to monitor rapid growth in time to apply appropriate supervision and avoid losses to the deposit insurance fund.

To this end, the FDIC proposed on April 5, 1989 (54 FR 13693) that insured banks planning to grow rapidly, i.e., by more than nine percent of assets over any consecutive three-month period, be required to provide the FDIC with 30 days advance written notice of such intent. As proposed, the advance notice would be filed as part of the bank's quarterly Reports of Condition and Income (Call Reports) by means of a check-off question asking whether the bank intended to grow rapidly during the following three months. Until and unless such a question was included on the Reports of Condition and Income, a notice of intent to grow rapidly would be given by letter or other written communication directed to the appropriate FDIC regional director for supervision. No special funding plan or arrangement designed to rapidly increase the assets of a bank could be implemented until 30 days following written notice given either through the submission of the Reports of Condition and Income or a separate letter or other written communication. A written notice would also be required within seven days whenever an insured bank increased its assets by more than nine percent during any three-month period unless the growth was pursuant to a previously reported notice of intent to grow rapidly.

The proposed regulation made clear that the reporting requirements were not intended to cover situations in which the growth threshold was exceeded as a result of normal growth expected of a new bank during its first year of operation (unless pursuant to a special funding plan or arrangement for which notice was not previously given), a merger or consolidation, or seasonal changes in deposit growth or lending and repayment patterns customary for the particular bank.

The FDIC received 81 comment letters on the proposal, about two-thirds of which were from community banks. The remaining comment letters were from bank holding companies, money center banks, grandfathered nonbank banks, securities firms, private parties, trade associations, and the Office of the Comptroller of the Currency.

The comment letters represented a diverse range of opinion with over a third expressing some degree of support for the need to control rapid growth in insured banks, especially growth resulting from the receipt of brokered deposits. A slightly greater number, however, expressed general opposition to the proposal under any circumstances. Most commenters took issue with one or more technical aspects of the proposal.

The major technical issue raised was the uncertainty as to what constituted a "special funding program." Many commenters pointed out that a variety of normal funding activities, such as the receipt of public funds from time to time, might be considered a "special funding program." The receipt of such funds, moreover, could not always be anticipated in time to provide the required 30 days advance notice. This would tend to hamper many banks in the conduct of their normal business activities and provide an unfair competitive advantage to other depository institutions not similarly constrained.

Although it was never the FDIC's intent to cover such normal and routine funding activities, the FDIC recognizes the newness of the concept of a special funding plan and the difficulties of further attempts to define it. Moreover, and more importantly, we recognize that such normal growth and funding activities, by-and-large, do not pose special safety and soundness concerns and reporting the same would unnecessarily burden insured banks and FDIC supervisory staff. Consequently, the FDIC has decided to narrow the focus of the final rule to three specific means of growth that have led to safety and soundness concerns in the past, namely, rapid growth resulting from the solicitation and receipt of fully insured brokered deposits, the operation of a "money desk" soliciting out-of-territory fully insured deposits, and secured borrowings, including repurchase agreements. Under the final rule, an entire range of ill-defined, so-called

"normal" growth of fluctuations in deposits is excluded from coverage. Excluded as well is growth or fluctuations in deposits resulting from seasonal or special circumstances such as an influx of tourists into an area during a particular season or the establishment of a new branch and related promotional activities. Growth resulting from aggressive pricing of deposits solicited within the bank's normal trade area is similarly excluded. In other words, the final rule focuses solely on the three possible sources of growth indicated. All other possible sources of growth are not covered or affected.

Two commenters on the initial proposal noted that out-of-territory deposit solicitations can be a cost-effective means of raising funds in certain high cost areas.

The FDIC recognizes that this may be true in some cases. It is also true, however, that such solicitations often create special problems and concerns for banks that may be located in other areas and especially so when out-of-territory deposit solicitation is used to fund rapid growth rather than as a replacement for higher-cost local funding. Therefore, the FDIC is continuing to require advance notice of such out-of-territory deposit solicitation programs in its final rule. We believe that by limiting notice to situations in which out-of-territory deposits are used to fund rapid growth and requiring only a single notice during any one year that any such program is continued, the burden should be minimal on those banks that may choose to utilize such funding.

A number of commenters suggested that the 30-day waiting period be reduced or eliminated, citing the need for flexibility to move quickly to seize market opportunities. Alternatively, one commenter suggested a provision for expedited review whereby an institution might request termination of the waiting period in as short a period as ten days.

Although the FDIC is continuing the 30-day advance notice requirement in the final rule as a reasonable period within which to solicit additional information, as necessary, and conduct the type of review contemplated, there is merit in permitting expedited review in certain limited circumstances where necessary information regarding funding plans and uses is furnished with the initial notice or is otherwise available from other federal regulators. Accordingly, any insured bank may request expedited review in exigent circumstances and the FDIC regional director, if the circumstances justify, will accord that notice priority review and may waive any remaining portion of the 30-day advance notice period.

A number of commenters suggested that nine percent growth over three months was too low a threshold for reporting and instead suggested a 12 to 15 percent range. Many also noted that the nine percent rate would disproportionately impact smaller community banks.

The FDIC believes the nine percent growth rate was not unreasonable in the context of addressing more generalized types of rapid growth plans even though it would have impacted smaller community banks more often. In the context of addressing rapid growth more narrowly, however, the FDIC has structured the final rule to provide for notice whenever funding from the three possible sources is likely to increase assets by 7.5 percent over any three-month period. This standard is somewhat more stringent than previously proposed because of the perceived need to become aware as soon as possible of significant special funding operations of the types identified. Given the narrow focus of the final rule, we believe the change will have little impact by way of any increased overall burden on insured institutions.

Several commenters expressed concern over the need for reporting after-the-fact rapid growth within ten days, pointing out that unexpected but harmless growth can occur quickly and many larger banks especially cannot monitor their growth daily since they do not maintain consolidated figures on a daily basis.

The FDIC appreciates these concerns and difficulties. Consequently, we have deleted the after-the-fact reporting requirement in the final rule and instead will monitor after-the-fact growth solely through the Call Reports. We believe the proposed requirement had limited appeal in any event as a backup to the requirement to report planned rapid growth in advance although, on occasion, it would have provided more rapid notice than through the Call Reports. However, these positive aspects appear marginal and, given the practical difficulties of complying, the requirement has been deleted. As a result, the final rule focuses solely on anticipatory supervision premised on advance notice of planned rapid growth from the three possible sources indicated.

Many commenters suggested that the reporting requirement be waived or a higher threshold limit be established for banks with adequate capital or otherwise in a generally sound condition.

While there is some merit in the approach suggested, it fails, nonetheless, to address the principal concern on which the original proposal was premised, namely, that an otherwise sound bank can grow very rapidly and assume excessive risk before the appropriate regulators become aware of its activities and can respond in a suitable manner. Based on its supervisory experience, the FDIC perceives a need in certain limited circumstances to become aware of rapid growth plans in advance in order to ensure appropriate supervisory oversight, including the scheduling of special examinations where appropriate. To limit reporting only to marginal or problem institutions which, generally speaking, are already closely monitored in any event, would fall short of the intended purpose of the proposal. Consequently, this suggestion is rejected in the final rule.

Approximately a fifth of all commenters complained that the proposal would impose unnecessary and burdensome monitoring and reporting requirements on all banks and unfairly burden them vis-a-vis their competitors.

The FDIC is very sensitive to the issue of burden and seeks to impose only the minimum burden necessary and then only on those institutions operating in a manner that may pose special risks. To this end, the final rule substantially reduces the burden originally contemplated by (1) Focusing solely on growth from the three possible sources indicated and excluding all other sources of growth, (2) eliminating separate reports on after-the-fact growth, and (3) providing exceptions from the requirements for certain types of banks. In addition, the final rule permits expedited review in exigent circumstances and a possible waiver of any remaining time on the advance notice period.

Two commenters, noting that the proposed use of a Call Report check-off item to notify the FDIC of planned rapid growth would in most cases require further communication with the banks to ascertain pertinent details of the intended growth, suggested that such an arrangement was awkward and "just doubles the work."

While it is true that notices of intent to grow rapidly given through the Call Reports will ordinarily prompt a follow-up request for additional information, these requests may be made telephonically in an expedited fashion. Moreover, there is nothing to prevent a bank that was planning rapid growth through one of the three means indicated to provide pertinent details of

its funding and investment plans by separate letter at the time of giving notice. Consequently, the final rule retains the Call Reports check-off option as a means of notification of planned rapid growth.

Several commenters observed that the proposal in effect represents an application process and constitutes an overbroad intrusion into the management of an institution.

The FDIC does not believe the proposal represents an application process since it contemplates no formal approval or disapproval of growth plans nor imposes any restraints on growth as such beyond the minimal delay needed by the regulatory authorities to consider rapid growth plans in context. The proposal and final rule represent essentially an information gathering device that will permit the regulators to receive and act on certain possibly high risk activities before the fact and before the risk profile of a bank is altered substantially to transfer a disproportionate share of the risk of the enterprise onto depositors and creditors and, indirectly, the FDIC.

The issue of intrusion into the management of a bank is a question of degree and not kind. The entire regulatory/supervisory apparatus intrudes constantly into the management of an institution and yet few would argue that none of it is necessary. So long as banks play a critical role in our economy and their deposits are insured by the Federal Government, some degree of intrusion is necessary to protect the public interest. The only question is the legitimate need for and efficacy of the intrusion proposed. By focusing on bank managements' plans in advance in an effort to possibly avoid problems and losses, the proposal and final rule shift the timing of regulatory intrusion to an earlier stage since, traditionally, regulators have encouraged institution management to remedy identified problems after-the-fact. However, the risk assessment process and dialogue between regulator and bank management remains essentially the same.

Certain institutions have requested an exemption or exclusion by virtue of their size, the nature of their operations and/or other constraints on their growth. More specifically, some money center banks have suggested that the FDIC monitor their growth by accepting or obtaining from the Federal Reserve System a copy of FR 2416, "Weekly Report of Assets and Liabilities for Large Banks," or FR 2444, "Weekly Report of Selected Assets."

Since there appears to be no reason in principle why large banks should be exempted from the type of anticipatory supervision envisioned, and further, since after-the-fact reporting of rapid growth has been deleted from the revised proposal, the final rule contains no large bank exemption.

Some so-called "bankers' banks" questioned the application of the proposal to their operations, pointing out that their assets often fluctuate substantially in an unpredictable manner.

The limited and consistent nature of the business of these banks in providing correspondent services and serving as a liquidity facility for other banks does not seem to fall within the intended purpose of the proposal and consequently the final rule contains an exemption for banks doing exclusively a correspondent banking business.

Several nonbank banks grandfathered under the provisions of the Competitive Equality Banking Act of 1987 requested an exemption from the proposal since their growth is already limited to seven percent during any 12-month period. (See 12 U.S.C. 1843(f).)

While yearly growth is limited, there is no assurance that short-term growth within any 12-month period cannot be substantial and possibly involve an assumption of excessive risk. Indeed, the "use or lose" nature of the constraint suggests the need for uneven growth from time to time to take full advantage of the seven percent limitation. Consequently, the final rule contains no exemption for grandfathered nonbank banks.

The Office of the Comptroller of the Currency (OCC) and several other commenters questioned the application of the proposed reporting requirements to national banks. The OCC in particular has suggested that as the primary regulator of national banks, it has the necessary tools to monitor, evaluate and, when appropriate, restrict a national bank's growth. It further suggested that the proposal would subject national banks to unnecessarily burdensome and potentially conflicting regulation. Other commenters complained of the additional supervisory layer over national and member banks and the pre-emption of the supervisory responsibility of the OCC and Federal Reserve Board. One commenter even questioned the legal authority of the FDIC to regulate the activities of national banks in the fashion proposed.

These comments in large measure reflect a misapprehension of the proposal. The FDIC is not attempting to regulate or supervise the activities of national or member banks. The proposal seeks only to establish an information gathering mechanism in certain limited cases with respect to all insured banks. The final regulation establishes no constraints on the activities of reporting institutions, including national and member banks, except for a minimal waiting period. Moreover, whatever information might be gathered will be shared with the OCC in the case of national banks and the Federal Reserve System in the case of state member banks and the FDIC will contact those agencies before contacting a national or member bank directly. The FDIC will look to these agencies in the first instance to apply whatever supervisory oversight and direction may be appropriate in each case for banks under their respective jurisdictions. The FDIC in turn expects to be kept informed, as is currently the case, of the results of that supervision. Insofar as the monitoring of these other banks is concerned, we are not aware that either of the other federal bank regulatory agencies has in place a similar monitoring system calling for advance notice of planned rapid growth. Should these agencies adopt similar reporting requirements, there would, of course, be no need for a duplicative FDIC requirement. The issue of legal authority is discussed extensively elsewhere in this notice document.

A miscellany of other comments were received, many of which have been resolved implicitly by the narrower focus of the final rule. For example, the FDIC perceives no need to create special exceptions for rapid growth that may result from the opening of a new branch or the closing of a nearby savings association since these situations will not trigger a report in any event under the final rule.

Several other of these miscellaneous comments, however, are still pertinent and deserve discussion. Three commenters, for example, pointed out that rapid growth alone is not an indicator of unsafe or unsound banking practices and that many banks can manage growth safely, e.g., through the arbitrage of new funds in U.S. Government issues.

The FDIC agrees with these observations and does not mean to suggest that all rapid growth is necessarily unsound or cannot be managed safely. On the other hand, rapid growth does present an occasion of special risk and has been mismanaged frequently enough to warrant special monitoring. Moreover, we would prefer advance notice of

planned rapid growth so that any such plans may be considered in context with the appropriate regulators in time to avoid possible serious problems or losses that might jeopardize the legitimate interests of the FDIC.

Two commenters pointed out that asset and liability realignments can significantly increase risk and not show in total footings.

This, of course, is true except that the proposal and final rule are not designed to capture these types of changes in risk profile. At present, these changes are noted after-the-fact through off-site monitoring systems based on analyses of Call Report data. We are inclined to believe that this type of monitoring of balance sheet realignments is sufficient for the time being.

Confidential Treatment of Notices

All notices or other information received in accordance with the final rule will be treated as confidential by the FDIC.

It is the agency's opinion based upon a reveiw of relevant case law that such notices or other information will be exempt from required public disclosure under the Freedom of Information Act. The notices or information will contain or constitute confidential commercial or financial information within the meaning of 5 U.S.C. 552(b)(4) and also fall within the parameters of 5 U.S.C. 552(b)(8) which exempts from public disclosure information contained in or related to examination, operating or condition reports prepared for the use of the FDIC or any other agency responsible for the supervision of financial institutions.

Statutory Authority

In order to properly discharge its supervisory responsibilities and to adequately administer and protect the deposit insurance funds, it is essential that the FDIC have accurate, up-to-date information regarding actions taken by insured banks that may pose a threat to their safety and soundness and to the insurance banks that may pose a threat to their safety and soundness and to the insurance fund. The FDIC's purpose in imposing a prior notice requirement before an insured bank may institute certain special funding plans is to provide the FDIC with a mechanism to obtain in a timely fashion information needed to assess the risks posed to the insurance fund administered by the FDIC, coordinate with other regulatory authorities, prepare for and schedule examinations of insured banks when and where they are most needed, and properly evaluate an institution's management, current and future capital and liquidity needs, etc. in light of plans which may substantially alter the nature of its balance sheet.

The FDIC's action in amending part 304 of its regulations to provide for such notice is fully consistent with the FDIC's purpose and is authorized by sections 7, 8, 9 (Eighth) and (Tenth), and 10(b) of the Federal Deposit Insurance Act (12 U.S.C. 1817, 1818, 1819, 1820(b)). Under section 9 of the FDI Act, the FDIC has broad general authority to issue regulations "as it may deem necessary to carry out the provisions of the [Federal Deposit Insurance Act] or of any other law which it has the responsibility of administering or enforcing . . . " 12 U.S.C. 1819 (Tenth). It is settled that binding legislative-type rules based on general rulemaking authority may be issued so long as the rules are reasonably related to the purpose of the enabling legislation containing the general rulemaking authority. *Mourning* v. *Family Publication Services*, 411 U.S. 336, 369 (1973) (quoting *Thorpe* v. *Housing Authority of the City of Durham*, 393 U.S. 268, 280–281 (1969)). The preamble to the legislation placing federal deposit insurance on a permanent basis states that the purpose of the Banking Act of 1935 was "[t]o provide for the sound, effective and uninterrupted operation of the banking system . . . " Pub. L. No. 74–305, 49 Stat. 684 (1935). The clear goal of the FDI Act as demonstrated by the express language of the statute and its legislative history is to protect the safety and soundness of insured banks. In order to do so, the FDIC must be fully informed of what actions insured banks plan to take that may present risks to their safety or soundness and may ultimately endanger, or pose a serious threat to, the deposit insurance fund administered by the FDIC.

The ability of a federal bank regulatory agency to adopt regulations in harmony with safety and soundness concerns based upon general rulemaking authority was judicially recognized long ago, *Continental Banking and Trust Company* v. *Woodall* 239 F.2d 707, 710 (10th Cir.), *cert. denied*, 353 U.S. 909 (1957), and reaffirmed by the DC Circuit in a case involving a challenge to a regulation adopted by an agency which at the time was another federal insurer of deposits, *Lincoln Savings and Loan Association* v. *Federal Home Loan Bank Board*, 856 F.2d 1558 (D.C. Cir. 1988). As the safety and soundness of the deposit insurance fund is inextricably linked with the safety and soundness of insured banks, *Federal Deposit Insurance Corporation* v. *Citizens State Bank*, 130 F.2d 102, 104 n. 6 (8th Cir. 1942), and the FDIC has a congressional mandate to pay insured deposits whenever an insured bank is closed "on account of inability to meet the demands of its depositors" (12 U.S.C. 1821(f)), the FDIC must preserve the solvency of the insurance fund in order to fulfill its mandate when called upon. It is not surprising, therefore, that the FDIC's authority to protect the deposit insurance fund by the adoption of substantive rgulations applicable to all insured banks has been judicially recognized, *National Council of Savings Institutions* v. *Federal Deposit Insurance Corporation*, 664 F. Supp. 572 (D.D.C. 1987). Furthermore, the FDIC is authorized under section 8(b) of the FDI Act (12 U.S.C. 1818(b)) to initiate cease-and-desist proceedings whenever a state nonmember bank is engaging in unsafe or unsound banking practices and, under section 8(a) of the FDI Act (12 U.S.C. 1818(a)), to terminate deposit insurance whenever an insured bank is engaging in such practices or is in an unsafe or unsound condition. The FDIC is not confined to initiating individual enforcement or termination actions under section 8 but may, at its discretion, adopt substantive regulations defining what constitutes an unsafe or unsound practice or what warrants the termination of deposit insurance. *Independent Bankers Association* v. *Heimann*, 613 F. 2d 1161 (D.C. Cir. 1979), *cert. denied*, 449 U.S. 823 (1980). As the FDIC is authorized to adopt substantive regulations for the purpose of protecting the safety and soundness of the banks it insures, and for the purpose of protecting the deposit insurance fund, the FDIC clearly has the authority to adopt regulations simply requiring that the FDIC receive prior notice of an insured bank's plans to take certain actions that may adversely affect its safety and soundness and indirectly the solvency of the deposit insurance fund. Not only does it logically follow from the above that the FDIC may require the reports proposed herein, the FDIC is expressly authorized to do so with respect to insured state nonmember banks. Section 7 of the FDI Act (12 U.S.C. 1817) provides that the FDIC may collect reports of condition "and such other reports as the Board [of Directors] may from time to time require."

The reports required herein are also necessary in order that, among other things, the FDIC can properly discharge its responsibility under section 10(b) of the FDI Act (12 U.S.C. 1820(b)) to schedule and undertake special examinations of insured banks other than state nonmember banks when the FDIC has reason to believe that such examination is necessary to determine

the condition of the bank in question. It follows, therefore, based on section 9, which authorizes regulations deemed necessary to carry out the provisions of the FDI Act, that the FDIC has the authority to require the reports from insured banks other than state nonmembers in order that is might fulfill its responsibility to undertake such examinations.

Accordingly, for the reasons stated in this notice, and pursuant to the FDIC's authority under sections 7, 8, 9 (Eighth) and (Tenth), and 10(b) of the Federal Deposit Insurance Act (12 U.S.C. 1817, 1818, 1819 (Eighth) and (Tenth), 1820(b)), the FDIC is revising section 304.6 of its regulations (12 CFR 304.6).

List of Subjects in 12 CFR Part 304

Bank deposit insurance, Banks, banking, Freedom of information, Reporting and recordkeeping requirements.

Accordingly, the FDIC hereby amends part 304 of title 12, Code of Federal Regulations, as follows:

PART 304—FORMS, INSTRUCTIONS AND REPORTS

1. The authority citation for part 304 continues to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 1817, 1818, 1819, 1820.

2. Section 304.6 is revised to read as follows:

§ 304.6 Notification of rapid growth.

(a) An insured bank may not undertake any special funding plan or arrangement designed to increase its assets by more than 7.5 percent during any consecutive three-month period without first notifying the appropriate FDIC regional director for supervision in writing at least 30 days in advance of the implementation of the special funding plan or arrangement. For purposes of this requirement, a special funding plan or arrangement is any effort to increase the assets of a bank through the solicitation and acceptance of fully insured deposits obtained from or through the mediation of brokers or affiliates, the solicitation of fully insured deposits outside a bank's normal trade area, or secured borrowings, including repurchase agreements.

(b) In the event a question is included with the Reports of Condition and Income asking whether the reporting bank intends to undertake any special funding plan or arrangement designed to increase its assets by more than 7.5 percent during the following three months, a bank may by check-mark indicate affirmatively that it plans to undertake such a plan or arrangement and the submission of its response to this question shall satisfy the notification requirement prescribed in paragraph (a) of this section. The bank may not implement its plan or arrangement for 30 days following the filing date of its response to the rapid growth question. For this purpose, "filing date" means the date on which the bank's response to the rapid growth question is mailed or placed in some other delivery system for transmission to the FDIC.

(c) In the event a question concerning special funding plans or arrangements is included with the Reports of Condition and Income and an insured bank between filing dates determines to undertake such a plan or arrangement, the bank may not implement the special funding plan or arrangement designed to increase the bank's assets by more than 7.5 percent during the following three months without first notifying the appropriate FDIC regional director for supervision in writing at least 30 days in advance.

(d) The notification required by paragraphs (a) and (c) of this section may be in letter form. Any notification furnished pursuant to this section shall be submitted to the FDIC regional director for supervision for the region in which the head office of the insured bank is located. Such notification shall be considered given on the date post-marked or delivered to the FDIC regional office if by means other than placement in the mails and shall be effective for the duration of the special funding plan or arrangement described but shall not exceed one year. A new notification must be filed for any special funding plan or arrangement continued beyond one year.

(e) The appropriate FDIC regional director for supervision may require elaboration or clarification of any information contained in an initial notification and thereafter may require additional information from time to time, through direct inquiry or the mediation of other federal regulatory agencies, about the sources, uses and management of funds obtained. In all cases, the FDIC regional director will contact the appropriate federal regulator before contacting any national or state member bank. All information obtained shall be considered in context with other available information and assessed in consultation with other federal and state regulatory authorities, as appropriate. After appropriate review of any initial notification, the regional director may waive any remaining portion of the 30 day advance notice period.

(f) The provisions of this section shall not apply to any insured bank engaged exclusively in providing correspondent banking services and serving as a liquidity facility for other insured depository institutions.

By order of the Board of Directors. Dated at Washington, DC, this 3rd day of April, 1990.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 90-11870 Filed 5-21-90; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900-AD31

Loan Guaranty: Lenders Appraisal Processing Program

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) is amending its loan guaranty regulations (38 CFR part 36) to implement a system for delegating to certain lenders, the review of appraisal reports and the determination of reasonable value of properties to be purchased with VA guaranteed loans. These regulations are being promulgated in accordance with the Veterans Home Loan Program Improvements and Property Rehabilitation Act of 1987.

EFFECTIVE DATE: These regulations are effective May 22, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Burke, Assistant Director for Construction and Valuation (262), Loan Guaranty Service, Veterans Benefits Administration, (202) 233-2691.

SUPPLEMENTARY INFORMATION: On pages 20398 through 20402 in the **Federal Register** dated May 11, 1989, VA published proposed regulations to amend its loan guaranty regulations (38 CFR part 36) to implement a system for delegating to certain lenders, the review of appraisal reports and the determination of reasonable value of properties to be purchased with VA guaranteed loans. The new program will be called the Lenders Appraisal Processing Program (LAPP).

A total of seventeen commenters provided written comments in response to the proposed regulations. Comments were received from eight trade associations, seven lenders, one mutual insurance company and one independent fee appraiser. All of the

commenters are involved with the VA Home Loan Guaranty Program.

Many of the comments revolved around the provisions concerning qualification requirements for lenders' staff personnel, stating that the five year experience requirement was unnecessary and excessive considering the qualification requirements under the Department of Housing and Urban Development (HUD) similar "Direct Endorsement" (DE) program and what has been generally accepted by the rest of the industry. Additionally, the term staff "review appraiser" was a concern and was considered by the commenters to represent an activity that would be beyond the type and scope performed by most lender personnel involved in appraisal reviews.

We consider these valid comments and have revised the regulatory provisions accordingly to require a minimum of three years experience and to designate the lender's staff employee as a "Staff Appraisal Reviewer".

Two commenters indicated that the appraisal review function should be able to be completed by not only the "staff appraisal reviewer" but also by the underwriter. One of these commenters also stated that a "staff review appraiser" should be utilized only on a consultant basis to assist with difficult and problematic cases and to work with the lender's quality control plan.

Under the regulations an underwriter who possesses the minimum qualifications can be approved by VA to act as the lender's "staff appraisal reviewer" and perform both functions. Those underwriters who cannot satisfy our minimum qualification requirements will not be accepted as the lender's "staff appraisal reviewer". The use of consultant appraisers to assist underwriters who otherwise do not possess VA's minimum qualification requirements is not considered to be in the best interest of the loan guaranty program. The use of consultant appraisers as independent auditors and/or as contractors who perform field reviews in connection with quality control plans is acceptable.

Two commenters stated that the lender's staff review appraiser should be state certified, or at a minimum state licensed, considering the requirements of the Office of Management and Budget (OMB) Circular A–129 and that the regulation should require that appraisals be conducted, at a minimum, in accordance with generally accepted appraisal standards as reflected in the "Uniform Standards of Professional Appraisal Practice" promulgated by the Appraisal Foundation.

We do not view the provisions of OMB Circular A–129 as applying to the type of appraisal review performed under these regulations. However, if the state has a licensing and/or certification requirement for such individuals VA would require, as a qualifying factor, that staff reviewers must have complied with the state requirement(s). Requirements regarding the conduct of VA fee appraisers in the performance of appraisals will be addressed in separate instructions directed specifically at those individuals. We point out that of the Uniform Standards for Professional Appraisal Practice, Standard 1 is applicable to appraisals performed for VA loan guaranty purposes, Standard 2 is applicable insofar as it relates to written reports, and Standards 3 through 6 relate to matters which do not impact the VA Loan Guaranty Program.

One commenter expressed a concern with the requirement for lenders to continue to use VA designated fee appraisers instead of their own staff appraisers to conduct appraisals. The commenter stated that use of lender staff appraisers to conduct appraisals could actually improve the quality of underwriting on VA loans and that because of "no bids" lenders would have a strong incentive to underwrite loans prudently. VA does not agree with these views and considers the rotational selection by VA of VA designated fee appraisers to be a keystone to quality in its appraisal system. Furthermore, the statute does not provide for the use of lender staff appraisers and specifically requires the use of VA rotationally assigned fee appraisers. A change to the statute would be necessary to allow use of lender staff appraisers. This commenter also stated that the provision that the first 15 cases submitted under the new program be reviewed by VA staff is overly strenuous and recommended reducing the number. This view was also shared by a number of the other commenters.

We have reconsidered the 15 case requirement and have revised the provision. The regulation now requires that each lender staff appraisal reviewer must first satisfy an initial VA office case review requirement and then a subsequent office review requirement. The first five cases involving properties located in the jurisdiction of the VA office where the LAPP staff appraisal reviewer is located will be processed by the lender to the point where the notification of reasonable value to the veteran has been drafted but not issued. Those cases will then be submitted to the VA office which will review the appraisal and issue the Certificate of Reasonable Value (CRV). They will then determine the acceptability of the LAPP lender staff appraisal reviewer's processing. Upon successful completion of the five case review requirement the LAPP lender's staff appraisal reviewer will be allowed to process subsequent cases in that locale without prior VA involvement. A subsequent office case review requirement must be satisfied in each additional VA office in whose jurisdiction the LAPP lender wishes to extend utilization of the LAPP authority. The subsequent office review requirement consists of the lender staff appraisal reviewer's first case processed under LAPP in that locale. VA review of that case will be as described above for the initial case review requirement. VA offices may extend the initial or subsequent office case review requirement(s) if satisfactory performance is not demonstrated. However, the VA office must discuss with VA Central Office staff the problems encountered if they intend to extend the review requirements to more than ten cases in the first office review or to more than five cases in any subsequent office review. We also recognize that there may be situations relating to a lender's operating structure which may require VA to consider the appropriateness or necessity of the subsequent office review requirement and VA will address those situations as they arise or are presented.

Two commenters urged expedited processing of cases submitted to VA offices during the initial case review period. VA will include in the separate instructions issued by the Secretary a requirement that VA offices issue the CRV's in these cases within two workdays of receipt in the Construction and Valuation section and that a report of any negative findings in the LAPP lenders staff appraisal reviewer's processing must be provided to the lender, in writing, within five workdays.

Two commenters requested that VA consider "grandfathering" by automatically qualifying HUD "DE" lenders without a probationary period or an initial case review requirement or by approving their home office and regional management personnel as LAPP staff appraisal reviewers due to the length and breadth of their experience. VA will not consider "grandfathering" in any form under LAPP.

Several commenters disagreed with the provision that precluded lenders from raising the fee appraiser's recommended value estimate or processing reconsideration of value requests. This prohibition was envisioned as a temporary measure at the outset of the program and it was

contemplated extending the authority to make revisions and process appeals to LAPP lenders once the program had been operating for a sufficient period of time. We also consider cases where there is a difference of opinion relative to the fee appraiser's appraisal report and its recommendation(s) to be optimum cases for VA staff reviews for monitoring purposes.

We have reconsidered this provision and have revised the regulation to provide LAPP lenders with limited authority to revise or process appeals of value up to an amount which will be specified in the separate instructions which VA will issue. That amount will initially be two percent or less of the fee appraiser's estimated market value and must be clearly warranted and supported by the real estate market or other valid data considered adequate and reasonable by professional appraisal standards. It is to be understood that the two percent amount is not in any way to be considered an administrative adjustment figure which may be utilized and applied indiscriminately and without analysis of valid data, and therefore without basis or justification with the sole purpose of reaching an amount necessary to consummate the sale or mortgage transaction. Every case in which the LAPP lender staff appraisal reviewer makes an upward adjustment to the fee appraiser's estimated market value as indicated by the sales comparison approach will be desk audited and/or field reviewed by VA staff. Lenders are put on notice that they shall indemnify VA in each case where VA has incurred a loss as a result of a payment of claim under guaranty and in which VA determines that the increase was unwarranted or arbitrary and capricious. The authority provided under 38 U.S.C. 1831(d) which permits a lender to obtain a VA fee panel appraiser's report which VA is obligated to consider in the reconsideration (appeal) process shall not apply to lenders having LAPP authority.

Two commenters addressed the requirement for a certification by the staff appraisal reviewer with each appraisal report. One stated that such a certification is totally unnecessary while the other stated that the language should be less specific. We have revised the regulation to require that a one time certification be submitted with the lender's application for acceptance of their staff appraisal reviewer. We do not agree that the language in the certification should be changed to be less specific. We have revised and strengthened the certification language, in light of it now being a one time requirement.

Several commenters indicated that the requirement for issuance of the lender's notification of the reasonable value determination to the veteran within two workdays was too stringent, that it was unclear as to when the period begins, and that appeal processing should not count against the lender's time.

We have clarified and expanded the time frame for notifying the veteran of the lender's reasonable value determination to within five workdays of receipt of the fee appraisal report. Processing of an appeal by the lender or by VA will not count against the notification time period.

One commenter stated that appraisals involving affiliates of a lender should not be allowed and should be processed by VA. The commenter stated that no matter what quality controls are required, the protections will be dismantled and extensive abuse can occur. The VA too is concerned with abuses, but we do not agree with the commenter that they are unavoidable. The regulation requires that in order to process under LAPP the lender with an affiliate relationship must be able to show to VA's satisfaction that they are essentially separate entities, operating independently of one another, free of cross influences. To provide further assurances, we have expanded the regulation to require that all LAPP lenders must provide a quality control plan which specifically addresses overall appraisal quality. If the lender is involved with an affiliate, their quality control plan must also address the insulation of the appraiser, the appraisal reviewer and the underwriter from the influence of the affiliate. This also addresses the views of one commenter who indicated that all lenders should submit such a plan.

One commenter suggested that the individual(s) nominated by the lender to be their LAPP appraisal reviewer should be required to pass an exam or a test and/or prove actual field experience as an appraiser. Obviously, the optimum would be for lenders to have in their employ a professional real estate appraiser to perform appraisal reviews. However, realistically this does not represent the industry norm and would require that the majority of lenders change their practices significantly. We further believe that lenders' appraisal review personnel, although not fully qualified to conduct appraisals, can possess sufficient expertise to determine the over-all accuracy, acceptability and reliability of a professional fee appraiser's work and determine that the property is acceptable for VA financing purposes. We will not require actual field experience as an appraiser in determining the acceptability of a lender's staff appraisal reviewer. We do not consider that a written test or exam would, in the end, assure that the individual is properly qualified. The regulations do require acceptable completion of an initial case review period which we consider to be a "performance test" for the LAPP lender's staff appraisal reviewer.

Several commenters urged VA to reconsider its position on appraisals of proposed construction at the outset in the nationwide implementation of the lender Appraisal Processing Program or alternatively proceed with a test of lender review of proposed construction appraisals. The primary purpose of LAPP is to improve the timeliness of the delivery of the benefit to the veteran. In the proposed construction category, group or individual appraisal requests are usually made in advance or at the start of construction and the Certificate of Reasonable Value is issued in advance of the mortgage credit review process. Consequently, the review of proposed construction appraisals by VA staff does not create a timeliness problem. Proposed construction cases, because of the exhibits and other processing requirements, are inherently more involved than existing construction cases. We therefore intend to test lender review of proposed construction at selected VA offices as was noted in the Supplementary Information published with the proposed regulations on May 11, 1989 (See 54 FR 20399–20400).

One commenter stated that the VA should require that the assigned VA fee appraiser cooperate fully with the LAPP lender's staff appraisal reviewers in answering questions concerning individual appraisal reports. We fully agree and this issue will be addressed in separate instructions issued by VA directly to its fee appraisers.

One commenter stated that VA should issue specific national guidelines and requirements for completion of the Uniform Residential Appraisal Report (URAR), require fee appraisers to support and justify each section of the appraisal and that the report should be self-contained and not require further investigation by the lender staff reviewer to support the acceptability of the report or the recommended value. They stated that the lender should be able to rely on the appraiser's statements including whether the property meets VA's minimum property requirements, is basically eligible for the

program or is in a flood plain, etc., and that the VA should establish senior people at the regional office and national levels to deal with lender concerns under the program. This commenter also stated that the regulations may have been targeted toward smaller lenders dealing only with one VA office and not lenders with regional or national operations.

The URAR is an industry accepted report form. When use of the form was adopted by VA, instructions were issued to the VA fee panel concerning completion of certain items on the form for VA purposes; otherwise, the form must be completed in accordance with industry accepted standards. The form, when properly completed, provides a concise format for presenting the appraiser's description, findings and valuation recommendation. VA fee appraisers are required to complete the form in such a way that it clearly reflects the results of a thorough investigation and provides the rationale for the value estimate. We therefore believe our instructions are appropriate. While generally lenders' staff appraisal reviewers should be able to rely on the fee appraiser's report without further investigation, it is an integral part of the reviewer's responsibility to obtain additional clarification or justification from the fee appraiser when the lender determines it necessary. Under LAPP the lender and the lender's staff appraisal reviewer assume the responsibility for making prudent determinations concerning the acceptability of the property as security for VA financing purposes. Since the lender's staff appraisal reviewer will have authority to make revisions or process appeals, within limitations set by VA, obviously independent investigation and collection of data may be necessary. The same applies to eligibility of the property or conditions. Ultimately it is the lender's responsibility to make the determination as to the acceptability of the property and required conditions. We do not believe this is any different than the role and responsibility under HUD's "DE" program or with other similar programs in the industry.

We have centralized the basic acceptance of the lender's staff appraisal reviewer(s) to Central Office. The application process will be set forth in separate instructions issued by VA and is similar to the process of applying for automatic authority. Under the process, automatic lenders desiring LAPP authority will submit the necessary application documents to the VA office serving the lender's home or main office. Basically the necessary documents will consist of an application form for the staff appraisal reviewer(s) (VA Form 26–6684, Application for Fee Appraiser will be used for this purpose initially), a letter from the lender's senior officer nominating the staff appraisal reviewer(s), and submission of the specific certifications required (e.g., no courtesy LAPP value determinations for other lenders, no LAPP processing when there is a valid outstanding HUD conditional commitment or CRV.) The VA office will ensure the required application documents have been submitted, will make its recommendation concerning the applicant, and will forward the entire package within 10 days of receipt to VA Central Office for processing. VA Central Office will advise the lender and VA regional office(s) of its decision. Local VA office personnel will be available to lenders to assist in discussing LAPP procedures and cases. The Chief, Construction and Valuation section, or, if appropriate, the Loan Guaranty Officer will be available when higher level intervention is warranted. VA field offices have jurisdiction over the fee panels; therefore, complaints concerning fee appraisers must continue to be directed to the VA office on whose fee panel the appraiser is a member. Finally, these regulations clearly contain references to lenders with regional, multi-state or nationwide operations and thus have not solely targeted small single office operations.

One commenter stated that the proposal, if enacted, could jeopardize the objectivity of VA's current appraisal processing system for several reasons, principally that having the review appraiser under the employ of the lender will create an atmosphere conducive to creating pressure on that individual to cooperate and come up with specific values. They stated that an independent appraiser is in a better position to provide a high quality unbiased opinion of values and, additionally, that use of independent review appraisers would result in lower employment costs to lenders. The commenter was further concerned that lenders, in using VA's rotational assignment procedure for the initial appraisal, might be able to find out who the next appraiser is in line for assignment and use that information to manipulate VA's assignment system.

VA also is concerned with the objectivity of the staff appraisal reviewer in the employ of the lender. We believe we have designed the program with sufficient safeguards to adequately protect the Government's interests and ensure that the determinations made by lender's staff are prudent and reasonable. A key safeguard is the mandatory use of VA's rotationally assigned fee appraisers to render value recommendations on which the lender's staff appraisal reviewer will base the reasonable value determination. VA will also limit the ability of the lender to increase the fee appraiser's value recommendations. Such increases are not in any way administrative and must be fully justified and, furthermore, all cases involving a lender increase in value recommendation will be desk or field reviewed by VA staff personnel. The procedures also provide for withdrawal of a LAPP lender's authority for cause. We further do not believe that the rotational assignment procedure is subject to any widespread abuse as described by the commenter. VA is currently in the process of automating the loan guaranty activity which includes automation of the assignment procedure with adequate controls to prevent such abuses.

We are adding a provision which will address the possibility of requiring lenders to pay fees, if it is determined necessary at some future point in the program in order for them to process cases under this authority. We note that the Department of Housing and Urban Development currently has a lender fee structure under its programs.

We are also adding a provision to the regulations concerning the separate instructions which will be published by the Secretary and which also discusses the requirement for due diligence in compliance with those instructions and these regulations.

The Secretary hereby certifies that these final regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 through 612.

Public Law 100–198 requires that the standards and procedures for the VA program of lender determinations of reasonable value be established in the appropriate regulations. This program will not cause lenders to significantly change their practices since such review of appraisals is now accomplished for conventional loans and most Federal Housing Administration (FHA) insured loans. Lenders that make VA guaranteed loans also make conventional and FHA insured loans. The main impact will be on the time involved in processing a VA guaranteed loan. Pursuant to 5 U.S.C. 605(b) these regulations are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Secretary has also determined that these final regulations are not a "major rule" within the meaning of Executive Order 12291. They will not have an annual effect on the economy of $100 million or more, and not cause a major increase in costs or prices for consumers or individual industries; nor will they have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete in domestic or export markets.

The information collection requirement contained in § 36.4344 of this regulation have been approved by the Office of Management and Budget (OMB) under OMB control number 2900–0513.

The Catalog of Federal Domestic Assistance Program Number is 64.114.

These regulations are issued under authority granted the Secretary by sections 210(c), 1810, 1831 and 1820 of title 38, United States Code.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan programs—housing and community development, Manufactured homes, Veterans.

Approved: March 20, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR part 36, Loan Guaranty, is amended by adding § 36.4344 to read as follows:

§ 36.4344 Lender Appraisal Processing Program.

(a) *Delegation of authority to lenders to review appraisals and determine reasonable value.* (1) To be eligible for delegation of authority to review VA appraisals and determine the reasonable value of properties to be purchased with VA guaranteed loans, a lender must (i) have automatic processing authority under 38 U.S.C. 1802(d), and (ii) employ one or more staff appraisal reviewers acceptable to the Secretary.

(2) To qualify as a lender's staff appraisal reviewer an applicant must be a full-time member of the lender's permanent staff and may not be employed by, or perform services for, any other mortgagee. The individual must not engage in any private pursuits in which there will be, or appear to be, any conflict of interest between those pursuits and his/her duties, responsibilities, and performance as a Lender Appraisal Processing Program (LAPP) staff appraisal reviewer. Three years of experience is necessary to qualify as a lender's staff appraisal reviewer. That experience must demonstrate a knowledge of, and the ability to apply industry-accepted principles, methods, practices and techniques of appraising, and the ability to competently determine the value of property within a prescribed geographical area. The individual must demonstrate the ability to review the work of others and to recognize deviations from accepted appraisal principles, practices, and techniques, errors in computations, and unjustifiable and unsupportable conclusions.

(3) Lenders that meet the requirements of 38 U.S.C. 1802(d), and have a staff appraisal reviewer determined acceptable by VA, will be authorized to review appraisals and make reasonable value determinations on properties that will be security for VA guaranteed loans. The lender's authorization will be subject to a one-year probationary period. Additionally, lenders must satisfy initial and subsequent VA office case review requirements prior to being allowed to determine reasonable value without VA involvement. The initial office case review requirement must be satisfied in the VA regional office in whose jurisdiction the lender's staff appraisal reviewer is located before the LAPP authority may be utilized by that lender in any other VA office's jurisdiction. To satisfy the initial office case review requirement, the first five cases of each lender staff appraisal reviewer involving properties in the regional office location where the staff appraisal reviewer is located will be processed by him or her up to the point where he or she has made a reasonable value determination and fully drafted, but not issued, the lender's notification of reasonable value letter to the veteran. At that point, and prior to loan closing, each of the five cases will be submitted to the local VA office. After a staff review of each case, VA will issue a Certificate of Reasonable Value, which the lender may use in closing the loan automatically if it meets all other requirements of the VA. If these five cases are found to be acceptable by VA, the lender's staff appraisal reviewer will be allowed to fully process subsequent appraisals for properties located in that VA office's jurisdiction without prior submission to VA and issuance by VA of a Certificate of Reasonable Value. Lenders must also satisfy a subsequent VA office case review requirement in each additional VA office location in which they desire to extend and utilize this authority. Under this requirement, the lender must have first satisfied the initial office case review requirement and then must submit to the additional VA office(s) the first case each staff appraisal reviewer processes in the jurisdiction of that office. As provided under the initial office case review requirement, VA office personnel will issue a Certificate of Reasonable value for this case and subsequently determine the acceptability of the lender's staff appraisal reviewer's processing. If VA finds this first case to be acceptable, the lender's staff appraisal reviewer will be allowed to fully process subsequent cases in that additional VA office's jurisdiction without prior submission to VA. The initial and subsequent office case review requirements may be expanded by VA if acceptable performance has not been demonstrated. After satisfaction of the initial and subsequent office case review requirements, routine reviews of LAPP cases will be made by VA staff based upon quality control procedures established by the Chief Benefits Director. Such review will be made on a random sampling or performance related basis. During the probationary period a high percentage of reviews will be made by VA staff.

(4) The following certification by the lender's nominated staff appraisal reviewer must be provided with the lender's application for delegation of LAPP authority:

I hereby acknowledge and represent that by signing the Uniform Residential Appraisal Report (URAR), FHLMC (Federal Home Loan Mortgage Corporation) Form 70/FNMA (Federal Notice Mortgage Association) Form 1004, I am certifying, in all cases, that I have personally reviewed the appraisal report. In doing so I have considered and utilized recognized professional appraisal techniques, have found the appraisal report to have been prepared in compliance with applicable VA requirements, and concur with the recommendations of the fee appraiser, who was assigned by VA to the case. Furthermore, in those cases where clarifications or corrections have been requested from the VA fee appraiser there has been no pressure or influence exerted on that appraiser to remove or change information that might be considered detrimental to the subject property, or VA's interests, or to reach a predetermined value for that property. *Signature of Staff Appraisal Reviewer.*

(5) Other certifications required from the lender will be specified with particularity in the separate instructions issued by the Secretary, as noted in § 36.4344(b).

(b) *Instructions for LAPP Procedures.* The Secretary will publish separate instructions for processing appraisals under the Lenders Appraisal Processing Program. Compliance with these regulations and the separate instructions issued by the Secretary is deemed by VA to be the minimum exercise of due diligence in processing LAPP cases. Due

diligence is considered by VA to represent that care, as is to be properly expected from, and ordinarily exercised by, reasonable and prudent lenders who would be dependent on the property as security to protect its investment.

(c) *VA minimum property requirements.* Lenders are responsible for determining that the property meets VA minimum property requirements. The separate instructions issued by the Secretary will set forth the lender's ability to adjust, remove, or alter the fee appraiser's or fee compliance inspector's recommendations concerning VA minimum property requirements. Condominiums, planned-unit developments and leasehold estates must have been determined acceptable by VA. A condominium or planned-unit development which is acceptable to the Department of Housing and Urban Development or the Department of Agriculture may also be acceptable to VA.

(d) *Adjustment of value recommendations.* The amount of authority to upwardly adjust the fee appraiser's estimated market value during the lender staff appraisal reviewer's initial review of the appraisal report or to subsequently process an appeal of the lender's established reasonable value will be specified in the separate instructions issued by VA as noted in § 36.4344(b). The amount specified must not in any way be considered an administrative adjustment figure which may be applied indiscriminately and without valid basis or justification with the sole purpose of reaching an amount necessary to complete the sale or mortgage transaction.

(1) *Adjustment during initial review.* Any adjustment during the staff appraisal reviewer's initial review of the appraisal report must be fully and clearly justified in writing on the appraisal report form or, if necessary, on an addendum. The basis for the adjustment must be adequate and reasonable by professional appraisal standards. If real estate market or other valid data was utilized in arriving at the decision to make the adjustment, such data must be attached to the appraisal report. All adjustments, comments, corrections, justifications, etc., to the appraisal report must be made in a contrasting color, be clearly legible, and signed and dated by the staff appraisal reviewer.

(2) *Processing appeals.* The authority provided under 38 U.S.C. 1831(d) which permits a lender to obtain a VA fee panel appraiser's report which VA is obligated to consider in an appeal of the established reasonable value shall not apply to cases processed under the authority provided by this section. All appeals of VA fee appraisers' estimated market values or lenders' reasonable value determinations above the amount specified in the separate instructions issued by VA must be submitted, along with the lender's recommendations, if any, to VA for processing and final determination. Unless otherwise authorized in the separate instructions lenders must also submit appeals, regardless of the amount, to VA in all cases where the staff appraisal reviewer has made an adjustment during their initial review of the appraisal report to the fee appraiser's market value estimate. The fee appraiser's estimated market value or lender's reasonable value determination may be increased only when such increase is clearly warranted and fully supported by real estate market or other valid data considered adequate and reasonable by professional appraisal standards and the lender's staff appraisal reviewer clearly and fully justifies the reasoning and basis for the increase in writing on the appraisal report form or an addendum. The staff appraisal reviewer must date and sign the written justification and must cite within it the data used in arriving at the decision to make the increase. All such data shall be attached to the appraisal report form and any addendum.

(e) *Notification.* It will be the responsibility of the lender to notify the veteran borrower in writing of the determination of reasonable value and related conditions specific to the property and to provide the veteran with a copy of the appraisal report. Any delay in processing the notification of value must be documented. Any delay of more than five work days between the date of the lender's receipt of the fee appraiser's report and date of the notification of value to the veteran, without reasonable and documented extenuating circumstances, will not be acceptable. A copy of the lender notification letter to the veteran and the appraisal report must be forwarded to the VA office of jurisdiction at the same time the veteran is notified. In addition, the original appraisal report, related appraisal documentation, and a copy of the reasonable value determination notification to the veteran must be submitted to the VA with the request for loan guaranty.

(f) *Indemnification.* When the Secretary has incurred a loss as a result of a payment of claim under guaranty and in which the Secretary determines an increase made by the lender under § 36.4344(d) or (f) was unwarranted, or arbitrary and capricious, the lender shall indemnify the Secretary to the extent the Secretary determines such loss was caused, or increased, by the increase in value.

(g) *Affiliations.* A lender affiliated with a real estate firm builder, land developer or escrow agent as a subsidiary division, investment or any other entity in which it has a financial interest or which it owns may not use this authority for any cases involving the affiliate unless the lender demonstrates to the Secretary's satisfaction that the lender and its affiliate(s) are essentially separate entities that operate independently of each other, free of all cross-influences (e.g., a formal corporate agreement exists which specifically sets forth this fact).

(h) *Quality Control Plans.* The lender must have an effective self-policing or quality control system to ensure the adequacy and quality of their LAPP staff appraisal reviewer's processing and, that its activities do not deviate from high standards of integrity. The quality control system must include frequent, periodic audits that specifically address the appraisal review activity. These audits may be performed by an independent party, or by the lender's independent internal audit division which reports directly to the firm's chief executive officer. The lender must agree to furnish findings and information under this system to VA on demand. While the quality control personnel need not be appraisers, they should have basic familiarity with appraisal theory and techniques and the ability to prescribe appropriate corrective action(s) in the appraisal review process when discrepancies or problems are identified. The basic elements of the system will be described in separate instructions issued by the Secretary. Copies of the lender's quality control plan or self-policing system evidencing appraisal related matters must be provided to the VA office of jurisdiction with the lender's application for LAPP authority.

(i) *Fees.* The Secretary may require mortgagees to pay an application fee and/or annual fees, including additional fees for each branch office authorized to process cases under the authority delegated under this section, in such amounts and at such times as the Secretary may require.

(j) *Withdrawal of lender authority.* The authority for a lender to determine reasonable value may be withdrawn by the Loan Guaranty Officer when proper cause exists. A lender's authority to make reasonable value determinations shall be withdrawn when the lender no

longer meets the basic requirements for delegating the authority, or when it can be shown that the lender's reasonable value determinations have not been made in accordance with VA regulations, requirements, guidelines, instructions or applicable laws, or when there is adequate evidence to support reasonable belief by VA that a particular unacceptable act, practice, or performance by the lender or the lender's staff has occurred. Such acts, practices or performance include, but are not limited to: Demonstrated technical incompetence (i.e., conduct which demonstrates an insufficient knowledge of industry accepted appraisal principles, techniques and practices; or the lack of technical competence to review appraisal reports and make value determinations in accordance with those requirements); substantive or repetitive errors (i.e., any error(s) of a nature that would materially or significantly affect the determination of reasonable value or condition of the property; or a number or series of errors that, considered individually, may not significantly impact the determination of reasonable value or property condition, but which when considered in the aggregate would establish that appraisal reviews or LAPP case processing are being performed in a careless or negligent manner), or continued instances of disregard for VA requirements after they have been called to the lender's attention.

(1) Withdrawal of authority by the Loan Guaranty Officer may be either for an indefinite or a specified period of time. For any withdrawal longer than 90 days a reapplication for lender authority to process appraisals under these regulations will be required. Written notice will be provided at least 30 days in advance of withdrawal unless the Government's interests are exposed to immediate risk from the lender's activities in which case the withdrawal will be effected immediately. The notice will clearly and specifically set forth the basis and grounds for the action. There is no right to a formal hearing to contest the withdrawal of LAPP processing privileges. However, if within 15 days after receiving notice the lender requests an opportunity to contest the withdrawal, the lender may submit, in person, in writing, or through a representative, information and argument to the Loan Guaranty Officer in opposition to the withdrawal. The Loan Guaranty Officer will make a recommendation to the Regional Office Director who shall make the determination as to whether the action should be sustained, modified or rescinded. The lender will be informed in writing of the decision.

(2) The lender has the right to appeal the Regional Office Director's decision to the Chief Benefits Director. In the event of such an appeal, the Chief Benefits Director will review all relevant material concerning the matter and make a determination that shall constitute final agency action. If the lender's submission of opposition raises a genuine dispute over facts material to the withdrawal of LAPP authority, the lender will be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses and confront any witness the Veterans Benefits Administration presents. The Chief Benefits Director will appoint a hearing officer or panel to conduct the hearing. When such additional proceedings are necessary, the Chief Benefits Director shall base the determination on the facts as found, together with any information and argument submitted by the lender.

(3) In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the Chief Benefits Director shall make a decision on the basis of all the information in the administrative record, including any submission made by the lender.

(4) Withdrawal of the LAPP authority will require that VA make subsequent determinations of reasonable value for the lender. Consequently, VA staff will review each appraisal report and issue a Certificate of Reasonable Value which can then be used by the lender to close loans on either the prior VA approval or automatic basis.

(5) Withdrawal by VA of the lender's LAPP authority does not prevent VA from also withdrawing automatic processing authority or taking debarment or suspension action based upon the same conduct by the lender.

(Authority: 38 U.S.C. 1831)

(Information collection requirements contained in § 36.4344 were approved by the Office of Management and Budget under control number 2900–0513)

[FR Doc. 90–8694 Filed 5–21–90; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3781–2]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: United States Environmental Protection Agency (USEPA)

ACTION: Final rulemaking; Direct final.

SUMMARY: USEPA is approving a revision to the Minnesota State Implementation Plan (SIP) for particulate matter. The revision was necessitated by USEPA's promulgation of new National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter equal to or less than 10 micrometers (PM_{10}).

The effect of this action is to document that Minnesota's committal SIP satisfies USEPA's revised requirements for PM_{10} in areas designated as Group II (52 FR 29385). The Group II areas in Minnesota are in Minneapolis, Hennepin County; Duluth and Iron Range, St. Louis County; Iron Range, Itasca County; Two Harbors, Lake County; and St. Cloud, Stearns County.

DATES: This action will be effective July 23, 1990. Unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the SIP revision, and other materials relating to this notice, are available at the following addresses. (It is recommended that you telephone Maggie Greene at, (312) 886–6088, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604.

Minnesota Pollution Control Agency, Division of Air Quality, 520 Lafayette Road, St. Paul, Minnesota 55155.

Written comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Maggie Greene, Air and Radiation Branch, U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6088.

SUPPLEMENTARY INFORMATION:

I. Background

On July 1, 1987, USEPA promulgated revised National Ambient Air Quality Standards (NAAQS) for particulate matter.[1] In the section of the Federal Register notice (52 FR 24679–82), entitled "Requirements for State Implementation Plans", USEPA set forth its SIP development policy for PM_{10}. For areas designated as Group II under this policy, the State is required to submit either of the following two types of SIP revisions:

(1) A complete SIP for particulate matter—10 microns and under (PM_{10}) with accompanying modeled attainment demonstrations showing attainment and maintenance of the PM_{10} standard within 3 years of the SIP's adoption, or

(2) A "committal" SIP that supplements the existing SIP with enforceable commitments to perform the actions required at 52 FR 24681 for such "committal" SIPS.

On May 31, 1988, the State of Minnesota submitted a committal SIP for Group II areas to USEPA as a revision to its particulate matter SIP. The Group II areas of concern in Minnesota are in Minneapolis, Hennepin County; Duluth and Iron Range, St. Louis County; Iron Range, Itasca County; Two Harbors, Lake County; and St. Cloud, Stearns County.[2]

II. Evaluation of Committal SIP Required Provisions for Group II Areas

There are five provisions that are required by USEPA for inclusion in every State committal SIP for approval. These provisions commit the State to perform the following activities:

(1) Gather ambient PM_{10} data, at least to an extent consistent with minimum USEPA requirements and guidance.[3]

(2) Analyze and verify the ambient PM_{10} data and report 24-hour PM_{10} NAAQS exceedances to the appropriate Regional Office within 45 days of each exceedance.

(3) When an appropriate number of verifiable 24-hour NAAQS exceedances becomes available (see section 2.0 of the PM_{10} SIP Development Guideline) or when data indicating an annual arithmetic mean (AAM) above the level of the annual PM_{10} NAAQS become available, acknowledge that a nonattainment problem exists and immediately notify the appropriate Regional Office.

(4) Within 30 days of the notification referred to in (3) above, or within 37 months of promulgation, whichever comes first, determine whether the measures in the existing SIP will assure timely attainment and maintenance of the primary PM_{10} standards, and immediately notify the appropriate Regional Office.

(5) Within 6 months of the notification referred to in (4) above, adopt and submit to USEPA a PM_{10} control strategy that assures attainment as expeditiously as practicable but no later than 3 years from approval of the committal SIP.

Comparison of the State's provisions with the above requirements indicates that no discrepancies, omissions, or shortcomings exist in the Minnesota committal SIP.

III. Evaluation of Schedule Milestones

USEPA requires that the committal SIP include enforceable milestones with timely commitment dates, consistent with the State's PM_{10} SIP Development Plan. Minnesota has acceptably committed to all required milestones.

IV. USEPA's Conclusion and Final Action

To be approvable, PM_{10} committal SIPs must incorporate all five provisions enumerated at 52 FR 24681 and provide enforceable milestone commitments that ensure program implementation. Because Minnesota's proposed committal SIP commits to all of the five requisite provisions and to all enforceable milestones, USEPA is approving the committal SIP for PM_{10} for the State of Minnesota's Group II areas in Minneapolis, Hennepin County; Duluth and Iron Range, St. Louis County; Iron Range, Itasca County; Two Harbors, Lake County; and St. Cloud, Stearns County.

Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on July 23, 1990. However, if we receive notice by June 21, 1990, that someone wishes to submit critical comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period. See 47 FR 27073 (June 23, 1982).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in the context of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

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 July 23, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Intergovernmental relations, Particulate matter.

Dated: May 8, 1990.

Valdas V. Adamkus,

Regional Administrator.

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart Y—Minnesota

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1230 is amended by adding new paragraph (c) to read as follows:

§ 52.1230 Control strategy and rules: Particulates.

* * * * *

(c) Approval—On May 31, 1988, the State of Minnesota submitted a committal SIP for particulate matter with an aerodynamic diameter equal to or less than 10 micrometers (PM_{10}) for

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[1] The primary and secondary particulate matter NAAQS are now violated when either: 1) the expected annual arithmetic mean value of PM_{10} concentrations exceeds 50 micrograms per cubic meter of air (50 $\mu g/m^3$) (the annual standard), or 2) the expected number of days that the PM_{10} concentration exceeds 150 $\mu g/m^3$ is more than one per calendar year (the 24-hour standard).

[2] These Group II areas were listed at 52 FR 29385 (August 7, 1987).

[3] Section 58.13 of 40 CFR part 58 requires States within 1 year after PM_{10} NAAQS are promulgated to begin sampling PM_{10} every day (at least at one site) in areas with a PM_{10} nonattainment probability of 95 percent or greater, and every other day (at least at one site) in areas with a nonattainment probability between 20 and 95 percent.

Minnesota's Group II areas. The Group II areas of concern are in Minneapolis, Hennepin County; Duluth and Iron Range, St. Louis County; Iron Range, Itasca County; Two Harbors, Lake County; and St. Cloud, Stearns County. The committal SIP contains all the requirements identified in the July 1, 1987, promulgation of the SIP requirements for PM_{10} at 52 FR 24681.

[FR Doc. 90-11725 Filed 5-21-90; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 761

[OPTS-66008G; FRL 3714-8]

Polychlorinated Biphenyls; Manufacturing, Processing, and Distribution in Commerce Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Section 6 of the Toxic Substances Control Act (TSCA) generally prohibits the manufacture, processing and distribution in commerce of polychlorinated biphenyls (PCBs). In addition, section 6 of TSCA provides a procedure where persons may petition the Administrator for good cause shown, for an exemption from these prohibitions. This rule identifies four petitions which EPA is denying, six petitions which EPA is granting, two petitions which are not required, one petition which has been withdrawn, and one petition amendment which is granted.

DATES: In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m. Eastern Daylight Time on June 5, 1990. This final rule shall be effective July 5, 1990.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

Copies of this final rule can be obtained from the Environmental Assistance Division. Copies of the support documents for this rule can be obtained through the OTS Document Control Officer listed above.

SUPPLEMENTARY INFORMATION: This final rule addresses 12 individual and class petitions for exemptions and one exemption amendment from the prohibition of distribution in commerce of PCBs.

I. Background

A. Statutory Authority

Section 6(e) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(e), generally prohibits the manufacture of PCBs after January 1, 1979, and the processing and distribution in commerce of PCBs after July 1, 1979.

Section 6(e)(3)(B) of TSCA provides that any person may petition the Administrator for an exemption from the prohibition against the manufacture, processing, and distribution in commerce of PCBs. The Administrator may by rule grant an exemption if the Administrator finds that "(i) an unreasonable risk of injury to health or environment would not result, and (ii) good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl." The Administrator may set terms and conditions for an exemption and may grant an exemption for not more than 1 year.

B. History of this Rulemaking

EPA has received for consideration 12 exemption petitions and one exemption amendment under TSCA section 6(e)(3)(B) which are the subject of this final rule. Four exemption petitions request approval to process and distribute in commerce PCBs for purposes of buying, selling, and servicing customers' electrical transformers. Since the buying and selling of transformers is considered a separate action from servicing, both kinds of actions have been treated independently as discussed below for the purpose of evaluating the exemption petitions. In addition, two petitions requested approval to process and distribute in commerce PCBs for use as a mounting medium in microscopy with one of those also seeking to process and distribute in commerce PCBs for use as immersion oil in low fluorescence microscopy and as an optical liquid. One petitioner requested to both (i) distribute equipment containing less than 50 ppm PCBs in commerce within the United States and, also, to (ii) export equipment containing less than 50 ppm PCBs. One petitioner requested exemptions to both (i) manufacture, and to (ii) export PCBs in small quantities for research and development.

One petitioner requested an exemption to import small quantities of PCBs for research and development. Another, petitioner requested an exemption to distribute in commerce inadvertently generated PCBs. Finally, a petition amendment was submitted requesting an exemption to process and distribute in commerce PCBs on non-porous component parts of transformers. The proposed rule for these 12 exemptions was published on August 24, 1988 (FR 32327) and the proposed exemption amendment was published on September 12, 1989 (FR 37698).

II. Unreasonable Risk Finding

Section 6(e)(3)(B)(i) of TSCA requires a petitioner to demonstrate that granting an exemption would not result in an unreasonable risk of injury to health or the environment.

To determine whether a risk is unreasonable, EPA balances the probability that harm will occur to human health and the environment against the benefits to society and the ascertainable costs to the petitioner of granting or denying each petition. Specifically, EPA considers the following factors:

1. Effects of PCBs on human health and the environment.
2. Benefits to society of granting an exemption and the costs to the petitioner and to society of denying an exemption.

These factors are described at length in the preamble to the August 24, 1988 proposed rule (53 FR 32327).

III. Good Faith Efforts Finding

Section 6(e)(3)(B)(ii) of TSCA requires petitioners to demonstrate a good faith effort to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for PCBs. EPA considers several factors in determining whether a petitioner has demonstrated good faith efforts. For each petition, EPA considers the kind of exemption the petitioner is requesting and whether the petitioner expended time and effort to develop or search for a PCB substitute. In each case, the burden is on the petitioner to show specifically what it did to substitute non-PCB material for PCBs or to show why it was not feasible to substitute non-PCBs for PCBs.

IV. Disposition of Pending Exemption Petitions

A. Processing and Distribution in Commerce of PCBs for Purposes of Servicing Customers' Transformers

Electric Apparatus Service Association. The Electric Apparatus Service Association (EASA) petitioned for a renewal of its 1-year exemption to process and distribute in commerce PCB- contaminated fluid for the purpose of servicing transformers.

As a preliminary matter, EPA is answering general questions about how it interprets section 6(e) and implements regulations regarding exemptions. This discussion is intended to clarify any confusion brought about by past statements regarding the processing and distribution in commerce of PCBs for purposes of servicing customers' PCB and PCB-contaminated transformers and introducing PCB-contaminated fluid into the customers' PCB and PCB-contaminated transformers.

First, no exemption is required for the owner of PCB or PCB-contaminated equipment to service his own equipment. This includes putting PCB fluids from equipment he owns back into his own equipment. The intent of this provision, first announced in the May 31, 1979 PCB rule, is to allow utilities and other industrial owners/users of equipment to maintain their own PCB equipment without an exemption.

No exemption is required for a servicing company to reintroduce PCB fluids or PCB-contaminated fluids derived from a customer's equipment back into that customer's equipment during servicing. Since ownership of the PCB fluids does not change, this servicing does not constitute processing or distribution in commerce of PCBs.

Further, a servicing company may also introduce less than 50 ppm fluids into customers' equipment without an exemption, in accordance with the use authorization granted by rule published on June 27, 1988, the "Uncontrolled Rule Amendments," and prior EPA statements acknowledging the special status of these fluids.

After 1979, however, the servicing of PCB equipment by anyone other than the owner/user, which involves introducing a service company's PCBs (greater than 50 ppm) into a customer's equipment, does require an exemption, since this constitutes processing and distribution in commerce of PCBs by the service company.

a. *Background.* In discussing the EASA exemption petitions in the proposed rule, EPA found that the activities of this exemption request would not present an unreasonable risk. EPA agreed that: (1) The amount to be processed and distributed in commerce in servicing customer's transformers was a relatively small percentage of the PCBs in circulation in PCB-contaminated transformers; (2) the transformers would be serviced by EASA members in accordance with the 40 CFR 761.30(a)(2) regulatory requirements; (3) granting the exemption would avoid costs of approximately $10 million ($37,500 per company); and (4) granting an exemption would make it easier for small utilities continue to provide efficient and reliable electrical service throughout the United States. Thus, EPA concluded that EASA had met the statutory requirement of not presenting an unreasonable risk of injury to human health and the environment.

In the proposed rule of August 24, 1988, however, EPA concluded that EASA had not met the burden of demonstrating good faith efforts to substitute non-PCB fluids for PCB-contaminated fluids in servicing customers' equipment. EPA is aware that non-PCB fluids are available and are perfectly acceptable as a substitute fluid during servicing. If PCB fluids greater than 50 ppm are reused during servicing, the effect is to perpetuate the use of PCBs, and to defer opportunity to dispose of the service company's PCB contaminated fluids. Also, EPA concluded that there has been adequate time for EASA members to become familiar with PCB fluid prohibitions, to make other arrangements for disposal of fluids, and to acquire non-PCB fluids for their servicing needs.

b. *Decision on petition.* Although EASA has satisfied the statutory requirement pertaining to no unreasonable risk, it has failed to meet sufficiently the requirements of good faith efforts. EPA considers several factors in determining whether a petitioner has demonstrated a good faith effort. One such factor is whether the petitioner expended time and effort to develop or search for a substitute. The burden is on the petitioner to show specifically what it did to substitute non-PCB material for PCBs or to show why it was not feasible to do so. Although EASA contends good faith efforts have been made to reduce PCBs, EASA has failed to demonstrate any effort to significantly reduce the amount of PCBs in fluids in inventory. EPA also believes that although EASA can be commended for its diligent education efforts, EASA has had sufficient time to complete both the education of members and the implementation of the necessary procedures. To date, EASA has had over 3 years to notify its members and to implement the regulatory requirements. Therefore, EASA's petition requesting permission to process and distribute members own PCB-contaminated bulk fluids greater than 50 ppm, during servicing of customers' transformers, is hereby denied.

EPA strongly recommends that, when performing minor servicing on PCB-contaminated transformers or rebuilding customer's equipment, EASA members should reuse the customer's fluid or refill the transformer with clean fluid and provide the customer with information on reclassification procedures, to the greatest extent possible, so as to avoid creating new volumes of PCB- contaminated mineral oil. The rebuilt units that are cleaned, rewound, and refilled with non-PCB fluid can most probably be successfully reclassified to non-PCB status, once placed on-line for a 90–day period by the customer.

B. Processing and Distribution in Commerce of PCBs in Buying and Selling Transformers

1. *Electric Apparatus Service Association.* EASA also petitioned for a renewal of its 1–year exemption to process and distribute in commerce PCB bulk fluid and non-porous, PCB-contaminated component parts that have been double-rinsed in the buying and selling of PCB-contaminated transformers. EPA denied the petition as it relates to bulk fluids but as grants the petition as it relates to component parts.

a. *Background.* Again, EPA is clarifying the applicable regulatory provisions and past statements which EPA has made regarding the processing and distribution in commerce of PCBs during the buying and selling of used PCB Transformers and PCB-contaminated transformers. EPA is aware that there have been seemingly conflicting views expressed in prior statements about this activity, including the fundamental question of when an exemption is required.

In January, 1984, an EPA letter regarding an EASA exemption may have caused confusion about the status of buying and selling activities under the PCB regulations. "Buying and selling" typically involves a servicing company acquiring failed or obsolete equipment from a user, performing minor or major repairs on the unit, and then selling it as repaired or rebuilt equipment. The requirement of an exemption for buying and selling of PCB and PCB-contaminated equipment is concerned both with "buying and selling" as a distinct activity from the processing and servicing that may occur prior to resale of the equipment.

Although distinct under the PCB regulations, "buying and selling" activities can involve processing and distribution in commerce of bulk PCB dielectric fluids and the PCB residues on the equipment components.

In the past, EPA made statements made by EPA about the more general regulatory requirements (40 CFR 761.20(c)(1)) for distributing totally enclosed PCBs and PCB Items. Particularly, statements made prior to July 10, 1984 may have caused confusion

in the context of "buying and selling" by service companies, as opposed to buying and selling by owner/user companies.

Section 761.20(c)(1) of the regulations states that: "PCBs at concentrations of 50 ppm or greater, or PCB Items with PCB concentrations of 50 ppm or greater, sold before July 1, 1979 for purposes other than resale may be distributed in commerce only in a totally enclosed manner after that date." This has been interpreted to mean that no exemption is needed to distribute in commerce (sell) a PCB-contaminated transformer that is totally enclosed (intact and non-leaking) when sold, if the unit was originally sold prior to July 1, 1979 for purposes other than resale.

This provision of the regulations had also been interpreted in the past as allowing subsequent sales (domestic) of totally enclosed equipment "by anyone to anyone," if the equipment was originally bought for use before July 1, 1979. In letters to EASA, prior to the July 10, 1984 PCB exemptions rule, EPA suggested that this provision covered sales by service companies, and that no exemption was required if these conditions alone were met and that no exemption was required of a service company, if the service company added only less than 50 ppm fluid to the equipment. This was interpreted to mean that a PCB-contaminated unit to which only less than 50 ppm fluid was added could be sold without an exemption, even though it had not been reclassified to "non- PCB" status before being sold.

The July 10, 1984 PCB exemption rule made a distinction between the owners/users and the servicers. EPA would like to clarify further, at this time, the distinction made in the regulatory language between the owners/users and servicers/ rebuilders. The regulatory intent of the exemption is to allow utility and other industrial owners/users of equipment to maintain their own PCB equipment without an exemption. The servicing of PCB equipment by one other than an owner/user, however, does require an exemption if it involves processing and distribution in commerce of PCBs.

The business of frequent buying and selling of transformers by servicers/rebuilders is quite different from casual or occasional sales between owners/users. EPA's regulation of this activity is analogous to the case of servicing with PCB-contaminated fluid, in that no exemption is required for an owner/user to service equipment with PCBs, but an exemption is required for the same activity when performed by a service company.

EPA concludes that "buying and selling" transactions by service companies are, in fact, to be more stringently regulated than sales between owners/users of equipment.

Specifically, an exemption is needed where a service company introduces its own PCB-contaminated fluids into equipment being resold because reselling constitutes distribution in commerce. An exemption is also required in any event when a service company resells a PCB-contaminated transformer. This means an exemption is required when any PCB-contaminated unit is resold by a service company, including those units that are PCB-contaminated when they are resold in the same condition as purchased, (i.e., no fluids added by service company), or when they are resold after the service company has reintroduced PCB-contaminated fluid to it (including the fluid originally drained from it). Finally, an exemption is required to resell PCB-contaminated units to which non-PCB fluid has been added, but which have not been reclassified to non-PCB status.

Again, the PCBs subject to regulation here are the PCB-contaminated fluids derived from the company's or from customers' equipment and PCB residues on components salvaged from such equipment. The resale of electrical equipment can involve processing and distribution in commerce of PCBs from both sources.

EPA reemphasizes that "buying and selling" activities are prohibited without an exemption whenever the result would be the resale by the service company of a PCB-contaminated unit. These activities are prohibited regardless of the source of the PCB-contaminated fluid. It applies even if the activity entails the mere replacement with fluid drained from the unit, because, in that situation, a servicer's PCB-contaminated fluid is then being distributed in commerce and "sold" to the purchaser.

b. *Decision on petitions.* In the August 24, 1988 proposed rule, EPA proposed to deny the EASA petition related to "buying and selling" activities. Based on the same factors as listed in the preceding EASA servicing exemption request, EPA found that the buying and selling activities related to this petition comply with the statute's no unreasonable risk requirements of section 6(e)(3)(B)(i) of TSCA.

EPA found, however, that EASA failed to show sufficient evidence of good faith efforts in finding and using non-PCB substitute fluids in the equipment as required by section 6(e)(3)(B)(ii) of TSCA. EPA considers several factors in determining whether a petitioner has demonstrated good faith efforts. One such factor is whether the petitioner expended time and effort to develop or search for a substitute or to reduce its inventory. However, the burden is on the petitioner to show specifically what it did to substitute non-PCB material for PCBs, to reduce its inventory of PCBs, or to show why it was not feasible to do so. EASA has not demonstrated to EPA that it has made any significant reduction in the use of PCB-contaminated bulk fluids in the equipment than had originally been associated with the petition granted to EASA in 1984. Nor has EASA indicated why it is not feasible to do so.

Where bulk fluids are concerned, EASA has not provided any additional information that would rebut EPA's findings on good faith efforts in the proposed rule. EPA has determined to deny the petition insofar as it requests permission to reintroduce any PCB-contaminated bulk fluids, greater than 50 ppm, into equipment prior to resale.

Most of the written comments and hearing testimony submitted in response to the August 24, 1988 Proposed Exemption Rule focused on the processing and resale of non-porous components from transformers, rather than the bulk PCB-contaminated fluids, as the more significant issue of concern.

EASA formally amended its original petition to include components parts, and there has been considerable comment identifying the significance of the components issue in this rulemaking. EPA reopened the comment period to solicit comments on this amended petition (54 FR 37693).

EPA has determined that, due to the non-porous nature of these component parts and, also, because of the relatively small amounts of PCBs involved (less than 10 percent of the original petition amount), the activity of reusing component parts presents no unreasonable risk to health and the environment.

Regarding the benefits to society of granting an exemption, EASA maintains that, without access to their stockpiles of component parts, both economic loss to the member companies and detriment to the society would be incurred. EASA asserts that its members may be put out of business if reuse of these components is prohibited, due to their inability to repair transformers during the activities of buying and selling used transformers and servicing customers' transformers.

Although EPA makes no judgment regarding this claim, EPA acknowledges that without stocks of component parts, many transformers could not be

repaired promptly. There could be a severe detriment to equipment users as a result of the interruptions of electrical services as well as the premature disposal of reusable units.

To support its claim of good faith effort to reduce inventories of PCB-contaminated components, EASA has submitted a substantial amount of evidence to indicate an effort to develop a double-rinse method to remove PCBs from the non-porous component parts that would be reused on the PCB-contaminated transformers. This double-rinse procedure, if demonstrated successfully, will employ a protocol similar to that in EPA's spill cleanup policy (40 CFR part 761, subpart G). EASA maintains that the introduction of the double-rinsed, non-porous component parts back onto the PCB-contaminated transformers will not change the original parts per million PCB content of the transformer into which the component is incorporated.

In further support of EASA's current attempts to demonstrate compliance with the TSCA good faith efforts standard, EASA submitted evidence to EPA that there may be no substitute for some components needed to repair or rebuild equipment, and that it is not feasible to sample the existing stockpiles of components for historic PCB contamination.

EPA concludes, therefore, that the amendment to the exemption petition that is limited to processing and distribution in commerce of the PCB residues on non-porous, double-rinsed transformer component parts as well as buying and selling of PCB or PCB-contaminated transformers that have been serviced with double-rinsed, non-porous parts, meets both the no unreasonable risk and good faith efforts standards. While EPA is denying the section of the exemption petition requesting exemptions for servicing transformers with PCB-contaminated bulk fluids, it has determined to grant a class exemption for 1 year on the amendment of the exemption petition to process and distribute in commerce non-porous, double-rinsed components that may have PCB residues. Also, EPA is granting the petition to buy and sell PCB-contaminated transformers that have been serviced with double-rinsed, non-porous component parts. EPA has concluded that granting an exemption for servicing and reselling of PCB and PCB-contaminated, non-porous components will accomplish a significant reduction in PCBs being introduced into commerce by the service companies.

There has been growing concern, by both the public and EPA about the potential risks posed by the uncontrolled storage at service companies of PCB equipment that is used for component parts in servicing transformers. Therefore, in future requests for renewal of their exemptions, EPA will consider the petitioner's evidence of no unreasonable risk and good faith efforts by evaluating whether stockpiles of component parts have been effectively decontaminated and, also, whether inventories of PCB and PCB-contaminated transformers in uncontained storage areas have been reduced.

EPA will, therefore, evaluate any further exemptions based upon: (1) Demonstration of the efficacy of a method to decontaminate existing stocks of non-porous components; (2) evidence showing that the PCB-contaminated transformers in inventory have been identified and placed in PCB storage areas with proper containment similar to that required under § 761.65(b); and (3) evidence that all future sources of the components, including inventories of PCB-contaminated transformers stored on-site for reuse, will be properly identified and managed.

2. *Ward Transformer.* Ward Transformer petitioned for a 1 year exemption to process and distribute in commerce PCBs in buying and selling of PCB-contaminated transformers.

Ward Transformer is engaged in the same types of activities as other EASA members; however, as Ward might differ from the rest of EASA, EPA will address the petition request filed by Ward Transformer individually. This is explained in the EPA decision on the following exemption request by Jerry's Electric.

In the August 29, 1985 Notice of Petition Denial (50 FR 35192), EPA found that Ward was in non-compliance with the storage for disposal requirements under 40 CFR 761.65(a) for large quantities of PCB-contaminated fluid. EPA concluded that this activity could pose an unreasonable risk to human health and the environment according to section 6(e)(3)(B)(i) of TSCA.

According to its new petition for exemption, Ward has since disposed of the stored PCB-contaminated fluid that was the subject of the prior enforcement action. The petitioner provided EPA with copies of manifests and certifications showing that between 18,000 and 20,000 gallons of PCB-contaminated fluid were disposed of by an EPA permitted disposal company.

Although this new information allays, to some extent, EPA's concern about the petitioner's good faith efforts, as well as the unreasonable risk requirements under TSCA, EPA is denying Ward's petition for an exemption, based on other considerations.

First of all, the 18,000 to 20,000 gallons of PCB-contaminated fluid which Ward has disposed of arose from improper storage of fluids derived from past servicing activities. This disposal, however, is only of marginal value in predicting the amounts of PCB fluids that will be handled during the period of the new exemption and whether those amounts demonstrate a good faith effort to substitute non-PCBs. EPA has not found that Ward demonstrated a significant reduction of current inventories of PCB fluids or of finding substitutes for PCB fluids.

In this final rule, EPA has denied the similar EASA and Jerry's Electric petitions, which relate to bulk fluids, on the basis of failure to show good faith efforts as required under TSCA section 6(e)(3)(B)(ii). Ward has not presented any evidence which shows that, it is, in fact, greatly reducing current inventories of PCB fluids or finding substitutes for PCB fluids. Ward has, therefore, not proven to be distinct in this respect from the other EASA members.

EPA has, thus, determined to deny the Ward Transformer petition for an exemption to process and distribute in commerce PCBs in buying and selling PCB-contaminated transformers, due to its failure to show substantial evidence that the requirement of TSCA section 6(e)(3)(B)(ii) of good faith efforts has been satisfied. EPA acknowledges that Ward Transformer does have approval under the EASA exemption to process and distribute in commerce the PCB residues encountered on non- porous component parts of PCB-contaminated transformers during the buying, selling, and rebuilding of transformers. Ward shall, therefore, still be allowed to reuse component parts, as explained in Unit IV.B.1 above, concerning EASA's petitions.

3. *Jerry's Electric, Inc.* Jerry's Electric petitioned for a 1–year exemption to process and distribute in commerce PCBs in buying and selling PCB-contaminated transformers. Jerry's is engaged in the same types of activities as other EASA members. The regulations pertaining to the processing and distribution in commerce of PCBs during the activities of servicing customers' transformers and buying and selling used transformers were discussed above under the EASA exemptions.

Jerry's was originally singled out from the other EASA members in this request for an exemption because of its claims of good faith efforts. Jerry's presented

evidence that it would rebuild and resell only about 450 PCB- contaminated transformers, or about 10 percent of the units it rebuilt. During the comment period following the proposed exemption rule of August 24, 1988, EPA found that these claims made by Jerry's are not significantly different from other EASA members and do not vary widely from the industry standard. Because efforts to reduce inventory, rather than overall percentage of PCBs in inventory are required to meet the good faith efforts standard, EPA concludes that Jerry's has not shown significant evidence of good faith efforts of reducing its inventory or of finding substitutes for its PCB fluids.

Also, during the comment period on the proposed rule, EASA requested clarification on the need for an exemption in rebuilding of transformers and inquired how the regulations applied to the activities engaged in by Jerry's Electric. EASA maintained in their hearing comments that since Jerry's was buying only PCB-contaminated equipment and adding less than 2 ppm fluid to that equipment prior to resale, that Jerry's did not actually need an exemption.

Jerry's does need an exemption to resell PCB-contaminated transformers regardless of the concentration of PCB fluid or even if no fluid at all is added to the transformer. If a transformer is still PCB-contaminated when resold (because of not being reclassified or otherwise), the sale requires an exemption. This is further explained and clarified above, in the EASA petition decision. While EASA is correct in pointing out that an exemption is not required to add non-PCB fluid to a transformer, EPA does require an exemption for service companies to resell PCB-contaminated electric equipment.

Therefore, EPA acknowledges that Jerry's Electric also has approval under the EASA exemption to process and distribute in commerce the PCB residues encountered on non-porous component parts of PCB-contaminated transformers during the buying, selling, and rebuilding of transformers.

EPA denies, however, Jerry's petition to process and distribute in commerce PCBs in buying and selling PCB-contaminated transformers based on the lack of evidence to support the good faith efforts requirement of TSCA section 6(e)(3)(B)(ii).

C. Distribution in Commerce of Equipment Containing Less than 50 ppm PCBs for Use in the U.S. and Abroad.

EPA received one petition for exemption to distribute in commerce within the United States, die casting machines and trim presses, as well as hydraulic, heat transfer, and other miscellaneous equipment in use and in storage for reuse, which contain less than 50 ppm PCBs. This same petitioner requested an exemption to distribute in commerce the same equipment for export.

General Motors Corporation. On December 22, 1986, General Motors Corporation (General Motors) submitted two petitions for exemptions to distribute in commerce certain die casting machinery and trim presses, hydraulic, heat transfer, and other miscellaneous equipment in use or in storage for reuse. One petition was for distribution in commerce of PCB equipment within the United States. Another petition request was for distribution in commerce of PCB equipment for export from the United States.

On June 27, 1988, subsequent to General Motor's request for an exemption, EPA promulgated amendments to the July 10, 1984 use authorization rule or the "Uncontrolled PCB Rule." This final amendment announced an additional regulatory exclusion for certain products ("excluded PCB products") which contain less than 50 ppm PCBs. The exclusion allows the use, processing, and distribution in commerce of products containing less than 50 ppm PCBs, provided these products were legally manufactured, processed, distributed in commerce or used prior to October 1, 1984. Due to this generic exclusion announced in the June 27, 1988 Uncontrolled Rule Amendment (FR 24206), EPA has determined that the die casting and other miscellaneous equipment that is the subject of GM's petition are "excluded PCB products" within the meaning of 40 CFR 761.3. The activities for which General Motors requested an exemption are to: (1) Distribute in commerce within the United States die casting and similar equipment contaminated with less than 50 ppm PCB; and (2) export such equipment contaminated with less than 50 ppm PCBs.

As such, the equipment is excluded from the prohibitions on processing and distribution in commerce, and an exemption is not required to distribute them in commerce for use within the United States or to export them from the United States.

D. Microscopy

EPA received two petitions to process and distribute in commerce PCBs for use as a mounting medium in microscopy. PCBs are used in art and historic conservation to preserve specimens for later study, and in identifying and preserving small particles, including environmental contaminants, industrial contaminants, and crime scene trace evidence. The identification of these particles is based on the form, structure, and optical properties of these particles as they appear relative to the optical properties of PCBs. EPA has authorized indefinitely the use of PCBs as a mounting medium in microscopy.

1. *McCrone Accessories & Components, Division of Walter C. McCrone Associates, Inc.* The McCrone Accessories & Components (McCrone) petition is in the form of a request for renewal of its 1-year exemption granted in July, 1984 to engage in the processing and distribution in commerce of PCBs for use as a mounting medium in microscopy.

In the August 24, 1988, Proposed PCB Exemption Rule, EPA proposed to deny the petitioner's request for another 1-year exemption because the petitioner had shown no efforts to reduce the sale and use of PCBs where possible or to develop a chemical substance which may be substituted for PCBs as required by section 6(e)(3)(B)(ii) of TSCA. Thus, although the unreasonable risk requirement was met, the petitioner had failed to meet the statutory requirement of good faith efforts as required by section 6(e)(3)(B)(ii) of TSCA.

During the comment period, however, McCrone responded to this proposed determination by providing further clarification of the very specific and unique purposes intended for the Aroclor 5442 in their exemption petition. McCrone has explained that Aroclor 5442 has superior properties for use in criminalistics and, also, for the characterization of old-master paintings for which very small quantities of the Aroclor are needed for the microscopic examination of these art collections.

The physical properties of Aroclor that cause it to be a superior substance for permanent particle mounting in microscopy work include the following characteristics of PCBs:

a. They are colorless in thin layers.

b. They are chemically stable so properties do not change over extended periods of time (essential for art authentication and evidence preservation).

c. They have low viscosity at 100 °C (centigrade), but very high viscosity at room temperature.

d. They have refractive indices very close to 1.662 (to optimize contrast enhancement of mounted particles).

e. They have a viscosity and refractive index very resistent to change over time.

There was sufficient documentation in the comments to the Proposed PCB Exemption Rule of August 24, 1988 to show that significant efforts have been made to develop substitutes for Aroclors as mounting mediums for other than temporary preparations, with little success. Possible substitutes, thus far, have not been able to duplicate all the physical properties that make Aroclor exceptional as a mounting medium, and they tend to break down in less than 3 years. The prospects for development of adequate substitutes are remote because the small quantities of PCBs involved in these highly specialized uses serve as a deterrent to commercial development of substitutes.

The cumulative usage of Aroclor as a mounting medium, an immersion oil, and as a refractive index liquid is de minimus, in that only 1 liter per year of Aroclor is used by all of the microscopists combined and just one ounce of Aroclor 5442 will produce at least 4,000 individual microscope slide preparations. Also, professionally trained personnel using Aroclor in the controlled laboratory conditions make every reasonable effort to ensure proper mounting of the slides and no environmental contamination of PCBs.

Based on the comments submitted by McCrone, EPA has concluded that substitutes are not available for the use of PCBs as a permanent microscopic mounting medium. However, EPA has found that good faith efforts have been made by McCrone to find a substitute for PCBs.

EPA has determined to grant the McCrone petition for renewal of its exemption. In addition, EPA has determined to automatically renew the McCrone petition to process and distribute PCBs in commerce for use as a mounting medium in microscopy unless the petitioner notifies EPA of any change in the quantity of PCBs processed or distributed in commerce or unless EPA receives any other information from the public regarding either of the requisite findings upon which this exemption is based. EPA, also, reserves the authority to exclude any processing or distribution in commerce of PCBs from the automatic renewal of the exemption upon determination that maintaining its exemption will pose an unreasonable risk of injury to human health or the environment. Any changes in the disposition of this exemption would be published in a notice of proposed rulemaking.

2. *R.P. Cargille Laboratories, Inc.* R.P. Cargille Laboratories, Inc. (Cargille) Cargille petitioned for a renewal of its 1-year exemption to process and distribute in commerce PCBs for (1) use as a mounting medium in microscopy; (2) use as an immersion oil in low fluorescence microscopy; and (3) use as an optical liquid.

In the proposed PCB exemption rule, EPA found no evidence that Cargille had developed PCB-free replacements as it alleged in the July 1984 exemption petition. Since several factors are considered in determining whether a petitioner has made good faith efforts and because the burden rests on the petitioner to show specifically what it did to substitute non-PCBs for PCBs or show why it did not seek to substitute non-PCBs for PCBs, EPA could not make a finding of good faith efforts in this petition. Therefore, EPA proposed to deny Cargille's new exemption request based on its failure to demonstrate the statutory requirements of good faith efforts to find PCB substitutes.

Cargille has, however, submitted comments to the August 24, 1988 proposed PCB exemption rule. A great deal of research was undertaken and clarification given to satisfy the TSCA section 6(e)(3)(B)(ii) requirement. Cargille submits that replacements have been developed for virtually all low-fluorescence microscopy uses, as well as for use as a mounting medium in all but the "most harsh and militarily critical environments such as high energy, uv, laser, and thermonuclear radiation communication/targeting applications." For those very specific applications, there is no available substitute that achieves all the necessary physical and optical properties of PCBs. These include high stability, high refractive index, low optical dispersion, and low auto-fluorescence. Thus, the requirement to demonstrate good faith efforts to substitute non-PCB has been satisfied for purposes of these limited applications.

These comments further support the unreasonable risk requirement of section 6(e)(3)(B)(i) of TSCA. Professionally trained personnel work under controlled laboratory conditions using disposable gloves and working under an exhaust hood. Also, only minute quantities of PCBs are used at a time. Cargille submits that these are sufficient controls to prevent injury to human health and the environment.

For these reasons, EPA determined that Cargille demonstrated both good faith efforts in finding substitutes for PCBs and that no unreasonable risks will result from the exempted activities. Therefore, EPA has determined to grant Cargille an automatic renewal of its exemption requests. The same contingencies apply to this exemption as to the one granted to McCrone. Cargille must notify EPA of any change in the quantity of PCBs or method of handling the PCBs which are involved in the automatic renewal of the exemption.

Thus, the petition will be automatically extended 1 year from the effective date of this rule, unless EPA receives any other information from the public regarding either of the requisite findings upon which this exemption is based. EPA, also, reserves the authority to exclude any processing or distribution in commerce of PCBs from the automatic renewal of the exemption upon determination that maintaining its exemption will pose an unreasonable risk of injury to human health or the environment. Any changes in the disposition of this exemption would be published in a notice of proposed rulemaking.

E. Research and Development

EPA received two petitions for exemption from the same petitioner; one petition requesting an exemption to manufacture PCBs for use in small quantities for research and development and the other petition requesting an exemption to export PCBs for use in small quantities for research and development. EPA also received from a second petitioner a request for an exemption to import small quantities of PCBs for research and development.

EPA has determined that the good faith efforts finding is not applicable to petitions to manufacture or to export PCBs in small quantities for research and development on projects consistent with the overall purposes of section 6(e) of TSCA, such as using PCBs as standards for the purpose of measuring PCB concentrations or using PCBs in the study of health or environmental effects of PCBs, because, in these cases, there are no PCB substitutes. There will always be a need for pure analytical standards to be developed to support laboratory analysis for PCBs. Also, pure PCBs are needed in critical health and environmental research because commercial PCBs contain mixtures of isomers and contaminants which may adversely affect experimental research, and in general, PCBs are being phased out of use and are less available for areas of critical research and development.

EPA authorized, indefinitely, the use of PCBs in small quantities for research and development in the Use Authorization Rule published in the

Federal Register of July 10, 1984. But the manufacturing, importing, or exporting of PCBs in small quantities for research and development is not allowed without specific individual exemptions. Therefore, EPA must make a company-specific determination before granting petitions for exemption to manufacture, import, or export PCBs for use in research and development.

1. *Accu-Standard.* On April 11, 1986, Accu-Standard submitted two petitions for exemptions. One petition was to manufacture PCBs in small quantities for research and development and one was to export PCBs in small quantities for research and development.

Accu-standard has shown that their PCBs are manufactured using good laboratory practices by trained laboratory personnel. The PCBs are packaged in hermetically sealed containers of 5 mL or less (by volume) and are marked with warning labels. As little as 200 mg and no more than 100 g of PCBs will be synthesized per year.

Because of the small quantity limitations and the carefully controlled conditions on PCB manufacture, EPA finds that no unreasonable risk will result from granting an exemption to Accu-Standard to manufacture PCBs in small quantities for research and development.

EPA generally treats petitions for exemption to export PCBs more stringently than petitions for exemption to distribute PCBs within the United States, because EPA has little or no control over the distribution, use, and disposal of PCBs once they have been exported. However, EPA believes that those concerns are mitigated in the export of PCBs in small quantities for research and development by the viscosity, quantity, marking, and packaging of the PCBs, as well as by the careful handling of the PCBs by trained personnel. Since Accu-Standard will be exporting no more than 800 g per year of PCBs under this exemption, EPA finds that no unreasonable risk will result from granting the exemption.

Therefore, EPA has determined to grant Accu-Standard the exemptions to both manufacture and to export PCBs in small quantities for research and development.

EPA will automatically renew the exemptions every year. However, Accu-Standard will be required to notify EPA each year of any changes in the quantity or the manner of handling PCBs under the Accu-Standard exemption(s). EPA will review such information, and reserve the authority to change the status of the exemption(s) if necessary, by rulemaking.

2. *Unison Transformer Services, Inc.* On April 24, 1987, Unison Transformer Services, Inc. (Unison) submitted a petition for exemption to import into the United States small quantities of PCBs for research and development. Unison is actually requesting an exemption to import small quantities of samples of PCB-containing fluid taken from PCB Transformers which have been retrofilled, for the purpose of testing and analysis. Unison wants to analyze this fluid to determine the PCB concentration, moisture content, and other parameters, as part of its customer service program.

Although the amounts, handling and other parameters of this petition request emulate those of the "small quantities for research and development" definition, EPA distinguishes this petition from others previously granted for "small quantities for research and development." TSCA section 3 defines importation as manufacture, so the manufacturing exemption is required. Unison is not asking, however, for permission to manufacture new PCBs which are indispensable in scientific and environmental research. Instead, they are asking to import (for analysis) existing PCB samples drawn from electrical equipment they are servicing abroad. While the unreasonable risk findings from the proposed rule are still valid, this petition should be more properly characterized as one for importing (manufacturing) existing PCB fluids for analysis of existing PCBs rather than as one for importing for scientific research and development.

Should Unison follow the conditions of the petition, that is: (i) The use of 5.0 mL hermetically sealed vials, (ii) an imported total not to exceed 250 samples per year during the exemption period, (iii) quarterly inspections of its laboratories to ensure that proper safety procedures are being followed, and (iv) sufficient absorbent shall be placed around the shipping container to prevent PCB release should an accident occur, EPA concludes that there will then be no unreasonable risk of injury to health or the environment.

Unison stated that denial of its application would significantly hinder its efforts to offer its services in many countries, which would adversely impact efforts to remove PCBs from U.S. corporate-owned transformers abroad. They also state that granting their petition would expedite removal and destruction of PCBs in many nations. Therefore, EPA believes that the goal under section 6(e) of TSCA to phase out the manufacture, processing, distribution in commerce, and use of PCBs is consistent with granting this petition to import small quantities of PCBs for analysis in aid of PCB disposal activities. The importation of small quantities of existing PCB fluid for analysis, under the safeguards described above, will aid in the worldwide reduction of PCB fluids still in use.

Unison has explored the alternative of having these analyses conducted in the countries in which the samples are taken, but found that these countries do not have the necessary experience to quantitate PCBs in Unison's proprietary fluid. EPA is satisfied that Unison has made good faith efforts to have these analyses conducted in foreign countries.

Therefore, EPA grants Unison an exemption for 1 year to import no more than 250 samples of PCB-contaminated fluid taken from PCB Transformers for purposes of testing and analysis. EPA will also automatically renew the exemption every year. However, Unison will be required to notify EPA each year of any changes in the quantity handled, in the manner of handling PCBs under Unison's exemption, or the availability of foreign laboratories for the required analysis. EPA will review such information and any other information related to the findings upon which this exemption is based, and change the status of the exemption, if necessary, by rulemaking.

F. Inadvertently Generated PCBs

EPA received one renewal petition for exemption to process and distribute inadvertently generated PCBs above allowable concentration levels for "excluded manufacturing processes."

Aluminum Company of America. On July 24, 1987 the Aluminum Company of America (ALCOA) requested a renewal of its 1 year exemption to distribute in commerce aluminum chloride ($AlCl_3$) containing inadvertently generated PCBs above the limits established in the July 10, 1984 Uncontrolled PCB Rule.

EPA was notified on June 2, 1989, that ALCOA withdrew its request for an exemption. EPA therefore, makes no determination on ALCOA's July 24, 1987 petition for an exemption.

V. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, issued February 17, 1982, EPA must judge whether a rule is a "major rule" and, therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. EPA has determined that this rule is not a "major rule" as that term is defined in section 1(b) of the Executive Order.

EPA has concluded that this rule is not "major" because the annual effect of the rule on the economy will be considerably less than $100 million; it will not cause any noticeable increase in costs or prices for any sector of the economy or for any geographic region; and it will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of U.S. enterprises to compete with foreign enterprises in domestic or foreign markets. This rule allows the manufacture, processing and distribution in commerce, and export of PCBs that would otherwise be prohibited by section 6(e)(3)(A) of TSCA for the petitioners who met the requirements of section 6(e)(3)(B) of TSCA and the Interim Procedural Rules for PCB Exemptions. This rule was submitted to the Office of Management and Budget (OMB) for review prior to publication, as required by the Executive Order.

B. Regulatory Flexibility Act

Section 603 of the Regulatory Flexibility Act (the Act), 5 U.S.C. 603, requires EPA to prepare and make available for comment an initial regulatory flexibility analysis in connection with rulemaking. The initial regulatory flexibility analysis must describe the impact of the final rule on small business entities. Section 605(b) of the Act, however, provides that section 603 of the Act "shall not apply to any proposed or final rule if the Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

EPA has tried to estimate the cost of this rule on the small businesses whose petitions EPA has denied. For purposes of this regulatory flexibility analysis, EPA considers a small business to be one whose annual sales revenues were less than $40 million. This cutoff is in accordance with EPA's definition of a small business for purposes of reporting under section 8(a) of TSCA, which was published in the Federal Register of November 16, 1984 (49 FR 45430).

EPA is denying the exemption petition that was submitted by EASA on behalf of approximately 265 small businesses who want to process and distribute PCBs in servicing customers' electrical transformers. EPA estimates that the costs of denial of the petition would be approximately $10 million (approximately $37,500 per company) which is approximately the same as the estimate made in 1984 (PCB Exemption Petitions Economic Impact Analysis, April 1984).

EPA is denying one petition that was submitted by EASA on behalf of approximately 265 small businesses who want to process and distribute in commerce PCBs in buying and selling transformers. EPA estimates that the incremental costs of denial to be at most $160 for a average size PCB-contaminated transformer, assuming all of the transformer fluid has to be disposed of and replaced.

EPA is granting EASA's exemption amendment requesting to process and distribute in commerce PCB residues on non-porous, double-rinsed component parts of transformers and to buy and sell PCB or PCB-contaminated transformers to which such component parts have been added.

EPA is denying both Jerry's Electric and Ward Transformer an exemption to process and distribute in commerce PCBs in buying and selling PCB-contaminated transformers.

EPA is granting the two exemption petitions to process and distribute in commerce PCBs for use as a mounting medium in microscopy, which had previously been denied.

EPA is granting McCrone's petition for exemption to process and distribute in commerce PCBs for use as a mounting medium in microscopy. EPA is also granting Cargille's petition for exemption to process and distribute in commerce PCBs for use as a mounting medium in microscopy, use as an immersion oil in low fluorescence microscopy (other than capillary microscopy), and use as an optical liquid.

Therefore, in accordance with section 605(b) of the Act, EPA certifies that this final rule, if promulgated, will not have a significant economic impact on a substantial number of small business entities. In addition, EPA is sending a copy of this final rule to the Chief Counsel for Advocacy of the Small Business Administration.

EPA further notes that section 606 of the Act states that the requirements of section 603 do not alter in any manner standards otherwise applicable by law to Agency action. Current law, section 6(e)(3)(A) of TSCA and EPA's PCB Ban Rule, 40 CFR part 761, prohibits the manufacture, processing, and distribution in commerce of PCBs. This rule, under section 6(e)(3)(B) of TSCA, exempts persons from these prohibitions where EPA has found that petitioners have demonstrated that granting an exemption would not result in an unreasonable risk of injury to health or the environment and that they have made good faith efforts to develop substitutes for PCBs. Both small and large businesses must meet the same statutory standard. Thus, even if EPA believed that it was an economically desirable policy to grant an exemption petition for a small business, it could do so only if the small business met the requirements set forth in TSCA. Therefore, this rule does not add to the burden placed on small businesses, it only relieves the burden placed on some businesses through granting exemptions.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., authorizes the Director of OMB to review certain information collection requests by Federal Agencies. Under OMB Control Number 2070–0021, OMB has approved a general information collection request submitted by EPA for purposes of collecting information for rulemakings on PCB exemption petitions, and for any recordkeeping or reporting conditions to PCB exemption petitions granted by EPA.

VI. Official Rulemaking Record

For the convenience of the public and EPA, all of the information originally submitted and filed in docket number OPTS–66002 (processing and distribution in commerce exemptions) is being consolidated into one docket number OPTS–66008. This final rule is a continuation of that docket under OPTS–66008F.

Public comments, the transcript of the rulemaking hearing, and submissions made at the rulemaking hearing, or in connection with it, will not be listed, because these documents are exempt from Federal Register listing under TSCA section 19(a)(3). A full list of these materials will be available on request from EPA's Environmental Assistance Division office listed under "FOR FURTHER INFORMATION CONTACT."

A. Previous Rulemaking Records

Official Rulemaking Record from "Polychlorinated Biphenyls; Exclusions, Exemptions and Use Authorizations; Final Rule," Docket No. OPTS–62053A, 53 FR 24206, June 27, 1988.

B. Support Documents

EPA is identifying the complete rulemaking record on the date of promulgation of the final rule, as prescribed by section 19(a)(3) of TSCA. Persons are encouraged to point out any omissions or errors in the record.

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated

biphenyls, Reporting and recordkeeping requirements.

Dated: May 14, 1990.

Charles L. Elkins,

Director, Office of Toxic Substances, Environmental Protection Agency.

Therefore, 40 CFR part 761 is amended as follows:

PART 761—[AMENDED]

1. The authority citation for part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614 and 2616.

2. By revising § 761.80 to read as follows:

§ 761.80 Manufacturing, processing and distribution in commerce exemptions.

(a) The Administrator grants the following petitioner(s) an exemption for 1 year to process and distribute in commerce PCBs for use as a mounting medium in microscopy:

(1) McCrone Accessories & Components, Division of Walter C. McCrone Associates, Inc., 2820 South Michigan Avenue, Chicago, IL. 60616.

(2) [Reserved]

(b) The Administrator grants the following petitioners an exemption for 1 year to process and distribute in commerce PCBs for use as a mounting medium in microscopy, an immersion oil in low fluorescence microscopy and an optical liquid:

(1) R.P. Cargille Laboratories, Inc., 55 Commerce Road, Cedar Grove, N.J. 07009.

(2) [Reserved]

(c) The Administrator grants the following petitioner(s) an exemption for 1 year to manufacture PCBs for use in small quantities for research and development:

(1) Accu-Standard, 25 Science Park, New Haven, CT. 06503.

(2) [Reserved]

(d) The Administrator grants the following petitioner(s) an exemption for 1 year to export PCBs for use in small quantities for research and development:

(1) Accu-Standard, New Haven, CT. 06503.

(2) [Reserved]

(e) The Administrator grants the following petitioner an exemption for one year to import (manufacture) into the U.S., small quantities of existing PCB fluids from electrical equipment for analysis:

(1) Unison Transformer Services, Inc., Tarrytown, N.Y. 10591, provided each of the following conditions are met:

(i) The samples must be shipped in 5.0 mL or less, hermetically sealed vials.

(ii) The exemption is limited to no more than 250 samples per year.

(iii) Unison makes quarterly inspections of its laboratories to ensure that proper safety procedures are being followed.

(iv) Unison annually notifies and describes to EPA its attempts to have samples analyzed abroad.

(2) [Reserved]

(f) The Administrator grants the following petitioner a class exemption to its members for 1 year to process and distribute in commerce non-porous transformer component parts which have been decontaminated of PCB residues and to buy and sell PCB transformers or PCB-contaminated transformers to which only double-rinsed, non-porous component parts have been added.

(1) Electrical Apparatus Service Association, 1331 Baur Boulevard, St. Louis, MO. 63123.

(2) [Reserved]

(g) The 1-year exemption granted to petitioners in paragraphs (a) through (e) of this section shall be renewed automatically so long as the petitioners notify EPA annually of any increase in the amount of PCBs to be processed and distributed, imported (manufactured), or exported or of any change in the manner of processing and distributing, importing (manufacturing), or exporting of PCBs and unless EPA initiates rulemaking to terminate the exemption.

[FR Doc. 90-11860 Filed 5-21-90; 8:45 am]

BILLING CODE 6560-50-D

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6875]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final Rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, the community will not be suspended and the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATE: As shown in fifth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, Federal Center Plaza, 500 C Street, SW., Room 416, Washington, DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures.

On August 25, 1986, FEMA published a final rule in the **Federal Register** that revised the NFIP floodplain management criteria. The rule became effective on October 1, 1986. As a condition for continued eligibility in the NFIP, the criteria at 44 CFR 60.7 require communities to revise other floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly, the communities are not compliant with NFIP criteria and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt and submit the required documentation of legally enforceable revised floodplain management regulations after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator finds that notice and public procedures under 5 U.S.C. 533(b) are impracticable and

unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 90- and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to adopt adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

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

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

State and Community name	County	Community No.	Effective date
Regular Program Communities:			
Pennsylvania, Morrisville, borough of	Bucks	420194	June 4, 1990.
Vermont:			
Albany, town of	Orleans	500243	Do.
Arlington, town of	Bennington	500012	Do.
Barnard, town of	Washington	500292	Do.
Barre, city of	Washington	500105	Do.
Barre, town of	Washington	500273	Do.
Bennington, town of	Bennington	500013	Do.
Benson, town of	Rutland	500259	Do.
Berkshire, town of	Franklin	500049	Do.
Berlin, town of	Washington	500106	Do.
Brandon, town of	Rutland	500090	Do.
Bridgewater, town of	Washington	500144	Do.
Bridport, town of	Addison	500164	Do.
Cabot, town of	Washington	500108	Do.
Calais, town of	Washington	500109	Do.
Cambridge, town of	Lamoille	500061	Do.
Canaan, town of	Essex	500046	Do.
Castleton, town of	Rutland	500091	Do.
Charlotte, town of	Chittenden	500309	Do.
Chelsea, town of	Orange	500070	Do.
Chester, town of	Washington	500146	Do.
Chittenden, town of	Rutland	500092	Do.
Clarendon, town of	Rutland	500093	Do.
Cornwall, town of	Addison	500317	Do.
Danby, town of	Rutland	500312	Do.
Derby, town of	Orleans	500248	Do.
East Montpelier, town of	Washington	500111	Do.
Fair Haven, town of	Rutland	500094	Do.
Fairfield, town of	Franklin	500053	Do.
Fayston, town of	Washington	500326	Do.
Ferrisburg, town of	Addison	500002	Do.
Franklin, town of	Franklin	500310	Do.
Georgia, town of	Franklin	500217	Do.
Goshen, town of	Addison	500004	Do.
Highgate, town of	Franklin	500055	Do.
Hinesburg, town of	Chittenden	500322	Do.
Huntington, town of	Chittenden	500036	Do.
Hyde Park, town of	Lamoille	500230	Do.
Hyde Park, village of	Lamoille	500231	Do.
Jeffersonville, village of	Lamoille	500062	Do.
Jericho, town of	Chittenden	500037	Do.
Landgrove, town of	Bennington	500178	Do.
Leicester, town of	Addison	500006	Do.
Lincoln, town of	Addison	500007	Do.
Ludlow, town of	Washington	500150	Do.
Ludlow, village of	Washington	500294	Do.
Manchester, town of	Bennington	500015	Do.
Manchester, village of	Bennington	500179	Do.
Marlboro, town of	Windham	500283	Do.
Middlebury, town of	Addison	500008	Do.
Milton, town of	Chittenden	500038	Do.
Monkton, town of	Addison	500167	Do.
Montpelier, city of	Washington	505518	Do.
Mt. Holly, town of	Rutland	500096	Do.
New Haven, town of	Addison	500009	Do.
Northfield, town and village of	Washington	500118	Do.

State and Community name	County	Community No.	Effective date
Orange, town of	Orange	500239	Do.
Orwell, town of	Addison	500168	Do.
Panton, town of	Addison	500169	Do.

Issued: May 16, 1990.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 90-11837 Filed 5-21-90; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 64

[Docket No. FEMA 6874]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of the flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATE: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR part 59 et. seq.). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

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

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	Location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date [1]
Region I					
Connecticut	Bethlehem, town of, Litchfield County	090178	Nov. 28, 1975 Emerg., June 4, 1990, Reg., June 4, 1990, Susp.	June 4, 1990	June 4, 1990.

State	Location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date [1]
Do	New Canaan, town of, Fairfield County.	090010	Apr. 7, 1972 Emerg., May 16, 1977, Reg., June 4, 1990, Susp.	June 4, 1990	June 4, 1990.
Do	Wallingford, Town of, New Haven County.	090090	June 25, 1973 Emerg., Sept. 15, 1978, Reg., June 4, 1990, Susp.	June 4, 1990	June 4, 1990.
Do	Wilton, town of, Fairfield County	090020	July 31, 1974, Emerg., Nov. 17, 1982, Reg., June 4, 1990, Susp.	June 4, 1990	June 4, 1990.
Massachusetts	Cummington, town of, Hampshire County.	250159	June 2, 1975, Emerg., June 4, 1990, Reg., June 4, 1990, Susp.	June 4, 1990	June 4, 1990.
Maine	Richmond, town of, Sagadahoc County.	230121	July 11, 1975, Emerg., June 4, 1990, Reg., June 4, 1990, Susp.	June 4, 1990	June 4, 1990.
Do	Searsport, town of, Waldo County	230185	July 2, 1975, Emerg., May 17, 1990, Reg., June 4, 1990, Susp.	May 17, 1990	June 4, 1990.
Region II					
New York	Margaretville, village of, Delaware County.	360208	May 9, 1875, Emerg., June 4, 1990, Reg., June 4, 1990, Susp.	June 4, 1990	June 4, 1990.
Region III					
Pennsylvania	Big Run, borough of, Jefferson County.	420508	May 18, 1976, Emerg., June 4, 1990, Reg., June 4, 1990, Susp.	June 4, 1990	June 4, 1990.
Do	Broad Top, township of, Bedord County.	421333	Aug. 7, 1975, Emerg., June 4, 1990, Reg., June 4, 1990, Susp.	June 4, 1990	June 4, 1990.
Do	Cambrige, township of, Crawford County.	421564	Dec. 10, 1975, Emerg., Sept. 10, 1984, Reg., June 4, 1990, Susp.	June 4, 1990	June 4, 1990.
Do	Cochranton, borough of, Crawford County.	420348	Sept. 10, 1975, Emerg., June 4, 1990, Reg., June 4, 1990, Susp.	June 4, 1990	June 4, 1990.
Do	Conemaugh, township of, Somerset County.	422047	Aug. 1, 1975, Emerg., June 4, 1990, Reg., June 4, 1990, Susp.	June 4, 1990	June 4, 1990.
Do	Garrett, borough of, Somerset County.	420797	July 31, 1975, Emerg., June 4, 1990, Reg., June 4, 1990, Susp.	June 4, 1990	June 4, 1990.
Do	Paint, township of, Somerset County	422521	Feb. 13, 1976, Emerg., June 4, 1990, Reg., June 4, 1990, Susp.	June 4, 1990	June 4, 1990.
Region IV					
Alabama	Lamar County, Unincorporated Areas	010271	Mar. 16, 1976, Emerg., June 4, 1990, Reg., June 4, 1990, Susp.	June 4, 1990	June 4, 1990.
Do	Monroe County Unincorporated Areas.	010325	Dec. 21, 1978, Emerg., June 4, 1990, Reg., June 4, 1990, Susp.	June 4, 1990	June 4, 1990.
Do	Pickens County, Unincorporated Areas.	010283	May 25, 1976, Emerg., June 4, 1990, Reg., June 4, 1990, Susp.	June 4, 1990	June 4, 1990.
Georgia	Houston County, Unincorporated Areas.	130247	Aug. 19, 1974, Emerg., June 4, 1990, Reg., June 4, 1990, Susp.	June 4, 1990	June 4, 1990.
Florida	Port Orange, city of, Volusia County	120313	July 19, 1974, Emerg., May 16, 1977, Reg., June 4, 1990, Susp.	June 4, 1990	June 4, 1990.
Do	South Daytona, city of, Volusia County.	120314	June 18, 1971, Emerg., Oct. 3, 1976, Reg., June 4, 1990, Susp.	June 4, 1990	June 4, 1990.
Region V					
Wisconsin	Polk County, Unincorporated Areas	550577	Apr. 22, 1975, Emerg., June 4, 1990, Reg., June 4, 1990, Susp.	June 4, 1990	June 4, 1990.
Do	Viola, village of, Richland County	550460	Dec. 5, 1974, Emerg., June 4, 1990, Reg., June 4, 1990, Susp.	June 4, 1990	June 4, 1990.
Region VI					
Texas	Somerville, city of Burleson County	480091	July 21, 1975, Emerg., June 4, 1990, Reg., June 4, 1990, Susp.	June 4, 1990	June 4, 1990.
Region III					
Pennsylvania	Central City, borough of, Somerset County.	420796	Aug. 29, 1975, Emerg., June 18, 1990, Reg., June 18, 1990, Susp.	June 18, 1990	June 18, 1990.
Do	East Conemaugh, borough of, Cambria County.	422259	Feb. 25, 1977, Emerg., June 18, 1990, Reg., June 18, 1990, Susp.	June 18, 1990	June 18, 1990.
Do	East Fairfield, township of, Crawford County.	421565	May 20, 1975, Emerg., June 18, 1990, Reg., June 18, 1990, Susp.	June 18, 1990	June 18, 1990.
Do	Gaskill, township of, Jefferson County.	421727	Feb. 3, 1976, Emerg., June 18, 1990, Reg., June 18, 1990, Susp.	June 18, 1990	June 18, 1990.
Do	Guilford, township of, Franklin County	421650	Jan. 20, 1976 Emerg., June 18, 1990, Reg., June 18, 1990, Susp.	June 18, 1990	June 18, 1990.
Do	Hamilton, township of, Franklin County.	421651	Jan. 17, 1974, Emerg., June 18, 1990, Reg., June 18, 1990, Susp.	June 18, 1990	June 18, 1990.
Do	Hooversville, borough of, Somerset County.	4206798	Sept. 5, 1976, Emerg., June 18, 1990, Reg., June 18, 1990, Susp.	June 18, 1990	June 18, 1990.
Do	Rockwood, borough of, Somerset County.	422045	Feb. 17, 1977, Emerg., June 18, 1990, Reg., June 18, 1990, Susp.	June 18, 1990	June 18, 1990.
Do	Saegertown, borough of, Crawford County.	420352	May 12, 1975, Emerg., June 18, 1990, Reg., June 18, 1990, Susp.	June 18, 1990	June 18, 1990.
Do	Terry, township of, Bradford County	421111	Nov. 28, 1975, Emerg., June 18, 1990, Reg., June 18, 1990, Susp.	June 18, 1990	June 18, 1990.
Do	Troy, township of, Crawford County	421572	Apr. 17, 1975, Emerg., June 18, 1990, Reg., June 18, 1990, Susp.	June 18, 1990	June 18, 1990.
Do	Venango, borough of, Crawford County.	420355	Mar. 9, 1977, Emerg., June 18, 1990, Reg., June 18, 1990, Susp.	June 18, 1990	June 18, 1990.
Do	Woodcock, township of, Crawford County.	421578	July 9, 1975, Emerg., June 18, 1990, Reg., June 18, 1990, Susp.	June 18, 1990	June 18, 1990.

State	Location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date [1]
Virginia	West Point, town of, King William County.	510083	Apr. 16, 1975, Emerg., June 18, 1990, Reg., June 18, 1990, Susp.	June 18, 1990	June 18, 1990.
Region IV					
South Carolina	Marion County, Unincorporated Areas.	450141	July 22, 1985, Emerg., June 18, 1990, Reg., June 18, 1990, Susp.	June 18, 1990	June 18, 1990.
Region VII					
Nebraska	Scotts Bluff County, Unincorporated Areas.	310473	Apr. 25, 1980, Emerg., June 18, 1990, Reg., June 18, 1990, Susp.	June 18, 1990	June 18, 1990.

[1] Certain Federal assistance no longer available in special flood hazard areas.
Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Issued: May 16, 1990.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 90-11836 Filed 5-21-90; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 83-31]

Radio Broadcast Services; Moscow, Ohio; Paris, Wilmore, Morehead, Falmouth, Winchester, Carrollton, Elizabethtown, Dry Ridge, Somerset, and Williamstown, Kentucky; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Commission, in its synopsis of the *Memorandum Opinion and Order* in MM Docket No. 83-31 (55 FR 6645, February 26, 1990), listed the incorrect number of applicants for Channel 246C2 at Goodlettsville, Tennessee, ordered to amend their applications to meet spacing requirements to Channel 246C2 at Sommerset. Therefore, the number of applicants so ordered in sentence five of the summary paragraph is changed from seven to one.

EFFECTIVE DATE: May 2, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael Ruger Mass Media Bureau, Policy and Rules Division, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 90-11882 Filed 5-21-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107, 171, 172, 173, 176, 177, 178, and 180

[Docket Nos. HM-183, 183A; Amdt. Nos. 107-20, 171-100, 172-115, 173-212, 176-27, 177-71, 178-89, and 180-2]

RIN 2137-AA42

Requirements for Cargo Tanks; Extension of Effective Date

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; revision of effective date and partial response to petitions for reconsideration.

SUMMARY: This document revises the effective date for a final rule issued under Docket Nos. HM-183/183A (June 12, 1989; 54 FR 24982). In addition, this document makes clarifications and specifies compliance dates for certain provisions contained in the final rule. RSPA is taking this action in response to petitions for reconsideration. This action partially responds to certain of the petitions for reconsideration and provides additional time for RSPA to fully evaluate and determine the merits of other issues raised by petitioners.

DATES: *Effective:* The final rule published under Docket HM-183/183A on June 12, 1989 (54 FR 24982), and the amendments contained herein are effective September 1, 1990. *Compliance:* However, compliance with the regulations as amended in part 180, with the exception of those concerning registration and design certification, is authorized from June 12, 1989.

FOR FURTHER INFORMATION CONTACT: Charles Hochman, (202) 366-4545, or Hattie Mitchell, (202) 366-4488, Office of Hazardous Materials Transportation, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590-0001; or Richard Singer, (202) 366-2994, Office of Motor Carrier Safety, Federal Highway Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION: On June 12, 1989, RSPA published a final rule (Docket Nos. HM-183/183A; 54 FR 24982) establishing new standards pertaining to the use, requalification, and manufacture of cargo tank motor vehicles. On September 15, 1989, RSPA published a document (54 FR 38233) which extended the closing date for receiving petitions for reconsideration from September 12, 1989 to November 14, 1989, and similarly extended the effective date of the final rule from December 12, 1989 to February 12, 1990. On December 6, 1989, RSPA published another document (54 FR 50382) which further extended the effective date to June 12, 1990, allowing additional time for RSPA and FHWA to study issues raised in the many petitions for reconsideration received in response to the final rule and effectively suspending mandatory compliance dates in the final rule. RSPA has now received over 1,000 petitions, some of which are substantive in nature. Because resolving certain issues has taken longer than anticipated, RSPA is extending the effective date of the final rule to September 1, 1990. RSPA expects to publish an amended final rule based on the merits of certain petitions by the end of August 1990.

In the two previous extension documents, RSPA stated that the compliance dates would be addressed in a separate document. RSPA intended to address both the compliance dates and the issues raised in the petitions in the same document. However, several petitioners and numerous telephone

callers have requested that RSPA specify the compliance dates early enough to allow persons affected by the final rule an opportunity to adjust their scheduling for compliance with the applicable provisions. RSPA agrees that these dates are essential for planning and scheduling purposes and, therefore, is addressing the compliance dates in this document rather than waiting until it completes its reconsideration with respect to the other issues in the petitions.

RSPA has given full consideration to the issues raised by petitioners concerning time frames for implementing the various provisions contained in the final rule. With certain exceptions, the compliance dates contained in this document are consistent with those recommended by petitioners.

With regard to construction of cargo tanks, the Truck Trailer Manufacturers Association (TTMA) petitioned RSPA to allow the continued construction of MC 306, MC 307 and MC 312 cargo tanks for a period of three years (instead of the 18 months provided in the final rule) and that construction of all DOT 406, DOT 407 and DOT 412 cargo tanks be postponed for a period of two years. TTMA stated that this two-year postponement is necessary because two years is the minimum development cycle for a new cargo tank. RSPA has been informed that the development of a new cargo tank may take two years. To provide for an orderly transition, particularly for small businesses, RSPA accepts TTMA's petition to allow construction of MC 306, MC 307 and MC 312 cargo tanks for three years from the effective date of the final rule. RSPA believes manufacturers of MC 331 and MC 338 cargo tanks have similar need for time to implement changes in structural design requirements. Thus, to provide for an orderly transition, RSPA will allow continued construction of MC 331 and MC 338 cargo tanks in accordance with current §§ 178.337–3 and 178.338–3, respectively, for three years. However, no cargo tank may be marked or certified to the current MC 331 or MC 338 specification with respect to structural design, or to the MC 306, MC 307 or MC 312 specification after August 31, 1993.

RSPA disagrees with TTMA's request that construction of DOT 406, DOT 407, and DOT 412 cargo tanks be postponed for two years. A two year prohibition on the construction of these new specification cargo tanks would impose an unnecessary constraint on commerce and would penalize manufacturers who are presently in a position to commence manufacture of cargo tanks meeting the new specifications. In addition, a mandatory delay in construction of these new specification cargo tanks would unnecessarily delay implementation of the safety features contained in the new specifications. Therefore, RSPA is allowing construction of cargo tanks to the new specifications to begin on the effective date of this final rule.

RSPA has received over 900 petitions, including late-filled petitions, from members of the propane gas industry. These petitioners raised objections to an apparent prohibition, contained in § 173.33(e) of the final rule, against the retention of lading in the external piping and hose reels of MC 330 and MC 331 cargo tanks during transportation. It was not RSPA's intent in the final rule to apply § 173.33(e) to MC 330 and MC 331 cargo tank motor vehicles. It was intended, in both the proposed rule and the final rule, that this provision apply only to DOT specification cargo tanks used to transport liquid hazardous materials. The current requirements, at 49 CFR 178.337–9 and 178.337–10, require that piping be protected from accident damage in all cases and RSPA has no data indicating additional controls are needed. RSPA has informed the National Propane Gas Association of this position in a letter dated March 7, 1990.

Also, the wet line provision in § 173.33(e) does not apply to the transportation of hazardous materials having relatively low hazards which are authorized to be transported in nonspecification cargo tanks, even if a DOT specification cargo tank may be used. For example, § 173.33(e) does not apply to cargo tanks used to transport materials under §§ 173.118a (combustible liquids) and 173.131 (road asphalt, or tar, liquid).

Many petitioners, including the American Petroleum Institute (API), asked that RSPA broaden the exception granted to "fuels metered for road fuel tax purposes" to include other materials. These petitioners stated that many materials are metered for other than tax purposes, and the use of a tax as a criteria for providing exceptions is inappropriate, with no safety basis. Petitioners also pointed out that many other petroleum products are not taxed, and are considered "less hazardous" than gasoline. Finally, petitioners stated that a large percentage of cargo tank motor vehicles, currently transporting materials which are permitted under the exception to be retained in the piping, exceed the specified maximum piping volume limitation. These petitioners urged RSPA to grandfather existing cargo tanks transporting gasoline in "wet lines" which exceed the 50 gallon volume limit.

The comments expressed by petitioners asking that the exception in § 173.33(e) be broadened raised new information which was not brought to our attention during the comment period for the NPRM, or during any of the subsequent hearings or public meetings. We now realize that the retention of hazardous materials product in piping during transportation is more prevalent than was indicated earlier during development of the final rule. These petitions are under consideration and will be addressed further in the subsequent document. However, RSPA anticipates certain revisions will be made to the final rule.

RSPA has been petitioned to make certain revisions in the registration requirements contained in new part 107, subpart F of the final rule. These petitions are under review. Based on the merits of several petitions, RSPA intends to make certain revisions to the final rule. RSPA has already received over 150 registration statements. RSPA will delay processing these statements until the issues raised by petitioners are resolved. In reviewing the registration statements, RSPA finds that many statements do not contain the required information. These incomplete statements will be returned to the applicants along with an indication of the reasons for their return.

Some petitioners confused the effective date of the final rule with the deadline dates for performing the first periodic tests and inspections, which were not specified in the final rule. In addition, several petitioners were under the misunderstanding that existing cargo tanks had to be in compliance with the various inspection and test requirements prior to the effective date of the final rule. Therefore, as suggested by several petitioners, the following tables are provided for clarity. Table I sets forth the time interval for performing the periodic tests and inspections presecribed in § 180.407(c) and the date by which the first test or inspection must be performed. The time for completing the first external visual inspection on vacuum tanks has been extended to allow owners additional time to complete the inspection. Table II sets forth the compliance dates for certain other requirements found in the final rule.

TABLE I.—COMPLIANCE DATES—INSPECTIONS AND RETESTS UNDER § 180.407(C)

Test or inspection (cargo tank, configuration, and service)	Date by which first test must be completed (see note)	Interval period after first test
External Visual Inspection:		
All cargo tanks designed to be loaded by vacuum with full opening rear heads	Sept. 1, 1991	6 months.
All other cargo tanks	do	1 year.
Internal Visual Inspection:		
All insulated cargo tanks, except MC 330, MC 331, MC 338	do	Do.
All cargo tanks transporting lading corrosive to the tank	do	Do.
All other cargo tanks, except MC 338	Sept. 1, 1995	5 years.
Lining/Cladding Inspection:		
All lined or clad cargo tanks transporting lading corrosive to the tank	Sept. 1, 1991	1 year.
Leakage Test:		
All cargo tanks except MC 338	do	Do.
Pressure Retest:		
All cargo tanks which are insulated with no manhole or insulated and lined, except MC 338	do	Do.
All cargo tanks designed to be loaded by vacuum with full opening rear heads	Sept. 1, 1992	2 years.
MC 330 and MC 331 cargo tanks in chlorine service	do	Do.
All other cargo tanks	Sept. 1, 1995	5 years.
Thickness Test:		
All unlined cargo tanks in corrosive service, except MC 338.	Sept. 1, 1992	2 years.

NOTE: If a cargo tank is subject to an applicable inspection or test requirement under the regulations in effect on August 31, 1990, and the due date (as specified by a requirement in effect on August 31, 1990) for completing the required inspection or test occurs before the compliance date listed in Table I, the earlier date applies.

TABLE II.—MARKING, CERTIFICATION AND CONSTRUCTION REQUIREMENTS

Applicable provision	Compliance date
No cargo tank may be marked or certified to the current MC 331 or MC 338 specification (§§ 178.337–3 and 178.338–3), or to the MC 306, MC 307, MC 312 specifications after (§ 180.405(c)(1)).	Aug. 31, 1993.
Persons who repair MC-series cargo tanks must have National Board or ASME certification after (§ 180.413(a)).	Dec. 31, 1991.
Vacuum cargo tanks must be equipped with a self-closing valve system before (§ 180.405(f)).	Sept. 1, 1993.
Retrofit or certification of manhole assemblies must be completed before (§ 180.405(g)).	Sept. 1, 1995.
Leak-tight pressure relief valves must be installed when replacing reclosing pressure relief valves on cargo tanks after (§§ 178.345–10(b) and 180.405(h)).	Aug. 31, 1992.
Re-marking of MAWP on affected MC-series cargo tanks must be completed before (§§ 173.33(c)(2) and 180.405(k)).	Jan. 1, 1991.
Construction of DOT 406, DOT 407, DOT 412 cargo tanks authorized after.	Aug. 31, 1990.
New construction of DOT 400 series cargo tanks must be equipped with dual function pressure relief devices after (§ 178.345–10(b)).	Aug. 31, 1995.

List of Subjects

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, title 49, chapter I, subchapter C of the Code of Federal Regulations, is amended as follows:

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGING

1. The authority citation for part 173 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1808; 49 CFR part 1, unless otherwise noted.

§ 173.33 [Amended]

2. Section 173.33, as revised at 54 FR 25005, June 12, 1989, is amended as follows:

a. In paragraph (c)(4), remove the date "December 12, 1989" and add, in its place, the date "September 1, 1990".

b. In paragraph (d)(1), remove the date "December 12, 1989" the first time it appears and add, in its place, the date "September 1, 1990", and remove the date "December 12, 1989" the second time it appears and add, in its place, the date "August 31, 1990".

PART 178—SHIPPING CONTAINER SPECIFICATIONS

3. The authority citation for part 178 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR part 1.

§ 178.337-6 [Amended]

4. In § 178.337-6(a), as revised at 54 FR 25017, June 12, 1989, remove the date "December 12, 1989" and add, in its place, the date "August 31, 1990".

§ 178.345-10 [Amended]

5. In § 178.345-10(b)(3) introductory text, as added at 54 FR 25025, June 12, 1989, remove the date "June 6, 1994" and add, in its place, the date "August 31, 1995", and remove the date "June 12, 1991" and add, in its place, the date "August 31, 1992".

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

6. The authority citation for Part 180 is revised to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1806, 1808; 49 CFR part 1.

§ 180.405 [Amended]

7. Section 180.405, as added at 54 FR 25033, June 12, 1989, is amended as follows:

a. In the last sentence in paragraph (b), remove the date "June 12, 1989" and add, in its place, the date "August 31, 1990", and remove the date "December 5, 1990" and add, in its place, the date "August 31, 1993".

b. In the table in paragraph (c)(1), in the line entry "MC 306, MC 307, MC 312", remove the date "Dec. 5, 1990" and add, in its place, the date "Sept. 1, 1993".

c. In paragraph (f) introductory text, remove the date "December 12, 1989" and add, in its place, the date "September 1, 1990", and in paragraphs (f)(2)(i) and (f)(4)(i), remove the date "June 12, 1992" each time it appears and add, in each place, the date "September 1, 1993".

d. In paragraph (g)(1), remove the date "June 13, 1994" and add, in its place, the date "August 31, 1995"; remove the date "December 12, 1989" the first time it appears and add, in its place, the date "September 1, 1990"; remove the date "December 12, 1989" the second time it appears and add, in its place, the date "September 1, 1990"; and remove the date "December 12, 1989" the third time it appears and add, in its place, the date "August 31, 1990".

e. In paragraph (g)(2), remove the date "December 12, 1989" and add, both places it appears, the date "September 1, 1990", and remove the date "June 13, 1994" and add, in its place, the date "August 31, 1995".

f. In paragraph (g)(3), remove the date "June 13, 1994" and add, in its place, the date "August 31, 1995".

g. In paragraph (h), remove the date "June 12, 1991" and add, in its place, the date "August 31, 1992", and remove the date "June 13, 1994" and add, in its place, the date "August 31, 1995".

§ 180.407 [Amended]

8. In § 180.407(g)(1)(iv), as added at 54 FR 25036, June 12, 1989, remove the date "June 13, 1994" and add, in its place, the date "August 31, 1995".

§ 180.413 [Amended]

9. In § 180.413(a) introductory text, as added at 54 FR 25038, June 12, 1989, remove the date "December 5, 1990" and add, in its place, the date "January 1, 1992".

§ 180.417 [Amended]

10. In § 180.417(a)(3) heading, as added at 54 FR 25039, June 12, 1989, remove the date "December 12, 1989" and add, in its place, the date "September 1, 1993".

Issued in Washington, DC on May 15, 1990, under authority delegated in 49 CFR part 1.53.

Travis P. Dungan,

Administrator.

[FR Doc. 90-11849 Filed 5-21-90; 8:45 am]

BILLING CODE 4910-10-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85-15; Notice 13, Docket No. 89-10; Notice 3]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment; Technical Amendments

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Technical amendments; final rule.

SUMMARY: This notice contains technical amendments of the final rule published on May 9, 1989, which revised requirements for headlamps, the petitions for reconsideration of that rule published on February 8, 1990, and the final rule establishing requirements for Type HB5 light sources, published on April 9, 1990. The amendments provide corrected section references, and, in one instance, deletion of a conflicting phrase.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA (202-366-5263).

SUPPLEMENTARY INFORMATION: On May 9, 1989, NHTSA published amendments to Federal Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* (Notice 8, 54 FR 20068). As part of that final rule, the paragraphs of the standard were renumbered. For example, paragraph S4.3.1.8 became S5.3.1.8. However, in this instance, the corresponding reference to S4.3.1.8 in Table IV (in the locational requirements for center highmounted stop lamps) was not changed to the new nomenclature, and it is necessary to do so.

The same notice adopted S7.7.5.2(a)(1)(v) relating to vertical aim with the vehicle headlamp aiming device (VHAD). The agency stated in part that means shall be provided in the VHAD for compensating for deviations in floor slope "not less than" 1.2 degrees from the horizontal. The agency intended the range of compensation to be "less than" 1.2 degrees, and therefore the word "not" is erroneous and must be deleted.

Petitions for reconsideration of the May 9 rule were received and acted upon in a rule published on February 8, 1990 (Notice 12, 55 FR 4424). Two typographical errors appeared. In Item 27, a reference in section S7.5(i) to "paragraphs S7.4 (k) and (l)" was revised to read "sections S.4 (h) and (i)", omitting the "7" after "S". In Item 37, an amendment to "S7.7.5(c))(1)" should have been to "S7.7.5.2(c)(1)".

Finally, there remains an inadvertent conflict to be resolved with reference to sections S7.6(c) and S7.6(d). S7.6(c) in pertinent part specifies upper beam performance requirements for Type HB3 light sources, and S7.6(d), lower beam performance requirements for Type HB4 light sources. The final rule published on April 9, 1990 (55 FR 13138) added Figure 26 to the standard. This Figure is intended to assist in understanding the requirements of bulb and headlamp combinations. In part, it addresses the use of HB3 and HB4 light sources for either upper or lower beam. Such use is permissible since there is no filament life requirement, and thus no reason to

have the lower beam use a longer life filament. The amendments of May 9, 1989, deleted filament life requirements, but did not delete the words "on the upper beam" and "on the lower beam" from S7.6(c) and S7.6(d). The recent addition of Table 26 has resulted in an inadvertent conflict in the standard because S7.6(c) and S7.6(d) with their specific beam references can be interpreted as forbidding their use for other beams, or that when used for other beams, there is no required performance. The solution is to delete the specific beam references, so that Figure 26 may become unambiguous with respect to use of HB3 and HB4 light sources.

Because the amendments are technical in nature and have no substantive impact, it is hereby found that notice and public comment thereon are unnecessary. Further, because the amendments are technical in nature, it is hereby found for good cause shown that an effective date earlier than 180 days after issuance of the rule is in the public interest, and the amendments are effective upon publication in the **Federal Register.**

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing part 571 of 49 CFR is amended as follows:

PART 571—AMENDED

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§571.108 [Amended]

2. In section S7.6(c), the phrase "on the upper beam" appearing in the second and third sentences is removed.

3. In section S7.6(d), the phrase "on the lower beam" appearing twice in the second sentence is removed.

4. In section S7.7.5.2(a)(1)(v), the word "not" is removed.

5. In section S7.7.5.2(c)(1), the words "The headlamp assembly (the headlamp(s) and the integral or separate VHAD mechanism)", are removed and the phrase "The headlamp assembly (the headlamp(s), and the VHAD(s))" is inserted in their place.

6. In Table IV, the reference to "S4.3.1.8" appearing in the second and fourth columns with reference to "high-mounted stop lamps" is revised to read "S5.3.1.8".

Issued on May 16, 1990.

Jeffrey R. Miller,

Deputy Administrator.

[FR Doc. 90-11754 Filed 5-21-90; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 90515-9115]

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

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

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces the adjustment of the closure date of the commercial salmon fishery in the exclusive economic zone (EEZ) from Sisters Rocks to House Rock, Oregon. The closure date of this fishery is changed from May 14, 1990 to May 24, 1990. The requirement to close the fishery upon attainment of a quota of 6,200 chinook salmon remains in effect. The Director, Northwest Region, NMFS (Regional Director), has determined that this adjustment is necessary to provide commercial salmon fishermen additional opportunity to harvest available Rogue River spring chinook salmon. This action is intended to allow maximum harvest of the target salmon stock while not increasing fishery impacts on other salmon stocks, particularly Klamath River chinook salmon.

DATES: The closure date of the commercial salmon fishery in the EEZ from Sisters Rocks to House Rock, Oregon, is adjusted from May 14, 1990 to May 24, 1990. Actual notice to affected fishermen was given prior to 2400 hours local time, May 14, 1990, through a special telephone hotline and U.S. Coast Guard notice-to-mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23 (as amended May 1, 1989).

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries are published at 50 CFR part 661. In its preseason notice of 1990 management measures (55 FR 18894, May 7, 1990), NOAA announced that the 1990 commercial fishery for all salmon except coho in the subarea from Sisters Rocks to House Rock, Oregon, would begin on May 1 and continue through the earlier of May 14 or the attainment of a quota of 6,200 chinook salmon.

Based on the best available information, less than 100 chinook salmon have been landed through May 9, 1990. Inclement weather has been the limiting factor on catch rates in this fishery which is intended to harvest Rogue River spring chinook salmon. Extension of the season through May 24, 1990, is expected to provide commercial salmon fishermen additional opportunity to harvest available fish of the target salmon stock, while not increasing fishery impacts on other salmon stocks, particularly Klamath River chinook salmon.

Regulations at 50 CFR 661.21(b)(1)(i) authorize inseason changes in fishing seasons. Therefore, the closure date of the commercial salmon fishery in the subarea from Sisters Rocks to House Rock, Oregon, is changed from May 14, 1990 to May 24, 1990. The requirement to close the fishery upon attainment of a quota of 6,200 chinook salmon, the establishment of a closed area 6 to 200 nautical miles of shore, and all other restrictions stated in the preseason notice of management measures remain in effect.

In accordance with the revised inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen of this change in the closure date was given prior to 2400 hours local time, May 14, 1990, by telephone hotline number (206) 526-6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Oregon Department of Fish and Wildlife, and the California Department of Fish and Game regarding a change in the closure date of the commercial fishery between Sisters Rocks and House Rock, Oregon. The State of Oregon will manage the commercial fishery in State waters adjacent to this area of the EEZ in accordance with this federal action. This notice does not apply to other fisheries which may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for

this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after filing with the Office of the **Federal Register**, through May 31, 1990.

Other Matters

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

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

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

Dated: May 16, 1990.

Richard H. Schaefer,

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

[FR Doc. 90-11790 Filed 5-16-90; 5:05 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 99
Tuesday, May 22, 1990

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. FV-90-120]

South Texas Onions; Proposed Redistricting and Reapportionment of Committee Membership

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would reestablish the districts that comprise the production area for South Texas onions and reapportion committee membership among the new districts. These changes are intended to provide more equitable industry representation on the South Texas Onion Committee in view of changes that have occurred in the distribution of onion acreage and production among the current districts.

DATES: Comments must be received by June 6, 1990.

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

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone 202-447-5331.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 143 and Marketing Order No. 959 (7 CFR part 959), regulating the handling of onions grown in South Texas. The marketing 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 rule has been reviewed by the Department in accordance with Departmental Regulation 1512.1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this 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 35 handlers of South Texas onions under this marketing order, and approximately 75 onion producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the handlers and producers of South Texas onions may be classified as small entities.

The South Texas Onion Committee (committee) is established under the terms of the marketing order to work with the Department in administering the program. The committee consists of 17 members, of which 10 are producers and 7 are handlers. Committee membership is currently allocated geographically among four districts.

The committee met on October 31, 1989, and unanimously recommended reestablishing the districts and reapportioning committee membership among the reestablished districts. This recommendation was made pursuant to § 959.25 of the marketing order.

The marketing order covers onions grown in 35 counties in South Texas. To provide a basis for selecting committee membership, the production area is currently divided into four districts. District 1, known as the Coastal Bend area, consists of 15 counties in the eastern portion of the production area. District 1 is represented on the committee by two producer members and one handler member. District 2, commonly referred to as Laredo, is comprised of three counties in the western portion of the production area, and is allocated one producer and one handler member position on the committee. District 3, known as the Lower Valley, consists of the four southernmost counties of the production area. Four producer and three handler members represent District 3 on the committee. Finally, District 4, known as the Winter Garden district, consists of the 13 northern counties of the production area. This district is represented on the committee by three producer and two handler members.

Since the districts were last reestablished in 1975, changes have occurred in the distribution of onion acreage and production among the four districts. In recent seasons, both acreage and production have become increasingly concentrated in District 3 (the Lower Valley). In the 1988-89 season, the Lower Valley accounted for about 85 percent of the total planted acreage and about 90 percent of South Texas onion production.

The remaining acreage (about 15 percent of the total) was planted in District 2 (Laredo) and District 4 (Winter Garden). During the 1988-89 season, about 4 percent of the South Texas onions produced were grown in Laredo and about 6 percent in the Winter Garden district. No commercial onion production has been reported in the Coastal Bend area (District 1) for the past 5 years.

The committee recommended that the current districts be reestablished by combining Districts 1 and 3 (Coastal Bend/Lower Valley) and Districts 2 and 4 (Laredo/Winter Garden). The Coastal Bend/Lower Valley district would be allocated six producer and four handler member positions on the committee. This action would therefore increase representation of the Lower Valley area by three committee members in recognition of the large share of total onion acreage and production in that area. The Coastal Bend region would no longer be provided separately with three positions on the committee. Since commercial onion production has

ceased in the Coastal Bend area, the committee does not believe it is justified to have 3 of the 17 members allocated to that area as is currently the case. In addition, the three Coastal Bend positions currently are vacant.

The committee also recommended that the newly established Laredo/Winter Garden district be allocated four producer members and three handler members. The combined representation of these two regions would therefore remain the same. Although the Laredo/Winter Garden district accounts for only about 10 percent of total South Texas onion production, that district would be allocated about 40 percent of total committee membership. While the committee considered reducing the number of positions allocated to the Laredo/Winter Garden district, it concluded that it would not be in the best interest of the industry to do so at the present time.

The marketing order requires nine concurring votes, or two-thirds of the votes cast (whichever is greater), to approve any committee action. Providing the Laredo/Winter Garden district with more than one-third of the committee members should ensure that the interests of this district's producers and handlers are taken into consideration during committee deliberations. The committee believes this to be particularly important because of the large, 16-county area this district encompasses.

Additionally, growing and marketing conditions in the Laredo/Winter Garden district differ from those in the Lower Valley. The growing season is several weeks earlier in the Lower Valley, for example, and the Laredo/Winter Garden district's later shipping season results in a different marketing situation in terms of pricing and competitive supplies.

After consideration of all relevant factors' the committee recommended these actions as a means of improving the operation of the marketing order by providing more equitable industry representation on the committee.

Committee members serve 2-year terms of office beginning August 1 with about one-half of the membership selected each year. Of the current members', six are serving terms of office that expire in 1990 and eight are serving terms that expire in 1991. Three positions (those allocated to the Coastal Bend district) are vacant. The committee recommended that present committee members continue to serve for the remainder of the term to which they were appointed, and that this change in districting and apportionment of membership be effective for nominations for members to serve the term beginning August 1, 1990. At that time, nominations would be solicited for three growers and two handlers to represent the Coastal Bend/Lower Valley district, and two growers and two handlers to represent the Laredo/Winter Garden district.

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

A comment period of 15 days is deemed appropriate because the committee members' terms of office begin on August 1 and the changes, if adopted, must become effective at least 30 days prior to that date. Additionally, producers and handlers are aware of this recommendation which imposes no additional requirements. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Texas.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 959 be amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

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

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

2. Section 959.110 is revised to read as follows:

§ 959.110 Reestablishment of districts.

Pursuant to § 959.25. the following districts are reestablished:

(a) District 1 (Coastal Bend-Lower Valley): The counties of Victoria, Calhoun, Goliad, Refugio, Bee, Live Oak, San Patricio, Aransas, Jim Wells, Nueces, Kleberg, Brooks, Kenedy, Duval, McMullen, Cameron, Hidalgo, Starr, and Willacy.

(b) District 2 (Laredo-Winter Garden): The counties of Zapata, Webb, Jim Hogg, De Witt, Wilson, Atascosa, Karnes, Val Verde, Frio, Kinney, Uvalde, Medina, Maverick, Zavala, Dimmit, and LaSalle.

3. Section 959.111 is revised to read as follows:

§ 959.111 Reapportionment of committee membership.

Pursuant to § 959.25, committee membership is reapportioned among districts as follows:

(a) District 1 (Coastal Bend-Lower Valley): Six producer members and four handler members.

(b) District 2 (Laredo-Winter Garden): Four producer members and three handler members.

Dated: May 18 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–11783 Filed 5–21–90; 8:45 am]

BILLING CODE 3410–0–M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 88–034]

Tuberculin Test Requirements For Calves Imported From Canada

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to amend the regulations requiring tuberculosis testing of certain cattle from Canada before their importation into the United States, to exempt certain calves from testing if they meet specified requirements, including tuberculosis testing of their dams. This change would remove the requirement for testing certain calves that do not present a risk of spreading tuberculosis.

DATES: Consideration will be given only to comments received on or before July 23, 1990.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 88–034. 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. Kathleen J. Akin, Import-Export Products, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 755, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–7830.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 92 (referred to below as the regulations) regulate the importation into the United States of

specified animals and animal products in order to prevent the introduction into the United States of various diseases. Section 92.20 of the regulations contains specific provisions concerning the importation into the United States of cattle from Canada.

Section 92.20(b) of the regulations prohibits the importation from Canada of cattle from any herd in which any cattle have been determined to have tuberculosis, and allows importation of cattle from other herds under the following conditions. The cattle must either be imported for slaughter in accordance with § 92.23, or if imported for other purposes, must be accompanied by a certificate issued or endorsed by a salaried veterinarian of the Canadian government. The certificate must state that the cattle are from a tuberculosis-free herd, or must state the date and place the cattle were last tested for tuberculosis; that the cattle were found negative for tuberculosis on such test; and that such test was performed within 60 days preceding the arrival of the cattle at the port of entry.

We propose to exempt certain calves that are not from a tuberculosis-free herd from the testing requirement, if their dams have been tested and found free of tuberculosis and certain other conditions are met. We propose to exempt any calf that is imported with its dam and that was born after the dam was tested in accordance with the regulations and found free of tuberculosis. Since the regulations require the dam to be tested within 60 days prior to arrival at the port of entry, this would limit the exemption to calves no more than 60 days old. Calves born to dams free of tuberculosis are also free of tuberculosis at birth. Such calves face no more risk of becoming infected with tuberculosis during the 60 days after birth than any cattle tested under the regulations fact of becoming infected during the period of 60 days currently allowed by the regulations between testing and arrival at the port of entry. We allow a period of up to 60 days between testing and arrival at the port of entry of Canadian cattle because our experience monitoring such imports indicates such cattle are unlikely to become infected with tuberculosis during that time, in view of the incidence of tuberculosis in Canada.

To ensure that only eligible calves are imported in accordance with the proposed change, we propose to require that such calves be accompanied by a certificate issued or endorsed by a salaried veterinarian of the Canadian government. The certificate would state the date and place the calf's dam was last tested for tuberculosis; that the dam was found negative for tuberculosis on such test; that such test was performed within 60 days preceding the arrival of the calf and dam at the port of entry; and that the calf was born after such test was performed.

Executive Order 12291 and Regulatory Flexibility Act

We are proposing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule 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.

Removing the requirement for tuberculosis testing of certain calves would result in a savings to importers, who would otherwise bear the cost of the tests. The cost of testing one calf is approximately $5, and approximately 100 calves have been imported from Canada each year for the past several years. We do not expect that adoption of this proposal would increase the number of calves imported each year. We have reviewed past importations of calves from Canada and have determined that these involve approximately 10 to 20 importers each year, almost all of which are small entities. If all calves imported from Canada qualified for importation without tuberculosis testing, the savings would amount to approximately $500 per year, distributed among approximately 10 to 20 importers. We do not expect that all importers of calves from Canada will be able to arrange for the calves to meet the proposed requirements for importation without tuberculosis testing, so actual savings should be less than this projected maximum. The maximum economic effect on small entities is estimated to be an annual savings of approximately $30 for each of the approximately 10 to 20 small entities expected to import calves.

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 rule 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 No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 92

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

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

Accordingly, 9 CFR part 92 is amended as follows:

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

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

§ 92.20 [Amended]

2. Section 92.20(b) would be amended by changing the period at the end of paragraph (b)(2)(ii)(B) to read "; or", and by adding a new paragraph (b)(2)(ii)(C) to read as follows:

* * * * *

(C) For a calf imported with its dam, the date and place the calf's dam was last tested for tuberculosis; that the dam was found negative for tuberculosis on such test; that such test was performed within 60 days preceding the arrival of the calf and dam at the port of entry; and that the calf was born after such test was performed.

* * * * *

Done in Washington, DC., this 16th day of May, 1990.

Robert B. Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–11827 Filed 5–21–90; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 161, 162, 163, 164, and 165

[CGD 90-028]

Navigation Safety Initiatives; Puget Sound, Washington, and Columbia River, Oregon

AGENCY: Coast Guard, DOT.

ACTION: Request for comments; notice of hearing.

SUMMARY: The Coast Guard believes that the current operating practices of tank vessels and chemical carriers in Pacific Northwest waters might be enhanced to reduce the risk of pollution and environmental damage due to collisions and groundings. The purpose of this notice is to advise the public that the Commander, Thirteenth Coast Guard District is considering proposing rules and policy changes that could affect vessel operations and equipment while in the navigable waters of the states of Washington and Oregon. Included in this notice are a list of actions under consideration. The Coast Guard is interested in receiving comments on those proposals including alternative courses of action.

DATES: (a) Comments must be received on or before: July 23, 1990.

(b) A public hearing will be held on June 22, 1990, in Seattle, Washington, beginning at 9 a.m. and ending at 5 p.m. or earlier if all speakers have been heard.

ADDRESSES: (a) Comments should be mailed to Commander, Thirteenth Coast Guard District (mps), 915 Second Avenue, Jackson Federal Building, Seattle, Washington 98174-1067. The comments and other materials referenced in this notice will be available for inspection and copying at 915 Second Avenue, Jackson Federal Building, room 3506. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

(b) The public hearing will be held in the 4th Floor South Auditorium, Jackson Federal Building, 915 Second Avenue, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: LT L.R. Radziwanowicz, Assistant Chief, Port Safety Branch, (206) 442-1711, Commander, Thirteenth Coast Guard District (m), 915 Second Avenue, Jackson Federal Building, Seattle, Washington 98174-1067.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this examination of potential safety improvements by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 90-028) and the specific section of the notice to which their comments apply, and give reasons for each comment. The Coast Guard specifically requests and desires comments concerning the anticipated economic impact of the proposals being considered to improve the accuracy of evaluating costs and potential benefits if the proposals are further developed and implemented. Also being sought is input related to factors affecting the implementation of the proposals. An explanation of how much time it might take to implement and delays which can be anticipated are of particular concern. Proposed alternatives to the suggested actions are sought as well.

A public hearing will be held in Seattle, Washington, on June 22, 1990, to receive comments on these navigation safety initiatives. Interested persons are also invited to participate in this hearing. Any person wishing to make an oral statement at the hearing should register by telephone or in writing with the officer listed above under **FOR FURTHER INFORMATION CONTACT** not later than two days before the date of the hearing. Oral statements by persons without prior registration will be allowed only if time permits. The Coast Guard reserves the right to impose time limits on oral statements.

Discussion of Proposal

The Coast Guard believes there is a need to enhance pollution prevention through increased vessel safety measures. This may be accomplished by issuing regulations and changing pilotage policy to reduce the likelihood of collisions and groundings in environmentally sensitive waters. Initially, the Coast Guard is considering implementing such measures in the waters of Puget Sound, the Strait of Juan de Fuca, Rosario Strait, Hood Canal and the Columbia River. A discussion of those measures follows in the form of specific proposals for those waters. For the Puget Sound and adjacent waters the Coast Guard is considering amending the existing Regulated Navigation Area and pilotage policy to incorporate certain vessel operating restrictions and extending the requirement for pilotage through the Strait of Juan de Fuca. For the Columbia River, the Coast Guard is considering establishing a Regulated Navigation Area as the vehicle for implementing certain vessel operating restrictions.

Proposal 1: Tug Escorts (Puget Sound, Strait of Juan de Fuca, Rosario Strait)

Tug escorts could be required for loaded single propulsion tankships and chemical carriers in the Strait of Juan de Fuca west of Port Angeles and adjacent navigable waters. Washington state law does not presently provide for tankship escorts west of Port Angeles. Tankships with a single means of propulsion present a greater risk of grounding in the event of a propulsion system casualty due to lack of a back up system. There are no towing resources in the western reaches of the Strait of Juan de Fuca dedicated to responding to these types of casualties. Anchoring is difficult due to the depth of the waters. Swift currents increase the likelihood that a grounding would occur before anchoring could be achieved or assistance provided by a tug. Similar conditions exist in other waterways. Providing an escort for these vessels could reduce the risk of groundings.

Proposal 2: Emergency Towing Plan (Puget Sound, Strait of Juan de Fuca, Rosario Strait)

An emergency towing plan could be required for tankships and chemical carriers that are also required to have escorts. Certain tankships already are required to be escorted under Washington state law east of Port Angeles. Other tankships and chemical carriers could be required to have tug escorts under Proposal 1. There is currently no requirement that these vessels have a plan that sets forth how assistance will be rendered by the escort vessel in the event of a casualty. It is believed that such a plan will provide for better communications between the escort vessel and the vessel being escorted and thereby assure a coordinated effective response to a propulsion or steering casualty on the tankship and reduce the risk of grounding or a mishap while assistance is being rendered.

Proposal 3: Speed Criteria (Puget Sound, Strait of Juan de Fuca, Rosario Strait)

Speed criteria could be established for tankships and chemical carriers under escort. Certain tankships are required to be under escort; however there have been no criteria established relative to the speed at which these vessels must operate. Of major concern is that tankships not exceed a speed which would render their escort ineffective in providing assistance if a steering or propulsion casualty were to occur. The

safety of the escorting tug and its operating characteristics are important considerations.

Proposal 4: Additional Bridge Personnel (Puget Sound, Strait of Juan de Fuca, Rosario Strait, Columbia River)

More than one licensed officer could be required on the bridge of tankships and chemical carriers while in the Columbia River, the Strait of Juan de Fuca and adjacent navigable waters. A pilot could be considered one of those officers. Vessel casualties have shown that the presence of a second officer on the bridge of vessels transiting pilotage waters could reduce the risk of groundings and collisions. A second officer on watch, perhaps designated as the navigating officer, could relieve the conning officer from a variety of tasks that can detract from maneuvering the vessel in pilotage waters.

Proposal 5: Pilotage (Strait of Juan de Fuca)

In furtherance of the objective of Proposal 4, the requirement for pilotage could be extended throughout the Strait of Juan de Fuca. This would in effect add a second officer on watch on some vessels in the waters west of Port Angeles. Depending upon what action is taken by the State of Washington related to this issue, a Federal pilot could be required on both foreign trade vessels and coastwise U.S. vessels or only on coastwise vessels. Vessels navigating the strait west of Port Angeles would benefit from the same level of local expertise as vessels receive inside Puget Sound. It would also reduce the communications difficulties in that area resulting from the varying degrees of competence in speaking and understanding English. Inasmuch as the Coast Guard presently has the authority to require pilotage under 46 USC 8502 for coastwise domestic vessels within the navigable waters of the Strait of Juan de Fuca, the Coast Guard is nevertheless requesting comments on the proposed policy change in view of the operational and economic impact it could have.

Proposal 6: Emergency Tow Lines on Barges (Puget Sound, Strait of Juan de Fuca, Rosario Strait, Columbia River)

Emergency tow lines could be required on barges transporting oil and chemicals in the Strait of Juan de Fuca and the Columbia River and adjacent navigable waters. The bars on the coasts of Washington and Oregon are particularly hazardous to tug barge combinations. Recent casualties involving tow line failures have focused on the need for a backup system to the primary tow line that can be put into use quickly. While prudent barge companies have implemented such systems, this practice has not received industry-wide acceptance.

Dated: May 15, 1990.

D.H. Whitten,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 90-11784 Filed 5-21-90; 8:45 am]

BILLING CODE 4910-14-M

Notices

Federal Register
Vol. 55, No. 99
Tuesday, May 22, 1990

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

Animal and Plant Health Inspection Service

[Docket 90-059]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Cotton Plant

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Calgene, Inc., to allow the field testing in Washington County, Mississippi, and Pinal County, Arizona, of cotton plants genetically engineered for tolerance to the herbicide bromoxynil. The assessment provides a basis for the conclusion that the field testing of these genetically engineered cotton plants will not present a risk of the introduction of dissemination of a plant pest and will not have a significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal Plant Health Inspsection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Quentin Kubicek, Biotechnologist, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 841, Federal Building, 6506 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write Mr. Clayton Givens at this same address. The environmental assessment should be requested under permit number 90-016-04.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organism and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit fo the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906.

Calgene, Inc., of Davis, California, has submitted an application for a permit for release into the environment, to field test cotton plants genetically engineered for tolerance to the herbicide bromoxynil. The field trail will take place in Washington County, Mississippi, and Pinal County, Arizona.

In the course of reviewing the permit applications, APHIS assessed the impact on the environment of releasing the cotton plants under the conditions described in the Calgene, Inc., application. APHIS concluded that the field testing will not present a risk of plant pest introduction of dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Calgene, Inc., as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene which confers tolerance to the herbicide bromoxynil has been inserted into a cotton chromosome. In nature, chromosomal genetic material can only be transferred to another sexually compatible flowering plant by cross-pollination. In this field test, the introduced gene cannot spread to another sexually compatible plant by cross-pollination because the field test plot is located at a sufficient distance from any sexually compatible cotton plant.

2. Neither the gene which confers tolerance to the herbicide bromoxynil nor its gene product, confers on cotton any plant pest characteristic. Traits that lead to weediness are polygenic and cannot be conferred by adding a single gene.

3. The organism *Klebsiella pneumoniae* subsp. *ozaenae* from which the gene which confers tolerance to the herbicide bromoxynil was isolated is not a plant pest and is a ubiquitous soil bacterium.

4. Select noncoding regulatory regions derived from plant pests have been incorporated into the plant DNA but do not confer on cotton any plant pest characteristic.

5. In nature, the gene which confers tolerance to the herbicide bromoxynil will not provide the transformed cotton plants with any measurable selective advantage over nontransformed cotton plants in their ability to disseminate or to become established in the environment.

6. The vector used to transfer the genes to cotton plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from a DNA sequence of a known plant pest, has been disarmed; that is, pathogenicity genes have been removed from the vector. The vector has been tested and shown to be nonpathogenic to susceptible plants.

7. The vector agent, the bacterium that was used to deliver the vector DNA and the genes into the plant cell, has been shown to be eliminated and no longer associated with any transformed cotton plant.

8. Bromoxynil is a herbicide that rapidly degrades in the environment. It

has been shown to be less toxic to animals than many herbicides commonly used.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 17th day of May, 1990.

Robert B. Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–11825 Filed 5–21–90; 8:45 am]

BILLING CODE 3410–34–M

[Docket No. 90–045]

U.S. Veterinary Biological Product and Establishment Licenses Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The purpose of this notice is to advise the public of the issuance of veterinary biological product and establishment licenses by the Animal and Plant Health Inspection Service during the months of January and February 1990. These actions are taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act.

FOR FURTHER INFORMATION CONTACT: Joan Montgomery, Program Assistant, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8674.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses for Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

Pursuant to these regulations, the Animal and Plant Health Inspection Service (APHIS) issued the following U.S. Veterinary Biological Product Licenses during the months of January and February 1990:

Product license code	Date issued	Product	Establishment	Establishment license No.
1495.20	01–04–90	Encephalomyocarditis vaccine, killed virus	Oxford Veterinary Laboratories, Inc	307
2825.01	01–12–90	Salmonella typhimurium bacterin	Biomune, Inc	368
1631.02	01–16–90	Marek's disease vaccine, live chicken herpesvirus	Solvay Animal Health, Inc	195
2840.00	01–17–90	Streptococcus suis bacterin	Grand Laboratories, Inc	303
7054.00	01–17–90	Bordetella bronchiseptica erysipelothrix rhusiopathiae-pasteurella multocida bacterin-toxoid.	NOBL Laboratories, Inc	319
E062.00	01–17–90	Lymphocytic choriomeningitis virus antiserum, for further manufacture.	Intervet America, Inc	286
5028.02	01–19–90	Feline leukemia virus test kit	IDEXX Corp	313
265A.00	01–22–90	Haemophilus somnus bacterial extract	SmithKline Beckman Corp	189
54D0.00	01–29–90	Mycoplasma pulmonia-rodent coronavirus-sendai virus antibody test kit.	Charles River Laboratories, Inc	344–A
C4D0.00	01–29–90	Mycoplasma fulmonis-rodent coronavirus-sendai virus antibody test kit, for further manufacture.	Charles River Laboratories, Inc	344
C525.00	01–29–90	Escherichia coli monoclonal antibody, for further manufacture.	Charles River Laboratories, Inc	344
1175.20	01–30–90	Bovine rhinotracheitis virus diarrhea-parainfluenza, vaccine, killed virus.	Becham, Inc	225
12C8.41	01–30–90	Bursal disease Marek's disease vaccine, live virus, live chicken and turkey Herpesvirus standard and variant.	Select Laboratories, Inc	279
5010.10	01–30–90	Bluetongue antibody test kit, complement fixation test	Veterinary Diagnostic Technology, Inc	336
5140.00	01–30–90	Caprine arthritis-encephalitis/ovine progressive pneumonia antibody test kit.	Veterinary Diagnostic Technology, Inc	336
A641.01	01–30–90	Marek's disease virus, live turkey Herpesvirus, cell free for further manufacture.	Select Laboratories, Inc	279
14R7.21	02–20–90	Canine Coronavirus-Parvovirus Vaccine, modified live and killed virus.	Fort Dodge Laboratories, Inc	112
3865.00	02–07–90	Streptococcus Equisimilus-Suis Antiserum	Grand Laboratories, Inc	303
13D1.21	02–13–90	Canine Distemper-Adenovirus Type 2-Parainfluenza-Parvovirus Vaccine, modified live virus.	Fort Dodge Laboratories, Inc	112
2657.00	02–13–90	Haemophilus Pleuropneumoniae Bacterin	Rhone Merieux, Inc	298
1623.10	02–16–90	Canary Pox Vaccine, modified live virus	Biomune, Inc	368
2641.00	02–20–90	Erysipelothrix Rhusiopathiae Bacterin	Grand Laboratories, Inc	303
A185.20	02–20–90	Bovine Rhinotracheitis-Virus Diarrhea-Parainfluenze, Respiratory Syncytial Virus, killed virus, for further manufacture.	Grand Laboratories, Inc	303
A905.52	02–20–90	Rabies Virus, killed virus, for further manufacture	Fort Dodge Laboratories, Inc	112
A905.51	02–23–90	Rabies Virus, killed virus, for further manfuacture	Fort Dodge Laboratories, Inc	112

No product licenses were suspended, revoked, or terminated during January or February 1990.

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

Pursuant to these regulations, APHIS issued the following U.S. Veterinary Biologics Establishment Licenses during the month of January 1990:

Establishment	Establishment license No.	Date issued
Charles River Laboratories, Inc.	344	01-29-90
Charles River Laboratories, Inc.	344-A	01-29-90

No new U.S. Veterinary Biologics Establishment Licenses were issued during the month of February 1990 and no establishment licenses were suspended, revoked, or terminated during the months of January or February 1990.

Done in Washington, DC, this 17th day of May 1990.

Robert B. Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-11824 Filed 5-21-90; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 90-065]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that six applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Analyst, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application	Applicant	Date received	Organism	Field test location(s)
90-038-02, Renewal of Permit 89-030-02, Issued 04-28-89.	Monsanto Agricultural Company.	02-07-90	Tomato plants genetically engineered to express a gene from *Bacillus thuringiensis* var. *kurstaki* that encodes a delta-endotoxin protein which is lethal to larvae of some lepidopteran insects.	California.
90-071-02, Renewal of Permit 89-065-01, Issued 05-19-89.	University of Kentucky	03-12-90	Tobacco plants genetically engineered to express a metallothionein gene from the mouse.	Kentucky.
90-088-03, Renewal of Permits 89-300-01, Issued 02-21-90; and 89-305-03, 89-305-05, 89-311-01, Issued 03-01-90.	The UpJohn Company	03-29-90	Cantaloupe and squash plants genetically engineered to express the genes encoding the viral coat proteins of cucumber mosaic virus and papaya ringspot virus.	California, Georgia, Michigan.
90-108-03	Calgene, Inc	04-18-90	Cotton plants that are genetically engineered to express both a delta-endotoxin protein from *Bacillus thuringiensis* var. *kurstaki* which is toxic to the larvae of some lepidopteran insects, and an enzyme that confers tolerance to the herbicide bromoxynil; and cotton plants genetically engineered to express an enzyme that confers tolerance to the herbicide bromoxynil.	Hawaii.
90-114-01, Renewal of Permit 89-136-01, Issued 08-11-89.	Pioneer Hi-Bred Int., Inc.	04-24-90	Alfalfa plants genetically engineered to express the coat protein gene of alfalfa mosaic virus.	Iowa.
90-121-01	Pennsylvania State University.	05-01-90	Rice plants genetically engineered to contain a kanamycin antibiotic marker gene.	Arizona.

Done in Washington, DC, this 17th day of May, 1990.

Robert B. Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-1182 Filed 5-21-90; 8:45 am]

BILLING CODE 90-3410-34

Forest Service

Sequoia National Forest, CA; Hot Springs Ranger District Appeal Exemption

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal, Hot Springs Ranger District, Sequoia National Forest.

SUMMARY: The Forest Service is exempting from appeal any decision issued from the effective date of this Notice through November 1990, that results from the analysis of the severe timber mortality in the western half of the Hot Springs Ranger District, Sequoia National Forest. The area proposed for exemption is generally the western half of the Hot Springs District. It is west of a line running north from Poso Park, through Doublebunk Meadow to Dome Rock. Unusual mortality is being caused by drought and related insect infestation.

There are currently higher than normal levels of tree mortality occurring throughout the Sequoia National Forest as a result of four consecutive years of below normal precipitation. This drought condition has caused a high degree of stress within the trees, which reduces their natural defense mechanisms and weakens them to the extent that they are now predisposed to attack by bark and engraver beetles. The western half of the Hot Springs District is experiencing mortality well above the District and Forest average.

Trees subject to insect attack act as hosts for producing new broods of insects, although harvest of these trees will probably not be effective in reducing the spread of the infestation. The commercial value of lumber recovered from infested trees declines rapidly as the wood deteriorates. Prompt removal of affected timber minimizes value and volume loss in salvaged timber. Excessive numbers of dead trees can lead to heavy fuel concentrations, making wildfire control extremely difficult.

Some of the insect-infested area has terrain that is appropriate for ground-based logging systems, such as tractors and skidders A portion of the affected area is poorly accessed by roads and is more appropriate for helicopter logging. (No new road construction will be proposed for the salvage operations, in part because it is not economical to build new roads for the relatively low harvest volume that will be proposed for sale.)

During the spring and early summer of 1990, helicopter logging on salvage sales (which are currently under contract) will be in progress in the vicinity of this relatively inaccessible insect-infested area. If the proposed insect salvage projects are not delayed due to appeals, it is possible that the current helicopter contractors will still be in the area and available to bid on contracts for the helicopter salvage sales. If the proposed helicopter projects are delayed by appeals, it is likely that the helicopter contractors will have completed their current contracts and will not be available to bid on the proposed helicopter salvage sales. If this happens, it is likely that there will be no bids on the helicopter sales.

Salvage logging, especially helicopter logging, is costly when compared to logging green timber sales because of the typically low volumes per acre removed. To be economically feasible, timber value must be high enough to compensate for the higher logging costs. If dead timber is not removed promptly, the decline in value and volume caused by deterioration will prevent economical removal by both ground-based and helicopter logging systems. For this reason it is necessary to remove dead and dying timber as soon as possible if an environmental analysis supports the decision to do so

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeals any decision made through November 1990 relating to the harvest and restoration of lands affected by drought-induced timber mortality in the western half of the Hot Springs District of the Sequoia National Forest. The affected area is west of a line going north from Poso Park, through Doublebunk Meadow to Dome Rock. My decision is conditional upon the Forest Supervisor determining through analysis that there is good cause to proceed with these projects to recover value in dead and dying timber and to rehabilitate National Forest lands affected by chronic drought and insect attack.

Environmental documents under preparation will address the effects of the proposed action on the environment, will document public involvement, and will address the issues raised by the public.

EFFECTIVE DATE: This decision will be effective May 22, 1990

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Timber Management Staff Director, Pacific Southwest Region, USDA Forest Service, 630 Sansome Street, San Francisco, CA. 94111, (415) 705–2648, or James A. Crates, Forest Supervisor, Sequoia National Forest, 900 W. Grand Avenue, Porterville, CA 93257, (209) 784–1500.

ADDITIONAL INFORMATION: The environmental analyses for this proposal will be documented in the Buck Helicopter Salvage Sale, the Tie Helicopter Salvage Sale, the Onion Flat Special Salvage Timber Sale (SSTS), the Young Bug SSTS, the Round SSTS, the Can SSTS, the Table Top SSTS, the Parker Pines SSTS, the Poso Pines SSTS, and the Windy Ridge SSTS environmental documents. Pursuant to 40 CFR 1501.7, scoping is currently in progress on some of the above projects, and will be initiated on the other projects in the near future. Scoping is conducted by the Hot Springs Small Sales Officer to determine the issues to be addressed in the environmental analyses.

The Forest is expected to complete the environmental documentation on the first of the proposed projects at the end of May or early June. Environmental analyses will continue, and decisions will be issued continuing into November 1990. The environmental documents and related maps will be available for public review at the Hot Springs Ranger Station, Rt. 4, Box 548, California Hot Springs, CA 93207 and at the Supervisor's Office, Sequoia National Forest, 900 W. Grand Avenue, Porterville, CA 93257.

The catastrophic damage presently occurring in the western half of the Hot Springs District covers approximately 50,000 acres. Within this area approximately 6,000 acres and 3 million board feet (MMBF) is presently being proposed for salvage. The value to the Forest Service of 3 MMBF salvage volume is estimated at $180,000. This figure does not include the many jobs and thousands of dollars in benefits that are realized in related service, supply and construction industries. Rehabilitation and restoration measures will be necessary for watershed protection, erosion prevention and fuels treatments.

Delays for any reason could jeopordize chances of accomplishing recovery and rehabilitation of the damaged resources during this field season. Delays would result in volume and value losses, and increase the chances of wildfires occurring due to the large additional quantity of standing and down fuels.

May 16, 1990.

David M. Jay,

Deputy Regional Forester.

[FR Doc. 90–11812 Filed 5–21–90; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for the clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chatper 35).

Agency: Bureau of the Census.

Title: Census of Finance, Insurance, and Real Estate—1989 Pretest.

Form number(s): CB–6001, 6002, 6100, 6200, 6301, 6302, 6400, 6501, 6502, 6503, 6700.

Type of request: New collection.

Burden: 16,742 hours.

Number of respondents: 4,829.

Avg hours per response: 1 hour and 28 minutes.

Needs and uses: This pretest will submit plans and materials developed for the 1992 Census of Finance, Insurance, and Real Estate to rigorous testing under conditions that closely approximate an actual census. Census will use pretest results to plan and implement, for the first time, economic census coverage for the following service sector industries: depository and nondepository credit institutions; security and commodity brokers, dealers, exchanges, and services; insurance carriers, agents, brokers, and services; real estate operators and lessors, agents and managers, title abstract offices, and land subdividers and developers; and

holding and other investment offices. Statistical measures from this pretest will provide information to evaluate questionnaire design, instructions, measurement concepts, and collection methods.

Affected public: Businesses or other for-profit organizations; Federal agencies or employees; Non-profit institutions; and Small businesses or organizations.

Frequency: One time only.

Respondent's obligation: Mandatory.

OMB desk officer: Don Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (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 Don Arbuckle, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 16, 1990.

Edward Michals,

Department Clearance Officer, Office of Management and Organization.

[FR Doc. 90-11767 Filed 5-21-90; 8:45 am]

BILLING CODE 3510-07-M

Bureau of Export Administration

[Docket No. 90915-0011]

Prepreg Production Equipment; Solicitation of Public Comments on the Economic Impact of Maintaining Export Controls Notwithstanding Foreign Availability

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Commerce.

ACTION: Request for comments on the economic impact of maintaining controls on Prepreg Production Equipment.

SUMMARY: Under section 5(f) of the EAA (the Act), when the President exercises his authority and retains export controls on a commodity notwithstanding a finding of foreign availability, the Secretary of Commerce is also required to issue a concise statement of the economic impact of the decision to maintain controls on prepreg production equipment. To assist the Department in making such a statement, comments are requested from the public. The specific types of information requested are described in the "Supplementary Information" portion of this document.

DATES: Comments should be received by June 21, 1990.

ADDRESSES: Written comments should be sent to: Irwin M. Pikus, Director, Office of Foreign Availability, rm SB 097, Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Lisa Gimelli Hilliard, Office of Foreign Availability, rm. SB 097, Department of Commerce, Washington, DC 20230, Telephone: (202) 377-8074.

SUPPLEMENTARY INFORMATION: The Office of Foreign Availability (OFA) of the Bureau of Export Administration is required by sections 5 (f) and (h) of the Export Administration Act of 1979, as amended (EAA), to request and review claims of foreign availability on items controlled for national security purposes. Under section 5 (f) of the EAA, I made a positive determination on August 18, 1989 for prepreg production equipment controlled by ECCN 1357A(e) of the Commodity Control List (CCL) (Supplement No. 1 to § 799.1 of the Export Administration Regulations (15 CFR 799.1)). On September 15, 1989, the President determined that export controls on this equipment must be maintained notwithstanding foreign availability, because the absence of controls would prove detrimental to U.S. national security, and directed that negotiations be initiated with source countries to eliminate the foreign availability. This determination was published in the **Federal Register** on September 25, 1989 (54 FR 39159).

The Department requests that comments from the public provide information on the economic impact of maintaining controls in terms of sales, employment and profitability. Where appropriate, comments should be made relative to specific manufacturers of prepreg production equipment, as well as to the industry as a whole. Comments will be used to supplement other available information needed to analyze the economic effects of maintaining current U.S. controls on the trade in this equipment. Information for which confidential treatment is requested should be submitted separately as described below.

This period for submission of comments on the economic impact of maintaining the controls on prepreg production equipment will close on June 21, 1990. The Department will consider all comments received before the close of the comment period in developing the economic impact statement. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured.

Specifically, the Department is interested in receiving the following information relative to prepreg production equipment in 1989 and projections for 1990:

1. Estimate of total world sales, including sales to the USSR, Eastern Europe, the People's Republic of China (PRC) and other countries. Estimates should be both in terms of dollar sales and number of units.

2. Estimate of projected sales to the USSR, Eastern Europe, the PRC and other countries if the export restrictions on prepreg production equipment were removed.

3. Descriptions of market demand, including distribution of sales by country, type of buyer (i.e. industrial; government), and by use application.

4. Descriptions of market supply, including distribution of production and potential capacity by country.

5. Degree to which production facilities are dedicated exclusively to the production of pregreg production equipment.

6. Price level and range of prices for the equipment. Is there a significant price differential between U.S. and non-U.S. producers? Could prices be substantially reduced if production levels were increased (i.e. do significant production economies of scale exist)?

7. Are there significant quality differences among suppliers? Is there a significant quality difference between equipment produced by the U.S. and outside the U.S.? Describe the nature of such differences.

8. Primary or critical components and/or materials used in the manufacture of prepreg production equipment and source of components and/or materials (i.e. domestic or foreign).

9. Estimate of number of employees required per million dollars of sales; what occupational skill levels are generally required by production workers?

10. To what extent do export restrictions on this equipment affect sales and profits? Is there an effect on research and development (R&D) activities in terms of total R&D expenditures and focus of R&D activities?

11. Estimate of man-hours needed to complete export forms for sale of equipment to Warsaw Pact and to Western countries. Estimates of amount of time to receive export license from date filed.

The above information collection has been approved by OMB under Control Number 0694-_____. Public reporting burden for this collection is estimated to average 5 hours per response, including the time for reviewing instructions, searching existing data sources,

gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this burden to Dr. Irwin M. Pikus, Director, Office of Foreign Availability, room SB-097, Department of Commerce, Washington, DC 20230 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

All non-confidential public comments will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning the economic impact of maintaining export controls on prepreg production equipment will be maintained in the Bureau of Export Administration's Freedom of Information Records Inspection Facility, room 4886, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration, Freedom of Information Officer, at the above address or by calling (202) 377-2593.

The Department will accept public comments accompanied by a request that all or part of the material be treated confidentially because of its business proprietary nature or for any other reason. The information for which confidential treatment is requested should be submitted on sheets of paper separate from any non-confidential information submitted. The top of each page should be marked with the term "CONFIDENTIAL BUSINESS INFORMATION." The Bureau of Export Administration will either accept the submission in confidence or, if the submission fails to meet the standards for confidential treatment, will return it. A non-confidential summary must accompany each submission of confidential information. The summary will be made available for public inspection.

Information accepted by the Bureau of Export Administration as privileged under subsections (b) (3) or (4) of the Freedom of Information Act (5 U.S.C. section 552(b) (3) and (4)) will be kept confidential and will not be available for public inspection, except according to law.

Dated: May 15, 1990.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 90-11768 Filed 5-21-90; 8:45 am]

BILLIND CODE 3510-DT-M

Joint Factory Computing and Communications Subcommittee of the Automated Manufacturing Equipment Technical Advisory Committee et al; Partially Closed Meeting

A meeting of the Joint Factory Computing and Communications Subcommittee of the Automated Manufacturing Equipment Technical Advisory Committee; the Computer Peripherals, Components & Related Test Equipment Technical Advisory Committee; the Computer Systems Technical Advisory Committee and the Electronic Instrumentation Technical Advisory Committee will be held June 14, 1990, 8:30 a.m., in the Herbert C. Hoover Building, room 1617F, 14th & Pennsylvania Avenue, NW., Washington, DC. The Joint Committee advises the Office of Technology and Policy Analysis on overlapping issues such as: Computerized Numberial Control (CNC), Computer-Aided Design (CAD), Computer-Aided Manufacturing (CAM), Computer-Aided Engineering (CAE), etc.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion of technical data and software regulations rewrite.
4. Discussion of workstations and Computer-Aided Design (CAD).
5. Discussion of neworks.
6. Discussion of automated testing.
7. Discussion of microprocessor development systems.

Executive Session

8. 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 that time permits, members of the public may present oral statements to the Committee. Written sttements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, OTPA/BXA, room 4069A, U.S. Department of Commerce, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552(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 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 377-2583.

Dated: May 16, 1990.

Betty Anne Ferrell,

Director Technical Advisory Committee Unite.

[FR Doc. 90-11879 Filed 5-21-90; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-570-802]

Final Determination of Sales at Less Than Fair Value; Industrial Nitrocellulose From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that imports of industrial nitrocellulose (INC) from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries on INC from the PRC. The ITC will determine within 45 days of the publication of this notice whether these imports injure, or threaten material injury to, the U.S. industry.

EFFECTIVE DATE: May 22, 1990.

FOR FURTHER INFORMATION CONTACT: Joel Fischl or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–3003 or (202) 377–1769, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that imports on INC from the PRC are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated weighted-average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

On March 5, 1990, the Department published an affirmative preliminary determination (55 FR 7753). Since that time, the Department has not received a hearing request or comments from any interested parties.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were 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 this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

INC is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent which is produced from the reaction of cellulose with nitric acid. INC is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. INC is currently provided for under HTS subheading 3912.20.00. Prior to January 1, 1989, INC was classifiable under item 445.25 of the *Tariff Schedules of the United States Annotated* (TSUSA). The scope of this investigation does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

Period of Investigation

The period of investigation is April 1, 1989 through September 30, 1989.

Fair Value Comparisons

To determine whether sales of INC from the PRC to the United States were made at less than fair value, we compared the United States Price to the foreign market value, as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We used best information available as required by section 776(c) of the Act because China North Industries Corporation failed to respond to the Department's requests for information. We determined that the best information available was information submitted by the petitioner.

United States Price

Petitioner's estimate of United States Price for INC is based upon the average c.i.f. unit value of cellulose nitrate imports from the PRC, as reported in the U.S. Census Bureau IM–145 report for May 1989. Petitioner made adjustments to the unit price for estimated movement charges.

Foreign Market Value

Petitioner alleges that the PRC is a nonmarket economy country within the meaning of section 773(c) of the Act. Accordingly, petitioner based foreign market value on constructed value calculated from factors of production valued in a market economy country (i.e., Thailand) at a comparable level of economic development to the PRC. In its calculation, petitioner added amounts for factory overhead, general expenses and packing based on petitioner's costs. Petitioner also added the statutory minimum eight percent of the sum of its own general expenses and manufacturing cost for profit.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation, under section 733(d) of the Act, of all entries of INC from the PRC, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from the PRC exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/Producer/Exporter	Weighted-Average margin percentage
China North Industries Corporation	78.40
All Others	78.40

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations.

If the ITC determines that material injury, or threat of material injury, does not exist with respect to INC, the proceeding will be terminated and all securities posted as a result of the suspension will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all INC from the PRC, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Dated: May 14, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90–11769 Filed 5–21–90; 8:45 am]

BILLING CODE 3510–DS–M

[A-588-812]

Final Determination of Sales at Less Than Fair Value; Industrial Nitrocellulose from Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that imports of industrial nitrocellulose (INC) from Japan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of INC from Japan. The ITC will determine within 45 days of the publication of this notice whether these imports injure, or threaten material injury to, the U.S. industry.

EFFECTIVE DATE: May 22, 1990.

FOR FURTHER INFORMATION CONTACT: Joel Fischl or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-3003 or (202) 377-1769, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that imports of INC from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673(a)) (the Act). The estimated weighted-average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

On March 5, 1990, the Department published an affirmative preliminary determination (55 FR 7762). Since that time, the Department has not received a hearing request or comments from any interested parties.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were 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 this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

INC is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent which is produced from the reaction of cellulose with nitric acid. INC is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. INC is currently provided for under HTS subheading 3912.20.00. Prior to January 1, 1989, INC was classifiable under item 445.25 of the *Tariff Schedules of the United States Annonated* (TSUSA). The scope of this investigation does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

Period of Investigation

The period of investigation is April 1, 1989 through September 30, 1989.

Fair Value Comparisons

To determine whether sales of INC from Japan to the United States were made at less than fair value, we compared the United States Price to the foreign market value, as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We used best information available as required by section 776(c) of the Act because Asahi Chemical Industry Co., Ltd failed to respond to the Department's requests for information. We determined that the best information available was information submitted by the petitioner.

United States Price

Petitioner's estimate of United States Price for INC is based upon the average c.i.f. unit value of cellulose nitrate imports from Japan, as reported in the U.S. Census Bureau IM-145 report for May 1989. Petitioner made adjustments to the unit price for estimated movement charges.

Foreign Market Value

Petitioner's estimate of foreign market value for INC is based on foreign manufacturers' price quotes to Japanese customers, as determined by petitioner's market research. Petitioner deducted movement charges from the foreign market value and made circumstance of sale adjustments for differences in credit and packing.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation, under section 733(d) of the Act, of all entries of INC from Japan, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Japan exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/Producer/Exporter	Weighted-average margin percentage
Asahi Chemical Industry Co., Ltd	66.00
All Others	66.00

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations.

If the ITC determines that material injury, or threat of material injury, does not exist with respect to INC, the proceeding will be terminated and all securities posted as a result of the suspension will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all INC from Japan, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Dated: May 14, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-11770 Filed 5-21-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-805]

Final Determination of Sales at Less Than Fair Value; Industrial Nitrocellulose from the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that imports of industrial nitrocellulose (INC) from the Republic of Korea (ROK) are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of INC from the ROK. The ITC will determine within 45 days of the publication of this notice whether these imports injure, or threaten material injury to, the U.S. industry.

EFFECTIVE DATE: May 22, 1990.

FOR FURTHER INFORMATION CONTACT: Joel Fischl or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-3003 or (202) 377-1769, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that imports of INC from the ROK are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated weighted-average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

On March 5, 1990, the Department published an affirmative preliminary determination (55 FR 7754). Since that time, the Department has not received a hearing request or comments from any interested parties.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were 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 this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

INC is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent which is produced from the reaction of cellulose with nitric acid. INC is used as a film-former in coatings, lacquers, furniture finishers, and printing inks. INC is currently provided for under HTS subheading 3912.20.00. Prior to January 1, 1989, INC was classifiable under item 445.25 of the *Tariff Schedules of the United States Annotated* (TSUSA). The scope of this investigation does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

Period of Investigation

The period of investigation is April 1, 1989 through September 30, 1989.

Fair Value Comparisons

To determine whether sales of INC from the ROK to the United States were made at less than fair value, we compared the United States price to the foreign market value, as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We used best information available as required by section 776(c) of the Act because Miwon Company, Ltd failed to respond to the Department's requests for information. We determined that the best information available was information submitted by the petitioner.

United States Price

Petitioner's estimate of United States Price for INC is based upon the average c.i.f. unit value of cellulose nitrate imports from the ROK, as reported in the U.S. Census Bureau IM-145 report for May 1989. Petitioner made adjustments to the unit price for estimated movement charges.

Foreign Market Value

Petitioner's estimate of foreign market value for INC is based on foreign manufacturers' price quotes to Korean customers, as determined by petitioner's market research. Petitioner deducted movement charges from the foreign market value and made circumstance of sale adjustments for differences in credit.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation, under section 733(d) of the Act, of all entries of INC from the ROK, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from the ROK exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/Producer/Exporter	Weighted-average margin percentage
Miwon Company, Ltd	66.30
All Others	66.30

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations.

If the ITC determines that material injury, or threat of material injury, does not exist with respect to INC, the proceeding will be terminated and all securities posted as a result of the suspension will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all INC from the ROK, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Dated: May 14, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-11771 Filed 5-21-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-412-803]

Final Determination of Sales at Less Than Fair Value; Industrial Nitrocellulose from the United Kingdom

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that imports of industrial nitrocellulose from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of industrial nitrocellulose from the United Kingdom. The ITC will determine within 45 days of the publication of this notice whether these imports injure, or threaten material injury to, the U.S. industry.

EFFECTIVE DATE: May 22, 1990.

FOR FURTHER INFORMATION CONTACT: Steven Lim or Bradford Ward, 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) 377-4087 or (202) 377-5288, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that imports of industrial nitrocellulose (INC) from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). The estimated weighted-average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

On March 5, 1990, the Department published an affirmative preliminary determination (55 FR 7763). Verification of the questionnaire responses submitted by the respondent, Imperial Chemical Industries (ICI) was conducted at ICI's headquarters in Manchester, United Kingdom, from March 5 through March 9, 1990, and at the Wilmington, Delaware, facilities of ICI's U.S. subsidiary, ICI Americas, on March 26 and March 27, 1990.

Interested parties submitted comments for the record in case briefs dated April 19 (respondent) and April 25, 1990 (petitioner), and in rebuttal briefs dated April 26 (petitioner) and April 30, 1990 (respondent).

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were 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 this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent which is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. Industrial nitrocellulose is currently provided for under HTS subheading 3912.20.00. Prior to January 1, 1989, industrial nitrocellulose was classifiable under item 445.25 of the *Tariff Schedules of the United States* (TSUS). The scope of this investigation does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

Period of Investigation

The period of investigation (POI) is April 1, 1989, through September 30, 1989.

Such or Similar Comparisons

For the purposes of this investigation, we have determined that all industrial nitrocellulose comprises a single category of such or similar merchandise. Product comparisons were made on the basis of the following criteria: Nitrogen percentage, viscosity rating, wetting agent type, cellulose source, physical form, and wetting agent percentage.

Where there were no sales of identical merchandise in the home market with which to compare merchandise sold in the United States, sales of the most similar merchandise were compared on the basis of the characteristics described above. In those instances, we made adjustments for differences in the physical characteristics of the merchandise in accordance with section 773(a)(4)(C) of the Act.

Fair Value Comparisons

To determine whether sales of industrial nitrocellulose from the United Kingdom in the United States were made at less than fair value, we compared the United States price to the foreign market value, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

As provided for in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price where the merchandise was sold to unrelated purchasers prior to importation into the United States.

In those cases where sales were made through a related sales agent in the United States to an unrelated U.S. purchaser prior to the date of importation, we also used purchase price as the basis for determining United States price. For these sales, the Department determined that purchase price was the most appropriate determinant of United States price based on the following elements:

1. The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of a related selling agent;

2. This was the customary commercial channel for sales of this merchandise between the parties involved; and

3. The related selling agent in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer in Puerto Rico.

Where all the above elements are met, we regard the routine selling functions of the exporter as merely having been relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions take place in the United States or abroad does not change the substance of the functions themselves.

We calculated purchase price based on either delivered or CIF port of entry prices to unrelated customers in the United States. We made deductions, where appropriate, for brokerage and handling, foreign inland freight, storage in the United Kingdom, ocean freight, containerization, transit insurance, U.S. duties, U.S. Customs fees, and U.S.

inland freight, in accordance with section 772(d)(2) of the Act. We used purchase order date as the appropriate date of sale for purchase price transactions because we verified that the material terms of sale (*e.g.*, price and quantity) were set at the time of the purchase order.

Where the merchandise was sold to unrelated purchasers after importation into the United States, we used exporter's sales price (ESP) to represent the United States price, as provided for in section 772(c) of the Act. We calculated ESP based on FOB warehouse or delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, brokerage and handling, containerization, ocean freight, transit insurance, U.S. duties, U.S. Customs fees, U.S. inland freight, credit expenses, commissions, product liability insurance, and indirect U.S. selling expenses (including inventory carrying costs, technical service expenses, and other miscellaneous indirect selling expenses incurred in the United States and the home market).

ICI incurred no short term debt in the United States. Therefore, for purposes of calculating ESP credit and inventory carrying expense, we used the average U.S. prime rate as the best information available.

In accordance with section 772(d)(1)(C) of the Act, we added to the United States price the amount of value-added tax (VAT) that apparently would have been collected on the export sale had it been subject to the tax. We computed the hypothetical amount of VAT added to United States price by applying the home market VAT rate to a United States price net of all charges and expenses that would not have been incurred had the product been sold in the home market.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we calculated foreign market value based on home market sales. We calculated foreign market value based on the packed prices (either delivered or ex-works) to unrelated customers in the United Kingdom. We made deductions, where appropriate, for inland freight, discounts, rebates, and credit expenses. We deducted home market packing costs and added U.S. packing costs.

In comparing purchase price sales, we made a circumstance of sale adjustment for differences in credit terms. When a commission was paid on a purchase price sale, we added the amount of the commission to the weighted average foreign market value and then deducted from the weighted average foreign market value the lesser of either total home market indirect selling expenses or the U.S. commission amount, in accordance with 19 CFR 353.56(b)(1).

In comparing ESP sales, we deducted from the average foreign market value home market credit expenses, as well as indirect selling expenses. In accordance with 19 CFR 353.56(b)(2), the amount of home market indirect selling expenses deducted from the average foreign market value could not exceed total U.S. indirect selling expenses for the sale in question.

We made a circumstance of sale adjustment in accordance with section 773(a)(4)(B) of the Act to account for any differences in taxation between the two markets. Because the home market prices were reported net of VAT, this adjustment was made by adding the hypothetical tax on the U.S. sale to both the United States price and the foreign market value.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Interested Party Comments

Comment 1: Respondent argues that the Department should use home market sales to related customers in calculating foreign market value because doing so is the Department's normal practice when the sales can be demonstrated to be arm's length in nature. Respondent states that the comparability of prices to related and unrelated customers was established, demonstrating the arm's length nature of the related party transactions.

Petitioner argues that the Department should not include sales to related parties because respondent failed to demonstrate adequately (*i.e.*, by providing proof that pricing to related parties follows established policies) that the prices were arm's length in nature.

DOC Position: We have not included sales to related parties in calculating foreign market value. Under 19 CFR 353.45, the Department may disregard transactions between related parties if the price does not fairly reflect the usual price at which sales are made to unrelated parties. Generally, for the Department to determine whether transactions between related parties are arm's length in nature,

> a respondent must provide a detailed analysis of the prices charged to related parties and those to unrelated parties on identical products. If, based on this evidence, it appears that the prices may be comparable, we will do our own analysis on all of respondent's sales.

(Final Determination of Sales at Less than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany (54 FR 18992, 19090; May 3, 1989))

To show that the related party transactions were at arm's length, respondent attempted at verification to demonstrate that, for particular grades of merchandise in the home market, the reported prices to two buyers, one of which was related to respondent, were comparable. However, the nature of financial transactions between respondent and the related buyer was such that respondent was unable to provide documentary proof that merchandise was actually paid for. Accordingly, respondent was not able to satisfy the obvious prerequisite that prices used in such a comparison be verifiable.

In addition, it is questionable whether the respondent and the related party are separate entities. Indeed, the brief filed after the verification by respondent's counsel emphasized that the related buyer, described in the verification report as a sister company, "should correctly be termed a business unit," (respondent's April 19, 1990, brief, p. 13). Thus, it appears that the related party is simply a unit within the same company as the respondent. Since respondent used unverifiable prices to what may not even be a separate entity, we have not accepted respondent's claim that sales to related parties should be used in calculating the FMV for purposes of our final determination.

Comment 2: Respondent and petitioner point out that, for comparisons of all grades of INC, the difference in merchandise amount reported in respondent's database was added to the FMV but should have been subtracted from the FMV.

DOC Position: We agree, and have made this correction for purposes of the final determination.

Comment 3: Respondent argues that the Department should calculate the hypothetical U.S. VAT based on the gross U.S. price, instead of a U.S. price net of selling expenses, movement charges, rebates and commissions. Alternatively, respondent argues, the Department should use the weighted average of actual VAT paid in the home market as the hypothetical U.S. VAT.

Petitioner argues that using the gross U.S. price as the basis for VAT calculations would artificially increase the hypothetical VAT.

DOC Position: As explained in the U.S. price section of this notice, section 772(d)(1)(C) directs the Department to add to the U.S. price the amount of VAT that apparently would have been collected on the export sales had they been subject to the tax. Although this inquiry is unavoidably hypothetical, the most reasonable course is to include within the U.S. tax base that level of expenses which is included within the home market tax base.

Consistent with our practice, we made circumstance of sale adjustments to the FMV to offset any differences between the VAT in the United Kingdom and the imputed VAT on U.S. sales. This adjustment ensured that prices in each market were compared on a tax-net basis, preventing the export exemptions from artificially inflating or deflating the dumping margin.

Comment 4: Respondent argues that the reported U.S. interest rate, rather than the reported U.K. interest rate, should be used in calculating credit expenses on purchase price sales.

Petitioner argues that since ICI Americans has no short-term borrowing, its short-term funds needs must be met directly or indirectly by ICI, the parent company in the United Kingdom. Therefore, using ICI's credit expense is appropriate.

DOC Position: Since purchase price sales are normally financed in the home market country, we have followed Departmental practice and used the home market interest rate in calculating credit on purchase price sales.

Comment 5: Respondent argues that a post-POI provision to a customer of cost-free merchandise as a replacement for merchandise sold during the POI should be allowed as a direct warranty expense.

Petitioner argues that no warranty expense was mentioned in the response nor was any general or customer-specific warranty arrangement reported, and that the expense was actually only "an adjustment to the price of a particular shipment." Petitioner states that any adjustment allowed should apply only to the one sale in question or, alternatively, to all sales of INC, but not just to all sales to the customer in question.

DOC Position: We have not allowed any adjustment for the claimed warranty expense. Respondent stated in its questionnaire response that it incurred no warranty expenses in the home market and made no mention that a warranty policy existed. As new information, such a claim cannot be accepted.

Comment 6: Respondent argues that an expense reported as containerization of U.S.-bound shipments was actually a loading expense which is part of fixed manufacturing overhead expenses, and thus should not be deducted from U.S. price.

DOC Position: We consider the expense a movement expense, and have treated it as such for purposes of our final determination. In addition, Departmental characterization of expenses need not conform to a company's internal classification procedures.

Comment 7: Respondent argues that a storage expense incurred in the United Kingdom on Puerto Rico-bound shipments is included in the transfer price from respondent to a related reseller, and thus was correctly not reported.

DOC Position: We disagree. The storage expense was incurred after sale to the first unrelated buyer and thus has been deducted from the U.S. price for sales made in Puerto Rico.

Comment 8: Petitioner argues that home market technical service expenses are not, as respondent claims, directly related to home market sales.

DOC Position: We agree. We have continued to treat these expenses as indirect since they consist primarily of employees' salaries which would have been paid regardless of specific sales being made.

Comment 9: Petitioner argues that, because some pallets are not returned, ICI overestimated home market pallet costs by including a return cost for all pallets as well as replacement costs for some.

DOC Position: We verified that the home market packing costs were correctly reported. We therefore have used the verified pallet cost information in calculating home market packing cost for purposes of our final determination.

Comment 10: Respondent states that U.S. product code 29018 should have been matched with U.K. product code 11127, not 11128.

DOC Position: We determined that U.S. product code 29018 was more appropriately matched with U.K. product code 11128 because their viscosity ratings are closer. In all comparisons of similar merchandise where only viscosity differed, the home market product with a viscosity rating closest to the U.S. product's viscosity rating was chosen as the most appropriate match.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation, under section 733(d) of the Act, of all entries of industrial nitrocellulose from the United Kingdom, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from the United Kingdom exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/Producer/Exporter	Weighted-average (*Margin percentage*)
Imperial Chemical Industries	11.13
All Others	11.13

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist with respect to industrial nitrocellulose, the proceeding will be terminated and all securities posted as a result of the suspension will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all industrial nitrocellulose from the United Kingdom, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Dated: May 14, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-11772 Filed 5-21-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-803]

Final Determination of Sales at Less Than Fair Value; Industrial Nitrocellulose From the Federal Republic of Germany

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that imports of industrial nitrocellulose (INC) from the Federal Republic of Germany (FRG) are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of industrial nitrocellulose from the FRG. The ITC will determine within 45 days of the publication of this notice whether these imports injure, or threaten material injury to, the U.S. industry.

EFFECTIVE DATE: May 22, 1990.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Bradford Ward, 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) 377-4136 or (202) 377-5288, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that imports of industrial nitrocellulose from the FRG are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). The estimated weighted-average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice

Case History

On March 5, 1990, the Department published an affirmative preliminary determination (55 FR 7763). Verification of the questionnaire responses submitted by the respondent, Wolff Walsrode AG (Wolff), was conducted at Wolff's U.S. subsidiary in Burr Ridge, Illinois on March 7 through 9, 1990, and at Wolff's headquarters in Bomlitz, FRG from March 19 through 23, 1990.

Interested parties submitted comments for the record in their case briefs dated April 20, 1990, and in their rebuttal briefs dated April 27, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were 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 this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent which is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. Industrial nitrocellulose is currently provided for under HTS subheading 3912.20.00. Prior to January 1, 1989, industrial nitrocellulose was classifiable under item 445.25 of the *Tariff Schedules of the United States* (TSUS). The scope of this investigation does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

Period of Investigation

The period of investigation (POI) is April 1, 1989 through September 30, 1989.

Such or Similar Comparisons

For the purposes of this investigation, we have determined that all industrial nitrocellulose comprises a single category of such or similar merchandise. Product comparisons were made on the basis of the following criteria: Nitrogen percentage, viscosity rating, wetting agent type, cellulose source, physical form, and wetting agent percentage.

Where there were no sales of identical merchandise in the home market with which to compare merchandise sold in the United States, sales of the most similar merchandise were compared on the basis of the characteristics described above. In those instances, we made adjustments for differences in the physical characteristics of the merchandise in accordance with section 773(a)(4)(C) of the Act.

Fair Value Comparisons

To determine whether sales of industrial nitrocellulose from the FRG to the United States were made at less than fair value, we compared the United States Price to the foreign market value, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

As provided for in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price where the merchandise was sold to unrelated purchasers prior to importation into the United States. We calculated purchase price based on FOB U.S. port or delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for brokerage and handling, foreign inland freight, ocean freight, transit insurance, U.S. duties, U.S. Customs fees, U.S. inland freight and rebates, in accordance with section 772(d)(2) of the Act.

Where the merchandise was sold to unrelated purchasers after importation into the United States, we used exporter's sales price (ESP) to represent the United States price, as provided for in seciton 772(c) of the Act. We calculated ESP based on FOB warehouse or delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, brokerage and handling, ocean freight, transit insurance, U.S. duties, U.S. Customs fees, repacking, U.S. inland freight, credit expenses, rebates, and indirect selling expenses, including inventory carrying expense and product liability premiums.

We recalculated the credit expense reported by Wolff on ESP sales based on the period from shipment date to payment date, rather than from invoice date, which may occur after shipment.

In accordance with section 772(d)(1)(C) of the Act, we added to United States price the amount of value-added tax (VAT) that would have been collected on the export sale had it been subject to the tax. We computed the hypothetical amount of VAT added to United States price by applying the home market VAT rate to a United States price net of all charges and expenses that would not have been incurred had the product been sold in the home market.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we calculated foreign market value based on home market sales. We calculated foreign market value based on the packed, delivered prices to unrelated customers in the FRG. We made deductions, where appropriate, for inland freight, transit insurance, discounts, rebates, and sales-related testing expenses. We deducted home market packing costs and added U.S. packing costs.

On comparisons involving purchase price sales, we subtracted home market commissions from the foreign market value and added U.S. indirect selling expenses up to the amount of the weighted average home market commissions paid, in accordance with 19 CFR 353.56(b)(1). We made a circumstance of sale adjustment for differences in credit terms. We recalculated the reported credit expense on purchase price sales to impute credit from the date of shipment to the date of payment, rather than from date of U.S. invoice. We used the home market interest rate to impute credit for the period from shipment to U.S. invoice date, and the U.S. interest rate for the period from U.S. invoice date to payment date, since the U.S. subsidiary bears the imputed expense as of the U.S. invoice date.

On comparisons involving ESP sales, we deducted home market credit expenses, which we recalculated to impute credit from shipment date, rather than from invoice date as reported by Wolff. We also deducted indirect selling expenses, including inventory carrying expense, product liability premiums, and, where appropriate, commissions.

In accordance with 19 CFR 353.56(b)(2), the amount of home market indirect selling expenses deducted from the weighted average foreign market value could not exceed total U.S. indirect selling expenses for the sale in question.

We made a circumstance of sale adjustment in accordance with section 773(a)(4)(B) of the Act to eliminate any differences in taxation between the two markets. Because the home market prices were reported net of VAT, this adjustment was made by adding the hypothetical tax on the U.S. sale to both the United States price and the foreign market value.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank

Interested Party Comments

Comment 1: Petitioner claims that purchase order date, rather than ex-factory shipment date, should be used as the date of sale for Wolff's purchase price sales. Petitioner contends that the purchase order date is appropriate because it is the date that the material terms of sale, *i.e.*, price and quantity, are fixed for Wolff's transactions and that most of the order changes made subsequent to this date, such as shipment date and destination, are not material. Furthermore, petitioner asserts that Wolff's claimed practice is contrary to that of the domestic industry and at least one major foreign supplier. Since Wolff reported purchase price sales on the basis of shipment date and not purchase order date, and the Department's verification was unable to support Wolff's date of sale selection, petitioner argues that the Department should calculate Wolff's margin on the basis of the best information available.

Wolff contends that it correctly reported the ex-factory shipment date as date of sale for purchase price sales. Wolff states that the Department verified that the terms and conditions of sale permit modification of the material terms of sale up to the date of shipment and that frequent modifications to these terms did occur after the purchase order date. Not until shipment are these terms established.

DOC Position: In its responses and at verification, Wolff demonstrated that even though the material terms of sale are included in the purchase order, the terms of sale are not final until shipment. A number of changes prior to the shipment date involved price and quantity. These changes are made both by Wolff and by its customers. That these changes can and do occur up to the shipment date indicates that the terms of sale are not set at purchase order date. Therefore, we have used the date of shipment as the date of sale.

With respect to petitioner's argument regarding industry practice, the Department has already recognized that dates of sale can differ among parties in the same industry. As correctly pointed out by the respondent in its rebuttal brief, in *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany* (54 FR 18992, 19041, May 3, 1989), we determined that the appropriate dates of sale varied from company to company within the same industry, depending on the specific facts and circumstances of each company.

Comment 2: Petitioner claims that home market sales of a product that is 70% INC and 30% wetting agent (70/30% INC) are not in the ordinary course of trade because FRG customers normally demand 65% INC and 35% wetting agent (65/35% INC) products. Moreover, petitioner argues that the volume of these transactions in the FRG during the POI was so small that these sales cannot be considered made in normal commercial quantities. Therefore, petitioner holds that the Department should disregard these sales and base the FMV for this product on an alternative, most similar product.

Wolff states that the FRG sales in question are identical to the U.S. product and, therefore, are the proper sales for comparison. In addition, Wolff contends that the terms under which these sales were made were consistent with the terms of other sales made in the home market, within the range of prices prevailing in the home market during the POI, and in quantities typically purchased in the home market. As a result, these sales were in the ordinary course of trade. Because Wolff offers its entire range of products for sale to all customers world-wide, FRG customers will occasionally purchase 70/30% INC, and U.S. customers will occasionally purchase 65/35% INC, as the Department verified.

DOC Position: From the information developed at verification, we have determined that the sales in question were not made in the ordinary course of trade. Although the sales and distribution channels are identical to other home market sales and the transaction quantities are similar to other home market sales, the circumstances of these sales are not ordinary. Wolff did not sell the customer what it originally wanted and instead offered a substitute product, not normally sold in the home market, at the price it charges for the product originally ordered. The price to the customers reflects, in part, these conditions rather than simply the product costs and normal market forces that would have otherwise determined price.

Comment 3: Wolff contends that the Department should exclude from sales comparisons certain home market sales that are subjected to unique production and testing standards. These standards involve considerably narrower tolerances than the usual production of this INC grade, in order to meet special physical qualities required by Wolff's customer. As a result of this procedure, Wolff claims that these sales possess different physical characteristics than other home market sales of this INC grade.

Petitioner claims that Wolff has failed to demonstrate that these sales are physically different from the other compared home market sales, nor has Wolff produced any information regarding added costs incurred in producing this merchandise. Accordingly, petitioner argues that as the sales in question are physically identical to the other home market sales of "most similar" merchandise, the Department should continue to include these sales in its comparisons.

DOC Position: Since there are no identical home market sales of the U.S. product for the INC in question, we have made product comparisons based on the "most similar" merchandise sold in the FRG. Based on our product matching criteria, as described above, the sales in question are the "most similar" home market product to the U.S. product. The production procedures, narrow tolerances and special testing requirements do not necessarily make these sales physically different from the other sales of this home market product, according to the matching criteria. Special production and testing procedures may be the basis of claims for circumstances of sale or difference in merchandise adjustments. However, since Wolff neither made such claims nor provided cost data to substantiate such claims, we were unable to consider them. Consequently, we have included the sales involving "special testing" in our sales comparison without additional adjustments.

Comment 4: Wolff states that the Department should make price comparisons at comparable levels of trade, in accordance with 19 CFR 353.58. Since Wolff sells to end-users and distributors in the home market, but only to end-users in the U.S., Wolff contends that the Department should only compare U.S. sales to home market end-user sales and disregard distributor sales from comparison.

Petitioner responds that Wolff failed to show that different levels of trade exist in the home market, therefore its claim should be rejected.

DOC Position: Wolff established that it sells to two types of customers in the home market, end-users and distributors, but sells only to end-users in the U.S. Accordingly, we agree with the respondent and have compared end-user sales in the U.S. only to end-user sales in the FRG.

Comment 5: Wolff argues that freight expenses between its home market factory warehouse and its regional warehouses prior to sale should be treated as a direct adjustment to FMV.

Petitioner contends that this freight expense should be treated as an indirect expense as it constitutes a pre-sale expense.

DOC Position: Consistent with our final determination in *Industrial Phosphoric Acid from Israel* (52 FR 25440, 25441, July 7, 1987), we have treated the movement expense for transporting the merchandise from the factory to a regional warehouse as a movement charge to be deducted to arrive at an ex-factory home market price.

Comment 6: Wolff claims that the Department improperly calculated home market credit expenses in the preliminary determination by deducting the early payment discount from the gross unit price used in the calculation. Wolff contends that this discount should not be deducted from the price in the credit calculation because it does not appear on the invoice and is not factored into the account receivable. Accordingly, Wolff asserts that the Department should calculate credit on the basis of the posted amount since Wolff does not know whether the customer will take advantage of this program when it extends credit.

Petitioner contends that when this discount is granted it should be subtracted from the gross unit price because it represents revenue Wolff never receives on the sale.

DOC Position: We agree with the petitioner and have deducted the early payment discount from the gross unit price in the credit calculation for all sales where this discount was given.

Comment 7: Wolff claims that the Department improperly disallowed two revenue items as adjustments to U.S. price in the preliminary determination. These items represent additional amounts that are directly related to the sale, such as the additional revenue Wolff receives for arranging freight to the customer's warehouse that are invoiced to and paid by the customers. These items should be added to the U.S. price for margin calculation purposes.

Petitioner contends that the Department should exclude these adjustments as they are completely unrelated to the comparative net prices of the subject merchandise.

DOC Position: In accordance with the Act and the Department's regulations, we make adjustments to the U.S. price in order to arrive at an ex-factory price. Where the sale price does not include freight, for example, it is neither appropriate nor logical to add a freight charge to this price and deduct a freight expense. Consequently, we agree with the petitioner and have rejected Wolff's claim.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation, under section 733(d) of the Act, of all entries of industrial nitrocellulose from the FRG, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from the FRG exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/Producer/Exporter	Weighted-average (margin percentage)
Wolff Walsrode AG	3.84
All Others	3.84

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist with respect to industrial nitrocellulose, the proceeding will be terminated and all securities posted as a result of the suspension will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumpting duties on all industrial nitrocellulose from the FRG, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Dated: May 14, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-11773 Filed 5-21-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-201-504]

Porcelain-on-Steel Cooking Ware From Mexico; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On September 20, 1989, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on porcelain-on-steel cooking ware from Mexico. The review covers two manufacturers and/or exporters of this merchandise to the United States and the period May 20, 1986 through November 30, 1987

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and the correction of certain clerical and computer programming errors, we have changed the margins from those presented in our preliminary results.

EFFECTIVE DATE: May 22, 1990.

FOR FURTHER INFORMATION CONTACT: Linnea Bucher or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On September 20, 1989, the Department of Commerce (the Department) published in the **Federal Register** (54 FR 38714) the preliminary results of its administrative review of the antidumping duty order on porcelain-on-steel cooking ware from Mexico, (52 FR 43415 May 20, 1986). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of porcelain-on-steel cooking ware, including tea kettles, which do not have self-contained electric heating elements. All of the forgoing are constructed of steel and are enameled or glazed with vitreous glasses. During the review period, such merchandise was classifiable under item numbers 654.0815 and 654.0818 of the Tariff Schedules of the United States Annotated (TSUSA). These products are currently classifiable under HTS item 7323.94.00. Kitchenware currently entering under item 7323.94.00.10 is not subject to the order. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers two manufacturers and/or exporters, Troqueles y Esmaltes (TRES) and CINSA, S.A. (CINSA), to the United States of Mexican porcelain-on-steel cooking ware and the period May 20, 1986 through November 30, 1987.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the request of the respondents and the petitioner we held a hearing on June 7, 1989. We received comments from both respondents. TRES and CINSA, and the petitioner, General Housewares Corporation (GHC).

Comments

Comment 1: GHC contends that the Department did not verify TRES's U.S. price information. Specifically, the petitioner contends that TRES failed verification with regard to transfer prices, date of payment, discounts or rebates, movement expenses, indirect selling and administrative expenses, and the total sales figure. Therefore, the Department must resort to best information otherwise available (BIA), pursuant to 19 U.S.C. 1677e(b), to calculate U.S. price. Citing *Procelain-On-Steel Cooking Ware from the People's Republic of China* (PRC), 54 FR 18129 (1989), (Cooking Ware from the PRC), petitioner contends that the Department should use, as BIA, the antidumping rate calculated in the original investigation.

TRES argues that it is the Department's practice to permit respondents to correct at verification minor errors appearing in the questionnaire response. *See Brass Sheet and Strip from Canada*, 51 FR 44319, 44321 (1986). Only substantial discrepancies warrant the rejection of the entire questionnaire response. *See Final Determination of Sales at Less Than Fair Value; Antifriction Bearings (Other than Tapered Roller Bearings) And Parts Thereof from the Federal Republic of Germany*, 54 FR 18998 (1989) (AFBs from Germany). TRES further argues that petitioner's reliance on Cooking Ware from the PRC is misplaced. TRES points out that, in contrast to respondents here, the respondent in *Cooking Ware from the PRC* had failed to provide any documentation at verification to confirm the payment for U.S. sales.

Department's Position: We agree with the respondents. Section 776(b) of the Tariff Act requires the use of BIA only when the Department is "unable to verify the accuracy" of submitted information. In this case our verification uncovered only minor errors and omissions, the majority of which the respondents corrected at verification. These minor errors were not of a magnitude to warrant the wholesale rejection of the questionnaire response. *See Oil Country Tubular Goods from Canada; Final Determination of Sales at Less Than Fair Value*, 51 FR 15029 (1986), and *Fresh Cut Flowers from Colombia; Final Determination of Sales At Less Than Fair Value*, 52 FR 6842 (1987). In those instances where we were unable to verify the accuracy of respondents' information (*e.g.*, transfer pirces), we relied on BIA.

Comment 2: GHC contends that, in the event the Department does not use the antidumping rate calculated in the original fair value investigation as BIA and TRES, the Department should disallow TRES's claimed adjustments to FMV for (1) commissions paid to related and unrelated agents, (2) volume rebates, and (3) promotional rebates. GHC argues that TRES allocated aggregate commission expenses to individual sales instead of linking actual expenses to individual sales. The petitioner further argues that the Department did not verify that TRES had granted volume rebates on a "majority" of it cooking ware items, and that TRES had set the terms of the annual volume rebates at the beginning of each fiscal year. Finally, the petitioner argues that TRES's promotional rebates are a form of advertisement and, therefore, should be treated as an advertising expense.

TRES argues that where a respondent's narrowest accounting records do not permit a separate identification of actual expenses for individual sales, the Department has permitted a respondent to use a reasonable allocation methodology. *See Brother Industries, Inc., v. U.S.*, 540 F. Supp. 1341 (CIT 1982), *aff'd. sub. nom, Smith Corona Group Consumer Products Division v. U.S.*, 713 F.2d 1568 (Fed. Cir. 1983), *cert, den.* 465 U.S. 1022 (1984) (*Smith Corona*).

Department's Position: We agree with the respondent. The courts have upheld

the Department's practice of permitting a respondent to calculate expenses using a reasonable allocation methodology. *See Smith Corona, supra.* In this case, we found TRES's allocation methodology to be reasonable. Furthermore, a respondent is not required to demonstrate that it had granted volume rebates on a majority of its cooking ware items before it is entitled to an adjustment on individual sales. *See Television Receiving Sets, Monochrome and Color, From Japan; Final Results of Administrative Review of Antidumping Finding,* 50 FR 24278 (1985). A respondent is only required to demonstrate that it actually granted the rebates on the sales for which it seeks an adjustment. Finally, promotional rebates, by definition, do not constitute a form of advertising. Therefore, we did not treat promotional rebates as an advertising expense.

Comment 3: GHC contends that the Department should use a weighted-average interest rate to calculate TRES's U.S. credit expense, rather than a simple average rate, because TRES used a weighted-average interest rate to calculate home market credit expenses. The petitioner further contends that because Intermex, the U.S. importer, may wait one year before making payment to TRES for inventory received from its parent company, Intermex is, in effect, receiving a loan from TRES. Accordingly, the Department should deduct the imputed interest expenses attributable to this loan from U.S. price as an indirect selling expenses.

Department's Position: At verification we found that TRES did in fact use a weighted-average interest rate to calculate both its home market and U.S. credit costs.

We disagree with the petitioner's argument that the so-called "loan" from TRES to Intermex represents an additional indirect selling expense to TRES. Upon delivery of the inventory in the United States, Intermex issues a promissory note to TRES. TRES has the option of either discounting the note or waiting until the maturity date to receive payment. Since we have already accounted for credit expenses and inventory carrying costs, a deduction from U.S. price is inappropriate.

Comment 4: GHC contends that the Department should deny CINSA's claimed adjustment to FMV for insurance costs because CINSA did not record such costs on either a product-line or a cost-center basis, but, instead, calculated the adjustment based on an allocation method. This method also overstates the adjustment if cooking ware products incur lower insurance costs than the products not covered by this administrative review.

The petitioner also contends that the Department should deny CINSA's claimed adjustment to FMV for rebates and unrelated party commission expenses because such adjustments are based on allocation factors instead of on actual expenses incurred.

Department's Position: We disagree with the petitioner. (*See* our response to Comment 2.) Furthermore, we verified that CINSA's insurance costs were based on a standard percentage of the value of a shipment, regardless of destination or product mix.

Comment 5: GHC contends that the Department should deny CINSA's adjustment for volume discounts on nongovernment sales in the home market because CINSA did not grant volume discounts for all sales.

Department's Position: We have denied this claim, not for the reason suggested by the petitioner, but because we were unable to verify adequately the volume discount for the sales we examined during verification.

Comment 6: GHC contends that the Department should deny both respondents' claimed adjustment for related-party commissions because such expenses are based on allocation factors rather than on actual expenses incurred.

Department's Position: We disagree with the petitioner. (*See* our response to Comment 2). In our preliminary results, we denied an adjustment for related party commissions. We have reconsidered this issue. We are now following the rational articulated in *Certain Iron Construction Castings from Canada: Final Determination of Sales At Less Than Fair Value,* 51 FR 2412 (1986) and *Final Determination of Sale At Less Than Fair Value; Generic Cephalexin Capsules from Canada,* 54 FR 26820 (1989), where we granted an adjustment for related-party commissions because the company would not have incurred such expenses in the absence of the sale.

In this case we verified that CINSA and TRES incurred their related party commission expenses only if the respondents had made a sale of the subject merchandise. We also verified that the respondents made commission payments equal to a specified percentage of the selling price. We found that the respondents did not include any sales-related expenses or salaries in their claimed adjustment. We also found the respondents' allocation methodologies to be reasonable. Accordingly, we have made a circumstance-of-sale adjustment for the respondents' related party commissions.

Comment 7: GHC contends that the Department should use the weighted average of FOMEX export and non-FOMEX domestic loan rates, rather than the Mexican Costo Procentual Promedio (CPP), Mexico's cost of funds to banks, to calculate CINSA's home market credit costs. CINSA argues that, because the Department is calculating the cost of borrowing in the home market, the Department should examine only home market loans.

Department's Position: In our preliminary results, we calculated CINSA's home market credit costs based on the firm's weighted-average short-term borrowing rate, not on the CPP. We selected CINSA's non-FOMEX loans, rather than its FOMEX export loans, because the latter loans are tied exclusively to U.S. export sales, instead of home market sales.

Comment 8: GHC emphasizes that although CINSA stated at verification that it had financed all of its U.S. export sales during the review period with FOMEX export loans, the verification report states that CINSA did not obtain any such loans during the first half of that period. The petitioner contends that CINSA failed to provide the proper documentation (*e.g.,* cancelled checks, bank statements) to confirm that the company had paid the principal and interest accruing on the FOMEX export loans that the company actually did obtain. Because CINSA failed to demonstrate that it had obtained FOMEX export loans for the entire review period, and because CINSA failed to provide the proper documentation for the loans that it did obtain, the petitioner urges the Department to rely on BIA to calculate U.S. credit costs. As BIA, the petitioner proposes that the Department use CINSA's home market credit costs.

Department's Position: We agree with the petitioner that we should use BIA but only for the first half of the review period. However, we do not agree with the petitioner's proposed BIA. Because we are seeking to calculate CINSA's U.S. credit costs, rather than its home market credit costs, we must examine loans used to finance U.S. export sales. Therefore, a more appropriate BIA in this case is CINSA's verified FOMEX export loans obtained during the second half of the administrative review period. Although CINSA failed to provide cancelled checks or bank statements, by providing telexes and a document trail that tied these loans into the firm's subsidiary ledger, it demonstrated to our satisfaction that it has paid the principal and interest on these export loans.

Comment 9: GHC contends that the Department must compare products that have the same number of enamel coatings to make appropriate model matches. Because the Department failed to do so, it must rely on BIA to calculate FMVs where there are faulty model matches.

Department's Position: We disagree. We afforded the patitioner and the respondents the opportunity to present their views on the product-matching criteria in the early stages of the administrative review. GHC failed to mention at that time that the number of enamel coatings was an appropriate product-matching criterion. The first time that GHC suggested that the number of enamel coatings should be used as a product-matching criterion was in its brief after the preliminary results notice. Not only did GHC proffer no compelling reason for altering our product-matching criteria, but its suggestion was offered too late in the reivew process. Finally, the product-matching criteria contained in Appendix V of the questionnaire response—style, size, and configuration—provide a reasonable and objective basis for establishing the comparability of the products subject to the administrative review.

Comment 10: GHC contends that the Department should use daily exchange rates available from Compuserve or some other source, rather than monthly exchange rates provided by the International Monetary Fund (IMF), to convert Mexican pesos into U.S. dollars. The use of monthly exchange rates underestimates FMVs because of the rampant inflation during the review period.

Department's Position: We disagree with GHC. When the Federal Reserve does not certify an exchange rate for a foreign country, we rely on a surrogate exchange rate to convert foreign currency into U.S. dollars. *See Fresh Cut Flowers from Colombia; Final Determination of Sales at Less Than Fair Value,* 52 FR 6842 (1987). In the case of Mexico, we have consistently used the average monthly exchange rates published by the IMF as reasonable surrogates for the certified Federal Reserve exchange rates. *See Final Determination of Sales at Less Than Fair Value; Certain Steel Pails from Mexico,* 55 FR 12245 (1990); and *Certain Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review,* 55 FR 12696 (1990).

Comment: GHC contends that the Department should use both of the columns entitled "credit expenses" and "direct credit expenses" as appearing on the computer tape, to calculate CINSA's U.S. credit costs.

CINSA argues that the Department should not use the data contained in either of these columns because they are not base on CINSA's actual borrowing experience in the U.S. market. According to CINSA, the "credit expense' column reflects an imputed credit deduction calculated by using the Mexican CPP interest rate. The "direct credit expenses" column reflects an imputed credit deduction calculated by using the U.S. prime interest rates. These rates were supplied by CINSA bacause they were requested by the Department in their fair value case. CINSA contends the Department should use the data that reflect CINSA's actual short-term borrowing experience in the market.

Department's Position: We agree with the respondent and have used CINSA's data that reflect its actual U.S. short-term borrowing experience.

Comment 12: GHC claims that the Department did not successfully verify frit purchases or the amount of enamel used by CINSA, as indicated by a discrepancy between standard and actual figures noted in the verification report. The Department also failed to verify the amount of labor and overhead for mixing ingredients to create enamel color.

Department's Position: During verification we found that the discrepancy between the amount of frit that should be consumed for a given amount of production in a month and the amount recorded in the work-in-process records was due to enamel stored in vats on the factory floor. Concerning labor and overhead costs in the mixing departments, *see* Comment 14.

Comment 13: GHC argues that the Department did not verify how CINSA calculated the cost of the melamine production which CINSA included in its profit and loss statement to calculate the cost of goods sold (COGS). Because this information was not verified, the petitioner contends that it is inappropriate to substract any amount for the cost of melamine production from the COGS.

Department's Position: We agree and have not subtracted the cost of melamine from the COGS.

Comment 14: Petitioner requests that the Department require CINSA to supply 1987–1988 variances (differences between standard and actual costs) for the cost-of-production (COP) calculations for the July–October 1987 period. Use of the 1986–1987 variances underestimates COP for the review period because of rising inflation.

Department's Position: Because at the time of the submission of the questionnaire responses, the 1987–1988 variances were not available, CINSA reported the 1986–1987 factors. However, in calculating its standard costs for the July–October 1987 period, CINSA included a reasonable adjustment for anticipated inflation. Therefore, we did not underestimate COP for the review period.

Comment 15: CINSA received income in the form of management fees paid to the president of the firm for services rendered to a joint venture partner. GHC contends that this income should not offset fixed overhead costs to calculate CINCA's COP because the verification report does not explain why this item is considered income. Additionally, unused discounts or rebates should not be considered income because there is no explanation of why they are part of fixed overhead.

Department's Position: We disagree. The verification report makes clear that, at the time that CINSA's president rendered the service, its value was recorded in the accounting records as azn expense. Upon receipt of payment for the service, the company recorded the payment as income. Therefore, the recorded income is a proper offset to the recorded expense.

Similarly, discounts and rebates were reported at the time of sale in the accounting records as expenses. At the time of payment any unused discounts or rebates were recorded as income.

Comment 16: GHC contends that the Department failed to verify that CINSA had collected the value-added tax (VAT) for steel inputs from its customers at the time of sale. The Department should add the value-added tax to the reported steel costs.

Department's Position: We disagree. GHC misunderstands how a VAT system operates. In a VAT system, the consumer of the final product (in this case, the cookware) pays the VAT on the full value of the final product. Any VAT paid by the producers involved in the various stages of production is offset by taxes paid by the ultimate customer. Effectively, these intermediate producers pay no VAT at all. Therefore, it is inappropriate to add the VAT to CINSA's reported steel costs in this case.

Comment 17: GHC contends that since the Department did not verify whether certain advertising and computer services purchased by CINSA from another branch of the corporation were provide at arm's-length prices, these expenses should not be allowed.

GHC also claims that extra costs for double-coated cooking ware were not included in the COP, but that whether or not they were, the issue is moot because the Department did not verify the added costs. Since these costs were not verified, the Department should use BIA for the cost of double-coated cooking ware.

Department's Position: The Department has discretion to decide which items to verify. From the profit and loss statement we traced amounts for variable selling expenses, antidumping duties, overhead costs for the production and services departments to CINSA's general ledger. Since we found no discrepancies for these items we consider the accuracy of the entire profit and loss statement to be verified. Similarly, regarding material costs, we chose to verify enamel and frit purchases and consumption and chose not to verify the cost of double-coated enamel ware. See also our response to Comment 9.

Comment 18: The petitoner claims that because CINSA purchased frit at less than an arm's-length price the Department should use the price the frit seller charged to unrelated firms as the cost of frit to CINSA.

Department's Position: We disagree. We verified that the frit seller charged an arm's length price. The difference between the price CINSA paid for frit purchased from related parties and the price CINSA paid to unrelated firms was due to a quantity discount and amounts incurred for packing, freight, commission, warehousing, and insurance.

Comment 19: The petitioner contends that the Department made computer programming errors in determining whether CINSA's sales were above or below COP and in determining TRES's U.S. brokerage expenses. CINSA asks that we correct two other computer errors, one affecting the home market sales data base and the other relating to the application of the commission offset.

Department's Position: We agree and have corrected the programming errors.

Comment 20: CINSA claims that the Department included credit costs as direct selling expenses in COP as well as the full amount of short-term interest expenses as general financial expenses (an indirect expense). This resulted in double-counting CINSA's short-term interest expenses and in overstating CINSA's COP. Citing *All-Terrain Vehicles from Japan*, 54 FR 4864 (1989) and *Antifriction Bearings from Germany*, 54 FR 1892 (1989), CINSA asks that the Department exclude credit costs from direct selling expenses or reduce general expenses by the amount of these interest expenses.

CINSA also argues that the Department double-counted CINSA's imputed credit expenses in the constructed value (CV) calculation. The failure to offset or remove from general expenses an amount attributable to direct credit expense is contrary to the Department's precedent. CINSA cites *64K Dynamic Random Access Memory Components from Japan*, 51 FR 15943 (1986) and *Erasable Programmable Read Only Memories from Japan*, 50 FR 47450 (1985) to support its argument.

Department's Position: We have reviewed the CV and COP computer programs and verified that no double-counting occurred.

Comment 21: Citing *Offshore Platform Jackets and Piles from the Republic of Korea*, 51 FR 11795 (1986), CINSA contends that in calculating COP and CV the Department should include in general financial expenses the company's foreign exchange gains and losses not attributable to foreign currency accounts receivable. CINSA's U.S. customers make payments in U.S. dollars. CINSA deposits the dollars in U.S. interest-bearing accounts for a period of ninety days. During this ninety day period, the Mexican peso depreciates relative to the U.S. dollar. As a result of this depreciation, CINSA recognizes an exchange rate gain by converting its U.S. dollar proceeds into Mexican pesos on the ninetieth day after the date of sale rather than by doing so on the date of payment.

Citing *Offshore Platform Jackets and Piles from Korea, supra*, (1986), *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina*, 49 FR 48588 (1984), and *Certain All-Terrain Vehicles from Japan*, 54 FR 4864 (1985), GHC contends that the Department should not include CINSA's foreign exchange gains and losses in general financial expenses. GHC argues that such gains or losses are not directly related to the production of cooking ware. Furthermore, the Department denied a similar claim in the fair value investigation. Finally, the Department did not verify the information submitted by CINSA.

Department's Position: We reviewed the theoretical basis as well as the supporting documentation on the record in considering this claim. We have included only the gains on foreign exchange earned on bank deposits as part of the COP. These gains were realized for working capital used during the normal operations of the company. We do not allow offsets to production costs for income arising from activities unrelated to the production of the product under review. However, we do permit an offset for the interest income accruing from investments held for working capital purposes.

In this case foreign exchange gains earned from U.S. bank accounts held for working capital purposes were allowed. Since CINSA's financial records did not support its claim for the other foreign exchange deductions, we did not allow them.

Comment 22: CINSA contends that in calculating COP and CV the Department should allow inflation gains reported as "the effect on monetary position" (also referred to as the "gain on monetary assets") in the profit and loss statement. These gains result from holding monetary liabilities in excess of monetary assets. CINSA further contends that the Department verified that CINSA records this information in its company books in accordance with generally accepted Mexican and international accounting principles. CINSA argues that the Department's denial of this adjustment in the preliminary results distorts the COP and CV calculations, because these gains are a legitimate offset to net income. Although the Department has taken inflation into account in calculating CINSA's financing expenses, it failed to do so in calculating CINSA's net income offsets.

GHC contends that the Department should deny this adjustment because such gains are unrealized. In *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina*, 49 FR 48589 (1984), Commerce denied an adjustment because "inventory holding gains in the selling, general and administrative expenses" were unrealized.

Department's Position: We have not reduced COP for gains reported under "effects on monetary position" because the record only indicates the total amount recorded on the financial statements without identifying how much of this total is attributable to the inputs used in production, how much is attributable to the working capital position, or how much is attributable to the nonmonetary assets. Because CINSA failed to provide sufficiently specific calculations to support its claim, we have disallowed it.

Comment 23: CINSA contends that the Department erred in making an adjustment for the difference in steel costs between foreign and domestic steel used in producing the subject merchandise. Although CINSA provided this information to the Department, CINSA made no claim for the adjustment.

Department's Position: We agree and have eliminated the adjustment.

Comment 24: Citing *Erasable Programmable Read Only Memories from Japan*, 50 FR 45447 (1985) and *64K Dynamic Random Access Memory Components from Japan*, 51 FR 15943 (1986), CINSA claims that the Department should apply a one-month lag between CINSA's date of production and its date of sale to take inflation into account when calculating COP and CV.

Citing *Tubeless Steel Disc Wheels from Brazil*, 51 FR 46904 (1986), the petitioner argues that the Department properly calculated CINSA's COP and CV as of the date of shipment.

Department's Position: We agree with the petitioner. Section 773(b) of the Tariff Act does not specify how the Department must calculate a company's COP. In accordance with our administrative practice, we calculate COP for the month in which the U.S. sale occurred. Moreover, where, as here, a country's economy experiences hyperinflation, we use a company's replacement costs incurred during the month of shipment, rather than its historicl costs, to calculate CV and COP. *See Amended Final Determination of Sales At Less Than Fair Value and Amended Antidumping Duty Order; Tubeless Steel Disc Wheels from Brazil*, 53 FR 34566 (1988), and *Oil Country Tubular Goods from Argentina*, 50 FR 12595 (1985). This practice enables us to achieve a fair comparison by examining contemporaneous costs and prices, and thereby avoid distortions caused by hyperinflation.

CINSA's reliance on *Eproms* and *64K DRAMS* is misplaced because the Japanese economy was not experiencing hyperinflation in the periods examined in those cases.

Comment 25: Citing the original investigation in this administrative proceeding, the relevant regulations (19 CFR 353.58 (1989), judicial decisions, and administrative precedent (*Digital Readout Systems and Subassemblies Thereof from Japan*, 53 FR 47844 (1988), *Brass Sheet and Strip from Japan*, 53 FR 2396 (1988); *Tapered Roller Bearings from Japan*, 52 FR 30700 (1987)), TRES contends that the Department should exclude from the calculation of FMV those home market sales made at a level of trade different from that of U.S. sales. TRES specifically contends that the Department should limit its FMV calculations to sales made to wholesalers and distributors and should exclude sales made to retailers, supermarkets, and the Mexican government.

GHC contends that the Department must include all sales for purposes of calculating FMV, specifically contending that TRES has not shown that it had a "consistent pricing policy that is uniquely connected to quantities of sale" within the meaning of *NAR, S.p.A. v. United States*, slip OP. 89–12 (CIT 1989) (*NAR*).

Department's Position: We agree with the petitioner and, accordingly, have not removed retail or government home market sales from our FMV calculations. As the petitioner noes, TRES failed to demonstrate that it had maintained a "[c]onsistent pricing policy that [was] uniquely connected to" the quantities of the subject merchandise sold to retailers, supermarkets, and the Mexican government. In fact, a careful examination of TRES's sales data showed no correlation among purchasers, prices, and quantities purchased. Because TRES failed to establish a correlation between price and quantities with respect to its alleged different levels of trade, we calculated FMV based upon all sales, in accordance with section 773(a)(1)(A) of the Tariff Act. *See Tapered Roller Bearings from Japan, supra.*

Comment 26: TRES contends that, in calculating the company's home market credit expenses with respect to the two customers that had issued promissory notes to Intermex, the Department should use the date of execution instead of the maturity date of the note as the date of payment. TRES further contends that the Department should use Intermex's weighted-average cost of borrowing for U.S. dollar loans, rather than the interest rates that Intermex charged on the promissory notes, to calculate U.S. credit costs for all sales subject to the administrative review. TRES also reasons that the interest accrued pursuant to the notes represents income, not an expense, to either Intermex or TRES. Finally, citing *Internal Combustion Engine Forklift Trucks, from Japan; Final Determination of Sales at Less Than Fair Value*, 53 FR 12252 (1988), and other administrative precedents, TRES argues that the Department should offset the imputed interest credit costs of the sales subject to the promissory notes with the interest income earned on those notes.

GHC argues that any information submitted to the Department before verification that identified which invoices were subject to the promissory notes was untimely. GHC further argues that Intermex never received payment for the majority of the invoices covered by the promissory notes during the administrative review period. Therefore, the Department cannot use any interest income derived from the notes to offset U.S. credit expenses. GHC finally contends that TRES's reliance on *Forklift Trucks from Japan, supra*, is misplaced because that case involved a late payment penalty fee.

Department's Position: We treat the maturity date of a promissory note as the date of payment because that is the date that money actually changes hands. We agree with the respondent that we should not apply this methodology to sales not subject to the promissory notes. Accordingly, we have made the appropriate correction to the preliminary results. We also agree that we should use Intermex's weighted-average short-term borrowing rate, rather than the interest rates on the promissory notes, to calculate U.S. credit costs for all sales subject to the administrative review. *See Final Determination of Sales At Less Than Fair Value; Tapered Roller Bearings from Japan*, 52 FR 30700 (1987). Therefore, we have made the appropriate corrections in those instances where we used the interest rates on the promissory notes to calculate credit expenses.

We agree with petitioner that we should not offset TRES' U.S. credit costs with the interest income derived form the promissory notes. TRES failed to demonstrate at verification the actual amount of the interest income accruing from the promissory notes. However, we disagree with the petitioner's untimeliness argument. The current regulation governing the timeliness of written submissions, 19 CFR 353.31, was not in effect during the period prededing this verification.

Comment 27: TRES contends that the Department misapplied the special rule for commission offsets in 19 CFR 353.56(b)(1)(1989). Specifically, TRES contends that the Department's computer program incorrectly included the offset on every home market sale, though commissions were earned on sales to two U.S. customers. TRES also contends that the Department overstated the adjustment for the May through December 1986 period by using a figure for U.S. indirect selling expenses that includes both commissions and indirect selling expenses.

GHC contends that the Department should not use TRES's computer tape, submitted on January 1, 1989, to calculate the commission offset because the Department did not verify this information. Citing *Floral Trade Council of Davis, California v. United States*, 704 F. Supp. 233, 240 (CIT 1988), the petitioner argues That the Department should not use BIA to benefit the respondent. GHC argues that the

Department should use as BIA the indirect selling expenses as subnmitted in the original computer tapes.

Department's Position: We have corrected the computer program to eliminate the offset adjustment for the sales on which U.S. commissions were paid. We have examined the computer program and verified that the adjustment for the May through December 1986 period is correct.

Comment 28: TRES contends that the Department incorrectly calculated movement expenses, other than those incurred for foreign inland freight, for all of the company's ESP sales. Specifically, TRES contends that the Department erred in calculating such expenses based on the net unit sales price rather than on the transfer price.

GHC contends that because the Department was unable to verify the transfer prices for all ESP sales, the Department should use BIA. GHC further contends that, as BIA, the Department should use Intermix's net unit sales price to unrelated U.S. purchasers.

Department's Position: We agree with the petitioner. Because we were unable to verify all of TRES's transfer prices, as BIA we used Intermex's net unit sales price to unrelated U.S. purchasers as the basis for calculating movement expenses.

Comment 29: Citing *Forklift Trucks from Japan, supra, Industrial Phosphoric Acid from Israel,* 52 FR 25540 (1987), and other administrative precedents, TRES contends that the Department should have used Intermex's weighted-average interest rate for U.S. dollar-denominated loans, rather than that for peso-denominated loans, to make an adjustment to U.S. price for inventory carrying costs. Citing *AFBs from Germany, supra and Consumer Products Division, SCM Corporation v. Silver Reed America, Inc.* 713, F.2d 1568 (Fed. Cir. 1983), *cert. den.*, 104 S.Ct. 1274 (1984), TRES further contends that the Department should make a similar adjustment to FMV to account for the imputed credit expenses (*i.e.*, inventory carrying costs) incurred while the merchandise was in transit from the factory to the warehouse.

Citing *Silver Reed, supra,* GHC argues that the Department should use TRES's weighted-average short-term borrowing rate for peso-denominated loans to calculate inventory carrying costs. GHC further contends that TRES's claim for an adjustment to FMV should be disallowed because TRES provided no relevant information that the Department verified.

Department's Position: To calculate inventory carrying costs when the subject merchandise is in transit in both the home market and the U.S. market, our standard practice is to use a respondent's home-market borrowing rate for the period that the merchandise is in transit in the foreign country and "on the water." *See Certain Steel Pails from Mexico, Final Determination at Sales of Less Than Fair Value,* 55 FR 12245 (1990) *supra.* For the period that the merchandise is in transit in the United States, we use the company's U.S. short-term borrowing rate. Therefore, we have made the necessary corrections to reflect our practice.

GHC's reliance on *Silver Reed* is misplaced because Intermex obtained U.S. dollar-denominated loans, not peso-denominated loans, on behalf of TRES. We agree with the petitioner, however, that TRES provided no information at verification to warrant a corresponding adjustment to FMV. Accordingly, we are denying TRES's claim for an adjustment to FMV for imputed credit expenses.

Comment 30: For those U.S. sales for which there were no home market sales of identical merchandise for comparison purposes, TRES contends that it was unable to determine which similar models and monthly weighted-average FMVs the Department selected to compare with U.S. sales. As a result, TRES proposes its own model matches for comparison purposes. GHC contends that the Department, rather than TRES, is in a better position to determine the most appropriate similar merchandise where identical matches are unavailable.

Department's Position: We agree with TRES and have reselected model matches for U.S. sales for which no contemporaneous home market sales of identical merchandise existed. The new matches are listed in the final analysis memorandum.

Final Results of Review

As a results of our review of the comments received, we have determined the margins for the period May 20, 1986 through November 30, 1987 to be:

Manufacturer/Exporter	Margin (Percent)
CINSA	1.63
TRES	5.81

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions on each exporter directly to the Customs Service. Individual differences between the United States price and the foreign market value may vary from the percentages stated above.

Furthermore, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required on shipments of porcelain-on-steel cooking ware from Mexico by the reviewed firms.

For any shipments of this merchandise manufactured or exported by the remaining known manufacturers and/or exporters not covered in this review, the cash deposit will continue to be at the rate published in the final determination of sales at less than fair value for these firms (52 FR 43415, December 2, 1986).

For any future entries of this merchandise from a new exporter, not covered in this administrative review, whose first shipments occurred after November 30, 1987 and who is unrelated to the reviewed firms, a cash deposit of 5.81 percent shall be required.

These deposit requirements are effective for all shipments of porcelain-on-steel cooking ware from Mexico entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

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 § 353.22 of Commerce's regulations, published at 19 CFR 353.22 (1989).

Dated: May 15, 1990.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-11871 Filed 5-21-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-437-601]

Final Results of Antidumping Duty Administrative Review: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the Republic of Hungary

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On January 4, 1990, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished (TRBs), from Hungary. The review covers one manufacturer/exporter of this merchandise to the United States and the period February 6, 1987 through May

31, 1988. The final dumping margin is 5.38 percent.

EFFECTIVE DATES: May 22, 1990.

FOR FURTHER INFORMATION CONTACT: Kimberly Hardin, Mary Jenkins, or Mary S. Clapp, 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) 377–8371, 377–1756, or 377–3965, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 1990, the Department published in the **Federal Register** (55 FR 348) the preliminary results of this (the first) administrative review of the antidumping duty order on TRBs from Hungary (52 FR 23319, June 19, 1987). The Department has now completed the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

On April 3, 1990, the Court of International Trade (CIT) affirmed a remand determination by the U.S. International Trade Commission (ITC) changing its conclusion from an affirmative finding of injury based on cumulation of Hungarian imports with those from other countries to one that the U.S industry was neither materially injured nor threatened with such injury from imports of TRBs from Hungary. *Marsuda-Rogers* v. *United States,* Court No. 87–07–00772, Slip Op. 90–35 (April 3, 1990). In accordance with the decision of the Court of Appeals for the Federal Circuit (CAFC) in *Timken Company* v. *United States,* Slip Op. 89–1489 (January 4, 1990), the Department published a notice of the *Marsuda-Rogers* decision as not in harmony with the Department's determination (55 FR 14990, April 20, 1990). The Department will not order the lifting of the suspension of liquidation of entries entered, or withdrawn from warehouse, for consumption on or after April 13, 1990 before there is a conclusive court decision in this lawsuit.

Scope of 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 the date is now classified solely according to the appropriate HTS item numbers.

Import covered by this review are shipments of TRBs from Hungary, in accordance with the scope determination made in the antidumping duty order (52 FR 23319). During the review period such merchandise was classifiable under items 680.30, 680.39, 681.10 and 692.32 of the Tariff Schedules of the United States. The merchandise is currently classifiable under HTS item numbers 8482.20.00, 8482.91.00, 8482.99.30, 8483.20.40.80, 8483.30.40, and 8483.90.20. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers one manufacturer/exporter of Hungarian TRBs and the period February 6, 1987 through May 31, 1988.

United States Price

In calculating United States price, the Department used purchase price, as defined in section 772 of the Act. Purchase price was based on either the FOB Hamburg, West Germany port price to unrelated purchasers or the FOB Hungarian factory price to unrelated purchasers. With respect to FOB Hamburg sales, we made deductions for foreign inland freight and brokerage and handling charges. We valued the inland freight deductions using surrogate data based on Portugese freight costs, which were provided by the American Embassy in Lisbon. We selected Portugal as the surrogate country for the reasons explained below in the Foreign Market Value section of this notice. Deductions for brokerage and handling were based on the charges paid by the Hungarian producer, Magyar Gordulocsapagy Muvek (MGM), in freely convertible currency to a West German freight forwarder. As in the original investigation of TRBs from Hungary, we have used market-economy data where provided.

Foreign Market Value

We have concluded that Hungary is a state-controlled-economy country for purposes of this administrative review. For this review (initiated prior to the effective date of section 1316 of the Omnibus Trade and Competitiveness Act of 1988 (1988 Act)), we used the pre-1988 Act criteria for calculating the FMV of merchandise from state-controlled-economy countries. Therefore, section 773(c) of the Act requires us to use prices or the constructed value of such or similar merchandise in a non-state-controlled economy. If such or similar merchandise is not produced in a non-state-controlled-economy country which the Secretary concludes to be comparable in terms of economic development to the home market country, the Secretary may calculate the FMV using constructed value based on factors of production incurred in the home market.

As described in the preliminary results of our review, we were unable to obtain verifiable prices or constructed value data from potential surrogate companies in comparable economies. Therefore, we used the factors of production, valued in a comparable economy, as the basis for determining foreign market value. We calculated constructed value based on the factors of production reported by the Hungarian producer, except as described below. MGM accounts for all Hungarian exports to the United States of the subject merchandise.

Where possible, we valued the factors on the basis of prices paid by MGM to market-economy suppliers. Where market-economy prices were not provided, we obtained information for valuing the factors of production from publicly available sources. We chose Portugal as the surrogate for valuing the factors of production because we determined that it was comparable in terms of economic development to Hungary and we were able to obtain more complete publicly available data pertaining to Portugal than other potential surrogate countries with comparable economies.

The material costs for each component were calculated by multiplying the gross weight of steel by the steel unit price less the salable scrap value. The scrap factor was adjusted to reflect only that portion considered salable; thus, the portion considered as waste is included in the cost of materials. The respondent had not indentified waste and additionally miscalculated the cost of materials by adding the scrap value to the net value of steel.

We valued the factors of production as follows:

- Raw material costs were based on the costs to MGM for imports of certain steel products from market economies. The steel was purchased from a supplier in a market economy and paid for in freely convertible currency. As in the original investigation, we used market-economy values where provided. In the preliminary results of this administrative review, we used an average price to value each type of steel input. For the final results of this administrative review, we have calculated individual values for each input for each type of TRB being valued,

where specific information was available. This was done in order to ensure the most accurate application of values to the factors of production relating to steel inputs.

• Other raw materials for certain TRB components were based on EUROSTAT'S Portuguese export or import data, as appropriate. In the absence of market-economy prices to the respondent, we determined that these data were appropriate indications of prices in the surrogate country for purposes of valuing these raw materials.

• We valued steel scrap, factory overhead, and inland freight using information supplied by the American Embassy in Lisbon. The information provided by the Embassy reflected the costs a producer of TRBs would incur in Portugal.

• We valued labor using Portuguese labor rate data obtained from the U.S. Bureau of Labor Statistics. We used the OECD Main Economic Indicators Labor Wage Index to adjust the labor rate to match the period of review. In the preliminary results of this administrative review, we used individual labor rates for skilled, trained, and unskilled workers based on information supplied by the American Embassy in Lisbon and the U.S. Bureau of Labor Statistics. For purposes of the final results of this administrative review, we have calculated only one labor rate. *See* Department's position on comment 3.

• We used the OECD Main Economic Indicators Consumer Price Index to adjust factor values drawn from periods outside the review period. In the absence of data coinciding precisely with the review period, we determined that such adjustments would provide data representative of the period of review.

• We used the statutory minimum of ten percent of the sum of material and fabrication costs for general expenses.

• We used the statutory minimum of eight percent of material and fabrication costs plus general expenses for profit.

• The value for packing was based on market-economy data contained in the public file of *Antifriction Bearings and Parts Thereof (Other than Tapered Roller Bearings) from Romania* (AFBs). The packing value used in AFBs was based on the packing costs of an AFB producer located in Portugal. The packing value was adjusted to the period of review as described above.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received a case brief from the respondent, MGM, and a rebuttal brief from the petitioner, the Timken Company.

Comment 1: Respondent argues that the Department should not have averaged the freight rates provided by the American Embassy in Lisbon. Respondent also argues that the source of the data should be documented.

Petitioner states that the Department correctly applied the average of the freight rates provided by the American Embassy.

Department's Position: We have continued to rely on the foreign inland freight rates quoted in a cable from the American Embassy in Lisbon. The American Embassy indicated that these freight rates were provided by an international freight forwarder located in Lisbon. These rates represent the only evidence of freight rates in Portugal on the record. The information on freight rates provided by the American Embassy in Lisbon does not contain inconsistencies similar to those on labor rates. Therefore, we have determined that the average of the freight rates per kilogram for 20-foot containers, as provided by the American Embassy, is appropriate for purposes of valuing the cost of shipping the TRBs under consideration.

Comment 2: Respondent contends that the Department incorrectly applied surrogate data to value two steel inputs. Respondent states that the Department applied a surrogate value for a steel product that is not used by MGM in the production of any TRB. In addition, respondent states that the Department chose the wrong surrogate data to value the hot-rolled steel rods used by MGM to manufacture forged rings.

Petitioner agrees that it is virtually impossible to manufacture cones from the steel product which the Department used to value cones in the preliminary determination. Petitioner also agrees that the Department misidentified the surrogate data which were used to value rings.

Department's Position: We agree. For purposes of the final results of this review, we have based the value of forged rings on surrogate prices for hot-rolled steel rods and the value of cones on surrogate prices for other steel rods.

Comment 3: Respondent argues that the Department should reject the labor rates used in the preliminary results of this review. Respondent states that the labor rates used in the preliminary determination were unsubstantiated and unverifiable.

Petitioner contends that the labor rates used by the Department in the preliminary results of this review are appropriate. Petitioner disagrees with respondent's suggestions that the Department use new labor rate data and various methods of adjustment.

Department's Position: As a result of further analysis of the information available to the Department on labor rates, we have determined that the U.S. Bureau of Labor Statistics (BLS) is the best available source for statistical data pertaining to labor rates. We compared labor rates provided by the American Embassy in Lisbon for two different time periods and were unable to reconcile contradictory data contained in those submissions. The BLS is responsible for monitoring and reporting labor rates worldwide and, as such, is a reliable source of information for this purpose. Therefore, for purposes of the final results of this review, we determined that the information published by the BLS was the best information on the record for use in the valuing of the labor factors of production provided by the Hungarian TRB manufacturer.

Furthermore, for purposes of the final results of this review, we used only one rate to value labor costs for all categories of workers. Given that the BLS rate reflects the average labor rate for all production workers in the machinery (except electrical) manufacturing sector, we determined that it is inappropriate to calculate separate skilled, trained, and unskilled labor rates.

Comment 4: Respondent objects to the factory overhead rate used in the preliminary results of this review, stating that it is higher than that used in the original investigation. Respondent states that if the rate is used in the final results of this review, it should only be applied to the cost of materials and labor, not to the cost of manufacturing.

Petitioner states that the overhead rate used in the preliminary results of this review is closer to reality in the bearing industry than the rate used in the original investigation and should, therefore, be used in the final results of this review.

Department's Position: We have continued to rely on the factory overhead rate calculated by reference to company specific information provided by the American Embassy in Lisbon. The overhead rate we used is that of a bearings manufacturing operating in Portugal as determined on the basis of detailed information contained in the annual report of the Portugese bearings manufacturer. We calculated factory overhead as the ratio of the firm's factory overhead to its cost of manufacturer. We determine that the resulting percentage should be applied to the factors of production for the TRBs from Hungary on the same basis. This is

the most accurate reflection of factory overhead in the surrogate country.

Comment 5: Respondent argues that the packing expense may be distorted because it is applied on a per-kilogram basis instead of a per-TRB basis. Respondent suggests that the Department use one percent of total ex-factory cost plus general expenses for packing.

Petitioner contends that applying a per-piece packing cost would cause significant distortions. Petitioner also notes that the one percent of total ex-factory cost plus general expenses was a ranged version of an actual percentage reported in a previous investigation and that these data were rejected in the final determination of that case.

Department's Position: We have continued to rely on a surrogate packing rate applied on a per-kilogram basis in the final determination calculations. Because we valued all material inputs on a per-kilogram basis, valuation of packing alone on a per-TRB basis would be inconsistent with other elements of the calculation. In addition, packing costs usually bear a relationship to the size of the product being shipped and weight correlates more closely to the size of a TRB than the number of units being shipped.

Final Results of the Review

As a result of our analysis, we determine the margin to be:

Manufacturer/Exporter	Time period	Margin (percent)
Magyar Gordulocsapagy Muvek	2/6/87-5/31/88	5.38
New Exporters	2/6/87-5/31/88	5.38

The Department will instruct the Customs Service to assess antidumping duties at that rate on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for in section 751(a)(1) of the Act, the Department will require a cash deposit of estimated antidumping duties based on the above margin on entries of this merchandise from MGM. For any entries of this merchandise from a new exporter, whose first shipments occurred after May 31 1989, and who is unrelated to the reviewed firm or any previously reviewed firm, a cash deposit of 5.38 percent shall be required. This deposit requirement is effective for all shipments of certain TRBs from Hungary entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22(c)(8) of the Department's regulations.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-11872 Filed 5-21-90; 8:45 am]

BILLING CODE 3510-DS-M

[C-559-001]

Certain Refrigeration Compressors From the Republic of Singapore, Preliminary Results of Countervailing Duty; Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has conducted two administrative reviews of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore. We preliminarily determine that the signatories have complied with the terms of the suspension agreement during the periods January 1, 1986 through December 31, 1986, and January 1, 1987 through March 31, 1988. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: May 22, 1990.

FOR FURTHER INFORMATION CONTACT: Megan Pilaroscia or Barbara Williams, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

On November 7, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 51167) a notice of suspension of countervailing duty investigation regarding certain refrigeration compressors from the Republic of Singapore. On November 9, 1987, and as amended on November 17, 1987, the Department published a notice of "Opportunity to Request Administrative Review" (52 FR 43095; 52 FR 43929) of this case. On November 30, 1987, the petitioner, Tecumseh Products Company, and the respondents, Matsushita Refrigeration Industries (Singapore) Pte. Ltd. (MARIS) and Matsushita Electric Trading (Singapore) Pte. Ltd. (METOS), currently known as Asia Matsushita Electric (Singapore) Pte. Ltd., requested an administrative review of the suspension agreement (52 FR 47617). We initiated the fourth review, covering the period January 1, 1986 through December 31, 1986, on December 15, 1987. On October 31, 1988, the Department published a notice of "Opportunity to Request Administrative Review" (53 FR 43913) for the following period, and on November 15, 1988, the petitioner requested an administrative review (54 FR 4871) of that period. We initiated the fifth review, covering the period January 1, 1987 through March 31, 1988, on January 31, 1989. The Department has now conducted these administrative reviews in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by these reviews are shipments of Singaporean hermetic refrigeration compressors rated not over one-quarter horsepower. During the review periods, such merchandise was classifiable under item number 661.0900 of the *Tariff Schedules of the United States Annotated.* This merchandise is currently classifiable under HTS item number 8414.30.40.

The reviews cover one producer and one exporter of the subject merchandise. These two companies, along with the Government of Singapore, are the signatories to the suspension agreement. The reviews cover the periods January 1, 1986 through December 31, 1986, and January 1, 1987 through March 31, 1988, and five programs.

Analysis of Programs

(1) The Economic Expansion Incentives Act—Part IV

Part IV of the Economic Expansion Incentives Act allows a 90 percent tax exemption on a company's profits if the company is designated as an export enterprise. MARIS is so designated and used this tax exemption during the periods of review.

MARIS exports only refrigeration compressors, all of them through METOS. To calculate the benefit, for each review period we divided MARIS' tax savings from the program by the f.o.b. value of METOS' total exports of MARIS' refrigeration compressors. On this basis, we preliminarily determine the benefit from this program, during the first period reviewed, to be 4.23 percent of the f.o.b. value of the merchandise, and 2.06 percent in the following period of review.

(2) Financing Through the Monetary Authority of Singapore

The suspension agreement prohibits MARIS and METOS from applying for or receiving any financing provided by the rediscount facility of the Monetary Authority of Singapore for shipments of the subject refrigeration compressors to the United States. We determined that neither the signatory producer nor exporter received any financing through the Monetary Authority on the subject compressors exported to the United States during the review periods. Therefore, we preliminarily determine that both companies have complied with this clause of the agreement.

(3) Other Programs

Petitioner requests that the Department review possible benefits conferred by the Government of Singapore to MARIS under the following programs: the Skills Development Fund, the Public Utilities Board Surcharge Exemption, and the technical assistance fee withholding tax exemptions. The Department has examined these programs in prior reviews and determined that they were not countervailable (50 FR 30493, July 26, 1985; 53 FR 25647, July 8, 1988). We have received no new information to indicate that these programs confer countervailable benefits on MARIS.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the signatories have complied with the terms of the suspension agreement, including the payment of the provisional export charge for both periods. From January 1, 1986 through January 9, 1987, a provisional export charge rate of 4.92 percent was in effect, and from January 9, 1987 through March 1988, a rate of 8.35 percent was in effect. We also preliminarily determine the net bounty or grant to be 4.23 percent of the f.o.b. value of the merchandise for the January 1, 1986 through December 31, 1986 review period and 2.06 percent of the f.o.b. value of the merchandise for the January 1, 1987 through March 31, 1988 review period. The suspension agreement states that the Government of Singapore will offset completely with an export charge the net bounty or grant calculated by the Department.

Following the methodology outlined in section B.4 of the agreement, the Department preliminarily determines that, for the period January 1, 1986 through December 31, 1986, and the period January 1, 1987 through March 31, 1988, a negative adjustment may be made to the provisional export charges in effect. These rates, established in the notices of the final results of the first and second administrative reviews of the suspension agreement (50 FR 30493, July 26, 1985; 52 FR 848, January 9, 1987), are 4.92 percent and 8.35 percent, respectively. For both periods, the Government of Singapore may refund the difference to the companies.

The Department intends to notify the Government of Singapore that the provisional export charge on all exports to the United States with Outward Declarations filed on or after the date of publication of the final results of this administrative review shall be 2.06 percent of the f.o.b. value of the merchandise.

The agreement can remain in force only as long as shipments from the signatories account for at least 85 percent of imports of the subject Singaporean refrigeration compressors into the United States. Our information indicates that the two signatory companies accounted for 100 percent of imports into the United States of this merchandise during the review periods.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days after the date of publication. Any hearing, if requested, will be held 35 days after the date of publication or the first workday following. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: May 15, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-11873 Filed 5-21-90; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificates of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an Export Trade Certificate of Review, Application No. 90-00004.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to Dimick International & Associates, Inc. (DIA). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Douglas J. Aller, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade:

Products: All Products.

Services: All Services.

Technology Rights: Technology rights, including, but not limited to, patents and trademarks, that relate to Products and Services.

Export Trade Facilitation Services (as they relate to the export of Products: Export Trade Facilitation Services, including consulting; research on

overseas markets; market analysis and strategy; collection of information on trade opportunities; arranging for exporter risk coverage with the Export-Import Bank; legal assistance; services related to compliance with customs requirements; transportation; facilitating the formation of shippers associations; and financing.

Export Markets:

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation:

To engage in Export Trade in the Export Markets, DIA may:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;
2. Enter into exclusive licensing agreements with Suppliers for the export of Products, Services, and Technology Rights to the Export Markets;
3. Allocate export sales or divide the Export Markets among Suppliers for the sale and/or licensing of Products, Services, and Technology Rights;
4. Establish the price of Products, Services, and Technology Rights for sale and/or licensing in the Export Markets;
5. Negotiate and manage licensing agreements for the export of Technology Rights; and
6. Collect information on trade opportunities in the Export Markets and distribute such information to clients.

A copy of the Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

Dated: May 15, 1990.

Douglas J. Aller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 90-11762 Filed 5-21-90; 8:45 am]

BILLING CODE 3510-DR-M

Auto Parts Advisory Committee; Closed Meeting

ACTION: Notice of closed meeting of Auto Parts Advisory Committee.

SUMMARY: The U.S. Automotive Parts Advisory Committee (the "Committee") advises U.S. Government officials on matters relating to the implementation of the Fair Trade in Auto Parts Act of 1988. The Committee: (1) Reports annually to the Secretary of Commerce on barriers to sales of U.S.-made auto parts and accessories in Japanese markets; (2) assists the Secretary in reporting to the Congress on the progress of sales of U.S.-made auto parts in Japanese markets, including the formation of long-term supplier relationships; (3) reviews and considers data collected on sales of U.S.-made auto parts to Japanese markets; (4) advises the Secretary during consultations with the Government of Japan on these issues; and (5) assists in establishing priorities for the Department's initiatives to increase U.S.-made auto parts sales to Japanese markets, and otherwise provide assistance and direction to the Secretary in carrying out these initiatives. At the meeting, committee members will receive briefings on the status of ongoing consultations with the Government of Japan and will discuss specific trade and sales expansion programs related to U.S.-Japan automotive parts policy.

DATE AND LOCATION: The meeting will be held on Tuesday, June 12, 1990 from 10:00 a.m. to 4:00 p.m. in Louisville, Kentucky.

FOR FURTHER INFORMATION CONTACT: Mr. Stuart Keitz, Office of Automotive Industry Affairs, Automotive Affairs and Consumer Goods Sector, Trade Development, Main Commerce, room 4036, Washington, DC 20230, telephone: (202) 377-0669.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel formally determined on June 14, 1989, pursuant to section 10(d) of the Federal Advisory Act, as amended, that the series of meetings or portions of meetings of the Committee and of any subcommittee thereof, dealing with privileged or confidential commercial information may be exempt from the provisions of the act relating to open meeting and public participation therein because these items will be concerned with matters that are within the purview of 5 U.S.C. 552b(c)(4) and (9)(B). 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, Main Commerce.

Dated: May 16, 1990.

Henry Misisco,

Director, Office of Automotive Industry Affairs.

[FR Doc. 90-11880 Filed 5-21-90; 8:45 am]

BILLING CODE 3510-DR-M

Exporters' Textile Advisory Committee; Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held on June 14, 1990. The meeting will be at 2 p.m. in Room 3407 at the Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230.

The Committee advises Department of Commerce officials on textile and apparel export issues.

Agenda

1. Emerging export opportunities in Southern Europe.
2. HEIMTEXTIL of the Americas proposed for Miami, Florida in 1991/92.
3. The ATC Corporation's proposed apparel mart in Osaka, Japan.
4. Update on Europe 1992 and the Uruguay Round trade negotiations.
5. Report on recently concluded events—STAR home textiles in Milan and the Yarn and Fabric Trade Mission to Mexico.
6. Report on Office of Textiles and Apparel, Market Expansion Division, FY91 events scheduling.
7. Other business.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact William Dawson (202/377-4324).

Dated: May 16, 1990.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-11881 Filed 5-21-90; 8:45 am]

BILLING CODE 3510-DR-M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Decision: Denied. Applicants have failed to establish that domestic

instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for each of the listed dockets.

Docket Number: 89–144. *Applicant:* Cornell University, New York State College of Veterinary Medicine, Ithaca, NY 14853–6401. *Instrument:* Variable Area Gas Flowmeter-Rotameter, Model Series 2100. *Manufacturer:* KDG Flowmeter, United Kingdom. *Date of Denial Without Prejudice to Resubmission:* January 16, 1990.

Docket Number: 89–156. *Instrument:* Electrometer-Patch Clamp Amplifier, Model EPC–7.

Docket Number: 89–159. *Instrument:* Microelectrode Puller, Model L/M 3P–A.

Applicant: University of Virginia, Charlottesville, VA 22908. *Manufacturer:* List Electronic, West Germany. *Date of Denial without Prejudice to Resubmission:* February 6, 1990.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90–11874 Filed 5–21–90; 8:45 am]

BILLING CODE 3510–DS–M

Florida Atlantic University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 89–293. *Applicant:* Florida Atlantic University, Boca Raton, FL 33431. *Instrument:* Angular Distribution Electron Spectrometer System, Model ADES 400. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* See notice at 55 FR 2881, January 29, 1990.

Comments: None received.

Decision: Approved. No domestic manufacturer was both "able and willing" to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the instrument was intended to be used, and have it available to the applicant without unreasonable delay in accordance with § 301.5(d)(2) of the regulations, at the time the foreign instrument was ordered (December 29, 1988).

Reasons: The foreign instrument provides precise LEELS, XPS, AES, SIMS, UPS and ISS analysis. This capability is pertinent to the applicant's intended purposes. We know of no domestic manufacturer both able and willing to provide an instrument with the required features at the time the foreign instrument was ordered.

As to the domestic availability of instruments, § 301.5(d)(2) of the regulations provides that, in determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, "the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be taken into account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case." This subsection also provides that, if "a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument."

The regulations require that domestic manufacturers be both "able and willing" to produce an instrument for the purposes of comparison with the foreign instrument. Where an applicant, as in this case, received a no bid response to a formal request for quotation sent to domestic manufacturers it is apparent that the domestic manufacturers were either not able or not willing to produce an instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument was intended to be used at the time the foreign instrument was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90–11875 Filed 5–21–90; 8:45 am]

BILLING CODE 3510–DS–M

University of Florida; Decision on Application; for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket number: 90–002. *Applicant:* University of Florida, Gainesville, FL 32611–2046. *Instrument:* Mass Spectrometer, Model MAT 90. *Manufacturer:* Finnigan MAT, West Germany. *Intended Use:* See notice at 55 FR 3439, February 1, 1990.

Comments: None received.

Decision: Approved. No domestic manufacturer was both "able and willing" to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the instrument was intended to be used, and have it available to the applicant without unreasonable delay in accordance with § 301.5(d)(2) of the regulations, at the time the foreign instrument was ordered (November 17, 1989).

Reasons: The foreign instrument provides a resolution of 50 000 (10% valley definition) with a mass range to 17 500 μ and a scan rate 0.1 to 1000 seconds/decade. The capability of the foreign instrument described above is pertinent to the applicant's intended purposes. We know of no domestic manufacturer both able and willing to provide an instrument with the required features at the time the foreign instrument was ordered.

As to the domestic availability of instruments, § 301.5(d)(2) of the regulations provides that, in determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, "the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be taken into account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case." This subsection also provides that, if "a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument."

The regulations require that domestic manufacturers be both "able and willing" to produce an instrument for the purposes of comparison with the foreign instrument. Where an applicant, as in

this case, received a no bid response to a formal request for quotation sent to the domestic manufacturers it is apparent that the domestic manufacturer was either not able or not willing to produce an instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument was intended to be used at the time the foreign instrument was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90-11876 Filed 5-21-90; 8:45 am]

BILLING CODE 3510-DS-M

University of Minnesota, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket number: 89-186. *Applicant:* University of Minnesota, Minneapolis, MN 55455. *Instrument:* Scanning Electron Microscope, Model S-900. *Manufacturer:* Hitachi, Japan. *Intended Use:* See notice at 54 FR 34541, August 21, 1989. *Reasons:* The foreign instrument provides a resolution of 4nm at 1kV and 1nm at 30kV. *Order date:* March 27, 1989. *Advice Submitted by:* National Institutes of Health, January 30, 1990.

Docket Number: 88-305. *Applicant:* Oregon State University, Corvallis, OR 97331-4003. *Instrument:* Particle Electrophoresis, Mark II. *Manufacturer:* Rank Bros., United Kingdom. *Intended Use:* See notice at 53 FR 43465, October 27, 1988. *Reasons:* The foreign instrument provides rotating prism optics and both a cylindrical and flat sample cell. *Order Date:* May 6, 1988. *Advice submitted by:* National Institute of Standards and Technology, March 1, 1990.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, was being manufactured in the United States at the time the instrument was ordered.

The National Institute of Standards and Technology and National Institutes of Health advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value to either of the foreign instruments for the applicant's intended use being manufactured at the time the foreign instrument was ordered.

We know of no other domestic instrument or apparatus of equivalent scientific value to the either of the foreign instruments being manufactured at the time it was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90-11877 Filed 5-21-90; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits and Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

May 15, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels.

EFFECTIVE DATE: June 1, 1990.

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 these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. 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).

Memoranda of Understanding (MOUs) dated December 21, 1988 and February 14, 1989 between the Governments of the United States and Costa Rica establish, among other things, specific limits and guaranteed access levels (GALs) for cotton and man-made fiber textile products in Categories 340/640, 342/642 and 347/348, produced or manufactured in Costa Rica and exported during the twelve-month period which begins on June 1, 1990 and extends through May 31, 1991.

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 54 FR 50797, published on December 11, 1989). Also see 54 FR 3521, published on January 24, 1989; and 54 FR 9876, published on March 8, 1989.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 54 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOUs dated December 21, 1988 and February 14, 1989, but are designed to assist only in the implementation of certain of their provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 15, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to Memoranda of Understanding (MOUs) dated December 21, 1988 and February 14, 1989 between the Governments of the United States and Costa Rica; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 1, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Costa Rica and exported during the twelve-month period which begins on June 1, 1990 and extends through May 31, 1991, in excess of the following levels of restraint:

Category	Twelve-Month restraint limit
340/640	609,500 dozen
342/642	225,000 dozen
347/348	901,000 dozen

You are directed to continue counting merchandise in Categories 340/640, 342/642 and 347/348 which is exported during the period January 1, 1990 through May 31, 1990. Textile products in Categories 340/640, 342/642 and 347/348 which have been exported to the United States prior to June 1, 1990 shall not be subject to this directive.

Additionally, pursuant to the MOUs dated December 21, 1988 and February 14, 1989; and under the terms of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (June 10, 1987) and 54 FR 50425 (December 6, 1989), effective on June 1, 1990, guaranteed access levels have been established for properly certified textile products assembled in Costa Rica from fabric formed and cut in the United States in cotton and man-made fiber textile products in the following categories which are exported from Costa Rica during the period June 1, 1990 through May 31, 1991:

Category	Guaranteed access level
340/640	650,000 dozen
342/642	250,000 dozen
347/348	1,000,000 dozen

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of May 15, 1990, shall be denied entry unless the Government of Costa Rica authorizes the entry and any charges to the appropriate specific limits. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-11763 Filed 5-21-90; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

May 15, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 22, 1990.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6580. For information on embargoes and quota re-opening, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 331/631 is being increased by application of swing, reducing the limit for Category 341.

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 54 FR 50797, published on December 11, 1989). Also see 54 FR 24731, published on June 9, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 15, 1990.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 5, 1989, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Sri Lanka and exported during the period which began on July 1, 1989 and extends through June 30, 1990.

Effective on May 22, 1990, the directive of June 5, 1989 is being amended further to adjust the limits for cotton and man-made fiber textile products in the following categories, as provided under the provisions of the current bilateral agreement between the Governments of the United States and Sri Lanka:

Category	Adjusted twelve-month limit [1]
331/631	1,868,201 dozen pairs
341	577,663 dozen of which not more than 265,000 dozen shall be in Category 341-Y.[2]

[1] The limits have not been adjusted to account for any imports exported after June 30, 1989.

[2] Category 341-Y: only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.

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,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-11764 Filed 5-21-90; 8:45 am]

BILLING CODE 3510-DR-M

Establishment of a New Export Visa Arrangement and Certification Requirements for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Costa Rica

May 15, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing export visa and certification requirements.

EFFECTIVE DATE: June 1, 1990.

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).

JDuring negotiations between the Governments of the United States and Costa Rica, agreement was reached to establish a new export visa arrangement and certification system for cotton and man-made fiber textile products in Category 340/640, 342/642 and 347/348, produced or manufactured in Costa Rica and exported from Costa Rica on and after June 1, 1990.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apperel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also

see 54 FR 3521, published on January 24, 1989; and 54 FR 9876, published on March 8, 1989.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

Interested persons are advised to take all necessary steps to ensure that textile products, produced or manufactured in Costa Rica, which are to be entered into the United States for consumption, or withdrawn from warehouse for consumption, that are exported from Costa Rica on and after June 1, 1990 will meet the stated visa and certification requirements.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 15, 1990.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Export Visa and Certification Arrangement of April 20, 1990 between the Governments of the United States and Costa Rica; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, and the Special access Program as set forth in 51 FR 21208 (June 11, 1986) and 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), you are directed to prohibit, effective on June 1, 1990, entry into the Customs territory of the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of textiles and textile articles of cotton and man-made fiber textile products in Categories 340/640, 342/642 and 347/348, produced or manufactured in Costa Rica and exported on and after June 1, 1990 from Costa Rica for which the Government of Costa Rica has not issued an appropriate visa or certification fully described below.

Each shipment of apparel or made-up products assembled in Costa Rica wholly from components cut in the United States from U.S.-formed fabric and which falls under HTS number 9802.00.8010 which is subject to a Guaranteed Access Level (GAL) must be accompanied by a certification issued by the appropriate Costa Rica authorities and a completed Export Declaration (form ITA-370P), or successor document.

Each shipment of woven apparel products assembled in Costa Rica wholly from components out in the United States from U.S.-formed fabric and then subject in Costa Rica to bleaching, acid-washing, stone-washing or permapressing following assembly, which is subject to a GAL, even though it may not be classified under HTS number 9802.00.8010, shall be certified by the appropriate Costa Rican authorities.

Shipments of textile products not accompanied by a properly issued certification and an Export Declaration (form ITA-370P) shall be accompanied by a properly issued visa.

The visa is a circular stamped marking in blue ink which will appear on the front of the original commercial invoice. The certification is a square-shaped stamped marking in blue ink on the front of the original commercial invoice. The original visa or certification shall not be stamped on duplicate copies of the invoice. The original of the invoice with an original visa or certification stamp shall be required to enter the shipment into the United States. Duplicates of the invoice may not be used for this purpose.

The visa or certification stamp will include the following information:

1. The visa or certification number. The visa or certification number shall be the standard nine-digit/letter format beginning with one digit for the last digit of the year of export followed by the two character alpha country code specified by the International Organization for Standardization (ISO) (the Code for Costa Rica is "CR"). On the visa stamp, these first two codes shall be followed by the number "1" and a five-digit numerical serial number identifying the shipment (e.g., OCR123456). On the certification stamp, these first two codes shall be followed by the number "2" and a five-digit numerical serial number identifying the shipment (e.g., OCR212345).

2. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

3. The signature of the issuing official.

4. The correct category(s), merged category(s), quantity(s) and unit(s) of quantity provided for in the U.S. Department of Commerce CORRELATION and in the U.S. Tariff Schedule(s) of the United States annotated (e.g., "Cat. 340-510 DZ").

Entry of textile products subject to the certification system will be permitted only for those shipments accompanied by:

1. A valid certification by the Government of Costa Rica.

2. A completed copy of the Export Declaration (form ITA-370P or successor document) with a proper declaration by the Costa Rican assembler that the articles were subject to assembly in Costa Rica from parts described on that Export Declaration.

3. A proper Importer's Declaration.

Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct visa corresponding to the actual shipment (e.g., quota Categories 347/348 may be visaed as 347/348, or if the shipment consists solely of Category 347 merchandise, the shipment may be visaed as "Cat. 347," but not as "Cat. 348").

U.S. Customs shall not permit entry if the shipment does not have a visa or certification, or if the visa or certification number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa or certification is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa or certification is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged to any applicable quota.

If the visa or certification is not acceptable to the U.S. Customs Service, a new visa must be obtained from the Costa Rican Government or a visa waiver requested by the Costa Rican Government, issued by the U.S. Department of Commerce, and presented to the U.S. Customs Service before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa with the shipment. It does not waive any applicable quota requirements.

Any shipment which is declared for the Special Access Program but found not to qualify may be permanently denied entry into the United States.

In the event of denial of entry for a minor error on the form ITA-370P, where the remaining documentation fulfills requirements for entry under the Special Access Program, then a certification waiver must be obtained and presented to the U.S. Customs Service before any portion of the shipment will be released.

If the visa is deficient, the U.S. Customs Service will not return the original document after entry, but will provide a certified copy of that visaed invoice for use in obtaining a new correct original visaed invoice, or visa waiver.

If import quotas are in force, U.S. Customs Service shall charge only the actual quantity in the shipment to the correct category limit. If a shipment from Costa Rica has been allowed entry into the commerce of the United States with either an incorrect visa or no visa, and redelivery is requested but cannot be made, U.S. Customs shall charge the shipment to the correct category limit whether or not a replacement visa or visa waiver is provided.

Any shipment which requires a visa or certification, but which is not accompanied by a valid and correct visa or certification in accordance with the foregoing provisions shall be denied entry by U.S. Customs Service unless the Government of Costa Rica authorizes the entry and any charges to the agreement levels through the visa waiver process.

Visaed merchandise and products eligible for the Caribbean Basin Textile Special Access Program may not appear on the same invoice.

Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S. $250 or less, do not require a visa or certification for entry and shall not be charged to the agreement levels.

Facsimiles of the visa and certification stamps are enclosed with this letter.

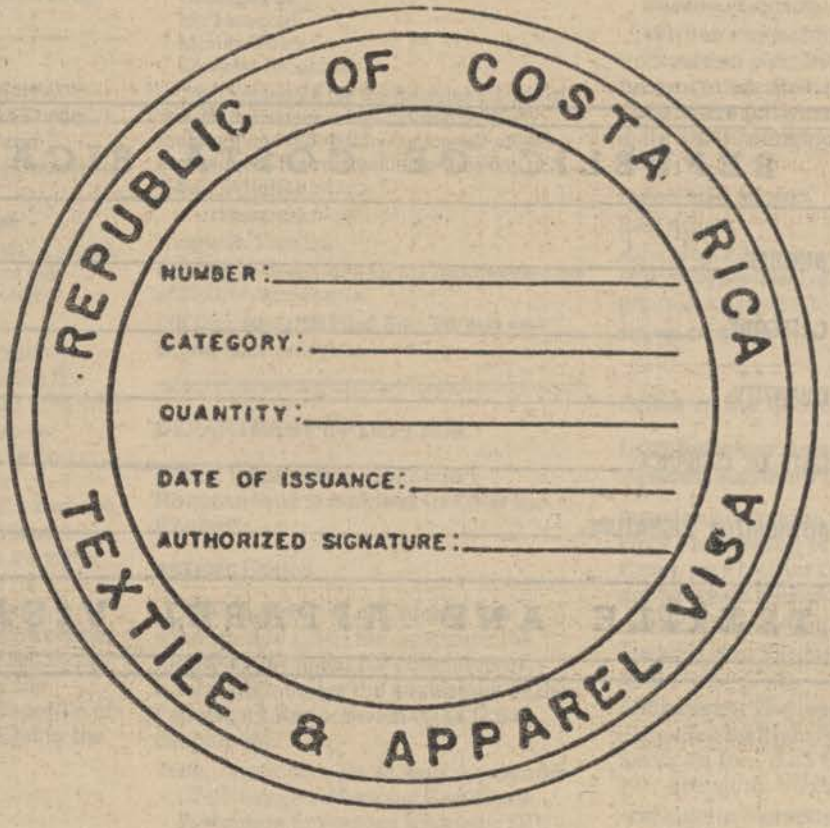
The actions taken with respect to the Government of Costa Rica and with respect to imports of textiles and textile articles of cotton and man-made fiber textile products have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1). This letter will be published in the **Federal Register**.

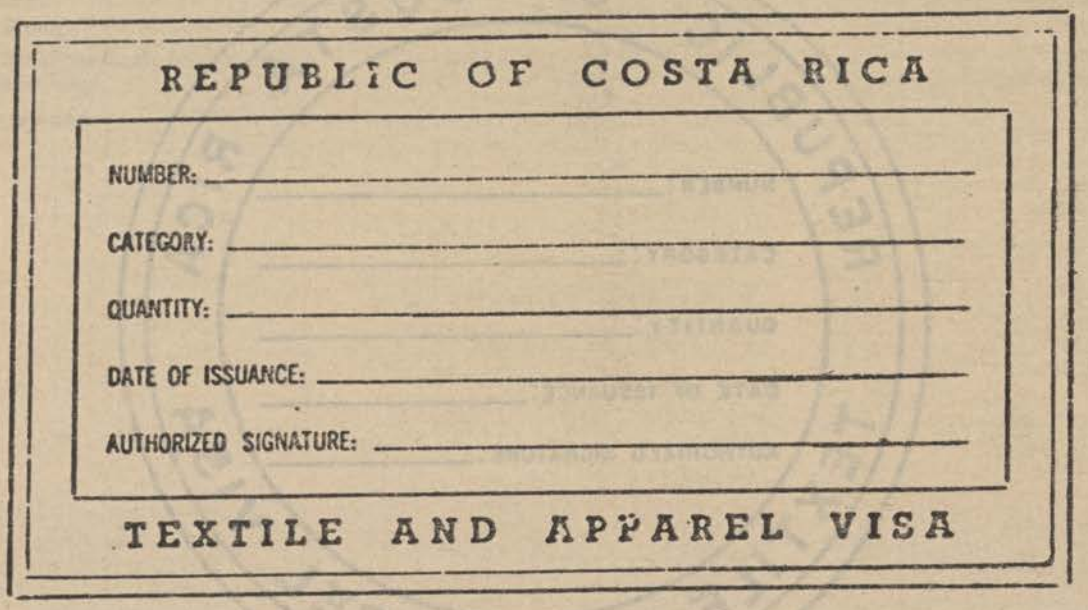
Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

BILLING CODE 3510-DR-M


REPUBLIC OF COSTA RICA
NUMBER:
CATEGORY:
QUANTITY:
DATE OF ISSUANCE:
AUTHORIZED SIGNATURE:
TEXTILE & APPAREL VISA



[FR Doc. 90-11765 Filed 5-21-90; 8:45 am]
BILLING CODE 3510-DR-C

New Officials of the Government of the Socialist Republic of Romania Authorized to Issue Export Visas Using the New Visa Stamp

May 15, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs authorizing the use of a new visa stamp.

EFFECTIVE DATE: June 1, 1990.

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 Government of the Socialist Republic of Romania has notified the United States Government that they will begin issuing a new visa stamp to accompany shipments of textile and apparel products, produced or manufactured in Romania and exported from Romania to the United States.

A facsimile of the new visa stamp is on file at the U.S. Department of Commerce, Office of Textiles and Apparel, 14th and Constitution Avenue, NW., room 3104, Washington DC 20230.

New officials authorized by the Government of the Socialist Republic of Romania to issue visas are listed in the letter published below to the Commissioner of Customs.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 15, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 29, 1983, as amended, that directed you to prohibit entry of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufacured in Romania for which the Government of the Socialist Republic of Romania has not issued an appropriate export visa.

Effective on June 1, 1990, the directive of December 29, 1983 is amended further to provide for the use of a new visa stamp to accompany shipments of textiles and textile products exported from Romania on and after June 1, 1990. Goods entered during the period June 1, 1990 through June 30, 1990 which are produced or manufactured in Romania and exported from Romania on and after June 1, 1990 shall be permitted entry if accompanied by either the old or new visa.

A facsimile of the new visa stamp is enclosed with this letter.

The Government of the Socialist Republic of Romania has authorized the officials listed below to issue visas for textile and apparel products, produced or manufactured in Romania and exported from Romania on and after June 1, 1990:

Andrei Serban
Gheorghe Miu
Ion Lazaroiu
Marian Voicu
Cornelia Niculescu

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,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–11766 Filed 5–21–90; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Certificate Pertaining to Foreign Interests; DD Form 441s; and OMB Control Number 0704–0024.

Type of request: Reinstatement.

Average Burden Hours/Minutes per Response: 1.1 Hours.

Frequency of Response: When processing a new facility security clearance and when there is a subsequent change in the information.

Number of Respondents: 2560.

Annual Burden Hours: 2816.

Annual Responses: 2560.

Needs and uses: Form is used to provide formal certification from the contractor relative to FOCI in order that the DoD may determine eligibility for a facility security clearance.

Affected public: Business or other for-profit.

Frequency: One-time only.

Respondent's Obligation: Contractor facilities must complete the form in order that the DoD may determine eligibility for a DoD facility security clearance. Mandatory.

OMB Desk Officer: Dr. Timothy Sprehe. Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer; Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis High Way, suite 1204, Arlington, Virginia 22202–4302.

Dated: May 16, 1990.

L.M. Bynum,

Alternate OSD Federal Register, Liason Officer, Department of Defense.

[FR Doc. 90–11866 Filed 5–21–89; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group C (Mainly Opto Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday and Wednesday, 5 and 6 June 1990.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 2011 Crystal Drive, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such program as imaging devices, infrared detectors and lasers. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5

U.S.C. app. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: May 16, 1990.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 90-11867 Filed 5-21-90; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday and Friday, 7 and 8 June 1990.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: David Slater, AGED Secretariat, 201 Varick Street, New York, New York 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. app. II § 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: May 16, 1990.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 90-11868 Filed 5-21-90; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

[CDFA No. 84.128A-6]

Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals With Severe Handicaps; Invitation of Applications for New Awards for Fiscal Year (FY) 1990

Purpose of Program: This program provides support to States and other public and nonprofit agencies and organizations to expand and otherwise improve rehabilitation services to individuals with the most severe handicaps. Awards under this competition are to support educational and rehabilitative services that maximize the vocational potential of low-functioning adults who are deaf, including those who are deaf and who have a secondary disability.

Projects must address the postsecondary education, counseling, vocational training, work transition, supported employment, job placement, follow-up, and community outreach needs of low-functioning adults who are deaf.

Deadline for Transmittal of Applications: July 5, 1990.

Applications Available: May 25, 1990.

Available Funds: $888,000.

Estimated Range of Awards: $444,000-$888,000.

Estimated Number of Awards: 1-2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, and 85; and (b) The regulations for this program in 34 CFR parts 369 and 373.

It is the policy of the Department of Education not to solicit applications before the publication of final priorities. However, in this case it is essential to solicit applications on the basis of the notice of proposed priority for this program as published in the **Federal Register** on March 20, 1990 (55 FR 10385), because the Department's authority to obligate these funds will expire on September 30, 1990.

In response to the Secretary's notice of proposed funding priority for fiscal year 1990, eight parties submitted comments. Five of the comments were favorable. None of these comments suggested any changes to the priority.

Three of the comments were not favorable. Two of the commenters objected to funds being set aside to address the needs of low-functioning adults who are deaf. One of these commenters also pointed out that there are insufficient funds in the commenter's State to meet the need for physical therapists. These commenters were apparently unaware that Congress appropriated funds in 1990 specifically to fund projects under the Program of Special Projects and Demonstrations to support "a consortium of institutions to provide education and vocational rehabilitation services for low functioning adults who are deaf." (Pub. L. 101-166, enacted November 21, 1989). Therefore, the general subject area of the priority and the requirement for a consortium reflect a congressional mandate rather than matters in which the Department can exercise discretion. The second commenter noted that the priority includes some requirements for coordination and cooperation that, while desirable, would have the effect of limiting the pool of eligible applicants. The Secretary recognizes that the priority is detailed but believes that the requirements referred to are important and are consistent with congressional intent. The legislative history of this appropriation indicates that Congress intended that the funds support a consortium of instituations to work in collaboration with private and public agencies to address the general education, counseling, vocational training, work transition, supported employment, job placement, follow-up, and community outreach needs of low-functioning adults who are deaf.

The third commenter recommended that the priority be limited to the support of projects that provide only vocational rehabilitation services in accordance with statutory language. Section 311(a)(1) of the Rehabilitation Act, as amended, authorizes the establishment of programs that hold promise of expanding or otherwise improving rehabilitation services to individuals with handicaps, irrespective of vocational potential, who can benefit from comprehensive services. The statute, therefore, does not limit the provision of services to vocational rehabilitation services. Also, as previously noted, Pub. L. 101-166 specifically appropriated funds under the Special Projects authority to provide education and vocational rehabilitation services.

This commenter also recommended that a "non-priority" funding category be added. The Secretary published a combined application notice (CAN) for fiscal year 1990 new awards under the Department's discretionary grant programs on September 15, 1989 (54 FR 38339). The CAN included an invitational (non-binding) priority under

the Program of Special Projects and Demonstrations. Consequently, applicants under this program were given the opportunity in fiscal year 1990 to submit applications in subject areas of their own choice.

Based on the comments received, the Secretary does not anticipate making any changes in the final priority. However, if any substantive changes are made in the notice of final priority, applicants will be given an opportunity to revise or resubmit their applications.

For Applications or Information Contact: Charlotte Coffield, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., Switzer Building, room 3221, Washington, DC 20202–2736. Telephone: (202) 732–1401; deaf and hearing impaired individuals may call (202) 732–1298 for TDD services.

Authority: 29 U.S.C. 777a(a)(1).

Dated: May 15, 1990.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 90–11791 Filed 5–21–90; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meeting of the International Energy Agency Industry Advisory Board

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notice is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on Tuesday, May 29, 1990, at the University of Bologna, Sala del Consiglio, via Zamboni 33, Bologna, Italy, beginning at 9:30 a.m. The agenda for the meeting is as follows:

1. Opening remarks.
2. Approval of Record Note for IAB meeting of December 5, 1989.
3. Status of current work; report on the March 23, 1990 meeting of the Standing Group on Emergency Questions.
4. Future Work of the IAB and the IEA.
5. Extension of United States' antitrust defense legislation.
6. IAB organization.
7. Next meeting.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, the meeting is open only to representatives of members of the IAB, their counsel, representatives of the Departments of Energy, Justice, State, the Federal Trade Commission, and the General Accounting Office, representatives of Committees of the Congress, representatives of the IEA, representatives of the Commission of the European Communities, and invitees of the IAB, or the IEA.

Issued in Washington, DC, May 16, 1990.

Stephen A. Wakefield,

General Counsel.

[FR Doc. 90–11855 Filed 5–21–90; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 8459–001, Vermont]

Geoffrey Shadroui, Availability of Environmental Assessment

May 15, 1990.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Swanton Dam Hydroelectric Project located on the Mississiquoi River in Franklin County, near Swanton, Vermont, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 90–11774 Filed 5–21–90; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 10924–000, et al.]

Hydroelectric Applications (Franklin Hydro, Inc., et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10924–000.

c. *Date filed:* April 11, 1990.

d. *Applicant:* Franklin Hydro, Inc.

e. Name of Project: Rogers Dam Hydroelectric Project.

f. *Location:* At the J&J Rogers Dam on the West Branch, Ausable River in Clinton and Essex Counties, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Frank O. Christie, Franklin Hydro, Inc., 8 East Main Street, Malone, New York 12953, (518) 483–1945.

i. *FERC Contact:* Mary C. Golato, (202) 357–0804.

j. *Comment Date:* June 27, 1990.

k. *Description of Project:* The proposed project would consist of the following facilities: (1) An existing concrete gravity dam 40 feet high and 180 feet long; (2) an existing reservoir having a surface area of approximately 8 acres, a storage capacity of 56 acre-feet, and a crest elevation of 660 feet mean sea level; (3) a proposed powerhouse containing one turbine-generator unit having an installed capacity of 100 kilowatts; (4) a proposed 13.8-kilowatt, 4,500-foot-long transmission line; and (5) appurtenant facilities. The dam is owned by Essex County. The average annual generation would be 3,500,000 kilowatthours. The applicant estimates that the cost of the studies would be $20,500.00.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

2 a. *Type of Application:* License Amendments.

b. *Project No.:* 2056–005.

c. *Date filed:* December 31, 1989.

d. *Applicant:* Northern States Power Company.

e. Name of Project: St. Anthony Falls Lower Dam Plant.

f. *Location:* On the Mississippi River, near Minneapolis, Hennepin County, Minnesota.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. C. Gary Anderson, Northern States Power Company, 414 Nicolette Mall, Minneapolis, MN 55401.

i. *FERC Contact:* Michael Dees (tag), (202) 357–0807.

j. *Comment Date:* June 29, 1990.

k. *Description of Project:* The proposed amendment of the existing licensed project would consist of: (1) A new powerhouse structure of reinforced concrete about 135.5 feet long, 62 feet wide and 60 feet high; (2) two forebay concrete gravity headwalls flanking the

powerhouse, each about 37 feet high, the west headwall measuring about 60 feet in length and connecting with the existing Corps of Engineers' navigation dam, and the east headwall measuring about 110 feet in length and connecting with the east bank of the river; (3) power house machinery consisting of two identical horizontal axis Kaplan-type turbines coupled through speed increasers to generators with a capacity of 8 megawatts (MW) each; and (4) appurtenant facilities.

1. This notice also consists of the following standard paragraphs: B, C, and D1.

3 a. *Type of Application:* Transfer of License.

b. *Project No.:* 7856–008.

c. *Date filed:* April 25, 1990.

d. *Applicant:* Potosi Power Company, Inc. (Licensee) and Potosi Generating Station (Transferee).

e. *Name of Project:* Potosi Power Company Water Power Project.

f. *Location:* On the South Willow and Potosi Creeks near Pony in Madison County, Montana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contract:*

Mr. Rhett Hurless, P.O. Box 3474, Bozeman, MT 599772–3474

Mr. Lance Bingham, 5160 Wiley Post Way, Suite 220, Salt Lake City, UT 84116, (801) 537–1520.

i. *FERC Contact:* Julie Bernt, (202) 357–0839.

j. *Comment Date:* June 28, 1990.

k. *Description of Project:* On October 7, 1985, new license was issued to the Potosi Power Company, Inc. for the construction, operation, and maintenance of the Potosi Power Company Water Power Project No. 7856. It is proposed to transfer the license to Potosi Generating Station. The purpose of this proposed license transfer is to reflect the sale of the project to Potosi Generating Sation.

The licensee certifies that it has fully complied with the terms and conditions of its license and obligates itself to pay all annual charges accrued under the license to the date of transfer. The transferee accepts all the terms and conditions of the license and agrees to be bound thereby to the same extent as though it were the original licensee.

l. This notice also consists of the following standard Paragraphs: B and C.

3 a. *Type of Application:* Surrender of License.

b. *Project No.:* 8284–003.

c. *Date filed:* March 14, 1990.

d. *Applicant:* Geoffrey Shadroui.

e. *Name of Project:* Stevens #1 Project.

f. *Location:* On the Stevens Branch of the Winooski River, in Washington County, Vermont.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contract:* Geoffrey Shadroui, 121 Maple avenue, Barre, VT 05641, (802) 476–7598.

i. *FERC Contact:* Mary C. Golato (tag) (202) 357–0804.

j. *Comment Date:* June 22, 1990.

k. *Description of Project:* The license for this project was issued on August 8, 1986, for an installed capacity of 35 kilowatts. The licensee states that it has determined that the project would be economically infeasible. No construction has commenced at the site.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

5 a. *Type of Application:* Surrender of License.

b. *Project No.:* 7746–004.

c. *Date filed:* March 14, 1990.

d. *Applicant:* Geoffrey Shadroui.

e. *Name of Project:* Stevens Branch.

f. *Location:* On the Stevens Branch of the Winooski River near Barre City, Washington County, Vermont.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Geoffrey Shadroui, 121 Maple Avenue, Barre, VT 05641, (802) 476–7598.

i. *FERC Contact:* Mary C. Golato (tag) (202) 357–0804.

j. *Comment Date:* June 22, 1990.

k. *Description of Project:* The license for this project was issued on August 8, 1986, for an installed capacity of 35 kilowatts. The licensee states that it has determined that the project would be economically infeasible. No construction has commenced at the site.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

6a. *Type of Application:* Minor License.

b. *Project No.:* 10806–000.

c. *Date Filed:* June 15, 1989.

d. *Applicant:* Holyoke Economic Development and Industrial Corporation.

e. *Name of Project:* Station No. 5.

f. *Location:* On the second level canal on the west bank of the Connecticut River, Hampden County, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert Batemen, City Hall, Rm. 10, Holyoke Ave., Holyoke, MA 01040, (413) 534–2200.

i. *FERC Contact:* Michael Dees, (202) 357–0807.

j. *Comment Date:* June 27, 1990.

k. *Description of Project:* The proposed project would consist of: (1) A gated intake with new trashracks located on the Second Level Canal of the Holyoke Water Power Company; (2) two 75-foot-long, 6.5-foot-diameter, steel penstocks; (3) a refurbished single-runner, vertical Kaplan turbine directly coupled to a rewound 790-kW generator; (4) a 375-foot-long, 16.5-foot-wide by 11-foot-high arched brick-lined tailrace tunnel; (5) a steel gate where the tailwater empties into the Connecticut River; (6) an interconnection with the Holyoke Gas and Electric Department's underground service line, and (7) appurtenant facilities.

1. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

7a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10875–000.

c. *Date filed:* January 25, 1990.

d. *Applicant:* Abert Rim Hydroelectric Company.

e. *Name of Project:* Abert Rim Hydroelectric Pumped Storage Project.

f. *Location:* On Mule Lake, fed by natural springs and Lake Abert, fed by the Chewaucan River in Lake County, Oregon, near the town of Lakeview. The project would occupy lands administered by the Bureau of Land Management. T34S, R21E and R22E; T35S, R21E; T33S, R22E; T32S, R22E; T31S, R22E; T30S, R21E; T29S, R21E; T28S, R21E, Willamette Base and Meridian.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Mr. Bart M. O'Keeffe, Project Manager, Abert Rim Hydroelectric Company, P.O. Box 60565, Sacramento, CA 95860 (916) 971–3717

Mr. Louis Rosenman, LeBoeuf, Lamb, Leiby & McRae, 1333 New Hampshire Avenue, NW, Washington, DC 20036, (202) 457–7500

i. *FERC Contact:* Ms. Deborah Frazier-Stutely, (202) 357–0842

j. *Comment Date:* June 18, 1990.

k. *Description of Project:* The proposed pumped storage project would consist of: (1) A 230-foot-high, 14,400-foot-long earthen dam, which would enlarge the existing Mule Lake; (2) an 825 acre Mule Lake with a storage capacity of 60,000 acre-feet at elevation 5,765 feet msl, to be utilized as the upper reservoir; (3) two control gates; (4) two 35-foot-diameter, 1,400-foot-high power shafts; (5) two 35-foot-diameter, 1,600-foot-high surge shafts; (6) a 1,600-foot-high access shaft with elevator; (7) an underground powerhouse containing

eight pump generator units with a combined installed capacity of 2 million kW, producing an average annual energy output of 4,992,000 MWh; (8) a switchyard; (9) a converter station; (10) two 35-foot-diameter, 3,400-foot-long tailraces discharging into; (11) the 35,000 acre Lake Abert reservoir with a storage capacity of 1,050,000 acre-feet at elevation 4,255 feet msl to be utilized as the lower reservoir; (2) two control gates above the tailrace; (13) a 3,400-foot-long vehicle access tunnel; (14) a 43-mile-long, 500-kV AC transmission line tying into an existing Pacific Power and light line; (15) a 3-mile-long, 500-kV DC line tying into an existing Bonneville Power Administration line.

No new access roads will be needed to conduct the studies. The applicant estimates the cost of the studies to be conducted under the preliminary permit at $2,000,000.

l. *Purpose of Project:* Project power would be either sold to a California private utility, California municipal utility or an Oregon utility.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

8a. *Type of Application:* Preliminary Permit.

b. *Project No. 10880–000.*

c. *Date filed:* January 29, 1990.

d. *Applicant:* Contractors Power Group, Inc.

e. *Name of Project:* Ryegrass Water Power Project.

f. *Location:* On the Richfield Canal and Big Wood River in Lincoln and Blaine Counties, Idaho, near the town of Shoshone. T.2&3, R.18E, Boise Meridian and Base.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Harold Shelter, Secretary, Route 4, Buhl, ID 83316, (208) 543–5177

John J. Straubhar, Project Engineer, P.O. Box 820, 1061 Blue Lakes Blvd. N., Twin Falls, ID 83301, (208) 733–5200

i. *FERC Contact:* Ms. Deborah Frazier-Stutely, (202) 357–0842.

j. *Comment Date:* June 22, 1990.

k. *Description of Project:* The proposed project would consist of: (1) A 60-foot-long diversion dam consisting of 4 radial gates to be constructed in the existing Richfield Canal; (2) a 60-inch-diameter, 4,000-foot-long penstock; (3) a powerhouse containing three generating units with a total installed capacity of 2,160 kW, producing an average annual energy output of 10.26 million kWh; (4) a tailrace discharging project flows into Big Wood River; (5) a ¼-mile-long access road; and (6) a ⅛-mile-long, 46-kV transmission line tying into an existing Idaho Power Company line.

Approximately 1,500 feet of the Richfield Cnal, upstream from the diversion dam, will be deepened and widened to accommodate an additional 50 cfs of flow and to facilitate possible backwater curves.

No new access road will be needed to conduct the studies. The applicant estimates the cost of the studies to be conducted under the preliminary permit at $16,500.

l. *Purpose of Project:* Project power would be sold to Idaho Power Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

9a. *Type of Application:* Minor License.

b. *Project No. 10882.*

Date filed: February 1, 1990.

c. *Applicant:* Norman Ross Burgess.

d. *Name of Project:* Three Forks Water Power Project.

f. *Location:* On Blueford, Rock, Middle, and Mud Creeks in Trinity County, California.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Mr. Norman R. Brugess, P.O. Box 200, Zenia, CA 95495, (707) 923–9653

i. *Commission Contact:* Mr. William Roy-Harrison, (202) 357–0845.

j. *Comment Date:* June 18, 1990.

k. *Description of Project:* The proposed project would utilize and incorporate into any license issued the applicant's existing Blueford Creek exemption, Project No.l 6062, and would consist of: (1) A 1260-foot-high, 83-foot-long diversion structure on Mud Creek at elevation 2,530 feet msl; (2) an 1,100 foot-long conduit; (3) a 12-foot-high, 35-foot-long diversion structure on Middle Creek at elevation 2,446 feet msl; (4) a 540-foot-long conduit; (5) a 17-foot-high, 49-foot-long diversion structure on Rock Creek at elevation 2,480-feet msl; (6) a 635-foot-long conduit to a junction box combining with Mud and Middle Creek water; (7) a 3,123-foot-long conduit; ⁹8) an 11.5 acre-foot and 4.1 acre-foot settlement basins; ⁹90 a 24-inch-diameter, 6,500-foot-long penstock tied in with the Blueford Creek penstock, at elevation 1,526 feet msl; ⁹10) an intake box on an unnamed stream and 50 feet of 12 inch diameter steel pipe, releasing water 40 feet upstream of the Blueford Creek diversion; (11) an 8-foot-high, 35-foot-long diversion sturcutre; (12) a 24-inch-diameter, 6,618-foot-long penstock; (13) a powerhouse containing a generating unti with a rated capacity of 1,300 Kw; (14) a 12 kV, 22,900-foot-long transmission line; and (15) appurtenant facilities.

Items 10 through 14 are existing facilities of Project No. 6062.

The applicant estimates the combined facility will have an average annual energy generation of 7,251 MWh.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

10a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10891–000.

c. *Date filed:* February 14, 1990.

d. *Applicant:* Dike Hydroelectric Partners.

e. Dike Project.

f. *Location:* Partially on lands administered by the Bureau of Land Management on the Snake River, near the town of Glenns Ferry, in Elmore County, Idaho.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Bart M. O'Keeffe, P.O. Box 60565; Sacramento, CA 95860, (916) 971–3717.

i. FERC Contact: Michael Spencer at (202) 357–0846.

j. *Comment Date:* June 29, 1990.

k. *Description of Project:* The proposed project would consist of: (1) A 500-foot-long, 123-foot-high roller compacted concrete dam; (2) a 560-acre reservoir with a storage capacity of 19,000 acre-feet and a water surface elevation of 2,585 feet msl; (3) a powerhouse adjacent to the dam containing two generating units with a total installed capacity of 66 MW and an estimated annual generation of 360 GWH; (4) a 2,300-foot-long access road; and (5) a 3,200-foot long transmission line.

The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $400,000.

l. *Purpose of Project:* Project power would be sold.

m. Purpose of Project: This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

11a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10901–000.

c. *Date filed:* March 7, 1990.

d. *Applicant:* Skaguay Power Company.

e. *Name of Project:* Skaguay Power.

f. *Location:* At the existing Colorado Division of Wildlife Skaguay Dam and Reservoir located on West Beaver Creek near Cripple Creek in Teller and Fremont Counties, Colorado.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Contact Person:* Mr. Andrew Kit Jackson, 372 Hollyberry Lane, Boulder, CO 80302, (303) 440–4055.

i. FERC Contact: Ms. Julie Bernt, (202) 357–0839.

j. *Comment Date:* June 21, 1990.

k. *Description of Project:* The applicant proposes to restore the existing abandoned Skaguay power station which was built around 1900. The project would consist of: (1) A 79-foot high rock-filled and steel-faced dam owned by the Colorado Division of Wildlife; (2) a reservoir with a normal pool elevation of 9,000 feet msl, a surface area of 114 acres, and a storage area of 3,570 acre-feet; (3) a 26,700-foot-long penstock; (4) a powerhouse containing one generating unit with a rated capacity of 600 kW; and (5) a 7-mile-long transmission line. The applicant estimates the average annual energy production to be 2,900 GWh and the cost of the work to be performed under the preliminary permit to be $30,000.

l. *Purpose of Project:* The power produced would be sold to a local power company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

12a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10902–000.

c. *Date filed:* March 8, 1990.

d. *Applicant:* D/R Resources Company.

e. *Name of Project:* George B. Stevenson Dam.

f. *Location:* On the First Fork Sinnemahoning Creek in Cameron County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert D. Rizzo, D/R Resources Company, 300 Oxford Drive, Monroeville, PA 15146, (412) 856–9700.

i. FERC Contact: Robert Bell, (202) 357–0806.

j. *Comment Date:* June 18, 1990.

k. *Description of Project:* The proposed project consists of: (1) The existing 1,918-foot-long, 166-foot-high rolled earth dam; (2) an impoundment having a surface area of 1,470 acres and a storage capacity of 244,020 acre-fee; (3) the existing intake structure; (4) the existing 1,150-foot-long, 16-foot-diameter concrete tunnel; (5) the proposed powerhouse containing 2 generating units with a total rated capacity 9,000-kW; (6) the proposed tailrace; (7) a proposed transmission line; and (8) appurtenant facilities.

The applicant estimates the average annual generation would be 20,000,000 kWh and would be sold to a local utility. The existing dam and project facilities are owned by the Commonwealth of Pennsylvania, Department of Environmental Resources. The applicant estimates the cost of performing the studies under the preliminary permit would be $150,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

13a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10912–000.

c. *Date filed:* March 19, 1990.

d. *Applicant:* Bit River Hydro, Inc.

e. *Name of Project:* Flat Rock Dam.

f. *Location:* At Flat Rock Dam, Schuylkill River, Counties of Philadelphia, Lower Merion Township, Montgomery, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Robert Hoe, Bit River Hydro, Inc., 737 Cornelia Place, Philadelphia, PA 19118, (215) 242–9098.

i. *FERC Contact:* Mary C. Golato, (202) 357–0804.

j. *Comment Date:* June 21, 1990.

k. *Description of Project:* The proposed project would consist of the following facilities: (1) The existing 525-foot-long, 17-foot-high Flat Rock dam; (2) 1-foot-high flashboards; (3) the existing reservoir with a surface area of 243 acres, a storage capacity of 790 acre-feet and an elevation of 38.2 feet mean sea level; (4) a proposed powerhouse containing two turbine-geneator units at a total installed capacity of 2,500 kilowatts; (5) a 600-foot-long transmission line; and (6) appurtenant facilities. The dam is owned by the Pennsylvania Department of Environmental Resources. The applicant estimates that the average annual generation would be 12,600,000 kilowatts and that the cost of the studies under permit would be $125,000.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

14a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10913–000

c. *Date filed:* March 15, 1990.

d. *Applicant:* Mohawk Dam 14 Associates.

e. *Name of Project:* Mohawk Dam 14 Hydroelectric Project—Lock 18

f. *Location:* On the Mohawk River, in German Flats, in Herkimer County, New York

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Neal F. Dunlevy, P.E., Mohawk Dam 14 Associates, 185 Genessee Street, Utica, NY 13501, (315) 793–0366.

i. *FERC Contact:* Mary C. Golato, (202) 357–0804.

j. *Comment Date:* June 21, 1990.

k. *Description of Project:* The proposed project would consist of the following facilities: (1) An existing 150-foot-long moveable dam; (2) a reservoir having a surface area of 420 acres, a storage capacity of 2,200 acre-feet, and an elevation of 383 feet mean sea level; (3) a proposed powerhouse with a generator unit at a rated capacity of less than 2 megawatts; (4) a proposed transmission line rated at 13.8 kilovolts and extending 2,000 feet long; and (5) appurtenant facilities. The dam is owned by the State of New York, Department of Transportation. The average annual generation is expected to be in the range of 10,000 megewatthours. The applicant estimates the cost of the studies under permit would be $30,000. The energy would be sold to a local utility.

1. This notice also consists of the following standard paragraphs: A5, A7, A10, B, C and D2.

15a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10914–000.

c. *Date filed:* March 15, 1990.

d. *Applicant:* Mohawk Dam 12 Associates.

e. *Name of Project:* Mohawk Dam Hydroelectric Project—Lock 16.

f. *Location:* On the Mohawk River in the town of Minden in Montgomery County, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Neal F. Dunlevy, Mohawk Dam 12 Associates, 185 Genessee Street, Utica, NY 13501, (315) 793–0366.

i. *FERC Contact:* Mary C. Golato, (dmt), (202) 357–0804.

j. *Comment Date:* June 21, 1990.

k. *Description of Project:* The proposed project would consist of the following facilities: (1) An existing moveable 360-foot-long dam; (2) a reservoir having a surface area of 240 acres, a storage capacity of 2,700 acre-feet, and an elevation of 322.5 feet mean sea level; (3) a proposed powerhouse containing a generating unit at a capacity of less than 2 megawatthours; (4) a proposed 115-kilovolt transmission line extending 500 feet long; and (5) appurtenant facilities. The average annual generation would be in the range of 10,000 megawatthours. The applicant estimates that the cost of the studies under permit would be $30,000. The dam is own by the New York State Department of Transportation. The energy would be sold to a local utility.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

16a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10915–000.

c. *Date filed:* March 15, 1990.

d. *Applicant:* Mohawk Dam 8 Associates.

e. *Name of Project:* Mohawk Dam 8 Hydroelectric Project—Lock E–12.

f. *Location:* On the Mohawk River in the town of Florida in Montgomery County, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Neal F. Dunlevy, Mohawk Dam 8 Associates, 185 Genessee Street, Utica, NY 13501, (315) 793–0366.

i. *FERC Contact:* Mary Golato (dmt), (202) 357–0804.

j. *Comment Date:* June 27, 1990.

k. *Description of Project:* The proposed project would consist of the following facilities: (1) An existing moveable dam 492 feet long; (2) a reservoir having a surface area of 600 acres, a storage capacity of 5,000 acre-feet, and an elevation of 279 feet mean sea level; (3) a proposed powerhouse containing a single generating unit at a capacity of less than 2 megawatts; (4) a proposed transmission line approximately 10,000 feet long; and (5) appurtenant facilities. The dam is owned by the New York State Department of Transportation. The applicant estimates that the cost of the studies under permit would be $30,000. The average annual generation would be in the range of 10,000 megawatthours, and would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

17a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10916–000.

c. *Date filed:* March 22, 1990.

d. *Applicant:* Troyka Power.

e. *Name of Project:* Madrid Hydro Project.

f. *Location:* On The Grass River near Madrid, St. Lawrence County, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Rodney F. Coffey, 501 Cherry Road, Syracuse, NY 13219, (315) 488–2530.

i. *FERC Contact:* Ed Lee (dmt), (202) 375–0609.

j. *Comment Date:* June 21, 1990.

k. *Description of Project:* The proposed run-of-river project consist of: (1) The existing 420-foot-long and 13-foot-high earth dam; (2) existing 100-acre reservoir; (3) a proposed intake structure; (4) a new concrete powerhouse housing two 375-kW generating units for a total installed capacity of 750 kW; (5) a proposed tailrace; (6) a new 300-foot-long, 13.2-kV transmission line; and (7) appurtenant facilities. The applicant estimates that the average annual generation would be 3,400 MWh. The cost of the work and studies to be performed under the permit would be $50,000. The site is owned by the Town of Madrid, New York. The applicant proposes that all power generated will be sold to a local utility company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

18 a. *Type of Filing:* Preliminary Permit.

b. *Project No.* 10917–000.

c. *Date Filed:* March 27, 1990.

d. *Applicant:* Wayne County Water Conservancy District.

e. *Name of Project:* Fremont River Project.

f. *Location:* Occupies lands within the Fishlake National Forest on the Fremont River, near the town of Torrey, in Wayne County, Utah.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert J. Murdock, 2964 East 3135 South, Salt Lake City, Utah 84109, (801) 487–0258.

i. *FERC Contact:* Thomas Dean, (202) 357–0841.

j. *Comment Date:* June 22, 1990.

k. *Description of Project:* The applicant intends to study developing hydropower potential by investigating construction of a series of diversion dams along the Fremont River. The proposed project would consists of: (1) A 108-foot-high, 4,980-foot-long earth-filled Torrey dam; (2) a 1,029-acre reservoir with a normal water surface elevation of 6,869 feet msl; (3) a powerhouse containing a single generating unit rated at 1.0 megawatts (MW); (4) a short 7.2–kV transmission line; (5) a 10-foot-high, 150-foot-long existing Garkane diversion dam; (6) a 6-mile-long canal leading to; (7) a 15-acre holding pond with a normal water surface elevation of 6,760 feet msl formed by; (8) a 30-foot-high earth-filled dike; (9) a 19-foot-high, 250-foot-long Hickman diversion dam; (10) a 22-acre reservoir with a normal water surface elevation of 6,597 feet msl; (11) a multiple turbine pumpback station located at the Hickman diversion dam; (12) a 48-inch-diameter, 2,600-foot-long buried pipeline leading back to the holding pond; (13) a 54-inch to 66-inch varying diameter, 21,000-foot-long buried penstock from the holding pond leading to; (14) a powerhouse containing a single generating unit rated at 7.3 MW; and (15) a 6.8-mile-long, 69-kV transmission line.

The applicant estimates the average annual energy production is 35,000 MWh. the approximate cost of the studies under the permit would be $110,000.

l. *Purpose of Project:* Applicant intends to sell the power generated from the proposed facility to Garkane Power Association.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

19 a. *Type of Application:* Preliminary Permit.

b. *Project No.* 10918–000.

c. *Date Filed:* March 29, 1990.

d. *Applicant:* Skookum Hydro, Inc.

e. *Name of Project:* Skookum Creek.

f. *Location:* On Skookum Creek in T37N, R5E, Willaimette Meridan, near Prairie in Whatcom County, Washington.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Contact Person:* Mr. Bill E. Covin, 1422 130th Avenue, NE, Bellevue, WA 98005, (206) 455–0234.

i. *FERC Contact:* Ms. Julie Bernt, (202) 357–0839.

j. *Comment Date:* June 21, 1990.

k. *Description of Project:* The proposed run-of-river project would consist of: (1) A concrete intake structure buried in the streambed at elevation 1,500 feet msl; (2) a 42-inch-diameter, 16,000-foot-long penstock; (3) a powerhouse containing one generating unit with a rated capacity of 6,000 kW; and (4) a 2-mile-long transmission line. The applicant estimates the average annual energy production to be 25.06 GWh and the cost of the work to be performed under the preliminary permit to be $40,000.

l. *Purpose of Project:* The power produced would be sold to a local power company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

20 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10919–000.

c. *Date Filed:* March 30, 1990.

d. *Applicant:* Red River Hydro Associates.

e. *Name of Project:* Red River Lock and Dam No. 3.

f. *Location:* On Red River near Colfax, Grant and Natchitoches Parishes, Louisiana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. David K. Iverson, Synergics, Inc., 191 Main St., Annapolis, MD 21401, (301) 268–8820.

i. *FERC Contact:* Michael Dees, (202) 357–0807.

j. *Comment Date:* June 27, 1990.

k. *Description of Project:* The proposed project would utilize the

existing U.S. Army Corps of Engineers' Red River Lock and Dam No. 3 and reservoir and would consist of: (1) A proposed powerhouse containing hydropower units with a total capacity of about 54 MW; (2) a proposed electrical switchyard; (3) a proposed transmission line; and (4) appurtenant facilities 2,900 feet long, to an existing 230-kV transmission line. Applicant estimates that the average annual energy generation would be 230 GWh, which would be sold to a utility, and that the cost of the studies to be performed under the permit would be $100,000.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

21 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10920–000.

c. *Date Filed:* April 2, 1990.

d. *Applicant:* City of Covington, Virginia.

e. *Name of Project:* Gathright Hydro Project.

f. *Location:* On the Jackson River in Alleghany, County, Virginia..

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

City Manager, City of Covington, 158 North Court Avenue, Covington, VA 24426, (703) 965–6300.

Neal Cody, Project Manager, Sithe Energies USA, Inc., 135 East 57th Street, 23rd Floor, New York, NY 10022, (212) 755–7600.

i. *FERC Contact:* Ed Lee (dmt) (202) 357–0809.

j. *Comment Date:* June 27, 1990.

k. *Description of Project:* The applicant proposes to utilize an existing dam under the jurisdiction of the U.S. Army Corps of Engineers. The proposed project would consist of: (1) A 1,075-foot-long penstock; (2) a powerhouse containing two 1.8-MW generating units having a total installed capacity of 3.6 MW; (3) a 3-mile-long, 46-kV transmission line; and (4) appurtenant facilities. Applicant estimates that the cost of the work to be performed under the terms of the permit would be $100,000 and that the project average annual energy output would be 19 GWh. Energy produced at the project would be sold to Old Dominion Electric Cooperative or another local utility company.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

22 a. *Type of Application*: Preliminary Permit.

b. *Project No.*: 10922–000.

c. *Date Filed*: April 2, 1990.

d. *Applicant*: Gathright Hydro Associates.

e. *Name of Project*: Gathright Hydro Project.

f. *Location*: On the Jackson River in Alleghany, County, Virginia.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact*: David K. Iverson, Synergics, Inc., 191 Main Street, Annapolis, MD 268–8820.

i. *FERC Contact*: Ed Lee (dmt) (202) 357–0809.

j. *Comment Date*: June 27, 1990.

k. *Competing Application*: Project No. 10920–000, Date Filed: April 2, 1990.

i. *Description of Project*: The applicant proposes to utilize an existing dam under the jurisdiction of the U.S. Army Corps of Engineers. The proposed project would consist of: (1) A 1,350-foot-long penstock; (2) a powerhouse containing one 6-MW generating unit (3) a 1,300-foot-long, 46-kv transmission line; and (4) appurtenant facilities. Applicant estimates that the cost of the work to be performed under the terms of the permit would be $100,000 and that the project average annual energy output would be 32.7 GWh. Energy produced at the project would be 32.7 GWh. Energy produced at the project would be sold to B.A.R.C. Electric Cooperative or another local utility company.

m. This notice also consists of the following standard paragraphs: A8, A9, A10, B, C, and D2.

23 a. *Type of Application*: Transfer of License.

b. *Project No.*: 3273–009.

c. *Date Filed*: March 13, 1990.

d. *Applicant*: Chittenden Falls Hydro Power Inc., and Chittenden Falls Dam Corporation.

e. *Name of Project*: Chittenden Falls Project.

f. *Location*: On the Kinderhook Creek in Columbia County, New York.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact*: Mr. P.S. Eckhoff, Chittenden Falls Hydro Power Inc., Box 158, Stuyvesant Falls, NY 12174, (518) 828–4684.

i. *FERC Contact*: Robert Bell (202) 357–0806.

j. *Comment Date*: June 22, 1990.

k. *Description of Project*: On June 29, 1981, a license was issued to Chittenden Falls Hydro Power Inc. (licensee), to construct, operate, and maintain the Chittenden Falls Project No. 3273. The licensee intends to transfer the license to the licensee and Chittenden Falls Dam Corporation to facilitate the continued financing and operation of the project.

l. This notice also consists of the following standard paragraphs: B and C.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit

application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTESTS", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027 (810 1st), at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in Section 313(b) of the Federal Power Act, 16 U.S.C. Section 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: May 16, 1990, Washington, DC.

Lois D. Cashell,

Secretary.

[Docket Nos. CP90-1251-000 et al.]

Northern Border Pipeline Co. et al.; Natural Gas Certificate Filings

May, 15, 1990.

Take notice that the following filings have been made with the Commission:

1. Northern Border Pipeline Company

[Docket No. CP90-1251-000]

Take notice that on April 26, 1990, Northern Border Pipeline Company (Applicant) 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP90-1251-000 an application pursuant to sections 7 (b) and (c) of the Natural Gas Act, requesting permission and approval to abandon and remove certain compressor facilities at compressor stations located in McKenzie and McIntosh Counties, North Dakota and for a certificate and of public convenience and necessity authorizing the installation and operation of replacement facilities at each of the compressor station sites, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to abandon and remove the existing 16,000 horsepower gas generators and power turbine (gas turbine) at Compressor Station Site Nos., 4 and 8 located in McKenzie and McIntosh Counties, North Dakota respectively and to install and operate a nominal 20,000 horsepower gas turbine at each of the compressor station sites.

Applicant states that the facilities to be bandoned were installed pursuant to authority in Docket No. CP78-124. Applicant estimates the cost of removal of the facilities to be $34,710 and the estimated salvage of the facilities to be reclaimed in $700,000. Applicant states that the replacement of the existing gas turbines is to be accomplished over a two year period. Applicant proposes to install one gas turbine during the summer of 1991 and the other during the summer of 1992. Applicant estimates the cost of the proposed facilities to be approximately $10.6 million. Applicant indicated that it would initially finance the proposed facilities from funds on hand, funds generated internally, and ultimately with permanent financing.

Applicant states that the primary reasons for replacing the existings gas turbines are as follows:

(1) Long lead time to supply certain replacement parts;

(2) Limited availability of spare parts;

(3) Loss of manufacturer repair and overhaul support beyond 1998;

(4) Recent experience of other companies with failures;

(5) Extended time for manufacturers to perform satisfactory repairs;

(6) The availability of only one spare gas turbine for the various users in the even of a major equipment failure.

Applicant states that they selected a 20,000 horsepower replacement compressor unit because no 16,000 horsepower gas turbine units are currently being manufactured.

Comment date: June 6, 1990, in accordance with Standard Paragraph F at the end of this notice.

2. Arkla Energy Resources a division of Arkla, Inc., Transcontinental Gas Pipe Line Corporation, Southern Natural Gas Company, Southern Natural Gas Company

[Docket No. CP90–1277–000, Docket No. CP90–1278–000, Docket No. CP90–1279–000, Docket No. CP90–1280–000].

Take notice that on April 30, 1990, the above listed companies filed in the respective docket prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's regulations under the Natural Gas Act of authorization to transport natural gas on behalf of various shippers under the blanket certificates issued pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

A summary of each transportation service which includes the shippers identity, the peak day, average day and annual volumes, the receipt point(s), the delivery point(s), the applicable rate schedule, and the docket number and service commencement date of the 120-day automatic authorization under Section 284.223 of the Commission's Regulations is provided in the attached appendix.

Comment date: June 29, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day[1] avg. annual	Points of—		Start up date, rate schedule	Related[2] dockets
				Receipt	Delivery		
CP90–1277–000 (4–30–90)	Arkla Energy Resources	Panda Resources	20,000 20,000 7,300,000	Various	AR, LA	3–1–90 IT	CP88–820–000 ST90–2383–000
CP90–1278–000 (4–30–90)	Transcontinental Gas Pipe Line Corporation.	Transco Energy Marketing Company.	10,000 3,000 3,650,000	Offshore LA	Offshore LA	3–1–90 IT	CP88–328–000 ST90–2592–000
CP90–1279–000 (4–30–90)	Southern Natural Gas Company	Access Energy Corp	100,000 100 36,500	Various	LA	3–3–90 IT	CP88–316–000 ST90–2265–000
CP90–1980–000 (4–30–90)	Southern Natural Gas Company	Access Energy Corp	100,000 100 36,500	Various	MS, AL	3–3–90 IT	CP88–316–000 ST90–2267–000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

3. Colorado Interstate Gas Company

Docket Nos. CP90–1343–000, CP90–1344–000, and CP90–1345–000

Take notice that on May 11, 1990, Colorado Interstate Gas Company (Applicant), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in the above referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86–589–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: June 29, 1990, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name	Peak day,[2] average day, annual	Receipt [3] points	Delivery points	Start up date, Rate schedule, Service type	Related [4] docket contract date
CP90–1343–000 (5–11–90)	North Central Oil Corporation	25,000 10,000 3,650,000	WY	TX	4–1–90 TI–1 Interruptible	ST90–2772–000 3–1–90
CP90–1344–000 (5–11–90)	North Central Oil Corporation	25,000 10,000 3,650,000	WY	TX	4–1–90 TI–1 Interruptible	ST90–2773–000 3–1–90
CP90–1345–000 (5–11–90)	North Central Oil Corporation	25,000 10,000 3,650,000	WY	TX	4–1–90 TI–1 Interruptible	ST90–2777–000 3–1–90

[2] Quantities are shown in Mcf.
[3] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[4] If an ST docket is shown, 120-day transportation service was reported in it.

4. Panhandle Eastern Pipe Line Company

[Docket No. CP90-1347-000]

Panhandle Eastern Pipe Line Company

[Docket No. CP90-1348-000]

United Gas Pipe Line Company

[Docket No. CP90-1349-000]

Columbia Gulf Transmission Company

[Docket No. CP90-1351-000]

Take notice that Applicants filed in the above referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for autorization to transport natural gas on behalf of various shippers under the blanket certificate issued in Docket No. CP89-1121-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: June 29, 1990, in accordance with Standard Pargraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Applicant: Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, Texas 77251-1642

Blanket Certificate Issued in Docket No. CP86-585-000

Docket No. (date filed)	Shipper name	Peak day,[2] avg. annual	Points of—		Start up date, rate schedule	Related [3] dockets
			Receipt	Delivery		
CP90-1347-000 (05-11-90)	TXO Production Corporation	500 500 150,000	WY	WY	03-08-90 PT	ST90-2671-000
CP90-1348-000 (05-11-90)	Semco Energy Services, Inc.	50,000 50,000 18,250,000	CO, IL, KS, MI, OH, OK, TX, WY	MI	03-01-90 PT	ST90-2673-000

[2] Quantities are shown in Dth unless otherwise indicated.
[3] If an ST docket is shown, 120-day transportation service was reported in it.

Applicant: United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478

Blanket Certificate Issued in Docket No. CP88-6-000

Docket No. (date filed)	Shipper name	Peak day,[1] avg. annual	Points of—		Start up date, rate schedule	Related [2] dockets
			Receipt	Delivery		
CP90-1349-000 (05-11-90)	Phibro Distributors Corporation	309,000 309,000 112,785,000	LA, TX, MS, AL	LA, FL, MS, TX	03-07-90 ITS	ST90-2512-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] If an ST docket is shown, 120-day transportation service was reported in it.

Applicant: Columbia Gulf Transmission Company, 3805 West Alabama, Houston, Texas 77027

Blanket Certificate Issued in Docket No. CP86-239-000

Docket No. (date filed)	Shipper name	Peak day,[1] avg. annual	Points of—		Start up date, rate schedule	Related [2] dockets
			Receipt	Delivery		
CP90-1351-000 (05-11-90)	Enmark Gas Corporation	50,000 10,000 3,650,000	LA, Offshore LA	LA	04-01-90 ITS-1 & ITS-2	ST90-2643-000

[1] Quantities are shown in MMBtu unless otherwise indicated
[2] If an ST docket is shown, 120-day transportation service was reported in it.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion ot intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-11776 Filed 5-21-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI90-98-000, et al.]

Poco Petroleum, Inc., et al.; Natural Gas Certificate Filings

May 14, 1990.

Take notice that the following filings have been made with the Commission:

1. Poco Petroleum, Inc.

[Docket No. CP90-98-000]

Take notice that on May 1, 1990, Poco Petroleum, Inc. (Poco) at 3600 Bow Valley Square IV, 250—6th Avenue, SW., Calgary, Alberta, Canada T2P 3H7, filed an application pursuant to Section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment to authorize sales for resale of natural gas subject to the Commission's NGA jurisdiction including natural gas produced in Canada, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: May 31, 1990, in accordance with Standard Paragraph J at the end of this notice.

2. Amoco Energy Trading Corporation

[Docket No. CI88-438-001]

Take notice that on May 1, 1990, Amoco Energy Trading Corporation (Amoco) of 200 East Randolph Drive, Chicago, Illinois 60680, filed an application pursuant to Sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder to amend its unlimited-term blanket certificate with pregranted abandonment previously issued by the Commission in Docket NO. CI88-438-000 to include authorization for sales for resale of imported natural gas, liquified natural gas, and surplus system supply gas purchased from interstate pipelines under interruptible sales programs, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: May 31, 1990, in accordance with Standard Paragraph J at the end of the notice.

3. Canadian Natural Gas Clearing House (US) Inc.

[Docket No. CI90-99-000]

Take notice that on May 7, 1990, Canadian Natural Gas Clearing House (US) Inc. (Applicant) of 2400, 300—5th Avenue SW., Calgary, Alberta, T2P 3C4, Canada, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment to authorize sales for resale of natural gas subject to the Commission's NGA jurisdiction including imported natural gas and gas purchased from "non-first-sellers" such as gas sold to Applicant pursuant to interstate pipeline ISS authority, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: May 31, 1990, in accordance with Standard Paragraph J at the end of this notice.

4. Tennessee Gas Pipeline Company

[Docket No. CP90-1317-000]

Take notice that on May 7, 1990, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP90-1317-000, a request pursuant to Section 7(b) of the Commission's Regulations under the Natural Gas Act, as amended, for authorization to abandon certain firm sales service to Orange and Rockland Utilities, Inc. (Orange and Rockland), effective November 6, 1989, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Tennessee requests approval to abandon a sales service to Orange and Rockland of 14,000 dekatherms (dt) per day under Tennessee's Rate Schedule CD-5, as Orange and Rockland are merely exercising an option to convert to a firm transportation pursuant to § 284.10 of the Regulations. Tennessee has requested an effective retroactive date of November 6, 1989. Tennessee does not request to abandon any facilities with the service.

Comment date: June 5, 1990, in accordance with Standard Paragraph F at the end of this notice.

5. United Gas Pipe Line Company

[Docket Nos. CP90-1318-000, CP90-1319-000, and CP90-1320-000]

Take notice that on May 7, 1990, United Gas Pipe Line Company (Applicant), Post Office Box 1478,

Houston, Texas 77251–1478, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88–6–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: June 28, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name	Peak day,[1] avg. annual	Points of—		Start up date rate schedule	Related [2] dockets
			Receipt	Delivery		
CP90–1318–000 (5–7–90)	Graham Energy Marketing Company	123,600 123,600 7,300,000	MS MS, Onshore LA, Offshore LA, TX	MS, Onshore LA, AL, FL	3–15–90 ITS	ST90–2615–000
CP90–1319–000 (5–7–90)	Exxon Corporation	103,000 103,000 37,595,000	Onshore LA, Offshore LA, TX, MS,	LA TX, MS	3–26–90 ITS	ST90–2517–000
CP90–1320–000 (5–7–90)	Health Petra Resources Inc	20,600 20,600 7,519,000	On shore LA, LA, Offshore LA, MS	MS AL LA	4–4–90 ITS	ST90–2617–000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed 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.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

[1] These prior notice requests are not consolidated.

Under the procedure herein provided for unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 90-11777 Filed 5-21-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS90-24-000, et al.]

Interline Natural Gas Inc., et al.; Applications for Small Producer Certificates [1]

May 15, 1990.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Commission's regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before June 4, 1990, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No.	Date filed	Applicant
CS90-24-000	4-12-90	Interline Natural Gas Inc., 175 West 200 South, Suite 2004, Salt Lake City, UT 84101.
CS90-26-000	5-8-90	CODA Energy, Inc., 9400 N. Central Expressway, L.B. 187, Dallas, TX 75231.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[FR Doc. 90-11778 Filed 5-21-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES90-31-000]

Edison Sault Electric Co.; Application

May 15, 1990.

Take notice that on May 10, 1990, Edison Sault Electric Company ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission") pursuant to section 204 of the Federal Power Act seeking authority to issue debt during 1990 and 1991 in an aggregate amount outstanding at any one time not exceeding $10 million with final maturities of not more than twelve months from issuance.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 285.211 and 385.214). All such motions or protests should be filed on or before June 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-11779 Filed 5-21-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP90-1326-000]

Northern Natural Gas Co., Division of Enron Corp. Request Under Blanket Authorization

May 15, 1990.

Take notice that on May 9, 1990, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP90-1326-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Premier Gas Company (Premier), a marketer of natural gas, under Northern's blanket certificte issued in Docket No. CP86-435.000 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.

Northern proposes to transport, on a firm basis up to 30,000 MMBtu per day for Premier. Northern states that construction of facilities would not be required to provide the proposed service.

Northern further states that the maximum day, average day, and annual transportation volumes would be approximately 30,000 MMBtu, 22,000 MMBtu and 10,950,000 MMBtu respectively.

Northern advises that service under § 284.223(a) commenced March 1, 1990, as reported in Docket No. ST90-2315.

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 withn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-11780 Filed 5-21-90; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3780.7]

Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; Morton International, Inc., Moss Point, MS

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on petition.

SUMMARY: Notice is hereby given by the United States Environmental Protection Agency (EPA) that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Morton International,

Inc., for its two Class I hazardous waste injection wells located at Moss Point, Mississippi. As required at 40 CFR part 148, the company has adequately demonstrated to the satisfaction of EPA by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the continued underground injection by Morton International, Inc., of the specific restricted hazardous waste, identified in the petition, into the Class I hazardous waste injection wells at the Moss Point facility, specifically identified as WDW–1 and WDW–2 wells, until September 30, 2000. The injection fluid is process wastewater from the manufacture of polysulfide-based rubber, urethanes, plasticizers, oligomers, and other chemicals. The waste stream is regulated as a characteristic liquid hazardous waste under 40 CFR 261.23(a)(5) because it exhibits the characteristic of reactivity due to the presence of sulfides.

As required at 40 CFR 124.10, a public notice was issued February 8, 1990. A public hearing was held March 15, 1990. The public comment period closed on March 26, 1990. All comments have been addressed and have been considered in the final decision. This decision constitutes final EPA action and there is no Administrative appeal process available for this final petition decision.

DATE: This action is effective as of May 1, 1990.

ADDRESS: Copies of the petiton and all pertinent information relating thereto, including citizen comments and EPA's response to comments, are on file at the following location: Environmental Protection Agency, Region IV, Water Management Division, Ground-Water Protection Branch, 345 Courtland Street, Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Mrs. Jeanette Maulding, Environmental Scientist, EPA, Region IV, telephone (404) 347–3866.

Dated: May 1, 1990.

Lee A. DeHihns, III,

Deputy Regional Administrator.

[FR Doc. 90–11840 Filed 5–21–90; 8:45 am]

BILLING CODE 6560–50–M

[WH-FRL-3781-1]

Drinking Water; Announcement of Public Meeting to Discuss the Preliminary Concept Paper for the Ground Water Disinfection Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The EPA Office of Drinking Water will conduct a public meeting to discuss its proposed approach to the Ground Water Disinfection Requirements. Section 1412 of the Safe Drinking Water Act Amendments of 1986 requires EPA to promulgate this treatment technique requirements along with criteria to determine which public water systems who use groundwater will be permitted to continue not disinfecting.

DATES: The public meeting will be held on June 21, 1990, from 1 p.m. to 6 p.m., at the Andrew W. Breidenbach Environmental Research Center Auditorium located at 26 West Martin Luther King Drive, Cincinnati, Ohio 45268. If public comments or discussion warrant it, the meeting will continue at the same location on June 22, 1990, from 9 a.m. to 12 noon.

EPA will accept written comments at the address below until July 13, 1990.

ADDRESSES: Copies of a preliminary concept paper outlining EPA's approach will be available at the meeting. A copy of the paper can also be obtained by writing to: Sharon Church, Criteria and Standards Division, Office of Drinking Water (WH–550D), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or calling (202) 382–3030, or the Safe Drinking Water Act Hotline at 1 (800) 426–4791.

SUPPLEMENTARY INFORMATION: The meeting will begin with a brief statement of the approach EPA is currently considering. Members of the public will be given an opportunity to make statements on issues relevant to the EPA approach. Most of the program will allow informal discussion of the issues.

Dated: May 14, 1990.

Robert H. Wayland, III,

Acting Assistant Administrator for Water.

[FR Doc. 90–11841 Filed 5–21–90; 8:45 am]

BILLING CODE 6560–50–M

[OPP-50706; FRL-3743-7]

Receipt of Notification of Intent to Conduct Small-Scale Field Testing; Nonindigenous Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from the New York State Agricultural Experiment Station, Cornell University, a notification of intent to conduct small-scale field testing in New York of a strain of *Trichoderma harzianum* isolated from wood shavings in England.

DATES: Comments must be received on or before June 5, 1990.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., Sw., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Product Manager (PM-21), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., Sw., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-557-1900.

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to the EPA's "Statement of Policy; Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act" of June 26, 1986 (51 FR 23313), has been received

from the New York State Agricultural Experiment Station, Cornell University, Geneva Campus, in Geneva, New York. The purpose of the proposed testing is to evaluate the efficacy of a nonindigenous strain of *Trichoderma harzianum* for control of *Botrytis cinerea* on grapes. The proposed field tests would be conducted in a vineyard located at the New York State Agricultural Experiment Station in Geneva, New York. The total area of the proposed test site is less than 1 acre.

Dated: May 8, 1990.

Anne E. Lindsay,

Director, Registration Division (H7505C), Office of Pesticide Programs.

[FR Doc. 90-11859 Filed 5-21-90; 8:45 am]

BILLING CODE 6560-50-D

[OPP-50705; FRL-3742-5]

Receipt of Notification of Intent to Conduct Small-Scale Field Testing; Genetically Modified Microbial Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from the Monsanto Agricultural Co. a notification of intent to conduct limited, noncontained laboratory/greenhouse and small-scale field tests involving the use of *lac*ZY (*E. coli* K-12) marked *Pseudomonas fluorescens* biovars 1, 2 (except *P. marginalis*) and 3, and the closely related organisms classified as *Pseudomonas putida*. This is a generic Notification submitted in lieu of separate Notifications for each of several essentially similar tests. Monsanto's generic Notification and request for exemption from the requirement for Experimental Use Permits for these small-scale tests are based upon the similarity of the organisms, the fact that the genetic modification will be the same in all cases, and the lack of any significant health or environmental concerns related to previous Notifications and small-scale field trials with these types of organisms. The *lac*ZY genes are inserted for the purpose of providing a marker for detection of the modified organisms at very low population levels in the soil.

DATES: Comments must be received on or before June 21, 1990.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H-7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., Sw., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted and any comment(s) concerning this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed tests and any written comments will be available for public inspection in Rm. 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Product Manager (PM) 21, Registration Division (H-7505C), Environmental Protection Agency, 401 M St., Sw., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1900.

SUPPLEMENTARY INFORMATION: A Notification of intent to conduct small-scale (less than 10 acres of land or less than 1 surface acre of water) field testing pursuant to the EPA's "Statement of Policy; Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act" of June 26, 1986 (51 FR 23313) has been received from the Monsanto Agricultural Co., St. Louis, MO. This Notification is intended as a generic Notification for testing of *Pseudomonas fluorescens* biovars 1, 2 (except *P. marginalis*) and 3, and the closely related organisms classified as *Pseudomonas putida* which have been genetically modified by permanently inserting in their chromosome the *lac*ZY genes from *Escherichia coli* K-12 in limited, noncontained laboratory/greenhouse and small-scale field tests. The *lac*ZY marker is a tracking system which has been previously used as a means to monitor survival and location of the organism under field conditions. The purpose of the proposed testing is to evaluate the ability of numerous *lac*ZY marked *Pseudomonas fluorescens* and *P. putida* strains to effectively and reliably control soil-borne plant diseases.

It is the intention of the company to conduct tests using these organisms over the next several years, either independently or in collaboration with university scientists. Research scientists in government and academia as well as science educators have indicated a keen interest in utilizing *lac*ZY marked *Pseudomonas* organisms as a model system for studying ecological effects of bacteria and for the purpose of student training.

Monsanto has based its request for approval for a generic Notification on the following rationale:

1. The strains to be used are well characterized, naturally occurring soil organisms which are genetically modified by inserting the *lac*ZY genes from *E. coli* K-12.

2. Three small-scale field tests with similar *lac*ZY marked soil pseudomonad organisms have been conducted following review of previous Notifications by EPA scientists. Experimental Use Permits were not required to conduct these tests.

3. There is an extensive data base for these organisms which includes information on health and environmental safety properties, toxicology data, details of the genetic engineering techniques used, genetic stability of the *lac*ZY marker, genetic transfer potential, health and safety properties of the genes and their products, detection sensitivity of the marker, plant colonization ability of the organisms, persistence and competitiveness of the organisms under natural field conditions, chemical and antibiotic sensitivity of pseudomonads, and the effect of the presence of the marker in pseudomonads on standard water quality and on dairy product shelf-life.

4. The testing protocol to be used would be essentially the same for all tests.

Since previous testing of these organisms both in contained laboratory/greenhouse and small-scale field tests confirms that the *lac*ZY gene element is a highly sensitive and reliable marker system for effectively tracking the organisms in field environments, presents negligible risks to health and the environment, and use of the marked organisms would provide a unique opportunity to develop ecological effects data in the field environment, the company has submitted this Notification as a generic Notification. The generic Notification would apply to Monsanto and its collaborators for future testing of the organisms described in limited, nontcontained laboratory/greenhouse and small-scale field testing and would exempt the company from the need for obtaining an Experimental Use Permit for testing in small-scale field trials where treated crops would be destroyed or used for research purposes only.

Dated: May 6, 1990.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 90-11858 Filed 5-21-90; 8:45 am]

BILLING CODE 6560-50-D

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice 10]

Agency Forms Submitted for OMB Review

AGENCY: Export-Import Bank of the United States.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1908, Eximbank has submitted a proposed collection of information to the Office of Management and Budget for review.

PURPOSE: The proposed form is to be used by commercial banks and other lenders in applying for guarantees on working capital loans advanced by the lenders to U.S. exporters.

SUMMARY: The following summarizes the information collection proposal submitted to OMB:

(1) *Type of request:* revised.
(2) *Number of forms submitted:* one.
(3) *Form Number:* EIB 84-1 (Rev.).
(4) *Title of information collection:* EIB 84-1 (Rev.), Application for Working Capital Loan Guarantee.
(5) *Frequency of use:* Upon application for guarantees on working capital loans advanced by the lenders to U.S. exporters.
(6) *Respondents:* Commercial banks and other lenders throughout the United States.
(7) *Estimated total number of annual responses:* 100.
(8) *Estimated total number of hours needed to fill out the form:* 200. Section 3504(h) of Public Law 96-511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed application may be obtained from Helene H. Wall, Agency Clearance Officer, (202) 566-8111. Comments and questions should be directed to Marshall Mills, Office of Management and Budget, Information and Regulatory Affairs, room 3235, New Executive Office Building, Washington, DC 20503, (202) 395-7340. All comments should be submitted within two weeks of this notice; if you intend to submit comments but are unable to meet this deadline, please advise Marshall Mills by telephone that comments will be submitted late.

Dated: May 17, 1990.

Helene H. Wall,

Agency Clearance Officer.

[FR Doc. 90-11839 Filed 5-21-90; 8:45 am]

BILLING CODE 6690-01-M

FEDERAL COMMUNICATIONS COMMISSION

[Gen Docket No. 90-119; DA 90-699]

Florida Region Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The FCC is accepting the Florida area's (Region 9's) plan for public safety. By accepting this plan, the FCC enables the licensing of the 821-824/866-869 MHz spectrum for public safety to begin.

EFFECTIVE DATE: May 16, 1990.

FOR FURTHER INFORMATION CONTACT: Maureen Cesaitis, Private Radio Bureau, Policy and Planning Branch, Washington, DC 20554, (202) 632-6497.

SUPPLEMENTARY INFORMATION:

1. On November 27, 1989, the Florida Area (Region 9) submitted its public safety plan to the Commission for review. The plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in its region. On February 26, 1990, Region 9 filed revisions to the plan, based on conversations with the Commission's staff.

2. The Region 9 plan was placed on Public Notice for comments on March 14, 1990, 55 FR 9357 (Mar. 13, 1990). The Commission received no comments in this proceeding.

3. We have reviewed the plan submitted for Region 9 and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the *Report and Order* in Gen. Docket No. 87-112, 3 FCC Rcd 905 (1987), 53 FR 1022, January 15, 1988, and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in Florida.

4. Accordingly, *it is ordered* that the Public Safety Radio Plan for Region 9 is accepted. Furthermore, licensing of the 821-824/866-869 MHz band in Region 9 may commence immediately.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 90-11883 Filed 5-21-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: New
Title: Flood Map Recipient Survey/ Order Form.
Abstract: FEMA will survey the recipients on the mailing list of the Flood Map Distribution Center this FY. Purpose is to affirm or update the information, which includes the name, company type, address, phone number and revised maps needed. FEMA Forms 81-52 and 81-52A, Flood Insurance Map/Microthin Order, are used to order maps by mail or telephone.
Type of Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
Estimate of Total Annual Reporting and Recordkeeping Burden: 63,456.
Number of Respondents: 264,400.
Estimated Average Burden Hours Per Response: .24 Hours.
Frequency of Response: Biennially, Other As required.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror, (202) 646-2624, 500 C Street SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Clearance Officer at the above address; and to Gary Waxman, (202) 395-7340, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: May 9, 1990.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 90-11830 Filed 5-21-90; 8:45 am]

BILLING CODE 6718-01-M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: New.

Title: Survey to Develop and Implement Certification Levels for Emergency Managers.

Abstract: The emergency management field is comprised of individuals whose training and experience varies substantially. There is a need to (1) provide incentives for self improvement, (2) establish reasonable criteria for professional achievement in the field and (3) improve our ability to assess preparedness of emergency agencies through assessment of staff capabilities. A reasonable certificate system for emergency managers will have a positive impact on these objectives.

Type of Respondents: State or local governments, Federal agencies or employees, Non-profit institutions.

Estimate of Total Annual Reporting and Recordkeeping Burden: 750.

Number of Respondents: 3,000.

Estimated Average Burden Hours per Response: .25.

Frequency of Response: Other: Once.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror, (202) 646-2624, 500 C Street SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Clearance Officer at the above address; and to Gary Waxman, (202) 395-7340, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: May 14, 1990.

Gail Kercheval,

Acting Director, Office of Administrative Support.

[FR Doc. 90-11831 Filed 05-21-90; 8:45 am]

BILLING CODE 6718-01-M

Amendment to Notice of a Major Disaster Declaration; Texas

[FEMA-863-DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-863-DR), dated May 2, 1990, and related determinations.

DATES: May 16, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Texas, dated May 2, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 2, 1990:

The counties of Anderson, McLennan, Montague, and Walker for Individual Assistance.

[Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance]

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-11832 Filed 5-21-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-863-DR]

Amendment to Notice of a Major Disaster Declaration; Texas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-863-DR), dated May 2, 1990, and related determinations.

DATES: May 11, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Mangement Agency, Washington, DC 20472, (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Texas, dated May 2, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 2, 1990:

The counties of Jones, Liberty, Somervell, and Taylor for Individual Assistance.

[Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance]

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-11833 Filed 5-21-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-863-DR]

Amendment to Notice of a Major Disaster Declaration; Texas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of major disaster for the State of Texas (FEMA-863-DR), dated May 2, 1990, and related determinations.

DATES: May 10, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Texas, dated May 2, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the castastrophe declared a major disaster by the President in his dclaration of May 2, 1990:

The counties of Bowie, Ellis, Fannin, Grayson, Hood, Johnson, Kaufman, Lamar, and Young for Individual Assistance.

[Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance]

Richard W. Krimm,

Acting Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-11834 Filed 5-21-90; 8:45 am]

BILLING CODE 6718-02-M

FEMA Advisory Board Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, announcement is made of the following FEMA Advisory Board meeting:

Name: Federal Emergency Management Agency Advisory Board.

Date of Meeting: May 30, 1990.

Time: 9 a.m. 4 p.m.

Place: Federal Emergency Management Agency, Emergency Information and Coordination Center, 500 C Street, SW, Washington, DC 20472.

Purpose: FEMA executives will provide reports on the Agency's budget,

personnel and programs. The status of a review of Civil Defense Programs will be provided and discussed. Program development concepts for the protection of national infrastructure assets will be discussed. Sessions on the future work agendas for the Board and the Board Panels will be conducted. Discussions will include calssified information. The Director has determined that the Board meeting should be closed to the public in accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 USC App. II, (1982)), because discussions will involve information that is specifically authorized to be kept "Secret" in the interest of national defense and is properly classified pursuant to the Executive Order.

Dated: May 2, 1990.

Robert H. Morris,

Acting Director.

[FR Doc. 90–11829 Filed 5–21–90; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

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.: 203–011160–012.

Title: Agreement 11160.

Parties:

Atlantic Container Line AB.
Compagnie Generale Maritime (CGM).
Orient Overseas Container Line (UK) Ltd.
Hapag Lloyd AG.
Johnson Scanstar.
Lykees Bros. Steamship Co., Inc.
Sea-Land Service, Inc.
Nedlloyd Lijnen BV.
Mediterranean Shipping Co.
Deppe Linie GmbH & Co.
P & O Containers Limited.
Polish Ocean Lines.
South Atlantic Cargo Shipping NV.

Synopsis: The proposed modification would delete South Atlantic Cargo Shipping NV as a party to the Agreement, effective July 19, 1990.

By Order of the Federal Maritime Commission.

Dated: May 17, 1990.

[FR Doc. 90–11800 Filed 5–21–90; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

First Banks, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 90–6387) published at page 10,498 of the issue for Wednesday, March 21, 1990.

Under the Federal Reserve Bank of St. Louis, the entry for First Banks, Inc. is amended to read as follows:

1. First Banks, Inc., St. Louis, Missouri; to acquire Clayton Savings and Loan Association, Clayton, Missouri, and thereby engage in the following nonbanking activities: Operating a thrift institution, making and servicing loans, sale of credit-related insurance, and discount securities brokerage activities pursuant to § 225.25(b)(9), (b)(1), (b)(8)(i), and (b)(15), respectively, of the Board's Regulation Y.

Comments on this application must be received by June 5, 1990.

Board of Governors of the Federal Reserve System, May 16, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–11801 Filed 5–21–90; 8:45 am]

BILLING CODE 6210–01–M

First of America Bank Corp.; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) or (f) of the Board's Regulation Y (12 CFR 225.23(a) 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. 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 June 11, 1990.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First of America Bank Corporation, Kalamazoo, Michigan; to acquire Pension and Group Services, Inc., Kalamazoo, Michigan, and thereby engage in providing employee benefits consulting services and limited actuarial services incident thereto. These activities have been approved previously by order. *Norstar Bancorp* 72 Federal Reserve Bulletin 729 (1986).

Board of Governors of the Federal Reserve System, May 16, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–11803 Filed 5–21–90; 8:45 am]

BILLING CODE 6210–01–M

Highlands Bankshares, 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 June 11, 1990.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Highlands Bankshares, Inc., Petersburg, West Virginia; to acquire 8.4 percent of the voting shares of The Stockmans Bank of Harman, Harman, West Virginia.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Hampton Family Partnership, Trenton, Kentucky; to become a bank holding company by acquiring 33.33 percent of the voting shares of Todd Bancshares, Inc., Trenton, Kentucky, and thereby indirectly acquire United Southern Bank, Trenton, Kentucky.

Board of Governors of the Federal Reserve System, May 16, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-11804 Filed 5-21-90; 8:45 am]

BILLING CODE 6210-01-M

The South Carolina National Bank, et al.; Change in Bank Control Notices: Acquisition of Shares of Banks or Bank Holding Companies

The notificants listed below have 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 the notice or to the offices of the Board of Governors. Comments must be received not later than June 5, 1990.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. The South Carolina National Bank as Trustee of the South Carolina National Corporation Amended and Restated Savings, Thrift and Deferred Cash Trust Agreement on behalf of The South Carolina National Corporation Amended and Restated Savings, Thrift and Deferred Cash Plan, Columbia, South Carolina; to acquire 11.94 percent of the voting shares of South Carolina National Corporation, Columbia, South Carolina, and thereby indirectly acquire The South Carolina National Bank, Charleston, South Carolina.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Ed. Duggan, Windsor, Colorado; to acquire an additional 3.75 percent of the voting shares of Windsor Bancorporation, Inc., Windsor, Colorado, for a total of 25.9 percent, and thereby indirectly acquire Bank of Windsor, Windsor, Colorado.

C. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. Leon Elster, Los Angeles, California; to acquire an additional 9.76 percent of the voting shares of Mid City Bancorp, Los Angeles, California, and thereby indirectly acquire Mid City Bank, N.A., Los Angeles, California.

Board of Governors of the Federal Reserve System, May 16, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-11802 Filed 5-21-90; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[Docket No. C-2493]

Diamond Shamrock Corporation; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Set Aside Order.

SUMMARY: The Federal Trade Commission has set aside a 1974 consent order as it applies to Occidental, a successor to a part of Diamond Shamrock Corporation, thus removing the order's prohibition of reciprocal dealing with customers and suppliers and certain related conduct. Occidental argued, among other things, that the restrictions in the order contrained its ability to compete, and that reopening and vacating the order would be in the public interest.

DATES: Consent order issued March 18, 1974. Order reopening and setting aside order issued April 30, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph Eckhaus, FTC/S-2115, Washington, DC 20580, (202) 326-2687.

SUPPLEMENTARY INFORMATION: In the Matter of Diamond Shamrock Corporation, the prohibited trade practices and/or corrective actions, as set forth at 39 FR 13769, are deleted in part.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Order Reopening and Setting Aside Order

Commissioners: Janet D. Steiger, Chairman, Terry Calvani, Mary L. Azcuenaga, Andrew J. Sternio, Jr., Deborah K. Owen.

Occidental Chemical Corporation ("Occidental"), a successor to a part of the business of Diamond Shamrock Corporation ("DSC"),[1] has filed a "Request of Occidental Chemical Corporation To Reopen and Vacate a Consent Order" ("Request"), pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and § 2.51 of the Commission's Rules of Practice, 16 CFR 2.51. In the Request, Occidental asks the Commission to reopen the proceeding in Docket No. C-2493 and set aside the consent order issued by the Commission on March 18, 1974, "insofar as it applies to Occidental." Request at 1. In support of its Request, Occidental states that the relief it seeks is required by changed conditions and the public interest. Request at 3. Occidental's request was placed on the public record for thirty days, pursuant to § 2.51 of the Commission's Rules of Practice. No comments were received. For the reasons stated below, the Request is granted.

I

The Commission issued its complaint and order in this matter on March 18, 1974. The complaint alleged that DSC had engaged in reciprocal dealing by "systematically utiliz[ing] its actual or potential purchases to obtain or increase sales of its products, services or raw materials to certain companies." 83

[1] The order applies to DSC and its "subsidiaries, successors, and assigns." 83 F.T.C. at 1392. Occidental is a successor by acquisition. Request at 1.

F.T.C. at 1390. The complaint further alleged that DSC's conduct had the effect, among other things, of foreclosing actual or potential suppliers of DSC, foreclosing DSC's competitors for selling to DSC's suppliers or giving DSC an unfair competitive advantage over its competitors. *Id.* at 1391.

The order prohibits DSC from engaging in reciprocal dealing with its suppliers and customers and from engaging in certain conduct that was thought to foster reciprocal dealing. Although some of the order's provisions expired in 1984, DSC still is prohibited from, among other things, discussions with another company "to ascertain, develop, facilitate, or further any relationship between purchases and sales of the nature prohibited by [the] order." 83 F.T.C. at 1393. DSC also is prohibited from making purchasing data available to its sales personnel and from making sales data available to its purchasing personnel. *Id.* at 1394.

II

The order in *Occidental Petroleum Corp.*, Docket C–2492, 83 F.T.C. 1394 (1974), like the *Diamond Shamrock* order, prohibited Occidental from engaging in reciprocal dealing and contained various fencing-in provisions to prevent opportunities for reciprocal dealing. In 1982, Occidental asked the Commission to reopen the order in *Occidental Petroleum Corp.* and set it aside, limit its duration to ten years or "bring it in line with current case law and enforcement attitudes." Rquest at 20. Occidental asserted that modification was warranted by changed conditions of law, fact and the public interest. Occidental argued, among other things, that similar orders entered against its competitors had expired, that the Commission and the Department of Justice were unlikely to challenge reciprocal dealing arrangements and that the order impeded Occidental's ability to compete. Request at 11.

On March 9, 1983, the Commission set aside the fencing-in provisions of the *Occidental* order and ordered that the remaining provisions of the order should expire ten years from the date of their original entry based on public interest considerations. *Occidental Petroleum Corp.*, Docket C–2492, 101 F.T.C. 373 (1983) (Reopening and Vacating in part and Modifying in Part Order Issued March 18, 1974). The Commission concluded that the fencing-in provisions of the *Occidental* order, with the passage of time, prohibited innocuous and possibly procompetitive conduct, resulting in competitive harm that outweighed any continuing need for them. The Commission concluded that the same public interest considerations warranted setting aside the remaining order provisions at the end of the specified ten-year period. *Id.* at 373–74.

The Commission consistent with its decision to modify and set aside the *Occidental* order, set aside two additional orders that prohibited the respondents from engaging in reciprocal dealing. In *The Southland Corp.*, Docket 8915, 102 F.T.C. 1337 (1983), the Commission set aside the fencing-in provisions of a 1974 order "at this time" and ordered that the remaining provisions be set aside ten years from the date of their original entry.[2] The Commission set aside a 1973 order prohibiting reciprocal dealing in *Georgia-Pacific Corp.*, Docket C–2402, 103 F.T.C. 203 (1984).[3]

III

In its Request, Occidental asserts that changed conditions and the public interest require the Commission to set aside the *Diamond Shamrock* order, which now applies to Occidental as a result of Occidental's acquisition of part of DSC's business. Request at 3. Occidental argues that the order prohibits conduct that the Commission described as "innocuous and often procompetitive" in its decisions to set aside the reciprocal dealing orders against Occidental, Southland and Georgia-Pacific. Request at 2. Occidental also argues that because the public policy considerations that "motivated [the Commission's decision to modify and set aside the *Occidental* order] have not changed," it would be "illogical and manifestly unfair" to subject Occidental, by reason of its acquisition of a part of DSC's business, to the same order provisions that the Commission decided should not apply to Occidental. Request at 4. Finally, Occidental asserts that it is "injured by the continued applicability of the *Diamond Shamrock* order to it, especially when similar consent orders applicable to several of its competitors have been permitted to expire." Request at 2 and 5 n.4.

IV

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), provided that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" require such modification. A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of it inequitable or harmful to competition. *Louisiana-Pacific Corp.*, Docket C–2956, Letter to John C. Hart (June 5, 1986), at 4.

Section 5(b) also provides that the Commission may modify an order when, although changed circumstances would not require reopening, the Commission determines that the public interest so requires. Respondents are therefore invited in petitions to reopen to show how the public interest warrants the requested modification. 16 CFR 2.51. In such a case, the respondent must demonstrate as a threshold matter some affirmative need to modify the order. *Damon Corp.*, Docket C–2916, Letter to Joel E. Hoffman, Esq. (March 29, 1983), at 2 ("Damon letter"). For example, it may be in the public interest to modify an order "to relieve any impediment to effective competition that may result from the order." *Damon Corp.*, Docket C–2916, 101 F.T.C. 689, 692 (1983). Once such a showing of need is made, the Commission will balance the reasons favoring the modification requested against any reasons not to make the modification. Damon letter at 2. The Commission also will consider whether the particular modification sought is appropriate to remedy the identified harm.

The language of section 5(b) plainly anticipates that the burden is on the petitioner to make a "satisfactory showing" of changed conditions to obtain reopening of the order. The legislative history also makes clear that the petitioner has the burden of showing, by means other than conclusory statements, why an order should be modified. If the Commission determines that the petitioner has made the necessary showing, the Commission must reopen the order to determine whether modification is required and, if so, the nature and extent of modification. The Commission is not required to reopen the order, however, if the petitioner fails to meet its burden of making the satisfactory showing of changed conditions required by the statute. The petitioner's burden is not a light one in view of the public interest in repose and the finality of Commission orders.

V

A reciprocal dealing arrangement exists when two parties deal with each

[2] The original *Southland* order was issued January 24, 1974. *See* 83 F.T.C. 1282.

[3] The order in *Georgia-Pacific*, 82 F.T.C. 1428 (1973), which had been in effect for more than ten years when the Commission issued the 1984 order, was set aside in its entirety.

other as both a buyer and seller, one party offering to buy the other party's goods conditioned on the second party buying goods from the first party.[4] The elements of proof required to show that reciprocal dealing violates the antitrust laws are equivalent to the elements required to prove an unlawful tying arrangement, in which, similarly to reciprocal dealing, a party's willingness to enter one transaction is condition on the other party's willingness to enter into a different one too.[5] Unilateral conduct, such as buying from a present customer in order to give that customer an incentive to keep buying from it, or to maintain "goodwill," does not violate the law,[6] nor does two parties maintaining a consensual relationship to purchase each other's products.[7] Continued order restraints against unilateral and consensual reciprocal dealing are legally unsupportable. Coercive reciprocal dealing may violate the law, if there is an actual agreement between the parties to make reciprocal purchases, if one party has substantial market power that tends to coerce the reciprocal transaction,[8] and if the reciprocal dealing arrangement forecloses a substantial amount of commerce.[9]

Occidental demonstrates that orders against reciprocal dealing, of all forms, by its competitors have now expired. *See Georgeia-Pacific Corp.*, Docket C–2402, 103 F.T.C. 203 (1984); *United States* v. *PPG Industries, Inc.*, 1970 Trade Cas. (CCH) ¶73,373 (W.D. Pa. 1970).

Occidental demonstrates that it has lost caustic soda business as a result of not having the ability to enter into reciprocal dealing arrangements. Public Record at 49–53. This showing supports Occidental's assertions that the restrictions in the Order constrain its ability to compete, and that reopening and vacating the order would thus tend to serve the public interest.

VI

In modifying and setting aside the *Occidental* order, the Commission said that the conduct prohibited by the order is "innocuous and may, in certain circumstances, be procompetitive." 101 F.T.C. at 373–74. The Commission believes that there is no sound reason to deny Occidental now relief equivalent to what the Commission already granted it in 1983.

Occidental has shown an affirmative need to reopen and modify the order, and this need is not outweighed by any reasons to continue the order. Accordingly, the Request to reopen and set aside the order, insofar as it applies to Occidental, is granted.

Accordingly, it is ordered that the proceeding in Docket C–2493 be, and it hereby is, reopened and that the order, insofar as it applies to Occidental, be, and it hereby is, set aside.

By the Commission, Commissioner Azcuenaga and Commissioner Strenio dissenting.

Donald S. Clark,

Secretary.

Dissenting Statement of Commissioner Mary L. Azcuenaga in Diamond Shamrock Corporation, Docket C–2493

A majority of the Commission today grants the petition of Occidental Chemical Corporation to reopen and set aside the order in *Diamond Shamrock Corporation*, Docket C–2493, insofar as it applies to Occidental.[1] The majority takes this action although Occidental failed to demonstrate changed conditions of fact or law that require reopening or public interest considerations that warrant reopening.[2] I cannot agree.

I

The majority relies on the public interest to set aside the order in *Diamond Shamrock*. Reopening an order may be warranted in the public interest when the respondent shows as a threshold matter some affirmative need to modify the order, usually a competitive disadvantage resulting from the order.[3] Occidental has not made the requisite threshold showing. Instead, Occidental's public interest arguments are vague and conclusory.

Occidental asserts that similar consent orders once applicable to several of its competitors have been set aside or permitted to expire. Petition at 2 & 5. Even if true, this assertion does not create an inference that Occidental is competitively disadvantaged. The mere fact that other firms are not precluded by order from engaging in certain conduct does not mean that the conduct is necessary to compete effectively or that Occidental is competitively disadvantaged by its inability to engage in that conduct. Occidental makes no claim or showing that it is unable to compete effectively by reason of the order.[4]

Affidavits from Occidental personnel are similarly uninformative. The affiants claim "instances" in the three and a half years since Occidental acquired Diamond Shamrock Chemical Corporation that Occidental has not completed transactions because it could not discuss reciprocal dealing. Not even one of these "instances" is identified, and no other specific information such as the identity of the potential customer or the volume of business is provided.

One would expect that Occidental could identify any competitive disadvantage it suffers with some degree of particularity.[5] Certainly that is a minimum we have required in other cases, and I see nothing here to justify a departure from our usual standards. In the absence of a showing of competitive harm, we cannot evaluate whether the order unnecessarily hinders competition, nor can we assess the appropriateness of the requested order revision to remedy the identified harm. This is law enforcement in a vacuum.

Occidental in its Petition and the majority in its Order rely primarily and almost exclusively on the fact that the

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[4] *Betaseed, Inc.* v. *U and I Inc.*, 681 F. 2d 1203, 1216 (9th Cir. 1982); *Spartan Grain & Mill Co.* v. *Ayers*, 581 F. 2d 419, 424 (5th Cir. 1978), *cert. denied*, 444 U.S. 831 (1979); *E.T. Barwick Industries, Inc.* v. *Walter E. Heller & Co.*, 692 F. Supp. 1331, 1337 (N.D. Ga. 1987); *Skepton* v. *County of Bucks, Pennsylvania*, 613 F. Supp. 1013, 1018 (E.D. Pa. 1985).

[5] *E.T. Barwick Industries, Inc.*, 692 F. Supp. at 1337; *Skepton*, 613 F. Supp. at 1018, *citing Betaseed, Inc.*, 681 F. 2d at 1216–17; *Spartan Grain and Mill Co.*, 581 F. 2d at 425.

[6] *Great Escape, Inc.* v. *Union City Body Co.*, 791 F. 2d 532, 537 (7th Cir. 1986). *See Davis* v. *First National Bank of Westville*, 868 F. 2d 206, 208 (7th Cir. 1989).

[7] *Great Escape, Inc.*, 791 F. 2d at 537; *see Davis*, 868 F. 2d at 208.

[8] *Great Escape, Inc.*, 791 F. 2d at 537; *E.T. Barwick, Inc.*, 692 F. Supp. at 1331; *Skepton*, 613 F. Supp. at 1018. *See Davis*, 868 F. 2d at 208; *Bruce* v. *First Federal Savings and Loan Association of Conroe, Inc.*, 837 F. 2d 712, 718 (5th Cir. 1988).

[9] *Bruce*, 837 F. 2d at 718, *citing, Jefferson Parish Hospital District No. 2* v. *Hyde*, 466 U.S. 2, 13–16 (1984).

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[1] Occidental filed the petition as a successor under the order by its 1986 acquisition of Diamond Shamrock Chemical Corporation.

[2] Although Occidental alleges "changed conditions" generally, Petition at 3, it does not specifically identify any changed conditions of fact.

[3] Once such a showing is made, the Commission will consider the reasons for and against modification and whether the particular modification requested is appropriate to remedy the identified harm. *See* Order Reopening and Setting Aside Order, Docket C–2493, at 4 ("Order").

[4] Occidental's allegation that other orders banning reciprocal dealing have expired, Petition at 5 n.4, does not identify either a change in law or a change in fact. The orders cited by Occidental had a definite term when they were issued, and almost all of them were issued before the Commission issued the order in *Diamond Shamrock*.

[5] Despite this vagueness, the majority concludes that the affidavits show that Occidental "has lost caustic soda business as a result of not having the ability to enter into reciprocal dealing arrangements." Order Reopening and Setting Aside Order ("Order") at 5. Occidental claimed only that several sales were not made to unidentified customers when it could not discuss reciprocity. Even assuming the truth of the claim, at most it shows a transaction cost. Occidental neither claims nor shows that it lost business overall as a result of the *Diamond Shamrock* order.

Commission set aside a similar order in *Occidental Petroleum Corp.*, Docket C–2492, 101 F.T.C. 373 (1983). According to Occidental, the 1983 decision of the Commission to set aside the *Occidental* order is the "most significant factor" in favor of setting aside the *Diamond Shamrock* order. Petition at 3, and it is "obviously controlling here." Petition at 4. Apparently acquiescing, the majority states that "there is no sound reason to deny Occidental now relief equivalent to what the Commission already granted it in 1983." Order at 6.

Occidental's argument is tantamount to saying that a decision to set aside one order requires setting aside all orders imposed for similar violations of law, regardless of the industry involved, differences in the competitive positions of different respondents or any other factual difference. This would be an astonishing development.[6] It ignores the reality that every law enforcement order is and must be based on its particular facts. Similarly, each petition to reopen and modify an order must be decided on its own merits. The Commission did not in 1983 decide that Occidental should never be subject to an order prohibiting reciprocal dealing, *see* Petition at 4; Order at 6, the Commission did not in 1983 decide that all reciprocal dealing orders should be set aside and most assuredly the Commission did not in 1983 decide that Occidental should be treated differently from any other potential successor to the terms of the *Diamond Shamrock* order. Instead, the Commission in 1983 considered a different petition in the context of a different order and found that modification of that order, *Occidental Petroleum Corp.*, Docket C–2492, was in the public interest.[7] Whatever competitive injury Occidental may have shown then, clearly the requisite showing has not been made here.

Nor is the 1983 decision in *Occidental* "controlling" by virute of *stare decisis* or *res judicata*. *Stare decisis* requires that we follow established legal principles—here, the standards for reopening and modification under Section 5(b) of the Federal Trade Commission Act. *Res judicata* does not make the 1983 decision "controlling," because the order at issue here is based on a cause of action different from that in *Occidental*, and Occidental, by virtue of its 1986 acquisition of Diamond Shamrock Chemical Corporation, is different from Occidental as it was constituted in 1983.

A change in law sufficient to require reopening is a change in statutory or decisional law that has the effect of bringing the provisions of the order in conflict with existing law, so that to continue the order would work an injustice. *Louisiana-Pacific Corp.*, Docket C–2956, slip op. at 20 (Nov. 15, 1989). Occidental fails to meet this standard, but the majority appears to conclude that the law has changed sufficiently that some provisions of the order are "legally unsupportable."

In its summary petition, Occidental alleges generally and without citation to authority that the law applicable to reciprocal dealing has changed and that it is "widely accepted" that most forms of reciprocal dealing are "entirely innocuous." According to Occidental, "even in its most extreme form—so-called 'coercive reciprocity'—the practice is not so anticompetitive in effect or lacking in redeeming virtues to justify applying a strict *per se* rule." Petition at 5.[8] These allegations fall far short of identifying a change in law sufficient to require reopening under Section 5(b). Occidental does not otherwise embellish its bare assertion on the state of the law.

The cases the majority cites quite simply do not demonstrate that the law has changed. *See* Order at 4–5. Two of those cases, *Betaseed, Inc.* v. *U and I Inc.*, 661 F.2d 1203 (9th Cir. 1982), and *Spartan Grain & Mill Co.* v. *Ayers*, 581 F.2d 419 (5th Cir. 1978), were cited in Occidental's 1982 petition in support of its argument that the law had changed.[9] After considering these and other cases Occidental cited, the Commission in 1983 specifically found that Occidental had failed to demonstrate a change in law.[10]

Nor do the cited cases provide any support for the proposition that the law of reciprocity has changed since 1983. This is hardly surprising, because if any such authority existed, Occidental presumably would have include those citations in its petition. The court in *Skepton* v. *County of Bucks, Pennsylvania*, 613 F. Supp. 1013 (E.D. Pa. 1985) (cited in the Order at 4 n.4), cited *FTC* v. *Consolidated Foods Corp.*, 380 U.S. 592 (1965), *Betaseed* and *Spartan Grain* for its discussion of reciprocity, and the court in *E.T. Barwick Industries, Inc.* v. *Walter E. Heller & Co.*, 692 F. Supp. 1331 (N.D. Ga. 1987) (cited in the Order at 4 n.4) relied, *inter alia*, on *Skepton*. A more recent case cited by the majority, *Great Escape, Inc.* v. *Union City Body Company, Inc.*, 791 F.2d 532 (7th Cir. 1986) (cited in the Order at 5 n.6), applied the same legal principles that were applied in *Betaseed* and *Spartan Grain*.[11]

Neither Occidental nor the majority suggests that reciprocal dealing is never unlawful. Indeed, both concede that so-called coercive reciprocal dealing may be unlawful. Order at 5; Petition at 5. The majority does conclude, however, that "[c]ontinued order restraints against unilateral and consensual reciprocal dealing are legally insupportable."[12] Order at 5.

I agree with the implication of the majority's statement that unilateral reciprocity is not, indeed, never was unlawful. This does not mean that provisions in the *Diamond Shamrock* order barring unilateral reciprocity were or are "legally unsupportable." At best, a finding that the order is too broad in its present context might support modifying the order to eliminate fencing-in provisions that may, with the passage of time, have served their purpose and may now needlessly impede competition. But neither Occidental nor the majority individually examines the

[6] By this reasoning, for example, if a firm subject to a divestiture order under Section 7 of the Clayton Act persuades the Commission to relieve it of its divestiture obligation, then all other Section 7 divestiture requirements similarly should be lifted.

[7] The order modifications in *Georgia-Pacific Corp.*, Docket C–2402, 103 F.T.C. 203 (1984), and *The Southland Corporation*, Docket 8915, 102 F.T.C. 1337 (1983), both reciprocal dealing orders, also were based on the public interest. In neither case did the Commission rely "expressly on its decision in *Occidental*," as Occidental erroneously claims. Petition at 6. Instead, in both cases, the Commission cited the public interest and said that the result "is consistent" with the decision in *Occidental*.

[8] Occidental also alleges that the Commission and the Antitrust Division "have discontinued efforts to enjoin reciprocal practices." Petition at 5. It is not clear whether Occidental proffers this as a change in law or a change in fact. Neither, however, can be inferred from government inaction with respect to a particular restraint of trade, which reflects the exercise of prosecutorial discretion or, perhaps, a dearth of violations.

[9] Request To Reopen and Vacate or Modify Consent Order in *Occidental Petroleum Corp.*, Docket C–2492 (Nov. 8, 1982), at 27, a copy of which was attached to the 1989 petition to reopen the *Diamond Shamrock* order "for the convenience of the Commission." Petition at 4 n.3.

[10] Occidental obviously could not incorporate by reference the change of law arguments in its 1982 petition, because the Commission already has rejected them.

[11] Two cases cited by the majority, *Davis* v. *First National Bank*, 868 F.2d 206 (7th Cir. 1989), and *Bruce* v. *First Federal Savings & Loan*, 837 F.2d 712 (5th Cir. 1988), arose under the Bank Holding Company Act, which prohibits reciprocal dealing but under standards different from those applied in Sherman Act cases, and the courts in both cases expressly stated that Sherman Act standards did not apply.

[12] Like all final orders, the order in *Diamond Shamrock* is of course presumptively valid, absent mistake or fraud, *see Louisiania-Pacific Corp.*, Docket C–2956, slip op. at 9 (Nov. 15, 1989), yet this statement suggests that the majority is willing to second guess what the Commission did in 1974.

so-called "legally insupportable" provisions in this light.[13]

I am not prepared to say, as does the majority, that consensual reciprocity can never be unlawful.[14] A consensual reciprocity agreement, like any contract, combination or conspiracy, may constitute an unreasonable restraint of trade under Section 1 of the Sherman Act, although, presumably, only the government or a foreclosed competitor would have standing to raise the issue. *See Industria Siciliana Asfalti, S.p.A.* v. *Exxon Research & Engineering Co.*, 1977–1 Trade Cas. (CCH) ¶ 61,256, at 70,778–80 (S.D.N.Y. 1977); *Spartan Grain*, 581 F.2d at 425 n.5; *see also Heublein, Inc.*, 96 F.T.C. 385, 596–97 (1980). The foreclosure and entry-deterring effects of reciprocity could be the same whether the reciprocal agreement is consensual or coercive. *See* V Areeda & Turner, *Antitrust Law* ¶ 1129h, at 196–77 (1980).

III

The standards under section 5(b) of the Federal Trade Commission Act for reopening an order are stringent, and the petitioner carries a heavy burden of proof in light of the public interest in repose and the finality of orders. *See United States* v. *Swift & Co.*, 286 U.S. 106 (1932); *United States* v. *Swift & Co.*, 276 U.S. 311 (1928); *United States* v. *Swift & Co.*, 189 F. Supp. 885 (N.D. Ill. 1960), *aff'd per curiam*, 367 U.S. 909 (1961). These interests are threatened if the Commission reopens and modifies orders absent a satisfactory showing of changed conditions or public interest considerations that eliminate the need for the order or make continued application of the order inequitable or harmful to competition. Insubstantial or frivolous petitions may be encouraged, wasting our resources. Decisions based on inadequate showings may tend to be arbitrary, resulting in inequitable treatment and lessening respect for the Commission's enforcement efforts. We can avoid these dangers by adhering to the standards for reopening set forth in Section 5(b) of the Federal Trade Commission Act.

No right of appeal obtains for today's decision, and it will be little remarked beyond a specialized segment of the bar. Nevertheless, this kind of decisionmaking diminishes the agency. I dissent.

[13] If the order appears too broad, the appropriate procedure, because Occidental has not requested modification and therefore has not attempted to limn the appropriate scope of modification, is to deny the petition and issue an order to show cause under § 3.72 of the Commission's Rules of Practice.

[14] Indeed, this is a unique and interesting departure from the rest of our enforcement agenda.

FR Doc. 90–11818 Filed 5–21–90; 8:45 am]
BILLING CODE 6750–01–M

[Docket No. 9040]

The Kroger Company

AGENCY: Federal Trade Commission.

ACTION: Notice of period for public comment on petition to reopen and modify the order.

SUMMARY: The Kroger Company, respondent in the order in Docket No. 9040, has petitioned the Federal Trade Commission to modify a 1977 consent order concerning the unavailability of advertised grocery products.

DATES: Deadline for filing comments in this matter is June 11, 1990.

ADDRESS: Comments should be send to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580. Requests for copies of the petition should be send to the Public Reference Branch, room 130.

FOR FUTHER INFORMATION CONTACT: Jerry R. McDonald, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326-2971.

SUPPLEMENTARY INFORMATION: The order against the Kroger Company in Docket No. 9040 was published at 42 FR 62912 on December 14, 1977. The petitioner, the Kroger Company, operates a chain of retail food stores. The order prohibits the Kroger Company from failing to have ach advertised sale item readily available for sale; from failing to price each advertised sale item at or below the advertised price; and from failing to sell each advertised sale item at or below the advertised price. The order modifications requested by petitioner would enable it to avail itself of the defenses to the unavailabiltiy of advertised items in the Trade Regulation Rule Concerning Retail Food Store Advertising and Marketing Practices, as amended on August 28, 1989. The requested modifications to the order would require petitioner to have adequate stock to meet reasonable demand for items advertised for sale at specified prices unless petitioner publishes in the advertisment a clear and adequate disclosure that quantities are limited. Additionally, consistent with the amended rule, the requested modifications to the order would provide that, even when petitioner does not publish a limited quantity disclaimer, it is not a violation of the order, when unavailability of an advertised items does occur if petitioner (1) Ordered sufficient quantities of the item to meet reasonably anticipated demand; (2) offers a raincheck for the unavailable item; (3) offers a substitute for the unavailable item at the advertised price or at a comparable price reduction; or (4) offers other compensation at least equal to the advertised value. The petition to modify was placed on the public record on April 23, 1990.

Donald S. Clark,
Secretary.

[FR Doc. 90–11817 Filed 5–21–90; 8:45 am]
BILLING CODE 6750–01–

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90F–0157]

Minnesota Mining and Manufacturing Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Minnesota Mining and Manufacturing Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a perfluoroalkyl acrylate copolymer, produced by the copolymerization of ethanaminium, *N,N,N*-trimethyl-2-[(2-methyl-1-oxo-2-propenyl)oxy]-, chloride; 2-propenoic acid, 2-methyl-, oxiranylmethyl ester; 2-propenoic acid, 2-ethoxyethyl ester; and 2-propenoic acid, 2[[(heptadecafluorooctyl)sulfonyl] methylamino]ethyl ester, as a component of paper and paperboard in contact with nonalcoholic foods at high temperatures including the use in microwave heat susceptor packaging.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition FAP OB4206 has been filed by Minnesota Mining and Manufacturing Co., 3M Center, St. Paul, MN 55144, proposing that the food additive regulations be amended to provide for

the safe use of perfluoroalkyl acrylate copolymer, produced by the copolymerization of ethanaminium, *N,N,N*-trimethyl-2-[(2-methyl-1-oxo-2-propenyl)oxy]-, chloride; 2-propenoic acid, 2-methyl-, oxiranylmethyl ester; 2-propenoic acid, 2-ethoxyethyl ester; and 2-propenoic acid, 2[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester, as a component of paper and paperboard in contact with nonalcoholic foods at high temperatures including the use in microwave heat susceptor packaging.

The potential environmental impact of this action in being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 14, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-11805 Filed 5-21-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90-0185]

Superpharm Corp.; Proposal to Withdraw Approval of Abbreviated New Drug Applications for Diazepam Tablets; Opportunity for a Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) proposes to withdraw approval of abbreviated new drug applications (ANDA's) 70-642, 70-643, and 70-644 held by Superpharm Corp., 1769 Fifth Ave., Bayshore, NY 11706 (Superpharm). The grounds for the proposed withdrawal are that (1) The applications contain untrue statements of material fact, and (2) based on new information, evaluated together with the evidence available when the applications were approved, there is a lack of substantial evidence that the drugs will have the effect they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

DATES: A hearing request is due on June 21, 1990; data and information in support of the hearing request are due on July 23, 1990.

ADDRESSES: A request for hearing, supporting data, and other comments should be identified with Docket No. 90N-0165, and submitted to the Dockets Management Branch (HFA-305), rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary E. Catchings, Division of Regulatory Affairs (HFD-366), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8041.

SUPPLEMENTARY INFORMATION:

I. Background

Superpharm holds three approved ANDA's for diazepam tablets: 70-642 (2 milligrams (mg)), 70-643 (5 mg), and 70-644 (10 mg). These products are generic versions of Roche's Valium Tablets.

To support approval of the ANDA's Superpharm submitted to FDA a bioequivalence study conducted by Bio-Research Laboratories, Sonneville, Quebec, Canada. This study demonstrated that Superpharm's Diazepam Tablets 10 mg were bioequivalent to Valium Tablets 10 mg. This study was also used to support bioequivalence of the 2 mg and 5 mg strengths. Because of the similarity of these two strengths to the 10 mg product, FDA granted the requested waiver of in vivo bioequivalence study requirements on them. Comparative in vitro dissolution studies were required instead.

The showing of bioequivalence was critical to the approval Superpharm's products. Valium Tablets, the listed drug under section 505(j)(6) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(j)(6)), was approved based on, among other things, adequate and well-controlled clinical studies showing that the product has the effects claimed for it. Superpharm's generic versions of Valium Tablets, Diazepam Tablets 2 mg, 5 mg, and 10 mg, were approved without the submission of clincial efficacy studies. Instead, Superpharm's products were approved based on a finding that Superpharm's products were bioequivalent to Valium Tablets. The finding of bioequivalence is necessary to support the conclusion that Superpharm's products will be therapeutically equivalent to Valium Tablets.

In addition to the bioequivalence study, Superpharm submitted to the ANDA for each strength tablet dissolution data, batch production records, and stability data, which were necessary for approval. FDA used the dissolution data to assess the comparability of Superpharm's products and Valium Tablets and to establish an appropriate dissolution specification for future, commercial batches of Superpharm's products. The dissolution specification helps provide assurance that commercial batches of Superpharm's products remain bioequivalent to Valium Tablets.

The batch production records are significant because they characterize the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of the Superpharm products shown to be bioequivalent to Valium Tablets. These same methods, facilities, and controls must be applied to production of commercial batches of Superpharm's products to provide assurance that the products remain bioequivalent to Valium Tablets.

The stability data provide assurance that Superpharm's products will retain their physical and chemical characteristics and their bioequivalence throughout their labeled shelf-lives.

During an inspection of Superpharm conducted from July 11, 1989, to August 1, 1989, FDA investigators identified false statements and other significant discrepancies concerning the production and testing of batches used to support approval of ANDA's 70-642, 70-643, 70-644. Following the inspection, FDA issued a Notice of Inspectional Observations (Form FD-483) to Superpharm detailing the untrue statements and discrepancies. By letters dated September 11, 1989, and September 21, 1989, Superpharm responded to the FD-483 observations. At the request of Superpharm, meetings were held between representatives of the firm and FDA to discuss the problems identified during the investigation of the firm's products. At one of these meetings, Superpharm informed FDA that the firm had hired an outside auditor to review the data supporting the approval of the diazepam ANDA's. Superpharm has since suspended production of its diazepam products.

The untrue statements and discrepancies identified in ANDA's 70-642, 70-643, and 70-644 and in Superpharm's records constitute new information that raises serious questions about the identity and characteristics of the batches that were used to demonstrate the bioequivalence of Superpharm's products and, thus, raises concerns about the actual bioequivalence of Superpharm's marketed products to Valium Tablets. The scope and significance of the untrue statements and discrepancies call into question the reliability of all data submitted to FDA to support approval of Superpharm's ANDA's for diazepam.

A discussion of the new information follows:

A. Information on the Manufacture of Batches Used to Perform Tests Necessary for Approval

1. *Discrepancies regarding the identity and characteristics of the batches*—(i) *ANDA 70–642, 2 mg.* In support of ANDA 70–642, Superpharm submitted to FDA two versions of a batch production record for batch 260285. The first version shows a theoretical batch size of 3.2 kilograms (kg) with a theoretical yield of 20,000 tablets (20M). The second version was for a theoretical batch size of 9.6 kg with a theoretical yield of 60,000 tablets (60M). The first version was submitted with the initial application dated July 1, 1985. The second version was submitted in response to an FDA deficiency letter dated October 1, 1985. Among other things, the October 1985 deficiency letter indicated that the 20M tablet batch size was inadequate for the purpose of stability testing.

Superpharm also submitted comparative in vitro dissolution data and stability data purportedly generated using product from batch 260285. In addition, Superpharm submitted stability data from two other batches, identified in the ANDA as batches 150385 and 160385. The batch records for batches 150385 and 160385 were never submitted to FDA.

FDA's reevaluation of ANDA 70–642 and inspection of the firm have revealed a number of discrepancies concerning the manufacture of batch 260285. As discussed above, Superpharm submitted two batch records for batch 260285 that show differences in batch size. These two versions also show that the two different sizes were manufactured in the same equipment at the same time, a physical impossibility.

Although the two batch sizes could not have been manufactured in the same equipment at the same time, records exist at the firm showing the manufacture of the two sizes as separate complete batches. For example, a notebook entitled "Batch Record for R&D Products: 1985" shows an entry corresponding to the smaller size batch. An entry dated February 22, 1985, in this record for batch 260285 identifies compression of the 20M tablet batch size. Similarly, an internal inventory record dated "2/5/84–" and inventory records for lots of excipients purportedly used in the batch show use of quantities of raw material corresponding to the 20M tablet batch size.

In contrast, other records show manufacture of a 60M tablet size batch. The diazepam raw material lot 4120 inventory record identifies a withdrawal for batch 260285 equivalent to the quantity indicated as used on the batch record for the larger 60M tablet batch. An inventory record dated October 29, 1985, indicates that the amount of diazepam tablets batch 260285 in inventory was 8.975 kg, which is consistent with the larger size batch.

A record also exists at the firm showing batch 260285 to be larger than reported on the two versions of the batch record. A notebook containing a log of samples to be destroyed includes an entry for 9.378 kg of diazepam batch 260285. This figure exceeds the 9.3 kg actual yield reported for the 60M size batch and exceeds the 3.2 kg yield reported for the 20M size batch.

Discrepancies also exist concerning the raw materials and manufacturing steps used in the manufacture of batch 260285. The two batch records for batch 260285 show the use of several different excipients; whereas, the inventory records for every lot of excipients identified on the batch records for this batch document use of only one excipient. In addition, the batch records show use of diazepam raw material lot 4120 in manufacturing the batch before its release date indicated on the raw material inventory record. Moreover, the original batch record found at the firm for this batch shows a 5-minute gap between the mixing operations and the start of compression checks. This 5-minute gap is insufficient time for reconciling the yield and for compression set-up time.

FDA's inspection of Superpharm also revealed several discrepancies concerning the manufacture of batches 150385 and 160385, the additional stability batches. First, the raw material inventory records do not show any withdrawals of excipients for use in these batches. Second, the batch records show use of diazepam raw material lot 4120 in manufacturing the batches before the raw material's release date indicated on the raw material inventory record. Third, the batch record for batch 150385 shows an actual yield of 100 percent of the theoretical yield at the finish of mixing operations and compression operations. Such an occurrence is highly unlikely. Fourth, the original batch record found at the firm for batch 160385 shows a 4-minute gap between the end of mixing operations and the start of compression checks. This 4-minute gap is insufficient time for reconciling the yield and for compression set-up time. Finally, inconsistencies exist between the yield shown on batch record 160385 and the inventory records. The batch record for this batch shows the finished yield of bulk tablets to be 2.66 kg. This does not agree with production inventory records. The October 29, 1985, inventory record shows the amount of finished product from batch 160385 to be 3.02 kg. The February 3, 1986, Superpharm destruction log and the February 3, 1986, Drug Enforcement Administration (DEA) destruction record both show 3.12 kg of batch 160385. These destruction amounts exceed the actual yield of tablets entered on batch record 160385.

All of the discrepancies discussed above raise questions about the identity and characteristics of the batches used to perform tests necessary for approval of ANDA 70–642. Many of these discrepancies indicate that certain records were falsified, although which records were actually falsified is not clear. These discrepancies and falsifications impugn the integrity and validity of all representations made by Superpharm about batches 260285, 150385, and 160385. They also raise questions about whether the product approved under the ANDA is representative of the product marketed by Superpharm.

(ii) *ANDA 70–643, 5 mg.* In support of approval of ANDA 70–643, Superpharm submitted two versions of a batch production record for batch 350385. The first version shows a theoretical batch size of 20M tablets and a theoretical weight of 3.2 kg. The actual yields documented on the batch record for this verions were 19,870 tablets and a weight of 3.18 kg. The second version of batch 350385 shows a theoretical batch size of 60M tablets and a theoretical weight of 9.6 kg. The actual yields documented were 59,370 tablets and a weight of 9.5 kg. The first version was submitted in the initial application. The second version was submitted in response to FDA's October 1, 1985, deficiency letter (discussed above).

Superpharm also submitted comparative in vitro dissolution data and stability data purportedly developed using product from batch 350385. In addition, Superpharm submitted stability data purportedly from two additional batches, identified in the ANDA as batches 140385 and 270285. The batch records for batches 140385 and 270285 were not submitted to the ANDA.

FDA's reevaluation of ANDA 70–643 and inspection of the firm have revealed several discrepancies concerning the manufacture of batch 350385. As discussed above, Superpharm submitted two batch records for batch 350385 that show different size batches. The records also show that the two different sizes

were manufactured in the same equipment at the same time. This occurrence is not possible.

Records at the firm show further inconsistencies in the size of batch 350385. The diazepam raw material lot 4120 inventory record shows a withdrawal for batch 350385 corresponding to the 60M tablet, 9.6 batch size. Similarly, an inventory work sheet dated October 29, 1985, identifies the inventory of batch 350385 as 9.32 kg. On the other hand, a notebook entitled "Batch Record for R&D Products: 1985" has an entry dated March 28, 1985, for diazepam tablets 5 mg, batch 350385, indicating a batch size of 10,000 tablets.

Discrepancies also exist concerning the date of manufacture of batch 350385. The batch records submitted to FDA show manufacture on March 1, 1985. The notebook entitled "Batch Record of R&D Products: 1985" shows manufacture of batch 350385 on March 28, 1985. The October 29, 1985, inventory work sheet suggests that the 60M tablet batch 350385 was manufactured after, and as a result of, FDA's October 1, 1985, deficiency letter.

Moreover, discrepancies exist concerning the raw materials used in batch 350385. The excipient raw material inventory records corresponding to the lots of excipients identified on the batch records do not show any withdrawals for batch 350385.

FDA's inspection of Superpharm also revealed a number of discrepancies concerning the manufacture of batches 140385 and 270285, the additional stability batches. First, records at the firm show discrepancies in the date of manufacture of batch 270285. The R&D production log identifies compression of this batch on March 2, 1985. The batch record identifies the date of all manufacturing operations for this batch to be February 27, 1985.

Second, there are inconsistencies in records concerning excipient raw materials. The batch records show use of multiple excipients. However, the excipient raw material inventory records do not show withdrawal of excipients for batch 140385 and show withdrawal of only one excipient for batch 270285.

Finally, an inconsistency exists in the documented manufacturing operations for batch 140385. The batch record shows a 1-minute gap between the end of mixing operations and the start of compression. Such a short amount of time is insufficient for reconciling the yield and for the compression set-up time.

All of the discrepancies discussed above raise questions about the identity and characteristics of the batches used to perform tests necessary for approval of ANDA 70–643. Many of these discrepancies indicate that certain records were falsified, although which records were falsified is not clear. These discrepancies and falsifications impugn the integrity and validity of all representations made by Superpharm concerning batches 350385, 140385, and 270285. They also raise questions about whether the product approved under the ANDA is representative of the product marketed by Superpharm.

(iii) *ANDA 70–644, 10 mg.* To support approval of ANDA 70–644, Superpharm submitted two versions of a batch production record for batch 110385. The first version of batch 110385 shows a theoretical batch size of 20M tablets and a theoretical weight of 3.2 kg. The actual yields documented on the batch record for this version were 19,870 tablets and a weight of 3.14 kg. The second version of batch 110385 shows a theoretical batch size of 60M tablets and a theoretical weight of 9.6 kg. The actual yields reported on the batch record were 59,750 tablets and a weight of 9.4 kg. The first version was submitted in the initial application. The second version was submitted in response to FDA's October 1, 1985, deficiency letter (discussed above).

Superpharm also submitted in vivo bioequivalence data, in vitro dissolution data, and stability data purportedly developed utilizing product from batch 110385. The in vivo bioequivalence data also supported approval of ANDA's 70–642 and 70–643. In addition, Superpharm submitted stability data from two additional batches, identified in the ANDA as batches 120385 and 280285. Batch records for batches 120385 and 280285 were not submitted to the ANDA.

FDA's reevaluation of ANDA 70–644 and inspection of the firm show discrepancies concerning the manufacture of batch 110385. As noted above, Superparm submitted two versions of the batch records for batch 110385. These two versions show different batch sizes and manufacture of the two different sizes in the same equipment at the same time.

There are also significant discrepancies between the batch records for batch 110385 and destruction records for this batch. Destruction records dated February 6, 1986, show that 9.32 kg of batch 110385 was destroyed. This amount exceeds the amount reported as being manufactured on the 20M batch record and, when compared with the 60M batch records, leaves only 80 grams, an insufficient amount of product to perform the required in vivo bioequivalence study, in vitro dissolution tests, and stability studies reported in the ANDA. A DEA destruction record dated November 19, 1987, shows additional inconsistencies regarding batch size. This record shows destruction of .52 kg and 10 mg of batch 110385. This amount plus the 9.32 kg identified as destroyed on the February 3, 1986, destruction record for this batch exceeds the 9.4 kg yield indicated on the 60M tablet batch record.

Moreover, although the batch records for batch 110385 show use of multiple excipients, the excipient raw material inventory records corresponding to the lots of excipients identified on the batch records as being used in the manufacture of the batch do not show withdrawals of any of the raw materials for use in making the batch.

FDA's inspection also revealed several discrepancies regarding the manufacture of batches 120385 and 280285, the additional stability batches. First, inconsistencies exist between the amount of product produced according to the batch records, the amount of product destroyed according to destruction records, and the amount of product necessary to perform the required stability studies on these batches. The batch records show actual yields for both batches as 3.15 kg. The destruction records show 3.14 kg destroyed for batch 280285 and 3.10 kg for batch 120385. The differences in amounts between the batch record yields and the amounts reported as destroyed are not sufficient to perform the stability tests reported in the ANDA.

Second, although the batch records show the use of multiple excipients, the raw material inventory records corresponding to the lots of excipient ingredients identified on the batch records do not show use of any excipients in batch 120385 and show use of only one excipient in batch 280285.

Third, an inconsistency exists in the manufacturing operations for batch 120385. The batch record shows an 8-minute gap between the end of mixing operations and start of compression checks. This 8-minute period is insufficient to accomplish start-up of compression after mixing operations are completed.

All of the discrepancies discussed above raise questions about the identity and characteristics of the batches used to perform tests necessary for approval of ANDA 70–644. These discrepancies indicate that certain records submitted to FDA were falsified. However, it is not clear which records are false. These discrepancies and falsifications impugn the integrity and validity of all representations made by Superpharm concerning batches 110385, 120385, and

280285. They also raise questions about whether the product approved under the ANDA is representative of the product manufactured by Superpharm. Moreover, because product from batch 110385 was used in the in vivo bioequivalence study that was critical to a finding that all of Superpharm's diazepam products were bioequivalent to the listed drug, Valium Tablets, the bioequivalence of Superpharm's diazepam products is now questionable.

2. *Discrepancy regarding the manufacturer and supplier of the active ingredient.* During the inspection of Superpharm, FDA discovered records that show a manufacturer and supplier of diazepam raw material different from the manufacturer and supplier the firm identified in records submitted in support of approval of ANDA's 70–642, 70–643, and 70–644. The untrue statements submitted to the ANDA's concerning the raw material supplier raise further questions about the characteristics of the batches used to perform tests necessary for approval.

3. *Discrepancies regarding mixing equipment.* Superpharm submitted Master Production Records for ANDA's 70–642, 70–643, and 70–644 specifying in the manufacturing instructions that mixing was to be performed in a certain type of blender. On batch records for certain batches used in testing to support approval of the ANDA's, the blender specified in the Master Production Records was crossed out and a different type of blender written in. This revision was initialed by the operator. This change made on the batch records indicates that mixing of the test (pilot) batches was actually performed in a blender that is different than the one specified in the Master Production Records. Superpharm later informed FDA by letter that "equipment used to manufacture the pilot production will be the same while producing the scale up production batches." However, current production records and a letter from the firm show that current commercial batches are being manufactured using the type of blender specified on the Master Production Records; that is, they show the use of a type of blender different from the type used in the production of the batches submitted to support approval of the ANDA's. The untrue statement submitted to the ANDA's concerning the blending equipment to be used in making Superpharm's commercial product raises questions about whether the pilot batches used to perform tests necessary for approval were representative of the commercial product manufactured by Superpharm.

B. Information on Stability Tests

1. *Discrepancies regarding stability data.* FDA investigators noted numerous discrepancies in their review of stability testing records for ANDA 70–642 (2 mg), batches 260285, 150385, 160385; ANDA 70–643 (5 mg), batches 140385, 270285; and ANDA 70–644 (10 mg), batches 280285, 110385, 120385. Test values reported in ANDA submissions that relate to various aspects of stability testing for all three strengths are different from those noted in the firm's formal laboratory notebook. In most instances, page locations of the raw test data entered onto the stability summary charts submitted in the ANDA were found not to be accurate. The references to the laboratory notebook locations or raw test data, indicated on stability summaries for all three strengths at the 12-week interval, were incorrect in all instances. In addition, data reported in the ANDA for one batch were found to correspond to raw data of another batch. No original records or working documents were found to support the data in the firm's formal laboratory notebook and ANDA submissions for any stability testing.

There were deletions and changes in the batch number recorded on chromatograms and several pages of laboratory raw data entries pertaining to the testing of diazepam 5 mg tablets, batches 270285 and 350385. These changes were made in the raw data corresponding to the initial testing of batch 270285 reported on ANDA submissions of stability summaries for this batch. Every entry of batch number identification in the raw data initially showed batch 350385, then was deleted and changed to show 270285. Likewise, every entry of the batch number identification was changed from batch 270285 to 350385 on the pages of the firm's laboratory notebook containing the raw data corresponding to the initial testing of batch 350385 reported on stability summary charts. These changes in lot numbers also appear on the identification of the samples tested on chromatograms corresponding to HPLC testing for assay and content uniformity tests for both batches.

Superpharm admits that discrepancies exist, but claims that the values stated in the underlying data fall within acceptable ranges. Although such a statement may be true, it does not provide a basis for justifying the discrepancies observed in the ANDA submissions and the underlying raw data. While a few discrepancies due to transcription errors may be reasonable, the large number of errors noted here raises questions about the reliability of both the raw data and the ANDA submissions.

The discrepancies discussed above raise questions about the identity of the stability samples actually tested, whether testing was performed on all three batches as indicated in the ANDA submission, and whether the stability data reflect the actual stability of the diazepam products manufactured by Superpharm.

2. *Discrepancies regarding product descriptions (color).* There are discrepancies between the color of the products as described in the ANDA submissions and the color of the products as described in the raw stability test data. For example, the initial stability summaries describe the color of the 2, 5, and 10 mg tablets as white. An amendment to the ANDA's describes the 5 mg tablet batches as light green and the 10 mg batches as light blue. In addition to these differences in color descriptions, raw test data located in the firm's records for each strength tablet indicate that different colored products than those described in the ANDA submissions were tested. These discrepancies raise further questions about the identity of the stability samples actually tested and whether the stability tests reflect the actual stability of the diazepam products manufactured by Superpharm.

3. *Discrepancy regarding the size of the stability test batches.* FDA guidelines provide that stability testing be performed on at least three different batches of a drug product. Stability testing on at least three batches is necessary to allow an estimate of batch-to-batch variability and to help provide assurance that a single expiration dating period for all batches is justified.

Superpharm submitted stability data purportedly generated using product from the following batches for each strength product: ANDA 70–642 (2 mg), batches 260285, 150385, and 160385; ANDA 70–643 (5 mg), batches 350385, 140385, and 270285; and ANDA 70–644 (10 mg, batches 280285, 110385, and 120385. Batch records for batches 260285 (2 mg), 350385 (5 mg), and 110385 (10 mg) were submitted to the ANDA's. As discussed above, Superpharm submitted to FDA two versions of a batch production record for these batches. The first versions were submitted in the initial application, showing theoretical batch sizes of 3.2 kg and theoretical yields of 20M tablets. In a deficiency letter dated October 1, 1985, FDA informed Superpharm that the 20M batch size was inadequate for the purpose of stability testing and specified the kilogram range of an acceptable

batch size. Responding to the October 1985 deficiency letter, Superpharm submitted a second version of the batch production records for batches 260285, 350385, and 110385, showing theoretical batch sizes of 9.6 kg and theoretical yields of 60M tablets. As shown above, among other concerns, questions exist regarding the sizes of batches 260385, 350385, and 110385. Various records found at the firm during FDA's investigation do not support Superpharm's contention that these batches were 60M tablet size batches. As discussed above, records exist for each strength tablet suggesting that multiple batches of differing sizes may have been manufactured. The records are inadequate, however, to allow a determination of the sizes of batches 260385, 350385, and 110385.

Batch records for the remaining batches 150385 and 160385 (2 mg), 140385 and 270285 (5 mg), 120385 and 280285 (10 mg) were never submitted to the ANDA's. Review of the batch records found at the firm for these batches indicates that they were 20M tablet, 3.2 kg size batches. All other production records which reference these batches indicate that they were 20M tablet batches. Thus, no data were found to show that stability testing was performed on product from appropriately sized, production-like batches. In addition, the uncertainty about the sizes of these batches raises questions about the identity and characteristics of the stability samples actually tested and whether the stability data reflect the actual stability of the diazepam products manufactured by Superpharm.

II. Conclusions, Findings, and Proposed Action

As discussed above, ANDA's 70–642, 70–643, and 70–644 contain a number of untrue statements concerning bioequivalence, dissolution, manufacturing procedures and controls, and stability. Statements on these matters are material in that they may affect the agency's decision to approve an application.

Moreover, these untrue statements, together with the aforementioned discrepancies, constitute new information that raises significant questions about the reliability and adequacy of the data provided on the batches used in support of the approval of ANDA's 70–642, 70–643, and 70–644. Without reliable information concerning the identity, characteristics, and manufacture of the batches used for bioequivalence, dissolution, and stability studies necessary for approval, the agency cannot assume that the results of these studies are applicable to the approved, marketed products. In the absence of reliable data demonstrating acceptable stability, dissolution, and bioequivalence to the listed drug, there is a lack of substantial evidence of effectiveness.

Although ANDA's may be approved without the submission of adequate and well-controlled clinical efficacy studies, which are required under the substantial evidence standard in 21 U.S.C. 355(d), these approvals are supported by such clinical efficacy studies based on the submission of information to show bioequivalence to a listed, approved drug. The listed drug, to be approved by the agency, must be demonstrated effective based on clinical efficacy studies satisfying the substantial evidence requirement or must be related through bioequivalence data to another drug that has been demonstrated effective based on such studies. In the absence of reliable information showing bioequivalence between the generic drug at issue and the listed drug, and in the absence of information demonstrating stability of the generic drug throughout its labeled shelf-life, there is no basis for concluding that the clinical efficacy studies supporting the approval of the listed drug likewise support the claims of efficacy on the part of the generic drug.

Accordingly, the Director of the Center for Drug Evaluation and Research finds that (1) ANDA's 70–642, 70–643, and 70–644 contain untrue statements of material fact, and (2) on the basis of new information before him with respect to the drugs, evaluated together with the evidence available to him when the applications were approved, there is a lack of substantial evidence that the drugs will have the effect they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling thereof. Based on these findings, the Director proposes to withdraw approval of ANDA's 70–642, 70–643, and 70–644, Diazepam 2 mg, 5 mg, and 10 mg Tablets.

III. Notice of Opportunity for Hearing

Notice is hereby given to the holder of the ANDA's listed above and to all other interested persons, that the Director of the Center for Drug Evaluation and Research proposes to issue an order under section 505(e) of the act (21 U.S.C. 335(e)), withdrawing approval of ANDA's 70–642, 70–643, and 70–644 and all amendments and supplements thereto on the grounds stated above.

In accordance with section 505 of the act and 21 CFR part 314, the applicant is hereby given an opportunity for a hearing to show why approval of the ANDA's should not be withdrawn.

An applicant who decides to seek a hearing shall file: (1) on or before June 21, 1990, a written notice of appearance and request for hearing, and (2) on or before July 23, 1990, the data, information, and analyses relied on to demonstrate that there is a genuine issue of material fact to justify a hearing. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, submissions of data, information, and analyses to justify a hearing, other comments, and the grant or denial of a hearing are contained in 21 CFR 314.200 (except that the requirement in 21 CFR 314.200(d) (1) and (2) that the applicant submit adequate and well-controlled clinical efficacy studies does not apply) and in 21 CFR part 12.

The failure of the applicant to file a timely written notice of appearance and request for hearing, as required by 21 CFR 314.200, constitutes an election by that person not to use the opportunity for a hearing concerning the action proposed, and a waiver of any contentions concerning the legal status of that person's drug product. Any new drug product marketed without an approved new drug application is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions pursuant to this notice of opportunity for hearing are to be filed in six copies. Except for data and information prohibited from public disclosure under section 301(j) of the act or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Section 505(j)(6)(C) of the act requires that FDA remove from its approved product list (FDA's publication "Approved Drug Products with

Therapeutic Equivalence Evaluations") (the list) any drug that was withdrawn for grounds described in the first sentence of section 505(e) of the act. If the agency determines that withdrawal of the drugs subject to this notice is appropriate, FDA will announce their removal from the list in the **Federal Register** notice announcing the withdrawal of approval of the drug.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505 (21 U.S.C. 355)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82).

Dated: May 15, 1990.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 90-11806 Filed 5-21-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90N-0158]

Compliance Guidance Series: Device Recalls; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a report in the compliance guidance series entitled "Device Recalls: A Study of Quality Problems." The report provides an analysis of device quality problems that led to recalls from fiscal year 1983 to 1988. This information should be useful to medical device manufacturers in identifying those areas where controls should be emphasized to prevent or minimize quality problems that could lead to production and distribution of defective medical devices.

DATES: Comments by July 23, 1990.

ADDRESSES: Submit written requests for single copies of "Device Recalls: A Study of Quality Problems" to the Division of Small Manufacturers Assistance (HFZ-220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or call 301-443-6597 or (toll-free outside MD, 800-638-2041). Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Two copies of any comments should be submitted except that individuals may submit one copy. Comments and requests should be identified with the docket number found in brackets in the heading of this document. The report and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: W. Fred Hooten, Center for Devices and Radiological Health (HFZ-330), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1131.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a report in the compliance guidance series entitled "Device Recalls: A Study of Quality Problems." This report contains information on the causes of FDA medical device recalls for October 1983 through September 1988. Suggestions for establishing controls that can be used to minimize quality problems that lead to recalls are included. This information should be useful to medical device manufacturers in identifying those areas where controls should be emphasized to prevent or minimize quality problems that could lead to production and distribution of defective medical devices.

Dated: May 15, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-11747 Filed 5-21-90; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Public Information Collection Requirements Submitted to Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Department of Health and Human Services (HHS) previously published a list of information collection packages it submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (Pub. L. 96-511). The Health Care Financing Administration (HCFA), a component of HHS, now publishes its own notices as the information collection requirements are submitted to OMB. HCFA has submitted the following requirements to OMB since the last HCFA list was published.

1. *Type of Request:* Reinstatement; *Title of Information Collection:* State Medicaid Eligibility Quality Control Sampling Plans; *Form Numbers:* HCFA-317; *Frequency:* Semi-annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 110; *Average Hours per Response:* 24; *Total Estimated Burden Hours:* 2,640.

2. *Type of Request:* New; *Title of Information Collection:* Information Collection Requirements in Provider Reimbursement Manual, Sections 2196 and 2746, Kidney Transplantation; *Form Number:* HCFA-R-105; *Frequency:* Upon each kidney retrieval; *Respondents:* Businesses/other for profit and small businesses/organizations; *Estimated Number of Responses:* 9,000; *Average Hours per Response:* 5 minutes (reporting) and 10 minutes (recordkeeping); *Total Estimated Burden Hours:* 750 (reporting) and 1,500 (recordkeeping) for a total of 2,250 hours.

3. *Type of Request:* Reinstatement; *Title of Information Collection:* Ambulatory Surgical Center Request for Certification and Survey Report; *Form Numbers:* HCFA-377 and 378; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 2,400; *Average Hours per Response:* .375; *Total Estimated Burden Hours:* 900.

4. *Type of Request:* Extension; *Title of Information Collection:* Hospital Request for Certification and Survey Report; *Form Numbers:* HCFA-1514; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 1,984; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 496.

5. *Type of Request:* Extension; *Title of Information Collection:* Home Health Agency Medicare and Medicaid Survey Report Forms for Revised Conditions of Participation; *Form Numbers:* HCFA-1515 Revisions and Replacement; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 5,700; *Average Hours per Response:* 2.5; *Total Estimated Burden Hours:* 14,250.

6. *Type of Request:* Revised; *Title of Information Collection:* Information Collection for Referring and/or Ordering Physicians; *Form Number:* HCFA-1500; *Frequency:* On occasion; *Respondents:* Individuals, businesses/other for profit and small businesses/organizations; *Estimated Number of Responses:* 47,000,000; *Average Hours per Response:* .08 minute per electronic claim and .75 minute for paper claim; *Total Estimated Burden Hours:* 399,400.

Additional Information or Comments: Call the Reports Clearance Officer on 301-966-2088 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Herron, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: May 15, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 90-11862 Filed 5-21-90; 8:45 am]

BILLING CODE 4120-03-M

[IOA-024-N]

Medicare and Medicaid Programs; Meeting of the Advisory Council on Social Security

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Advisory Council on Social Security.

DATES: The meeting will be open to the public on May 24, 1990 from 9:00 to 4:30 p.m.; and, on May 25, 1990, from 9:00 a.m. to 5:00 p.m.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463), a meeting closed to the public will be held on May 24, 1990 from 4:30 p.m. to 5:30 p.m. to review, discuss, and evaluate government laws, regulations, and policy guidelines pertaining to conflicts of interest and ethical conduct. The discussion could reveal confidential or privileged commercial, financial, or personal information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

ADDRESSES: The meeting will be held at the Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20009, (202) 234-0700.

FOR FURTHER INFORMATION CONTACT: Olga Nelson Administrative Officer, Advisory Council on Social Security, Room 638-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, (202) 245-0217.

SUPPLEMENTARY INFORMATION:

I. Purpose

Under section 706 of the Social Security Act, the Secretary of Health and Human Services appoints an Advisory Council on Social Security every four years. The Advisory Council examines issues affecting the Social Security retirement, disability and survivors insurance programs, as well as the Medicare and Medicaid programs, which were created under the Social Security Act.

In addition, Secretary Sullivan has asked the Advisory Council specifically to address the following:

—The adequacy of the Medicare program to meet the health and long-term care needs of our aged and disabled populations, the impact on Medicaid of the current financing structure for long-term care, and the need for more stable health care financing for the aged, the disabled, the poor, and the uninsured;

—Major Old-Age, Survivors, and Disability Insurance (OASDI) financing issues, including the long-range financial status of the program, relationship of OASDI income and outgo to budget-deficit reduction efforts under the Balanced Budget and Emergency Deficit Control Act of 1985, and projected buildups in the OASDI trust funds; and

—Broad policy issues in Social Security, such as the role of Social Security in overall U.S. retirement income policy.

The Council is composed of 12 members: G. Lawrence Atkins, Robert M. Ball, Phillip Briggs, Lonnie R. Bristow, Theodore Cooper, John T. Dunlop, Karen Ignagni, James R. Jones, Paul O'Neill, A.L. "Pete" Singleton, John J. Sweeney, and Don C. Wegmiller; and the Chair, Deborah Steelman. The Council is to report to the Secretary and Congress by January 1, 1991.

II. Agenda

The Council will discuss Social Security interim findings and recommendations, and an Interim Report to the Secretary on Social Security issues. The Council will also hear presentations on the status of the health and social security trust funds. In addition, the Council will address and discuss critical questions in health care financing. These questions will examine the value, financing, access, and delivery of health care.

The agenda items are subject to change as priorities dictate.

(Catalog of Federal Domestic Assistance Programs Nos. 13.714 Medical Assistance Program; 13.773 Medicare—Hospital Insurance; 13.774 Medicare—Supplementary Medical Insurance; 13.802, Social Security-Disability Insurance; 13.803 Social Security-Retirement Insurance; 13.805 Social Security-Survivor's Insurance.)

Dated: May 16, 1990.

Ann LaBelle,

Executive Director, Advisory Council on Social Security.

[FR Doc. 90-12027 Filed 5-21-90; 8:45 am]

BILLING CODE 4120-01-M

Health Resources and Services Administration

Program Announcement and Funding Priorities for Advanced Nurse Education Grants

The Health Resources and Services Administration (HRSA) announces that applications will be accepted for Fiscal Year 1991, Grants for Advanced Nurse Education, authorized under section 821(a), title VIII, of the Public Health Service Act, as amended by Public Law 100-607.

The Administration's budget request for Fiscal Year 1991 does not include funding for this program. Applicants should be advised that this program announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Section 821(a) of the Public Health Service Act, as implemented by 42 CFR part 57, subpart Z, authorizes assistance to meet the costs of projects to:

(1) Plan, development and operate;

(2) Expand, or

(3) Maintain programs which lead to masters' and doctoral degrees and which prepare nurses to serve as nurse educators, administrators, or researchers or to serve in clinical nurse specialties determined by the Secretary to require advanced education.

To be eligible to receive a grant, a school must be a public or nonprofit private collegiate school of nursing.

Review Criteria

The review of applications will take into consideration the following criteria:

(1) The need for the proposed project including, with respect to projects to provide education in professional nursing specialists determined by the Secretary to require advanced education:

(a) The current or anticipated need for professional nurses educated in the specialty; and

(b) The relative number of programs offering advanced education in the specialty;

(2) The need for nurses in the specialty in which education is to be provided in the State in which the education program is located, as compared with the need for these nurses in other States;

(3) The degree to which the applicant proposes to recruit students from States in need of nurses in the specialty in

which the education is to be provided, and to promote their return to these States following education;

(4) The degree to which the applicant proposes to encourage graduates to practice in States in need of nurses in the specialty in which education is to be provided;

(5) The potential effectiveness of the proposed project in carrying out the educational purposes of section 821 of the Act and 42 CFR 57.2506;

(6) The capability of the applicant to carry out the proposed project;

(7) The soundness of the fiscal plan for assuring effective utilization of grant funds;

(8) The potential of the project to continue on a self-sustaining basis after the period of grant support; and

(9) The degree to which the applicant proposes to attract, retain and graduate minority and financially needy students.

In addition, the following mechanisms may be applied in determining the funding of approved applications:

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

2. Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.

3. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applicants address special areas of concern.

The Administration is neither proposing funding preferences nor special considerations in the review of applications for Fiscal Year 1991.

Funding Priorities for Fiscal Year 1991

Section 821(a) of the statute requires that the Secretary give priority to geriatric and gerontological nursing.

The following funding priorities were established in Fiscal Year 1989, after public comment, and are being extended in Fiscal Year 1991.

In determining the order of funding or approved applications, a funding priority will be given to:

(1) Applicant institutions that have either a 3-year average enrollment of minority students in graduate nursing education in excess of the national average or demonstrate an increase in minority enrollment in the graduate program which exceeds the program's prior 3-year average. Applicant institutions submitting applications to establish the first master's level nursing program in that institution may qualify for a funding priority if they can demonstrate an enrollment of minority students in their undergraduate program in excess of the national average for undergraduate nursing programs.

(2) Applications which develop, expand or implement courses concerning ambulatory, home health care and/or inpatient case management of those with HIV infection-related diseases including AIDS patients.

The application deadline date for FY 1991 is October 1, 1990. Applications shall be considered as meeting the deadline if they are either;

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

For information regarding this program contact: Division of Nursing, Bureau of Health Professions, Nursing Education Practice Resources Branch, Health Resources and Services Administration, Parklawn Building, room 5C-14, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-5763.

Requests for application materials, questions regarding grants policy and completed applications should be directed to: Grants Management Officer (D-23), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C-26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-6960.

The standard application form PHS 6025-1, Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

This program is listed at 13.299 in the "Catalog of Federal Domestic Assistance". It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR part 100).

Dated: March 22, 1990.

Robert G. Harmon,

Administrator.

[FR Doc. 90-11807 Filed 5-21-90; 8:45 am]

BILLING CODE 4160-15-M

Availability of Funds for Community and Migrant Health Center Activities and Cooperative Agreements With Statewide Organizations

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is announcing for Fiscal Year (FY) 1990: (1) the availability of approximately $423 million in grants for Community Health Center (CHC) activities and approximately $47 million in grants for Migrant Health Center (MHC) activities funded under sections 330 and 329 of the Public Health Service (PHS) Act (42 U.S.C. 254c and 254b, respectively); (2) the availability of approximately $31 million in grants under section 329 and 330 of the PHS Act for perinatal care activities; (3) the availability of approximately $5 million in grants under section 330(f)(1) of the PHS Act to provide technical and non-financial assistance; and (4) the availability of approximately $6 million in grants under section 333(g) of the PHS Act to support cooperative agreements with qualified statewide organizations to provide assistance in the development and coordination of primary health care services in areas that lack adequate health manpower or have populations lacking access to primary health care services. Eligible applicants for health center funding including perinatal services include only health centers now funded under sections 329 and 330. Eligible applicants for section 330(f)(1) funds include public and private nonprofit entities, including State and regional primary care associations. Eligible applicants for section 333(g) funds msut be a State or a State agency, or another statewide public or private nonprofit entity that operates solely within one State, and satisfies the Secretary that it is able to meet program requirements. Awards under section 330(f)(1) or 333(g) are usually in the $125,000 range.

Of the funds appropriated under the section 329 authority, $500,000 has been set aside to develop up to four demonstration State environmental plans addressing migrant worker housing, pesticide exposure, and water and sanitation services. Eligible applicants for cooperative agreements to develop these plans are public and private entities. Priority will be given those applicants having a formal and direct partnership agreement with Migrant Health Centers/Projects and other migrant farmworker service

providers as well as local environmental agencies.

Limited grant funds will be provided to support enhancement/improvement activities requested in section 329, 330, 330(f)(1) or 333(g) applications that go beyond the current services level. While some enhancement/improvement activities requested in section 329 or 330 applications may be funded immediately because of their imminent nature, the majority of these requests will be held for review by a national committee during the fourth quarter of the fiscal year and awards will be made by September 30, 1990.

DUE DATES: Applications for section 329 and/or 330 funds to provide essential services by existing grantees are due 120 days prior to the expiration of the current grant award unless otherwise specified. Proposals for grants to provide technical and other non-financial assistance under section 330(f)(1), cooperative agreements under section 333(g) and for the Migrant demonstration projects must be received no later than July 1, 1990. Applications shall be considered as meeting the deadline if they are either (1) Received on or before the deadline date; or (2) Postmarked before the deadline date and received in time for orderly processing. Untimely applications will be returned to the applicant or held for processing in a later review cycle, at the discretion of PHS. Applicants should obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service or request a legibly dated U.S. Postal Service postmark. Private metered postmarks shall not be accepted as proof of timely mailing.

ADDRESSES: The PHS Regional Grants Management Officers, whose names and addresses are provided in the appendix to this document are responsible for distributing application kits and guidance (Form PHS 5161–1 with revised face sheets DHHS Form 424, as approved by the OMB under control number 0348–0043 and 0937–0189), and completed applications must be submited to them. The kits and guidance will be sent to existing grantees; new applicants should contact the appropriate Regional Grants Management Officer. Projects funded through Cooperative Agreements which involve collection of information from 10 or more individuals will be subject to review under the Paperwork Reduction Act.

FOR FURTHER INFORMATION CONTACT: Information on current services grant funding levels may be obtained from the appropriate Regional Grants Management Officer (see Appendix). For general information about the availablility of section 329/330 funds, contact Richard C. Bohrer, (301) 443–2260. Additional information about available funding under section 330(f)(1) and section 333(g) can be obtained from Bonnie Lefkowitz, (301) 443–2270; additional information about Perinatal Care funding can be obtained from Joan Holloway (301) 443–8134; and additional information about the Migrant demonstrations can be obtained from Sonia Leon Reig, (301) 443–1153.

SUPPLEMENTARY INFORMATION: Application kits contain guidance information which incorporates new and updated program requirements arising from changes in the program's authorizing legislation. C/MHCs are no longer required to submit a separate application to request funding to support additional perinatal services or recruitment and retention activities. Funds previously received under the Comprehensive Perinatal Care Program and/or Recruitment and Retention program are now included in the C/MHC's Federal base level funding for the next funding period. Applications may include requests for increased funding beyond the base level as an enhancement/improvement package to support additional perinatal or retention and recruitment activities described in the grant application. Perinatal care funds are distributed according to infant mortality rates (IMR), which may be adjusted to apply to a particular area or population. Limited perinatal dollars are targeted to C/MHCs in areas with an adjusted IMR greater than the national average that were most able to enroll women into care early and bring them back for postpartum follow-up in a cost effective way. Priority will be given to service arrangements that encourage colocation of clinical, financial, nutritional, and social services or eligibility (one-time enrollment) into multiple service. Collaborative community-based efforts to overcome barriers that impede low-income women from access to or fully utilizing the array of services necessary to improve pregnancy outcomes should be demonstrated.

Federal responsibilities under the cooperative agreements, in addition to the usual monitoring and technical assistance provided under grants, will include the following: (1) The exercise of responsibility for final authority on the award of Federal grants, Federal health personnel placement, and overall program management of Federal resources in the context of fulfilling the State program as developed under the agreement; (2) The detail or assignment of Federal personnel to the Statewide organization; (3) The recruitment and assignment of National Health Service Corps personnel in accordance with the program developed under the cooperative agreement; and (4) Participation in the development of, and approval of Statewide plans at various stages during their development.

Criteria for Evaluating Competing and Noncompeting C/MHC Applications

When determining whether Federal support will be made available, the Department will review C/MHCs for compliance with standard criteria stipulated in the program regulations (42 CFR part 51c for CHC and part 56 for MHC activities) and their use of previously awarded section 330 and 329 funds. This year's reviews will continue to emphasize need and community impact, health services, management/administration and governance criteria as detailed in the nationally standardized section 329 and 330 application kit instructions for new, competing and non-competing continuation application. At a minimu, the application must demonstrate: (1) The need for services based on geographic, demographic, and economic factors, resources in the area, and health status; (2) Basic primary care services, coordination of other levels of care appropriate to defined needs that are available and accessible. Medical provider staff must be adequate in number, specialy mix and have the qualifications necessary to meet the needs of the community; (3) Appropriate leadership and management structures to ensure delivery of health services efficiently and effectively; and (4) Appropriateness of governing board composition, committee structure, and performance to function fully and effectively in its fiduciary role.

Funding determinations regarding perinatal care actvitities will largely depend on: (1) The extend to which the center has documented the unmet need for prenatal, neonatal, and inant care of residents of its community; (2) The adequacy and feasibility of the new or perinatal expanded efforts proposed to meet the needs of the population and to improve pregnancy outcomes by reducing the incidence of the infant mortality and morbidity. Particular attention will be focused on the applicant's ability to integrate a case management approach to perinatal care into its overall care delivery program; (3) The adequacy of the center's plan to evaluate the results of the activity in terms of improved health status; and (4)

The appropriateness of the proposed budget.

Applications requesting Federal grant support under section 330(f)(1) and section 333(g) will continue to be evaluated on their ability to coordinate Federal and State primary care resources; help C/MHCs recruit and retain physicians; promote the use of State resources (including Medicaid, Maternal and Child Health and Special Population funding) for primary care purposes; provide training and arrange for shared services and joint purchasing by C/MHCs; and promote partnerships and affiliations with State and local health departments, Area Health Education Centers, hospitals, specialty and social service providers and residency programs.

Evaluation criteria for reviewing applications submitted under the section 329 Migrant demonstrations will include the following: (1) Evidence of formal linkage with Migrant Health Centers/Projects: (2) Participation of Federal, public or private resources; (3) Coordination with State task forces and advisory councils dealing with migrant and seasonal farmworkers; (4) Documented need for target population and numbers to be served; and (5) Acceptability of methodology for measuring impact of the demonstration project on the environmental health status of the target population.

OTHER AWARD INFORMATION: All grants to be awarded under this notice are subject to the provisions of Executive Order 12372, as implemented by 45 CFR part 100, which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain federal programs. The application packages to be made available by DHHS will contain a listing of States which have chosen to set up such a review system and will provide a point of contact in the States for that review. Applicants are to contact their State single point of contact and follow their instructions for the review of applications.

In the OMB Catalog of Federal Domestic Assistance, the Community Health Center program is listed as Number 13.224; the Migrant Health Center program is Number 13.246; the program of technical and other non-financial assistance to Community Health Centers is Number 13.129; and the cooperative agreements program for development and coordination of comprehensive primary care services is listed as Number 13.130.

Dated: May 10, 1990.

Robert G. Harmon,

Administrator.

Appendix—Regional Grants Management Officers

Mary O'Brien, DHHS Region I—John F. Kennedy Federal Building, Boston, MA 02203 (617) 565–1482

Thomas Butler, DHHS Region II—26 Federal Plaza, Room 3300, New York, NY 10278 (212) 264–4496

Richard Dovaloesky, DHHS Region III—P.O. Box 13716, 3535 Market Street, Philadelphia, PA 19101 (215) 596–6653

Wayne Cutchens, DHHS Region IV—101 Marietta Tower, Room 1106, Atlanta, GA 30323 (404) 331–2597

Lawrence Poole, DHHS Region V—105 West Adams Street, 17th Floor, Chicago, Illinois 60603 (312) 353–8700

Frank Cantu, DHHS Region VI—1200 Main Tower Building, Dallas, Texas 75202 (214) 767–3885

Hollis Hensley, DHHS Region VII—601 East 12th Street, Room 501, Kansas City, MO 64016 (816) 426–5841

Jerry F. Wheeler, DHHS Region VIII—1961 Stout Street, Denver, CO 80294 (303) 844–4461

Alan Harris, DHHS Region IX—50 United Nations Plaza, San Francisco, CA 94102 (415) 556–2595

Neal Adams, DHHS Region X—2201 Sixth Avenue, Mail Stop RX 20, Seattle, WA 98121 (206) 442–7997

[FR Doc. 90–11808 Filed 5–21–90; 8:45 am]

BILLING CODE 4160–15–M

Special Project Grants and Cooperative Agreements; Maternal and Child Health Services; Federal Set-Aside Program

AGENCY: Health Resources and Services Administration, PHS, DHHS.

ACTION: Notice of extension of application due date.

SUMMARY: This notice extends the application due date for cooperative agreement number 3, described in the **Federal Register** of February 6, 1990 (55 FR 4021) as follows:

One cooperative agreement will support Central Office staff activities to gather, classify, store and disseminate information on maternal and child health, particularly information about and developed by OMCH-supported SPRANS Projects.

The application due date is extended to May 25, 1990. All other aspects of the original **Federal Register** notice remain the same.

Dated: May 15, 1990.

Robert G. Harmon,

Administrator.

[FR Doc. 90–11794 Filed 5–21–90; 8:45 am]

BILLING CODE 4160–15–M

Indian Health Service

Tribal Demonstration Projects for Diabetes and Mental Health Services for American Indians/Alaska Natives

AGENCY: Indian Health Service, HHS.

ACTION: Notice of competitive grant applications for Tribal Demonstration Projects for Diabetes and Mental Health Services for American Indians/Alaska Natives.

SUMMARY: The Indian Health Service (IHS) announces that competitive grant applications are now being accepted for Tribal Demonstration Projects for Diabetes and Mental Health Services for American Indians/Alaska Natives established under the authority of section 103(b)(1), Indian Self-Determination, Public Law 93–638, as amended by Public Law 100–472, 25 U.S.C. 450h(b)(1). There will be only one funding cycle during Fiscal Year 1990. Grants shall be administered in accordance with 42 CFR part 36, subpart H, and applicable OMB Circulars and DHHS policies. This program is within the Catalog of Federal Domestic Assistance Number 13.228. Executive Order 12372 requiring intergovernmental review is not applicable to this program.

DATE: An original and two (2) copies of the completed grant application must be submitted, with all required documentation, to the Grants Management Branch, Division of Acquisition and Grants Operations, room 6A–33, 5600 Fishers Lane, Rockville, Maryland 20857, by c.o.b. July 2, 1990. Applications shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline with hand carried applications received by c.o.b. 5 p.m.; or (2) postmarked on or before the deadline date and received in time to be reviewed along with all other timely applications. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing.

Applications received after the announced closing date will be returned to the applicant and will not be considered for funding.

ADDITIONAL DATES:

A. Application Receipt Date: July 2, 1990.

B. Application Review: July 17, 1990.

C. Applicants Notified of Results (approved, approved unfunded, or disapproved): July 31, 1990.

D. Anticipated Start Date: Between August 15, 1990–September 29, 1990.

FOR FURTHER INFORMATION CONTACT: For program information, contact: (1) Diabetes: James B. Huy, Operations Officer, Indian Health Service Diabetes Program, 2401 12th Street, NW., room 211N, Albuquerque, New Mexico 87102, (505) 766–3980. (2) Mental Health Program: Maria Stetter, Quality Assurance/Administrative Officer, Indian Health Service Mental Health Programs Branch, 2401 12th Street, NW., Albuquerque, New Mexico 87102, (505) 766–2873. For grants information, contact M. Kay Carpentier, Grants Management Officer, Grants Management Branch, Division of Acquisition and Grants Operations, Indian Health Service, room 6A–33, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–5204. (The telephone numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This announcement provides information on the general program purpose, eligibility requirements, programmatic priorities, funding availability, and application procedures.

General Program Goals

The goal of this announcement is to identify and fund a number of demonstration projects that will develop and implement promising and innovative services for American Indians and Alaska Natives in specific areas of diabetes and mental health.

Eligibility Requirements

Any federally recognized Indian tribe or Indian tribal organization is eligible to apply for a demonstration grant from the IHS under this announcement.

Programmatic Activities

Two separate and distinct activities will be funded under this program announcement. An applicant must address only one of these activities in an application!! An application that addresses both activities will be considered as non-responsive and the application will be returned without action.

(1) Diabetes Services

The grant application for diabetes services should address the implementation of a program: (a) To provide diabetic patients access to retinopathy screening, monitoring and treatment and (b) to provide eye care education to raise community awareness of diabetic eye disease and to educate patients with diabetic eye disease.

(2) Mental Health

The grant application for mental health services shall address the establishment of day treatment programs for chronically mentally ill (CMI) American Indian/Alaska Native persons.

Fund Availability

In Fiscal Year 1990, $550,000 will be available. Approximately $150,000 will be available to support approximately 3–7 diabetes related grants, with individual project funding needs varying widely. Approximately $400,000 will be available to support two mental health grants.

Period of Support

Both the diabetes and the mental health grants will be awarded for one-year project periods. The mental health grant may be renewed subject to availability of funds and satisfactory performance.

Application Process

An *IHS Grant Application Kit*, including required form PHS 5161–1 (rev. 3/89), may be obtained from the Grants Management Branch, Division of Acquisition and Grants Operations, room 6A–33, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone: (301) 443–5204.

A. Narrative

The narrative section of the application must include the following: (1) Statement of problem, (2) program objectives, and (3) work plan. The work plan section should be project specific. These instructions for the preparation of the narrative are to be used in lieu of the instructions on page 15–16 of the PHS–5161–1. The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully. The narrative may not exceed five single spaced pages in length, excluding attachments, budget, and letters of support/resolution.

1. Statement of the problem.

(a) Describe and define the target population at the project location.

(b) Describe the existing resources and services available related to the specific service the applicant is proposing to provide.

(c) Describe in detail the needs of the target population and what efforts have been made in the past to meet these needs, if any.

(d) Summarize the applicable State, IHS, and/or national standards for type of program for which the application is being submitted and describe the unmet needs of the applicant's current program in relation to applicable State, IHS, and/or national standards.

2. Program Objectives

(a) State concisely the objectives of the project.

(b) Describe briefly what the project intends to accomplish.

(c) Describe how accomplishment of the objectives will be measured.

3. Work Plan

(a) Describe the proposed program to be offered using existing resources. Indicate the referral systems, treatment process, and follow-up to be provided. Indicate the date that the program will begin to accept patients. Please note: for the mental health day program no more than five additional staff may be requested from grant funds.

(b) Describe the proposed program operations, including the type and cost of facilities and equipment to be used, transportation, numbers and credentials of staff, and numbers of patients to be served. Any equipment, either general purpose or specialized, requirements should be identified. Indicate needs by listing individual items and quantities necessary.

(c) Applications which propose to use an already existing appropriate facility (instead of needing to obtain such a facility upon award) will be given priority. Surplus government property may be available for this program.

(d) Describe the local resources and expertise available for this project from other related human service programs and the nature and amount of their cooperation/collaboration/assistance.

(e) Describe the system to be used for information collection and program evaluation to determine the impact of the project. The reporting system should include, but is not limited to, the number of referrals to the program, number and types of patients served, number of referrals for further treatment to other facilities, costs associated with the program, and services provided. Indicate the project's willingness to share its program experience with other IHS Areas and Tribal organizations.

(f) Indicate the kinds and frequency of reports to be provided on the progress of the program. A quarterly report for

program and financial status is the minimum requirement.

B. Documentation of Support

1. Tribal Resolutions

A resolution of the Indian tribe or Indian tribal organization supporting the project must accompany the application submission. Applications which propose services which will benefit more than one Indian tribe must include resolutions from all Tribes to be served.

2. Letters of the Cooperation/Collaboration/Assistance

If other related human service programs are to be involved in the project, letters confirming the nature and extent of thier cooperation/collaboration/assistance. Letters should be specific.

C. Costs

An itemized estimate of costs and justification for the proposed program by line item must be provided on form PHS–5161–1 (effective date 3/89). Any special start up costs should be indicated. Grant funding may not be used to supplant existing public and private resources.

D. Assurances

The application shall contain assurances to the Secretary that the applicant will:

1. Where applicant is providing services, provide such services at a level and range which is not less than that identified by the Service after negotiation with the applicant, as an appropriate level, range and standard of care.

2. Where providing services, provided services in accordance with law and applicable IHS policies and regulations.

3. Where providing services, provide services in a fair and uniform manner, consistent with medical need, to all Indian people.

Review Process

Applications that meet eligibility requirements, are complete, and conform to this program announcement will be reviewed by a centralized Objective Review Committee (ORC) conducted at the IHS Headquarters and in accordance with IHS objective review procedures. The objective review process is a nationwide competition for limited funding. The ORC will be comprised of IHS or Tribal staff (50–60%) and other non-IHS individuals (50–40%) with appropriate expertise. The ORC will review each application against established criteria. Based upon the evalution criteria, the reviewers will assign a numerical score to each application. In making the final funding decision the IHS will also consider recommendations of the IHS Area Office within which the applicant organization is located.

Evaluation Criteria

In scoring applications the following is considered:

The soundness of the applicant's plan for conducting the project and for assuring effective utilization of grant funds, considering the population to be served and description of its needs, and the clarity and feasibility of objectives.

The apparent capability of the applicant to organize and manage the proposed project successfully considering, among other things the adequacy of staff, management systems, equipment, facilities, any cooperative approach if this is a joint work plan involving multiple programs within the tribal organization, and in-kind contributions.

The relative effectiveness of the applicant's plan, showing that the plan addresses an unmet need in relation to IHS and national standards, the potential that the project will continue and be ongoing at the end of funding, and the ability to replicate the program nationwide.

The adequacy of the budget in relation to the scope of the project and available funds.

Dated: April 16, 1990.

Everett R. Rhoades,

Assistant Surgeon General Director.

[FR Doc. 90–11809 Filed 5–21–90; 8:45 am]

BILLING CODE 4160–16–M

Public Health Service

National Institutes of Health

Privacy Act of 1974; New System of Records

AGENCY: Public Health Service, Department of Health and Human Services.

ACTION: Notification of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of a proposal to establish a new Privacy Act system of records 09–25–0161, "Administration: NIH Consultant File, HHS/NIH/DRG." We are also proposing routine uses for this new system.

DATES: PHS invites interested parties to submit comments on the proposed internal and routine uses on or before June 21, 1990. PHS has sent a report of a New System to the Congress and to the Office of Management and Budget (OMB) on May 9, 1990. This system of records will be effective 60 days from the date submitted to OMB unless PHS receives comments on the routine uses which would result in a contrary determination.

ADDRESSES: Comments should be addressed to the National Institutes of Health (NIH) Privacy Act Officer at the address listed below. Comments received will be available for inspection from 9:a.m. to 3 p.m., Monday through Friday, in Room 3B03, Building 31, at that address.

FOR FURTHER INFORMATION CONTACT: NIH Privacy Act Officer, Building 31, Room 3B303, 9000 Rockville Pike, Bethesda, MD 20892, or call 301–496–2832. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The National Institutes of Health (NIH) proposes to establish a new system of records: 09–25–0161 "Administration: NIH Consultant File, HHS/NIH/DRG." This umbrella system of records will be used by NIH staff to assist them in identifying potential consultants for NIH advisory committees. Records collected under this system will be organized in an umbrella system and maintained according to the purposes of selecting consultants. Records will be obtained through self-nominations. Potential consultants submit a completed information form together with a current curriculum vitae to the NIH. At the NIH, the materials are screened for appropriateness and completeness, and, after any necessary consultations with the project officer and other NIH staff, the record will be established. NIH is treating the separate set of records as a single system under the Privacy Act (1) to show that all of the sets of records serve the same biomedical research purposes and contain similar data, (2) to apply consistent policies and practices in the maintenance of such records, and (3) to make it easier for subject individuals to obtain notification of, or access to, their records.

The records in this system will be maintained in a secure manner compatible with their content and use. Contractors will be required to adhere to the provisions of the Privacy Act and the HHS Privacy Act Regulations. The System Managers, the NIH Project Officers, and the Contract and/or Project Directors will control access to the data. Only contractor personnel, consultants to the contractor, the NIH Project Officer, and NIH employees whose duties require the use of such information will have regular access to

records in this system. Records will be stored in locked files or secured areas. Computer terminals will be in secured areas. Data stored in computers will be accessed through the use of keywords known only to the contractor or authorized personnel.

The particular safeguards implemented in each project will be developed in accordance with Chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS hf. 45–13; and part 6, "ADP Systems Security," of the HHS Information Resources Management Manual and the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

The routine uses proposed for this system are compatible with the stated purposes of the system.

The first routine use permitting disclosure to a congressional office is proposed to allow subject individuals to obtain assistance from their representatives in Congress, should they so desire. Such disclosure would be made only pursuant to a request of the individual.

The second routine use of this system allows disclosure to the Department of Justice to defend the Federal Government, the Department, or employees of the Department in the event of litigation.

The third routine use allowing disclosure to contractors for the purpose of processing or refining the records will permit NIH to administer the system efficiently. Contracting for such services is advisable because the agency lacks necessary internal resources and because processing or refining the records under contract will be cost-effective. Contracted services may include transcription, collation, computer input, and other records processing.

The following notice is written in the present, rather than future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the system has become effective.

Dated: May 14, 1990.

Wilford J. Forbush,

Director, Office of Management.

SYSTEM NAME:

Administration: NIH Consultant File, HHS/NIH/DRG.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

This system of records is an umbrella system comprising separate sets of records located in each of the NIH organizational components or facilities of contractors of the NIH.

Division of Computer Research and Technology, Data Management Branch, Building 12A, Room 4041B, National Institutes of Health, Bethesda, Maryland 20892

Write to the appropriate system manager listed in appendix I for a list of current locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Consultants who provide the evaluation of extramural grants and cooperative agreement applications and research contract proposals, including the NIH Reviewers' Reserve.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, addresses, resumes, curriculum vitae (C.V.s), areas of expertise, publications.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 301 of the Public Health Service Act, describing the general powers and duties of the Public Health Service relating to research and investigation, and section 402 of the Public Health Service Act, describing the appointment and authority of the Director of the National Institutes of Health, (42 USC 241 and 282).

PURPOSE OF THE SYSTEM:

This umbrella system comprises separate sets of records located in each of the NIH organizational components or facilities of contractors of the NIH. These records are used: (1) To identify and select experts and consultants for program reviews and evaluations; and (2) To identify and select experts and consultants for the review of special grant and cooperative agreement applications and research contract proposals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(2) Disclosure may be made to the Department of Justice or to a court or other tribunal from this system of records, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(3) Disclosure may be made to contractors to process or refine the records. Contracted services may include transcription, collation, computer input, and other records processing.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

Records may be stored in file folders and computer tapes and disks.

RETRIEVABILITY:

Records are retrieved by name, address, or expertise.

SAFEGUARDS:

(1) Authorized Users: Data on computer files is accessed by keyword known only to authorized users who are NIH or contractor employees involved in managing a review or program advisory committee, conducting a review of extramural grant applications, cooperative agreement applications, or research contract proposals, performing an evaluation study or managing the consultant file. Access to information is thus limited to those with a need to know.

(2) Physical Safeguards: Rooms where records are stored and locked when not in use. During regular business hours rooms are unlocked but are controlled by on-site personnel.

(3) Procedural Safeguards: Names and other identifying particulars are deleted when data from original records are encoded for analysis. Data stored in computers is accessed through the use of keywords known only to authorized users. The system of records will be protected according to the standards of Chapter 45–13 of the HHS General Administration Manual, supplementary Chapter PHS hf 45–13, and Part 6, "ADP Systems Security," of the HHS Information Resources Management Manual and the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records will be retained in accordance with the NIH Records Control Schedule which will allow records to be kept as long as there is an administrative need for the information.

SYSTEM MANAGER(S) AND ADDRESS:

The policy coordinator for this system is also the system manager listed for the Division of Research Grants.

Chief, Physiological Sciences Review Section, Referral and Review Branch, Division of Research Grants, Westwood Building, Room 203A, 5333 Westbard Avenue, Bethesda, Maryland 20892 and appendix I.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the appropriate system manager as listed in appendix I.

The requestor must also verify his or her identity by providing either a notarization of the request or a written certification that the requestor is whom he or she claims to be. The request should include: (a) Full name, and (b) appropriate dates of participation.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requestors should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosure of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, reasonably identify the record, specify the information to be contested, and state the corrective action sought with supporting information.

RECORD SOURCE CATEGORIES:

Subject individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix I: System Managers

Office of the Director (OD), Extramural Programs Management Officer, Building 1, Room 328, Bethesda, MD 20892

National Center for Research Resources (NCRR), Chief, Office of Review, Westwood Building, Room 10A14, Bethesda, MD 20892

National Cancer Institute (NCI), Chief, Grants Review Branch, Westwood Building/821, Bethesda, MD 20892

National Eye Institute (NEI), Review and Special Projects Officer, Building 31, Room 6A06, Bethesda, MD 20892

National Heart, Lung, and Blood Institute (NHLBI), Associate Director for Review, Westwood Building/557A, Bethesda, MD 20892

National Institute on Aging (NIA), Chief, Scientific Review Office, Building 31, Room 5C12, Bethesda, MD 20892

National Institute of Allergy and Infectious Diseases (NIAID), Deputy Director, Division of Extramural Activities, Westwood Building, Room 703, Bethesda, MD 20892

National Institute of Arthritis and Musculoskeletal and Skin Diseases (NIAMS), Chief, Grants Review Branch, Westwood Building/5A07, Bethesda, MD 20892

National Institute of Child Health and Human Development (NICHD), Deputy Director, Scientific Review Program, Executive Plaza N/520, Bethesda, MD 20892

National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), Chief, Review Branch, Westwood Building, Room 406, Bethesda, MD 20892

National Institute of Dental Research (NIDR), Chief, Scientific Review Branch, Westwood Building, Room 519, Bethesda, MD 20892

National Institute of Environmental Health Sciences (NIEHS), Deputy Director, Division of Extramural Research and Training, P.O. Box 12233, Research Triangle Park, NC 27709

National Institute of General Medical Sciences (NIGMS), Chief, Office of Review Activities, Westwood Building, Room 949, Bethesda, MD 20892

National Institute of Neurological Disorders and Stroke (NINDS), Chief, Scientific Review Branch, Federal Building, Room 9C10A, Bethesda, MD 20892

National Center for Nursing Research (NCNR), Chief, Extramural Programs, Building 31, Room 5B09, Bethesda, MD 20892

National Library of Medicine (NLM), Chief, Biomedical Information Support Branch, Building 38A, Room 5S522, Bethesda, MD 20892

National Center for Human Genome Research (NCHGR), Chief, Office of Scientific Review, Building 38, Room 6N613, Bethesda, MD 20892

Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), Associate Director for Referral and Review, Parklawn Building, Room 13-103, Rockville, MD 20857

[FR Doc. 90-11746 Filed 5-21-90; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Statement of Organization, Functions Delegation of Authority; Assistant Secretary for Health; Correction

Part H, Public Health Service (PHS), chapter H, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services published at 55 FR 17505, April 25, 1990 is being amended to make a technical correction to section H-30, Public Health Service—Order of Succession. The change is as follows:

Remove "Deputy Assistant Secretary for Health Operations and Director, Office of Mangement," and replace with:

Deputy Assistant Secretary for Health Operations

Dated: May 14, 1990

James E. Larson,

Acting Deputy Assistant Secretary for Information and Resources Management.

[FR Doc. 90-11760 Filed 5-21-90; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-90-3083]

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.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, 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 (202) 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 Officer 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).

Dated: May 14, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Requirements governing the lobbying of HUD personnel, FR–2732.
Office: Office of the Secretary.
Description of the Need for the Information and its Proposed Use: The proposed rule authorizes the Department to collect information pertaining to registration of consultants.
Form Number: HUD–2881, 2882, and 2883.
Respondents: Individuals or households, businesses or other for-profit, non-profit institutions, and small businesses or organizations.
Frequency of Submission: Annually.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Annual reporting	4,680		1		3.637		17,021

Total Estimated Burden Hours: 17,021.
Status: New.
Contact: Melvin Bell, HUD, (202) 755–4250, Scott Jacobs, OMB, (202) 395–6880.

Dated: May 14, 1990.

[FR Doc. 90–11749 Filed 5–21–90; 8:45 am]

BILLING CODE 4210–1–M

[Docket No. N–90–3084]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have 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 proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, 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 (202) 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 proposals 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 Notices list 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 Officer 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).

Dated: May 11, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Prospectus.
Office: Government National Mortgage Association.
Description of the Need for the Information and its Proposed Use: These forms will be used to provide a standard format for the description of securities for each type of mortgage eligible for inclusion in a mortgage-backed securities pool.
Form Number: HUD–11712, 11712–II, 11717, 11717–II, 1724, 11728, 11728–II, 1731, 11747, 11747–II.
Respondents: Businesses or other for-profit.
Frequency of Submission: Other.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Annual reporting	1,250		17.65		.25		5,517

Total Estimated Burden Hours: 5,517.
Status: Reinstatement.
Contact: Charles Clark, HUD, (202) 755–5535, Scott Jacobs, OMB, (202) 395–6880.

Dated: May 11, 1990.

Proposal: Report on Section 8 Program Utilization: New Construction, Substantial Rehabilitation, 202, Property Disposition, and Loan Management Set Aside.
Office: Housing.
Description of the Need for the Information and its Proposed Use: The data collected by the Field Offices will be retrieved by the Housing Information and Statistics Division and used to monitor the following: Determine the rate at which Section 8

programs are leased; minimize exposure to vacancy losses; determine project vacancy rates; identify and document cases where a reduction in the number of contracted units are leased to elderly, handicapped, or disabled tenants; and retrieve information to answer questions per correspondents.

Form Number: HUD–52684.

Respondents: Businesses or other for-profit, non-profit institutions, and small businesses or organizations.

Frequency of Submission: Quarterly and Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	31,937		1		.25		7,984

Total Estimated Burden Hours: 7,984.

Status: Reinstatement.

Contact: James J. Tahash, HUD, (202) 426–3944, Scott Jacobs, OMB, (202) 395–6880.

Dated: May 11, 1990.

[FR Doc. 90–11750 Filed 5–21–90; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. D–90–918; FR–2830–D–01]

Redelegation of Authority with Respect to Supportive Housing Demonstration Program and Supplemental Assistance for Facilities To Assist the Homeless Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: The Assistant Secretary for Community Planning and Development is redelegating to HUD Field Office Managers and Deputy Field Office Managers her power and authority to execute grant agreements and to approve recipient requests for the drawdown of grant funds with respect to the Supportive Housing Demonstration Program and the Supplemental Assistance for Facilities To Assist the Homeless Program, authorized under title IV, subtitles C and D, of the Stewart B. McKinney Homeless Assistance Act of 1987 (Pub. L. 100–77, 101 Stat. 482, 42 U.S.C. 11301 *et seq.*).

EFFECTIVE DATE: May 14, 1990.

FOR FURTHER INFORMATION CONTACT: James Forsberg, Director, Special Needs Assistance Programs, Department of Housing and Urban Development, 451 Seventh Street SW., room 7228, Washington, DC 20410. Telephone (202) 755–6300 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On September 25, 1989, by notice published in the **Federal Register** on October 2, 1989, at 54 FR 40527, the Secretary of Housing and Urban Development delegated to the Assistant Secretary for Community Planning and Development the authority to exercise the power and authority of the Secretary with respect to the Supportive Housing Demonstration Program and with respect to the Supplemental Assistance for Facilities To Assist the Homeless Program under title IV, subtitles C and D, of the Stewart B. McKinney Homeless Assistance Act of 1987 (Pub. L. 100–77, 101 Stat. 482, 42 U.S.C. 11301 *et seq.*).

This notice redelegates to HUD Field Office Managers and HUD Deputy Field Office Managers the power and authority of the Assistant Secretary to execute grant agreements and to approve recipient requests for the drawdown of grant funds with respect to both of these programs.

Accordingly, the Assistant Secretary for Community Planning and Development redelegates as follows:

Section A. Authority Redelegated

Each HUD Field Office Manager and Deputy Field Office Manager is authorized to execute grant agreements and approve recipient requests for the drawdown of grant funds with respect to the Supportive Housing Demonstration Program and the Supplemental Assistance for Facilities To Assist the Homeless Program authorized by title IV, subtitles C and D, of the Stewart B. McKinney Homeless Assistance Act of 1987 (Pub. L. 100–77, 101 Stat. 482, 42 U.S.C. 11301 *et seq.*).

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: May 14, 1990.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 90–11751 Filed 5–21–90; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

North American Wetlands Conservation Council Meeting; Availability of Document

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of solicitation package for project proposals for funding consideration through the North American Wetlands Conservation Council under authority of North American Wetlands Conservation Act.

SUMMARY: This notice advises the public that a final document, "Solicitation Package for Project Proposals for Funding Consideration Through the North American Wetlands Conservation Council Under Authority of North American Wetlands Conservation Act is available. This document provides the schedules, review criteria, definitions, description of information required in the proposal, and a format for proposals submitted for Fiscal Year 1991 funding. This document was prepared to comply with the "North American Wetlands Conservation Act". The Act established a North American Wetlands Council. This Federal-State-Private body annually recommends wetland conservation projects to the Migratory Bird Conservation Commission. These project recommendations will be selected from proposals made in accordance with this document.

Proposals from State and private sponsors require a minimum of 50 percent non-federal matching funds.

ADDRESSES: Copies of this document can be obtained by contacting the U.S. Fish and Wildlife Service, room 130, 4401 N. Fairfax Drive, Arlington, VA 22203, (703–358–1711).

FOR FURTHER INFORMATION CONTACT: Dr. Robert Streeter, Coordinator, North American Wetlands Conservation Council, Arlington Square Building, room 880, U.S. Fish and Wildlife Service,

Department of the Interior, Washington, DC 20240–3000, telephone (703) 358–1784.

Dated: May 17, 1990.

Robert Streeter,

Coodinator, North American Wetlands Conservation Council.

[FR Doc. 90–1188 Filed 5–21–90; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[AA–250–00–4830–11–ADVB–2410]

Reestablishment of the Wild Horse and Burro Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Reestablishment of the Wild Horse and Burro Advisory Board.

SUMMARY: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act of 1972 (5 U.S.C. App.). Pursuant to Congressional direction in the Fiscal Year 1990 Appropriations Act for the Department of the Interior and Related Agencies (Pub. L. 101–121), notice is hereby given that the Secretaries of the Interior and Agriculture are reestablishing the Wild Horse and Burro Advisory Board to provide advice concerning policy issues related to the management, protection, and control of wild free-roaming horses and burros on public lands administered by the Department of the Interior, through the Bureau of Land Management, and the Department of Agriculture, through the Forest Service.

FOR FURTHER INFORMATION CONTACT: John S. Boyles at (202) 653–9215, or write to Chief, Division of Wild Horses and Burros (250), Bureau of Land Management, U.S. Department of the Interior, Premier Building, room 901, Washington, DC 20240.

The certification of reestablishment is published below.

Certification

I hereby certify that the reestablishment of the Wild Horse and Burro Advisory Board is necessary and in the public interest in connection with the Secretary of the Interior's statutory responsibilities to manage the lands and resources administered by the Bureau of Land Management.

Dated: March 30, 1990.

Manuel Lujan, Jr.,

Secretary of the Interior.

[FR Doc. 90–11757 Filed 5–21–90; 8:45 am]

BILLING CODE 4310–84–M

[AZ–020–00–4212–11; AZA–24229]

Lease with Option To Purchase Lands; Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—Lease of Public Land, Mohave County, Arizona.

SUMMARY: The following described lands and interests therein have been determined to be suitable for classification and lease with the option of purchase after development under the provisions of the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.) and the regulations established by 43 CFR parts 2740 and 2910. These lands will not be offered for lease until at least sixty (60) days after the date of publication of this notice in the **Federal Register**:

Gila and Salt River Meridian

T. 21 N., R. 18 W.,

Sec. 8, Lot 1, W½ Lot 2, SW¼NE¼NE¼.

Containing 39.63 acres, more or less.

These lands are hereby classified for public purpose use as a school site. The Kingman Elementary School District 4 has made application for, and intends to use these public lands to construct an elementary and a junior high school and related facilities. The school will serve the needs of students in the Golden Valley area.

The lease/patent, when issued, will be subject to the provisions of Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior. Initially the lands will be leased and after substantial development of the parcel, the land may be purchased under the special pricing guidelines for $2.50 per acre.

The land is not required for any Federal purpose. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

Subject to all valid existing rights, the lands are hereby segregated from appropriations under any other public land law, including locations under the mining laws. This segregation will terminate upon issuance of a lease, publication of a Notice of Termination, or 18 months from the date of this publication, whichever occurs first.

For a period of forty-five (45) days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Elaine F. Marquis, Area Manager, Bureau of Land Management, Kingman Resource Area, 2475 Beverly Avenue, Kingman, Arizona 86401 (602) 757–3161.

Dated: May 7, 1990.

Charles R. Frost,

Acting District Manager.

[FR Doc. 90–11865 Filed 5–21–90; 8:45 am]

BILLING CODE 4310–32–M

[AK–932–00–4214–10; AA–64811]

Termination of Proposed Withdrawal and Reservation of Lands; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of a proposed withdrawal and reservation of lands requested by the U.S. Department of Agriculture, Forest Service, for protection of lands pending an exchange with the Haida Corporation.

EFFECTIVE DATE: May 22, 1990.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

SUPPLEMENTARY INFORMATION: Notice of a proposed withdrawal and reservation of lands for the U.S. Department of Agriculture, Forest Service, was published in the **Federal Register** on June 24, 1988 (53 FR 23807). The purpose of the application, serial number AA–64811, was to segregate approximately 4,478 acres of land in the Tongass National Forest while they were being considered for an exchange with the Haida Corporation, pursuant to the Haida Land Exchange Act of 1986, (100 Stat. 4303). The exchange has been finalized with a conveyance to the Haida Corporation and the Forest Service has cancelled its withdrawal application. At 8 a.m., Alaska Daylight Time, on the date of this notice all lands described in the **Federal Register** publication referred to above, will be

relieved of its segregative effect pursuant to 43 CFR 2310.2–1(c).

Sue A. Wolf,

Chief, Branch of Land Resources.

[FR Doc. 90–11758 Filed 5–16–90; 8:45 am]

BILLING CODE 4310–JA–M

Minerals Management Service

Outer Continental Shelf, Advisory Board Scientific Committee (SC); Plenary Session Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Public Law 92–463, 5 U.S.C., appendix I, and the Office of Management and Budget Circular A–63, Revised.

The Outer Continental Shelf (OCS) Advisory Board Scientific Committee (SC) will meet in plenary session at the Shawmut Inn, P.O. Box 431, Kennebunkport, Maine 04046, telephone (207) 967–3931, from 8 a.m. to 5 p.m. on June 27–28, 1990.

The agenda for the plenary session meeting will include the following subjects:

- Research and damage assessment activities related to the Prince William Sound (Alaska) Oil Spill
- Status of Minerals Management Service (MMS) research on protected species; and
- Current status of the MMS Environmental Studies Program

A detailed agenda is not yet available but may be requested from the MMS.

The meetings are open to the public. Approximately 30 visitors can be accommodated on a first-come-first-served basis at the plenary session. All inquiries concerning these meetings should be addressed to: Dr. Don Aurand, Chief, Branch of Environmental Studies, Offshore Environmental Assessment Division, Minerals Management Service, U.S. Department of the Interior, 381 Elden Street, Herndon, Virginia 22070, telephone (703) 787–1717.

Dated: April 25, 1990.

Ed Cassidy,

Deputy Director, Minerals Management Service.

[FR Doc. 90–11759 Filed 5–21–90; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Chesapeake and Ohio Canal National Historic Park Commission; Meeting

Notice is hereby given in accordance with Federal Advisory Committee Act that a meeting will be held Saturday, June 23, 1990, at the Williamsport Red Men Club, Williamsport, Maryland.

The Commission was established by Public Law 91–664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfeld, Chairman, Washington, DC.
Mrs. Dorothy Tappe Grotos, Arlington, Virginia.
Mr. Samuel S.D. Marsh, Bethesda, Maryland.
Mr. James F.Scarpelli, Sr., Cumberland, Maryland.
Ms. Elise B. Heinz, Arlington, Virginia.
Professor Charles P. Poland, Jr., Chantilly, Virginia.
Captain Thomas F. Hahn, Sheperdstown, West Virginia.
Mr. Rockwood H. Foster, Washington, DC.
Mr. Barry A. Passett, Washington, DC.
Mrs. Jo Reynolds, Potomac, Maryland.
Ms. Nancy C. Long, Glen Echo, Maryland.
Mrs. Minny Pohlmann, Dickerson, Maryland.
Dr. James H. Gilford, Frederick, Maryland.
Mr. Edward K. Miller, Hagerstown, Maryland.
Mrs. Sue Ann Sullivan, Williamsport, Maryland.
Mrs. Josephine, L. Beynon, Cumberland, Maryland.
Mr. Robert L. Ebert, Cumberland, Maryland.

Matters to be discussed at this making include:

1. Old and new business.
2. Superintendent's report.
3. Committee reports.
4. Public comments.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Thomas O. Hobbs, Superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at Park Headquarters, Sharpsburg, Maryland.

Dated: May 16, 1990.

Burnice T. Kearney

Regional Director, National Capital Region.

[FR Doc. 90–11869 Filed 5–21–90; 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 May 12, 1990. 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 June 6, 1990.

Carol D. Shull,

Chief of Registration, National Register.

ALASKA

Fairbanks North Star Borough-Census Area

Lacey Street Theatre, 504 Second Ave., Fairbanks, 90000878

AMERICAN SAMOA

Eastern District

US Naval Station Tutuila Historic District, Between Togotogo Ridge and W side of Pago Pago Harbor, on waterfronts of Fagatogo and Utulei villages, Fagatogo and Utulei, 90000854

ARIZONA

Gila County

Globe Mine Rescue Station, 1330 N. Broad St., Globe, 90000875

ARKANSAS

Monroe County

Capps House, Co. Rd. 48 E of jct. with SR 17, Lawrenceville vicinity, 90000877

Yell County

Mitchell House, SR 60 W of Watson Branch, Waltreak, 90000876

COLORADO

Adams County

Harris Park School, 7200 Lowell Blvd., Westminster, 90000868

Denver County

Annunciation Church, 3601 Humboldt St., Denver, 90000869

Pitkin County

Boat Tow (Historic Resources of Aspen MPS), 700 S. Aspen St., Aspen, 90000866
Holden Mining and Smelting Co. (Historic Resources of Aspen MPS), 1000 Block W. Hwy. 82, Aspen vicinity 90000867
Webber Block (Historic Resources of Aspen MPS), 210 S. Galena St., Aspen, 90000882

Rio Grande County

El Monte Hotel, 925 First Ave., Monte Vista, 90000870

Routt County

Bell Mercantile, The, 101–111 Moffat Ave., Oak Creek, 90000871

DISTRICT OF COLUMBIA

District of Columbia (State equivalent)

Old Woodley Park Historic District, Roughly bounded by Rock Creek Park, 24th St., Woodley Rd. and Cathedral Ave., NW., Washington, 90000856

FLORIDA

Dade County

Miami Senior High School, 2450 SW. First St., Miami, 90000881

LOUISIANA

St. Tammany Parish

McCaleb House, 906 Main St., Madisonville, 90000874

NEW HAMPSHIRE

Rockingham County

Margeson, Richman, Estate, Long Point Rd. near Great Bay shore, Newington, 90000873

NEW YORK

Nassau County

Roslyn House, Jct. of Lincoln Ave. and Roslyn Rd., Roslyn Heights, 90000880

NORTH CAROLINA

Catawba County

Huffman, George, Farm (Catawba County MPS), SR 1479, SE of jct. with Tate Blvd., Conover vicinity, 90000861

Memorial Reformed Church (Catawba County MPS), 201 E. Main St., Maiden, 90000865

Propst, David F., House (Catawba County MPS), Jct. of SR 1810 and SR 1878, Maiden vicinity, 90000864

Reinhardt, Franklin D., and Harren-Hood Farms (Catawba County MPS), SR 2013 NW of jct. with SR 2012, Maiden vicinity, 90000863

Sharpe-Gentry Farm (Catawba County MPS), Jct. of NC 10 and SR 1137, Propst Crossroads vicinity, 90000859

St. Paul's Reformed Church (Catawba County MPS), Jct. of SR 1151 and SR 1005, Startown, 90000860

Warlick-Huffman Farm (Catawba County MPS), SR 1116 NW of jct. with NC 10, Propst Crossroads vicinity, 90000862

Wilfong-Wilson Farm (Catawba County MPS), SR 1145, SW of jct. with SR 1146, startown vicinity, 90000858

Guilford County

Guilford College, 5800 W. Friendly Ave., Greensboro vicinity, 90000855

Sampson County

Thirteen Oaks (Sampson County MPS), Jct. of US 13 and SR 1647, Newton Grove vicinity, 90000879

VIRGINIA

Albemarle County

Monticola, SR 602 N of jct. with SR 724, Howardsville, 90000872

[FR Doc. 90–11709 Filed 5–21–90; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Joint Committee on Agricultural Research and Development (JCARD) of the Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the twenty-fifth meeting of the Joint Committee on Agricultural Research and Development (JCARD) of the Board for International Food and Agricultural Development (BIFAD on June 27th, 1990.

The purpose of the meeting is to deliberate on the proposal by the Agency for International Development and the Board for International Food and Agricultural Development to plan a collaborating research support program (CRSP) for sustaining agriculture in the context of appropriate use, management and protection of the national resource base. The focus of the meeting will be on the scope and process of planning to assure optimum use of the science and technology available in the United States Land Grant and other agricultural universities in the program.

JCARD will meet from 9 a.m. to 5 p.m. on June 27th, 1990. The meeting will be held in Room 1207 New State Building, 2201 C Street, Washington, DC. The meeting is open to the public. Any interested person may attend, may file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee, and to the extent the time available for the meeting permits.

The Bureau for Diplomatic Security has implemented new procedures for entry in the Department of State building. All persons, visitors and employees, are required to wear proper identification at all times while in the building.

Please let the BIFAD Staff known (at tel. nos. 663–2585 or 663–2578) that you expect to attend the meeting and on which days. Provide your full name, name of employing company or organization, address and telephone number not later than June 19. This will help you avoid waiting in line for a visitor's pass.

A BIFAD Staff member will meet you at the Department of State entrance at 21st and C Streets (at Virginia Avenue) with your visitors's pass.

Visitors who are not pre-cleared will have to wait in line and present a valid identification with photograph to the receptionist before they will be admitted to the building.

Mr. William Fred Johnson, BIFAD Support Staff, is the designated A.I.D. Advisory Committee Representative at the meeting. It is suggested that those desiring further information write to him in care of the Agency for International Development, BIFAD Support Staff, Washington, D.C. 20523–0059 or telephone him at (202) 647–8532.

Dated: May 16, 1990.

William F. Johnson,

A.I.D. Advisory Committee Representative, Joint Committee on Agricultural Research and Development, Board for International Food and Agricultural Development.

[FR Doc. 90–11810 Filed 5–21–90; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

ALPS Coat, et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other person showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 1, 1990.

Interested persons are invited to submit written comments regarding the

subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 1, 1990.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 7th day of May 1990.

Marvin M. Fooks,

Director, Office of Trade Admustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
ALPS Coatr (ILGWU)	Paterson, NJ	5/07/90	4/18/90	24,360	Women's Coats.
ASC (American Shizuki Corp.)	Ogallala, NE	5/07/90	4/17/90	24,361	AC & DC Film Capacitors.
Action Tungsram, Inc. (Company)	E. Brunswick, NJ	5/07/90	4/16/90	24,362	Lightbulbs.
Alvin Coat (ILGWU)	N. Haledon, NJ	5/07/9	4/11/90	24,363	Ladies' & Men Suits & Coats.
American Design & Fashions	Passaic, NJ	5/07/90	4/18/90	24,364	Women's Coats.
Andre Fashions (ILGWU)	Passaic, NJ	5/07/90	4/11/90	24,365	Ladies' Raincoats.
Arcadia Fashions (ILGWU)	Paterson, NJ	5/07/90	4/18/90	24,366	Women's Coats.
Conca D'oro (ILGWU)	Paterson, NJ	5/07/90	4/18/90	24,367	Ladies' Coats.
D&H Enterprises (Company)	Forks, WA	5/07/90	4/16/90	24,368	Shakes & Shingles.
Dabri Fashions (ILGWU)	Passaic, NJ	5/07/90	4/18/90	24,369	Women's Jackets.
Dave Holcomb Logging (Company)	McCleary, WA	5/07/90	4/12/90	24,370	Timber.
E.I. DuPont Co. (Workers)	Moberly, MO	5/07/90	4/23/90	24,371	Paint.
E&M Coat, Co. (ILGWU)	Paterson, NJ	5/07/90	4/11/90	24,372	Ladies' Coats.
Econo-Cut (ILGWU)	Paterson, NJ	5/07/90	4/11/90	24,373	Ladies' Coats & Jackets.
Elisa Fashions (ILGWU)	Paterson, NJ	5/07/90	4/11/90	24,374	Ladies' Coats.
Epoca Fashions (ILGWU)	Paterson, NJ	5/07/90	4/11/90	24,375	Ladies' Jackets.
Era Coats (ILGWU)	Paterson, NJ	5/07/90	4/18/90	24,376	Ladies' Coats.
Fiorertina Fashions (ILGWU)	Passaic, NJ	5/07/90	4/18/90	24,377	Women's Coats.
GEO, Inc. (Workers)	Denver, CO	5/07/90	4/20/90	24,378	Oil & Gas.
Garfield Sportswear, Inc. (ILGWU)	Garfield, NJ	5/07/90	4/18/90	24,379	Ladies' Jackets.
General Motors-CPC Doraville (UAW/GM)	Atlanta, GA	5/07/90	4/26/90	24,380	Autos.
General Motors-CPC Fairfax (UAW/GM)	Kansas City, KS	5/07/90	4/26/90	24,381	Cars.
General Motors-Hydramatic Div. (UAW-GM)	Three Rivers, MI	5/07/90	4/26/90	24,382	Transmissions.
Gerr'a, Inc. (ILGWU)	Montclair, NJ	5/07/90	4/11/90	24,383	Bathing Suits.
Greensleeves, Inc. (ILGWU)	Passaic, NJ	5/07/90	4/11/90	24,384	Bathing Suits.
Joseph Frank, Inc. (ILGWU)	Passaic, NJ	5/07/90	4/11/90	24,385	Ladies' Apparel.
Kabba Dress (ILGWU)	Nutley, NJ	5/07/90	4/11/90	24,386	Ladies' Dresses & Gowns.
Lido Fashions (ILGWU)	Paterson, NJ	5/07/90	4/18/90	24,387	Women's Coats.
Malcolm Clothing Corp. (ILGWU)	Passaic, NJ	5/07/90	4/18/90	24,388	Women's Coats.
Mario PaPa & Sons (ACTWU)	Gloversville, NY	5/07/90	4/26/90	24,389	Gloves.
Martec Inc. (Workers)	Wallingford, CT	5/07/90	4/05/90	24,390	Electronics Assemblies.
NL Fashions (ILGWU)	Paterson, NJ	5/07/90	4/18/90	24,391	Women's Coats.
N&R Fashions (ILGWU)	Paterson, NJ	5/07/90	4/11/90	24,392	Ladies' Coats.
N&S Fashions (ILGWU)	Paterson, NJ	5/07/90	4/18/90	24,393	Women's Coats.
Napco Security (formerly Alarm Lock Co.) (Workers)	Pinebrook, NJ	5/07/90	4/12/90	24,394	Door Locks.
Q&T Coat Inc. (ILGWU)	Paterson, NJ	5/07/90	4/11/90	24,395	Ladies' Coats.
Onadare Coats & Suits (ILGWU)	Paterson, NJ	5/07/90	4/18/90	24,396	Women's Coats.
Ornstein Fashions (ILGWU)	Garfield, NJ	5/07/90	4/18/90	24,397	Women's Jackets.
P&G Class Fashions (ILGWU)	Passaic, NJ	5/07/90	4/18/90	24,398	Ladies' Coats.
RCR Sportswear, Co. (ILGWU)	Passaic, NJ	5/07/90	4/18/90	24,399	Women's Coats.
RMR Corp. (ILGWU)	Elkton, MD	5/07/90	4/20/90	24,400	Motors.
Roman Fashions (ILGWU)	Paterson, NJ	5/07/90	4/11/90	24,401	Ladies' Coats.
Rosario's Sportswear Inc.	Passaic, NJ	5/07/90	4/18/90	24,402	Women's Skirts & Pants.
S&F Madewell (ILGWU)	Passaic, NJ	5/07/90	4/18/90	24,403	Cocktail Dresses.
Subsurface, Inc. (Workers)	Casper, WY	5/07/90	4/20/90	24,404	Oil & Gas.
Supercraft Coats (ILGWU)	Garfield, NJ	5/07/90	4/18/90	24,405	Women's Coats.
Vincenzo Fashions (ILGWU)	Newark, NJ	5/07/90	4/30/90	24,406	Ladies' & Men's Rainwear.
Warrenton Rubber (Company)	Warrenton, GA	5/07/90	4/23/90	24,407	Innertubes.

[FR Doc. 90-11842 Filed 5-21-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-23, 925]

Blackstone Corp.; Revised Determination on Reconsideration

On May 2, 1990, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of Blackstone Corporation, Jamestown, New York. The affirmed notice will soon be published in the **Federal Register.**

On reconsideration the Department found that sales and production of radiators decreased, in quantity, in 1989 compared to 1988 and in the first two months of 1990 compared to the same period in 1989. Radiators accounted for the major product at Jamestown. Average employment of production workers at Jamestown declined in 1989 compared to 1988.

Other findings on reconsideration show a transfer of production of radiators in 1989 to a company plant in Canada and company imports of radiators from Canada arriving in October 1989.

Conclusion

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with radiators produced at Blackstone Corporation, Jamestown, New York contributed importantly to the decline in sales or production and to the total or partial separation of workers at Blackstone Corporation, Jamestown.

New York. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Blackstone Corporation, Jamestown, New York who became totally or partially separated from employment on or after July 1, 1989 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC., this 9th day of May 1990.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90-11845 Filed 5-21-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-23,760]

Eastland Woolen Mill, Inc.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 8, 1990 applicable to all workers of Eastland Woolen Mill Incorporated, Corinna, Maine. The notice was published in the Federal Register on March 8, 1990 (55 FR 8616).

The Department also issued a certification TW-W-20,045 for the same worker group on October 20, 1987 which expired on October 20, 1989.

The Department, on its own motion, is amended TA-W-23,760 by deleting the December 8, 1988 impact date and inserting a new impact date of October 20, 1989 in order to eliminate the unintended coverage overlap in the two certifications. The amended notice applicable to TA-W-23,760 is hereby issued as follows:

All workers and former workers of Eastland Woolen Mill, Incorporated, Corinna, Maine who became totally or partially separated from employment on or after October 20, 1989 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 14th day of May 1990.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90-11843 Filed 5-21-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-23,951 and TA-W-23,952]

Munsingwear, Inc.; Affirmative Determination Regarding Application for Reconsideration

By a letter dated April 9, 1990, the Northern District Joint Board of the Amalgamated Clothing Workers Union requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for former workers of Munsingwear Inc., Ashland, Wisconsin and Minneapolis, Minnesota. The negative determination was issued on March 23, 1990 and was published in the Federal Register on April 10, 1990 (55 FR 13335).

The union claims, among other things, that the company shifted its product mix to more imported goods in the spring of 1990.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 14th day of May 1990.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90-11844 Filed 5-21-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-23, 954]

North American Refractories Co.; Curwensville, PA; Negative Determination Regarding Application for Reconsideration

By an application postmarked April 30, 1990, Local #448 of the Aluminum, Brick and Glass Workers Union requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on March 30, 1990 and published in the Federal Register on April 10, 1990 (55 FR 13335).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances;

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that steel imports have adversely affected refractories. The Department addressed this issue in its notice of negative determination. Certification under the worker adjustment assistance program is based on imports of like or directly competitive products contributing importantly to declines in employment, production or sales at the workers' firm. Refractories are not "like" nor "competitive" with imported steel.

The Department's denial was based on the fact that the increased import criterion of the Group Eligibility Requirements was not met. U.S. imports of refractories declined absolutely in the first nine months of 1989 compared to the same period in 1988. Investigation findings show that worker separations were the result of a production transfer of a product line (carbon magnesite refractories) from Curwensville to other company domestic plants. A domestic transfer of production would not form a basis for a worker group certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 11th day of May 1990.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90-11847 Filed 5-21-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-23-,676]

Picker International, Highland Heights, OH; Negative Determination Regarding Application for Reconsideration

By applications dated March 2nd and April 9th Local #1377 of the International Brotherhood of Electrical Workers (IBEW) and a petitioner requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on February 2, 1990 and published in the Federal Register on March 8, 1990 (55 FR 8615).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioner claimed that Picker is importing foreign components for its nuclear equipment and the MRI Scan. The petitioner submitted import data on X-Ray medical imaging equipment which increased in 1988 compared to 1987.

Investigation findings show that Picker produces medical diagnostic equipment.

In order for a worker group to be certified eligible to apply for adjustment assistance, it must meet all three of the group eligibility requirements—a significant decrease in employment; an absolute decrease in sales or production and an increase of imports which are like or directly competitive with the articles produced at the workers' firm and which "contributed importantly" to declines in sales or production and employment at the workers' firm.

The Department's denial was based on the fact that the "contributed importantly" test was not met for the workers producing medical diagnostic equipment. This test is generally demonstrated through a survey of the workers' firm's customers. The Department's survey of Picker's major customers shows that those with decreased purchases of medical diagnostic equipment from Picker in 1989 compared to 1988 did not increase their import purchases.

With respect to the foreign component issues, the Highland Heights facility did not produce the MRI Scan. Production on the MRI Scan was performed at other Picker facilities. Also, the last subcontract let overseas from Highland Heights for nuclear equipment was performed in July 1988. Worker separations occurring in mid 1988 are more than one year prior to the date of the petition—November 16, 1989. Section 223(b)(1) of the Trade Act does not permit the certification of workers laid off more than one year prior to the Act. Further, company officials have indicated that the subcontracting of production on nuclear components to offshore sources did not displace any employees.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 14th day of May 1990.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90-11846 Filed 5-21-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24, 036]

SKF Foundry, SKF USA, Inc. Washington, MO; Negative Determination Regarding Application for Reconsideration

By an application dated May 7, 1990 the company requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on April 16, 1990 and will soon be published in the **Federal Register.**

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that the subject workers produce gray and ductile iron castings. The major portion of castings produced by the SKF Foundry are for the auto industry.

The company claims that that imported autos directly impacted the foundry's loss of casting sales, production and employment.

The Department's denial was based on the fact that "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. The "contributed importantly" test is generally demonstrated through a survey of the workers' firms customers. The Department's survey accounted for a major portion of the foundry's sales and a substantial portion of the SKF's 1989 sales decline. The survey shows that the customers did not import gray and ductile iron castings during the survey period.

Further, under the Trade Act of 1974, only increased imports of articles like or directly competitive with the articles produced by the worker's firm or appropriate subdivision can be considered. Gray and ductile iron castings are not like or directly competitive with automobiles. This issue was addressed in *United Shoe Workers of America, AFL-CIO* v. *Bedell*, 506 F2d 174, (D.C. Cir. 1974). The court held that imported finished women's shoes were not like or directly competitive with shoe components—shoe counters. Similarly, gray and ductile iron castings cannot be considered like or directly competitive with automobiles.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 10th day of May 1990.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90-11848 Filed 5-21-90; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-90-57-C]

Jim Walter Resources, Inc., Petition for Modification of Application of Mandatory Safety Standard

Jim Walter Resources, Inc., P.O. Box 830079, Birmingham, Alabama 35283-0079 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its No. 1 Longwall, at its No. 3 Mine (I.D. No. 01-00758), located in Jefferson County, Alabama. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires and trolley feeder wires, high-voltage cables and transformers not be located inby the last open crosscut and be kept at least 150 feet from pillar workings.

2. As an alternate method, petitioner proposes to continue utilizing high-voltage (2300 v) cables at the No. 1 Longwall inby the last open crosscut.

The petitioner outlines specific equipment and conditions in the petition.

3. In addition, petitioner proposes that—

(a) The cables to be used would be SHD–GC 5KV MSHA approved jacketed cables. These cables provide a safe protection against potential for an ignition source as medium-voltage cables of the same type construction and better protection than low-voltage cables of non-shielded construction;

(b) The use of higher voltage motors results in lower current flow, thereby reducing heating of the cable;

(c) A sensitive ground fault and lockout protection circuit would be provided to detect, trip and lockout any cable with a ground fault current of 90 milliamperes. Therefore, this application of high-voltage cables is safer than that of medium-voltage cables under similar faulted conditions;

(d) All high-voltage cables supplying all prime movers located inby the last open crosscut are deenergized at any time this equipment is not in operation. This provides added protection through reduced exposure time.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 21, 1990. Copies of the petition are available for inspection at that address.

Dated: May 14, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90–11852 Filed 5–21–90; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–90–58–C]

Peabody Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Peabody Coal Company, 301 North Memorial Drive, P.O. Box 373, St. Louis, Missouri 63166 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Camp No. 2 Mine (I.D. No. 15–02705) located in Union County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that examinations be made on a weekly basis of seals and of return aircourses.

2. Due to a squeeze, examination of the entire 2nd north panel and the west return aircourse would result in a diminution of safety.

3. As an alternate method, petitioner proposes that—

(a) Monitoring the return air for dangerous and harmful mine gases would be made at the No. 1 entry, 2nd panel north;

(b) Examinations would occur both pre-shift and on shift, and the results would be recorded in a book maintained at the monitoring station and at the surface; and

(c) Persons assigned to monitor the air would be trained in the procedure for sampling. They would also be notified of the officials to contact in the event of an increase of harmful and dangerous gases. Sampling procedures and the steps to be taken when the samples indicate an increase in such gases would be posted at each monitoring station.

4. Petitioner states tha the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 21, 1990. Copies of the petition are available for inspection at that address.

Dated: May 14, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90–11851 Filed 5–21–90; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–90–69–C]

Pyro Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Pyro Mining Company, P.O. Box 267, Sturgis, Kentucky 42459 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Baker Mine (I.D. No. 15–14492) located in Webster County, Kentucky. The petition if filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. Four water pumps are located in the intake. Two pumps are a long distance from return air.

3. As an alternate method, petitioner proposes to install an automatic fire suppression device on each pump with a warning system that would sound at an attended surface location when CO is detected.

4. A carbon monoxide monitoring point, connected to the mine monitoring system would be installed downwind of one of the pumps to detect any CO generated at any of the pumps.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 21, 1990. Copies of the petition are available for inspection at that address.

Dated: May 14, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90–11853 Filed 5–21–90; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–90–61–C]

West Elk Coal Company, Inc.; Petition for Modification of Application of Mandatory Safety Standard

West Elk Coal Company, Inc., P.O. Box 591, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Mt. Gunnison No. 1 Mine (I.D. No. 05–03672) located in Gunnison County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be separated from belt haulage entries and that belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use air from the belt haulage entry to ventilate active working places.

3. In support of this request, petitioner proposes to install an early warning fire detection system utilizing a low-level carbon monoxide (CO) detection system in all belt entries used as intake aircourses and at each belt drive and tailpiece located in intake aircourses. Interim alert and alarm signal levels would be established to provide early warning of fire. The warning time provided by the system would be maximized. The CO monitoring system would initiate the fire alarm signals at an attended surface location where there is two-way communication. This responsible person would notify the working sections and other personnel who may be endangered when the permanently established alert and alarm levels are reached. The CO system would be capable of identifying any activated sensor and for monitoring electrical continuity and detecting electrical malfunctions.

4. The CO system would be visually examined at least once each shift and tested weekly to ensure the monitoring system is functioning properly. The monitoring system would be calibrated with known concentrations of CO and air mixtures at least monthly. A record of all inspections would be maintained on the surface. The inspection record would show the time and date of each weekly inspection, monthly calibration, and all maintenance performed on the system.

5. If the CO monitoring system is deenergized for routine maintenance or for failure of a sensor unit, the belt conveyor would continue to operate and qualified persons would patrol and monitor the belt conveyor using handheld CO detecting devices. A CO detection device would also be available for use on each working section in the event the monitoring system is deenergized or fails.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard, while compliance with the standard will result in a diminution of safety to the miners affected.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 21, 1990. Copies of the petition are available for inspection at that address.

Dated: May 14, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90–11850 Filed 5–21–90; 8:45 am]

BILLING CODE 4510–13–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: NRC Form 313—Application for Material License.

3. The form number if applicable: NRC Form 313.

4. How often the collection is required: New applications may be submitted at any time. Renewals are submitted every five years.

5. Who will be required or asked to report: Persons desiring a specific license to possess, use, or distribute byproduct or source material.

6. An estimate of the number of responses: 6,200.

7. An estimate of the total number of hours needed to complete the requirement or request: Approximately 8 hours and 15 minutes per response. The total annual industry burden is estimated to be 51,150 hours.

8. An indication of whether section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. *Abstract:* The information submitted on NRC Form 313 is reviewed by the NRC staff to determine whether the applicant for a material license is qualified by training and experience and has equipment, facilities, and procedures which are adequate to protect the health and safety of the public and minimize danger to life or property.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Ronald Minsk, Paperwork Reduction Project (3150–0120), Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this fourth day of May 1990.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,

Designated Senior Official for Information Resources Management.

[FR Doc. 90–11819 Filed 5–21–90; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, and of the ACNW, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published April 19, 1990 (55 FR 14884). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACRS Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings and when ACRS

Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the June 1990 ACRS and ACNW full Committee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committees (telephone: 301/492–4600 (recording) or 301/492–7288, Attn: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

Materials and Metallurgy, May 24, 1990, West Palm Beach, FL. The Subcommittee will review low Charpy upper shelf energy matters relating to the integrity of reactor pressure vessels, discuss the status of the HSST program, and other related matters.

Improved Light-Water Reactors, June 5, 1990, Bethesda, MD. The Subcommittee will review the draft SER for chapter 5 of the EPRI ALWR Requirements Documents.

Mechanical Components, June 6, 1990, Bethesda, MD. The Subcommittee will review: (1) The results of MOV tests performed in FRG and the staff's conclusions, (2) concerns about damper reliability, and (3) other valve concerns.

Thermal Hydraulic Phenomena, June 14, 1990, Bethesda, MD. The Subcommittee will discuss the status of selected research programs incuding: the 2D/3D Program and Calculational Capability for Accident Management.

Human Factors, July 11, 1990, Bethesda, MD. The Subcommittee will discuss reports on procedural violations (Chernobyl Spinoff) and organizational factors.

TVA Plant Licensing and Restart, July 24 (Site Tour) and 25, 1990, Huntsville, AL. The Subcommittee will review the planned restart of Browns Ferry Unit 2.

Joint Advanced Pressurized Water Reactors and Advanced Boiling Water Reactors, Date to be determined (May/June), Bethesda, MD. The Subcommittees will discuss the licensing review basis documents for CE Systems 80+ and GE ABWR designs.

Occupational and Environmental Protection Systems, Date to be determined (June/July) (tentative), Bethesda, MD. The Subcommittee will review the Advance Notice of Proposed Rulemaking on hot particles.

Thermal Hydraulic Phenomena, Date to be determined (July), Idaho Falls, ID. The Subcommittee will review the details of the modifications made to the RELAP–5 MOD–2 code as specified in the MOD–3 version.

Decay Heat Removal Systems, Date to be determined (July/August), Bethesa, MD. The Subcommittee will continue its review of the proposed resolution of Generic Issue 23, "RCP Seal Failures."

Joint Severe Accidents and Probabilistic Risk Assessment, Date to be determined (July/August), Bethesda, MD. The Subcommittees will continue their review of NUREG–1150, "Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants."

Joint Containment Systems and Structural Engineering, Date to be determined (July/August), Bethesda, MD. The Subcommittees will develop containment design criteria for future plants.

Materials ands Metallurgy, Date to be determined, Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 29, "Bolting Degradation or Failure in Nuclear Power Plants."

Quality and Quality Assurance in Design and Construction, Date to be determined, Bethesda, MD. The Subcommittee will discuss the performance-based concept of quality, what it means, its implementation, and preliminary results.

Decay Heat Removal Systems, Date to be determined, Bethesda, MD. The Subcommittee will explore the use of feed and bleed for decay heat removal in PWRs.

Auxiliary and Secondary Systems, Date to be determined, Bethesda, MD. The Subcommittee will discuss: (1) Criteria being used by utilities to design Chilled Water Systems, (2) regulatory requirements for Chilled Water Systems design, and (3) criteria being used by the NRC staff to review the Chilled Water Systems design.

Joint Regulatory Activities and Containment Systems, Date to be determined, Bethesda, MD. The Subcommittees will review the proposed final revision to appendix J to 10 CFR part 50, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactor," and an associated Regulatory Guide.

ACRS Full Committee Meetings

362nd ACRS Metting, June 7–9, 1990, Bethesda, MD. Items are tentatively scheduled.

*A. *Reactor Operating Experience (Open/Closed)*—Briefing and discussion of recent operating experience and events at nuclear power plants.

*B. *Certification of Evolutionary LWRs (Open)*—Discussion of issues other than those identified in SECY–90–016 for consideration in evolutionary light-water reactor certification.

*C. *Interim Standard for Hot Particles (Open)*—Briefing regarding the status of proposed revisions to the standard for exposure of the skin from radioactive particles.

*D. *Accident Sequence Precursor Program (Open)*—Briefing regarding the Accident Sequence Precursor Program at the ORNL Nuclear Operations Analysis Center.

*E. *Status of Implementation of the Safety Goal Policy (Open)*—Discussion of the status of implementation of the NRC's Safety Goal Policy.

*F. *Systematic Assessment of Licensee Performance (Open)*—Briefing and discussion regarding proposed revisions to the NRC Manual Chapter or Systematic Assessment of Licensee Performance.

*G. *NRC Research Program (OPEN)*—Discussion of proposed nature of the annual ACRS report to the U.S. Congress.

*H. *ACRS Subcommittee Activities (Open)*—Hear and discuss reports of ACRS subcommittees regarding the status of assigned activities such as the low charpy upper shelf energy matter relating to the integrity of reactor pressure vessels, results of the MOV tests performed in FRG, and the reliability of dampers. A report of the ACRS Subcommittee on Planning and Procedures will also be discussed.

*I. *EPRI Requirements for Advanced Light-Water Reactors (Open)*—Briefing and discussion of the NRC staff safety evaluation report for chapter 5 of the proposed EPRI requirements for advanced light-water reactors.

*J. *Emergency Operating Procedures (Open)*—Briefing and discussion regarding the status of NRC staff activities regarding emergency operating procedures and use of PRA for shutdown modes (modes 3–6) of operation.

*K. *Siting of Nuclear Power Plants (Open)*—Briefing and discussion regarding NRC staff activities to decouple nuclear plant siting from source term.

*L. *Nuclear Power Plant Technical Specifications (Open)*—Briefing regarding the status of NRC staff activities regarding the development of risk-based technical specifications.

*M. *Personnel Matters (Closed)*—Discussion of personnel matters related to the support of ACRS activities.

*N. *Anticipated ACRS Activities (Open)*— Discussion of anticipated ACRS subcommittee activities and items proposed for consideration by the subcommittee.

*O. *Generic Issue 84: CE Plants Without PORVs (Open)*—Briefing and discussion of proposed resolution of this generic issue.

*P. *Emergency Response Data System (Open)*—Briefing and discussion of the proposed NRC rule on an Emergency Response Data System.

363rd ACRS Meeting, July 12–14, 1990—Agenda to be announced.

364th ACRS Meeting, August 9–11, 1990—Agenda to be announced.

ACNW Full Committee Meetings

21st ACNW Meeting, June 28–29, 1990, Bethesda, MD. Items are tentatively scheduled.

*A. Briefing on impacts of alternative exploratory shaft facility construction techniques from both the engineering and geoscience perspective.

*B. Pathfinder Atomic Power Plant dismantlement. The Committee will be briefed on the NRC staff's findings in their safety evaluation report.

*C. Low-Level Waste Research Plan—update of NUREG–1380.

*D. Status of Proactive Work in the Division of HLWM (technical positions and rules)—for information. Impact of changes in DOE program and schedule on HLW program.

*E. A briefing on the conclusion of the recent BEIR V report, "Health Effects of Exposure to Low Levels of Ionizing Radiation."

*F. Briefing by EPRI/NUMARC on a methodology for predicting the I–129 source term for low-level waste sites.

*G. Discuss the definition of representativeness as it pertains to NRC staff's review of DOE's methodology for three-dimensional characterization of the proposed Yucca Mountain repository site.

*H. Review of the Technical Position on Seismic Hazards.

*I. Committee Activities—The Committee will discuss anticipated and proposed Committee activities, future meeting agenda, and organizational matters, as appropriate.

22nd ACNW Meeting, July 30–31, 1990—Agenda to be announced.

23rd ACNW Meeting, August 29–31, 1990—Agenda to be announced.

Dated: May 17, 1990.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 90–11823 Filed 5–21–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–416A and 50–417A]

Mississippi Power & Light Co., et al.; Denial of Amendments to Facility Licenses and Opportunity for Hearing

On September 2, 1986, applications were filed by Mississippi Power & Light Company (MP&L), System Energy Resources, Inc. (SERI) and South Mississippi Electric Power Association (the Licensee) to amend the Operating License for Grand Gulf Nuclear Station, Unit 1, (GGNS–1) and the Construction Permit for Grand Gulf Nuclear Station, Unit 2, (GGNS–2). The amendments would: (1) Authorize the transfer of control and authority to operate GGNS–1 and to construct GGNS–2 from MP&L to SERI (On July 28, 1986, Middle South Energy, Inc., a co-licensee, was renamed and reconstituted as SERI), and (2) delete certain antitrust license conditions that were imposed upon MP&L as a result of the construction permit antitrust review authorization process. Since it appeared that evaluation of the antitrust aspects would require an extended period of time, the Licensee proposed that the amendments be bifurcated into: (1) Technical amendments designating SERI responsible for the operation of GGNS Unit 1 and the construction of GGNS–2, and (2) amendments to delete the antitrust license conditions presently attached to the Grand Gulf Nuclear Station (Grand Gulf) licenses. In order to permit the Licensee to make the organizational changes concerning plant operation while perserving for further review questions concerning antitrust issues, the Nuclear Regulatory Commission (Commission) Staff (Staff) agreed to process the amendment requests using the suggested bifurcated procedure. Because the issues raised in the proposed amendments for GGNS–1 and GGNS–2 regarding the antitrust license conditions are substantially the same, the Staff consolidated its response to each request in this **Federal Register** Notice.

On December 20, 1986, the Staff issued Amendment 27 to the GGNS–1 operating license (NPF–29) authorizing SERI to possess, use and operate the facility and to possess and use fuel and ancillary licensed materials. The authority of a co-owner, South Mississippi Electric Power Association (SMEPA), to possess but not operate the facility was not affected by the amendment. On December 14, 1989, the Staff issued Amendment No. 65 to the GGNS–1 operating license which authorized the transfer of control and operation of the facility from SERI to Entergy Operations, Inc. (EOI), formed by Middle South Utilities, Inc., now Entergy Corporation, to operate all of its nuclear plants.

The Staff issued Amendment No. 8 to the GGNS–2 construction permit (CPPR–119) on December 20, 1986, to reflect the transfer of control and performance of licensing duties from MP&L to SERI. On December 22, 1989, the Staff issued Amendment No. 9 to the GGNS–2 construction permit which authorized the transfer of authority to construct GGNS–2 from SERI to EOI.

Amendment Nos. 27 and 65 to the GGNS–1 operating license and Amendment Nos. 8 and 9 to the GGNS–2 construction permit, explicitly conditioned the authorization of MP&L to transfer its right to possess, use, operate and construct the respective facilities to SERI and EOI on the continued obligation by MP&L and SERI to comply with the antitrust license conditions until further authorization by the Commission. The Staff has now completed its review of the portion of the request by MP&L to delete the antitrust license conditions from the GGNS–1 operating license and the GGNS–2 construction permit.

Based upon the available information, the Staff believes the proposed amendment requests do not change the underlying factors that led to the imposition of the antitrust license conditions that were recommended by the Department of Justice and agreed to by MP&L during the construction permit antitrust review conducted by the Department of Justice and the Staff pursuant to Section 105(c) of the Atomic Energy Act of 1954, as amended. For the reasons set forth below, the Staff denies the Licensee's amendment requests to, (1) Remove MP&L from the GGNS–1 operating license and the GGNS–2 construction permit, and (2) delete the antitrust license conditions from the GGNS–1 operating license and the GGNS–2 construction permit.

Discussion

During the construction permit antitrust review of the Grand Gulf Nuclear Station in the early 1970's, the staffs of the Department of Justice and the Atomic Energy Commission received allegations from members of the western Mississippi bulk power services market that MP&L had misused its market power and inhibited the growth of competition in the western Mississippi bulk power services market. As a result of these allegations and an independent analysis conducted by the Department of Justice, MP&L and the Department of Justice reached an agreement on a series of policy commitments designed to mitigate MP&L's alleged misuse of its market power. These commitments were structured to open up competitive alternatives to a broad cross section of power systems in western Mississippi by providing access to Grand Gulf and ancillary transmission services, as well as interconnection and coordination services that make access to these products meaningful. In a letter to the

Assistant Attorney General that accompanied delineation of the commitments, the President of MP&L stated that:

> These commitments represent a statement of policy for the future direction of Mississippi Power and Light Company and are made with the understanding that the Department of Justice will recommend to the Atomic Energy Commission that no antitrust hearing will be required.[1]

The Department of Justice, in its advice letter to the Atomic Energy Commission, dated May 24, 1973, concluded that an antitrust hearing would not be necessary in the Grand Gulf construction permit proceeding after MP&L agreed to an extensive set of policy commitments and ". . . with the expectation that the Commission will include them as conditions to the license. . . ." The commitments referenced in the Department of Justice advice letter were attached as license conditions to the Grand Gulf construction permits as a result of the antitrust construction permit review and also became a part of the GGNS–1 operating license upon issuance.

Subsequently, in conformance with Commission regulations, an operating license antitrust review was conducted for GGNS–1. In the process of its review, the Staff received allegations that MP&L was not implementing the antitrust license conditions imposed during the construction permit review. A Notice of Violation was issued to MP&L on May 28, 1980, citing MP&L with non-compliance with specific antitrust license conditions. After extensive negotiations, it became apparent to the Staff that a settlement agreement between MP&L and the complaining parties would be consummated. As a result of this agreement, Staff concluded its operating license antitrust review of GGNS–1 on October 9, 1981, advising that no significant antitrust changes had occurred since the construction permit review.

MP&L's proposed amendments dated September 2, 1986 sought the transfer of operating and construction reponsibilities for Grand Gulf from MP&L to SERI. As indicated *supra*, this responsibility has since been delegated to EOI. The newly formed EOI, a wholly owned subsidiary of Entergy Corporation (which until May 19, 1989, was known as Middle South Utilities, Inc.), will operate Grand Gulf. Power generated at Grand Gulf will continue to be distributed to each of the operating subsidiaries of Entergy Corporation, including MP&L. The amendments issued in December 1989 dealing with EOI, do not deal with the marketing of power from GGNS–1 or GGNS–2, nor do they modify the amount of power that MP&L will receive from the Grand Gulf facility or make any changes that will mitigate MP&L's existing market power in western Mississippi.

The MP&L antitrust license conditions have been in effect since the issuance of the Grand Gulf construction permits. These license conditions were designed to prohibit MP&L from using the power and energy produced by Grand Gulf to create or maintain a situation inconsistent with the antitrust laws. As noted in the GGNS–1 operating license antitrust review, the antitrust license conditions have had a positive impact on the competitive process in MP&L's service area; and, aside from the proposed amendment requests, the Staff would have had no reason to consider the removal of the antitrust license conditions from GGNS–1 and GGNS–2. Notwithstanding the proposed amendment requests, MP&L will continue to control high voltage transmission facilities in its service area and will continue to receive the same amount of power from Grand Gulf. MP&L will continue to possess significant market power in the western Mississippi bulk power services market. Consequently, MP&L still has the ability to create or maintain a situation inconsistent with the antitrust laws.

The issue raised by the proposed amendment requests that must be resolved by the Staff is whether the changes proposed by the Licensee create a valid reason for excusing MP&L from remaining on the licenses and being subject to the antitrust license conditions. Under the circumstances in this case, the Staff believes that continued application of the license conditions to MP&L is warranted because: (1) Section 103(a) of the Atomic Energy Act, as amended, authorizes the Commission to impose license conditions upon persons transferring nuclear facilities to others; (2) although the amendments authorize MP&L to transfer its rights to operate GGNS–1 to SERI and construct GGNS–2 to SERI, contingent upon continued compliance by MP&L and SERI with the antitrust license conditions, no change is taking place with regard to the distribution of or use of the power from the facilities or with MP&L's control over high voltage transmission facilities in its service area; (3) these transmission facilities and the use of the power from Grand Gulf provided the framework for the determination that a situation would be maintained or created by the issuance of the licenses, not the fact that MP&L would own or operate Grand Gulf; (4) in spite of the fact that SERI is a separate corporate entity, both MP&L and SERI are wholly owned and controlled by Entergy Corporation, a holding company organized under the Public Utility Holding Company Act; as such, Entergy Corporation's subsidiaries, including SERI and MP&L, are under common control and operate as an integrated public utility system with all energy in the entire Entergy Corporation system being distributed by a single dispatch center and wholesale transactions between the subsidiaries being governed by a series of System Agreements filed at the Federal Energy Regulatory Commission; (5) the NRC cannot be prevented from regulating within its proper domain by the creation of what in effect are paper transactions all within the same holding company; and (6) the maintenance of the antitrust license conditions is in the public interest since they will enhance competition in MP&L's service area. In the proposed amendment requests, MP&L cited the improved competitive situation in the western Mississippi bulk power services market and concluded that, as a result of these changes, the antitrust license conditions attached to the Grand Gulf licenses are no longer necessary. The Staff is aware of the procompetitive changes which have taken place in western Mississippi and as noted above, these changes were considered in conjunction with the GGNS–1 operating license review. The improvement in the competitive process has involved the implementation of interconnection agreements between MP&L and other power systems in western Mississippi. The Staff believes these improvements are to a large degree the direct result of the antitrust license conditions attached to the Grand Gulf licenses. The elimination of these conditions, as requested by the proposed amendments, may obviate any incentive for MP&L to continue these procompetitive practices in the future. Indeed, the Staff has received inquiries and comments expressing opposition to MP&L's request to delete the antitrust conditions from the Grand Gulf licenses.

For the reasons stated above, the Staff denies the portion of the amendment requests dated September 2, 1986 which seek to remove MP&L from the Grand Gulf licenses and to delete the antitrust license conditions now a part of the Grand Gulf licenses. The Licensee was notified of the Commission's denial of this request by letter dated May 15, 1990

[1] Letter dated May 22, 1973, from Donald C. Lutken, MP&L, to Thomas E. Kauper, Assistant Attorney General, Antitrust Division, U.S. Department of Justice, p. 1.

and a copy of this Notice is being forwarded to the Department of Justice for its review.

The Licensee may demand a hearing with respect to the denial described above within 30 days of the initial publication fo this Notice in the **Federal Register**. In the event a hearing is requested, any person whose interest may be affected by this proceeding may file a written petition for leave to intervene within 30 days of the initial publication of the notice of hearing in the **Federal Register**. A request for a hearing or petition 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. Interested persons should consult a current copy of 10 CFR 2.7.14 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Directorate II-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-11820 Filed 5-21-90; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

National Critical Technologies Panel; Establishment

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), it is hereby determined that the establishment of the National Critical Technologies Panel is necessary, appropriate, and in the public interest in connection with the performance of duties imposed upon the Director, Office of Science and Technology Policy, by sections 601-605 of the National Science and Technology Policy, Organization, and Priorities Act of 1976, as amended by Part E—Defense Industrial and Technology Base of the National Defense Authorization Act for Fiscal Years 1990 and 1991, Pub. L. 101-189 Title VI—National Critical Technologies Panel and other applicable law. This determination follows consultation with the General Services Administration, pursuant to section 9(a)(2) of the Federal Advisory Committee Act and the GSA Final Rule on Federal Advisory Committee Management (52 FR 45926, December 2, 1987).

1. *Name of Committee:* National Critical Technologies Panel.

2. *Purpose:* The purpose of the National Critical Technologies Panel shall prepare and submit to the President a biennial report on national critical technologies not later than October 1 of even-numbered years. These are to be the product and process technologies the panel deems most critical to the U.S. and not exceed 30 in number.

The report state, for each technology:

—The reasons for selection
—The state of development in the U.S. and other (leading) countries
—Estimates of current and anticipated levels of research and development in the U.S. and anticipated milestones for specific accomplishments by:
  —The Federal Government
  —State and local governments
  —Private industry
  —Colleges and universities.

3. *Effective Date of Establishment and Duration:* The establishment of the National Critical Technologies Panel is effective upon filing of the charter with the Director, OSTP, and with the standing committees of Congress having legislative jurisdiction over the Office of Science and Technology Policy. The National Critical Technologies Panel will terminate on December 31, 2000.

4. *Membership:* The membership of the National Critical Technologies Panel shall consist of 13 members appointed as follows:

(1) Three Federal Government Officials appointed by the Director of the Office of Science and Technology Policy, one of whom he shall designate as Chairman of the Panel;

(2) Six persons in private industry and higher education;

(3) One Official of the Department of Defense, to be appointed by the Secretary of Defense;

(4) One Official of the Department of Energy, to be appointed by the Secretary of Energy;

(5) One Official of the Department of Commerce, to be appointed by the Secretary of Commerce;

(6) One Official of the National Aeronautics and Space Agency, to be appointed by the Administrator of that Agency;

(7) The members from private industry and higher education appointed under (2) above shall serve for a term of two years; and

(8) Any vacancy in the membership of the panel shall be filled in the same manner as the original appointment.

5. *Advisory Group Operation:* The National Critical Technologies Panel will operate in accordance with provisions of the Federal Advisory Committee Act (Pub. L. 92-463), GSA Final Rule on Federal Advisory Committee Management (52 FR 45926), and other directives and instructions issued in implementation of the Act.

Dated: May 16, 1990.

Barbara J. Diering,

Committee Management Officer.

Charter

National Critical Technologies Panel

(A) Committee's official designation: National Critical Technologies Panel

(B) *Objectives and the scope of activities and duties:* The Panel shall prepare and submit to the President a biennial report on national critical technologies not later than October 1 of even-numbered years. These are to be the product and process technologies the panel deems most critical to the U.S. and shall not exceed 30 in number in any one year.

The report shall state, for each technology:

—The reasons for selection
—The state of development in the U.S. and other (leading) countries
—Estiamtes of current and anticipated levels of research and development in the U.S., and anticipated milestones for specific accomplishments by:
  —The Federal Government
  —State and local governments
  —Private industry
  —Colleges and universities

(C) *Duration:* The panel shall terminate on December 31, 2000.

(D) *Official to whom the committee reports:* The National Critical Technologies Panel ill report to the President of the United States.

Not later than 30 days after the date on which a report is submitted to the President, under section (B), the President shall transmit the report, together with any comments that the President considers appropriate, to Congress.

(E) *The agency responsible for providing the necessary support for this committee:* Except for fiscal year 1990, or as otherwise provided by law, funding and administrative support for the Penel shall be provided by the Office of Science and Technology Policy.

For fiscal year 1990, the Secretary of Defense shall reimburse the Director of the Office of Science and Technology Policy for the reasonable expenses, not to exceed $500,000, incurred by the National Critical Technologies Panel.

(F) *Description of the duties:* The panel shall, biennially, prepare and submit the National Critical Technoligies Report rquired by section 603 of the National Science and Technology Policy, Organization, and Priorities Act of 1976, as amended by Section 841 of the National Defense Authorization Act for Fiscal Year 1990 and 1991, Pub. L. 101–189.

(G) *Costs:* The estimated operating cost of this committee will be $500,000 and five full time equivalent years of effort annually.

(H) *The estimated number and frequency of committee meetings:* The National Critical Technologies Panel will meet on an approxiamtely monthly basis. Working sub-groups and staff may conduct other meetings and activities on such a schedule as is required to develop information and options for the committee.

(I) *Membership:* The Panel shall consist of 13 members appointed as follows:

(1) Three Federal Government Officials appointed by the Director of the Office of Science and Technology Policy, one of whom the Director shall designate as Chairman of the Panel;

(2) Six persons in private industry and higher education;

(3) One Official of the Department of Defense, to be appointed by the Secretary of Defense;

(4) One Official of the Department of Energy, to be appointed by the Secretary of Energy;

(5) One Official of the Department of Commerce, to be appointed by the Secretary of Commerce;

(6) One Official of the National Aeronautics and Space Agency, to be appointed by the Administrator of that Agency;

(7) The members from private industry and higher education appointed under (2) above shall serve for a term of two years; and

(8) Any vacancy in the membership of the panel shall be filled in the same manner as the original appointment.

(J) *Subgroups.* Subgroups may be formed to conduct studies on specific issues assigned by the Chairman. The Panel may utilize additional experts, both Federal and non-Federal as needed, to constitute its subgroups and study groups. These experts shall be appointed by the Chairman, and shall serve for the duration of the group upon which they serve or 365 days, whichever is sooner, unless terminated earlier by the Chairman. The Panel shall cooperate with any other committee, commission, or panel established by law which has overlapping responsibilities.

This charter for the National Critical Technologies Panel is hereby approved on: Date: May 9, 1990.

Barbara J. Diering,

Committee Management Officer.

Date Filed: May 10, 1990.

[FR Doc. 90–11861 Filed 5–21–90; 8:45 am]

BILLING CODE 3170–01–M

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34–28021; File No. SR–PSE–89–16)

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to a One-Year Pilot Which Requires the Trading Crowd to Make Ten-Up Markets

On June 7, 1989, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 therunder,[2] a proposed rule change to require PSE trading corwds to make ten-up markets for option series that the Exchange includes in a one-year pilot.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 26957 (June 22, 1989), 54 FR 27445 (June 29, 1989) and an amendment to the proposed rule change was published for comment in Securities Exchange Act Release No. 27202 (August 31, 1989), 54 FR 37177 (September 7, 1989). The Commission received four comment letters from PSE market-makers opposed to the proposed rule change and a letter from the PSE in response to these comment letters.

I. The Ten-Up Market Proposal

The Exchange proposes to establish a one-year pilot program to require PSE trading crowds to provide a depth of ten contracts for all non-borker/dealer customer orders, at the disseminated market quote at the time such orders are announced or displayed at a trading post ("Ten-Up requirement" or "Rule"). The disseminated market quote includes all quotes by market makers and floor brokers regardless of size, with the exception of market-maker orders for less than ten contracts that are represented at a trading post by a floor borker.[4] The ten-up requirement, therefore, will apply even if a bid or offer displayed as a disseminated market quote is made on behalf of a public customer order represented by a floor broker or an Order Book Official ("OBO"). If the size of the public customer quote is less than ten contracts, the trading crowd will be required to buy or sell the balance of contracts necessary to provide a depth of ten contracts. If the response of the trading crowd is insufficient to provide a depth of ten contracts, the OBO will allocate among the market makers present at the trading crowd the balance of contracts necessary to provide a depth of ten contracts.[5]

The Options Floor Trading Committee ("OFTC") will determine which option series are included in the pilot program.[6] Under the proposal, the Rule will not apply during trading rotations or if a "fast market" condition has been declared by the Exchange. In addition, two Floor Officials may grant an exemption to an options class or series within that class, if they determine that an exemption is warranted or that an error occurred in the posting of the market quotes.

The Exchange believes that the proposed rule change will protect investors and promote the public interest by assuring a minimum ten contract execution of public customer orders at the displayed bid or offer. The Exchange believes that the proposed rule change is consistent with the provisions of the Act and, in particular, Section 6(b)(5) thereof, in that the rule change is designed to promote just and

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[1] 15 U.S.C. 78s(b) (12) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] On March 13, 1990, the PSE amended its proposal to clarify the sanctions imposed on market makers and floor brokers for failure to remove, upon leaving a trading crowd, disseminated bids and offers triggering the ten-up market requirement. *See* letter from Steven W. Lazarus, Managing Attorney, Compliance, PSE, to Thomas R. Gira, Branch Chief, SEC, dated March 13, 1990 ("PSE letter No. 5").

[4] The PSE decided not to apply the Rule when market-maker orders for less than ten contracts are represented at a trading post by a floor broker because the Exchange did not believe it was reasonable or fair to obligate the remaining market-makers in a trading crowd to trade the balance of contracts necessary to comply with the Rule when another market maker, no different from themsleves, hands off an order for less than ten contracts to a floor broker. *See* letter from Steven W. Lazaraus, Staff Attorney, Compliance, PSE, to Howard L. Kramer, Assistant Director, SEC, dated February 2, 1990 ("PSE letter No. 2").

[5] Floor brokers and market-makers that cause a bid or offer to be posted are responsible for removing the quote if they leave the trading crowd. Failure to remove a posted bid or offer may result in the market maker or floor broker being held responsible for providing a depth of ten contracts upon returning to the traidng crowd, and/or being subject to disciplinary action by the Exchange. *See* Commentary .02 to Exchange Rule VI, section 87, as amended by PSE letter No. 5, *supra* note 3, at 1.

[6] The OFTC will disseminate this information, via a floor bulletin, on a monthly basis and immediately prior to the implementation of any changes in the enforcement of the Rule.

equitable principles of trade and to protect the investing public.

II. Comments Received on the Proposal

In response to the publication of the proposal, the Commission received three comment letters from two firms, a comment petition signed by twenty-four PSE market makers opposed to the Rule, and a response letter from the PSE.[7] The commentors raised objections regarding the operation and design of the Rule and argued that the Exchange violated members' due process rights in adopting the Rule.

a. Operation of the Rule

MJT Securities and First Options argued that the imposition of a ten-up requirement would distort the PSE's options pricing mechanism. In particular, they asserted that imposition of the Rule when the best bid/offer is on behalf of public customer orders would alter artificially the PSE's options markets because market would be obligated to execute up to nine contracts in instances where a public customers's order for less than ten contracts has improved the market. According to MJT Securities, such "tampering with the pricing mechanism [would have] unknown effects to the investing public [and doing so would set] a dangerous precedent [by] replacing market forces with artificial bureaucratic standards."[8] Similarly, First Options argued that the Rule would harm public investors because market makers who have less than ten contracts to trade at a price better than the prevailing market would be discouraged from putting their better market on the screens. Therefore, according to First Options, the public, not being aware of the better market available in the crowd, would receive more costly executions by always having to trade at the disseminated bid/offer.[9] First Options also argued that the Rule would expose market makers to greater risk because of their need to hedge options positions acquired by them "not of their own choosing, and at prices which they might consider ludicrous. . . ."[10]

MJT Securities and First Options also argued that, given the realities of the hectic pace and movement on the PSE options, floor, it would not always be possible to determine who was responsible for the prevailing market quotes and, further, whether or not those responsibilities were still in the trading crowd. Consequently, commentators maintained that market makers who remained in the crowd would be "hit" due to quotas left by market participants no longer in the crowd.[11] In addition, MJT asserted that the Rule "actually rewards those market makers who do *not* stay in the trading crowd but float from post to post or *worse* use independent floor brokers and never take the affirmative obligation of making markets seriously."[12] Moreover, MJT Securities argued that market makers easily can disguise their orders as public customer orders to benefit from the Rule.[13] Finally, MJT argues that the Exchange does not have enough staff to ensure that market makers will be able to update their quotas quickly in response to public customer orders.[14]

b. Design of the Rule

MJT Securities raised several concerns regarding the design of the Rule and how it could be applied consistently with other PSE Rules. In particular, the MJT letter questioned how the Rule would operate if a market maker were at or near established position limits or if a market maker were limited to "closing only" transactions pursuant to Regulation T of the Federal Reserve Board.[15] The MJT letter also questions how the Rule would be consistent with the requirement under Commentary .06 to PSE Rule VI, section 79 that market makers are obligated to trade, at a minimum, in "one lots" at the prevailing market quote. In addition, MJT argues that, because the Rule has been proposed as a pilot program, the Rule should contain criteria by which the Exchange and the Commission can evaluate its effectiveness.[16]

c. Adoption of the Rule

The commentators also argued that the PSE disregarded wide-spread member opposition to the Rule and ignored member's due process rights in an effort to gain OFTC–approval of the Rule. In particular, commentators argued that the PSE and the OFTC did not consult with the floor membership when formulating and adopting the Rule. Further, the commentators noted that the Rule was approved at an OFTC meeting when two members opposed to the Rule were absent.[17] Finally, the commentators argued that the OFTC and the PSE's Board of Governors ("Board") are not representative of the general options floor member population.[18]

d. PSE Response to Commentators

The PSE sent a letter to the Commission responding to these comments.[19] The Exchange stated that the Rule was adopted "in order to enhance the quality of the Exchange's markets and maintain its competitive standing among other options exchanges, who have enacted similar rules."[20] In response to claims that the Rule would disrupt the Exchange's options pricing mechanism, the PSE letter list the major determinants of options prices and concludes that these factors "should not be affected by the 'match or fill' requirement."[21] The PSE also noted that "since the bid/ask spread is a factor of supply and demand, if it is out of line the competitive market forces would bring it back in line thus creating no disruption in the pricing mechanisms."[22] In addition, the PSE

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[7] *See* letter from John A. Brown, Chairman, M.J.T. Securities, Inc., received July 5, 1989 ("MJT letter"); petition from 24 PSE market-makers, received July 24, 1989; letter from Craig Carberry, Compliance Officer, PSE, to Thomas Gira, Branch Chief, Division of Market Regulation, SEC, dated August 29, 1989 ("PSE Response letter"); letter from John A. Brown, Chairman, M.J.T. Securities, to Thomas Gira, Branch Chief, Division of Market Regulation, SEC, dated September 29, 1989 ("MJT letter No. 2"); and letter from George H. Van Hasselt and James Monsour, First Options of Chicago, Inc., to Thomas Gira, Branch Chief, Division of Market Regulation, SEC, dated October 4, 1989 ("First Options letter").

[8] MJT letter, *supra* note 7, at 1. *See also* First Options letter, *supra* note 7, at 2.

[9] First Options letter, *supra* note 7, at 2.

[10] *Id.* at 2.

[11] First Options letter, *supra* note 7, at 3 and MJT letter, *supra* note 7, at 3.

[12] MJT letter, *supra* note 7, at 2 (emphasis in original).

[13] *Id.* at 2.

[14] *Id.* at 4.

[15] Under § 220.12(b)(5) of Regulation T, 12 CFR 220.12, if a market maker is unable to satisfy a margin call by noon of the next business day after receipt of the call, the creditor is required to liquidate positions in the market maker's account.

[16] MJT letter, *supra* note, 7, at 3–4.

[17] *See* First Options, letter, *supra* note 7, at 2 and MJT letter, *supra* note 7, at 4.

[18] *See* First Options letter, *supra* note 7, at 1; MJT letter, *supra* note 7, at 4; and Market Maker Petition, *supra* note 7.

[19] *See* PSE Response letter, *supra* note 7. Two of the four comment letters, the First Options letter and the MJT letter No. 2, were received in response to the PSE's response letter. These letters primarily restate arguments raised in the first MJT letter and have been discussed above. The PSE also submitted five additional letters in response to questions raised by Commission staff: (1) PSE letter No. 2, *supra* note 4; (2) and letters from Steven W. Lazarus, Managing Attorney, Compliance, PSE, to Thomas R. Gira, Branch Chief, SEC, dated February 13 and 14, 1990 and March 7 and 13, 1990 (in chronological order, "PSE letters No. 3–6," respectively).

[20] PSE Response letter, *supra* note 7, at 1.

[21] *Id.* at 2. The letter lists the following factors: the price of the underlying stock; time remaining until expiration; interest rates; anticipated dividends; supply and demand for the option; and the volatility of the underlying stock.

[22] PSE letter No. 2, *supra* note 4, at 2.

argued that with implementation of the Pacific Options Exchange Trading System ("POETS"), quotes, in some instances, will be determined according to programmed theoretical models.[23] Finally, in response to MJT's concerns that the Rule would interfere with the ability of market makers to maintain quote spreads reflective of the risks in both the options and underlying equity markets,[24] the PSE responded that market makers would face the same decisions about whether to adjust their quotes, regardless of whether the Rule was in effect or not.

Indeed, the Exchange believes that the obligations created by the Rule are consistent with the obligations of market makers to contribute to the maintenance of a fair and orderly market. Specifically, the Exchange believes "that the obligation of a trading crowd to match or fill public customer orders of 10 contracts or less, which better the disseminated market, constitutes a general obligation of market makers . . . and will benefit public customers."[25] The Exchange also noted that currently several PSE trading crowds are voluntarily providing customers with a depth of ten contracts at the disseminated market quote.

In response to arguments that it would be difficult to determine at all times who is responsible for prevailing market quotes, the PSE noted that proposed Commentary. 04 to PSE Rule VI, section 62 ("Responsibilities of Floor Brokers") provides that the failure of a floor broker to remove a bid/offer that he has caused to be disseminated, upon his leaving a trading post, shall constitute a violation of section 62. Moreover, the PSE stated that market makers and floor brokers would be subject to formal disciplinary action if they failed to comply with the Rule. Finally, the PSE explained that members aware of a market participant leaving a trading crowd without having caused the removal of a market quote should bring the matter to the attention of the OBO or an Options floor Official ("Floor Official").

The PSE disagrees with MJT's assertion that market makers could "float from pit to pit" or use independent floor brokers to avoid compliance with the Rule. The Exchange stated that these market makers "would be subject to allocations of options contracts . . . in any trading crowd in which they are present at the time such allocations are made. . . ." [26] In addition, the PSE argued that market makers would not be able to disguise their orders as public customer orders because the Rule requires that member firms ascertain and document the account origin of orders taking advantage of the Rule, to ensure that only non-broker/dealer customer orders are afforded guaranteed executions. The Exchange noted that failure to ascertain account origin, or misrepresentation of account origin, would subject a member to formal disciplinary action.[27]

The Exchange also noted that, because the pilot would initially be limited to near-term options which are at, just in, and just out-of-the-money, the rule would not place an excessive burden on market makers. Moreover, the Exchange represented that both the number of market quote terminals and terminal operators has increased since May 1989, consistent with the Board's contingency when approving the rule.[28] Accordingly, the PSE believes that MJT's concerns with the Exchange's ability to update quickly market quotes is unfounded and that the "present number of quote terminal operators is sufficient to accommodate the implementation of the * * * [ten-up rule]." [29]

In response to comments regarding the design of the rule, the Exchange stated that the proposed rule does not contain an exemption from position limits for options positions assigned pursuant to the rule, and that market makers could request a position limit exemption pursuant to PSE rule VI, Section 5 ("Position Limits"). The Exchange also noted that a market maker would not be assigned contracts pursuant to the rule if he were restricted to closing only transactions under Regulation T.[30] In addition, the Exchange stated that, for those options series not included in the pilot program, Commentary .06 to PSE rule VI, section 79 would continue to require market makers to provide an execution of at least one contract if their bids or offers bettered the established market.

Lastly, the Exchange contends that "the proposed Rule was filed with proper input from and due process to its membership." [31] Specifically, the Exchange states that "the OFTC and the Board, representing the options floor population and the entire Exchange membership, participated actively in all stages of development of the rule, and sought input from the options floor membership throughout the course of its development." [32] In addition, the Exchange represents that it plans to seek input from its membership about the effectiveness of the Rule throughout the duration of the pilot program.

III. Discussion

After a careful review of the proposal, the comment letters received, and the PSE's responses to these comment letters, the Commission believes approval of the Rule is consistent with the Act. The Commission believes that the PSE proposal is a reasonable attempt to improve the quality and competitiveness of its options markets. The burden of improving market quality rightly falls on the PSE's market makers, who are charged with maintaining fair and orderly markets.[33] The Commission recognizes the Rule will impose some additional risks on PSE options market makers, nevertheless, the Commission believes that these risks are outweighed by the benefits of the PSE proposal.

First, the PSE proposal is consistent with sections 6, 11(b), and 11A of the

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[23] In general, auto-quote systems generate automatically options quotes on behalf of market makers according to an options pricing model that incorporates, among other variables, the price of the underlying security, a measure of volatility, interest rates and time to expiration. The Auto-Quote feature of POETS is used at the direction of PSE trading crowds and is available for all PSE equity options. *See* Securities Exchange Act Release No. 27633 (January 18, 1990), 55 FR 2466 (January 24, 1990) (order approving File No. SR-PSE-89-26).

[24] In particular, MJT posed the following hypothetical: an option market is quoted at 11⅛—11⅝ when the underlying stock is quoted at 36–36½, and a customer order for five contracts at 11⅜ is received at the post, causing the market markers in the crowd to be responsible for the balance of five contracts 11⅜. MJT then raised the concern that the market makers would change their quote to 10⅞–11⅜ to keep in line with the ½ point spread in the underlying stock market.

[25] PSE Response Letter, *supra* note 7, at 2.

[26] *Id.* at 3.

[27] The Exchange also noted that proposed Commentary. 05 to PSE rule VI, section 39 provides floor Officials with authority to nullify or adjust trades executed in contravention of the rule.

[28] In particular, the PSE represents that: (1) The number of market quote terminal operators ("MQTOs") has increased from 29 to 40 since May 1989; (2) its book staff break policy has been modified so that there are more MQTOs on the floor at any one time; (3) 14 POETS Auto-Quote terminals have been installed at two trading posts; and (4) the Exchange plans to install approximately 35 to 40 Auto-Quote terminals by July 1, 1990. In addition, the PSE argues that its current quote up-dating capabilities are sufficient in light of the decline in options trading volume on the PSE since May 1989 (1,633,000 contracts traded in May 1989 in comparison to 966,000 in February 1990).

[29] PSE letter No. 5, *supra* note 3, at 2. The PSE also represents that its POETS terminals, in general, and the Auto-Quote feature of these terminals, in particular, will be "fully capable of handling current trade volume and any unexpected volume surges." PSE letter No. 2, *supra* note 4, at 2.

[30] PSE Response letter, *supra* note 7, at 4.

[31] *Id.* at 6.

[32] *Id.* The Exchange also rejected the notion that there was wide-spread opposition to the rule, citing that only 24 market makers out of a total 264 PSE market makers formally protested adoption of the Rule.

[33] *See* section 11(b) of the Act and PSE rule VI, section 79.

Act in that it will result in improved quality of PSE options markets and better market maker performances. The PSE proposal will provide public customers with the assurance of order execution to a minimum depth of ten contracts at the best bid or offer. This could result in better executions of small customer orders by ensuring greater depth to the PSE options markets.

Second, the PSE proposal enhances fair competition among brokers and dealers and among exchange markets. Presently, the American Stock Exchange ("Amex"), Philadelphia Stock Exchange ("Phlx"), and Chicago Board Options exchange ("CBOE") all impose some form of ten-up requirement on their markets.[34] The PSE is entitled to competitively respond to the actions of the other options exchanges in order to encourage brokerage firms and their customers to trade in PSE options, and, where those options are multiple trades, to choose to route their orders to the PSE. In the judgment of the OFTC and the PSE Board, assuring minimum levels of liquidity is an effective competitive weapon for the PSE.

Moreover, the Commission finds that any costs imposed by the proposal are not outweighed by the important statutory benefits discussed above. The Commission does not believe that requiring brokers to execute ten contracts at their disseminated bid or offer will adversely impact the exchange's options pricing mechanism. In fact, the Commission believes the proposal should encourage market makers to become more competitive in making size markets, thereby facilitating transactions in securities, contributing to a more free and open market, and improving the quality of the PSE's options markets. The Commission also notes that the PSE proposal is designed to attract greater public customer order flow to the exchange, which would enhance market depth and liquidity and result in tighter oprtions spreads. Finally, as noted above, ten-up market requirements for public customer orders have been adopted on three other options markets nd the Commission is unaware of any negative comments or experiences with ten-up markets on those option exchanges.

[34] *See* Securities Exchange Act Release Nos. 26669 (March 27, 1989), 54 FR 13282 (March 31, 1989) (order approving Phlx ten-up Rule); 26924 (June 13, 1989), 54 FR 26284 (June 22, 1989) (order approving CBOE ten-up rule); and 27235 (September 11, 1989), 54 FR 38580 (September 19, 1989) (order approving Amex ten-up rule), respectively. Thus, since the fall of 1989, these other leading options markets, which collectively accounted for 85 percent of the options contract volume in 1989, have operated with a ten-up requirement.

Similarly, the Commission does not believe that the commentators' concerns that the ten-up requirement will make it difficult for market makers to hedge their increased positions outweighs the benefits to be derived from the rule. The PSE options listing standards are designed to ensure that only active stocks are eligible for options trading, thus these securities should permit market makers to effect necessary hedging positions. In addition, market makers can use options spreads to hedge their risks. Finally, the Commission notes that the position of options market makers on the floor provides them substantial time and place advantages over other market participants. The Commission believes that it is within the PSE's authority to impose a minimum trading requirement on its market makers, who are provided the rights and privileges to trade on the PSE floor, to assure a minimum level of liquidity for PSE options.

Finally, the Commission finds, based on the Exchange's representation that the OFTC and the Board "sought input from the options floor membership throughout the course of its development"[35] and the composition of the OFTC and the Board, [36] that PSE members' due process rights were not violated during the course of adoption of the Rule. Despite the fact that the PSE's floor membership is not represented on the OFTC and the Board in direct proportion to its percentage of the Exchange community, the Commission finds that the PSE floor is, and was at the time of adoption of the rule, adequately represented on the OFTC and the Board. In particular, seven market makers were on the OFTC and two were on the Board. In addition, the Commission notes that PSE floor members accounted for 31 percent of the Board and that this Board representation rate may be the highest among all the options exchanges.[37]

[35] PSE Response letter, *supra* note 7, at 6.

[36] When the Rule was adopted by the Board: (1) The Exchange membership consisted of 264 market makers and 61 floor brokers; (2) the OFTC was, and still is, comprised of seven market makers and seven floor brokers; and (3) the Board was composed of three public governors, eight representatives of upstairs firms, five representatives from the Exchange floor, and Dr. Maurice Mann, Chairman and Chief Executive Officer of the PSE. The representation of the floor on the Board consisted of two members from the equities floor (one specialist and one floor broker) and three members from the options floor (one floor broker and two market makers).

[37] In particular, for the other options exchanges, the percentage of their respective Boards represented by floor members, assuming the Boards are at their maximum size in accordance with their Constitutions or By-Laws, are as follows: (1) Amex—20 percent; (2) CBOE—28.6 percent; (3) Phlx—30 percent; and (4) New York Stock Exchange—18.5 percent.

Finally, the Commission has never read the statutory "fair representation" standard of section 6(b)(3) of the Act as requiring board representation equivalent to the percentage of memberships. Rather, the Commission believes this statutory standard recognizes the importance of providing upstairs retail and trading firms a reasonable voice in exchange governance. Given the critical importance of the order flow contributed by these firms it would be unrealistic and bad policy to provide them representation only equivalent to their number of memberships.

With regard to the remainder of the criticisms raised by the commentators, the Commission believes they are without merit. The Commission agrees with the PSE that it will be able to determine who is responsible for prevailing bids and offers because: (1) The Exchange can sanction a member for failure to remove a disseminated bid or offer upon leaving a trading post or failure to comply with the Rule; and (2) it is in the members' best interest that they inform OBOs or Floor Officials if they are aware that a market participant has left a trading crowd without having removed a disseminated bid or offer.

The Commission does not believe market makers will be able to avoid compliance with the rule by floating from post to post because they will be subject to the rule while in trading crowds and are obligated under Exchange rules to maintain a certain level of active trading on the options floor.[38] The Commission also agrees with the PSE that it would difficult for market makers to disguise their orders as public customer orders because of the requirement that firms ascertain and document the account origin of orders taking advantage of the Rule.

In addition, the Commission believes, based on PSE representations and the fact that the pilot initially will be limited to near-term options which are at, just

[38] Specifically, the Exchange's Options Floor Procedure Advice ("OFPA") B-9 and PSE rule VI, section 79 require that market makers execute at least 50 percent of their options trades in their Primary Appointment Zone. OFPA B-5 requires that market makers execute 40 percent of their transactions in-person, while present on the trading floor. In addition, the PSE has proposed amendments to its in-person and zone trading requirements that would make it even more difficult for market makers to evade obligations created by the Rule. In particular, the PSE proposes to increase its in-zone trading requirement to 75 percent and its in-person requirement to 60 percent. *See* Securities Exchange Act Release No. 27499 (December 4, 1989), 54 FR 51534 (December 15, 1989) (File No. SR-PSE-89-24).

in, or out-of-the-money, that the Exchange will have adequate staffing to ensure that quotes are updated in a timely fashion.[39] Moreover, the Commission believes the Auto-Quote feature of POETS will enhance the ability of market makers to update their quotes quickly.[40]

The Commission also believes that the rule is designed properly and does not conflict with other PSE rules. The rule does not eliminate the ability of market makers to seek position limit exemptions should they establish positions greater than established limits by virtue of the operation of the rule. The rule will not apply when a market maker is restricted to "closing only" transactions pursuant to Regulation T and the rule does not conflict with the requirement that, for those options not included in the pilot, market makers must provide an execution of at least one contract if their bid or offer betters the established market.

Finally, even though the Exchange has not designated precise evaluation criteria by which the pilot will be reviewed, the Commission believes that the PSE will be able to evaluate the effectiveness of the rule. In this regard, the Commission notes the PSE's commitment "to seek input from the membership throughout the duration of the pilot program, via the OFTC, and any member comments and suggestions submitted." [41] In addition, the Commission notes that, because the pilot is limited to near-term options which are at, just in, or out-of-the-money, and the Exchange has the authority to exempt option classes or option series from the pilot, operation of the pilot will be limited, controlled, and not overly burdensome on PSE market makers.[42]

[39] *See supra* notes 28–29 and accompanying text for the PSE's representation that it has a sufficient number of MQTOs to accommodate implementation of the rule.

[40] *See supra* note 29 and accompanying text for the PSE's representation that the Auto-Quote feature of POETS is fully capable of handling current PSE option volume and unexpected volume surges. This representation is consistent with the Commission's Automation Review Policy that requires, among other things, that the exchanges design their automated systems to handle, without delay, current and reasonably anticipated volume levels. *See* Securities Exchange Act Release No. 27445 (November 16, 1989), 54 FR 48703 (November 24, 1989).

[41] PSE Response letter, *supra* note 7, at 5.

[42] With regard to the remainder of the comments raised by the commentators, the Commission has considered them and believes that they have been resolved by the PSE.

Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, sections 6 and 11A.[43] Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) and 11(b) of the Act because it will promote just and equitable principles of trade, protect investors, and promote the public interest by assuring a minimum ten contract execution of public customers' orders. Also, the Commission finds that the proposal is consistent with §§ 11A(a)(1)(C) (ii) and iv) because it will promote "fair competition among brokers and dealers" and "the practicability of brokers executing investors' orders in the best market."

It is therefore order, pursuant to section 19(b)(2) of the Act,[44] that the proposed rule change (SR–PS–89–16) is approved for a one-year period ending May 16, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[45]

Dated: May 16, 1990.

Jonathan G. Katz,

Secretary.

[43] 15 U.S.C. 78f and 78k–1 (1982).

[44] 15 U.S.C. 78s(b)(2) (1982).

[45] 17 CFR 200.30–3(a)(12) (1989).

DEPARTMENT OF STATE

Advisory Committee on International Law; Partially Closed Meeting

A meeting of the Advisory Committee on International Law will take place at 10:00 a.m. on Thursday, May 31, 1990, in Room 1105 of the Department of State, 2201 C Street, NW., Washington, DC. The morning session will not be open to the public; the afternoon session (2:00 p.m. to 3:00 p.m.) will be open to the public up to the capacity of the meeting room.

The subject meeting will focus on policy and legal issues relating to the joint United States/Soviet initiative to expand the compulsory jurisdiction of the International Court of Justice; the cases of Nicaragua and Iran against the United States before the Court; the activities of the Conference on Security and Cooperation in Europe relating to dispute settlement; the United Nations Decade on International Law; and the recently established Secretary-General's Trust Fund to assist States in the Settlement of Disputes Through the International Court of Justice, as time permits. As the morning session will include examination and discussion of material classified in accordance with Executive Order 12356 or classified briefings on matters before the Committee the disclosure of which could adversely affect the foreign policy interests of the United States, it has been closed pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(1) and 5 U.S.C. 552b(c)(9)(B).

Entry to the building is controlled and will be facilitated by advance arrangements. Members of the public desiring to attend the afternoon session should, prior to May 30, notify the Office of the Assistant Legal Adviser for United Nations Affairs (telephone (202) 647–6771) of their name, affiliation, address and telephone number in order to arrange admittance. All attendees must use the C Street entrance to the building.

Dated: May 11, 1990.

Bruce C. Rashkow,

Assistant Legal Adviser for United Nations Affairs; Executive Director, Advisory Committee on International Law.

[FR Doc. 90–11864 Filed 5–21–90; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 90–035]

Memorandums of Understanding With the American Bureau of Shipping; Plan Review and Inspection of Vessels Under Construction and Tonnage Measurement of Vessels; Guidelines

ACTION: Notice.

SUMMARY: The American Bureau of Shipping (ABS) and the U.S. Coast Guard (USCG) have signed a new Memorandum of Understanding (MOU) to set forth guidelines for cooperation between ABS and the USCG in the area of plan review and inspection of vessels under construction and the tonnage measurement of vessels. This MOU incorporates appropriate features of previous MOU's which are cancelled. The MOU does not add to or reduce the scope of previously delegated functions; however, it more clearly defines the responsibilities of the parties.

DATES: This MOU is effective April 11, 1990.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Stephen L. Johnson, Ship Design Branch, Office of the Marine Safety, Security and

Environmental Protection, (202) 267–2997.

The MOU between ABS and USCG is revised in its entirety to read as follows:

Dated: May 11, 1990.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

I. Purpose

This Memorandum of Understanding (MOU) sets forth guidelines for cooperation between the American Bureau of Shipping (ABS) and the United States Coast Guard (USCG) in the area of plan review and inspection of vessels under construction and the tonnage measurement of vessels. This MOU incorporates appropriate features of previous MOU's which are cancelled. Nothing in this Memorandum alters in any way the statutory or regulatory authority of the USCG or the classification responsibilities of the ABS.

II. Parties

A. The USCG is statutorily responsible for safety of life and property at sea, and protection of the marine environment under the provisions of title 46, U.S. Code (U.S.C.), part B-Inspection and Regulation and Vessels and 33 U.S.C. chapter 33-Prevention of Pollution from Ships respectively. Under these authorities the USCG prescribes regulations for the design, construction, outfitting (including lifesaving equipment), operation and inspection of certain vessels. Regulations prescribed by the USCG incorporate ABS Rules. In accordance with 46 U.S.C. 3316, the USCG, in order to carry out its inspection and plan review responsibilities, may rely on ABS reports, documents, and certificates. The USCG also has statutory authority under 46 U.S.C. part J-Measurement of Vessels, for the measurement and the certification of tonnages for vessels required or eligible to be documented as vessels of the United States. Under 46 U.S.C. 14103, and 46 Code of Federal Regulations (CFR) part 69, authority was delegated to the ABS to measure certain vessels. This MOU fufills the requirements of 46 CFR 69.27(d).

B. The ABS is a corporation organized under the laws of the State of New York. The ABS was established to provide to shipowners, shipbuilders, underwriters, shippers and all interested in maritime commerce, whether domestic or foreign, a faithful and accurate classification and Registry of mercantile shipping and to aid and develop the Merchant Marine of the United States. The ABS is charactered for the purpose of promoting the security of life and property on the seas.

As the recognized U.S. classification society in accordance with 45 U.S.C. 3316, the ABS is maintained as an organization having no capital stock and paying no dividends. The Secretary of Transportation appoints two active representatives, one of which is the Commandant of the USCG, to represent the Government on the Board of Managers of the ABS. Affected American interests and members of the Coast Guard serve on technical and special committees and have a voice and vote in the development of Rules for classification published by the ABS. A standing committee of USCG and ABS Headquarters personnel periodically reviews the relationships between the organizations.

III. USCG Acceptance of ABS Plan Review and Inspection

The USCG will:

- Accept plan review and inspection described in USCG Navigation and Vessel Inspection Circulars (NVIC's) for implementing this agreement as part of the USCG vessel certification process for new vessels or vessels undergoing a major modification without review or attendance by USCG personnel.
- Maintain an oversight program to ensure that USCG regulatory and statutory requirements are being applied properly by ABS personnel.
- Provide the ABS with policies, interpretations and instructions necessary to perform the delegated plan review and inspection functions.
- Designate persons to serve as points of contact for periodic review, clarification, and reinforcement of the working relationship between the USCG and ABS. A senior officer will be assigned to the ABS Headquarters.
- Conduct periodic meetings at all levels with ABS counterparts to promote cooperation and handle matters of interpretation and policy.
- Process appeals resulting from the actions of the ABS in accordance with pertinent regulations.

The ABS will:

- When performing plan review or inspection functions on behalf of the USCG, ensure their staff requires compliance with the requirements of (1) the International Convention for the Safety of Life at Sea (SOLAS) or other international conventions to which the United States is party, (2) United States statutes, (3) USCG regulations including specific industry standards incorporated, and (4) Rules and standards of the ABS, in addition to interpretations, and policies of the USCG that would normally be applied to U.S. flag vessels.
- Promptly notify the USCG at any time the ABS cannot fulfill its responsibilities under this MOU for any reason.
- When disputes arise due to the vessel owner not being willing or able to comply with requirements given under the above standards, ensure that their staff complies with the appeal procedures found in 46 CFR 1.03.
- Designate persons at the ABS Headquarters and local levels to serve as points of contact with the USCG on matters of interpretation, policy and the working relationship.
- Conduct inspections and plan review of a vessel on behalf of the USCG only by full time employees of ABS, and not by employees acting as consultants for that same vessel. ABS will not use an employee to inspect or conduct plan review where such employee has a real or perceived conflict of interest because of his position or status with any other party.
- Promptly notify the USCG of any condition observed by ABS aboard any vessel subject to Certification by the USCG which fails to meet the requirements of the applicable international conventions, U.S. laws or regulations, if the condition is, or will remain, uncorrected upon completion of the ABS surveyor's visit. Notification of any condition observed by ABS will be made as soon as possible to allow the USCG the opportunity to inspect the vessel.
- Maintain records of inspections and plan review done on behalf of the USCG which shall be made available to the USCG upon request.
- Provide written confirmation that the vessel was constructed and inspected in accordance with the pertinent regulations of the USCG and advise the USCG of any outstanding requirements or limitations on areas the ABS has inspected.

IV. USCG Acceptance of ABS Tonnage Certificates

The USCG will:

- Accept the tonnage measurement services delegated in USCG Regulations as part of the USCG vessel certification process without review or attendance by USCG personnel.
- Maintain a monitoring program to ensure that USCG regulatory and statutory requirements are being applied properly by ABS personnel.
- Provide the ABS with policies, interpretations and instructions

necessary to perform the delegated tonnage measurement functions.

• Designate persons, in addition to the senior officer assigned to ABS Headquarters, to serve as points of contact for periodic review, clarification, and reinforcement of the working relationship between the USCG and ABS.

• Conduct periodic meetings at all levels with ABS counterparts to promote cooperation and handle matters of interpretation and policy.

• Process appeals resulting from the actions of the ABS in accordance with pertinent USCG regulations.

The ABS will:

• When performing tonnage measurement functions on behalf of the USCG, ensure that their staff complies with and applies the requirements of 46 U.S.C. part J, the applicable portions of 46 CFR part 69 and the articles and regulations of the International Convention on Tonnage Measurement of Ships, 1969, and all interpretations, and policies of the USCG within the scope of the authority delegated that would normally be applied to U.S. flag vessels.

• Not use an employee or contractor to measure and certify the tonnage of a vessel if that employee or contractor is acting or has acted as a tonnage consultant for that same vessel.

• Designate persons at the ABS Headquarters and local levels to serve as points of contact with the USCG on matters of interpretation, policy and the working relationship.

• Accept all requests to perform delegated services without regard to the vessel's location, unless prohibited to do so under the laws of the United States or under the laws of the jurisdiction in which the vessel is located.

• Physically inspect each vessel before issuing a tonnage certificate.

• Maintain a tonnage measurement file for each U.S. vessel that the organization measures which shall be accessible to the USCG.

• Provide the USCG with current schedules of measurement fees and related charges.

• Permit observer status representation by the USCG at all formal discussions that may take place between the ABS and other vessel tonnage measurement organizations pertaining to tonnage measurement of U.S. vessels or to the systems under which U.S. vessels are measured.

• Comply with routine procedural provisions jointly agreed to by the USCG and ABS.

V. Effective Date

This memorandum is effective upon acceptance by both parties as indicated by signatures below.

VI. Termination

The previous Memorandum of Understanding on plan review and inspection of vessels under construction and the Memorandum of Agreement on tonnage measurement of vessels are cancelled. This memorandum may be terminated by one party after written notice to the other party.

Dated: April 11, 1990.

P.A. Yost,

Commandant, United States Coast Guard.

Dated: March 30, 1990.

R.T. Soper,

Chairman and President, American Bureau of Shipping.

[FR Doc. 90-11785 Filed 5-21-90; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Acceptance of Noise Exposure Maps for Tucson International Airport, Tucson, AZ

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Tucson Airport Authority for Tucson International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: the effective date of the FAA's determination on the noise exposure maps is May 11, 1990.

FOR FURTHER INFORMATION CONTACT: David B. Kessler, Airport Planner, Airports Division, AWP-611.2, Federal Aviation Administration, Western-Pacific Region, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007, Telephone 213/297-1534.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Tucson International Airport are in compliance with applicable requirements of part 150, effective May 11, 1990.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Tucson Airport Authority. The specific maps under consideration are Exhibits "S" and "T" in the submission. The FAA had determined that these maps for Tucson International Airport are in compliance with applicable requirements. This determination is effective on May 11, 1990. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map

depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination of the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, Western-Pacific Region, Airports Division, Room 6E25, 15000 Aviation Boulevard, Hawthorne, California 90261.

Tucson Airport Authority, 7005 South Plumer Avenue, Tucson, Arizona 85706.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on May 11, 1990.

Herman C. Bliss,

Manager, Airports Division, AWP-600.

[FR Doc. 90-11798 Filed 5-21-90; 8:45 am]

BILLING CODE 4910-13-M

Intent to Prepare an Environmental Impact Statement and to Hold a Scoping Meeting for Phoenix Sky Harbor International Airport, Phoenix, AZ

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice to hold a public scoping meeting.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for development recommended by the Master Plan for Phoenix Sky Harbor International Airport. To ensure that all significant issues related to the proposed action are identified, a public scoping meeting will he held.

FOR FURTHER INFORMATION CONTACT: David B. Kessler, Airport Planner AWP-611.2, Federal Aviation Administration, Airports Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007, Telephone: 213/297-1534.

SUPPLEMENTARY INFORMATION: The FAA, in cooperation with the City of Phoenix, Arizona will prepare an Environmental Impact Statement for development recommended by the Master Plan for Phoenix Sky Harbor International Airport.

Since the airport is located in an area that currently contains noncompatible land uses in terms of aircraft noise; is located in an area where the potential for significant environmental/archeological impacts exist, and is controversial, a decision has been made to prepare an Environmental Impact Statement (EIS). The Joint Lead Agencies for the preparation of the EIS will be the Federal Aviation Administration (FAA) and the City of Phoenix.

Development recommended by the Master Plan to be evaulated in the EIS includes:

1. Construction of a third parallel runway and associated taxiway system.

2. Relocation of the Arizona Air National Guard Facility.

3. Land Acquisition to accommmodate the proposed construction and for approach protection.

4. Extension of Runway 8L/26R.

5. Future Terminal Building Construction.

Alternative:

The existing configuration of the airport precludes reorientation of the runways or relocation to different portions of the airport. Therefore the alternative to the proposed projects is the "No Action" alternative.

Comments and suggestions are invited from Federal, State and local agencies, and other interested parties to ensure that the full range of issues related to these proposed projects are addressed and all significant issues identified. Comments and suggestions may be mailed to the FAA information contract listed above.

Public Scoping Meeting

To facilitate receipt of comments, the public scoping meeting will be held on Thursday June 21, 1990. The meeting will be held at 10 a.m. m.s.t., the the Aviation Division's Training Room on the 3rd Floor West Mezzanine of Terminal 3, Phoenix Sky Harbon International Airport, 3400 Sky Boulevard, Phoenix, Arizona.

Issued in Hawthorne, California on Tuesday, May 15, 1990.

James J. Wiggins,

Acting Manager, Airports Division, AWP-600.

[FR Doc. 90-11799 Filed 5-21-90; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-90-22]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 11, 1990.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on May 15, 1990.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 12227.

Petitioner: National Business Aircraft Association, Inc.

Sections of the FAR Affected: 14 CFR 91.169 and 91.181.

Description of Relief Sought: To extend Exemption No. 1637, as

amended, that allows petitioner's members to operate small civil airplanes and helicopters of U.S. registry under the operating rules of §§ 91.183 through 91.215 and the inspection procedures of § 91.169(f). Exemption No. 1637, as amended, will expire on September 30, 1990.

Docket No.: 23647.
Petitioner: Embry-Riddle Aeronautical University.
Sections of the FAR Affected: 14 CFR 141.65.
Description of Relief Sought: To extend Exemption No. 3859, as amended, that permits petitioner to recommend graduates of its flight instructor certification courses for flight instructor certificates (with the associated ratings) without having to take the FAA written or flight tests. Exemption No. 3859, as amended, will expire on September 30, 1990.

Docket No.: 25298.
Petitioner: Petroleum Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.213(b).
Description of Relief Sought: To allow petitioner the use of weather observations taken at a location not at the airport where the IFR operations are conducted.

Docket No.: 26090.
Petitioner: Keystone Flight Services.
Sections of the FAR Affected: 14 CFR 21.197(c)(2).
Description of Relief Sought: To allow a special flight permit that would authorize the petitioner to conduct operations under part 135 for those aircraft they operate and maintain under a continuous airworthiness maintenance program under § 135.411(a)(2) or (b). Specifically, the exemption, if granted, would allow the Flight Standards District Office to issue this permit for transport-category helicopters used by the petitioner in emergency medical evacuation operations.

Dispositions of Petitions

Docket No.: 22441.
Petitioner: United Airlines.
Sections of the FAR Affected: 14 CFR 121.433(c)(1)(iii), 121.441(a)(1), and 121.441(b)(1) and Part 121, Appendix F.
Description of Relief Sought/ Disposition: To correct errors in Exemption No. 3451E, issued on October 31, 1989. That exemption allows petitioner to conduct an FAA-monitored training program under which petitioner's pilots in command, second in command, and flight engineers meet the annual ground and flight recurrent training requirement and the annual proficiency check requirements, subject to certain conditions and limitations.

Grant, May 4, 1990, Exemption No. 3451F.

Docket No.: 23685.
Petitioner: Department of the Navy, Marine Corps Air Station, Beaufort, SC.
Sections of the FAR Affected: 14 CFR 101.23(b) and 101.23(c).
Description of Relief Sought/ Disposition: To allow use of Missile Plume Simulator GTR–18 Class B Fireworks "Smokey Sam," within established controlled firing areas of Marine Corps Air Station Beaufort and Beaufort County Airport, South Carolina.

Grant, May 11, 1990, Exemption No. 3938B.

Docket No.: 25233.
Petitioner: Alaska Air Carriers Association.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought/ Disposition: To extend Exemption No. 4802, as amended, that allows pilots employed by the petitioner's member carriers to perform preventive maintenance by removing and/or replacing the passenger seats of aircraft used in Part 135 operations.

Grant, May 10, 1990, Exemption No. 4802B.

Docket No.: 25980.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR 121.337(f).
Description of Relief Sought/ Disposition: To amend Exemption No. 5132, as amended, that extends the compliance date for the installation of protective breathing equipment (PBE) for use in combatting in-flight fires on board airplanes from January 31, 1990, to July 31, 1990, for specific airlines. The amendment would add United Airlines to the list of airlines covered by the exemption.

Grant, May 10, 1990, Exemption No. 5132B.

[FR Doc. 90–11797 Filed 5–21–90; 8:45 am]
BILLING CODE 4910–13–M

Federal Railroad Administration

[BS–Ap–No. 2945]

Public Hearing; CSX Transportation

The CSX Transportation has petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed discontinuance of the automatic block signal system between HK Tower and Lexington, Kentucky. This proceeding is identified as FRA Block Signal Application No. 2945.

The FRA has issued a public notice seeking comments of interested parties and conducted a field investigation in this matter. After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on July 25, 1990, in room 345 of the John C. Watts Federal Building at 330 West Broadway in Frankfort, Kentucky.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR part 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on May 14, 1990.

J. W. Walsh,

Associate Administrator for Safety.

[FR Doc. 90–11786 Filed 5–21–90; 8:45 am]
BILLING CODE 4910–06–M

[BS–Ap–No. 2923]

Public Hearing; Southern Pacific Transportation Co.

The Southern Pacific Transportation company has petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed discontinuance and removal of the traffic control system on the 901 Track near Colton, California. This proceeding is identified as FRA Block Signal Application Number 2923.

The FRA has issued a public notice seeking comments of interested parties and conducted a field investigation in this matter. After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on July 11, 1990, in the Board Chambers Room of the County Administration Building at 385 North Arrowhead Avenue, San Bernardino, California.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR part 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on May 14, 1990.

J. W. Walsh,

Associate Administrator for Safety.

[FR Doc. 90-11787 Filed 5-21-90; 8:45 am]

BILLING CODE 4910-06-M

[RS&I-Ap-No. 1064]

Public Hearing; Union Pacific Railroad Co.; Northeast Kansas & Missouri Division, Mid Michigan Railroad Co., Inc.

The Union Pacific Railroad Company and the Northeast Kansas and Missouri Division, Mid Michigan Railroad Company, Incorporated have jointly petitioned the Federal Railroad Administration (FRA) seeking approval for relief from § 236.566 of the Rules, Standards and Instructions (49 CFR 236.566) to the extent that the Northeast Kansas & Missouri Division, Mid Michigan Railroad Company be permitted to operate locomotives not equipped with automatic cab signal apparatus in equipped territory between Upland and Marysville, Kansas.

This proceeding is identified as FRA Rules, Standards and Instructions Application Number 1064.

The FRA has issued a public notice seeking comments of interested parties and conducted a field investigation in this matter. After examining the carriers' proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on July 18, 1990, in the Clifton Hurst Room of the Buchanan County Courthouse at 5th and Jules Streets in St. Joseph, Missouri.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on May 14, 1990.

J. W. Walsh,

Associate Administrator for Safety.

[FR Doc. 90-11788 Filed 5-21-90; 8:45 am]

BILLING CODE 4910-06-M

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition; Clarence M. Ditlow, III

This notice sets forth the reasons for the denial of a petition submitted to the National Highway Traffic Safety Administration ("NHTSA") under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*).

By letter of April 23, 1990 from Clarence M. Ditlow III, the Center for Auto Safety ("CFAS") petitioned NHTSA to conduct a defect investigation into allegations of steering binding and lock-up on all 1980 through 1988 General Motors ("GM") front wheel drive cars.

The agency previously investigated alleged steering problems in 1980 through 1986 GM front wheel drive vehicles (EA87-006), but had closed the investigation due to the lack of a defect trend that related to safety. An earlier investigation on 1980 through 1981 GM X-body vehicles (EA83-015) was closed for the same reason. The 1987 and 1988 model year vehicles referred to in the petition are equipped with power steering systems similar to the 1986 vehicles covered by EA-87-006.

The information submitted with the CFAS petition consists mainly of complaint reports describing a problem, which becomes worse as vehicle mileage increases, of temporary lack of power assisted steering in a vehicle that is cold. Although petitioner claims in its letter that these new complaints report steering lock-up, as opposed to loss of power assist, a comparison of the two groups of complaints shows that most of the complaints in each group concern the latter problem rather than the former. Therefore, the new complaints do not contain any information that would lead the agency to reach a different conclusion that that reached in EA87-006 or EA83-015.

After reviewing the findings of the previous two investigations and the information presented with the petitioner's letter, NHTSA has concluded that there is not a reasonable possibility that an order concerning the notification and remedy of a safety-defect in relation to the petitioner's allegation would be issued at the conclusion of an investigation. Further commitment of resources in this case does not appear to be warranted. Therefore, the petition has been denied..

Authority: Sections 124, National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on May 16, 1990.

George L. Reagle,

Associate Administrator for Enforcement.

[FR Doc. 90-11755 Filed 5-21-90; 8:45 am]

BILLING CODE 4910-59-M

Denial of Motor Vehicle Defect Petition; Paul Roupinian

This notice sets forth the reasons for the denial of a petition for a defect investigation involving Nissan/Datsun 280ZX and 300ZX vehicles. The petition appears to have been submitted under section 124 and/or section 156 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1410a, 1416).

Mr. Paul Roupinian submitted a petition dated March 4, 1990, requesting the agency to issue an order for Nissan Motor Corporation (Nissan) to recall 1979 through 1987 Nissan/Datsun 280ZX and 300ZX vehicles equipped with automatic transmissions sold in the United States to remedy an alleged safety-related defect which causes inadvertent sudden vehicle acceleration. Mr. Roupinian stated that the defect origin is electro-magnetic interference (EMI) "which is emitted within the subject vehicles and enacts the cruise control in the Nissan vehicles into an instant mode of full power via the throttle unit." He claimed that Nissan was aware of the defect and has developed a remedy to reduce EMI by installing a filter known as a "grid buffer" and sometimes also by replacing wiring loom/harnesses in the subject vehicles.

The agency previously investigated alleged unintended sudden vehicle

acceleration of the subject vehicles (Preliminary Evlauation PE85–008, and Engineering Analysis EA85–029). The investigation was closed on July 11, 1989, after the manufacturer initiated a defect notification and remedy campaign to install a gear shift interlock system in the subject vehicles. According to Nissan's most recent quarterly report to NHTSA, to date approximately 61 percent of the subject vehicles have been remedied with shift interlock systems. NHTSA's records include very few complaints about vehicles that have received that modification.

The Closing Report for EA85–029 states that the agency's investigation did not detect a mechanical or electrical/electronic failure or malfunction (including EMI) common to the subject Nissan vehicles that could be related to sudden unexpected vehicle acceleration coupled with a simultaneous lack of braking system effectiveness. After receiving Mr. Roupinian's petition, the Office of Defects Investigation contacted Nissan concerning a filter reportedly used to reduce EMI in the subject vehicles, as mentioned in the petitioner's letter. Nissan stated that it was not aware of any filter such as the "grid buffer" described by petitioner used to reduce EMI in the subject vehicles.

Because Mr. Roupinian has presented no new, substantive information relating to the subject inquiry, this matter can be resolved without holding a public hearing under section 156 of the Safety Act or commiting additional agency investigative resources. Moreover, there is no reasonable possibility that the remedial order requested in the petition would be granted at the conclusion of an investigation. Accordingly, the petition is denied.

Authority: Sections 124 and 156 of the National Traffic and Motor Vehicle Safety Act, as amended (15 U.S.C. 1410a, 1416); delegations of authority at 49 CFR 1.50 and 501.8(g).

Issued on May 16, 1990.

George L. Reagle,

Associate Administrator for Enforcement.

[FR Doc. 90–11756 Filed 5–21–90; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 90–03–EX–NO2]

Cantab Motors; Grant of Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

This notice grants the petition by Cantab Motors of Round Hill, Va., for a temporary exemption from the passive restraint requirement of Motor Vehicle Safety Standard No. 208 *Occupant Restraint Systems.* The basis of the petition was that compliance would cause the petition substantial economic hardship, and that the petitioner has, in good faith, attempted to meet the requirements of the standard.

Notice of the petition was published on March 29, 1990, and an opportunity afforded for comment (55 FR 11714).

The make and type of passenger car for which exemption was requested is the Morgan open car, or convertible. The British manufacturer of the Morgan has not offered its vehicle for sale in the United States since the early days of the Federal motor vehicle safety standards. In recent years, however, Cantab Motors has bought a small number of incomplete Morgan cars from the British manufacturer, and imported them as motor vehicle equipment, completing manufacture by the addition of engine and fuel system components, and sold them in the United States. They differ from their British counterparts, not only in equipment items and modifications necessary for compliance with the Federal motor vehicle safety standards, but also in their fuel system components and engines, which are propane fueled. As the person completing manufacture of the vehicle, Cantab certifies its conformance to all applicable Federal safety and bumper standards. This has been a long-standing practice, and acceptable to NHTSA. The vehicle completed by Cantab in the U.S. is deemed sufficiently different from the one produced by Morgan in Britain that Cantab may be regarded as its manufacturer, not its converter, even though the brand names are the same.

Cantab completed assembly of eight Morgans for sale in the U.S. in the 12-month period preceding the filing of its petition. It argued that compliance with the passive restraint requirements of Standard No. 208 would cause it substantial economic hardship, and that it had in good faith attempted to comply with the standard. It asked for a 3-year exemption from the requirements, during which time it would continue to provide protection though its current three-point lap-shoulder belt system. Petitioner had a net loss exceeding $34,000 in 1988, and a cumulative net loss exceeding $98,000 for its first three years.

Describing its good faith efforts to conform to the automatic restraint requirements, Cantab, finding that no current system utilized in an open car was adaptable to a Morgan, including the automatic restraint system in Alfa Romeo convertibles, decided to support and contribute to the feasibility study commissioned by Morgan Motor Company. This study, conducted by the Motor Industry Research Association (MIRA), concluded that the development costs of an airbag system were too high to be feasible. However, MIRA recommended an automatically deploying belt. The costs of development of this system are estimated in excess of 200,000 Pounds Sterling. Morgan and Cantab have entered into joint development of the system, which is represented as substantially close to completion. Petitioner estimates that such a system will be operational in cars it assembles within the 3-year period for which it seeks exemption, and it intends to amortize development costs over the 3-year period.

Over 91 percent of Cantab's revenue has been generated from new car sales. Therefore, a denial of the petition would force it to go out of business. The company argued that an exemption would be in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act, because its vehicles contribute to the alternative fuel industry. Continued availability of the Morgan, whose parent company has manufactured cars for 80 years, would help to maintain the existing diversity of motor vehicles in the United States. The small number of vehicles likely to be covered by the exemption, and the limited use that is made of them for pleasure rather than for commuting or long trips, would have an immaterial effect upon motor vehicle safety in Cantab's opinion.

Finally, the company argued that its petition was virtually identical to that of another U.S. assembler of Morgan cars, Isis Imports, which on October 26, 1989, was granted a 3-year exemption from the automatic restraint requirements of Standard No. 208 (54 FR 43647).

No comments were received on the petition.

It is apparent from the Cantab petition that the slender volume of vehicles it sells afford it only a marginal existence under the best of circumstances, and has not provided it with a profit. Its petition indicates an awareness of the automatic restraint requirements, and a support of the efforts of Morgan to develop an automatically deploying belt. Thus it is manifest that to require to Cantabs to comply with the automatic restraint requirements recently applicable to it would cause it substantial economic hardship and that it has, in good faith, attempted to comply with the standard.

The addition to the vehicles of a propane-fueled engine is consistent with efforts within the Administration to promote alternate fuels, even if the

volume is not significant. An exemption is also consistent with the objective of the Vehicle Safety Act to continue to make available to consumers a diverse choice of motor vehicles. The agency also notes that the overall impact upon safety will be small; if the present rate of importation is maintained, only about two dozen vehicles will be manufactured under the exemption. Further, they will be equipped with a restraint system that complied before September 1, 1989.

In consideration of the foregoing, it is hereby found that the petitioner has met its burden of persuasion that compliance would cause it substantial economic hardship, and that it has, in good faith, attempted to comply with Standard No. 208. It is further found that an exemption would be in the public interest and consistent with the objectives of the Vehicle Safety Act. Accordingly, Cantab Motors is granted NHTSA Temporary Exemption No. 90–3, expiring May 1, 1993, from sections S4.1.2.1. and S4.1.2.2 of 49 CFR 571.208 Motor Vehicle Safety Standard No. 208 *Occupant Restraint Systems.*

(15 U.S.C. 1410; delegation of authority at 49 CFR 1.50)

Issued on: May 16, 1990.

Jeffrey R. Miller,

Deputy Administrator.

[FR Doc. 90–11811 Filed 5–21–90; 8:45 am]

BILLING CODE 4910–01–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, 1990, Public Law 101–164, signed into law by President George Bush on November 21, 1989, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the **Federal Register** every 30 days of grants 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, Director, Office of Capital and Formula Assistance, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street, SW., room 9301, Washington, DC 20590, (202) 366–1662.

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 number	Grant amount	Obligation date
Cobb County, Atlanta, GA	GA–03–0035	$727,500	05/08/90
City of Detroit, Detroit, MI	MI–03–0117	12,000,000	05/08/90
New Jersey Transit Corporation, Northeastern NJ	NJ–03–0076–01	35,400,000	04/25/90
New Jersey Transit Corporation, Northeastern NJ	NJ–03–0081–01	4,800,000	04/25/90
New Jersey Transit Corporation, Northeastern, NJ	NJ–03–0083	1,470,000	05/08/90
Ohio Department of Transportation, Cleveland, OH	OH–03–0107	1,757,785	05/07/90

SECTION 9 GRANTS

Transit property	Grant number	Grant amount	Obligation date
City of Modesto, Modesto, CA	CA–90–X351–00	$4,400,678	04/11/90
Santa Clara County Transit District, San Jose, CA	CA–90–X382–01	919,191	04/06/90
City of Fresno, Fresno, CA	CA–90–X383–00	2,847,062	04/18/90
Monterey County, Seaside-Monterey, CA	CA–90–X387–00	156,416	04/27/90
Monterey-Salinas Transit, Seaside-Monterey, CA	CA–90–X389–00	1,531,248	04/09/90
Commuter Rail Division of the Regional Transportation Authority, Chicago, IL-Northwestern IN	IL–90–X159–00	21,161,954	04/10/90
Tri-County Metropolitan Transportation District of Oregon Portland, OR-WA	OR–90–X031–00	6,655,806	04/09/90
Dallas Area Rapit Transit, Dallas-Ft. Worth, TX	TX–90–X175–00	20,427,364	04/03/90

Issued on: May 15, 1990.

Brian W. Clymer,

Administrator.

[FR Doc. 90–11789 Filed 5–21–90; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: May 16, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treaury Department Clearance Officer, Department of the Treasury, room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0181.
Form Number: 4768.
Type of Review: Revision.
Title: Application for Extension of Time to File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes.
Description: Form 4768 is used by estates to request an extension of time to file an estate (and GST) tax return and/or to pay the estate (and GST) taxes and to explain why the extension should be granted. IRS uses

the information to decide whether the extension should be granted.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents: 18,000.
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping, 13 minutes
Learning about the law or the form, 16 minutes
Preparing the form, 21 minutes
Copying, assembling, and sending the form to IRS, 20 minutes
Frequency of Response: On occasion.
Estimated Total Recordkeeping/ Reporting Burden: 21,060 hours.
OMB Number: 1545–0244.
Form Number: 6199.
Type of Review: Extension.
Title: Certification of Youth Participating in a Qualified Cooperative Education Program.
Description: Internal Revenue Code section 51(d)(8) requires that qualified school cooperative programs must certify their qualified students as youths participating in a qualified cooperative program in order that wages paid to the students by an employer be qualified for the jobs credit. Form 6199 provides for this certification.
Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 64,000.
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping, 7 minutes
Learning about the law or the form, 7 minutes
Preparing the form, 24 minutes
Copying, assembling, and sending the form to IRS, 20 minutes
Frequency of Response: On occasion.
Estimated Total Recordkeeping/ Reporting Burden: 62,080 hours.
OMB Number: 1545–0256
Form Number: 941c and 941c PR.
Type of Review: Revision.
Title: Statement to Correct Information.
Description: Used by employers to correct previously reported FICA or income tax data. It may be used to support a credit or adjustment claimed on a current return for an error in a prior return period. The information is used to reconcile wages and taxes previously reported or used to support a claim for refund credit or adjustment of FICA or income tax.
Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 1,064,500.
Estimated Burden Hours Per Response/ Recordkeeping:
941c, 7 hours, 32 minutes
941c PR, 5 hours, 65 minutes
Frequency of Response: On occasion.
Estimated Total Recordkeeping/ Reporting Burden: 7,932,160 hours.
OMB Number: 1545–0582.
Form Number: 1139.
Type of Review: Extension.
Title: Corporation Application for Tentative Refund.
Description: Form 1139 is filed by a corporation that has a net operating loss, capital loss, or unused credits to carry the loss or credits to a prior tax year. IRS uses Form 1139 to determine if the claim for credit or refund is correct.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 3,000.
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping, 26 hours, 19 minutes
Learning about the law or the form, 3 hours, 8 minutes
Preparing the form, 8 hours, 21 minutes
Copying, assembling, and sending the form to IRS, 1 hour, 20 minutes
Frequency of Response: On occasion.
Estimated Total Recordkeeping/ Reporting Burden: 117,390 hours.
OMB Number: 1545–0795.
Form Number: 8233.
Type of Review: Extension.
Title: Exemption From Withholding on Compensation for Independent Personal Services of a Nonresident Alien Individual.
Description: Compensation paid to nonresident alien (NRA) independent contractors is generally subject to 30% withholding. NRA employees may be subject to 30% withholding or graduated rates. However, such compensation may be exempt from withholding because of a U.S. tax treaty or personal exemption amount. Form is used to request exemption. Withholding agent reviews form and accepts it or not.
Respondents: Individuals or households, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 6,800.
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping, 26 minutes
Learning about the law or the form, 12 minutes
Preparing and sending the form to IRS, 41 minutes
Frequency of Response: Annually.
Estimated Total Recordkeeping/ Reporting Burden: 9,044 hours.
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90–11816 Filed 5–21–90; 8:45 am]

BILLING CODE 4830–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Old Master Drawings from the National Gallery of Scotland" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art in Washington, DC, beginning on or about June 24, 1990, to on or about September 23, 1990, and at the Kimbell Art

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202/619–5078, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Museum, Fort Worth, Texas, beginning on or about November 3, 1990, to on or about January 13, 1991, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: May 16, 1990.

R. Wallace Stuart,

Deputy General Counsel.

[FR Doc. 90-11792 Filed 5-21-90; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 99
Tuesday, May 22, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: May 15, 1990, 55 FR 20237.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: May 16, 1990, 10:00 a.m.

CHANGE IN THE MEETING: The following Item has been added to the Regular Agenda of May 16, 1990:

Item No., Docket No., and Company

E-2—EC90-10-001, ER90-143-001, ER90-144-001, ER90-145-001 and EL90-9-001, Northeast Utilities Service Company (Re Public Service Company of New Hampshire)

Lois D. Cashell,

Secretary.

[FR Doc. 90-11904 Filed 5-17-90; 8:45 am]

BILLING CODE 6717-02-M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE (NCLIS)

DATE AND TIME: June 28 and 29, 1990.

PLACE: Hyatt Regency Chicago, in Illinois Center, Chicago, Illinois.

STATUS:

June 28, 1990
9:00 a.m.-9:30 a.m.—Open
Opening Remarks, Chairman Reid
Report of Ad Hoc Search Committee
9:30 a.m.-5:15 p.m.—Closed
Sec. 1703.202 (2) and (6) of the Code of Federal Regulations, 45 CFR part 1703
June 29. 1990
8:00 a.m.-4:30 p.m.—Open

MATTERS TO BE DISCUSSED:

Opening Remarks, Chairman Reid
Report from Closed Meeting
Approval of Agenda
Approval of March Minutes
Chairman's Report
Administrative Reports
WHC Advisory Committee Recommendations
Legislative/Information Policies Committee Report
Ad Hoc Public Information Policies Report
International Committee Report
Budget Committee Report
Special Populations Committee Report
Ad Hoc Policies and Procedures Report
Public Affairs Committee Report
Information Literacy Recommendations
NCLIS Goals
New Business

Special provisions will be made for handicapped individuals by calling Barbara Whiteleather (202) 254-3100, no later than one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Susan K. Martin, NCLIS Executive Director, 1111 18th Street NW., Suite 310, Washington, DC 20036, (202) 254-3100.

Dated: May 14, 1990.

Susan K. Martin,

Executive Director.

[FR Doc. 90-11951 Filed 5-18-90; 11:03 am]

BILLING CODE 7527-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of May 21, 28, June 4, and 11 1990.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of May 21

There are no Commission meetings seheduled for the Week of May 21

Week of May 28—Tentative

Thursday, May 31

11:30 a.m.
Affirmation/Discussion and Vote (Public meeting) (if needed)

Week of June 4—Tentative

Monday, June 4

9:00 a.m.
Briefing by ALWR Utility Steering Committee on Advanced Light Water Reactor Certification Issues (Public meeting)

Friday, June 8

10:00 a.m.
Briefing on IIT Report on Vogtle Event (Public meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public meeting)(if needed)

Week of June 11—Tentative

Thursady, June 14

2:00 p.m.
Briefing on Accident Sequence Precursor Program (Public meeting)

Friday, June 15

10:00 a.m.
Briefing on Staff Recommendations for Implementation of Severe Accident Policy for Externally Initiated Events (Public meeting)
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.

Dated: May 17, 1990.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 90-11969 Filed 5-18-90; 12 25 pm]

BILLING CODE 7590-01-M

federal register

Tuesday
May 22, 1990

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Neosho Madtom and Razorback Sucker; Final and Proposed Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB31

Endangered and Threatened Wildlife and Plants; Neosho Madtom Determined To Be Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines a fish, the Neosho madtom (*Noturus placidus*), to be a threatened species under the authority of the Endangered Species Act of 1973 (Act), as amended. The madtom is currently known from the Neosho River (Grand River in Oklahoma) drainage: in the Neosho, Cottonwood, and Spring Rivers in southeastern Kansas, southwestern Missouri, and northeastern Oklahoma. Habitat destruction and modification, principally due to impoundments, dredging activities, and increased water demands, have decreased the distribution and abundance of the species and isolated it into three populations. This rule identifies the taxon as one in need of conservation, implements protective measures, and makes available recovery measures provided by the Act.

EFFECTIVE DATE: June 21, 1990.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Kansas State Office, Fish and Wildlife Enhancement, 315 Houston Street, Suite E, Manhattan, Kansas 66502.

FOR FURTHER INFORMATION CONTACT: Daniel Mulhern, at the above address, telephone (913) 539-3474.

SUPPLEMENTARY INFORMATION:

Background

Gilbert's (1886) collection of a *Noturus* specimen from the Neosho River near Emporia, Kansas, apparently is the first known record of the Neosho madtom. Two more specimens were taken from the Neosho River in Coffey County by the University of Kansas Biological Survey in 1912 (Wagner et al. 1984). Additional collections were made in 1951 and 1952 in the Neosho River in Kansas and Oklahoma, and also the Cottonwood River in Kansas (Taylor 1969, Wagner et al. 1984). Specimens of Neosho madtom were collected in the Spring River in Kansas in 1963 and in Missouri in 1964 (Wagner et al. 1984). The Cottonwood and Spring Rivers are part of the Neosho River drainage.

Specimens misidentified as furious madtom (*Schilbeodes eleutherus*) and brindled madtom (*Schilbeodes miurus*) also were collected from the Illinois River in Sequoyah County, Oklahoma, in 1946 (Moore and Paden 1950). Subsequent collections in 1948 and 1950 confirmed the presence of Neosho madtom in the lower Illinois River (Wagner et al. 1984). These are the only recorded occurrences of this species outside of the Neosho River drainage. Moss (1981) made later collections at three historical sites on the Illinois River, but found no Neosho madtoms. He concluded that hypolimnetic discharges from Tenkiller Ferry Dam may have produced temperatures that were too low for successful reproduction and growth of the species. It is believed the species is extirpated from the lower Illinois River (Wagner et al. 1984).

Sixty-eight percent of the known collections of this species are from 21 locations in the Neosho River (Wagner et al. 1984). The most upstream location is in Lyon County, Kansas, and the most downstream is near Miami, in extreme northern Ottawa County, Oklahoma, indicating the species is occupying at least the northern portion of its historic range. Although its original range included the entire Neosho (Grand) River drainage mainstreams, Moss (1981) was unable to locate specimens in suitable habitat between the reservoirs along this river in Oklahoma, indicating that reservoir construction has had an adverse impact on Neosho madtom populations.

Records of Neosho madtom from the Cottonwood River, which is a tributary of the Neosho River, are from 8 localities and 22 collections, with the confluence with Middle Creek near Elmdale, Chase County, Kansas, the most upstream locality. Collections made in 1983 along the Cottonwood River indicate that the species is relatively stable in this river (Wagner et al. 1984).

The distribution of this species in the Spring River is limited to only seven collections from three localities (Wagner et al. 1984, Moss 1981, Pflieger 1971, Branson et al. 1969). Collections from both Kansas and Missouri were taken very near the State line.

The current distribution of the Neosho madtom is restricted to the Neosho River drainage: the Neosho River in Kansas (Lyon, Coffey, Woodson, Allen, Neosho, Labette, and Cherokee Counties) and Oklahoma (Ottawa and Craig Counties); the Cottonwood River in Kansas (Lyon and Chase Counties); and the Spring River in Missouri (Jasper County) and Kansas (Cherokee County). With the exception of mainstream Federal reservoirs, and Flint Hills National Wildlife Refuge at the upper end of John Redmond Reservoir, all stream reaches in the range of the Neosho madtom are in private ownership.

The Neosho madtom is small, with adults averaging less than 7.5 cm (3 inches) long. It is characterized by having a midcaudal brownish stripe of pigment and a relatively deep body. The humeral process is moderately long, with somewhat reduced serrations of the pectoral spine. The adipose fin is well connected with the caudal fin. The mottled skin pigment readily distinguishes this species from other species belonging to the same genus found within its range (Taylor 1969, Wagner et al. 1984).

The species is almost exclusively found in riffles (Cross and Collins 1975, Deacon 1961), but exceptions to this generalization may be observed during early life stages and during spawning periods. Moss (1981) found that the Neosho madtom demonstrates a strong selection for small gravel substrates, usually less than 25 mm (1 inch) in diameter, and is only abundant on riffles with 8–16 mm (⅜ to ⅝-inch) gravel prevalent. The substrate must be loosely packed so the Neosho madtom can "wriggle" down into the gravel.

Adults utilize moderate to swift currents, while juveniles are most often found in areas of low current. Juveniles are found in depths from 0.1–1.0 m (4 to 39 inches), while adults tend to use depths less than 0.3 m (12 inches) (Moss 1981). Wagner et al. (1984) found that habitat use appeared to be very specific and suitable habitat was easy to identify. Moss (1981) speculated that spawning occurs in late June and July, and that madtoms feed primarily on aquatic insects.

On two occasions in the recent past, Neosho madtom populations have suffered severe reductions. A drought in 1952–56 depleted Kansas population levels, but the species has subsequently returned to earlier levels of abundance (Deacon 1961). A second reduction was documented in 1967 when Cross and Braasch (1968) found the species absent from all their sample stations in the Neosho River and at the confluence of the Cottonwood River and the South Fork of the Cottonwood River. The species had been locally abundant at these same stations in 1951 and 1952. Cross and Braasch (1968) attributed the decline to numerous fish kills in 1966 and 1967 caused by runoff from cattle feedlots. Pollution laws regulating feedlot runoff were passed in 1967, and

collections made by Moss (1981) in these areas indicate that the species' population had returned to earlier levels of abundance.

Removal of sand and gravel may have drastic short-term effects, but over a longer time period the species may be able to recover due to the natural depositional process that takes place after the disturbance ceases (Wagner et al. 1984). Reservoir construction is a major threat to the species (Moss 1981, Wagner et al. 1984). No specimens have been collected from five reservoirs constructed within the species' range, and habitat inundation is assumed to have caused local extirpation. The lower section of the Neosho River in Oklahoma is a series of reservoirs that has eliminated as much as one-third of the original range of the species (Wagner et al. 1984). Efforts to capture specimens in suitable habitat between the Oklahoma reservoirs in 1975 were unsuccessful (Moss 1981).

On December 30, 1982, the Service announced in the **Federal Register** (47 FR 58454) that the Neosho madtom, along with 146 other fish species, was being considered for addition to the List of Endangered and Threatened Wildlife. Under contract with the Service, a status report on the Neosho madtom was prepared by the Oklahoma Cooperative Fishery Research Unit (Wagner et al. 1984). The species was included in the Service's September 18, 1985, Notice of Review of Vertebrate Wildlife (50 FR 37958) as a Category 1 species, indicating that the Service had substantial biological data to support a proposal to list the species as endangered or threatened. On May 19, 1989, the Service announced in the **Federal Register** (54 FR 21635) that it was proposing to list the Neosho madtom as a threatened species.

Summary of Comments and Recommendations

In the May 19, 1989, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting general public comment was published in the Topeka Capitol-Journal on June 10, 1989; in the Pittsburg Morning Sun on June 11, 1989; and in the Joplin Globe on June 16, 1989. Eleven comments were received from three Federal and six State agencies, one university researcher, and one private fisheries organization.

Comments received during the public comment period are covered in the following summary. Comments of a similar nature or point were grouped into three general issues. These issues, and the Service's response to each, are discussed below.

Issue 1: Threats to the Species

Response: One commentor questioned whether or not small tributary watershed structures would prove a threat to Neosho madtom habitat. The Service believes that these structures could result in either beneficial or adverse effects, depending on circumstances. For example, stabilized flows could benefit the species if they reduce the threat of low-flow drought conditions, while elimination of peak flood flows could adversely affect the madtom by reducing the rate of removal of silt and debris from gravel riffles. Section 7 consultation procedures will allow us to coordinate with Federal action agencies to evaluate each situation on a case-by-case basis.

Another commentor stated that hydropower operations at mainstream reservoirs appear to be a major threat to the species, as opposed to reservoirs operated for flood control. The Service accepts the feasibility of this suggestion, and this is addressed in Section A of "Summary of Factors Affecting the Species."

Issue 2: Critical Habitat

Response: Two commentors suggested that critical habitat should be designated: One, to facilitate the regulation of agricultural pesticide use; and the other, to provide an additional deterrent to continued habitat destruction by impoundments. Both points are well-founded and were given consideration during initial and subsequent evaluation of this question.

With regard to the first point, it is not necessary to formally designate critical habitat to protect endangered and threatened species from pesticide use. Once the Neosho madtom is listed, the Environmental Protection Agency (Agency) will need to reinitiate consultation with the Service on the registration or reregistration of pesticides. The Service will, at that time, provide a biological opinion to the Agency, including information identifying Neosho madtom habitat areas. The Agency can then use this information to implement appropriate restrictions for pesticides that might be used in or near these areas.

With regard to the second point, it is questionable as to whether critical habitat can be definitively determined and whether such determination would provide benefits above and beyond species listing. The species is widespread (though not abundant) and mobile throughout linear stream drainages. Though gravel riffle areas are clearly important, they may not be the only important habitat areas for the Neosho madtom. And, though it appears possible to delineate specific gravel riffle areas that the species is presently using, some Neosho madtom may shift usage to new gravel riffle areas arising from changes in stream dynamics. The only way to legitimately identify all important riffle habitats would be to designate all gravel riffles within the three rivers in question. This, in effect, would state that any impact at or upstream of any riffle could constitute an effect. This could be viewed as an overly protective approach for conserving the species. Instead, it may be better to use a more judicious combination of Federal and State protection mechanisms, i.e., (a) Federal species protection measures under sections 7 and 9 of the Act and (b) State species and habitat protection measures to protect the Neosho madtom. A more detailed discussion of this latter approach may be found in the section on "Critical Habitat".

A third commentor supported a decision not to designate critical habitat, citing reasons which echo some of the Service's concerns and conclusions. These reasons are included in the section on "Critical Habitat".

Issue 3: Impacts to Agriculture

Response: One commentor questioned the economic impact that final listing may have on agricultural pesticide use. This is a valid concern, no doubt shared by other parties along the affected river drainages. The impacts of Federal listing of the Neosho madtom on all parties will be the same as presently occurs with other listed species. Any action which is authorized, funded, or permitted by a Federal agency must undergo review to ensure the action is not likely to jeopardize the continued existence of any listed species. In the case of Environmental Protection Agency registrations, provisions would be determined, if necessary, to avoid or minimize impacts to the Neosho madtom and all other listed or proposed species.

A comment also was made regarding anticipated problems with compliance by pesticide applicators, if restrictions are placed on pesticide use. It is premature to discuss restrictions that may be necessary to avoid jeopardy to the Neosho madtom as a result of pesticide use. The determination that a specific pesticide is likely to jeopardize

the continued existence of the Neosho madtom will depend on numerous factors including the specific pesticide (toxicity), crops grown in the vicinity of the Neosho madtom, terrain, drift, and other factors submitted to the Service by the Agency at the time of the consultation request. The Agency will welcome any ideas or suggestions on measures to preclude jeopardy to the madtom while minimizing impact to pesticide users.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Neosho madtom should be classified as a threatened species. Procedures found at 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 were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Neosho madtom (Noturus placidus are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Habitat modification, both existing and potential, comprises the major threat to the survival of the Neosho madtom. Deacon et al. (1979) recognized the species as threatened because of present or potential threats to its habitat or range. Such modification includes, among other things, water diversion, impoundment, reallocation, channelization, flood control, water pollution, and dredging for sand and gravel. This modification has resulted in the complete destruction or curtailment of a portion of the historic habitat and modification of much of the remaining habitat.

The construction of reservoirs causes the inundation of riffle habitat and changes turbidity, nutrient levels, and water temperatures downstream. No specimens have been captured in a reservoir, and habitat inundation is assumed to have caused local extirpation of the species (Wagner et al. 1984, Moss 1981). The construction of John Redmond Reservoir on the Neosho River in Kansas destroyed known riffle habitat.

Efforts to capture specimens in suitable habitat between reservoirs in Oklahoma have been unsuccessful (Moss 1981). The lower section of the Neosho (Grand) River in Oklahoma is a series of reservoirs that have eliminated as much as one-third of the original range of the species (Wagner et al. 1984). The disappearance of Neosho madtoms from the lower Illinois River in Oklahoma is attributed to hypolimnetic discharges from Tenkiller Ferry Dam which produced temperatures that were too low for successful reproduction and growth of the species (Moss 1981).

Frank Cross, University of Kansas, in litt., 1989, believes that discharges from hydropower dams eliminate Neosho madtoms from streams below these dams. He notes the disappearance of the species in and downstream from all reservoirs in the basin which generate hydroelectric power (Oklahoma), whereas the species persists downstream from flood control reservoirs not used for hydropower generation (Kansas). The water chemistry and temperature changes associated with abrupt daily release patterns are problems specific to the generation of hydroelectricity, and may well be the cause for many local extirpations.

The increasing demand for water for agricultural and municipal use will continue, with a projected increase in demand of 25 percent over the next 50 years in the Neosho River Basin (Kansas Water Office 1987), further impacting Neosho madtom habitat. An example of the effects of a decrease in flow occurred during the drought of 1952–1956 when the Neosho River lacked surface flow along most of its length for several months. The species suffered a dramatic decline and did not become common again until the third consecutive summer of continuous flow (Deacon 1961).

The Soil Conservation Service has proposed a project to construct as many as 11 small dams within the South Fork watershed of the Cottonwood River. Additionally, the Army Corps of Engineers (Corps) is investigating the possibility of constructing up to 112 small dams within the Cottonwood and Upper Neosho River watersheds. The Corps is also investigating the possibility of reallocating storage in existing Federal reservoirs in the Neosho River basin. All of these Federal actions have the potential to alter and/or reduce flows within the Neosho madtom's habitat. The Wolf Creek Nuclear Generating Station, near Burlington, Kansas, uses water from John Redmond Reservoir, which is operated by the Corps. To meet the station's legal water allocation, the elevation of the conservation pool may have to be increased in the future, further depleting flows in the Neosho River.

Runoff containing agricultural chemicals may affect the species directly or indirectly through impacts on water quality. Growth of filamentous algae in riffles in the Neosho River during low flows suggests that fertilizer runoff also may be affecting habitat (David Wiseman, Flint Hills National Wildlife Refuge, in litt., 1989). Discharges from municipalities along the Neosho and Cottonwood Rivers are another source of contamination of Neosho madtom habitat.

The Spring River drainage in Kansas and Missouri is rich in lead, zinc, and coal reserves; development of these resources has been extensive and can be expected to continue. Documented effects include elevated levels of sulfate and trace metals in stream water (Spruill 1984). The lower Spring River in Missouri has also been polluted by sewage and industrial effluents (Dieffenbach and Ryck 1976). Additionally, the Neosho River flows through numerous oil fields in southeastern Kansas, presenting the threat of oil spills into the river. Cross, pers. comm., 1988, believes that runoff from livestock feedlots is still a potential threat to the species.

Sand and gravel dredging has been demonstrated to affect fish communities in the lower Kansas River, with the extent of the effects being dependent on the age and location of the dredging site (Cross et al. 1982). The short term effects on the Neosho madtom of dredging activities in streams utilized by the species may be drastic, but over a longer time period the species may be able to recover if the situation is not compounded by additional threats.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no evidence to suggest overutilization of the Neosho madtom for any of these purposes.

C. *Disease or predation.* There is no evidence of threats to the Neosho madtom from disease. Efforts to improve the sport fishery in the three States have resulted in an increase in such predators as white bass (*Morone chrysops*) and walleye (*Stizostedion vitreum*) in most reservoirs, and it is likely these predators have also increased in the associated rivers. It is not known whether predation on Neosho madtom has increased, but this species' habit of occupying the gravel of riffle bottoms may preclude such a threat.

It is unknown what role interspecific competition may play in determining Neosho madtom abundance, though there is evidence suggestive of detrimental interspecific competition with the slender madtom (*Noturus exilis*) in the Spring River. The slender madtom is generally found in habitat

typically occupied by Neosho madtom, with Neosho madtom found in more marginal habitat (Cross, pers. comm., 1988). The slender madtom has not been found at localities in the Neosho or Cottonwood Rivers where Neosho madtom is most abundant.

D. *The inadequacy of existing regulatory mechanisms.* The Neosho madtom is officially listed as threatened by the State of Kansas, and endangered by the States of Oklahoma and Missouri. All three States prohibit taking or possession of this fish without a State permit, and all three regulate impacts to stream resources within State boundaries. However, these States have limited or no authority to deny applications for some or all water projects based on impacts to the State-listed Neosho madtom or its habitat.

The Kansas Department of Wildlife and Parks has identified portions of the Cottonwood, Neosho, and Spring Rivers as State-designated critical habitat for the Neosho madtom. The Kansas Department of Wildlife and Parks also requires a permit for publicly funded or permitted actions in Kansas which have the potential to destroy individuals of an endangered or threatened species or their critical habitat. However, the penalty for violating a Kansas permit for a threatened species is a maximum fine of $500 and/or 30 days in jail, which is probably not sufficient to deter adverse actions from occurring for large projects.

As noted under Factor A, the Corps is investigating the possibility of constructing up to 112 small dams in the upper Neosho River drainage that have the potential to alter and/or reduce flows within Neosho madtom habitat. The Corps is also investigating the possibility of reallocating storage in existing Federal reservoirs, and may modify operation of John Redmond Reservoir to meet the Wolf Creek Nuclear Generating Station's legal water allocation—all of which would alter flows in the Neosho River drainage. The Soil Conservation Service has proposed a project to construct as many as 11 small dams within the South Fork watershed of the Cottonwood River. However, these Federal actions are not subject to State law, e.g., the permitting requirement, unless specifically provided by Congress.

In Missouri and Oklahoma, the Missouri Department of Conservation and the Oklahoma Department of Wildlife Conservation review applications for projects that might have adverse impacts on State-endangered species. However, these agencies have no authority to deny these applications, if necessary, to protect the Neosho madtom.

Thus, it appears that in some aspects, existing State regulatory mechanisms are inadequate to protect the Neosho madtom. Federal listing would provide additional protection by requiring Federal permits for taking the fish and increasing penalties for unauthorized take. More importantly, Federal listing would result in mandated review of Federal actions that might impact the Neosho madtom and its habitat to insure that any action authorized, funded, or carried out by a Federal agency is not likely to jeopardize the continued existence of the Neosho madtom.

E. *Other natural or manmade factors affecting its continued existence.* The Neosho madtom has recently exhibited severe population declines due to pollution and drought (Deacon 1961, Cross and Braasch 1968). While drought is a natural phenomenon, the effects of drought are intensified by human degradation. The species occupies a very specialized macrohabitat, and its range has significantly decreased in the last 20 years. The species' range is now divided into three populations: In the Neosho and Cottonwood Rivers above John Redmond Reservoir in Kansas; the Neosho River below John Redmond Dam in Kansas downstream to Grand Lake in Oklahoma; and in one reach of the Spring River in Kansas and Missouri. The separation of these populations (by John Redmond Dam or by distance) would diminish the rate of recolonization from another population should any population suffer a major decline.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Neosho madtom as a threatened species. The original range of the species has decreased to three populations in three rivers. The historical factors which brought the species to this condition remain current threats. Because the species remains abundant in some locations, it is unlikely the species will become extinct in the foreseeable future. Therefore, endangered status is considered inappropriate. For reasons given below, the Service is not designating critical habitat.

Critical Habitat

Section 4(a)(3) of the Act requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently determinable or prudent for this species.

Though it is clear that the Neosho madtom prefers gravel riffle habitat, it has been found in other types of habitat during early life stages and during spawning periods. Precise spawning sites or habitats are not known with certainty, nor is there much information on species dispersal. In addition, as noted in the "Summary of Comments and Recommendations," gravel riffle habitat may change within the mainstream. Hence, important habitat areas are not specifically determinable.

The Service also finds that designation of critical habitat is not prudent. Although intentional taking of the Neosho madtom is presently not known to be a problem, the species is vulnerable to this threat. The fish is typically found in very specialized, easily identifiable habitat (gravel riffles), and most of the inhabited stream reaches are easily accessible by road. The potential threat of vandalism, though small, could be exacerbated by the publication of a detailed critical habitat description and maps.

More importantly, the Service doubts that designation of critical habitat will provide net benefits to the species above and beyond species listing when combined Federal and State protections are considered. By listing the species as threatened, the Act will protect the species through section 7 consultation (requiring consultation for Federal actions) and section 9 (prohibiting take of the species). Therefore, future Federal activities such as water development or management actions contemplated by the Soil Conservation Service and the Corps that might impact the Neosho madtom will have to undergo section 7 consultation. Since the Corps operates John Redmond Reservoir, any allocation of water for Wolf Creek Nuclear Generating Station would have to undergo consultation. Hydropower operations require issuance of Federal Energy Regulatory Commission licenses, which must undergo section 7 consultation. Pesticides undergoing registration or reregistration by the Environmental Protection Agency will have to be consulted on with respect to the Neosho madtom. Finally, Federal penalties under the Act for take of a listed species, in which an individual may be fined up to $50,000 or imprisoned up to a year, would provide an additional deterrent against unauthorized take.

The States' protective mechanisms will continue to have an important role in Neosho madtom protection. As noted previously, the Neosho madtom is State-

listed by all three States in which it is found, and all three States regulate impacts to stream resources within State boundaries. Kansas pollution laws regulating feedlot runoff appear to have helped the Neosho madtom already. Dredging for sand and gravel requires a permit from the Kansas Division of Water Resources. In addition, the Kansas Department of Wildlife and Parks would have to issue a threatened and endangered species permit allowing take if a State-listed species is involved. Since the Neosho madtom is listed as threatened in Kansas, the Department of Wildlife and Parks may deny a threatened and endangered species permit to the applicant to prevent dredging activities detrimental to the Neosho madtom. In Oklahoma and Missouri, dredging activities require permits, and the combination of State and Federal listing of the Neosho madtom is expected to create a greater awareness of the need to protect the Neosho madtom in permitting decisions in these States.

All involved agencies will be informed of the location of existing populations of the Neosho madtom and the importance of protecting this species' habitat. No further notification benefits would accrue from designating critical habitat. Therefore, in light of the above, it would not be prudent to determine critical habitat for the Neosho madtom.

Available Conservation Measures

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

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

Federal involvement is expected to include Soil Conservation Service water retention practices, Corps stream modification and reservoir management practices, Federal Energy Regulatory Commission licensing, and Environmental Protection Agency registration of pesticides. The Soil Conservation Service conducts water retention projects within the watersheds of the three river systems sustaining the Neosho madtom. The Corps conducts activities and issues permits to applicants for activities such as impoundment, channelization, flood control, and dredging. The Federal Energy Regulatory Commission licenses hydropower operations on hydroelectric facilities. The Environmental Protection Agency registers pesticides. If a proposed activity involving these agencies may affect the Neosho madtom, the above agencies would be required to consult with the Service to ensure that the activity is not likely to jeopardize the continued existence of this species.

The Act and its implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purpose of the Act. In some instances, permits may be issued for a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available. Such permit action is not expected on this species.

National Environmental Policy Act

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

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Author

The primary author of this final rule is Daniel W. Mulhern, Fish and Wildlife Service, Fish and Wildlife Enhancement, Manhattan, Kansas (913/539–3474, see **ADDRESSES** above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

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

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order, under "FISHES", to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
*	*	*	*	*	*	*	
Madtom, Neosho	*Notorus placidus*	U.S.A. (KS, MO, OK)	Entire	T	388	NA	NA
*	*	*	*	*	*	*	

Dated: May 15, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–11795 Filed 5–21–90; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB42

Endangered and Threatened Wildlife and Plants; Proposal To Determine The Razorback Sucker (Xyrauchen texanus) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes the razorback sucker (*Xyrauchen texanus*) to be an endangered species under the authority of the Endangered Species Act of 1973, as amended. This native fish is found in limited numbers throughout the Upper and Lower Colorado River Basin. Evidence of natural recruitment has not been found in the past 30 years, and numbers of adult fish captured in the last 10 years demonstrate a downward trend. Significant changes have occurred in razorback sucker habitat through diversion of water, introduction of nonnative fishes, and construction and operation of dams. Further changes are anticipated as these activities continue. Listing the razorback sucker as endangered would afford this species full protection under the Endangered Species Act.

DATES: Comments from all interested parties must be received by July 23, 1990. Public hearing requests must be received by July 6, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104–5110. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Patricia A. Schrader, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service, 529 25½ Road, Suite B–113, Grand Junction, Colorado 81505–6199 (303/243–2778 or FTS 322–0351).

SUPPLEMENTARY INFORMATION:

Background

The razorback sucker was described by Abbott in 1861 from a single mounted specimen captured from the Colorado River. He placed it in the genus *Catostomus* (LaRivers 1962), but Eigenmann and Kirsch, after further study, assigned it to its own genus, *Xyrauchen* (Kirsch 1889). Once known as the humpback sucker, the adult razorback sucker is readily identifiable by the abrupt sharp-edged dorsal ridge behind its head and a large fleshy subterminal mouth that is typical of most suckers. Adult fish are relatively robust, often exceeding 3 kg (6 lbs) in weight and 600 mm (24 in) in length. Younger fish, less than 150 mm (6 in) long, lack the distinct dorsal keel and, therefore, are not easily distinguished from the young of other sucker species.

The razorback sucker was once abundant throughout 5,635 km (3,500 mi) of the Colorado River basin, primarily in the mainstem and major tributaries in Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming; and in the States of Baja California Norte and Sonora of Mexico (Ellis 1914, Minckley 1973). There are many accounts of razorback sucker abundance during early settlement of the lower basin (Gilbert and Scofield 1898, Minckley 1973) and a significant commercial fishery for them existed in southern Arizona in the early 1900's (Hubbs and Miller 1953, Miller 1964). Jordan (1891) reported razorback suckers to be very abundant at Green River, Utah, in 1889. Residents living along the Colorado River near Clifton, Colorado, observed several thousand razorback suckers during spring runoff in the 1930's and early 1940's (Osmundson and Kaeding 1989).

In recent times, razorback sucker distribution has been reduced to about 1,208 km (750 mi) in the upper basin (McAda and Wydoski 1980, Holden and Stalnaker 1975, Ecology Consultants 1978) and to 322 km (200 mi) of the lower Colorado River in the lower basin now impounded by Hoover, Davis, and Parker dams (Minckley 1983). The Colorado River was divided into upper and lower basins at Lee Ferry, Arizona (approximately 14 km (9 mi) below Glen Canyon Dam) by the Colorado River Compact of 1922. Sizeable numbers of adult razorback suckers still occur in Lake Mohave (Minckley 1983), and Lanigan and Tyus (1989) estimated that 758 to 1,138 razorback suckers still inhabit the upper Green River. Observations in other areas are spotty and inconsistent and are generally viewed as incidental captures. No significant recruitment of these populations has been documented in recent years (Tyus 1987a, McCarthy and Minckley 1987).

Information on behavior and habitat needs of the razorback sucker is quite limited. It has not been a major objective of most upper basin investigations and it is rarely collected in fisheries investigations directed at other species. Some information has been accumulated in conjunction with other studies, and specific studies have been carried out by a few investigators throughout the basin.

Adult razorback suckers apparently migrate considerable distances to specific areas to spawn (Tyus 1987a). Spawning occurs in the lower basin from late January through April (Ulmer 1980, Langhorst and Marsh 1986, Mueller 1989). In the upper basin, Tyus (1987a) observed ripe razorback suckers in the vicinity of a suspected spawning area in the Green River from May 3 to June 15 in 1981, 1984, and 1986. Water temperatures during spawning in the lower basin ranged from 11.5–18°C (52.7–64.4°F) (Douglas 1952, Ulmer 1980, Langhorst and Marsh 1986) while temperatures recorded by Tyus in the upper Green River ranged between 10.5 to 18°C (50.9–64.4°F). Spawning is usually accomplished with several males accompanying a single female (Jonez and Sumner 1954, Ulmer 1980) over gravel bars that are swept free of silt by currents. In Lake Mohave and Senator Wash Reservoir, spawning takes place on gravel bars swept clean by wave action (Ulmer 1980, Bozek et al. 1984). Tyus (1987a) collected ripe adults over coarse sand substrates and in the vicinity of gravel or cobble bars. Direct observation of spawning activity was not possible because of high turbidities prevalent during that time of year. In Senator Wash Reservoir and Lake Mohave the eggs apparently settled onto gravel and into interstices swept clean by the spawning activity. Larvae appear to remain in the gravel until swim-up (Ulmer 1980, Mueller 1989).

A number of investigators have collected viable fertilized eggs and larvae in the areas of observed spawning activity (Bozek et al. 1984, Ulmer 1980, Marsh and Langhorst 1988, Tyus 1987a), but few have collected larvae larger than 14 mm (0.6 inches) in the wild. This indicates little or no successful recruitment of wild razorback suckers (Tyus 1987a). Marsh and Langhorst (1988) recovered larvae up to 20 mm (0.8 inches) total length in an isolated backwater in Lake Mohave where predators had been previously eradicated. However, these fish disappeared within a month following reinvasion of the backwater by predators. Most investigators have reported concentrations of carp (*Cyprinus carpio*), green sunfish (*Lepomis cyanellus*), bluegill (*Lepomis macrochirus*), channel catfish (*Ictalurus punctatus*), and largemouth bass (*Micropterus salmoides*) in razorback sucker spawning areas (Jonez and

Sumner 1954, Marsh and Langhorst 1988, Ulmer 1980, Bozek et al. 1984). Larvae and larger razorback suckers have been found in stomachs of predatory fishes such as green sunfish, warmouth (*Lepomis gulosus*), channel catfish, flathead catfish (*Pylodictis olivaris*), and threadfin shad (*Dorosoma petenense*) (Marsh and Langhorst 1988, Langhorst 1989, Brooks 1986).

Habitat needs of young and juvenile razorback suckers in the wild are largely unknown because they have rarely been encountered by researchers, particularly in native riverine habitats (Tyus 1987a). Marsh and Langhorst (1988) observed that larval razorback suckers in Lake Mohave remained near shore after hatching but either disappeared or migrated to depths in excess of 15 m (49 ft.) within a few weeks. Most young and juveniles have been collected from irrigation canals in southern California and Arizona (Marsh and Minckley 1989). Substantial numbers of razorback suckers have been reared through the juvenile and adult stages in hatcheries (Toney 1974, Hamman 1985) and in isolated ponds (Langhorst 1989), providing some information on growth rates and food habits.

Food habits of razorback sucker larvae have been studied in Lake Mohave (Marsh and Langhorst 1988) and under experimental conditions (Papoulis 1986). Larvae from reservoirs selected *Bosmina* spp. (Cladocera) and avoided Copepoda, while larvae from backwaters of Lake Mohave selected Bosimina and avoided Rotifera (Marsh and Langhorst 1988). Information is not available on food habits of razorback sucker larvae from natural riverine habitats.

Only limited information has been accumulated on the food habits of adult razorback suckers, primarily due to their rarity and protected status under State law. Marsh (1987) examined the stomachs of 34 adult specimens from Lake Mohave and determined that their food selection included benthic fauna and flora and inorganic materials from the bottom. Jonez and Sumner (1954) reported algae as the most common food item found in razorback sucker stomachs from Lake Mead, followed by plankton, insects, and decaying organic matter. Chironomids were the most prominent food item in razorback suckers from Lake Mohave. Vanicek (1967) examined eight adult razorback sucker stomachs from the Green River and found them packed with mud or clay containing chironomid larvae, plant stems and leaves. These studies and direct observations confirm what one would expect of a fish with the razorback sucker's morphology—a bottom feeding plankton consumer (Minckley 1973, Jonez and Sumner 1954).

Using scales, Minckley (1983) estimated annual growth rates in the wild Lake Mohave population to be less than 10 mm (0.4 inches) per year after their seventh year of life. Recently, researchers have demonstrated the inadequacies of using scales to determine the age of razorback suckers and have shown that most razorback suckers captured in recent times are much older than their scales would indicate (McCarthy and Minckley 1987). McCarthy and Minckley (1987) computed the ages of Lake Mohave razorback suckers collected in 1981–83 to be 24 to 44 years. Eighty-nine percent of the 70 fish sampled were estimated to have hatched prior to impoundment. Disappearance of razorback suckers from lower basin reservoirs 40 to 50 years after impoundment was documented by Minckley (1983). McCarthy and Minckley (1987) predict the Lake Mohave population is following this trend and may be extirpated before the year 2000. Tyus (1987a) concluded that razorback suckers in the Green River were substantially smaller and younger than those found in the lower basin, but no recent recruitment to the adult population was evident.

Adult razorback suckers are more vulnerable to capture during the spawning season. Tyus (1987b) reported them to be 10 times more prevalent in standardized electrofishing collections during the spring than during the remainder of the year. During spawning season razorback suckers have been found in runs with coarse sand, gravel, and cobble substrate; flooded bottomlands and gravel pits; and large eddies formed by flooded mouths of tributary streams and drainage ditches (Tyus 1987a, Osmundson and Kaeding 1989). Tyus (1987a) reported on six radio-telemetered adult razorback suckers that he tracked from April to November over a 2-year period. He observed that, outside breeding season, they utilized the main channel of the Green and Duchesne rivers, in depths of 0.6 to 3.4 m (1.7 to 11.0 ft) over sand or silt substrates with velocities of 0.1 to 0.6 m per second (0.33 to 2.0 ft per second). Razorback suckers selected near-shore runs during the spring and shifted to relatively shallow waters off mid-channel sandbars during the summer months. Except for spawning migrations, it appeared that the razorback suckers were relatively sedentary, moving only a few kilometers over several months. Valdez and Masslich (1989) tracked 17 razorback suckers throughout the winter on the Green River. They found that most of the radio-telemetered fish moved less than 5 km (3 mi) throughout the winter. They also reported localized diel movement patterns that increased with fluctuating flows which they attributed to changes in velocities. The radio-telemetered razorback suckers used slow run habitats, slack waters and eddies. They selected depths of 0.6 to 1.4 m (2.0 to 4.5 ft) and velocities of 0.03 to 0.33 m per second (0.1 to 1.1 ft per second).

The razorback sucker was proposed for listing as a threatened species on April 23, 1978, in the **Federal Register** (43 FR 17375). The proposal was withdrawn on May 27, 1980, in accordance with provisions of the 1978 amendments to the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). These provisions required the Service to include critical habitat in the listing of most species and to complete the listing process within 2 years or withdraw the proposal from further consideration.

A petition dated March 14, 1989, was received from the Sierra Club, National Audubon Society, the Wilderness Society, Colorado Environmental Coalition, Southern Utah Wilderness Alliance, and Northwest Rivers Alliance on March 15, 1989. The petition requested the Service to list the razorback sucker as an endangered species. A positive finding on this petition was made in June 1989 and subsequently published by the Service in the **Federal Register** on August 15, 1989 (54 FR 33586). This notice also stated that a status review was in progress and that the Service was seeking information until December 15, 1989. This proposal constitutes the final finding for the petitioned action.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the razorback sucker (*Xyrauchen texanus*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Once abundantly distributed throughout the Colorado River basin, the razorback sucker now inhabits approximately 25 percent of its

original range. It is considered by most researchers to be one of the rarest endemic species in the Colorado River basin, second only to the bonytail chub (*Gila elegans*) (McAda 1987). In the Lower Colorado River Basin, the razorback sucker occurs in significant numbers only in Lake Mohave, Arizona, and Nevada. These fish probably represent the largest remaining population in the basin (Minckley 1983). Small numbers of razorback suckers also are present in Lake Mead and Senator Wash Reservoir but are rare in the mainstem and other reservoirs of the lower basin. In the Upper Colorado River Basin, razorback suckers are found only rarely in the upper Green River, Utah; lower Yampa River, Colorado (Tyus 1987a, Tyus and Karp 1989); and mainstem Colorado River near Grand Junction, Colorado (Kaeding and Osmundson 1989). The razorback sucker is very rare throughout the remaining warmwater reaches of the Green, San Juan, and upper Colorado Rivers. Small populations also occur in the Colorado, Dirty Devil, and San Juan arms of Lake Powell (Persons and Bulkley 1982, McAda 1987, Roberts and Moretti 1989).

Since 1910, 15 dams have been constructed on the lower Colorado River and its major tributaries, the Gila and Salt Rivers. These dams have dewatered, cooled, or impounded nearly the entire lower basin system so that little natural riverine habitat exists today. Spawning has been observed in several reservoirs in the lower basin (Jonez and Sumner 1954, Loudermilk 1985) and razorback sucker larvae have been collected in Lake Mohave (Bozek et al. 1984, Marsh and Langhorst 1988). However, there have been no young razorback suckers collected from Lake Mohave longer than 15 mm (0.6 in.) total length, which indicates a lack of recruitment to the population in recent years (McCarthy and Minckley 1987). In the upper basin, Lake Powell and Flaming Gorge Reservoir have impounded 500 km (310 mi) of razorback sucker habitat and lowered water temperatures in another 105 km (65 mi) of the Colorado and Green Rivers. Other upper basin reservoirs also have altered natural flow and temperature regimes.

Dams and diversions also obstruct razorback sucker migration. Although little is known of the location of razorback sucker spawning areas prior to the construction of these facilities, it is believed that they have cut off access to, or impounded, once important spawning areas. Early investigators frequently referred to spawning concentrations in small tributaries in the lower basin (Jordan 1891, Hubbs and Miller 1953). More recently Tyus (1987a and 1987b) observed concentrations of razorback suckers near three suspected spawning areas in the upper Green River and lower Yampa River. Ulmer (1980) also observed spawning in Senator Wash Reservoir and Mueller (1989) did so in the tailwaters of Hoover Dam. Spawning has been observed in Lake Mead and Lake Mohave (Jonez and Sumner 1954, Minckley 1983, Langhorst and Marsh 1986). Radio tracking and recapture of tagged razorback suckers demonstrates that some fish migrate considerable distances to spawn. Tyus (1987a) recaptured 21 adult razorback suckers in suspected spawning areas that had been previously tagged in other locations over a period of 8 years. One razorback sucker was recaptured in the Green River 208 km (129 mi) downstream from its original capture site, a spawning area in the lower Yampa River. Ulmer (1980), utilizing SCUBA gear, followed five adult razorback suckers fitted with sonic transmitters from dispersed areas of Senator Wash Reservoir to two specific areas where congregations of spawning razorback suckers were observed from shore and underwater.

Storage and diversion of natural flows have resulted in an 18 percent reduction in mean annual discharge at the Green and Colorado River confluence 26 km (16 mi.) upstream of Lake Powell (U.S. Geological Survey [USGS] flow records, 1906–1982). Storage of high flows during the spring and releases of more water during the remainder of the year have reduced spring runoff by 28 percent in the Green River and 37 percent in the Colorado River during May and June (USGS flow records, 1906–1982). Reduction of these high spring flows has altered the natural flooding cycle essential to the maintenance of off-stream habitats used by razorback suckers (McAda 1977). Flooding of bottomland during spring runoff may be important to adults and rearing of young (Tyus and Karp 1989). The apparent lack of recruitment of razorback suckers may be associated with reduced availability of these inundated habitats (Osmundson and Kaeding 1989, Tyus and Karp 1989).

Dam operations also can cause changes in daily flow regimes. Peaking power operations at Flaming Gorge produced a 400 percent increase in daily fluctuations in flow at Jenson, Utah (USGS flow records, 1906–1982). Tyus and Karp (1989) recommend low, stable flows for razorback suckers during summer, fall, and winter. They found low, stable flows are necessary for growth and survival of young native fishes and stable flows through ice breakup are important for overwinter survival of young and adult native fishes.

Cooler water temperatures, as a result of dam operations, are theorized to have excluded the razorback sucker from portions of its original range (Vanicek 1967). Research by Bulkley and Pimentel (1983) on adult razorback sucker temperature preference and avoidance characteristics showed a preference range of 22–25 °C (71.6–77 °F) and an avoidance of temperatures below 14.7 °C (58.5 °F) and above 27.4 °C (81.3 °F). While winter temperatures drop well below the razorback sucker's reported range of preference throughout most of their range, summer temperatures are generally within the preferred limits. Riverine temperatures can vary greatly diurnally and between off-stream and mainstream habitats. Grabowski and Hiebert (1989) recorded water temperatures in backwaters of the Green River to be 2.5 to 3.8 °C (4.5 to 6.8 °F) warmer than the mainstream. While water temperature is a dynamic parameter, influenced by a multitude of variables, there are several reaches of the Green and Colorado rivers where spring and summer temperatures are clearly below the preferential range of the razorback sucker. These reaches occur directly below Flaming Gorge Reservoir for 105 km (65 mi.) where summer temperatures average less than 15 °C (59 °F) (U.S. Geological Survey Water Resource Data), and below Lake Powell for 384 km (238 mi.) where summer water temperatures rarely exceed 15 °C (59 °F) (Carothers and Minckley 1981). Razorback suckers have rarely been captured in these reaches since the completion of these dams (Vanicek 1967, Carothers and Minckley 1981).

The alteration of temperatures caused by the construction and operation of dams also may have an effect on the incubation time and survival of razorback sucker eggs. Incubation time to hatching varies inversely with water temperature, with longer hatching times required at lower temperatures. Gustafson (1975) reported that 5.5 days were required at 20 °C (68 °F) while Bozek et al. (1984) reported the following incubation periods: 19.4 days at 10 °C (50 °F); 11.1 days at 15 °C (59 °F); and 6.8 days at 20 °C (68 °F). Marsh (1985) found it required 9 days for larvae to hatch at 15 °C (59 °F) and 3.5 days at 25 °C (77 °F). Most investigators reported a poor hatching success at temperatures below 15 °C (59 °F) and total mortality of eggs below 10 °C (50 °F). Bozek et al. (1984) noted only slightly lower survival rates

at 10 °C (50 °F) than at 15 and 20 °C (59 and 68 °F).

Alteration of razorback sucker habitat is likely to continue with several major reservoirs and water diversions in the planning process or under construction (e.g., Animas-La Plata Project, Muddy Creek Reservoir, Sandstone Reservoir, Two Forks Reservoir, Central Utah Project). Other, less direct, influences such as decreased flow, alteration in stream hydrology, increased dissolved solids, and altered temperatures may adversely affect the razorback sucker by reducing its habitat, interrupting spawning, and increasing competition for food and space.

Development activities that most threaten the razorback sucker occur in the upper basin where most of the remaining riverine habitats occur. Since 1980 the U.S. Fish and Wildlife Service has conducted consultations under section 7 of the Endangered Species Act on over 100 federally funded or regulated projects in the upper basin that involved water depletions. Several transbasin diversions are being planned or are under construction. The two most prominent are the Central Utah Project which will divert 165,000 ac. ft. of water from the Green River to the Bonneville Basin, and the Two Forks Project, which will divert an additional 45,000 ac. ft. from the Colorado River to the East Slope of the Rocky Mountains.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Though once extensively used as a food fish when available in large numbers, the razorback sucker is no longer abundant and no markets are currently available for such enterprises. In the lower basin there were once enough razorback suckers to support a commercial fishery (Hubbs and Miller 1953). All States within the species' current range now have laws that protect the razorback sucker from harvest (Minckley et al. in press). Therefore, overutilization is not considered to be a threat today.

C. *Disease or Predation.* There is no evidence that disease is a significant factor in the current status of the razorback sucker. However, Minckley (1983) reported many old individuals captured in Lake Mohave were blind in one or both eyes and showed other signs of disease or injury. Several investigators have recently isolated pathogens from razorback suckers, but none have concluded that they were a serious threat to the existing stocks (Mpoame and Rinne 1983, Flagg 1982).

Several researchers have observed predation of razorback sucker eggs and larvae by carp, channel catfish, smallmouth bass (*Micropterus dolomieui*), largemouth bass, bluegill, green sunfish, and redear sunfish (*Lepomis microlophus*) (Marsh and Langhorst 1988, Jonez and Sumner 1954, Langhorst 1989, Ulmer 1980). The researchers hypothesized that predation is a major cause underlying the lack of recruitment to the adult razorback sucker population throughout the basin (McAda and Wydoski 1980, Minckley 1983, Tyus 1987a). Loudermilk (1985) observed that young razorback sucker larvae inhabited the upper water column for the first few days after swim-up and exhibited no defensive behavior from potential predators. Marsh and Langhorst (1988) found larval razorback suckers in Lake Mohave survived longer and grew larger in the absence of predators. Marsh and Brooks (1989) concluded that channel catfish and flathead catfish were major predators of razorback suckers stocked into the Gila River. They concluded that predation by these fish resulted in total loss of those stocks. Langhorst (1989) reported channel catfish and largemouth bass predation on juvenile razorback suckers averaging 171 mm (6.7 in.) total length stocked in isolated coves along the Colorado River in California. Two additional predaceous species, the walleye (*Stizostedion vitreum*) and northern pike (*Esox lucius*) have recently become prominent inhabitants of the Green River (Tyus and Beard 1990).

Though nonnative fish species were and are introduced by man, the ability of these nonnative fish to survive and become established in the Colorado River basin is, in part, due to the alteration of natural riverine habitat described under Factor A. Alteration of historic flow regimes and construction of reservoirs has created favorable conditions for some nonnative fishes (Seethaler 1978, McAda and Kaeding 1989, Minckley 1983). Thus the threat of predation is associated with habitat modification.

D. *The inadequacy of existing regulatory mechanisms.* As discussed in Factors A and C, the razorback sucker has declined substantially in the past 80 years because of major alterations in their habitats, dissection of the river system with dams, and the introduction of many new species to their ecosystem. Although they have been included on the protected list of all Colorado basin States, except Wyoming (where they are extirpated) and New Mexico (where no records of razorback sucker exist) (Marsh et al. in press), they have continued to decline. They are presently one of the most endangered fishes in the Colorado River basin (Deacon et al. 1979, Minckley 1983, Tyus 1987a).

Most State regulations protect the razorback sucker from take and possession. They do not, however, address the major problems of habitat destruction nor the introduction of competitive and predaceous species. All States prohibit the transportation and stocking of any fish species without prior consent of the respective State agencies. State agencies do, however, introduce new species which may compete with or prey upon the endangered Colorado River fishes. The Service has an informal agreement with the State of Colorado to review all stocking proposals in the Colorado River within Colorado. The Service is attempting to arrange similar coordination with the State of Utah. However, Service agreements with other States in occupied habitat of the razorback sucker have not been formulated. The Service can, to some extent, influence State stocking actions by not contributing Federal funds or fish from Federal hatcheries to stocking proposals with the potential to adversely impact the razorback sucker.

State water quality and streamflow regulations do not assign stringent criteria to waters inhabited by the razorback sucker. Regulations permit desilting and cooling because such water quality changes are generally deemed beneficial. However, the razorback sucker and other native fish species are adapted to the Colorado River's highly turbid, turbulent, and warm conditions. Most Federal regulations also consider water clarity, low temperatures, and "purity" desirable water quality standards. They assign criteria that enhance or preserve these conditions even though they may not provide the best conditions for native ecosystems.

The presence of any one or all of the other listed Colorado River fishes in the same reaches as the razorback sucker does not necessarily lend adequate protection to the razorback sucker since its life history and habitat requirements contrast quite significantly with those of the other species. And, while all Federal agencies are mandated to consider the other listed fishes relative to their actions, they are not so mandated for the razorback sucker. Therefore, those agencies may take actions and implement programs which avoid jeopardy to the endangered fishes while adversely affecting the razorback sucker.

The Colorado River Endangered Fishes Recovery Implementation Program (Recovery Program) has a goal of managing the razorback sucker so that it does not need the protection of

the Endangered Species Act. The management goal adopted by the Recovery Program for the razorback sucker is to establish and protect self-sustaining populations and natural habitat. Substantial funds and resources have been provided by the Recovery Program to meet the goals for this and other listed Colorado River fishes. Although actions by the Recovery Program will provide benefits to the razorback sucker, these actions alone do not provide adequate protection because the Recovery Program is not a regulatory mechanism. Instead, it is a cooperative effort agreed to by public and private entities that have an interest in how the Upper Colorado River Basin and its resources are managed. The Cooperative Agreement that binds these parties may be amended or terminated by agreement of the parties, or any party may withdraw upon written notice. Section 7 of the Endangered Species Act requires that all Federal agencies insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any threatened or endangered species. The Recovery Program does not have the force and effect of law to mandate that the effect of any Federal action on the razorback sucker be considered. And finally, the Recovery Program only applies to the upper basin (excluding the San Juan River), and therefore does not protect the species throughout its range.

E. *Other natural or manmade factors affecting its continued existence.* Of great concern is the fact that significant recruitment of young fish to these populations has not been evident for 30 years. There is considerable evidence that existing populations are composed primarily of old individuals that are slowly dying off (McCarthy and Minckley 1987, Tyus 1987a). A few naturally reproduced juveniles have been reported from the Colorado River and off-stream canal systems downstream of Lake Mohave (Marsh and Minckley 1989) and from the Green River (Holden 1978) in the past 15 years.

Marsh and Langhorst (1988) studied food availability and consumption by larval razorback suckers in Lake Mohave and found that larval razorback suckers consumed a variety of the zooplankters available in the area. Papoulias (1986) found, under experimental conditions, that food items needed to be present at a density of 10 organisms per liter within 10 days of absorption of the yolk sac. Death occurred at about 20–30 days of age if insufficient numbers of zooplankton were present. Marsh and Langhorst's (1988) research on Lake Mohave showed an average of 1.5 zooplankters per liter, and they reported the disappearance of larvae at about 20 days of age. Taken in conjunction with Papoulias' (1986) work, this suggests that the low availability of food organisms may be a factor in the apparent lack of recruitment of razorback suckers to the adult population in Lake Mohave.

The introduction and establishment of nonnative fish species into the Colorado River system is believed by many researchers to have negatively impacted the razorback sucker. Tyus et al. (1982) recorded 42 species that have become established in the Upper Colorado River Basin, and Minckley (1979) listed 37 nonnative species in the lower basin. Many of these may be innocuous or inhabit areas not occupied by razorback suckers, but several are considered serious competitors or predators (Minckley 1983, Loudermilk 1985). In addition to direct predation (see Factor C), competition may result in negative impacts to the razorback sucker, but impacts from competition are more difficult to detect than predation impacts. Populations of red shiner (*Notropis lutrensis*), common carp, and channel catfish share and presumably compete for food and space with razorback suckers (Karp and Tyus 1990, Tyus and Nikirk in press). Although these interactions are not fully understood, they are hypothesized to impact the razorback sucker due to their considerable numbers, the sharing of common foods, and occupation of the same habitats (Jonez and Sumner 1954, Jacobi and Jacobi 1982).

The threat of competition continues as nonnative species continue to be introduced and their ranges continue to expand. Since the reports by Minckley (1979) and Tyus et al. (1982), the northern pike has increased its range and invaded the mainstream of the Green River (Tyus and Beard 1990). The smallmouth bass has been introduced into Lake Powell, and the triploid grass carp (*Ctenopharyngodon idella*) has been legalized for importation into California and Arizona. In the lower basin, two tilapia species (*Tilapia* spp.) have become established, and, along with the flathead catfish, they have become the dominant fish species in the lower Colorado River (William Minckley, Arizona State University, pers. comm. 1989). The rainbow smelt (*Osmerus mordax*) has been recently proposed for introduction into Lake Powell.

Hybridization between razorback suckers and flannelmouth suckers has been reported by a number of investigators. Vanicek et al. (1970) and Holden (1973) reported a high incidence of hybridization between razorback and flannelmouth suckers in the upper basin. They found ratios of 16 hybrids to 73 razorback suckers and 40 hybrids to 53 razorback suckers, respectively. McAda and Wydoski (1980) reported eight razorback sucker x flannelmouth sucker hybrids collected with 95 razorback suckers in the upper basin. This suggests major alterations in the natural river system may have forced populations into close spatial and temporal proximity during spawning. Recent electrophoretic analyses of Lake Mohave razorback suckers revealed less than a 5 percent incidence of flannelmouth sucker genes. Buth et al. (1987) considered this level of introgression insignificant.

A pre-impoundment poisoning project in the Green River where Flaming Gorge Reservoir is now located is often cited as at least a partial cause for the loss of native fishes immediately downstream of the reservoir. While many razorback suckers were undoubtedly lost, a comparison of fish species present in Dinosaur National Monument before and after the program (Binns et al. 1963, Vanicek and Kramer 1969, Vanicek et al. 1970) supports the premise that the effect of the poisoning was of a short-term nature and not responsible for the current status of the razorback sucker. A similar pre-impoundment study and treatment program also were conducted on the San Juan River in New Mexico where Navajo Reservoir is located. No records of razorback suckers were documented before or after the treatment program.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the razorback sucker in determining to propose this rule. Based on this evaluation, the preferred action is to list the razorback sucker as endangered. Endangered status, which means that the species is in danger of extinction throughout all or a significant portion of its range, is appropriate for the razorback sucker because of its greatly reduced range, the extensive partitioning of its range by dams, the extensive alteration of its natural habitats through impoundment and altered flow and temperature regimes, its apparent inability to recruit successfully in the wild, and the introduction of nonnative fish species. A decision to take no action would constitute failure to properly classify the razorback sucker pursuant to the Endangered Species Act and would exclude the razorback sucker from

protection provided by the Act. A decision to propose only threatened status, which means a species is likely to become endangered within the foreseeable future, would not adequately reflect the status of the razorback sucker. The limited numbers of old fish that currently represent the nonrecruiting population indicate the razorback sucker is in danger of extinction throughout its range. Critical habitat is not being proposed for the reasons stated below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be listed as endangered or threatened. The Service finds that designation of critical habitat is not determinable or prudent at this time for the razorback sucker.

As noted earlier, there is limited information on the specific habitat needs of the razorback sucker. Though habitat occupied by the razorback sucker has been identified and spawning has been documented in several areas, it is questionable as to whether these areas are adequately meeting the life history needs of the razorback if there has been little or no recruitment. The razorback sucker cannot perpetuate itself in the wild if there is little or no recruitment of young fish into the population. It would not be in the best interest of the species to identify or use the characteristics of existing habitats as the basis for critical habitat when we are unable to identify those specific areas needed to bring about recruitment. Hence, the Service finds that critical habitat is not determinable at this time.

Even if critical habitat were determinable, it is unlikely that there would be a net benefit to the species from designation of critical habitat. First of all, designation of critical habitat would not protect the razorback sucker from predation or competition by nonnative fishes as described under "Background" and under Factors C and E. It would not protect the razorback sucker from predation or competition from nonnative fish species already in the Colorado River basin, nor would it deter future stocking of nonnative fishes beyond any deterrent resulting by listing the species as endangered. Therefore, designation of critical habitat would not abate the major threat posed by nonnative fish species.

Second, designation of critical habitat is not likely to provide additional protection benefits to the species' habitat beyond those attained through listing the species as endangered and resultant section 7 consultations. Much of the razorback sucker's habitat is located in areas under Federal jurisdiction, as noted below. In addition, existing Federal reservoirs on the Colorado River and its tributaries are major regulators of river flows and may be used to benefit razorback sucker habitat in accordance with section 7 of the Act. It is not necessary to designate critical habitat to achieve these protective or recovery benefits for the species.

Third, there are unlikely to be any additional notification benefits that would accrue from critical habitat designation. For the most part, Federal agencies (land management agencies, agencies responsible for water resource management, and agencies responsible for impacts to waters of the United States) are already aware of the presence of razorback sucker in areas under their jurisdiction. For example, the National Park Service addresses the razorback sucker in its resource management plans for Dinosaur National Monument, Canyonlands National Park, Glen Canyon National Recreation Area, Grand Canyon National Park, and Lake Mead National Recreation Area. The National Park Service also has a representative presently chairing the Colorado River Fishes Recovery Team. The Bureau of Land Management addresses the razorback sucker in resource management plans where habitat for razorback sucker occurs. The Bureau of Reclamation has a representative on the Recovery Team and is an active participant in the Recovery Program. The Western Area Power Administration also is a participant in the Recovery Program. The U.S. Army Corps of Engineers and the Environmental Protection Agency have jurisdiction over activities requiring the placement of dredge or fill material into all waters occupied by the razorback sucker. Designation of critical habitat is not expected to enhance the level of Federal awareness beyond that resulting from species listing.

And finally, the Recovery Program has established an information and education program to inform the public and non-Federal agencies about the Colorado River rare fish, including the razorback sucker, in the Upper Colorado River Basin, excluding the San Juan River. This program, and the programs of Federal agencies discussed above, would help notify the public and non-Federal agencies of the location of razorback sucker habitat.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to proposed or listed species or with respect to 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 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 insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Green and Colorado Rivers have been extensively developed through several Federal programs for power generation, flood control, salinity control, and irrigation. As a result, many Federal agencies are involved with activities which may affect the razorback sucker. Flow conditions in the Green and Colorado Rivers are influenced by power generation and flood control at several Bureau of Reclamation projects. Power generated by the Colorado River Storage Project reservoirs is marketed by the Western Area Power Administration, whose marketing program has considerable influence on discharges from those reservoirs. Other Bureau of Reclamation projects involving diversions and storage for irrigation or municipal and industrial uses and salinity control are

in various stages of planning, construction, or operation. The Soil Conservation Service has salinity control programs which affect flows and water quality in the Colorado River system. The Corps of Engineers would consider the razorback sucker in their administration of section 404 of the Clean Water Act, and the Environmental Protection Agency also would consider the fish in administration of the Clean Water Act, the National Environmental Policy Act, and other pollution and pesticide control programs. Several Federal land and resource management agencies including the National Park Service, the U.S. Forest Service, and the Bureau of Land Management would have to consider the needs of the razorback sucker in programs under their jurisdiction.

The interagency Colorado River Endangered Fishes Recovery Implementation Committee has been organized to coordinate the recovery of currently listed species (Colorado squawfish, humpback chub, and bonytail chub) and the management of the razorback sucker in the upper basin, excluding the San Juan River. This committee considers the razorback sucker an imperiled species that may require listing in the future unless programs are implemented to reverse its downward population trend. Listing the razorback sucker as endangered will give it equal status with the other three listed species in the committee's recovery efforts.

Listing the razorback sucker as endangered would influence the stocking of nonnative fish species and the management of recreational sportfishing in a similar manner as with the other three listed fish species in the Colorado River basin. If stocking or sportfishing programs involve Federal funds or permits, or receive fish from Federal hatcheries, the action would be reviewed under section 7 of the Act. In addition, control of nonnative fishes is an element of the Recovery Program. This program would confine stocking of nonnative fishes to areas where absence of potential conflict with rare or endangered fishes can be demonstrated. Where feasible and effective, nonnative fishes would be selectively removed from areas considered essential to listed species. Participants of the Recovery Program also would review State sportfishing practices and regulations for compliance with Federal law and impacts on rare and endangered fish species. As noted previously, the Service has an informal agreement with the State of Colorado to review all stocking proposals, and is seeking a similar arrangement with the State of Utah.

The Act, and its implementing regulations in 50 CFR 17.21, set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available. With respect to the razorback sucker, it is anticipated that few, if any, trade permits would ever be sought or issued, since the species is not in trade or common in the wild.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the razorback sucker;

(2) The location of any additional populations of the razorback sucker and reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution and population size of the razorback sucker; and

(4) Current or planned activities in the subject area and their possible impacts on the razorback sucker.

Final promulgation of the regulation on the razorback sucker will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, U.S. Fish and Wildlife Service, 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104–5110.

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

A complete list of all references cited herein, as well as others, is available upon request from the Service's Utah State Office (see **ADDRESSES** above).

Authors

This rule was prepared by D.L. Archer and P.A. Schrader, U.S. Fish and Wildlife Service (see **ADDRESSES** above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, 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: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical

order under "FISHES," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

(h) * * *

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Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
*	*	*	*	*		*	
Sucker, razorback	*Xyrauchen texanus*	U.S.A. (AZ, CA, CO, NM, NV, UT, WY) Mexico	Entire	E		NA	NA
*	*	*	*	*		*	

Dated: May 9, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–11796 Filed 5–21–90; 8:45 am]

BILLING CODE 4310–55–M

federal register

Tuesday
May 22, 1990

Part III

Federal Emergency Management Agency

Offer To Assist Insurers In Underwriting Flood Insurance Using the Standard Flood Insurance Policy; Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

Offer To Assist Insurers In Underwriting Flood Insurance Using the Standard Flood Insurance Policy

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency (FEMA).

ACTION: Notice of offer to assist insurers in underwriting flood insurance using the standard flood insurance policy.

SUMMARY: The Federal Insurance Administration is publishing in this notice the Financial Assistance/Subsidy Arrangement for 1990–1991 governing the duties and obligations of insurers participating in the Write-Your-Own Program (WYO) of the National Flood Insurance Program (NFIP). The Financial Assistance, Subsidy Arrangement sets forth the responsibilities of the Government to provide financial and technical assistance to the insurers. It is verbatim with what is set out as appendix A to 44 CFR part 62 and is republished for information and convenience.

This notice relates to the final rule which was published in the **Federal Register** on April 25, 1985, page 16236, as amended by the final rule which was published in the **Federal Register** on April 28, 1988, page 15208, regarding changes in the National Flood Insurance Program's regulations dealing with the issuance of flood insurance policies and the adjustment of claims and the establishment of a program of assistance to private sector property insurance companies in underwriting flood insurance using the Standard Flood Insurance Policy. In 1985, a copy of the offer to participate in the Arrangement was incorporated in a final rule and, this year, as in the years since, a copy of the offer is being published as a Notice.

DATES: The offer is effective upon May 22, 1990. The Financial Assistance/Subsidy Arrangement is effective with respect to flood insurance policies written under the Arrangement with an effective date of October 1, 1990, and later.

SUPPLEMENTARY INFORMATION: By way of background, the Federal Insurance Administration, working with insurance company executives, FEMA's Comptroller's Office and FEMA's Office of the Inspector General, addressed the operating and financial control procedures. The Statistical Plan, Accounting Procedures, and the Financial Control Plan were specifically referenced in the final rule, as amended, and, in addition, procedural manuals have been issued by the FIA in aid of implementation by the WYO companies of the procedures published in the final rule, as amended, such as the Flood Insurance Manual, Flood Insurance Adjuster's Manual, Rollover Procedures and FEMA Letter of Credit Procedures, all of which comprise the operating framework for the WYO Program.

The purposes of this Notice are:

(1) To offer, publicly, financial assistance to protect against underwriting losses resulting from floods on Standard Flood Insurance Policies written by private sector insurers;

(2) To provide a method by which the offer may be accepted; and

(3) To provide notice of the duties and obligations under the Financial Assistance/Subsidy Arrangement for the Arrangement year 1990–91.

Method of Acceptance of Offer

1. Acceptance of this offer shall be by telegraphed or mailed notice of acceptance or signed Arrangement to the Administrator prior to midnight EDT September 30, 1990.

2. The telegraphed or mailed notice of acceptance to the Administrator must be authorized by an official of the insurance company who has the authority to enter into such arrangements.

3. A duly signed original copy of the Notice of Acceptance must be on file with the Administrator by November 16, 1990.

4. If (1), (2) or (3) above are not satisfied, the acceptance will be considered by the Administrator as conditional and the commitment of NFIP resources to fulfill the "Undertaking of the Government" under Article IV of the Arrangement will take a lower priority than those needed to fulfill the requirement of the other participating insurance companies.

5. Send all acceptances of this offer to: FEMA, Attn: Federal Insurance Administrator, WYO Program, Washington, DC 20472.

Offer To Provide Financial Assistance

Pursuant to the provisions of the National Flood Insurance Act of 1968, as amended (title XIII of the Housing and Urban Development Act of 1968), 42 U.S.C. 4001–4128, Reorganization Plan No. 3 of 1978 (3 CFR 1978 Comp., p. 329), E.O. 12127, dated March 31, 1979 (3 CFR 1979 Comp., p. 376), Delegation of Authority to Federal Insurance Administrator, subject to all regulations promulgated thereunder and, to the duties, obligations and rights set forth in the Financial Assistance/Subsidy Arrangement as printed below, the Federal Insurance Administrator, hereinafter referred to as the "Administrator," offers to enter into the Financial Assistance/Subsidy Arrangement with any individual private sector property insurance company. This offer is effective only in a State in which such private sector insurance company is licensed to engage in the business of property insurance.

Federal Emergency Management Agency Federal Insurance Administration Financial Assistance/ Subsidy Arrangement

Purpose: To assist the company in underwriting flood insurance using the Standard Flood Insurance Policy.

Accounting Data: Pursuant to section 1310 of the Act, a Letter of Credit shall be issued under Treasury Department Circular No. 1075, Revised, for payment as provided for herein from the National Flood Insurance Fund.

Effective Date: October 1, 1990.

Issued by: Federal Emergency Management Agency, Federal Insurance Administration, Washington, DC 20472.

Article I—Findings, Purpose, and Authority

Whereas, the Congress in its "Finding and Declaration of Purpose" in the National Flood Insurance Act of 1968, as amended ("the Act"), recognized the benefit of having the National Flood Insurance Program (the Program) "carried out to the maximum extent practicable by the private insurance industry"; and

Whereas, the Federal Insurance Administration (FIA) recognizes this Arrangement as coming under the provisions of section 1310 of the Act; and

Whereas, the goal of the FIA is to develop a program with the insurance industry where, over time, some risk-bearing role for the industry will evolve as intended by the Congress (section 1304 of the Act); and

Whereas, the Program, as presently constituted and implemented, is subsidized, and the insurer (hereinafter the "Company") under this Arrangement shall charge rates established by the FIA; and

Whereas, this Arrangement will subsidize all flood policy losses by the Company; and

Whereas, this Financial Assistance/Subsidy Arrangement has been developed to involve individual Companies in the Program, the initial step of which is to explore ways in which any interested insurer may be

able to write flood insurance under its own name; and

Whereas, one of the primary objectives of the Program is to provide coverage to the maximum number of structures at risk and because the insurance industry has marketing access through its existing facilities not directly available to the FIA, it has been concluded that coverage will be extended to those who would not otherwise be insured under the Program; and

Whereas, flood insurance policies issued subject to this Arrangement shall be only that insurance written by the Company in its own name pursuant to the Act; and

Whereas, over time, the Program is designed to increase industry participation, and, accordingly, reduce or eliminate Government as the principal vehicle for delivering flood insurance to the public; and

Whereas, the direct beneficiaries of this Arrangement will be those Company policyholders and applicants for flood insurance who otherwise would not be covered against the peril of flood.

Now, therefore, the parties hereto mutually undertake the following:

Article II—Undertakings of the Company

A. In order to be eligible for assistance under this Arrangement the Company shall be responsible for:

1.0 Policy Administration, including
- 1.1 Community Eligibility/Rating Criteria
- 1.2 Policyholder Eligibility Determination
- 1.3 Policy Issuance
- 1.4 Policy Endorsements
- 1.5 Policy Cancellations
- 1.6 Policy Correspondence
- 1.7 Payment of Agents Commissions

The receipt, recording, control, timely deposit and disbursement of funds in connection with all the foregoing, and correspondence relating to the above in accordance with the Financial Control Plan requirements.

2.0 Claims processing in accordance with general Company standards. The FIA Claims Manual and Adjuster Management Outline, and Adjuster handbook can be used as guides by the Company, along with the National Flood Insurance Program (NFIP) Write-Your-Own (WYO) Financial Control Plan, Claims Questions and Answers Manual, the Flood Insurance Claims Office (FICO) Manual and other instructional materials.

3.0 Reports
- 3.1 Monthly Financial Reporting and Statistical Transaction Reporting shall be in accordance with the requirements of National Flood Insurance Program Statistical Plan for the Write-Your-Own (WYO) program and the Financial Control Plan for business written under the WYO Program. These data shall be validated/edited/audited in detail and shall be compared and balanced against Company financial reports.
- 3.2 Monthly financial reporting shall be prepared in accordance with the WYO Accounting Procedures.
- 3.3 The Company shall establish a program of self audit acceptable to the FIA or comply with the self audit program contained in the Financial Control Plan for business written under the WYO Program. The Company shall report the results of this self-audit to the FIA annually.

B. The Company shall use the following time standards of performance as a guide:

1.0 Application Processing—15 days (Note: If the policy cannot be mailed due to insufficient or erroneous information or insufficient funds, a request for correction or added monies shall be mailed within 10 days);
- 1.1 Renewal Processing—7 days;
- 1.2 Endorsement Processing—7 days;
- 1.3 Cancellation Processing—15 days;
- 1.4 Correspondence, Simple and/or Status Inquiries—7 days;
- 1.5 Correspondence, Complex Inquiries—20 days;
- 1.6 Supply, Materials, and Manual Requests—7 days;
- 1.7 Claims Draft Processing—7 days from completion of file examination;
- 1.8 Claims Adjustment—45 days average from receipt of Notice of Loss (or equivalent) through completion of examination.
- 1.9 For the elements of work enumerated above, the elapsed time shown is from date of receipt through date of mail out. Days means working, not calendar days.

In addition to the standards for timely performance set forth above, all functions performed by the Company shall be in accordance with the highest reasonably attainable quality standards generally utilized in the insurance and data processing industries.

These standards are for guidance. Although no immediate remedy for failure to meet them is provided under this Arrangement, nevertheless, performance under these standards can be a factor considered by the Federal Insurance Administrator (the Administrator) in determining the continuing participation of the Company in the Program.

C. The Company shall coordinate activities and provide information to the FIA or its designee on those occasions when a Flood Insurance Catastrophe Office is established.

D. Policy Issuance

1.0 The flood insurance subject to this Arrangement shall be only that insurance written by the Company in its own name pursuant to the Act.

2.0 The Company shall issue policies under the regulations prescribed by the Administrator in accordance with the Act;

3.0 All such policies of insurance shall conform to the regulations prescribed by the Administrator pursuant to the Act, and be issued on a form approved by the Administrator;

4.0 All policies shall be issued in consideration of such premiums and upon such terms and conditions and in such States or areas or subdivisions thereof as may be designated by the Administrator and only where the Company is licensed by State law to engage in the property insurance business;

5.0 The Administrator may require the Company to immediately discontinue issuing policies subject to this Arrangement in the event Congressional authorization or appropriation for the National Flood Insurance Program is withdrawn.

E. The Company shall establish a bank account, separate and apart from all other Company accounts, at a bank of its choosing for the collection, retention and disbursement of funds relating to its obligation under this Arrangement, less the Company's expenses as set forth in Article III, and the operation of the Letter of Credit established pursuant to Article IV. (Reference: Article IV, section A). All funds not required to meet current expenditures shall be remitted to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual.

F. The Company shall investigate, adjust, settle and defend all claims or losses arising from policies issued under this Arrangement. Payment of flood insurance claims by the Company shall be binding upon the FIA.

G. The Company may market flood insurance policies in any manner consistent with its customary method of operation.

Article III—Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds

A. The Company shall be liable for operating, administrative and production expenses, including any taxes, dividends, agent's commissions or any board, exchange or bureau assessments, or any other expense of whatever nature incurred by the Company in the performance of its obligations under this Arrangement.

B. The Company shall be entitled to withhold as operating and administrative expenses, other than agents or brokers commissions, an amount from the Company's written premium on the policies covered by this Arrangement in reimbursement of all of the Company's marketing, operating and administrative expenses, except for allocated and unallocated loss adjustment expenses described in C. below, which amount shall equal the average of industry expense ratios for "Other Acq." "Gen. Exp." and "Taxes" as published in the latest available (as of March 15 of the prior Arrangement year) "Best's Aggregates and Averages Property Casualty, Industry Underwriting—by Lines for Fire, Allied Lines, Farmowners Multiple Peril, Homeowners Multiple Peril, and Commercial Multiple Peril combined (weighted average using premiums earned as weights) calculated and promulgated by the Administrator. Premium income net of reimbursement (net premium income) shall be deposited in a special account for the payment of losses and loss adjustment expenses (see Article II, section E).

The Company shall be entitled to 14.0% of the Company's written premium on the policies covered by this Arrangement as the basic commission allowance to meet commissions and/or salaries of their insurance agents, brokers, or other entities producing qualified flood insurance applications and other related expenses.

Additionally, the Company shall be entitled to 0.1% of the Company's written premium on the policies covered by this Arrangement for each 1% growth in the Company's policies in force on September 30 of this Arrangement Year, reduced by 80% of the number of policies scheduled for transfer to the Company during this Arrangement Year pursuant to the Company's request under the NFIP Rollover Procedures, over the policies in force on September 30 of the prior Arrangement Year; the additional commission allowance calculated under this provision is limited to a maximum of 3%. The Company may withhold 15% of the Company's written premium during this Arrangement Year with an adjustment up or down, depending upon policy growth, being made at the end of this Arrangement Year.

In the case where the Company had no policies in force on September 30 of the prior Arrangement Year, the Company shall be entitled to withhold 15% of the Company's written premium on the policies covered by this Arrangement as the commission allowance, with no adjustment at the end of this Arrangement Year.

Nothing in Article III, section B, can be used as a means of increasing a Company's commission allowance by transferring business from one company to another company within a company group or by the merger or acquisition of another company. Payments of any additional commission allowance or refund of any excess commission allowance will be in accordance with the WYO Accounting Procedures Manual.

The Company, with the consent of the Administrator as to terms and costs, shall be entitled to utilize the services of a national rating organization, licensed under state law, to assist the FIA in undertaking and carrying out such studies and investigations on a community or individual risk basis, and in determining more equitable and accurate estimates of flood insurance risk premium rates as authorized under the National Flood Insurance Act of 1968, as amended. The Company shall be reimbursed in accordance with the provisions of the WYO Accounting Procedures Manual for the charges or fees for such services.

C. Loss Adjustment Expenses shall be reimbursed as follows:

1. Unallocated loss adjustment shall be an expense reimbursement of 3.3% of the incurred loss (except that it does not include "incurred but not reported").

2. Allocated loss adjustment expense shall be reimbursed to the Company pursuant to Exhibit A, entitled "Fee Schedule."

3. Special allocated loss expenses shall be reimbursed to the Company for only those expenses the Company has obtained prior approval of the Administrator to incur.

D.1. Loss payments under policies of flood insurance shall be made by the Company from funds retained in the bank account established under Article II, section E and, if such funds are depleted, from funds derived by drawing against the Letter of Credit established pursuant to Article IV.

2. Loss payments will include payments as a result of awards or judgments for damages arising under the scope of this Arrangement, policies of flood insurance issued pursuant to this Arrangement, and the claims processing standards and guides set forth at Article II, section A, 2.0 of this Arrangement. Prompt notice of any claim for damages as to claims processing or other matters arising outside the scope of this section (D)(2) shall be sent to the Assistant Administrator of the FIA's Office of Insurance Policy Analysis and Technical Services, along with a copy of any material pertinent to the claim for damages arising outside of the scope of the matters set forth in this section (D)(2).

Following receipt of notice of such claim, the General Counsel, FEMA, shall review the cause and make a recommendation to FIA as to whether the claim is grounded in actions by the Company which are significantly outside the provisions of this section (D)(2). After reviewing the General Counsel's recommendation, the Administrator will make his decision and the Company will be notified, in writing, within thirty (30) days of the General Counsel's recommendation, if the decision is that any award or judgment for damages arising out of such actions will not be recognized under Article III of this Arrangement as a reimbursable loss cost, expense or expense reimbursement. In the event that the Company wishes to petition for reconsideration of the notification that it will not be reimbursed for the award or judgment made under the above circumstances, it may do so by mailing, within thirty days of the notice declining to recognize any such award or judgment as reimbursable under Article III, a written petition to the Chairman of the WYO Standards Committee established under the Financial Control Plan. The WYO Standards Committee will, then, consider the petition at its next regularly scheduled meeting or at a special meeting called for that purpose by the Chairman and issue a written recommendation to the Administrator, within thirty days of the meeting. The Administrator's final determination will be made, in writing, to the Company within thirty days of the recommendation made by the WYO Standards Committee.

E. Premium refunds to applicants and policyholders required pursuant to rules contained in the National Flood Insurance Program (NFIP) "Flood Insurance Manual" shall be made by the Company from funds retained in the bank account established under Article II, section E and, if such funds are depleted, from funds derived by drawing

against the Letter of Credit established pursuant to Article IV.

Article IV—Undertakings of the Government

A. A Treasury Financial Communication System Letter(s) of Credit shall be established by the Federal Emergency Management Agency (FEMA) against which the Company may withdraw funds daily, if needed, pursuant to prescribed Federal Reserve Letter of Credit procedures as implemented by FEMA. The amounts of the authorizations will be increased as necessary to meet the obligations of the Company under Article III, sections (C), (D), and (E). Request for funds shall be made only when net premium income has been depleted. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for allowable Letter of Credit costs.

Request for payment on Letters of Credit shall not ordinarily be drawn more frequently than daily nor in amounts less than $5,000, and in no case more than $5,000,000 unless so stated on the Letter of Credit. This Letter of Credit may be drawn against the Company for any of the following reasons:

1. Payment of claim as described in Article III, section D; and
2. Refunds to applicants and policyholders for insurance premium overpayment, or if the application for insurance is rejected or when cancellation or endorsement of a policy results in a premium refund as described in Article III, section E; and
3. Allocated and unallocated Loss Adjustment Expenses as described in Article III, section C.

B. The FIA shall provide technical assistance to the Company as follows:

1. The FIA's policy and history concerning underwriting and claims handling.
2. A mechanism to assist in clarification of coverage and claims questions.
3. Other assistance as needed.

Article V—Commencement and Termination

A. Upon signature of authorized officials for both the Company and the FIA, this Arrangement shall be effective for the period October 1 through September 30. The FIA shall provide financial assistance only for policy applications and endorsements accepted by the Company during this period pursuant to the Program's effective date, underwriting and eligibility rules.

B. By June 1, of each year, the FIA shall publish in the **Federal Register** and make available to the Company the terms for the re-subscription of this Financial Assistance/Subsidy Arrangement. In the event the Company chooses not to re-subscribe, it shall notify the FIA to that effect by the following July 1.

C. In the event the Company elects not to participate in the Program in any subsequent fiscal year, or the FIA chooses not to renew the Company's participation, the FIA, at its option, may require (1) the continued performance of this entire Arrangement for one (1) year following the effective expiration date only for those policies issued during the original term of this Arrangement, or any renewal thereof, or (2) require the transfer to the FIA of:

a. All data received, produced, and maintained through the life of the Company's participation in the Program, including certain data, as determined by FIA, in a standard format and medium; and

b. A plan for the orderly transfer to the FIA of any continuing responsibilities in administering the policies issued by the Company under the Program including provisions for coordination assistance; and

c. All claims and policy files, including those pertaining to receipts and disbursements which have occurred during the life of each policy. In the event of a transfer of the services provided, the Company shall provide the FIA with a report showing, on a policy basis, any amounts due from or payable to insureds, agents, brokers, and others as of the transition date.

D. Financial assistance under this Arrangement may be cancelled by the FIA in its entirety upon 30 days written notice to the Company by certified mail stating one of the following reasons for such cancellation: (1) Fraud or misrepresentation by the Company subsequent to the inception of the contract, or (2) nonpayment to the FIA of any amount due the FIA. Under these very specific conditions, FIA may require the transfer of data as shown in Section C., above. If transfer is required, the unearned expenses retained by the Company shall be remitted to the FIA.

E. In the event the Act is amended, or repealed, or expires, or if the FIA is otherwise without authority to continue the Program, financial assistance under this Arrangement may be cancelled for any new or renewal business, but the Arrangement shall continue for policies in force which shall be allowed to run their term under the Arrangement.

F. In the event that the Company is unable to, or otherwise fails to, carry out its obligations under this Arrangement by reason of any order or directive duly issued by the Department of Insurance of any jurisdiction to which the Company is subject, the Company agrees to transfer, and the Government will accept, any and all WYO policies issued by the Company and in force as of the date of such inability or failure to perform. In such event the Government will assume all obligations and liabilities owed to policyholders under such policies arising before and after the date of transfer and the Company will immediately transfer to the Government all funds in its possession with respect to all such policies transferred and the unearned portion of the Company expenses for operating, administrative and loss adjustment on all such policies.

Article VI—Information and Annual Statements

The Company shall furnish to the FIA such summaries and analyses of information in its records as may be necessary to carry out the purposes of the National Flood Insurance Act of 1968, as amended, in such form as the FIA, in cooperation with the Company, shall prescribe. The Company shall be a property/casualty insurer domiciled in a State or territory of the United States. Upon request, the Company shall file with the FIA a true and correct copy of the Company's Fire and Casualty Annual Statement, and Insurance Expense Exhibit or amendments thereof, as filed with the State Insurance Authority of the Company's domiciliary State.

Article VII—Cash Management and Accounting

A. The FEMA shall make available to the Company during the entire term of this Arrangement and any continuation period required by FIA pursuant to Article V, section C., the Letter of Credit provided for in Article IV drawn on a repository bank within the Federal Reserve System upon which the Company may draw for reimbursement of its expenses as set forth in Article IV which exceed net written premiums collected by the Company from the effective date of this Arrangement or continuation period to the date of the draw.

B. The Company shall remit all funds not required to meet current expenditures to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual.

C. In the event the Company elects not to participate in the Program in any subsequent fiscal year, the Company and FIA shall make a provisional settlement of all amounts due or owing

within three months of the termination of this Arrangement. This settlement shall include net premiums collected, funds drawn on the Letter of Credit, and reserves for outstanding claims. The Company and FIA agree to make a final settlement of accounts for all obligations arising from this Arrangement within 18 months of its expiration or termination, except for contingent liabilities which shall be listed by the Company. At the time of final settlement, the balance, if any, due the FIA or the Company shall be remitted by the other immediately and the operating year under this Arrangement shall be closed.

Article VIII—Arbitration

A. If any misunderstanding or dispute arises between the Company and the FIA with reference to any factual issue under any provisions of this Arrangement or with respect to the FIA's non-renewal of the Company's participation, other than as to legal liability under or interpretation of the standard flood insurance policy, such misunderstanding or dispute may be submitted to arbitration for a determination which shall be binding upon approval by the FIA. The Company and the FIA may agree on and appoint an arbitrator who shall investigate the subject of the misunderstanding or dispute and make a determination. If the Company and the FIA cannot agree on the appointment of an arbitrator, then two arbitrators shall be appointed, one to be chosen by the Company and one by the FIA.

The two arbitrators so chosen, if they are unable to reach an agreement, shall select a third arbitrator who shall act as umpire, and such umpire's determination shall become final only upon approval by the FIA.

The Company and the FIA shall bear in equal shares all expenses of the arbitration. Findings, proposed awards, and determinations resulting from arbitration proceedings carried out under this section, upon objection by FIA or the Company, shall be inadmissible as evidence in any subsequent proceedings in any court of competent jurisdiction.

This Article shall indefinitely succeed the term of this Arrangement.

Article IX—Errors and Omissions

The parties shall not be liable to each other for damages caused by ordinary negligence arising out of any transaction or other performance under this Arrangement, nor for any inadvertent delay, error, or omission made in connection with any transaction under this Arrangement, provided that such delay, error, or omission is rectified by the responsible party as soon as possible after discovery.

However, in the event that the Company has made a claim payment to an insured without including a mortgagee (or trustee) of which the Company had actual notice prior to making payment, and subsequently determines that the mortgagee (or trustee) is also entitled to any part of said claim payment, any additional payment shall not be paid by the Company from any portion of the premium and any funds derived from any Federal Letter of Credit deposited in the bank account described in Article II, section E. In addition, the Company agrees to hold the Federal Government harmless against any claim asserted against the Federal Government by any such mortgagee (or trustee), as described in the preceding sentence, by reason of any claim payment made to any insured under the circumstances described above.

Article X—Officials Not to Benefit

No Member or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Arrangement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Arrangement if made with a corporation for its general benefit.

Article XI—Offset

At the settlement of accounts the Company and the FIA shall have, and may exercise, the right to offset any balance or balances, whether on account of premiums, commissions, losses, loss adjustment expenses, salvage, or otherwise due one party to the other, its successors or assigns, hereunder or under any other Arrangements heretofore or hereafter entered into between the Company and the FIA. This right of offset shall not be affected or diminished because of insolvency of the Company.

All debts of credits of the same class, whether liquidated or unliquidated, in favor of or against either party to this Arrangement on the date of entry, or any order of conservation, receivership, or liquidation, shall be deemed to be mutual debts and credits and shall be offset with the balance only to be allowed or paid. No offset shall be allowed where a conservator, receiver, or liquidator has been appointed and where an obligation was purchased by or transferred to a party hereunder to be used as an offset. Although a claim on the part of either party against the other may be unliquidated or undetermined in amount on the date of the entry of the order, such claim will be regarded as being in existence as of the date of such order and any credits or claims of the same class then in existence and held by the other party may be offset against it.

Article XII—Equal Opportunity

The Company shall not discriminate against any applicant for insurance because of race, color, religion, sex, age, handicap, marital status, or national origin.

Article XIII—Restriction on Other Flood Insurance

As a condition of entering into this Arrangement the Company agrees that in any area in which the Administrator authorizes the purchase of flood insurance pursuant to the Program, all flood insurance offered and sold by the Company to persons eligible to buy pursuant to the Program for coverages available under the Program shall be written pursuant to this Arrangement.

However, this restriction applies solely to policies providing only flood insurance. It does not apply to policies provided by the Company of which flood is one of the several perils covered, or where the flood insurance coverage amount is over and above the limits of liability available to the insured under the Program.

Article XIV—Access to Books and Records

The FIA and the Comptroller General of the United States, or their duly authorized representatives, for the purpose of investigation, audit, and examination, shall have access to any books, documents, papers and records of the Company that are pertinent to this Arrangement. The Company shall keep records which fully disclose all matters pertinent to this Arrangement, including premiums and claims paid or payable under policies issued pursuant to this Arrangement. Records of accounts and records relating to financial assistance shall be retained and available for three (3) years after final settlement of accounts, and to financial assistance, three (3) years after final adjustment of such claims. The FIA shall have access to policyholder and claim records at all times for purposes of the review, defense, examination, adjustment, or investigation of any claim under a flood insurance policy subject to this Arrangement.

Article XV—Compliance with Act and Regulations

This Arrangement and all policies of insurance issued pursuant thereto shall be subject to the provisions of the

National Flood Insurance Act of 1968, as amended, the Flood Disaster Protection Act of 1973, as amended, and Regulations issued pursuant thereto and all Regulations affecting the work that are issued pursuant thereto, during the term hereof.

Article XVI—Relationship Between the Parties (Federal Government and Company) and the Insured

Inasmuch as the Federal Government is a guarantor hereunder, the primary relationship between the Company and the Federal Government is one of a fiduciary nature, i.e., to assure that any taxpayer funds are accounted for and appropriately expended.

The Company is not the agent of the Federal Government. The Company is solely responsible for its obligations to its insured under any flood policy issued pursuant hereto.

In witness whereof, the parties hereto have accepted this Arrangement on this _____ day of _____, 1990.

Company
by _____

(Title)

The United States of America
Federal Emergency Management Agency
by _____
Federal Insurance Administrator
(Title)

Notice of Acceptance for Federal Emergency Management Agency; Federal Insurance Administration; Financial Assistance/Subsidy Arrangement (Arrangement)

Whereas, in 1990, there was published a Notice of Offer by the Federal Emergency Management Agency to enter into a Financial Assistance/Subsidy Arrangement (hereafter, the Arrangement).

Whereas, the above cited Arrangement, as published in and reprinted from the **Federal Register,** does not provide sufficient space to type in the name of the company.

Whereas, the Arrangement may include several individual companies within a Company Group and the Arrangement as published in and reprinted from the **Federal Register** does not provide sufficient space to type in a list of companies.

Therefore, the parties hereby agree that this Notice of Acceptance form is incorporated into and is an integral part of the entire Arrangement and is substituted in place of the signature block contained in the **Federal Register** under Article XVI of the Arrangement. The above mentioned Arrangement is effective in the States in which the insurance company(ies) listed below is (are) duly licensed to engage in the business of property insurance:

_____
_____
_____
_____
_____
_____
_____
_____

In witness, whereof, the parties hereto have accepted the Arrangement on this _____ day of _____, _____.

By: _____
Title: _____

The United States of America
Federal Emergency Management Agency
By: _____
Title: Federal Insurance Administrator _____

Exhibit A

FEE SCHEDULE

Range (by covered loss)	Fee
Erroneous assignment	$40.00
CWP	70.00
$0.01 to $200.00	70.00
$200.01 to $400.00	90.00
$400.01 to $600.00	110.00
$600.01 to $800.00	130.00
$800.01 to $1,000.00	150.00
$1,000.01 to $1,500.00	180.00
$1,500.01 to $2,000.00	200.00
$2,000.01 to $2,500.00	220.00
$2,500.01 to $3,000.00	240.00
$3,000.01 to $3,500.00	260.00
$3,500.01 to $4,000.00	280.00
$4,000.01 to $4,500.00	300.00
$4,500.01 to $5,000.00	320.00
$5,000.01 to $6,000.00	350.00
$6,000.01 to $7,000.00	370.00
$7,000.01 to $8,000.00	380.00
$8,000.01 to $9,000.00	400.00
$9,000.01 to $10,000.00	420.00
$10,000.01 to $15,000.00	460.00
$15,000.01 to $20,000.00	490.00
$20,000.01 to $25,000.00	520.00
$25,000.01 to $30,000.00	550.00
$30,000.01 to $35,000.00	580.00
$35,000.01 to $40,000.00	610.00
$40,000.01 to $45,000.00	640.00
$45,000.01 to $50,000.00	670.00
$50,000.01 to $75,000.00	800.00
$75,000.01 to $100,000.00	950.00
$100,000.01 to $125,000.00	1,100.00
$125,000.01 to $150,000.00	1,250.00
$150,000.01 to $175,000.00	1,400.00
$175,000.01 to $200,000.00	1,550.00
$200,000.01 to limits	1,700.00

Allocated fee schedule entry value is the covered loss under the policy based on the standard deductibles ($500 and $50) and limited to the amount of insurance purchased.

Dated: April 17, 1990.

Harold T. Duryee,

Federal Insurance Administrator.

[FR Doc. 90–11835 Filed 5–21–90; 8:45 am]

BILLING CODE 6718–05–M

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Federal Register

Vol. 55, No. 99

Tuesday, May 22, 1990

INFORMATION AND ASSISTANCE

FEDERAL REGISTER PAGES AND DATES, MAY

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

221.....18591
224.....18591
304.....21010
330.....20111
331.....20111
386.....20111
Proposed Rules:
202.....20275
563g.....18610
741.....18613
1611.....20023

13 CFR

302.....18593
309.....18594
Proposed Rules:
120.....18614
121.....20467
124.....18615
125.....19633

14 CFR

13.....18800
14.....18800
15.....18704
21.....19050, 20588
23.....18570, 19050
25.....20588
39.....18304, 18305, 18860, 18861, 19058, 19061, 19254, 19721, 19722, 20129–20133, 20590–20592, 20894
71.....18100, 18862, 19226, 19255, 19256, 20134
73.....19724, 20100
75.....19257
97.....18863
135.....20135
385.....20446
1215.....20592
Proposed Rules:
Ch. I.....18702, 20609
13.....20394
21.....18346
29.....18346
39.....18349, 18350, 18910, 19083–19086, 19269, 19271, 20164, 20165, 20609, 20610
47.....20394
61.....20394
71.....18122, 18123, 19272–19275, 19742, 20166, 20167
75.....18351
91.....20394
183.....20394

15 CFR

799.....19724
2006.....20593
Proposed Rules:
290.....18124

16 CFR

417.....20450
600.....18804
Proposed Rules:
4.....20469

17 CFR

1.....19725
200.....18306, 19062, 19871, 20894
230.....18306, 20894

18 CFR

271.....18100, 18864
274.....20450
1303.....20453

19 CFR

12.....19029
353.....20453
355.....20453
Proposed Rules:
122.....18352
133.....18353
201.....19276

20 CFR

212.....20454
416.....20612
Proposed Rules:
10.....20276
200.....19743
209.....19743
234.....19743
416.....19423, 20612

21 CFR

74.....18865, 19618
109.....20782
177.....18595, 18596, 19701
178.....18597, 18721
179.....18227, 18538, 19701
310.....18722, 19852
331.....19852
357.....19862
436.....19872
444.....18597
448.....19872
509.....20782
510.....18330, 19874
522.....18724
524.....20454
558.....18330, 18598
Proposed Rules:
Ch. I.....20799
312.....20802
333.....19868, 20434
334.....20434
335.....20434
341.....20434
344.....20434
347.....20434
348.....20434
350.....20434
355.....20434
356.....20434
357.....20434
358.....20434
448.....19868
450.....18617, 19701
874.....18830
878.....20568

22 CFR

Proposed Rules:
212.....18620, 20471

23 CFR

658.....19145
Proposed Rules:
1204.....20471

24 CFR

25.....18869
49.....18490
200.....18873
203.....18490, 18869
205.....18873
207.....18490
213.....18490
221.....18490
234.....18490
237.....18490
280.....20240
510.....18490
511.....20040
570.....18490
Proposed Rules:
200.....19895
511.....20070
888.....20682

25 CFR

143.....19620
177.....20455
Proposed Rules:
61.....18128
143.....19637

26 CFR

1.....19423, 19622, 19875
35a.....19622
46.....19622
602.....19622
Proposed Rules:
1.....18626, 18639, 19423, 19897–19947, 20278–20289

27 CFR

Proposed Rules:
9.....20168
179.....18736

28 CFR

0.....19063, 20456
Proposed Rules:
0.....18130

29 CFR

517.....19064
1910.....19258
2619.....20136
2676.....20137
Proposed Rules:
1910.....19745
2700.....20805

30 CFR

75.....20137
926.....19727
936.....20138
942.....20600
Proposed Rules:
56.....19748
57.....19748
58.....19748
70.....19748
71.....19748
72.....19748
75.....18736, 18737, 19748
202.....18911, 20679
206.....18911, 20679
210.....18911, 20679
212.....18911, 20679
250.....18639
780.....19637
785.....19637
816.....19637
913.....19751
914.....19087
931.....19752

31 CFR

103.....20139

32 CFR

199.....19145
813.....20787
836.....20787
847.....18600
Proposed Rules:
286b.....20168

33 CFR

100.....18600, 19065, 19628, 19736, 19881, 20262
117.....18875, 20263
151.....18578
165.....18724, 20263–20265
Proposed Rules:
117.....20477, 20613, 20805
161.....21044
162.....21044
163.....21044
164.....21044
165.....19959, 21044

36 CFR

1234.....19216

37 CFR

1.....18230
Proposed Rules:
301.....18131
306.....18131

38 CFR

3.....18601, 20144
17.....20150
19.....20144
21.....18603
36.....21015
Proposed Rules:
3.....19088
17.....19753
21.....18641, 18642

39 CFR

20.....19260

40 CFR

52.....18106–18110, 18604, 18725, 19065, 19066, 19262, 19881, 20265–20272, 20601, 21021
60.....18876, 19882
61.....18330, 19882
62.....19883
228.....20274, 20788
261.....18496, 18726, 18876
264.....19262
271.....18496
272.....18112
280.....18566
302.....18496
350.....19264
721.....20792
761.....21023
790.....18881
Proposed Rules:
6.....18838
52.....18131, 20479, 20614, 20616, 20806
82.....18256
180.....19277–19282, 20416
185.....19283, 20416
186.....20416
261.....18132, 18507, 18643, 19830, 20169
264.....20678

41 CFR

60-30.....19069
101-3.....18702
101-45.....19737
201-45.....19221
271.....18507
302.....18507

42 CFR

405.....18331

Proposed Rules:

405.....20896
412.....19426
416.....20896
440.....20896
482.....20896
483.....20896
488.....20896
493.....20896

43 CFR

3100.....18604
5450.....19884
5460.....19884

Public Land Orders:

725 (Revoked in part by PLO 6781).....19629
1697 (Revoked).....18335
2354 (Revoked in part by PLO 6780).....19629
6777.....18335
6779.....19070
6780.....19629
6781.....19629
6782.....20766

44 CFR

64.....18113, 18336, 18884, 18885, 21031-21033
65.....18115, 18116
67.....18117

Proposed Rules:

67.....18138, 19961

45 CFR

235.....18727
1215.....20152

Proposed Rules:

233.....18912
234.....18912
235.....18912
1355.....19089
1356.....19089
1357.....19089

46 CFR

25.....18578
401.....19145
550.....20457
580.....20457
581.....20457

Proposed Rules:

58.....18142
146.....20996
160.....18142
515.....20482
525.....20482
530.....20482
560.....20482
572.....20482

47 CFR

0.....19148
1.....19148, 20396
5.....19148, 20396
15.....18339
21.....20396
22.....20396
25.....20396
61.....19148
63.....20396
73.....18887, 18888, 19264, 19265, 19830, 20603, 21035
74.....20396
76.....18888
78.....20396
80.....20396
90.....20396
94.....18889
95.....20396
97.....20396
99.....20396

Proposed Rules:

1.....18738, 20400
21.....18354
25.....18918
32.....20482
43.....18354
63.....20400
65.....18920, 18921
73.....18355, 19284
74.....18354
78.....18354
94.....18354
95.....18740

48 CFR

201.....19070
202.....19070
204.....19070
206.....19070
208.....19070
215.....19070
217.....19070
219.....19070
222.....19070
223.....19070
225.....19070
226.....19070
227.....19070
232.....19070
237.....19070
244.....19070
245.....19070
246.....19070
247.....19070
251.....19070
252.....19070
App. H.....19070
App. I.....19070
513.....20457
514.....20457
515.....20457
553.....20457
1501.....18340

Proposed Rules:

9.....18296
237.....19967
1527.....20809
1552.....20809

49 CFR

107.....21035
171.....20796, 21035
172.....20796, 21035
173.....20796, 21035
175.....20796
176.....20796, 21035
177.....19210, 21035
178.....21035
180.....21035
571.....18889, 19630, 20158, 21038
1056.....18729

Proposed Rules:

27.....18644
107.....20962
171.....18438, 20962
172.....18438
173.....18438, 20242
174.....18546
175.....18546
176.....20962
177.....18546
396.....18355
1003.....18741
1043.....18741
1084.....18741
1105.....20810
1106.....20810
1150.....20810
1152.....20810

50 CFR

17.....18844, 19145, 21148
216.....20458
222.....20603
611.....19266, 19738
628.....18729
646.....18893
650.....18604, 20274
658.....18120, 20162
661.....18894, 20607, 21039
672.....18605, 19266, 19738, 20465
675.....19266

Proposed Rules:

17.....18357, 18843, 20483, 21154
32.....19968
33.....19968
662.....19284

LIST OF PUBLIC LAWS

Last List May 15, 1990

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H.R. 922/Pub. L. 101-291

To designate the building located at 1515 Sam Houston Street in Liberty, Texas, as the "M.P. Daniel and Thomas F. Calhoon, Senior, Post Office Building". (May 17, 1990; 104 Stat. 184; 1 page) Price: $1.00

H.R. 1472/Pub. L. 101-292

To establish the Grand Island National Recreation Area in the State of Michigan, and for other purposes. (May 17, 1990; 104 Stat. 185; 7 pages) Price: $1.00

H.R. 4637/Pub. L. 101-293

To amend Public Law 101-86 to eliminate the 6-month limitation on the period for which civilian and military retirees may serve as temporary employees, in connection with the 1990 decennial census of population, without being subject to certain offsets from pay or other benefits. (May 17, 1990; 104 Stat. 192; 1 page) Price: $1.00

H.J. Res. 453/Pub. L. 101-294

Designating May 1990 as "National Digestive Disease Awareness Month". (May 17, 1990; 104 Stat. 193; 2 pages) Price: $1.00

H.J. Res. 490/Pub. L. 101-295

Commemorating May 18, 1990, as the 25th anniversary of Head Start. (May 17, 1990; 104 Stat. 195; 2 pages) Price: $1.00

S. 1853/Pub. L. 101-296

To award a congressional gold medal to Laurance Spelman Rockefeller. (May 17, 1990; 104 Stat. 197; 3 pages) Price: $1.00

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