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Wednesday
June 3, 1992

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

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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.

CHICAGO, IL

WHEN: June 16; 9:00 a.m.
WHERE: Room 328
Ralph H. Metcalfe Federal Building
77 W. Jackson
Chicago, IL
RESERVATIONS: Call the Federal Information Center, 1–800–366–2998

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Rules and Regulations

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

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Exempted Prescription Products

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: This final rule is issued by the Administrator of the DEA, amending § 1308.32 of title 21 of the Code of Federal Regulations such that those products listed in § 1308.32 containing butalbital shall not be exempted from sections 952–954 of the Controlled Substance Import and Export Act. This action is in response to a decision of the United Nations Commission on Narcotic Drugs taken at the Commission's thirty-fourth session.

EFFECTIVE DATE: July 6, 1992.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7183.

SUPPLEMENTARY INFORMATION: A notice was published in the Federal Register on January 14, 1992, proposing that products containing butalbital not be exempt from import/export regulations. Interested persons were given until February 13, 1992, to submit comments or objections regarding the proposal. No comments were received.

The Controlled Substances Act (CSA) as amended in accordance with 21 U.S.C. 811 (g)(3)(A), and the Controlled Substances Import and Export Act as amended in accordance with 21 U.S.C. 956 (b), authorizes the Attorney General to except any compound, mixture, or preparation containing any depressant or stimulant substances listed in paragraph (a) or (b) of Schedule III or in Schedule IV or V from the application of all or any part of this subchapter. This is applicable if (1) the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant or stimulant effect on the central nervous system and (2) such ingredients are included, therein, in such combination, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which do have a depressant or stimulant effect on the central nervous system.

The United States is a party to the United Nations Convention on Psychotropic Substances, 1971. Congress intended that the United States fulfill the requirements of this treaty and made provisions under 21 U.S.C. 801(a) of the CSA to incorporate the Convention's provisions into the CSA.

Under the provisions of the 1971 Convention, Article 3 provides that, if certain conditions are met, a Party may exempt preparations containing psychotropic substances from certain measures of control provided for in the Convention, except for specific obligatory requirements. A Party must then notify the Secretary-General of this action. The Secretary-General, in turn, notifies the Commission on Narcotic Drugs (CND). After notification and subsequent review, the CND may decide to terminate the exemption of a preparation.

On May 16, 1989, the United States notified the United Nations of the exemption of 55 products containing butalbital. On April 29, 1991, the 34th Commission on Narcotic Drugs, by decision 4 (XXXIV), decided to terminate the exemption by the Government of the United States of America of the preparations containing butalbital as found in § 1308.32 of title 21 of the Code of Federal Regulations, from certain control measures provided for under the 1971 Convention on Psychotropic Substances, so that the requirements of Article 12, paragraph 2, import/export documentation, of the Convention should apply to these preparations.

To comply with the decision of the Commission, the DEA hereby amends § 1308.32 of the Code of Federal Regulations such that those exempt prescription products listed in § 1308.32 containing butalbital shall be subject to the import/export requirements of sections 952–954 of the CSA.

The Deputy Assistant Administrator of the DEA hereby certifies that this action will have no negative economic impact upon small entities whose interests must be considered under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.).

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612 and it has been determined that this matter does not have sufficient Federalism implications to require the preparation of a Federalism Assessment.

It has been determined that drug control matters are not subject to review by the Office of Management and Budget (OMB), pursuant to the provisions of E.O. 12291. Accordingly, this action is not subject to those provisions of E.O. 12278 which are contingent upon review by OMB. Nevertheless, the Deputy Assistant Administrator has determined that this is not a "major rule" as that term is used in E.O. 12291 and that it would otherwise meet the applicable standards of sections 2(a) and 2(b)(2) of E.O. 12778.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, DEA, Drug traffic control, Narcotics, and Prescription drugs.

Under the authority vested in the Attorney General by section 202(d) of the Act (21 U.S.C. 811(g)(3)(A)) and delegated to the Administrator of the DEA by regulations of the Department of Justice (28 CFR 0.100), and redelegated to the Deputy Assistant Administrator, Office of Diversion Control of the DEA, pursuant to 47 FR 43370, the Deputy Assistant Administrator of the Office of Diversion Control hereby amends title 21, CFR, part 1308.

Part 1308—Schedule of Controlled Substances

1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 801(a), 811, 812, 871(b).

2. Section 1308.32 is amended by revising the introductory text to read as follows:

§ 1308.32 Exempted prescription products.

The following compounds, mixtures,

or preparations which contain a non-narcotic controlled substance listed in § 1308.12(e) or in § 1308.13(b) or (c) or in § 1308.14 or in § 1308.15 listed in the Table of Exempted Prescription Products have been exempted by the Adminsitrator from the application of sections 302 through 305, 307 through 309, 1002 through 1004 of the Act (21 U.S.C. 822–825, 827–829, and 952–954) and §§ 1301.24, 1301.31, 1301.32, and §§ 1301.71 through 1301.76 of this chapter for administrative purposes only. Except that those products containing butalbital shall not be exempt from the requirements of 21 U.S.C. 952–954 concerning importation, exportation, transshipment and in-transit shipment of controlled substances. Any deviation from the quantitative composition of any of the listed drugs shall require a petition of exemption in order for the product to be exempted.

* * * * *

Dated: May 22, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–12828 Filed 6–2–92; 8:45 pm]

BILLING CODE 4410-09-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD7 92-16]

Special local regulations: Port Canaveral, Cape Canaveral, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is adopting special local regulations for the Florida Sports Fishing Association Billfish Tournament (FSFA Billfish Tournament). The event will be held annually on the Port Canaveral Barge Canal and the Port Canaveral Inner Reach Channel on the last Saturday of June or the first Saturday of July as published in the Seventh Coast Guard District Local Notice to Mariners. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: July 6, 1992.

FOR FURTHER INFORMATION CONTACT: CDR D. P. Rudolph, (904) 247–7318.

SUPPLEMENTARY INFORMATION: On Tuesday, March 31, 1992, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (57 FR 10849). Interested persons were requested to submit comments, and no comments were received.

Drafting Information

The drafters of these regulations are QM1 Anneta Culver, Marine Event Petty Officer, Coast Guard Group Mayport and LT Jacqueline M. Losego, Project Attorney, Seventh Coast Guard District Legal Office.

Discussion of Comments

No comments were received. Accordingly, the final rule contains no changes to the notice of proposed rulemaking published in the **Federal Register**.

Economic Evaluation and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of these regulations is expected to be so minimal that a full regulatory evaluation is unnecessary. This event is not expected to affect commercial activities on Canaveral Barge Canal or Port Canaveral Inner Reach Channel. Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Federalism

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

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with section 2.B.2.08 of Commandant Instruction M16475.1B and Commandant Instruction 16751.3A, and this proposal has been determined to be categorically excluded. Specifically, the Coast Guard has consulted with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service regarding the environmental impact of this event, and it was determined that the event does not threaten protected species.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.716 is added to read as follows:

§ 100.716 Annual Florida Sports Fishing Association Billfish Tournament.

(a) *Regulated area.* A regulated area is established for the waters of Port Canaveral Harbor. The regulated area is bound on the west by the easternmost State Road 401 bascule bridge, position 28–24–33 N, 080–37–55 W, and on the east by the line drawn between Canaveral Harbor Entrance Channel Light #12 (LLNR 8955), position 28–24–38 N, 080–34–59 W, and Canaveral Harbor Entrance Channel Lighted Buoy #13 (LLNR 8960), position 28–24–33 N, 080–34–59 W. The southern boundary will be a line drawn from Canaveral Harbor Entrance Channel Lighted Buoy #13 to the Cape Canaveral southern jetty, position 28–24–29 N, 080–35–18 W, then following the southern shoreline of Cape Canaveral Harbor to the easternmost State Road 401 bascule bridge. The northern boundary will be a line extending from Canaveral Harbor Entrance Channel Light #12, following the northern shoreline of Cape Canaveral Harbor, but excluding all navigable waters north of a line drawn across the mouth of the East Basin, Middle Basin, and West Basin.

(b) *Special local regulations.* A "No Wake Zone" is established in the regulated area.

(c) *Effective dates.* The Commander, Coast Guard Group Mayport will publish the effective times and dates during which the regulations in this section will be effective in the Seventh Coast Guard District Local Notice to Mariners.

Dated: May 14, 1992.

K.M. Ballantyne,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.

[FR Doc. 92–12809 Filed 6–2–92; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 05-92-29]

Special Local Regulations for Marine Events; 1.6 Mile Choptank River Swim, Choptank River Bridge, Choptank River, Cambridge, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Notice of Implementation of 33 CFR 100.512.

SUMMARY: This notice implements 33 CFR 100.512 for the 1.6 Mile Choptank River Swim, to be held on June 7, 1992. These special local regulations are needed to provide for the safety of participants and spectators on the navigable waters during this event. The effect will be to restrict general navigation in the regulated area for the safety of participants in the swim, and their attending personnel.

EFFECTIVE DATE: The regulations in 33 CFR 100.512 are effective from 7 a.m. to 11:15 a.m., June 7, 1992.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204, or Commander, Coast Guard Group Baltimore (301) 576-2520.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LT Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

Fletcher Hanks, of Endurance Sports Events, Inc. Swim submitted an application to hold this year's swim on June 7, 1992. The event is the swim portion of the Cambridge Triathlon, and will consist of approximately 500 swimmers racing on a course west of the Choptank River Bridge starting at the Gateway Marina and finishing at Great Marsh Point. Since this is the type of event contemplated by these regulations, and the safety of the participants would be enhanced by the implementation of the special local regulations for this regulated area, the regulations in 33 CFR 100.512 are being implemented.

Dated: May 26, 1992.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 92-12913 Filed 6-2-92; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD7 92-49]

Special Local Regulations: Ponce De Leon Inlet, Florida

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special Local Regulations are being adopted for the Daytona Beach Offshore Challenge powerboat race. The event will be held on July 19, 1992 from 12 p.m. EDT to 3 p.m. EDT, one nautical mile offshore of Daytona Beach, Florida. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective from 12 p.m. EDT to 3 p.m. EDT on July 19, 1992.

FOR FURTHER INFORMATION CONTACT: CDR D.P. Rudolph, (904) 247-7318.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations, and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The updated information to hold the event was not received until April 27, 1992, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are QM1 Anneta Culver, Marine Event Petty Officer, Coast Guard Group Mayport, and LT Jacqueline M. Losego, Project Attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulations

There will be thirty-five (35) offshore powerboats ranging in size from 24 to 50 feet. It is anticipated that there will be approximately 500 spectator craft. The race will begin at the Daytona Beach Pier ten miles north of the Ponce de Leon Inlet and proceed north, parallel to the beach and approximately 400 yards offshore, for a distance of 2 miles. At the 2 mile point, the boats will turn towards the ocean and then head back south 4 and ½ miles offshore. They will then turn in towards the shore to a point approximately 400 yards offshore, and then go back to the point of beginning. The entire race consists of seven or ten consecutive laps of the above described course. These regulations are required to provide for the safety of life on the navigable waters during the event.

Federalism

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

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2.08 of Commandant Instruction M16475.1B and Commandant Instruction 16751.3A, and this proposal has been determined to be categorically excluded. Specifically, the Coast Guard has consulted with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service regarding the environmental impact of this event, and it was determined that the event does not threaten protected species.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35-T0749 is added to read as follows:

§ 100.35-T0749 Ponce De Leon Inlet, Florida.

(a) *Regulated Area:* A regulated area is established for the waters lying within an area bounded by the following coordinates: position 29-15-40 N, 081-01-07 W at the Northwest corner; position 29-15-43 N, 081-01-00 W at the Northeast corner; position 29-11-46 N, 080-59-00 W at the Southeast corner; and, position 29-11-41 N, 080-59-06 W at the Southwest corner.

(b) *Special Local Regulations:* Entry into the regulated areas is prohibited unless authorized by the Patrol Commander. After termination of the Daytona Beach Offshore Challenge Race, all vessels may resume normal operations.

(c) *Effective Dates:* These regulations become effective from 12 p.m. EDT to 3 p.m. EDT on July 19, 1992.

Dated: May 19, 1992.

K.M. Ballantyne,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.

[FR Doc. 92-12911 Filed 6-2-92; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CGD 09-92-38]

Safety Zone Regulations; Lower Lake Huron, St. Clair River and Black River

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is establishing a Safety Zone for portions of Lower Lake Huron, the St. Clair River and Black River during the festivities surrounding the annual Port Huron to Mackinac Island Race. These regulations are needed to provide for the safety of life and property on navigable waters prior to and until approximately eight hours after the start of this event.

EFFECTIVE DATE: These regulations will become effective from 12 p.m. (EDST) on July 17, 1992, until 6 p.m. (EDST), July 18, 1992.

FOR FURTHER INFORMATION CONTACT: William A. Thibodeau, Marine Science Technician Third Class, U.S. Coast Guard, Aids to Navigation and Waterways Management Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199-2060, (216) 522-4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rule Making has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable.

Drafting Information

The drafters of these regulations are William A. Thibodeau, Marine Science Technician Third Class, U.S. Coast Guard, project officer, Aids to Navigation and Waterways Management Branch, and M. Eric Reeves, Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The circumstances requiring these regulations result from past experiences prior to and after the start of the annual Port Huron to Mackinac Island Race. This event, based on past records, has drawn in excess of 100,000 people and dramatically increased boating traffic in the general vicinity. These regulations require that all vessels in the designated area from the lower part of the Black River to the International Boundary in the St. Clair River northward to the Lake Huron Cut Buoys, Lake Huron, in United States waters will be operated at a "SLOW/NO-WAKE" speed. There will be no restrictions imposed by the Canadian authorities in their waters. These regulations are necessary to ensure the protection of life and property prior to and until approximately eight hours after the start of the race.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

Economic Assessment and Certification

These regulations are considered to be nonmajor under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulations

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A new § 165.TO938 is added to read as follows:

§ 165.TO938 Safety zone: Lower Lake Huron, St. Clair River and Black River.

(a) *Location.* The following area is a safety zone: That portion of the Black River from the 10th Street Bridge (mile 0.7), Port Huron, MI, out to the waters of the St. Clair River, and portions of the St. Clair River and Lake Huron enclosed by a line beginning at the south end of the mouth of the Black River and St. Clair River, eastward to the International Boundary, thence northward along the International Boundary to position 43 degrees 02 minutes 50 seconds North, 082 degrees 23 minutes 50 seconds West, then due west intersecting Lake Huron Cut Buoys 5 (LLN 9465) and 6 (LLN 9470) to shore at position 43 degrees 02 minutes 50 seconds North, 082 degrees 26 minutes 50 seconds West, thence southward along the shore to origin.

(b) *Effective date.* This regulation is effective from 12 p.m. (EDST) on July 17, 1992 until 6 p.m. (EDST) on July 18, 1992, unless otherwise terminated by the Coast Guard Patrol Commander (Officer in Charge, U.S. Coast Guard Station Port Huron, MI).

(c) *Regulations.* (1) The above regulated area is designated as a "SLOW/NO-WAKE ZONE". All commercial and recreational vessel traffic transiting the above listed area will be operated at bare steerageway, keeping the vessel's wake at a minimum, and will exercise a high degree of caution in the area.

(2) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander (Officer in Charge, U.S. Coast Guard Station Port Huron, MI). The Patrol Commander may be contacted on channel 16 (156.8 MHz) by the call sign "Coast Guard Patrol Commander".

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may terminate the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: May 5, 1992.

G.A. Penington,

Rear Admiral, U. S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 92-12810 Filed 6-2-92; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL-4103-2]

National Emission Standards for Hazardous Air Pollutants; National Emissions Standards for Radon Emissions from Phosphogypsum Stacks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule announces the Administrator's final decision on reconsideration of 40 CFR part 61, subpart R, National Emission Standards for Radon Emissions from Phosphogypsum Stacks. EPA previously announced it would reconsider that portion of subpart R that required that all phosphogypsum be disposed in stacks or mines (55 FR 13480, April 10, 1990). The disposal requirement precluded the distribution and use of phosphogypsum for agriculture, construction, and research and development activities. The form of the final rule adopted by the Agency is a combination of the options proposed for public comment on April 10, 1990 (55 FR 13482) and is based on the various risks presented by the radionuclides contained in the phosphogypsum. First, distribution of phosphogypsum for use in agriculture will be permitted provided that the certified average concentration of radium-226 in the phosphogypsum does not exceed 10 pCi/g. This limit is intended to assure that the risks from indoor radon and direct gamma radiation exposure in residences constructed on land previously treated with phosphogypsum do not exceed an acceptable level. Second, distribution of phosphogypsum for use in research and development (R&D) will be permitted so long as affected facilities do not use more than 700 pounds of phosphogypsum for a particular R&D activity and warning labels are placed on containers used to store phosphogypsum for R&D purposes. Third, other uses of phosphogypsum will be permitted on a case-by-case basis with prior EPA approval. EPA approval will be granted only if EPA finds that the proposed use of the phosphogypsum will be at least as protective of public health, in the short term and the long term, as disposal in a stack or mine.

DATES: June 3, 1992.

Judicial review: Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of decisions under section 112 is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

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

SUPPLEMENTARY INFORMATION:

Motion for Reconsideration

For any party who wishes to present new information to EPA regarding the appropriateness of this revised regulation, a Petition for Reconsideration may be filed under section 307(d)(7)(B) of the Clean Air Act.

Docket

The rulemaking record is contained in Docket No. A-79-11 and contains information considered in determining the health effects associated with uses of phosphogypsum, estimating the impact of the revised standard, and establishing the format of the final rule. It also contains all comments received from the public during the comment period. This docket is available for public inspection and copying between 8 a.m. and 3 p.m. on weekdays. A reasonable fee may be charged for copying.

A single copy of the Background Information Document (BID) has been placed in the docket. Copies of the Background Information Document may be obtained by writing to: Director, Criteria and Standards Division (ANR-460W), Office of Radiation Programs, Environmental Protection Agency, Washington, DC 20460.

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I. Definitions

A. Terms

Activity—The amount of a radioactive material. It is a measure of the transformation rate of radioactive nuclei at a given time. The customary unit of activity, the curie, is 3.7×10^{10} nuclear transformation per second.

Effective Dose of Equivalent (EDE)—The sum of the risk-weighted organ dose equivalent commitments. The effective dose equivalent has the same risk (for the model used to derive the weighting factors) as a uniform dose equivalent to all organs and tissues. For the purposes of these standards, "effective dose equivalent" means the result of the calculation used to determine the dose equivalent to the whole body, by taking into account the specific organs receiving radiation, the dose each organ receives, and the risk per unit dose to that organ. The system for calculation of the EDE and the weighting factors used for purposes of this rule is described in detail in the International Commission on Radiological Protection's Publication No. 26, Pergamon Press, New York (1982).

Flux standard—A regulatory standard that limits the amount of radon that can emanate per square meter of regulated material per second, averaged over a single source.

Half-Life—The time it takes half the atoms of a particular radioactive material to transform, or decay, to another nuclear form.

Incidence—The predicted number of fatal cancers in a population resulting from exposure to a pollutant. Other health effects (non-fatal cancers, genetic, and developmental) are noted separately.

Maximum Individual Risk—The maximum additional cancer risk imposed on a person due to exposure to a pollutant for a 70-year lifetime.

Pathway—The route through which radionuclides might contaminate the

environment or reach people, e.g. air, water, food.

Radionuclide—A type of atom which spontaneously undergoes radioactive decay.

B. Acronyms

CAA—The Clean Air Act, 42 U.S.C. Sec. 7401 *et seq.*

CAAA—The Clean Air Act Amendments of 1991

CERCLA—The Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*

CFR—Code of Federal Regulations

CMI—Consolidated Minerals, Inc.

BID—The Background Information Document prepared in support of this rulemaking

EPA—United States Environmental Protection Agency

mrem—millirem, 1×10^{-3} rem

MIR—Maximum Individual Risk

NESHAP—National Emission Standard for Hazardous Air Pollutants

NRDC—Natural Resources Defense Council, Inc.

pCi—picocurie, 1×10^{-12} curie

pCi/g—picocurie per gram

pCi/m^2–s—picocurie per square meter per second

RCRA—The Resource Conservation and Recovery Act

TFI—The Fertilizer Institute

TSCA—The Toxic Substances Control Act

USG—United States Gypsum Company

II. Background

A. Standard Setting Under Section 112

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

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

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

B. The NESHAP for Phosphogypsum Stacks

Phosphogypsum stacks are large piles of waste from wet acid phosphorus production. These are approximately 66 stacks of phosphogypsum located in 12 different states. Two-thirds of these stacks are located in Florida, Texas, Illinois, and Louisiana. Because the phosphate ore used to produce the phosphoric acid contains relatively high concentrations of uranium and radium, phosphogypsum stacks also contain high concentrations of these elements. The presence of radium in the stacks causes them to release radon gas into the atmosphere.

During the rulemaking that resulted in promulgation on December 15, 1989, of the final 40 CFR part 61, subpart R, NESHAP for radon emissions for phosphogypsum stacks, EPA performed a pile-by-pile assessment of radon releases from 58 phosphogypsum stacks located at 41 different facilities. Radon emissions were based on radon flux measurements from stacks in Florida and Idaho which, combined with the radium content of the phosphate rock, allowed EPA to estimate emissions from the other stacks. The maximum individual risk estimates were based on the locations of nearby residents obtained from industry or topographical maps. Where information was unavailable, people were assumed to be 800 meters from the site boundary. Population information within 80 km was taken from census tract data.

The estimated maximum individual lifetime risk of fatal cancer from radon emissions from phosphogypsum stacks is 9×10^{-5}. The radon emissions are estimated to cause 0.95 fatal cancers and 0.047 non-fatal cancers per year to the 95 million people within 80 km. Approximately 90% of the risk to the population is borne by people whose risk is less than 1×10^{-5}, and 33% of the risk is borne by people whose risk is less thatn 1×10^{-6}.

As stated earlier, the maximum individual risk to any individual is 9×10^{-5} which is less than the benchmark of approximately 1×10^{-4} and is therefore presumptively acceptable. The incidence of 0.95 results from the low levels of risk to the millions of persons included within the modelling radius, with the bulk of the incidence from people whose individual risk is less thatn 1×10^{-5}. Over 77% of the population is exposed to risks of less than 1×10^{-6}. EPA, therefore, concluded that the risk associated with baseline emissions was acceptable.

In addition to re-examining all of the health-related factors discussed above, EPA also examined the cost, scientific certainty, and technological feasibility of control technology necessary to lower radon emissions from phosphogypsum stacks. The results of this examination indicated that the small reductions in incidence and maximum individual risk would be achieved at relatively large costs. Therefore, EPA determined that baseline emissions provided an ample margin of safety and established a NESHAP requiring that all phosphogypsum be disposed of in stacks or mines and that such stacks or mines not emit more than a flux of 20 pCi/m^2-s radon into the ambient air.

EPA settled on this form of a standard pursuant to its authority under CAA section 112(e) to set a work practice standard when it is "not feasible to prescribe or enforce an emission standard" because the hazardous air pollutant cannot be emitted through a conveyance designed or constructed to emit or capture such air pollutant. Given the size of the stacks, use of a conveyance to capture the radon emitted by the stacks is utterly impractical. Without requiring the radium-rich phosphogypsum to be first disposed into large, manageable stacks or mines, which is generally what has been done with the existing phosphogypsum, the phosphogypsum could have been incorporated into other products or otherwise diffused throughout the country, such that the

Agency would be unable to ensure that the phosphogypsum's radon emissions do not present an unacceptable risk to public health. EPA concluded that, once the phosphogypsum is deposited in stacks, an additional requirement limiting radon-222 emissions to 20 pCi/m^2-s would be sufficient to ensure an ample margin of safety.

Because the final phosphogypsum NESHAP was promulgated and became effective on December 15, 1989, it became applicable to existing phosphogypsum sources on March 15, 1990. Clean Air Act section 112(c)(1)(B)(i), 42 U.S.C. 7412(c)(B)(i).

C. Petitions for Reconsideration

EPA received petitions from The Fertilizer Institute ("TFI"), Consolidated Minerals, Inc. ("CMI"), and U.S. Gypsum Co. ("USG") to reconsider the portion of the phosphogypsum NESHAP, 40 CFR part 61, subpart R, which requires disposal into stacks or mines of all phosphogypsum, thereby preventing alternative uses of the material. In pertinent part, TFI contended that this provision (1) was adopted without proper notice and comment, (2) was contrary to the national policy favoring recycling and reuse of secondary materials, (3) effectively prevented any amount, no matter how small, from being used in the research and development of beneficial uses of the material, (4) was unnecessary because certain uses of phosphogypsum such as mixing with soil as a calcium replenisher do not cause significant risks, and (5) would cause irreparable harm to thousands of farmers.

CMI stated that this portion of the phosphogypsum NESHAP was arbitrary and capricious because it prevented the use or sale of any of the phosphogypsum produced by CMI's particular industrial process. CMI contended that the EPA prohibition was unreasonable because the CMI method allegedly reduces the radium concentration in much of the resultant phosphogypsum such that "safe" levels of radon gas emissions to ambient air are ensured.

U.S. Gypsum's petition supported the phosphogypsum NESHAP only insofar as it pertained to untreated phosphogypsum. USG stated that phosphogypsum that is treated so as to achieve "safe" levels of radium (the material that ultimately results in radon gas emissions to ambient air) should be allowed for agricultural use. USG stated that there are safer alternative products available in the agricultural gypsum market that are economically viable, and because the technology to treat phosphogypsum is also available and viable, alternative use of untreated phosphogypsum was properly prohibited by the NESHAP. Therefore, USG requested reconsideration as to the ban on use of treated phosphogypsum and, additionally, to allow research and development of phosphogypsum purification technologies.

In accordance with section 307(d)(7)(B) of the Clean Air Act, 42 U.S.C. 7607(d)(7)(B), EPA granted limited reconsideration of the portion of the phosphogypsum NESHAP, 40 CFR part 61, subpart R, which required disposal of phosphogypsum in stacks or mines. Although the Agency concluded that several of the issues raised by the petitioners merit reconsideration, EPA did not agree with all of the arguments or assertions raised. For example, EPA believes that its proposal, published at 54 FR 9612, *et seq.* (March 7, 1989), which included explicit regulatory language requiring that phosphogypsum be disposed in stacks or mines (implicitly prohibiting alternative uses), provided adequate public notice for the final rule. Indeed, comments from both industry and environmental groups on this very issue were submitted to EPA in response to that proposal.

EPA granted limited reconsideration in order to receive more information on the following: (1) The specific types of proposed alternative uses of phosphogypsum; (2) the current or anticipated feasibility of those alternative uses; (3) the research and development of processes which remove radium from phosphogypsum; (4) the health risks associated with either research and development or alternative uses, (5) the availability, cost, and effectiveness of substitutes for phosphogypsum, and (6) the proper definition of "phosphogypsum" in terms of its origin and its radium content.

D. Limited Class Waiver from Compliance

Pursuant to the Agency's authority under Clean Air Act section 112(c)(1)(B)(ii), 42 U.S.C. 7412(c)(1)(B)(ii), and 40 CFR parts 61.10–61.11, EPA granted a limited waiver from compliance with the work practice portion of the phosphogypsum NESHAP, 40 CFR part 61, subpart R, for the 1990 growing season for those owners engaged in the distribution or use of phosphogypsum for agricultural purposes. This limited waiver was based upon the finding of the Administrator that such activity presented no imminent endangerment to public health, that the immediate prohibition of such use would cause great injury to many small farmers who rely upon phosphogypsum, and that it would be burdensome and impracticable to issue limited waivers to each affected farmer. The limited compliance waiver was extended to June 1, 1991, (55 FR 40834 October 5, 1990) and to October 1, 1991 (56 FR 23519 May 22, 1991). EPA permitted the compliance waiver to expire on October 1, 1991, in order to facilitate an orderly transition to the provisions of the revised Subpart R.

E. Proposed Rule

In accordance with the subjects being reconsidered, EPA simultaneously proposed four options to maintain or amend the phosphogypsum NESHAP.

1. Option A

EPA proposed making no change to the phosphogypsum NESHAP, 40 CFR part 61, subpart R, as promulgated on December 15, 1989 at 54 FR 51653 (December 15, 1989).

2. Option B

EPA proposed to amend the definition of "phosphogypsum" to add a requisite threshold concentration level in terms of picocuries of radium per gram of phosphogypsum. EPA considered for this threshold level a range of values up to 10 picocuries of radium per gram. EPA also proposed to amend the present definition of phosphogypsum from the "waste which results from the process of wet acid phosphorus fertilizer production" to "the waste or other form of byproduct which results from the process of wet acid phosphorus production."

3. Option C

EPA proposed allowing the use of phosphogypsum for the limited purpose of researching and developing processes that remove radium-226 from phosphogypsum. Under this option, an owner desiring to make such use must first receive permission from EPA. Permission would be granted only upon a finding by the Administrator that the proposed project is at least as protective of public health, in the short and long term, as would be disposal into a stack or mine, and upon such other factors as the Administrator in his discretion deems appropriate.

4. Option D

EPA proposed allowing any alternative use of phosphogypsum for which the owner has first received permission from EPA. Permission would be granted by the Administrator upon finding that the proposed use is at least as protective of public health, in the short and long term, as would be disposal into a stack or mine, and upon

such other factors as the Administrator in his discretion deems appropriate.

III. Reconsideration of Standard

A. Analytic Methodology

The PATHRAE dose assessment model was utilized to evaluate the incremental increases in the maximum individual lifetime risk (MIR) associated with the uses of phosphogypsum in agriculture, road construction, and research and development activities. (See Reference (1).) The PATHRAE model was initially developed as an analytical tool to assist the EPA in developing standards for low-level radioactive waste and below regulatory concern waste disposal. The PATHRAE model estimates the potential health effects which could occur if radioactive wastes were disposed of in a near surface facility, sanitary landfill, or other geologic setting.

Although PATHRAE models up to ten different off-site and on-site pathways through which persons may come in contact with radioactivity from disposed material, this analysis only utilized eight pathways: Groundwater migration to a river, groundwater migration to a well, erosion and transport to a river, food grown on site, direct gamma radiation, on-site dust inhalation, inhalation of radon in structures, and atmospheric transport of contaminants. Maximum individual lifetime risks from one year of exposure were obtained from the PATHRAE dose assessment results using the risk conversion factors in EPA's Environmental Impact Statement for radionuclide NESHAPS. (See Reference (2).)

Where PATHRAE did not model the exposure scenario (e.g., direct gamma exposure to a person performing experimental analyses on phosphogypsum contained in metal drums), the MICROSHIELD computer code was used to augment the results of the PATHRAE analyses. (See Reference (3).) MICROSHIELD is a microcomputer adaptation of the ISOSHLD mainframe code for analyzing gamma radiation shielding. (See Reference (4).) MICROSHIELD has solution algorithms for 14 different geometries and performs dose rate calculations by one of three geometry-based calculational routines which include analytical expressions, Simpson's rule integration, and point-kernel integration.

Twelve scenarios were developed to evaluate the radiological risks associated with the use of phosphogypsum in agriculture (Scenarios 1–7), road construction (Scenarios 8–11), and research and development activities (Scenario 12). The purpose of these scenarios was to identify the greatest maximum individual lifetime risk of fatal cancer from several exposed groups: members of critical population groups, members of the general public, people living on contaminated land, and workers. Given the uncertainties associated with characterizing a population that might occupy the treated land 100 years in the future, the risk distribution and incidence in a hypothetical population was not estimated. Because these scenarios were designed to be as realistic as possible, the assumptions used relied on survey data and widely accepted scientific information whenever possible. For example, the build-up of radium-226 in the soil takes into consideration removal mechanisms such as radioactive decay, plant uptake, leaching, and wind erosion. In order to minimize the uncertainty of the risk estimates, assumptions with large uncertainties that would not provide any significant clarification of the exposure scenarios, such as the impacts of natural events (e.g. 100 year floods, tornadoes, and hurricanes), were not included in the analyses.

Ra-226 concentrations of 26 pCi/g, 10 pCi/g, 7 pCi/g, 5 pCi/g, and 3 pCi/g in the phosphogypsum were used to determine the significance of varying the level of radioactivity on the risk associated with use. As a result of the number of scenarios, pathways, and Ra-226 concentration levels utilized, over 670 individual risk estimates were generated. The risks provided in Section B are individual lifetime risks based on a 70 year exposure period unless noted otherwise. These risks represent the incremental increase in risk above that presented by exposure to natural background radiation. (Refer to the Background Information Document, Reference (5), for additional details on the exposure scenarios.)

B. Risk Estimate Results

1. Risks from Agricultural Applications

Seven scenarios involving the agricultural application of phosphogypsum were evaluated. Scenarios 1, 3, and 5 assume a clay soil with the exposed individual being 890 meters from the site boundary. Scenarios 2, 4, and 6 assume a sandy soil with the exposed individual being 100 meters from the site boundary. Scenario 7 evaluated the effect of using phosphogypsum containing a range of radium-226 concentrations with different application rates. In each scenario the phosphogypsum was applied biennially over a 100 year period. At the end of the 100 year period the land was coverted to other uses which resulted in increased risks to the users of the treated land. The exposure pathways evaluated in Scenarios 1 through 6 included: Direct gamma exposure and inhalation of contaminated dust by agricultural workers; direct gamma exposure, indoor radon inhalation, and ingestion of contaminated well water by individuals living on the treated land; inhalation of contaminated dust, ingestion of contaminated well water, ingestion of foodstuffs contaminated by well water, and ingestion of foodstuffs grown on treated soil by members of the critical population group; and ingestion of river water contaminated by groundwater or surface water runoff by off-site individuals. Scenario 7 evaluated only the direct gamma exposure and indoor radon pathways for the on-site individual. The risks that occur result from the accumulation of radium-226 activity in the treated soil. For Scenarios 1 and 2, 3 and 4, and 5 and 6, a radium-226 concentration of 26 pCi/g in phosphogypsum is estimated to cause increases in the soil activity of 0.60, 0.88, and 2.70 pCi/g respectively after 100 years of use.

For phosphogypsum with lower radium-226 concentrations, the soil activity can be estimated by ratioing the radium-226 concentration in the phosphogypsum and multiplying by the increased soil activity for the scenario of interest. For example, if the radium-226 concentration in the phosphogypsum is 10 pCi/g, the increased soil activities for the scenarios listed above are estimated to be 0.23, 0.34, and 1.0 pCi/g. Naturally occurring radium-226 soil activities range from 0.5 to 3 pCi/g.

The largest increases in the maximum individual lifetime risks (MIR) for agricultural applications of phosphogypsum, Scenarios 1–6, resulted from the direct gamma radiation and indoor radon inhalation exposure pathways for people living in a house built on phosphogypsum treated land. These incremental risk increases and the sums of these increased risks are presented in Table 1. The sum of the gamma radiation and indoor radon inhalation risks for these six agricultural scenarios ranges from 4.5×10^{-5} to 1.8×10^{-3}. The gamma radiation and radon inhalation risks in Scenarios 1 & 2, 3 & 4, and 5 & 6 are the same because the differences between the scenarios only affected those pathways associated with the migration of radionuclides in water. As Table 1 illustrates, the increased risks appear to be approximately proportional to the concentration of radium-226 in the phosphogypsum.

Scenario 7 was developed to determine how the sum of the gamma radiation and radon inhalation risks could be kept below the presumptively safe level of approximately 1×10^{-4} by varying the phosphogypsum application rate and radium-226 concentration in the phosphogypsum. These results are presented in Table 2. The sum of the maximum lifetime risks to the on-site individual from 70 years of exposure to gamma radiation and indoor radon ranges from 1.5×10^{-5} for 3 pCi/g phosphogypsum applied at a rate of 500 lbs/acre to 1.5×10^{-3} for 15 pCi/g phosphogypsum applied at a rate of 10,000 lbs/acre.

TABLE 1.—GAMMA AND RADON RISKS FOR AGRICULTURAL APPLICATIONS

Scenarios	Pathway	Maximum individual lifetime risk				
		26 pCi/g	10 pCi/g	7 pCi/g	5 pCi/g	3 pCi/g
1 and 2	Direct Gamma	2.1 E-4	8.4 E-5	5.6 E-5	4.0 E-5	2.4 E-5
	Indoor Radon	1.8 E-4	7.0 E-5	4.8 E-5	3.5 E-5	2.1 E-5
	Sum	3.9 E-4	1.5 E-4	1.0 E-4	7.5 E-5	4.5 E-5
3 and 4	Direct Gamma	3.2 E-4	1.3 E-4	9.1 E-5	6.1 E-5	3.6 E-5
	Indoor Radon	4.8 E-4	1.8 E-4	1.3 E-4	9.1 E-5	5.3 E-5
	Sum	8.0 E-4	3.1 E-4	2.2 E-4	1.5 E-4	8.9 E-5
5 and 6	Direct Gamma	9.8 E-4	3.7 E-4	2.7 E-4	1.9 E-4	1.1 E-4
	Indoor Radon	8.4 E-4	3.3 E-4	2.3 E-4	1.7 E-4	9.8 E-5
	Sum	1.8 E-3	7.0 E-4	5.0 E-4	3.6 E-4	2.1 E-4

Note: 1.0 E-4 equals 1×10^{-4}

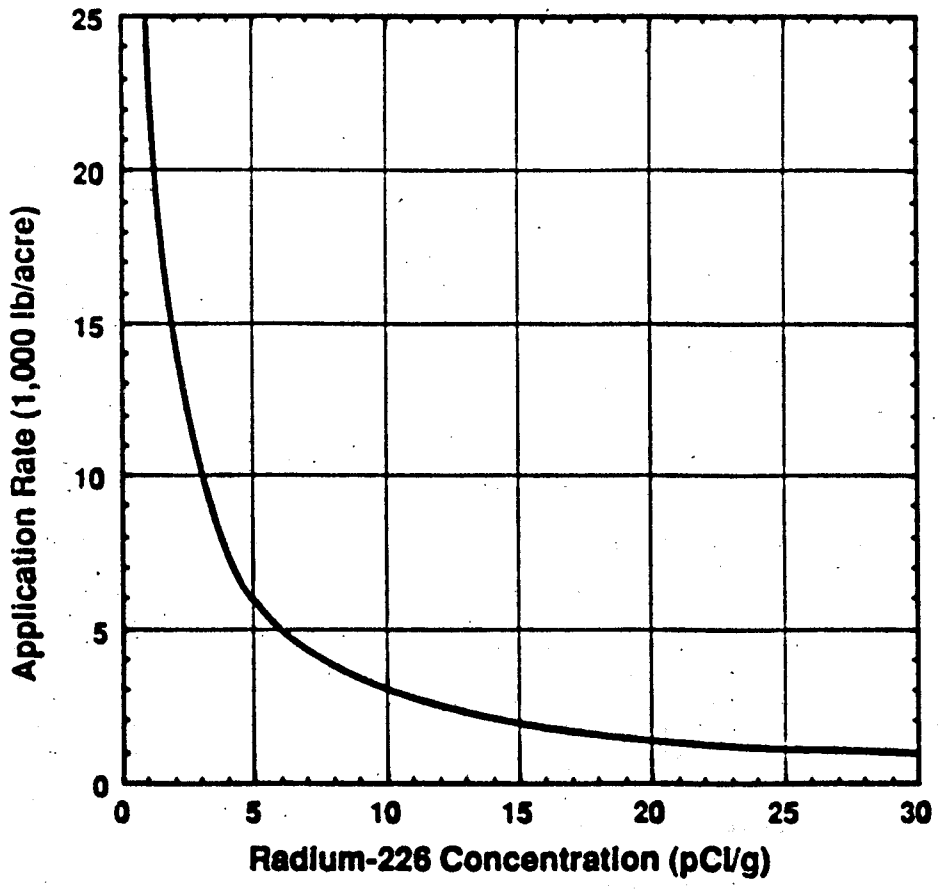
TABLE 2.—GAMMA AND RADON RISKS FROM AGRICULTURAL APPLICATIONS (SCENARIO 7)

Application rate (lbs/acre)	Ra-226 Concentration in phosphogypsum (pCi/g)						
	3	7	15	20	30	45	60
500	1.5 E-5	3.6 E-5	7.7 E-5	9.8 E-5	1.5 E-4	2.3 E-4	3.1 E-4
1,000	3.1 E-5	7.0 E-5	1.5 E-4	2.0 E-4	3.1 E-4	4.6 E-4	
1,500	4.6 E-5	9.8 E-5	2.3 E-4	3.1 E-4	4.6 E-4		
2,500	7.7 E-5	1.8 E-4	3.8 E-4	5.0 E-4			
5,000	1.5 E-4	3.6 E-4	7.7 E-4				
10,000	3.1 E-4	7.0 E-4	1.5 E-3				

Figure 1 presents the curve that is generated when the combinations of Ra-226 content and application rate that yield an estimated maximum lifetime individual risk of 3×10^{-4} are plotted. If the point representing a given Ra-226 content in phosphogypsum and a given application rate for phosphogypsum is located within or on this curve, the corresponding lifetime individual risk from exposure to gamma radiation and radon inhalation will not exceed the presumptively safe level.

FIGURE 1

APPLICATION RATE OF PHOSPHOGYPSUM AS A FUNCTION OF RA-226 CONCENTRATION FOR A LIFETIME RISK OF 3 X 10^{-4}



Because PATHRAE does not estimate the radiological risks associated with the direct ingestion of phosphogypsum treated soil by children, separate risk estimates using the International Commission on Radiological Protection methodology were performed. Depending on the radiological content of the phosphogypsum and the number of years that the soil is assumed to be ingested, the risks range from approximately 3.7×10^{-7} to 7.4×10^{-6}. However, the radiological risks associated with exposure scenarios that are more realistic are at the lower end of this range. (Refer to the Background Information Document, Reference 5, for additional details on these risk estimates.)

2. Risks From Road Construction

Scenarios 8, 9, 10, and 11 were used to estimate the radiological hazard associated with using phosphogypsum to construct asphalt and concrete roads. Scenarios 8 and 9 were used for risks from asphalt roads and Scenarios 10 and 11 were used for concrete roads. The primary difference between these two is that phosphogypsum is used in the concrete road surface and in the road base for the concrete roads but only in the road base for asphalt roads. The exposure pathways evaluated for these scenarios include: Direct gamma exposure and dust inhalation by construction workers; direct gamma exposure of persons driving on the road; direct gamma exposure, inhalation of indoor radon, ingestion of contaminated well water, and ingestion of foodstuffs grown on-site by individuals living on the treated land; direct gamma exposure, ingestion of contaminated well water, and ingestion of foodstuffs contaminated by well water by members of the critical population group; and ingestion of river water contaminated by groundwater or surface water runoff by off-site individuals.

The largest increases in the maximum individual lifetime risks are associated with the gamma radiation and indoor radon inhalation exposure pathways for people living in a house constructed on land where roads built using phosphogypsum once existed. These incremental risk increases and the sums of these risk are presented in Table 3. The gamma radiation and radon inhalation risks in Scenarios 8 & 9 and 10 & 11 are the same because the differences between the scenarios only affected those pathways associated with

the migration of radionuclides in water. As illustrated in Table 3, the increases in the maximum individual lifetime risks from gamma radiation and indoor radon exposure are proportional to the concentration of the Ra-226 in the phosphogypsum. The sums of the incremental increases in the maximum individual lifetime risks from the direct gamma and indoor radon exposures ranged from 7.5×10^{-4} to 9.3×10^{-3}.

TABLE 3.—GAMMA AND RADON RISKS FOR ROAD CONSTRUCTION SCENARIOS

Scenarios	Pathway	Maximum individual lifetime risk				
		26 pCi/g	10 pCi/g	7 pCi/g	5 pCi/g	3 pCi/g
8 and 9	Direct gamma	1.8 E-3	7.0 E-4	5.0 E-4	3.7 E-4	2.2 E-4
	Indoor radon	4.3 E-3	1.7 E-3	1.2 E-3	8.4 E-4	5.3 E-4
	Sum	6.1 E-3	2.4 E-3	1.7 E-3	1.2 E-3	7.5 E-4
10 and 11	Direct gamma	3.6 E-3	1.3 E-3	9.8 E-4	7.0 E-4	4.1 E-4
	Indoor radon	5.7 E-3	2.2 E-3	1.5 E-3	1.1 E-3	6.5 E-4
	Sum	9.3 E-3	3.5 E-3	2.5 E-3	1.8 E-3	1.1 E-3

3. Risks from Research and Development Activities

Scenario 12 was developed to estimate the maximum individual lifetime risks associated with conducting research and development activities with phosphogypsum. In this scenario, exposures are estimated for a worker who spends four hours per day, 250 days per year, in a laboratory within one meter of an open 55 gallon drum of phosphogypsum. One 55 gallon drum of phosphogypsum equals approximately 700 pounds of phosphogypsum. The lab undergoes two air exchanges per hour. The worker is exposed via direct gamma radiation, dust inhalation, and radon inhalation pathways. The radon inhalation pathway resulted in the highest maximum individual lifetime risk. Table 4 presents the radon inhalation risks for 5 and 10 year time periods. As Table 4 shows the increase in the maximum individual lifetime risk ranges from 1.2×10^{-5} to 2.2×10^{-4}. Although longer time periods would result in higher risks, the Agency believes that these exposure periods are representative of likely time periods for performing research and development activities.

TABLE 4.—RADON RISKS FOR RESEARCH AND DEVELOPMENT ACTIVITIES

Years of exposure	Maximum individual risk				
	26 pCi/g	10 pCi/g	7 pCi/g	5 pCi/g	3 pCi/g
5	1.1 E-4	4.1 E-5	2.8 E-5	2.0 E-5	1.2 E-5
10	2.2 E-4	8.2 E-5	5.6 E-5	4.0 E-5	2.4 E-5

C. Decision on Acceptable Risk

In the first step of the two-step approach for establishing standards to control risks to public health from hazardous air pollutants, the Agency determines what level of exposure presents an "acceptable risk." The EPA believes that the level of the maximum individual lifetime risk, the distribution of risks in the exposed population, incidence, the science policy assumptions and uncertainties associated with the risk measures, and the weight of evidence that a pollutant is harmful to health are all important factors that may be considered in the acceptability judgment. Under the policy established by the Administrator in the benzene decision and implemented in a number of subsequent standards, there is a presumption of acceptability for a risk of approximately one in ten thousand to the maximally exposed individual.

In each of the scenarios used to estimate the risk from using phosphogypsum, the principal MIRs were derived from exposures to the radon gas resulting from the radioactive decay of radium-226 and the direct gamma radiation resulting from the increase in radon-222 decay products. The sums of the MIRs ranged from 1.5×10^{-5} to 1.5×10^{-3}, 7.5×10^{-4} to 9.3×10^{-3}, and 1.2×10^{-5} to 2.2×10^{-4} for agriculture, road construction and research and development activities, respectively. These results clearly indicate that the risks to public health from the radiological hazards associated with uses of phosphogypsum depend on the amount of phosphogypsum used, the radium-226 concentration in the phosphogypsum, and the exposure pathway. Thus, while the unrestricted use of phosphogypsum in agriculture could result in maximum individual lifetime risks exceeding the presumptively safe level of approximately 1×10^{-4}, limitations on the amount of phosphogypsum applied, the radium-226 concentration in the phosphogypsum, or both of these factors could reduce the risks associated with agricultural use to an acceptable level. In contrast, regardless of the radium-226 concentration in phosphogypsum, the use of phosphogypsum in road construction always resulted in a MIR significantly greater than the presumptively safe level. Because of the uncertainties associated with characterizing a population that might occupy land previously treated with phosphogypsum 100 years in the future, the distribution of risk and incidence of fatal cancer in a hypothetical exposed population was not estimated.

After examining the factors identified above, EPA has determined that the risks represented by uses of phosphogypsum in which the MIR does not exceed the presumptively safe level of approximately 1×10^{-4} are acceptable. In earlier radionuclide NESHAP rulemakings implementing the criteria in the Administrator's benzene decision, EPA determined that in some instances that emissions corresponding to estimated maximum individual lifetime risks as high as 3×10^{-4} were acceptable. In the case of phosphogypsum, considering all of the information available on potential

exposures and the associated risks, as well as the uncertainties inherent in deriving risk estimates, EPA has concluded that certain uses of phosphogypsum may be considered acceptable so long as those uses are restricted to limit the estimated lifetime risk to any individual to no more than 3 in 10 thousand.

In evaluating work practice restrictions for agricultural use which would correspond to an acceptable risk level, EPA estimated the upper 95th percentile of the phosphogypsum application rates. This estimate was based on the application rates reported for various crops in California and for peanut crops in Georgia. The curve in Figure 1 was then used to identify the radium-226 concentration in phosphogypsum that, when applied at the upper 95th percentile application rate, would result in a maximum individual risk from indoor radon inhalation and direct gamma exposure of 3×10^{-4}. Based on information submitted during the public comment period, the Agency estimates that the 95th percentile of the application rates for phosphogypsum in the United States is approximately 2,700 pounds per acre. Applying this value to the curve in Figure 1, the radium-226 concentration that would result in a MIR of 3×10^{-4} is approximately 10 pCi/g. Therefore, EPA has determined that limiting the average radium-226 concentration in phosphogypsum used in agriculture to 10 pCi/g or less would result in a maximum individual lifetime risk that could be deemed acceptable.

An acceptable risk level for agricultural use of phosphogypsum could also be achieved by a limit on the amount of phosphogypsum which could be applied during agricultural use which varies dependent on the radium-226 concentration in the phosphogypsum. While hypothetically acceptable, this approach would involve greater regulatory complexity, increase recordkeeping burdens on agricultural users, and complicate enforcement activities. Accordingly, EPA has concluded that a single limit on the radium-226 concentration in phosphogypsum removed from phosphogypsum stacks and used in agriculture would be a more practicable approach to achieving an acceptable risk level than a variable limit on application rates.

In the risk estimates for the research and development scenario, EPA determined that limiting the amount of phosphogypsum utilized in any research and development activity to 700 pounds (one 55 gallon drum) would correspond to a maximum individual risk to researchers over the time periods evaluated to 2.1×10^{-4}. This is within the range of risks that has been determined to be acceptable for other radionuclide NESHAP categories. Therefore, EPA has concluded that modest work practice requirements, including a limit of 700 pounds on the amount of phosphogypsum which may be utilized in a given research and development activity, will achieve an acceptable level of risk.

For the road construction scenarios analyzed, the use of phosphogypsum always resulted in a MIR greater than the outer bound of the presumptively safe level of approximately 1×10^{-4}. Therefore, EPA has determined that the use of phosphogypsum in road construction presents an unacceptable level of risk to public health.

D. Decision on Ample Margin of Safety

Under the two-step process established by the Vinyl Chloride decision, the second step determines an "ample margin of safety," the level at which the standard is set. The first step determination of acceptability is only a starting point for the analysis, in which a ceiling for the ultimate standard is set. This second step establishes the legally enforceable limit that must be met by a regulated activity.

In the ample margin decision, the Agency again considers all of the health risk and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including costs and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors. In the second step, EPA typically strives to protect the greatest number of persons possible to an individual lifetime risk level no higher than approximately 1 in 1 million. After considering all of these factors, the Agency then establishes the standard at a level that provides an ample margin of safety to protect the public health.

In evaluating the risks to future populations associated with alternative uses of phosphogypsum, EPA concluded it was not feasible to characterize future exposures or a hypothetical exposed population sufficiently to enable estimates of the distribution of risk or total incidence of fatal cancer. Therefore, the cost incurred in reducing the incidence of fatal cancer or maximizing the number of people with an individual lifetime risk level no higher than approximately 1 in 1 million also could not be estimated. However, for agricultural uses, the Agency did attempt to estimate the cost per life saved based on the reduction in the risk and the increase in cost on a per acre basis.

Because the potential benefits of research and development are extremely difficult to quantify, the Agency concluded that it could not perform meaningful cost analyses for this use pattern. Also, because the MIRs for the use of phosphogypsum in road construction always exceed the upper limit of the presumptively safe level of approximately 1×10^{-4}, the Agency concluded it was not necessary to perform any additional analysis for this use pattern.

In the ample margin of safety decision step for agricultural uses of phosphogypsum, EPA has re-examined all the health-related factors considered in the first step, in addition to examining the availability and cost of substitute materials which can be used to reduce the risk associated with agricultural uses of phosphogypsum. The Agency has also attempted to estimate the range of the cost per life saved associated with a decision to prohibit use of phosphogypsum use in agriculture (or to reduce the permissible radium-226 concentration in a manner which results in use of alternate materials.)

EPA has already determined that continued agricultural use of phosphogypsum will only be acceptable if the average radium-226 concentration is no greater than 10 pCi/g. Therefore, EPA attempted as part of establishing an ample margin of safety to estimate the cost per life saved associated with further hypothetical reductions in the risks associated with agricultural use. EPA could not estimate the costs per life saved associated with reductions from 10 pCi/g to specific lower concentrations because present information is insufficient to predict the effect of further reductions in the required concentration on the market price or availability of the material. The available information is sufficient to conclude that a 10 pCi/g limit will substantially reduce the supply of untreated phosphogypsum available for agricultural use, and that further reductions in the permissible limit would entail further reductions in the potential supply of conforming material. EPA realizes that technology is available to treat phosphogypsum to reduce the radium-226 content, but EPA does not believe that it can assess the cost effectiveness of such technology or the likelihood it will be utilized to achieve a particular limit.

EPA did estimate the cost per life saved of a prohibition on agricultural

use, or of a further reduction in the permissible limit for radium-226 sufficient to eliminate phosphogypsum use. This analysis was performed by analyzing the potential reductions in risk and increases in cost on a per acre basis. In the analysis, EPA compared use of phosphogypsum in peanut production to use of natural gypsum. The analysis assumes that the land to be treated with phosphogypsum or natural gypsum will remain in peanut production for 100 years and then be converted to residential use, and that the land is treated biennially over the entire 100 year period. A natural gypsum product was used as the substitute material because: (1) It is the substitute material most likely to be available, (2) it is the substitute material most likely to be cost effective, (3) the range of radium-226 concentrations in natural gypsum and the ratio of the application rates for natural gypsum and phosphogypsum are known. The analysis also assumes that the phosphogypsum contains 10 pCi/g of radium-226 and is applied at a rate of 900 pounds per acre, and that the natural gypsum contains approximately 3 pCi/g of radium-226 and is applied at the rate of 675 pounds/acre. Natural gypsum has more calcium in it than phosphogypsum, therefore, it takes less natural gypsum to achieve the same nutritional result.

Table 5 presents the results of the analysis of the cost per life saved. The undiscounted cost per life saved ranges from a low value of $520,000 for land that is converted to residential use with 3 houses per acre to a high value of $220M for land that has one residence per 138 acres. Each residence is assumed to contain the national average of 2.7 occupants. This extremely wide range is a direct result of the difficulties associated with characterizing the conversion of phosphogypsum treated land into residential developments. Since EPA cannot reliably predict where residential development will occur in the future, EPA cannot make regulatory distinctions on this basis. It is possible that the actual cost to save a particular life could be as small or as great as the extremes of this range. However, the average cost per life saved resulting from a prohibition on agricultural use of phosphogypsum will certainly be substantially greater than $520,000 and substantially less than $220M.

TABLE 5.—COSTS PER LIFE SAVED

	MIR	ΔMIR reduction	Material cost (dollar/acre)	ΔMaterial cost (dollar/acre)	Cost/life saved (dollar/death)	
					1 House per 138 acres	3 Houses per acre
Phosphogypsum	9.0×10^{-6}	7.0×10^{-5}	10.67	5.90	220,000,000	520,000
Natural gypsum	2.0×10^{-5}		16.57			

EPA has also examined the cost of available substitute materials. The first analysis evaluated the relative differences in the total cost per ton, material cost plus transportation cost, between phosphogypsum and eight substitute materials. With the exception of one substitute material, which had a cost index of 1.28, phosphogypsum appeared to enjoy a distinct competitive advantage over the other seven substitute materials which had cost indices ranging from 1.86 to 2.78. However, this analysis did not take into consideration the differences in application rates between the phosphogypsum and the substitutes. Three substitute materials were selected from the eight substitutes evaluated in the first analysis to evaluate the differential in the cost per acre for growing peanuts. These substitutes were selected because of the availability of information on the suggested application rates for peanuts. The increased cost per acre of using the substitutes instead of the phosphogypsum ranged from $6.56 to $17.81 per acre. This increased cost can represent a significant operating cost for many farmers. For this analysis the distance to Tifton was selected because it is located in the middle of the Georgia peanut growing district. Actual distances between farm locations, phosphogypsum suppliers, and suppliers of substitute materials; material application rates; and transportation costs vary to such an extent that other similar analyses will sometimes show that the competing products are less costly than the phosphogypsum. A third analysis was performed to evaluate the cost to increase yield by using three phosphogypsum substitute materials as sources of calcium for growing peanuts. The results of this analysis show that differences in the cost per pound increase in yield between phosphogypsum and the substitutes ranges from 2.5 to 61.6 cents per pound. This represents 7.9% to 195% of the 1990 quota support price of 31.6 cents per pound. These analyses show that, of all the materials evaluated, phosphogypsum is the most cost effective means of increasing peanut yield.

Based on the significant costs associated with prohibiting agricultural use of phosphogypsum or substantially reducing the radium-226 concentration in the phosphogypsum below the acceptable level of 10 pCi/g, the fact that phosphogypsum is the most cost effective material analyzed for increasing peanut yield, and the scientific uncertainties associated with the assumptions used in the Agency's estimates, the Administrator has determined that limiting the average radium-226 concentration in phosphogypsum used in agriculture to 10 pCi/g will protect the public with an ample margin of safety. Therefore, EPA is amending the work practice portion of subpart R to allow phosphogypsum to be removed from phosphogypsum stacks and distributed for use in agriculture if certain procedures and restrictions are followed.

IV. Responses to Public Comments

On April 10, 1990, the EPA proposed in the **Federal Register** four options to maintain or modify 40 CFR part 61, subpart R (55 FR 13482 April 10, 1990). The **Federal Register** notice requested public comments on the proposed options, and (1) the specific types of proposed alternative uses of phosphogypsum; (2) the current or anticipated feasibility of those alternative uses; (3) the research and development of processes which remove radium from phosphogypsum; (4) the health risks associated with either research and development or alternative uses, (5) the availability, cost, and effectiveness of substitutes for phosphogypsum, and (6) the proper definition of "phosphogypsum" in terms of its origin and its radium content. An informal public hearing was held in Atlanta, Georgia to provide interested parties an opportunity to present their views, and written comments were

solicited. Comments were received from over 300 individuals and organizations representing government agencies, industry and other members of the regulated community, environmental and public interest groups, and the general public. This section of the preamble discusses the comments received during the public comment period.

A. Legal and Policy Oriented Comments

There were several significant legal and policy oriented comments that appeared in numerous letters and petitions for reconsideration to the Agency prior to the beginning of this rulemaking effort. The Agency believes that each one of these issues should be addressed as part of this final decision. The following paragraphs contain the Agency's responses to these comments. These comments were raised primarily by industry, academia, and research and development organizations that are opposed to any regulation of the alternative uses of phosphogypsum.

Comment: Several commenters stated that the prohibition on phosphogypsum use and research is impermissible under the Clean Air Act.

Response: EPA disagrees with this comment. The Agency has a Congressionally-mandated responsibility under section 112(a) of the Clean Air Act to control air emissions from a hazardous air pollutant which "causes or contributes to air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness." In 1979, EPA determined that radionuclide emissions to the air constituted hazardous air pollutants which might be regulated under section 112. Because phosphate ore contains above average concentrations of the radionuclides uranium and radium, phosphogypsum also contains these elements. In 1989, EPA determined that it could best control radon emissions and the associated risks to an acceptable level by requiring the placement of the phosphogypsum in stacks, thereby, preventing alternative uses of the material. This work practice requirement was adopted pursuant to the authority provided by section 112(e).

The Agency has just completed approximately 700 risk estimates on various commercial applications of phosphogypsum. The results of these estimates indicate that some restricted use of phosphogypsum in agriculture and research and development activities may pose levels of risk deemed safe under section 112 of the Clean Air Act, but that other uses pose higher, unacceptable risks. Accordingly, the revisions of the work practice standard for phosphogypsum establish specific conditions under which distribution and use of phosphogypsum will be permitted. These restrictions are necessary to achieve the level of public health protection required by the Clean Air Act and are a lawful extension of the work practice requirements in the original standard.

Comment: One commenter suggested that the prohibition on use and research is not supported by the rulemaking record.

Response: The Agency has agreed to reconsider the risks associated with the alternative uses of phosphogypsum which were prohibited by the final rule as originally promulgated on October 31, 1989. As part of its reconsideration, the Agency has performed estimates of the risks associated with agricultural, road construction, and research and development applications of phosphogypsum. These risk estimates were designed to be best estimates of risks to the maximum exposed individual and incorporate data from industry surveys, scientific studies, previous EPA risk estimates, and nationally recognized radiation protection organizations. In light of the small risks involved in conducting such limited scale research, and in light of EPA's policy of waste minimization and material recycling, EPA has decided to remove its original blanket prohibition on research and development activities.

Comment: The prohibition on phosphogypsum use and research is contrary to other contemporaneous EPA regulatory actions concerning phosphogypsum.

Response: The Agency disagrees with this comment. Specifically, the Office of Solid Waste, in 40 CFR part 261, Special Wastes from Mineral Processing (Mining Waste Exclusion); Final Regulatory Determination and Final Rule, (56 FR 27300 June 13, 1991) stated that current management of phosphogypsum and process wastewater poses potential health and environmental problems. However, due to the enormous cost of regulating these wastes under subtitle C of the Resource Conservation and Recovery Act (RCRA), the Agency will investigate the use of the Toxic Substances Control Act (TSCA) to control the threats to human health and the environment presented by these wastes. This investigation will, at a minimum, address the risk reduction potential and associated costs for such regulatory options as restrictions on manufacturing, processing, or disposal. To conduct this investigation, the Phosphoric Acid Wastes Workgroup has been established and is co-chaired by the Office of Solid Waste and Office of Pesticides and Toxic Substances. Considering these efforts, the Agency believes that its actions are totally consistent with one another.

B. Comments on Rule Options

The comments on the four options proposed by EPA for maintaining or modifying the disposal requirement were generally polarized: Approach A was favored largely by environmental organizations and private citizens; Approach B received very little support; Approach C was criticized by industry, academia, private citizens, and public interest groups; Approach D received some support from industry but was criticized by environmental groups and private citizens. Most industry comments stated that the disposal requirement should be eliminated, but this was not a part of any of the proposed options.

The EPA considered all of these comments in formulating the final rule for subpart R. The EPA response to these comments are presented below.

The following sections are split into discussions of the four alternative options presented in the April 10, 1990, Federal Register notice, and ancillary issues that were relevant to formulating the final rule for phosphogypsum. The main position and concerns presented by commenters are followed by an EPA response to the comments in the context of the final rule.

Option A Comments: The commenters who favored this approach fell into two groups: environmental organizations, that felt that any additional exposure of humans to radiation or contamination of land by radioactive material is unacceptable because there is no safe threshold level for radiation exposure; and private citizens, environmentalists and public organizations opposed to Consolidated Minerals proposed Pine Level Project in DeSoto County, Florida. Many commenters from industry and academia opposed Option A because they thought it was contrary to the national policy favoring the recycling and reuse of secondary or byproduct materials.

Response: The D.C. Circuit decision in *Natural Resources Def. Council, Inc.* v. *EPA*, 824 F.2d 1146 (1987) ("*Vinyl Chloride*") recognizes that EPA may deem some level of cancer risk as acceptable, in light of the fact that many carcinogenic substances are assumed not to have a threshold value below which they pose no risk. In the context of the *Vinyl Chloride* decision, the issue is whether "acceptable" risk is equated

with *de minimis* risk, and is thereby defined as "trivial" or "of no value," or whether some higher level of risk is considered acceptable under the court's ruling.

The court explained that the Congressional mandate to provide "an ample margin of safety" to "protect the public health" requires the Administrator to make an initial determination of what is "safe." This determination must be based exclusively upon the Administrator's determination of the risk to health at a particular emission level. The Administrator's decision does not require a finding that "safe" means "risk free." 824 F.2d at 1164.

The court also declined to restrict the Administrator to any particular method of determining what constitutes an acceptable risk but explained simply that "the Administrator must determine what inferences should be drawn from available scientific data and decide what risks are acceptable in the world in which we live." 824 F.2d at 1166.

While it is true that there is no threshold level below which there is no cancer risk from exposure to radiation, the EPA has concluded that there are levels of radiation exposure that do present acceptable risks. The final rule allows uses of phosphogypsum which pose estimated risks that EPA has found to be acceptable.

With respect to the comment that Option A is contrary to the national policy of recycling, the EPA disagrees. The EPA is a world leader in the effort to establish recycling programs and promote the virtues of recycling. However, the global trend toward recycling waste and byproduct materials does not mean that public health and ecological risks are ignored. Quite the contrary. The recycling of waste and byproduct materials requires us to compare the health and ecological risks associated with past disposal practices to the risks associated with proposed recycling practices, along with any benefits to be gained from the recycling activity. Clearly, the risks associated with recycling activity should not be significantly greater than the risks associated with the disposal practices nor should they outweigh the benefits achieved from recycling.

Option B Comments: The few supporters of Option B suggested that a radium-226 threshold level of 5 pCi/g would adquately protect public health and safety and the environment. Commenters opposed to Option B noted that the intent of the rule was to regulate radon emissions and not radium content and that a threshold level would discriminate against processes that could be employed to reduce radon emissions but not the radium content.

Response: The Agency does not believe that restricting the radium-226 concentration in phosphogypsum in commerce will adequately protect public health and safety and the environment with an ample margin of safety for all possible phosphogypsum applications. The level of risk presented by a particular application depends not only upon the radium-226 concentration in the phosphogypsum but also the nature of the application, the exposure scenario, the exposure pathway, the amount of phosphogypsum used, and other factors too numerous to list. As shown in our risk estimates for road construction applications, even at radium-226 concentrations 3 pCi/g, the risk to the maximum exposed individual is well above the acceptable level. However, the Agency's estimates for agricultural applications of phosphogypsum indicate that a threshold concentration of 10 pCi/g will protect public health with an ample margin of safety.

The Agency agrees that there are several proven mechanisms which can be utilized to reduce the risk associated with radon exposure that do not affect the radium concentration of the material from which the radon emanates. The Agency also believes that these exposure control mechanisms should be instituted, as needed and where possible, to ensure that the risks presented by a particular application are acceptable. For these reasons the Agency has included a mechanism for applicants to obtain EPA approval for uses of phosphogypsum not explicitly addressed in the revised final rule.

Option C Comments: Several commenters were opposed to Option C because they felt that limiting the research and development activities to finding ways to remove the radium from the phosphogypsum was too restrictive. Other commenters were opposed to this option because they felt that adequate Agency oversight and monitoring procedures are not available to ensure that the public health is protected with an ample margin of safety.

Response: The Agency agrees with these comments. In its original rulemaking, the Agency underestimated the extent of research and development activities involving phosphogypsum. Currently there are several hundred million tons of phosphogypsum stored in stacks around the country. Restricting research and development activities to radium removal ignores the potentially large recoverable mineral values, such as sulfur, contained in the phosphogypsum and impedes the use of phosphogypsum in applications which may not present themselves until some time in the future. The final rule explicitly allows research involving a limited quantity of phosphogypsum. The Agency believes that the conditions imposed on this use of phosphogypsum will ensure protection of public health with an ample margin of safety.

Option D Comments: A few industry commenters opposed to any disposal requirement believe that if alternative uses of phosphogypsum must be controlled, then Option D is preferred. Commenters from academia and industry stated that any restrictions imposed on research and development activities as part of this option should be minimized when such activities do not pose significant risks to public health or the environment.

Response: The Agency agrees with many of these comments. Option D not only provides the Agency the flexibility to deal with requests to use phosphogypsum in applications that are in place today but also provides a framework in which to evaluate requests to use phosphogypsum in future applications. The Agency believes that the level of restrictions placed on a particular application should be commensurate with the level of risk associated with the application. Therefore, any request to use phosphogypsum must contain an estimate of the risks that may be associated with the particular use.

V. Final Rule to Amend Subpart R

A. Description of Final Rule

The amended subpart R will remain in the form of a work practice standard that directs that all phosphogypsum be placed initially in stacks or mines. The 20 pCi/m^2–s flux standard, as originally promulgated on December 15, 1989, remains in effect for all inactive phosphogypsum stacks. By requiring that radium-rich phosphogypsum be first disposed into large, manageable stacks or mines, which is generally what has been done with the existing phosphogypsum, the revised subpart R assures that any subsequent distribution or use of phosphogypsum will be controlled to assure radon emissions from the phosphogypsum do not present an unacceptable risk to public health. If an owner or operator removes phosphogypsum from an inactive stack, the stack must be retested for conformity to the 20 pCi/m^2–s flux standard within ninety days, and at least once every calendar year thereafter that additional phosphogypsum is removed.

All phosphogypsum stack owners or operators engaged in the distribution of phosphogypsum will be required to prepare and maintain certification documents containing the name and address of each purchaser or recipient of phosphogypsum, the quantity sold or transferred, the date of sale or transfer, the intended use of the material (e.g. agricultural, research and development), the average Ra-226 concentration at the location in the stack from which phosphogypsum was removed, and the signature of date of the person preparing the records. Distributors, retailers, and resellers who purchase or receive phosphogypsum for subsequent resale or transfer must also prepare and maintain certification documents. Except for agricultural end-users, a copy of the certification documents must be provided to each purchaser or transferee.

The use of phosphogypsum in agriculture will be permitted. However, phosphogypsum intended for agricultural use must have a certified average concentration of radium-226 no greater than 10 pCi/g. There is no limitation on the amount of material that can be applied and farmers do not have to maintain certification or application records.

The use of phosphogypsum in research and development will also be permitted. However, no facility may purchase or possess more than 700 pounds of phosphogypsum (approximately the amount in one 55 gallon drum) for a particular research and development activity. Containers of phosphogypsum utilized in research and development activities must be labeled with a specific warning. Facilities utilizing phosphogypsum in research and development activities will also be required to maintain detailed records.

Other uses of phosphogypsum will be prohibited without prior EPA approval. A request that EPA permit distribution or use for purposes other than agriculture or research and development may be approved only if EPA finds that the proposed distribution and/or use of phosphogypsum is at least as protective of the public health, in both the short term and the long term, as is disposal of phosphogypsum in a stack or a mine. Applications for EPA approval must include, as a minimum, the following information:

(1) The name and address of the person(s) making the request.

(2) A description of the proposed use, including any handling and processing that the phosphogypsum will undergo.

(3) The location of each facility, including suite and/or building number, street, city, county, state, and zip code, where any use, handling, or processing of the phosphogypsum will take place.

(4) The mailing address of each facility where any use, handling, or processing of the phosphogypsum will take place, if different from (3).

(5) The quantity of phosphogypsum to be used by each facility.

(6) The average concentration of radium-226 in the phosphogypsum to be used.

(7) A description of any measures which will be taken to prevent the uncontrolled release of phosphogypsum into the environment.

(8) An estimate of the maximum individual risk, risk distribution, and incidence associated with the proposed use, including the ultimate disposition of the phosphogypsum or any product in which the phosphogypsum is incorporated.

(9) A description of the intended disposition of any unused phosphogypsum.

(10) Each request shall be signed and dated by a corporate officer or public official in charge of the facility.

EPA will develop a guidance document to assist in the implementation of this revised regulation. This guidance document will discuss the process for evaluating requests to distribute or use phosphogypsum for purposes other than agriculture and research and development. The guidance document will also discuss inspections and other compliance monitoring activities.

B. Legal Authority

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

The existing subpart R was promulgated in the form of a work practice standard under section 112(e) becuase it would be utterly impractical to require that the radon released by phosphogypsum stacks be emitted through a conveyance designed to and constructed to emit or capture such pollutant. The work practice standard required that all phosphogypsum be disposed in stacks or mines and that such stacks or mines be managed to emit no more than 20 pCi/m^2-s. The requirement of disposal in stacks or mines was intended to assure that the emissions from phosphogypsum would not escape regulatory scrutiny.

The revisions to subpart R are a logical extension of the original work practice standard. EPA has determined that other uses of phosphogypsum can provide an ample margin of safety, but only under certain conditions. No owner or operator is required to remove phosphogypsum from a stack, but he must satisfy additional work practice requirements if he does. If phosphogypsum could be removed from a stack or mine and disseminated in commerce without any restrictions, this would frustrate the basic objective of subpart R, to assure that emissions from phosphogypsum do not jeopardize public health.

C. Effective Date

The revisions to the NESHAP for radionuclide emissions from phosphogypsum stacks adopted by this rule are effective immediately upon publication. Under section 112(c)(1)(B)(i) of the Clean Air Act, activities by existing sources which would violate a newly promulgated or revised NESHAP are not prohibited until 90 days after the effective date of the standard. However, in this instance, EPA has decided that it will apply the provisions of the revised NESHAP immediately to all facilities including existing sources.

EPA believes that the evident purpose of the 90 day delay for compliance by existing sources embodied in section 112(c)(1)(B)(i) is to afford such sources time to prepare for the imposition of new requirements. Indeed, section 112 (c)(1)(B)(i) is phrased as an exception to a general prohibition on emissions violative of a NESHAP. Therefore, EPA doubts that it was intended to apply to those revisions of a standard which relax existing requirements rather than creating new requirements. Although the Administrative Procedure Act (APA) does not formally apply in this instance, an analogous provision in the APA provides support for this interpretation. The general requirement that a substantive rule must be published or served 30 days before its effective date, which is also intended to afford affected parties time to prepare for imposition of the rule, does not apply to "a substantive rule which grants or recognizes an exception or relieves a restriction." 5 U.S.C. 553(d)(1).

In this case, any facility which would be in compliance with the original standard for phosphogypsum stacks would also be in compliance with the revised standard. The revisions simply offer facilities additional options for distribution and use of phosphogypsum.

which were not available under the original standard. Facilities who elect to remove phosphogypsum from stacks and distribute it in commerce pursuant to the provisions of this rule, or to distribute or use phosphogypsum removed from stacks, must meet certain requirements. However, under the original standard, none of these activities were legally permissible. Moreover, the revised standard does not require any facility to engage in any of these activities.

Since the revisions of subpart R impose no new binding requirements and constitute a substantive relaxation of the original standard, there is no reason to interpret section 112 as requiring a delay in their applicability. Indeed, any delay in implementation of the revised standard could unnecessarily impede agricultural use of phosphogypsum during the 1992 growing season. Therefore, EPA will apply the revisions of subpart R incorporated in this rule immediately to all facilities including existing sources.

VI. Miscellaneous

A. Docket

The docket is an organized and complete file of all information considered by EPA in the development of the standards. The docket allows interested persons to identify and locate documents so they can effectively participate in the rulemaking process. It also serves as the record for judicial review.

Transcripts of the hearings, all written statements, the Agency's response to comments, and other relevant documents have been placed in the docket and are available for inspection and copying during normal working hours.

B. General Provisions

Except where otherwise specifically stated, the general provisions of 40 CFR part 61, subpart A, apply to all sources regulated by this rule.

C. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The information collection requirements were approved by OMB on May 6, 1992. The OMB Control Number is 2060-0191.

D. Executive Order 12291

This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA written response to those comments are available for public inspection at Docket A-79-11.

EPA has determined that this action does not constitute a major rule within the meaning of Executive Order 12291 since it is not likely to result in (1) a nationwide annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agenices, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, a Regulatory Impact Analysis is not being prepared for this action. The distribution of phosphogypsum is currently prohibited by the existing rule. Because this revised rule is a relaxation of the existing requirements, it will upon promulgation permit the distribution of phosphogypsum on a controlled basis.

E. Regulatory Flexibility Analysis

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

Because the use of phosphogypsum is currently prohibited and this revised rule permits restricted phosphogypsum use, EPA believes that the proposed changes ease the regulatory burdens associated with provisions of the existing final rule. Therefore, this rule will have no adverse effect on small businesses. For the preceding reasons, I certify that this rule will not have significant economic impact on a substantial number of small entities.

F. References

(1) U.S. Environmental Protection Agency, "PATHRAE-EPA: A Performance Assessment Code for the Land Disposal of Radioactive Wastes, Documentation and User's Manual", EPA 520/1-87-028, Washington, DC, December 1987.

(2) U.S. Environmental Protection Agency, "Risk Assessment Methodology, Environmental Impact Statement for NESHAPS Radionuclides, Volume 1, Background Information Document", EPA 520/1-89-005, Washington, DC, September 1989.

(3) GROVE Engineering, Inc., "MICROSHIELD, User's Manual", Washington Grove, Maryland, 1985.

(4) Engel, R. L., et al., "ISOSHLD, A Computer Code for General Purpose Isotope Shielding Analysis", BNWL-2316, U.S. Department of Energy, Richland, Washington, June 1966.

(5) U.S. Environmental Protection Agency, "Alternative Uses of phosphogypsum and Associated Risks, Background Information Document", EPA 520/1-91-029, Washington, DC, September, 1991.

List of Subjects in 40 CFR Part 61

Air pollution control, Hazardous materials, Asbestos, Beryllium, Mercury, Vinyl Chloride, Benzene, Arsenic, and Radionuclides.

Dated: May 20, 1992.

William K. Reilly,

Administrator.

Part 61 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as folllows:

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

2. Part 61 is amended by revising Subpart R to read as follows:

Subpart R—National Emission Standards for Radon Emissions From Phosphogypsum Stacks.

Sec.

61.200 Designation of facilities.
61.201 Definitions.
61.202 Standard.
61.203 Radon Monitoring and Compliance Procedures.
61.204 Distribution and Use of Phosphogypsum for Agricultural Purposes.
61.205 Distribution and Use of Phosphogypsum for Research and Development.
61.206 Distribution and Use of Phosphogypsum for Other Purposes.
61.207 Radium-226 Sampling and Measurement Procedures.
61.208 Certification Requirements.
61.209 Required Records.
61.210 Exemption from the Reporting and Testing Requirements of 40 CFR 61.10.

Subpart R—National Emission Standards for Radon Emissions From Phosphogypsum Stacks

§ 61.200 Designation of facilities.

The provisions of this subpart apply to each owner or operator of a phosphogypsum stack, and to each person who owns, sells, distributes, or otherwise uses any quantity of phosphogypsum which is produced as a result of wet acid phosphorus production or is removed from any existing phosphogypsum stack.

§ 61.201 Definitions.

As used in this subpart, all terms not defined here have the meaning given them in the Clean Air Act or subpart A of part 61. The following terms shall have the following specific meanings:

(a) *Inactive stack* means a stack to which no further routine additions of phosphogypsum will be made and which is no longer used for water management associated with the production of phosphogypsum. If a stack has not been used for either purpose for two years, it is presumed to be inactive.

(b) *Phosphogypsum* is the solid waste byproduct which results from the process of wet acid phosphorus production.

(c) *Phosphogypsum stacks* or *stacks* are piles of waste resulting from wet acid phosphorus production, including phosphate mines or other sites that are used for the disposal of phosphogypsum.

§ 61.202 Standard.

Each person who generates phosphogypsum shall place all phosphogypsum in stacks. Phosphogypsum may be removed from a phosphogypsum stack only as expressly provided by this subpart. After a phosphogypsum stack has become an inactive stack, the owner or operator shall assure that the stack does not emit more than 20 pCi/m^2-s of radon-222 into the air.

§ 61.203 Radon monitoring and compliance procedures.

(a) Within sixty days following the date on which a stack becomes an inactive stack, or within ninety days after the date on which this subpart first took effect if a stack was already inactive on that date, each owner or operator of an inactive phosphogypsum stack shall test the stack for radon-222 flux in accordance with the procedures described in 40 CFR part 61, appendix B, Method 115. EPA shall be notified at least 30 days prior to each such emissions test so that EPA may, at its option, observe the test. If meteorological conditions are such that a test cannot be properly conducted, then the owner or operator shall notify EPA and test as soon as conditions permit.

(b)(1) Within ninety days after the testing is required, the owner or operator shall provide EPA with a report detailing the actions taken and the results of the radon-222 flux testing. Each report shall also include the following information:

(i) The name and location of the facility;

(ii) A list of the stacks at the facility including the size and dimensions of each stack;

(iii) The name of the person responsible for the operation of the facility and the name of the person preparing the report (if different);

(iv) A description of the control measures taken to decrease the radon flux from the source and any actions taken to insure the long term effectiveness of the control measures; and

(v) The results of the testing conducted, including the results of each measurement.

(2) Each report shall be signed and dated by a corporate officer in charge of the facility and contain the following declaration immediately above the signature line: "I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and based on may inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment. See, 18 U.S.C. 1001."

(c) If the owner or operator of an inactive stack chooses to conduct measurements over a one year period as permitted by Method 115 in appendix B to part 61, within ninety days after the testing commences the owner or operator shall provide EPA with an initial report, including the results of the first measurement period and a schedule for all subsequent measurements. An additional report containing all the information in § 61.203(b) shall be submitted within ninety days after completion of the final measurements.

(d) If at any point an owner or operator of a stack once again uses an inactive stack for the disposal of phosphogypsum or for water management, the stack ceases to be in inactive status and the owner or operator must notify EPA in writing within 45 days. When the owner or operator ceases to use the stack for disposal of phosphogypsum or water management, the stack will once again become inactive and the owner or operator must satisfy again all testing and reporting requirements for inactive stacks.

(e) If an owner or operator removes phosphogypsum from an inactive stack, the owner shall test the stack in accordance with the procedures described in 40 CFR part 61, appendix B, Method 115. The stack shall be tested within ninety days of the date that the owner or operator first removes phosphogypsum from the stack, and the test shall be repeated at least once during each calendar year that the owner or operator removes additional phosphogypsum from the stack. EPA shall be notified at least 30 days prior to an emissions test so that EPA may, at its option, observe the test. If meteorological conditions are such that a test cannot be properly conducted, then the owner shall notify EPA and test as soon as conditions permit. Within ninety days after completion of a test, the owner or operator shall provide EPA with a report detailing the actions taken and the results of the radon-222 flux testing. Each such report shall include all of the information specified by §61.203(b).

§ 61.204 Distribution and use of phosphogypsum for agricultural purposes.

Phosphogypsum may be lawfully removed from a stack and distributed in commerce for use in agriculture if each of the following requirements is satisfied:

(a) The owner or operator of the stack from which the phosphogypsum is removed shall determine annually the average radium-226 concentration at the location in the stack from which the phosphogypsum will be removed, as provided by § 61.207.

(b) The average radium-226 concentration at the location in the stack from which the phosphogypsum will be removed, as determined pursuant to § 61.207, shall not exceed 10 picocuries per gram (pCi/g).

(c) All phosphogypsum distributed in commerce for use in agriculture by the owner or operator of a phosphogypsum stack shall be accompanied by a certification document which conforms to the requirements of § 61.208(a).

(d) Each distributor, retailer, or reseller who distributes phosphogypsum for use in agriculture shall prepare certification documents which conform to the requirements of § 61.208(b).

§ 61.205 Distribution and use of phosphogypsum for research and development.

(a) Phosphogypsum may be lawfully removed from a stack and distributed in commerce for use in research and development activities if each of the following requirements is satisfied:

(1) The owner or operator of the stack from which the phosphogypsum is removed shall determine annually the average radium-226 concentration at the location in the stack from which the phosphogypsum will be removed, as provided by § 61.207.

(2) All phosphogypsum distributed in commerce for use in research or development by the owner or operator of a phosphogypsum stack or by a distributor, retailer, or reseller shall be accompanied at all times by certification documents which conform to the requirements of § 61.208.

(b) Phosphogypsum may be purchased and used for research and development purposes if the following requirements are satisfied:

(1) Each quantity of phosphogypsum purchased by a facility for a particular research and development activity shall be accompanied by certification documents which conform to the requirements of § 61.208.

(2) No facility shall purchase or possess more than 700 pounds of phosphogypsum for a particular research and development activity.

(3) Containers of phosphogypsum used in research and development activities shall be labeled with the following warning:

Caution: Phosphogypsum Contains Elevated Levels of Naturally Occuring Radioactivity

(4) For each research and development activity in which phosphogypsum is used, the facility shall maintain records which conform to the requirements of § 61.209(c).

(c) Phosphogypsum not intended for distribution in commerce may be lawfully removed from a stack by an owner or operator to perform laboratory analyses required by this subpart or any other quality control or quality assurance analyses associated with wet acid phosphorus production.

§ 61.206 Distribution and use of phosphogypsum for other purposes.

(a) Phosphogypsum may not be lawfully removed from a stack and distributed or used for any purpose not expressly specified in § 61.204 or § 61.205 without prior EPA approval.

(b) A request that EPA approve distribution and/or use of phosphogypsum for any other purpose must be submitted in writing and must contain the following information:

(1) The name and address of the person(s) making the request.

(2) A description of the proposed use, including any handling and processing that the phosphogypsum will undergo.

(3) The location of each facility, including suite and/or building number, street, city, county, state, and zip code, where any use, handling, or processing of the phosphogypsum will take place.

(4) The mailing address of each facility where any use, handling, or processing of the phosphogypsum will take place, if different from paragraph (b)(3) of this section.

(5) The quantity of phosphogypsum to be used by each facility.

(6) The average concentration of radium-226 in the phosphogypsum to be used.

(7) A description of any measures which will be taken to prevent the uncontrolled release of phosphogypsum into the environment.

(8) An estimate of the maximum individual risk, risk distribution, and incidence associated with the proposed use, including the ultimate disposition of the phosphogypsum or any product in which the phosphogypsum is incorporated.

(9) A description of the intended disposition of any unused phosphogypsum.

(10) Each request shall be signed and dated by a corporate officer or public official in charge of the facility.

(c) The Assistant Administrator for Air and Radiation may decide to grant a request that EPA approve distribution and/or use of phosphogypsum if he determines that the proposed distribution and/or use is at lease as protective of public health, in both the short term and the long term, as disposal of phosphogypsum in a stack or a mine.

(d) If the Assistant Administrator for Air and Radiation decides to grant a request that EPA approve distribution and/or use of phosphogypsum for a specified purpose, each of the following requirements shall be satisfied:

(1) The owner or operator of the stack from which the phosphogypsum is removed shall determine annually the average radium-226 concentration at the location in the stack from which the phosphogypsum will be removed, as provided by § 61.207.

(2) All phosphogypsum distributed in commerce by the owner or operator of a phosphogypsum stack, or by a distributor, retailer, or reseller, or purchased by the end-user, shall be accompanied at all times by certification documents which conform to the requirements § 61.208.

(3) The end-user of the phosphogypsum shall maintain records which conform to the requirements of § 61.209(c).

(e) If the Assistant Administrator for Air and Radiation decides to grant a request that EPA approve distribution and/or use of phosphogypsum for a specified purpose, the Assistant Administrator may decide to impose additional terms or conditions governing such distribution or use. In appropriate circumstances, the Assistant Administrator may also decide to waive or modify the recordkeeping requirements established by § 61.209(c).

§ 61.207 Radium-226 sampling and measurement procedures.

(a) Before removing phosphogypsum from a stack for distribution to commerce pursuant to § 61.204, § 61.205, or § 61.206, the owner or operator of a phosphogypsum stack shall measure the average radium-226 concentration at the location in the stack from which phosphogypsum will be removed. Measurements shall be performed for each such location prior to the intitial distribution in commerce of phosphogypsum removed from that location and at least once during each calendar year while distribution of phosphogypsum removed from the location continues.

(b) The radium-226 concentration shall be determined in accordance with the analytical procedures described in 40 CFR part 61, appendix B, Method 114.

(c) Phosphogysum samples shall be taken at regularly spaced intervals across the surface of the location in the phosphogypsum stack from which phosphogypsum will be removed.

(d) The minimum number of samples considered necessary to determine a representative average radium-226 concentration for the location on the stack to be analyzed shall be calculated as follows:

(1) Obtain the measured mean and standard deviation of 30 regularly spaced phosphogypsum samples.

(2) Solve the following equation for the number of samples required to achieve a 95% confidence interval:

$$e \geq \frac{\tau(n)s}{x\sqrt{n}}$$

where:

τ is the students—τ distribution,

s = measured standard deviation of the radium-226 concentration,

x = measured mean of the radium-226 concentration,

e = allowable error (expressed as a fraction), and
n = number of samples.

See Reference 1 of Method 115 in appendix B to part 61 for a detailed discussion of this statistical technique.

(3) If the number of samples required is greater than 30, then obtain and analyze the necessary number of additional samples and recalculate the average radium-226 concentration using the combination of the results of the original 30 samples and additional samples. The additional samples shall also be regularly spaced across the surface of the location in the phosphogypsum stack from which phosphogypsum will be removed.

§ 61.208 Certification requirements.

(a)(1) The owner or operator of a stack from which phosphogypsum will be removed and distributed in commerce pursuant to § 61.204, § 61.205, or § 61.206 shall prepare a certification document for each quantity of phosphogypsum which is distributed in commerce which includes:

(i) The name and address of the owner or operator;

(ii) The name and address of the purchaser or recipient of the phosphogypsum;

(iii) The quantity (in pounds) of phosphogypsum sold or transferred;

(iv) The date of sale or transfer;

(v) A description of the intended end-use for the phosphogypsum;

(vi) The average radium-226 concentration, in pCi/g, of the phosphogypsum, as determined pursuant to § 61.207; and

(vii) The signature of the person who prepared the certification.

(2) The owner or operator shall retain the certification document for five years from the date of sale or transfer, and shall produce the document for inspection upon request by the Administrator, or his authorized representative. The owner or operator shall also provide a copy of the certification document to the purchaser or recipient.

(b)(1) Each distributor, retailer, or reseller who purchases or receives phosphogypsum for subsequent resale or transfer shall prepare a certification document for each quantity of phosphogypsum which is resold or transferred which includes:

(i) The name and address of the distributor, retailer, or reseller;

(ii) The name and address of the purchaser or recipient of the phosphogypsum;

(iii) The quantity (in pounds) of phosphogypsum resold or transferred;

(iv) The date of resale or transfer;

(v) A description of the intended end-use for the phosphogypsum;

(vi) A copy of each certification document which accompanied the phosphogypsum at the time it was purchased or received by the distributor, retailer, or reseller; and

(vii) The signature of the person who prepared the certification.

(2) The distributor, retailer, or reseller shall retain the certification document for five years from the date of resale or transfer, and shall produce the document for inspection upon request by the Administrator, or his authorized representative. For every resale or transfer of phosphogypsum to a person other than an agricultural end-user, the distributor, retailer, or reseller shall also provide a copy of the certification document to the purchaser or transferee.

§ 61.209 Required records.

(a) Each owner or operator of a phosphogypsum stack must maintain records for each stack documenting the procedure used to verify compliance with the flux standard in § 61.202, including all measurements, calculations, and analytical methods on which input parameters were based. The required documentation shall be sufficient to allow an independent auditor to verify the correctness of the determination made concerning compliance of the stack with flux standard.

(b) Each owner or operator of a phosphogypsum stack must maintain records documenting the procedure used to determine average radium-226 concentration pursuant to § 61.207, including all measurements, calculations, and analytical methods on which input parameters were based. The required documentation shall be sufficient to allow an independent auditor to verify the accuracy of the radium-226 concentration.

(c) Each facility which uses phosphogypsum pursuant to § 61.205 or § 61.206 shall prepare records which include the following information:

(1) The name and address of the person in charge of the activity involving use of phosphogypsum.

(2) A description of each use of phosphogypsum, including the handling and processing that the phosphogypsum underwent.

(3) The location of each site where each use of phosphogypsum occurred, including the suite and/or building number, street, city, county, state, and zip code.

(4) The mailing address of each facility using phosphogypsum, if different from paragraph (c)(3) of this section.

(5) The date of each use of phosphogypsum.

(6) The quantity of phosphogypsum used.

(7) The certified average concentration of radium-226 for the phosphogypsum which was used.

(8) A description of all measures taken to prevent the uncontrolled release of phosphogypsum into the environment.

(9) A description of the disposition of any unused phosphogypsum.

(d) These records shall be retained by the facility for at least five years from the date of use of the phosphogypsum and shall be produced for inspection upon request by the Administrator, or his authorized representative.

§ 61.210 Exemption from the reporting and testing requirements of 40 CFR 61.10.

All facilities designated under this subpart are exempt from the reporting requirements of 40 CFR 61.10.

Appendix B—[Amended]

3. By amending Table 1 in Method 114 in appendix B to part 61 by inserting in alphabetical order the following entry:

Ra–226
A–1, A–2, G–1, G–2

[FR Doc. 92–12640 Filed 6–2–92; 8:45 am]
BILLING CODE 6560-50-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 710 and 752

[AIDAR Notice 92-3]

Metric System

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The Agency for International Development Acquisition Regulation (AIDAR) is being amended to implement the Agency's Metric Transition Plan that was issued pursuant to the Metric Conversion Act and Executive Order 12770.

EFFECTIVE DATE: July 6, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen J. O'Hara, FA/PPE, room 1600I, SA–14, Agency for International Development, Washington, DC 20523–1435. Telephone: (703) 875–1534.

SUPPLEMENTARY INFORMATION: A new part 710 is added which sets out the criteria and authority for waiving the requirement to use the metric system of

measurement and establishes a requirement for recording and reporting on waivers. The clause on Language, Weights, and Measures is revised, retitled and relocated to reflect the requirement for use established in part 710.

The changes being made by this Notice are not considered significant rules under FAR section 1.301 and subpart 1.5. This Notice will not have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act. It is not considered a major rule under Executive Order 12291, and has been submitted to OMB for review. This Notice does not establish any information collection as contemplated by the Paperwork Reduction Act. Because of the nature and subject matter of this Notice, use of the proposed rule/public comment approach was not considered necessary. We decided to issue as a final rule; however, we welcome public comment on the material covered by this Notice or any other part of the AIDAR at any time. Comment or questions may be addressed as specified in the "**FOR FURTHER INFORMATION CONTACT**" section of the preamble.

List of Subjects in 48 CFR Parts 710 and 752

Government procurement.

Accordingly for the reasons set out in the Preamble, 48 CFR chapter 7 is amended as follows:

1. Part 710 is added to read as follows:

PART 710—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

710.011 Solicitation provisions and contract clauses.
710.070 Metric system waivers.

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

710.011 Solicitation provisions and contract clauses.

The contracting officer shall insert the clause at 752.210-70 in all AID-direct solicitations and contracts.

710.070 Metric system waivers.

(a) *Criteria.* The FAR 10.002(c) requirement to use the metric system of measurement for specifications and quantitative data that are incorporated in or required by AID contracts may be waived when AID determines in writing that such usage is impractical or is likely to cause U.S. firms to experience significant inefficiencies or the loss of markets.

(b) *Authorization.* (1) The AID Metric Executive (FA/AS), the contracting officer, and the AID official who approves the procurement requirement (by signing a PIO/T or equivalent document) are authorized to waive the metric requirement for one of the above reasons. The AID Metric Executive is authorized to overrule a decision to grant a waiver, or to nullify a blanket waiver made by another approving official so long as a contractor's rights under an executed contract are not infringed upon.

(2) A blanket waiver for a class of multiple transactions may be issued for a term not to exceed three years.

(3) When a waiver will be based upon the adverse impact on U.S. firms, clearance from the AID Metric Executive (FA/AS) and the Office of Small and Disadvantaged Business Utilization (SDB) will be obtained prior to authorization.

(c) *Records and reporting.* (1) The basis for each waiver and any plans to adapt similar requirements to metric specifications in future procurements should be documented in the contract file.

(2) Each procurement activity will maintain a log of the waivers from the metric requirements which are authorized for its procurements. The logs shall list the commodity/service being procured, total dollar value of the procured item(s), waiver date, authorizing official, basis for waiver, and AID actions that can promote metrication and lessen the need for future waivers.

(3) Within 30 days of the closing of each fiscal year, each AID/W procurement activity and each Mission will submit a copy of the metric waiver log for the year to the AID Metric Executive. (Mission logs are to be consolidated in a Mission report for the procurement activity and for the nonprocurement activities maintaining such logs under the AID Metric Transition Plan.) Repetitive purchases of commercially produced and marketed items and classes of items may be consolidated in reporting procurements that do not exceed $10,000 cumulatively during the reporting period.

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 752.2—Texts of Provisions and Clauses

2. The authority citation for part 752 continues to read as follows:

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., p. 435.

3. Section 752.210-70 is added to read as follows:

752.210-70 Lanaguage and measurement.

The following clause shall be used in all AID-direct contracts.

Language and Measurement (June 1992)

(a) The English language shall be used in all written communications between the parties under this contract with respect to services to be rendered and with respect to all documents prepared by the contractor except as otherwise provided in the contract or as authorized by the contracting officer.

(b) Wherever measurements are required or authorized, they shall be made, computed, and recorded in metric system units of measurement, unless otherwise authorized by AID in writing when it has found that such usage is impractical or is likely to cause U.S. firms to experience significant inefficiencies or the loss of markets. Where the metric system is not the predominant standard for a particular application, measurements may be expressed in both the metric and the traditional equivalent units, provided the metric units are listed first.

[End of Clause.]

752.7005 [Removed]

4. Section 752.7005 is removed and reserved.

Dated: May 7, 1992.

John F. Owens,

Procurement Executive.

[FR Doc. 92-12866 Filed 6-2-92; 8:45 am]
BILLING CODE 6116-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 911215-2114]

RIN 0648-AD50

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

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement portions of amendment 18 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI), and amendment 23 to the FMP for Groundfish of the Gulf of Alaska (GOA). These amendments allocate Pacific cod and pollock between inshore and offshore components of the groundfish

fishery in the GOA, and temporarily allocate pollock between inshore and offshore components in the BSAI, as defined in the proposed amendments. Also, these regulations temporarily establish a catcher vessel operational area in the BSAI within which the offshore component is prohibited from conducting fishing operations for pollock during the second seasonal allowance (i.e., the "B" season). In addition, a Western Alaska Community Development Quota (CDQ) program to help develop commercial fisheries in communities on the Bering Sea coast has been approved. Full implementation of this portion of amendment 18, however, will depend on approval of program criteria and specific fishery development plans (FDPs) through a separate rulemaking. These actions are intended to promote management and conservation of groundfish and other fish resources and to further the goals and objectives contained in the FMPs that govern these fisheries.

EFFECTIVE DATE: June 1, 1992.

ADDRESSES: Copies of amendments 18 and 23 to the FMPs and the final supplemental environmental impact statement/regulatory impact review/ final regulatory flexibility analysis (FSEIS/RIR/FRFA) may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 (telephone 907-271-2809).

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter, Fishery Management Biologist, at 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

Domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ) off Alaska are managed in accordance with the GOA and BSAI FMPs. Both FMPs were prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The GOA FMP is implemented by regulations appearing at 50 CFR 611.92 for the foreign fishery and at 50 CFR part 672 for the U.S. fishery. The BSAI FMP is implemented by regulations appearing at 50 CFR 611.93 for the foreign fishery and 50 CFR part 675 for the U.S. fishery. General regulations that also pertain to the U.S. fisheries appear at 50 CFR part 620. The fisheries for walleye pollock (*Theragra chalcogramma*) and Pacific cod (*Gadus macrocephalus*) off Alaska and the affected human environment are described in the FMPs and in the FSEIS/ RIR/FRFA. The Council adopted amendments 18 and 23 to the respective FMPs at its meeting of June 24-29, 1991, for review, approval, and implementation by the Secretary of Commerce (Secretary). At its August and September 1991 meetings, the Council rejected motions to rescind its earlier adoption of the amendments. During the summer of 1991, the Council staff revised the draft SEIS/RIR/IRFA (supplemental environmental impact statement/regulatory impact review/ initial regulatory flexibility analysis), which was completed on September 19, 1991. Notice of the draft SEIS was published in the **Federal Register** on November 22, 1991, which provided for public review and comment until January 6, 1992 (56 FR 58905).

The official receipt date of amendments 18 and 23 from the Council was December 1, 1991. The Secretary immediately made a preliminary evaluation of the amendments to determine whether they were consistent with the national standards of the Magnuson Act and sufficient in scope and substance to warrant review under section 304 of the Magnuson Act. A notice of availability of, and request for public comment on, amendments 18 and 23 was published in the **Federal Register** on December 12, 1991 (56 FR 64738). Public comment on the amendments was invited until February 4, 1992.

A notice of proposed implementing rules was published on December 20, 1991 (56 FR 66009), and invited comments until February 3, 1992. A correction notice was published on January 23, 1992 (57 FR 2814), but did not change the public comment period. All comments received through February 4, 1992, were considered.

Almost 1,100 letters commenting on the amendments and the proposed implementing rules were received. After careful consideration of the public comments, the record developed by the Council, and analyses of the potential effects of the proposed amendments, the Secretary partially disapproved amendment 18 to the BSAI FMP and approved amendment 23 to the GOA FMP. Accordingly, changes are made in the final rule implementing amendment 18, but no substantive changes are made in the final rule implementing amendment 23. Specific changes from the proposed rule in the final rule are described below. Also, a summary of and response to public comments appears later in this rule.

Purpose and Description of Allocations

The primary purpose of amendments 18 and 23 is to protect the inshore component of the fishery from preemption by the offshore fleet. Indication of a preemption problem between these two sectors of the groundfish fishery became apparent early in 1989. Substantial processing of pollock by catcher/processor vessels contributed to an early closure of the pollock fishery in the Shelikof Strait District on March 21, 1989 (54 FR 12204, March 24, 1989), effectively preventing inshore components from realizing their anticipated economic benefit from pollock later in the fishing year. At the April 1989 Council meeting, fishermen and processors from Kodiak Island requested the Council to consider inshore-offshore allocations to prevent future preemption of resources by one industry sector over another.

The problem statement adopted by the Council at its April 1990 meeting stated in part:

> The Council defines the problem as a resource allocation problem where one industry sector faces the risk of preemption by another.

The Council expressed the view that specified allocations of the total allowable catch (TAC) of pollock and Pacific cod for inshore and offshore components at the beginning of a fishing year would resolve the preemption problem and better enable operators within those components to plan harvesting and/or processing activity during the fishing year. A discussion of this conservation and management problem, and an analysis of the effects of various alternative management measures considered by the Council to resolve it, are contained in the FSEIS/ RIR/FRFA, which is available from the Council (see **ADDRESSES**).

Biological, economic and social impacts were evaluated during the decisionmaking process. Biological impacts were fully considered using the SEIS and the biological opinions prepared for amendments 18 and 23. The SEIS and biological opinions determined that implementation of the amendments would not have significant adverse effects on fishery stocks or endangered species, and in particular Steller sea lion populations listed as threatened under the Endangered Species Act. Because the amendments were allocative and did not change the total fishing mortality, the economic and social impacts were deemed by the Secretary to be most important during review of the amendments.

The economic methodology used by the Council for analyzing the economic effects of the proposed amendments was a concern noted in the preamble to the proposed rule for amendments 18 and 23 (56 FR 66009, December 20, 1991). An

input-output analysis was used by the Council to estimate the impacts of the alternatives, including the allocations proposed by amendments 18 and 23. An input-output analysis is designed principally to measure economic activity such as volume of revenue, income and employment. While useful for identifying interindustry transactions and tracing the flow and multiplier effects of revenues and expenditures in an economic system, input-output analysis does not measure economic efficiency or present estimates of net economic gains or losses for society or for private enterprises. FMPs and amendments recommended by a regional fishery management council are to be reviewed by the Secretary for their consistency with the Magnuson Act and other applicable law which require information on costs and benefits to the Nation. Therefore, NMFS undertook a cost-benefit analysis during the public comment period on the proposed rule for amendments 18 and 23. The cost-benefit analysis drew principally from the data used by the Council, existing literature and information provided in public comments on the amendments and by NMFS staff.

Based on the available information supplied by the Council, NMFS and the public, the Secretary determined that full approval of amendments 18 and 23 would result in favorable economic impacts to Alaska coastal communities but would also result in net economic losses to the Nation ranging from $103 to $178 million, depending upon various assumptions. There was almost a zero probability that the action would produce positive net National economic benefits. Based on the record before the Secretary, approval of amendment 23 would be expected to result in an estimated net economic loss to the Nation of $22.7 million if the allocation was in place from the beginning of 1992 to the end of 1995, discounted for net present value. Without discounting for net present value, economic costs of amendment 23 are estimated to be $6.4 million for each full year the allocation is in effect. The net economic costs for approval of only part of the 1992 season (Year 1) for the GOA and the BSAI range from $2 million to $15 million. Full year costs in Year 2 are estimated to range from $32–55 million, not discounted for net present value.

Social impacts were also evaluated by the Secretary in comparison with the economic impacts associated with amendments 18 and 23. The Secretary determined that social benefits associated with approval amendment 23 and the 1992 "B" season allocation of amendment 18 outweighed the economic costs of these allocations. The allocations as approved for Pacific cod in the GOA and pollock in the BSAI closely approximate the status quo in terms of harvesting and processing histories. This, coupled with the need to provide some protection to the inshore sector from the offshore sector, were the basis of the Secretary's approval of these allocations.

The allocation of 100 percent of the GOA pollock TAC to the inshore sector proposed by the Council and approved by the Secretary slightly exceeds the harvest rates of the inshore sector in recent years and results in a redistribution of the pollock resource from the offshore sector to the inshore sector. The Secretary determined that this redistribution was appropriate based on the social and other benefits that would be derived from implementation of the allocation.

The GOA fisheries for pollock and Pacific cod are primarily conducted from Kodiak and Sand Point. Both communities are historically dependent on commercial fisheries for their existence. Fishermen who base their operations in Kodiak and Sand Point operate smaller vessels than those used in the Bering Sea fisheries and land their catches for processing in Alaskan ports. These fishermen pursue an annual round of fisheries in the GOA, shifting among fisheries for Pacific cod and pollock, halibut, and salmon depending on the season. The seasonal round of fisheries provides relatively stable employment for fishermen and processing workers on a year-round basis. While seasonal species composition varies with stock abundance, these fisheries have provided the bulk of the employment in these communities. Information in the record shows that Sand Point depends on fishing and fish processing for 87 percent of paid employment and that fishery employment in Kodiak is approximately 56 percent of local employment. While some transient workers are employed in Sand Point and Kodiak fish processing plants during summer months, the stability and viability of both communities is based on the seasonal round of fisheries. The loss of any one element of the seasonal round of fisheries, such as pollock, that is not replaced would result in significant social costs. Year-round employment would no longer be available in fishing and fish processing with corresponding increases in welfare costs and a decreased local tax base. Loss of part-time fishing activities would further depress employment in service and support industries dependent on seasonal fishing. Also, loss of the ability to fish year-round in seasonal fisheries would increase stress on social institutions such as the family and reduce the quality of life for residents of the communities. The social and economic costs that result from a loss of seasonal fisheries was demonstrated in the GOA in 1989 when the pollock quota was taken by March 10 and the salmon fishery was closed on March 26 as a result of the *Exxon Valdez* oil spill. The Secretary determined that failure to protect GOA costal communities from transfers of effort from the BSAI offshore sector through allocations of pollock and Pacific cod among inshore and offshore interests in the GOA would severely affect the employment and social fabric of the GOA communities.

The portion of amendment 18 that was disapproved by the Secretary would have increased the inshore allocation of the TAC for pollock in the BSAI from 35 percent in 1992, to 40 percent in 1993, and 45 percent in 1994 and 1995. However, an economic review performed by NMFS indicated a large net economic loss to the Nation resulting from this proposed allocation without evidence of sufficient countervailing social or other benefits. The initial 35 percent allocation was approved for the 1992 "B" season because it provides the desired preemption protection and results in a net benefit to the Nation. Under the Magnuson Act, the Council has the option of revising the disapproved portion of amendment 18 and resubmitting it for expedited Secretarial review.

In partially disapproving amendment 18 and fully approving amendment 23, the Secretary recognizes that the potential for preemption of the inshore sector is a genuine conservation and management problem because these two sectors of the industry have greatly differing mobility and harvesting capabilities. This problem is exacerbated by overcapitalization in the industry as a whole. Therefore, parts of amendment 18 and all of amendment 23 are implemented as an interim measure pending development of a solution to the overcapitalization problem. The Council is encouraged to work as expeditiously as possible toward some other method of allocating fish among competing users, ideally one that relies on free market decisions, instead of direct government intervention. The Council is working on a moratorium on the entry of new fishing vessels generally and on a transferable quota program for the fixed gear fisheries for sablefish and Pacific halibut.

A description of approved portions of amendments 18 and 23 and the specific regulations implementing them follows.

1. Inshore and Offshore Definitions

The inshore component is defined by this action at 50 CFR 672.2 and 675.2. Basically, this definition identifies three places where Pacific cod harvested in the GOA or pollock harvested in the GOA or the BSAI area could be processed and considered an "inshore component" for quota monitoring purposes. These include "shoreside" operations, processor vessels at fixed locations in State of Alaska waters, and small processor vessels. The term "processor vessel" includes mothership operations that do not catch fish but receive from catcher vessels and process it, and catcher/processors that are capable of catching and processing fish. Both kinds of processor vessels operating in the groundfish fisheries are required to have Federal groundfish vessel permits unless they are functioning as shoreside operations. Shoreside operations do not have Federal groundfish vessel permits and may include processing plants on shore or on floating platforms, or groundfish buying stations.

Motherships or catcher/processors (i.e., processor vessels) that have Federal groundfish vessel permits but operate under the inshore definition are required to remain in Alaska State waters in the same geographic location during a fishing year when they are processing pollock (hereinafter, unless otherwise specified, includes both BSAI and GOA pollock) and Pacific cod harvested in the GOA that were taken during open directed fisheries for these species. Alaska State waters are those adjacent to the State of Alaska and shoreward of the EEZ. For purposes of this definition, a single geographic location during a fishing year will be determined by the geographic coordinates reported on the most recent check-in notice in effect at the time of the first opening of a directed fishery for Pacific cod in the GOA or for pollock, or, if there is no check-in report at the time of the first directed fishery openings during a fishing year, the first check-in report submitted during a directed fishery for Pacific cod in the GOA or for pollock.

For example, a mothership located in Alaska State waters, that receives pollock or GOA Pacific cod during an open directed fishery for those species for the first time in a fishing year, would have to process subsequent receipts of pollock and Pacific cod during open directed fisheries at the same location for the remainder of the fishing year. The location will be determined by the check-in report required under §§ 672.5 and 675.5. If a check-in report is not received during an open directed fishery for pollock and Pacific cod, then it will be presumed that reported processing of those species is occurring at the location given in the most recent check-in report.

This restriction applies on a fishing-year basis and only to the processing of pollock and GOA Pacific cod during open directed fisheries for those species. A processor vessel could leave the specified "inshore component" location to process other species of groundfish not included under amendments 18 and 23 or non-groundfish species. However, if it processes pollock and GOA Pacific cod again during open directed fisheries for those species later in the same fishing year, the processor vessel must return to the same location reported on the first check-in report of the fishing year at which pollock or GOA Pacific cod were processed during open directed fisheries for those species.

In addition, a processor vessel could process pollock and GOA Pacific cod taken as incidental catch or bycatch, in a location other than where it processes these species during directed fishing for pollock and GOA Pacific cod, when directed fishing for these species is prohibited. Legitimate processing of bycatch amounts of pollock and Pacific cod in different locations will be determined according to the directed fishing standards at §§ 672.20(g) and 675.20(h).

The location restrictions on processor vessels operating in State of Alaska waters under the inshore definition will apply in the 1992 fishing year from the effective date of this rule, and will not be implemented retroactively to the beginning of the fishing year. This means, for example, that processor vessels that have operated at one location during the first quarter pollock fishery in the GOA or the pollock roe season (January 1–April 15) in the BSAI will not be required to process pollock in the same location for subsequent directed fisheries for pollock later in 1992. However, this rule will be in effect for the first GOA pollock and Pacific cod directed fisheries in 1993.

For purposes of the "inshore component" definition, small processor vessels are those that are less than 125 feet (38.1 m) in length overall and process less than 18 metric tons (mt) per day of pollock and GOA Pacific cod. The tonnage standard is based on a daily average during any weekly reporting period. It applies to pollock and Pacific cod in the aggregate and in round weight equivalents calculated using standard product recovery rates.

The offshore component also is defined by this action at 50 CFR 672.2 and 675.2 simply as including all processor vessels in the groundfish fisheries off Alaska that are not included in the inshore definition. Catcher vessels that can only catch and not process fish are not in either the inshore or offshore categories. Their harvests of pollock and GOA Pacific cod will be counted against either the inshore or offshore allocations of pollock and Pacific cod, depending on where the catch is delivered for processing.

Processor vessels are not allowed to catch or process pollock or Pacific cod as an inshore and offshore operation during the same year. For purposes of this measure, the BSAI area and the GOA are viewed as one area. For example, a mothership would not be allowed to process pollock in the GOA under the inshore definition and in the BSAI area under the offshore definition in the same fishing year. It could operate under the inshore definition to process GOA pollock and then move offshore in the BSAI area in the same fishing year to process Pacific cod caught in the BSAI area or flatfish, since these species are not included in the inshore definition for the BSAI area. However, it would have to return to its original location to process pollock caught in either the BSAI area or the GOA, or Pacific cod caught in the GOA in open directed fisheries for those species.

2. Inshore and Offshore Allocations

Under approved amendment 23 for the GOA groundfish fisheries, 90 percent of the Pacific cod TAC and 100 percent of the pollock TAC for each fishing year, as specified in the annual notice of specifications for groundfish, will be allocated to the inshore component of the groundfish fishery. Ten percent of the Pacific cod TAC will be allocated to the offshore component, and an appropriate percentage of the pollock TAC for bycatch purposes will be allowed.

Only the inshore component would be allowed to conduct directed fishing for pollock in the GOA. Nevertheless, under current §§ 672.20 (g) and (h), catcher/processors from the offshore component will be able to retain bycatch amounts of GOA pollock. For a given fishing trip, pollock retention for a vessel in the offshore component must be less than 20 percent by weight (round weight equivalent) of other species retained under current management policies. This provision will allow for the retention

and processing of pollock bycatch by the offshore component, until the pollock TAC is reached, and is intended to alleviate unnecessary discard and waste of the resource. Once the GOA pollock TAC is reached for a given regulatory area and district, pollock must be treated as a prohibited species under current § 672.20(c)(3).

The offshore component will be allocated up to 10 percent of the Pacific cod TAC for each regulatory area in the GOA. The Director, Alaska Region, NMFS (Regional Director), will determine what proportion of this amount will be necessary as bycatch for directed fishing for other species by the offshore component. After this expected bycatch amount is subtracted from the offshore allocation, the remaining amount may be available to the offshore component for directed fishing purposes. For TAC monitoring purposes in the GOA, the retained bycatch of Pacific cod taken by the offshore component will differ from the retained bycatch of pollock. Retained bycatch of pollock taken by the offshore component in the GOA will be counted against the inshore allocation, but retained bycatch of Pacific cod by the offshore component will be credited to its 10 percent allocation. If there happens to be any bycatch of Pacific cod over this 10 percent amount, it will be counted against the inshore allocation.

Under the approved portions of amendment 18 for the BSAI area groundfish fisheries, the inshore component will receive 35 percent of the 1992 non-roe pollock season TAC apportioned to domestic annual processing (DAP), and the offshore component will receive the remaining 65 percent. This allocation applies only to the pollock DAP remaining for the 1992 fishing year on the effective date of this rule. There is no provision for retroactive allocation of pollock amounts already harvested during 1992.

The current specification of DAP for the non-roe ("B" season) pollock season, which begins on June 1, 1992, is 663,000 mt (57 FR 3952, February 3, 1992). The actual tonnage that will be available to both sectors of the BSAI pollock fishery will depend on adjustments made for overages or underages of the roe-season harvest and for pollock bycatch amounts taken between open seasons for pollock. Theoretically, if there were no such adjustments, the inshore component would be allocated 232,050 mt (663,000 × 0.35) and the offshore component would be allocated 430,950 mt (663, 000 × 0.65). This does not include the 195,000 mt of pollock that was initially apportioned to the nonspecific groundfish reserve for the BSAI area. Half of this reserve amount, or 97,500 mt, will be made available for the Western Alaska CDQ program as described below. However, if none of the BSAI pollock TAC is used under the CDQ program by the end of the third quarter, and if the 50 percent portion of reserve set aside for the CDQ program is not used for other purposes, an additional 34,125 mt and 63,375 mt of pollock may be added to the inshore and offshore allocations, respectively, for the 1992 fishing year.

If the Regional Director determines that either of the inshore or offshore components will not be able to process the entire amount of its allocation of pollock or GOA Pacific cod during a fishing year, then NMFS will publish a notice in the **Federal Register** that reallocates the projected unused amount of pollock or Pacific cod to the other component.

3. Catcher Vessel Operational Area (CVOA)

An approved portion of amendment 18 provides for a CVOA in the Bering Sea in which access to pollock is limited only to catcher vessels that harvest pollock for delivery to either the offshore component or the inshore component. The CVOA is located south of 56° N. latitude and between 163° and 168° W. longitudes. The offshore component, including all processing vessels, is not allowed to conduct fishing operations for pollock in the CVOA.

4. Western Alaska Community Development Quota (CDQ)

The approved portion of amendment 18 provides for withholding half the amount of BSAI pollock assigned to the nonspecific reserve. The amount withheld will be made available for allocation to qualifying community development projects in western Alaska. As a result, 7.5 percent of the BSAI pollock TAC will be set aside for purposes of this program at the beginning of the fishing year. For the 1992 fishing year, this amount is 97,500 mt. The set aside amount will be reduced as allocations are made to fishery development projects. Following the end of the third quarter, any portion that is unallocated for western Alaska community development projects will be reapportioned to the nonspecific reserve. Any apportionments from the nonspecific reserve to the pollock TAC during 1992 will be allocated to the inshore and offshore components according to the 35/65 proportion described under § 675.20(a)(2)(iii).

To be eligible, a community must meet specified criteria and have an approved FDP. Criteria for community eligibility will be established by the Governor of Alaska, in consultation with the Council, and announced in the **Federal Register** following approval by the Secretary. The program criteria will be required to undergo analysis and evaluation of benefits and costs before being submitted to the Secretary for approval through a notice-and-comment rulemaking procedure. The Secretary will review the criteria for consistency with the objectives of the BSAI groundfish plan, the Magnuson Act, the national standards, and applicable law. Individual FDPs recommended by the Governor of Alaska, after consultation with the Council, will be reviewed by the Secretary for consistency with the criteria.

Actual allocations of pollock to Bering Sea communities under the CDQ program would be announced annually in the **Federal Register** by the Secretary, beginning with the second year of implementing the CDQ program. Unless amended, this program will end on December 31, 1995, along with other provisions of the inshore-offshore allocations.

Specific Changes From the Proposed Rule in the Final Rule

The only substantive difference between the proposed rule (56 FR 66009, December 20, 1991) and this final rule results from the Secretary's partial disapproval of amendment 18 to the FMP for groundfish fisheries in the BSAI area. In effect, this partial disapproval will allocate BSAI pollock between inshore and offshore sectors of the industry only for the 1992 "B" season instead of through 1995 as the Council had proposed. This caused the following changes in the regulatory text for 50 CFR part 675 from that which was proposed.

1. The applicability dates that preceded most of the proposed rule paragraphs were changed from December 31, 1995, to December 31, 1992. This change was made for those paragraphs that are pertinent to the allocation, including the definitions of inshore and offshore. The applicability date of December 31, 1995, for the Western Alaska CDQ program is not changed, indicating the Secretary's full approval, in concept, of this part of amendment 18. This approval of the CDQ program was conditioned on subsequent analysis of the program criteria and FDPs before they are submitted to the Secretary for approval through the rulemaking procedure. Therefore, the regulatory text at

§ 675.20(a)(3) that provides authority for the allocation of pollock for CDQ purposes was expanded to include paragraph (a)(3)(iii) for the program criteria. This paragraph is reserved for later publication of the program criteria after the analysis, public comment, and Secretarial review are complete.

2. The identification of new statistical areas in the Bering Sea that were proposed to be added to the definitions at § 675.2 are not included in the final rule. The primary purpose of these new statistical areas was for monitoring the offshore catch allowance of pollock in the CVOA during the roe-season (January 1 through April 15). As approved, amendment 18 will require only the prohibition of offshore fishing for pollock in the CVOA. Hence, definition of new statistical areas is not needed.

3. The proposed schedule of pollock allocations between inshore and offshore components for the years 1993 through 1995 is not included in the final rule. The Secretary's decision on amendment 18 explicitly rejected the proposed inshore-offshore allocation of pollock in those years. Therefore, the final rule at § 675.20(a)(2)(iii) was changed to provide for a 35/65 percent allocation of pollock in each subarea between inshore and offshore components only for the second seasonal allowance of pollock taken after June 1, for the 1992 fishing year.

4. Proposed rule changes to § 675.20(a)(7) are deleted from the final rule. This proposed change would have incorporated the setting of inshore-offshore allocations into the annual groundfish specification process described at paragraph (a)(7). It is unnecessary to change this regulatory text with only a portion of the 1992 fishing year affected by this final rule.

5. Proposed rule changes to § 675.20(a)(8) also are not needed in the final rule because of the short-term applicability of the BSAI pollock allocations. Instead, authority for the Regional Director to establish directed fishing allowances, and to prohibit directed fishing or retention of a groundfish species by either the inshore or offshore component, is incorporated by reference in paragraph (a)(2)(iii) of § 675.20.

6. The proposed rule definition of the catcher vessel operational area at § 675.22(g) is changed in the final rule. The text that allows limited fishing within the area by the offshore component until or before April 15 is deleted, because that fishing period is now closed for the remainder of 1992.

7. The proposed rule definitions of *Inshore* and *Offshore* at 50 CFR 672.2 and 675.2 are redesignated as *Inshore Component* and *Offshore Component*. The word "component" is used throughout the preamble. Adding it to the definitions will clarify the meaning of these definitions.

Other changes from the proposed rule were made in the final rule text of 50 CFR parts 672 and 675 for purposes of clarity and synthesis with existing regulations. These changes include the following:

1. Definitions of "catcher/processor" and "mothership" were not used in the final rule as proposed because the definition of "processor vessel" incorporates both types of vessels.

2. The definition of "processor vessel" is changed in the final rule to clarify that it is a vessel that can be used for processing groundfish, as already defined, and is a vessel that has a Federal groundfish vessel permit. Incorporating the criterion of having a Federal permit is essential for distinguishing a "processor vessel" from a "shoreside operation."

3. The definition of "shoreside operation" is changed in the final rule to clarify that it does not have a Federal groundfish vessel permit and that it could be any person (including, for example, a corporation or individual) that receives unprocessed groundfish from a catcher vessel. The fact that a shoreside operation may be a building on land or a vessel that is substantially a land structure is of no significance for purposes of monitoring catch quotas of the inshore and offshore components. Changing the name from "shoreside processing facility" in the proposed rule to "shoreside operation" in the final rule clarifies that, for monitoring and recordkeeping purposes, a shoreside operation does not have to be a physical structure or processing plant.

4. Finally, the definition of "inshore component" in the final rule is different from that used in the proposed rule by changing the terms "mothership" and "catcher/processor" to the more comprehensive "processor vessel," and by clarifying the use of check-in reports to determine the geographic location of processor vessels operating in Alaska State waters as "inshore component" processors for purposes of pollock and GOA Pacific cod. A more complete explanation of how this definition will be used is given above in the discussion under the heading "Inshore and Offshore Definitions."

Response to Comments

Amendments 18 and 23 involved the most controversial allocation issue ever received by the Secretary under the Magnuson Act. Nearly 1,100 letters commenting on the amendments and the proposed implementing rules were received during the public comment period. Approximately 300 letters expressed views in favor of approval and 790 expressed opposition to approval of the amendments. Two letters commented on specific details of the proposed rule without expressing an opinion for or against approval. Most letters in favor and opposed were written by processing plant workers and fishermen working in the inshore and offshore sectors, respectively.

Based on the return addresses of comment writers, residents of 34 States ranging from Alaska in the west to Maine in the east and south to Texas commented on amendments 18 and 23. Eighty-three percent of the comments were received from residents of the States of Alaska and Washington. Of the 397 comments from Alaska residents, 289 were in favor of approval while 108 were opposed. Of the 511 comments received from Washington residents, four were in favor of and 507 were opposed to approval. Comments were received from seven members of Congress and eight members of the Washington State Legislature. Two Federal executive branch departments submitted comments, including one late comment. Local government leaders also expressed views when 13 Alaska coastal communities submitted comments. Three Alaska native corporations commented also, and one petition with 1,171 signatures was received from the North Pacific Seafood Coalition. Many of the letters received were similar to one another, allowing for some consolidation of the description of comments in this portion of the rule. Significant issues and concerns raised by these comments are summarized and responded to as follows:

Comment 1: Amendments 18/23 would violate national standard 1 because they would require shifts in fishing patterns that would frustrate rather than facilitate achievement of optimum yield (OY). Harvest of the BSAI area roe season allocation by the offshore sector would be frustrated by the ice edge. The amount of pollock TAC allocated to the offshore sector is not consistently available outside of the CVOA.

Response: National standard 1 requires fishery conservation and management measures to prevent overfishing while achieving, on a continuing basis, the OY from each fishery. Neither amendment 23 nor approved portions of amendment 18 reduce the likelihood of pollock TAC or Pacific cod TAC being reached.

NMFS agrees that fishing patterns would change in response to implementation of the CVOA in the BSAI area. This action establishes the CVOA and specifies inshore-offshore allocations of pollock only for the 1992 "B" season. The pollock roe season fishery for 1992 is finished and the ice edge will have substantially receded by the time that the pollock non-roe fishery opens on June 1, 1992. Historical catch data presented in chapter 2 of the FSEIS indicate that large amounts of pollock are likely to be available north and west of the CVOA during the non-roe season. For the remainder of 1992, the non-roe season pollock catch limit for the Bering Sea (BS) subarea is expected to be about 663,000 mt (depending on adjustments made for overages or underages of the roe season quota and bycatch of pollock between the roe and non-roe seasons), of which 35 percent, or 232,050 mt, will be allocated to the inshore sector and 65 percent, or 430,950 mt, will be allocated to the offshore sector. Weekly production report data for 1991 indicate that the inshore and offshore components have sufficient capacity as well as sufficient opportunity to harvest and process the remainder of the OY in 1992.

Comment 2: Amendments 18/23 are consistent with national standard 1, to prevent overfishing while achieving OY, because they: (1) Do not change the amount or the process for determining the amount of pollock and Pacific cod removed from the fishery; (2) help to prevent localized overfishing by factory trawlers that engage in the practice of pulse fishing; and (3) will help achieve the OY from the pollock and Pacific cod fisheries by increasing the amount of food produced from these fisheries due to the higher product recovery rates experienced by the shoreside plants. Greater food production is an objective recognized in the definition of "optimum yield."

Response: As stated in the response to Comment 1, NMFS agrees that the approved portions of the proposed amendments do not change the amount or the process of determining TAC and believes that the OY from the pollock fisheries will be achieved.

Comment 3: Total revenue and exports would increase as a result of an increase in food production due to the inshore allocation.

Response: An increase in food production does suggest an increase in total revenue and a possible increase in exports. The recovery rate of the inshore sector appears to be somewhat higher than that of the offshore sector. However, the factory fleet has indicated that it is improving its technology and expects to increase recovery rates in the future. While the inshore sector may experience a higher recovery rate in 1992, the offshore sector may show a trend of increasing recovery rates with time, thereby increasing its ability to produce food products.

Comment 4: The economic analysis that the Council conducted is based on the wrong methodology, industry-supplied data for 1990 were ignored, and the Council analysis focused on data only from 1989. Therefore, the cumulative effects of sampling and analytical errors, combined with inappropriate assumptions, render results of the input-output analysis employed by the Council statistically meaningless and violative of national standard 2.

Response: National standard 2 requires that conservation and management measures be based on the best scientific information available including, but not limited to, information of a biological, ecological, economic, or social nature.

The administrative record does not close until the Secretary makes a decision. In recommending the allocation among fishing vessels that deliver to the offshore and inshore sectors, the Council relied upon an input-output analysis. Notwithstanding the Council's view, agency economists concluded that a cost-benefit model is the better scientific method to determine the net national costs and benefits of a proposed allocation. The decision of the Secretary was based on this cost-benefit analysis as well as public comment and the input-output model.

During the public comment period, NOAA used the Council's data to review the Council's findings that the proposed allocations would result in net national benefits. NMFS cost-benefit data, as well as the Council's input-output analysis and information regarding social benefits to coastal communities, were part of the administrative record considered by the Secretary in evaluating the costs and benefits of the amendments. The Council found national benefits would result associated with maintaining a balance in the social and economic opportunities inherent in the fisheries of the GOA and the BSAI. NMFS economic data, when considered along with the information in the record regarding the social benefits accruing to coastal communities from the allocations, confirmed the conclusions of the Council regarding the net national benefits derived from amendment 23 for the GOA and the 1992 "B" season, only, of amendment 18 in the BSAI.

The availability of new information must also be considered. While starting the FMP process over again when new information becomes available is not necessary, new information should be incorporated into a final FMP where practicable; and, where such information indicates that drastic changes have occurred in the fishery, such information might require revision of the management measures. While the Council considered primarily 1989 data, NOAA also took into account the 1990 and 1991 harvesting levels in the GOA and BSAI to address substantial changes in the circumstances and management of the groundfish fisheries over the past several years. NOAA also considered the effects of management measures that have been instituted since 1989, including, but not limited to, quarterly quotas, limits on rollovers between quarters, and the prohibition on roe stripping. These changes were taken into account by the Secretary in making the decision that the GOA and BSAI allocations are consistent with national standard 2.

Comment 5: Approval of amendments 18/23 is arbitrary and capricious because the record does not demonstrate a rational basis for the specific allocations proposed and no basis for allocating away from one sector to provide for the growth of another; the proposed allocations are politically driven and are not based on substantial biological, economic, and social analysis and justification.

Response: The amendments, as approved by the Secretary, do not allocate in order to provide growth for one sector over another. In the GOA, the allocations that were approved by the Secretary closely resemble recent harvest patterns. Public testimony was received indicating that the inshore processing plants are capable of processing the allocation of pollock and Pacific cod without further growth. A reason for their previous failure to process amounts of fish commensurate with the newly allocated levels is that the supply of fish was not available. As discussed for Comment 4, the administrative record upon which the Secretary made the decision contains clear evidence that social and other benefits outweigh the economic costs of the approved allocations.

Concerns with the adequacy of the record were expressed in the preamble to the proposed rule, and the public was asked to comment on the economic analysis included in the draft SEIS/RIR/IRFA and the consistency of the amendments with several of the Magnuson Act national standards.

Based on the record developed by the Council, public comment, and cost-benefit data submitted by NMFS, the Secretary determined that the record contains sufficient information to approve amendment 23 and portions of amendment 18.

Comment 6: Amendments 18/23 are consistent with national standard 2 because the Council did base its decision on a complete record containing the most current and best available information. In addition, 50 CFR 602.12 states that scientific information does not have to be complete for preparation and implementation, it only needs to be based on the best possible information and as new information indicates changes are necessary, the FMP should be amended on a timely basis. There was reliable information before the Council indicating the need to amend the FMP based on changing conditions of the fishery, since the plan was originally adopted when foreign fleets were operating.

Response: The 1989 incident of preemption of the inshore fleet in the GOA clearly indicated a changing fishery and a need to implement new management measures. NOAA agrees that the information available was the best and most current possible for approval of amendment 23 in its entirety and for the 1992 "B" season allocations of amendment 18.

Comment 7: The Magnuson Act and case law require the Secretary to consider public comment, and not rely solely on the record before the Council, when reviewing a plan or plan amendment for consistency with the Magnuson Act and other applicable law. Therefore, information that was not included in the analyses before the Council should be reviewed by the Secretary when making a decision.

Response: Consideration of public comment is an integral part of the Secretarial review process for proposed FMP amendments. The purpose of soliciting public comments is to include them in the decision-making process. The Secretary considered all public comments that were received on amendments 18 and 23.

Comment 8: Amendments 18/23 violate the fairness and equity criterion of national standard 4 because the Council did not take into consideration the financial risk taken by factory trawlers in developing the domestic pollock fishery.

Response: An allocation of fishing privileges may impose a hardship on one group if it is outweighed by the total benefits received by another group or groups. An allocation need not preserve the status quo in the fishery to qualify as fair and equitable if a restructuring of fishing privileges would maximize overall benefits. To be fair and equitable, an allocation of fishing privileges should be rationally connected to the achievement of OY and to an objective of an approved FMP. The Council is required to make an initial estimate of the relative benefits and hardships imposed by the allocation, and compare its consequences with those of alternative allocation schemes, including the status quo.

NOAA recognizes the difficult judgment necessary in making such allocative decisions. By concurring in the Council's conclusions that the GOA allocation and the 1992 "B" season in the BSAI would result in net benefits, NOAA is not making the assumption that the offshore factory trawler fleet has less financial investment and risk than the inshore sector. Public testimony was presented at the Council level and several comments were submitted during public review that described the financial risks associated with both the development of the factory trawler fleet and the shoreside processing industry. Testimony was received regarding the dependence of the factory trawler fleet on the groundfish harvests and the dependence of other businesses on the offshore fleet, including those that sell and repair fishing equipment, fish processing equipment and fishing gear, as well as freight management and warehousing companies. NOAA believes the social and economic impacts of preemption of the inshore sector by the offshore sector, as well as the need to provide some protection to the inshore sector, were clearly demonstrated in the GOA during 1989. The relatively small quota amounts for GOA pollock and Pacific cod, and the Gulf coastal communities that depend on an access to these resources, are clearly vulnerable to massive transfers of effort from the much larger offshore fleet that normally operates in the Bering Sea. Gulf coastal communities are characterized by historic dependence on fishing, and a high proportion of those engaged in this activity are local residents. In NOAA's view, the economic losses as a result of amendment 23 in the GOA are clearly offset by the social benefits accruing to the GOA coastal communities. The resource size in the GOA is a small percentage of that in the BSAI, and the proposed allocation will have a less significant effect on the industry as a whole. The economic effect of the GOA allocation will be much closer to the status quo than the economic effect of the proposed allocation in the Bering Sea. All these factors were evaluated by the Secretary in making the decision. Therefore, the decision is consistent with national standard 4.

Comment 9: Amendments 18/23 violate the fairness and equity criterion of national standard 4 because several objectives of the amendments would not be met.

Response: The objectives of Amendments 18/23 were to address the problems of (1) The future ecological, social, and economic health of the resource and the industry; (2) excessive harvests and processing capabilities; (3) resource allocation; and (4) appropriate management measures to advance the conservation needs of the area. The future ecological, social, and economic health of the resource and the industry is being addressed by the allocations as approved by controlling the percent of the fishery resource that can be taken by the offshore sector. The factory trawler fleet is capable of harvesting a large amount of fish in a short period of time, which can quickly lead to an overharvest. Evidence of the high harvesting capability occurred in 1991 when the third quarter specification for pollock was obtained in a little over one month for both the Central and Western subareas of the GOA and the fishery had to be closed prior to the end of the third quarter, September 29, 1991. The allocations were approved by the Secretary as being a solution for the current situation and will provide the appropriate management measure at present to advance the conservation needs of the area by reducing fishing pressure and ensuring a share of the resource for the coastal communities.

Comment 10: Amendments 18/23 violate the fairness and equity criterion of national standard 4 because the proposed allocations are not related to current and historic proportions of the harvest, or proportional to current processing capacity or harvesting ability.

Response: Public testimony and written comments were received regarding the capacity of inshore plants to process the increased amount of fish under the allocations. Representatives of several inshore plants testified that they had not been operating at full capacity previously because they did not have enough fish to supply the plants. Harvests of pollock by the inshore sector in the GOA in 1989, 1990, and 1991 were 45 percent, 82 percent, and 76 percent, respectively. The 3-year average is 67.7 percent for inshore and 32.3 percent for offshore. Harvests of Pacific cod by the inshore sector the GOA in 1989, 1990, and 1991 were 87

percent, 83 percent, and 78 percent, respectively. The 3-year average for the inshore sector was 82.7 percent and for offshore, 17.3 percent. For BSAI pollock, the inshore sector took 20 percent, 17 percent, and 28 percent for 1989, 1990, and 1991, respectively. The 3-year average in the BSAI for the inshore sector was 21.7 percent and for offshore, it was 78.3 percent.

The economic effect of allocating 100 percent of pollock and 90 percent of Pacific cod in the GOA to the inshore sector, combined with the social benefits derived from the allocations (including stability within the community from year-round employment and the certainty of a steady supply of fish), supports approval. With respect to the BSAI, the economic effects of the 35 percent of pollock allocated inshore during the 1992 "B" season, combined with the information regarding the social benefits to BSAI communities supports the approval.

Comment 11: Amendments 18/23 violate the fairness and equity criterion of national standard 4 because fishermen are discriminated against for the benefit of shoreside processors.

Response: NOAA believes that this action is consistent with the fairness and equity criterion of national standard 4 for the reasons provided in the response to Comment 8. Regulations implementing these amendments do not restrict owners or operators of catcher vessels from delivering to either inshore or offshore processing sectors, or at least during the early part of a fishing season or year. Once a component reaches its TAC, catcher vessels can only deliver to the other component.

Comment 12: Amendments 18/23 violate national standard 4 because they are not consistent with the Council's comprehensive goals.

Response: In 1984, the Council adopted nine Comprehensive Fishery Management Goals for the development of fishery management plans. While each of the nine goals applies, two of these are of particular importance to the amendments. One of the goals is to ensure that the people of the United States benefit from optimum utilization of the Nation's publicly owned fishery resources. The benefits to the Nation will be demonstrated by the social growth of Alaskan communities. Another goal is to promote economic stability, growth, and self-sufficiency in maritime communities. The allocations as approved by the Secretary will clearly benefit the coastal communities of Alaska and aid them in achieving a stable, self-sufficient, and growing economy.

Comment 13: Amendments 18/23 violate national standard 4 because they are not reasonably calculated to promote conservation because (a) no conservation benefits are demonstrated by limiting the offshore fleet; (b) increased effort near shore will lead to localized depletion of pollock stocks and will not reduce the risk of local depletion or extracting large portions of individual schools or subpopulations during the roe season and could negatively affect food supply and spawning behavior; (c) increased fishing effort near sea lion rookeries means critical habitat, nesting, rookery, and haulout sites for marine mammals could be negatively affected; precautionary measures to protect this species, its habitat, and food source should be implemented before the proposed amendments are put into force; (d) the problem of shortened seasons is not solved; (e) increased wastes are not demonstrated to be reversed; the bycatch of prohibited species is greater by the inshore sector and would increase under the amendments; water and air pollution would be increased as a result of increased inshore processing activity; and (f) reduced observer coverage would decrease ability to manage the fishery and increase risk of TAC overages such as the 1991 third quarter overrun in the GOA by the inshore catcher fleet.

Response: (a) A factor to be considered in establishing an allocation scheme is whether it will promote conservation. It may promote conservation by optimizing yield, in terms of size, value, market mix, price, or economic or social benefit of the product. The Secretary has determined that limiting the ability of the offshore fleet to receive more than the percentages of fish harvests allocated under amendment 23 for the GOA FMP and the approved portion of amendment 18 for the BSAI FMP will promote conservation in terms of the social and economic benefits accruing to the inshore sector of the industry.

(b) NOAA recognizes that amendment 18 could have increased fishing effort in near-shore areas. The effect of partial approval of amendment 18, however, is that only 35 percent of the 1992 "B" season pollock TAC (adjusted for "A" season overages and between season bycatch) may be harvested from the BSAI management area for inshore processing. The "B" season fishery will be more dispersed on the Bering Sea shelf than it is during the spawning or "A" season when pollock are more congregated and fishing is focused on the Aleutian Basin stock and between the ice edge and the Aleutian Islands. Potential adverse impacts on near-shore pollock stocks in 1992 are further mitigated by the continued prohibition of directed fishing for pollock in the Bogoslof subarea and within 10 miles of key Steller sea lion rookeries. NMFS scientists have asserted that the potential for localized depletion of the BSAI pollock stock does not pose a threat to the pollock resource.

For amendment 23, the potential problem of localized depletion of pollock stocks was addressed in 1990 and 1991 through inseason action and emergency rules and for subsequent years by amendments 20 and 25. The 1992 Stock Assessment and Fishery Evaluation Report states that BSAI and GOA pollock stocks are at either high or moderate levels of abundance and have experienced only slight decline since 1990. Harvests of pollock by offshore trawl vessels in the GOA have only averaged 32.3 percent of the TAC over the last 3 years (1989, 1990, and 1991). Therefore, the allocation approved for the GOA is not expected to result in a significantly increased fishing effort by inshore operators or to impact pollock stocks negatively in either the GOA or the BSAI management area.

(c) NOAA recognizes that increased fishing effort in the CVOA may diminish the availability of food resources to Steller sea lions dependent upon this geographic region; however, the overall amount of TAC available for harvest in the BSAI and GOA will not be affected by the amendment.

On January 21, 1992, NMFS completed formal section 7 consultations on the 1992 BSAI TACs to evaluate their effects on Steller sea lions, a threatened species, as well as on other listed species under NMFS' jurisdiction. Based upon a review of the available data during the 1992 TAC specifications process, NMFS concluded that concentration of fishing effort on the southeastern BSAI shelf was likely to occur in 1992. Because of this anticipated effort shift, NMFS expanded no-trawl zones around five rookeries during the 1992 first seasonal allowance of pollock, January 1–April 15 (§ 675.20(a)(2)(ii)), to provide better protection to Steller sea lions. These expanded closures, together with the year-round 10 nautical mile closures of all major rookery sites implemented under amendments 20/25 (57 FR 2683, January 23, 1992), are expected to mitigate any potential adverse impacts to Steller sea lions of increased harvests on the southeastern BSAI shelf.

The March 4, 1992, biological opinion for amendment 18 concluded that the implementing regulations for the

Amendment as approved for the "B" season only would actually limit to a greater extent the amount of fishing effort that could be conducted in areas known to be important foraging and breeding grounds for the Steller sea lion. Amendment 18 would proportionately allocate the yearly available harvest of pollock to inshore, offshore, and western Alaska community sectors within the BSAI fishing industry. Therefore, implementation of amendment 18 as approved is not likely to jeopardize the continued existence of endangered or threatened species under NMFS' jurisdiction.

An informal consultation for amendment 23 to the GOA was conducted by NMFS. NOAA reviewed the available data on GOA pollock stocks, fisheries, and Steller sea lions. Based on the analysis, NOAA hypothesized that the temporal and/or spatial compression of the pollock fishery that occurred during the 1980s may have diminished the local availability of food resources important to Steller sea lions. Management measures to disperse fishing effort over space and time and to divert some effort from Steller sea lion foraging areas were implemented.

Since these measures already exist, the proposed allocations are not expected to alter significantly the distribution of fishing effort and amendment 23 will not affect any listed species in a way that was not already considered.

(d) The intent of amendments 18/23 is to protect coastal communities from fisheries preemptions due to groundfish harvests by highly mobile and effective offshore processing operations that can lead to pulse fisheries and early seasonal closures. This issue is being addressed separately by the Council under proposed management measures that include individual transferable quotas (ITQs) and a moratorium on further entry into the groundfish, halibut, and crab fisheries off Alaska.

(e) NMFS is using the best information available to estimate discard amounts in the groundfish fisheries and, at this time, has no reason to believe that discard amounts will increase under amendment 23 and the approved portion of amendment 18. The amount of prohibited species taken in the groundfish trawl fisheries is largely governed by PSC limits, attainment of which will prohibit further fishing for specified species by both inshore and offshore operations. NMFS also contends that, while the amount of groundfish processed by inshore operations may increase under amendment 23 and the approved portion of amendment 18, these operations must continue to comply with laws and regulations set forth under the Clean Air Act and the Clean Water Act. The Environmental Protection Agency (EPA) is responsible for issuing permits to these facilities and ensuring that, by issuing such a permit to conduct operations, the facility can operate within the guidelines established by regulation. It is also EPA's responsibility to enforce compliance with those guidelines.

Based on comments received for amendments 18/23, the shoreside plants have the capacity to process the increased amount of fish that will be delivered as a result of the amendments. NMFS will continue to monitor the activities of the shoreside plants for compliance and will refer any violations that come to its attention to the EPA.

(f) The allocations as approved by the Secretary to the inshore sector would mean more fish would be harvested without the benefit of 100 percent observer coverage. However, NMFS is confident that the resultant risk of potential TAC overages is minimal because these allocations do not represent a significant increase over the anticipated inshore proportional harvest. In addition, the observer coverage of the inshore fleet is sufficient for quota monitoring purposes.

Comment 14: Amendments 18/23 violate national standard 4 because they contribute to excessive shares (40 percent) of the BSAI pollock TAC to two Japanese companies.

Response: Pursuant to 50 CFR 602.14, an allocation scheme must be designed to prevent any person or entity from acquiring an excessive share of fishing privileges and to avoid conditions fostering inordinate control by buyers or sellers that would not otherwise exist. Commenters have expressed concern that, because the market for surimi is in Japan, allocation of the pollock resource to shoreside processors, several of which are Japanese-owned, creates inordinate control in the hands of those buying the surimi product. However, there is no indication in the record for amendments 18/23 that the allocations that were approved by the Secretary for the GOA and the BSAI area are inconsistent with the excessive shares prohibition of national standard 4. Amendment 18, as approved, follows closely the current harvest and processing patterns for BSAI pollock in 1992.

The Antitrust Division of the U.S. Department of Justice reviewed amendments 18/23 and the proposed rule and provided no indication that the amendments would vest an excessive share of fishing privileges in an individual, corporation, or other entity. Should it appear that at some point in the future, shoreside processing plants are violating U.S. antitrust law, appropriate action will be taken by the U.S. Department of Justice.

Comment 15: Amendments 18/23 satisfy both tests of the fair and equitable standard of national standard 4 in that they are rationally connected to the furtherance of legitimate FMP objectives and the overall benefits of the allocation outweigh the burdens on the industry. They are fair and equitable in that they preserve a traditional fleet with demonstrated catch histories and promote conservation in the form of improved fleet management and avoidance of waste.

Response: The Secretary has determined that the allocations in the GOA and the 1992 "B" season in the BSAI area are consistent with the fair and equitable criterion of national standard 4. Fleet management is not expected to change with the amendments as approved by the Secretary. Traditional measures of inseason actions and observer coverage will continue to be utilized by NMFS.

Comment 16: Approval of amendments 18/23 avoids excessive amounts of waste and discard because shoreside plants have to pay for their raw material and have to extract more usable product than do factory trawlers. Also, factory trawlers discard large amounts of fish that are determined to be unsuitable for processing.

Response: Shoreside processing plants demonstrate an increase in use of all raw materials. Some factory trawlers may experience a greater loss of potential product due to the conditions under which they must work. Equipment used for preparing fish products must be precisely set and rough conditions experienced at sea on the factory trawlers could prevent maximum efficiency of processing equipment. The inshore processing plants do not have to deal with the movement of equipment and can be more precise in their cuts of fish. Because of this, the inshore processing plants appear to have a somewhat higher product recovery rate.

Comment 17: Amendments 18/23 would resolve NMFS management problems and allow TAC to be fully reached.

Response: One purpose of the allocations is to serve as a preliminary step toward solving the problem of overcapitalization. The allocations as approved by the Secretary will allow for a temporary solution while more permanent management measures can

be evaluated (i.e., limited entry, ITQs). The allocations as approved could increase the amount of time it will take to reach TAC by limiting the competing processor/harvesters to certain areas. This would relieve fishing pressure.

Comment 18: Approval of the Western Alaska CDQ would not promote discrimination because communities would only receive 7.5 percent of the TAC for the area leaving 92.5 percent for the rest of Alaska and other states, and 55 percent of this would go to the factory trawler fleet while 45 percent would go to the inshore processors. The benefits to the western Alaska communities are significant, and yet their allocated 7.5 percent of the TAC would not pose a hardship upon Pacific Northwest residents. Out of 7,000 individuals making up the factory fleet, 6,000 are residents of the Pacific Northwest; and out of 8,000 individuals making up the inshore sector, 6,000 are residents of the Pacific Northwest. Clearly, the allocation does not discriminate between residents of States. In addition, there are no excessive shares and no community will be eligible for more than 4 percent. No State of Alaska statutes or regulations are being used to implement the Western Alaska CDQ program. The Governor only recommends criteria for inclusion and reviews the applications. The Secretary has the ultimate authority to approve or disapprove. Therefore, no discrimination will result based on State statutes or regulations.

Response: The Western Alaska CDQ program has been approved in concept. The State of Alaska, in consultation with the Council, will provide details of the program criteria prior to submission for rulemaking. NOAA has determined that neither amendment 18 as approved nor amendment 23 discriminates against non-Alaskan residents.

Comment 19: Amendments 18/23 discriminate against non-Alaska residents because the Western Alaska CDQ program is not available to communities in other States and the amendments would cause a massive job transfer from other States to Alaska.

Response: The CDQ program does not discriminate between Alaskans and non-Alaskans on the basis of State of residence. The adverse effect of the CDQ program in setting aside pollock reserve for use by western Alaskan communities for FDPs falls equally upon similarly situated Alaskans and non-Alaskans. Regulations that are determined to discriminate against residents from different States would not be approved.

Comment 20: Amendments 18/23 are consistent with national standard 4 because the amendments do not discriminate against non-Alaskan residents by allocating fish to fishermen who may be predominately based in Alaska and who deliver their catch to Alaskan shore-based processors while denying fish to fishermen based primarily outside Alaska. Alaskan and non-Alaskan residents are fully represented and both stand to benefit from approval of the amendments. Shares have not been excessively concentrated in a single entity because the amendments will not result in monopolistic or oligopolistic concentrations.

Response: NOAA agrees the allocations as approved will not discriminate among residents of different states. The allocations remain fair and equitable to both inshore and offshore sectors for amendment 23 and the 1992 "B" season amendment 18.

Comment 21: The economic and social stability of the coastal communities of Alaska could increase with approval of amendments 18/23 because the allocations proposed by the amendments will make resource availability more predictable for individual economic units and could foster a stable, self-sustaining economy. The allocations would further sociological and economic goals in communities in need of development. Therefore, the Western Alaska CDQ program is necessary; without this program, these communities will not be able to enter the fishery. The CDQ program could lead to an increased interrelationship between income earned and success of the subsistence economy and allow the communities to attain their social and economic goals. In addition, the Western Alaska CDQ would promote conservation, in that the community residents would take a greater interest in their overall ecosystem. And since inefficient regulatory techniques are acceptable to attain social or biological objectives if these measures are justified, opportunities for private economic development, such as the CDQ program, should be encouraged or these communities will become abandoned.

Response: The Secretary has conditionally accepted the Western Alaska CDQ program provisions, which will set aside 7.5 percent of the BSAI area pollock reserve for development of remote western Alaskan communities. The State of Alaska has not yet submitted any program criteria or FDPs to the Council. Upon submission, the Council will thoroughly review the criteria to evaluate their costs and benefits before submitting them to the Secretary in the rulemaking process. The Secretary will also review the criteria for consistency with the objectives of the groundfish plan, the national standards and other applicable law as discussed in the preamble to the proposed rule (FR 56 66009, December 20, 1991).

A factor to be considered is whether the allocation will further the goals of the BSAI FMP. The assignment of fishing privileges through the CDQ program will further the goals of the BSAI groundfish FMP by promoting economic stability, growth, and self-sufficiency in the coastal communities and improving their opportunities for enhancing their self-sufficiency.

Comment 22: The amendments propose a specific allocation for shore-based processors that is not provided for under the Magnuson Act definitions of "fishing" and "fishery conservation and management." Specifically, authority does not exist under the Magnuson Act to allocate between inshore and offshore processing industries because the Magnuson Act only provides for allocations among fishermen and not among those to whom fishermen deliver.

Response: The amendments do not make specific allocations among shore-based processors. Amendments 18/23 allocate fish between fishing vessels that deliver to either the "inshore component" or "offshore component." The allocation applies directly to fishing vessels because it limits the amount of fish a vessel can deliver either component. The Secretary is authorized to make such an allocation under the Magnuson Act.

Comment 23: The amendments would be unconstitutional in that they would take away the "right to fish."

Response: The United States Constitution does not include an expressed right to fish.

Comment 24: The Magnuson Act allows allocations to be made that will exclude or severely restrict a user group from a fishery to protect a sector when it can be demonstrated that that social and other benefits to the preempted sector outweigh the costs to the other sector.

Response: Comment noted. The social and economic impacts of the 1989 preemption imposed hardship to the coastal communities of Alaska, which are characterized by historical dependence on fishing. Analysis that led to the approval of amendment 23 showed that the social benefits to these communities would offset economic losses.

Comment 25: Amendments 18/23 would violate national standard 5

because they do not promote efficiency in the use of fishery resources. They would not solve, and could exacerbate, the current overcapitalization of the pollock fishery. The amendments would create an incentive for inefficient shore-based operators to overinvest in fishing and processing equipment resulting in the use of more productive resources than necessary to harvest the available TAC. The amendments also would protect less efficient competitors in the open access management system at the expense of the more efficient operations. Finally, the amendments would violate national standard 5 because they have economic allocation as their sole purpose. Evidence of this objective is that (a) the SEIS presents no biological or ecological rationale or benefit, (b) no legitimate social, community, or cultural benefits from reallocation are realized (most shore plants are staffed by low-paid foreign guest workers who have little interaction with Alaskan communities), and (c) the proposed allocations would result in a windfall profit to inshore processing operations and would further reduce the profit of independent catcher vessel operators.

Response: National standard 5 requires fishery conservation and management measures to promote efficiency in the utilization of fishery resources, except that economic allocation must not be the sole purpose of such measures. In theory, an efficient fishery would harvest all the allowable catch with a minimum use of economic inputs (e.g., labor, capital, fuel, etc.). NOAA is aware that overcapitalization is a problem in the Alaska groundfish fisheries and that amendments 18/23 do little to resolve this problem of excessive economic inputs. However, as approved and implemented by this action, the amendments are not substantially less efficient than the current open access fishery without amendments 18/23. NMFS is implementing only those portions of the proposed amendments that do not appear to exacerbate the overcapitalization problem. In addition, NMFS is strongly urging the Council to work toward a more efficient method of allocating fishing privileges other than direct government intervention. NMFS is aware that the Council currently is working on a moratorium on the entry of new vessels into the fisheries, to be followed by a permanent solution to excess fishing capacity. Any incentive to over-invest in the inshore catching and processing sector will be tempered by the planned expiration of the approved allocations, and the possibility of limited access measures in the near future.

After careful review of the record, NOAA has determined that amendments 18/23 do not have economic allocation as their sole purpose. For the allocation measures that were approved, primarily in the GOA, the interim allocations favoring the inshore component could reduce the bycatch of prohibited species and improve the overall recovery of fish products from the round weight harvested. In addition, the marginal economic loss to the Nation of the GOA allocations is clearly offset by social benefits. Coastal communities in the GOA have a historic dependence on the fishing industry and have a high proportion of their permanent residents involved in fishing and processing businesses. The fact that a non-resident or foreign work force is hired to work in local processing plants during peak fishing seasons when local labor supply is insufficient does not detract from the stabilizing effects of long-term fishing and processing on the local economy. Transient labor contributes to local community economies through its demands for goods and services. Finally, any allocation of fishing privileges will cause some industry participants to be better off and others to be worse off than they would have been without the allocation. This is acceptable under the guidelines of the national standards of 50 CFR 602, providing that such allocations are justified by the achievement of overall biological, economic, and social benefits. The Secretary determined that the GOA and 1992 BSAI "B" season allocations are justified on these criteria. As a result of this partial implementation of Amendments 18/23, the potential for windfall profits is limited.

Comment 26: National standard 5, the "efficiency" goal, is satisfied by the allocation because "efficiency" measures maximization of resource recovery, not maximum harvesting efficiency, which rewards discards and waste. The Secretary measures efficiency in utilization in terms of delivery price to the consumer, quality of product, community economic stability, production efficiency, use of capital and labor, full utilization of harvested fish, and social efficiency without having economics as the sole purpose of the measure. The efficiency of utilization must reflect a sensible balance of economic, social, and biological factors. Technical economic efficiency is only one factor. The allocations of amendments 18/23 promote maximization of resource recovery and do not have an economic allocation as their sole purpose while improving efficiency, because they would permit the efficient investment of capital to prevent the deterioration of present physical capacity by assuring a supply of fish. To disapprove the allocation based on the grounds of "efficiency" would apply a double standard.

Response: Comment noted. The benefits of economic stability and social gains to the Alaskan coastal communities balance potential economic losses to the Nation.

Comment 27: Amendments 18/23 would violate national standard 6 because they make wholesale changes in fishing patterns and practices without assessment of potential impacts on sensitive marine habitats or marine mammals.

Response: National standard 6 requires that conservation and management measures take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches. As was explained in Response to Comment 13 (a) and (c), these impacts were analyzed in the draft SEIS and in the biological opinions prepared for amendments 18/23.

Comment 28: Amendments 18/23 would violate national standard 7 because (a) they would impose the most economically restraining and burdensome regulatory regime when a less instrusive and expensive alternative (e.g., exclusive registration areas) would more effectively address the preemption issue, (b) they would impose a large economic cost to produce speculative short-term benefits, and (c) they would force former joint venture processing (JVP) vessels currently delivering to at-sea processors to modify their vessels to transport fish to shore plants.

Response: National standard 7 requires fishery conservation and management measures to minimize costs and avoid unnecessary duplication. The cost-benefit analysis performed by NMFS concluded that the allocations proposed for the GOA would not present an undue economic hardship that was not outweighed by social gains, and the 1992 "B" season in the BSAI also showed that the social benefits to be incurred would offset the economic losses. However, the allocations proposed for the remaining years in the BSAI, 1993 through 1995, do indicate that the cost to the Nation would be more than the social and other benefits could justify. Therefore, because of the lack of a balance between social and economic factors from the years 1993 through 1995, the remainder of amendment 18 is not consistent with national standard 7 and

only the 1992 "B" season could be approved under amendment 18. Other alternatives were considered and rejected by the Council or the Secretary because they were either more restrictive or would not have prevented preemption of the inshore component by the offshore processing vessels.

Comment 29: Amendments 18/23 are consistent with national standard 7 because the Council is free to choose an alternative that, although fair and equitable, may not be the least restrictive.

Response: Amendment 23 and the 1992 "B" season of amendment 18 are consistent with national standard 7 because, although the measures are more restrictive to the offshore component, they provide a significant social benefit to the inshore communities that balances these losses.

Comment 30: A benefit-cost analysis is not necessary under national standard 7 because the recommendation "freezes" the status quo and there is no significant reallocation to the inshore sector and, therefore, no costs to the offshore sector. Because there is no shift in net national benefits, there is no need to elaborate. However, it should be noted that there would be a significant increase in social benefits from a conservation and management point of view (fleet management and waste avoidance).

Response: Approval of amendment 23 and the 1992 "B" season of amendment 18 are in agreement with the comment that there would be a significant social benefit for the inshore sector and that the benefits would offset other economic losses. NOAA disagrees with the statement that the allocations "freeze" the status quo because the current system allows for unregulated take of one, more mobile, sector over another, whereas the allocations will decrease the amount available to the more mobile sector. And, as evidenced by the anticipated increase in social benefits to the inshore sector, there is an apparent shift in economic benefits (i.e., to the inshore). Where there is such a significant allocation as proposed in these amendments, a cost-benefit analysis is a crucial part of the review process.

Comment 31: The allocations as proposed provide only a short-term gain for the inshore sector and will not solve the long-term problem of controlling fishing effort. ITQs are suggested as a long-term solution.

Response: NOAA agrees that the current open access system is a problem and that some form of ITQ could help to mitigate the inshore-offshore issue. While ITQs are under consideration by the Council, the urgent problem of preemption had to be addressed. The allocations as approved by the Secretary, although only temporary, will serve as a preliminary step towards a control on fishing effort and provide immediate relief while the Council works on a more permanent solution.

Comment 32: A conservation and management measure must provide real and substantial benefits and the benefits to society must be assessed. At present, the communities have little direct involvement and may already be effectively barred. Participation depends on an inshore allocation. Individual fishing quotas (IFQs) may not be sufficient to develop an independent fishing industry. The current derby style of the fishery is detrimental to the resource and increases the likelihood that the communities will never be able to enter the fishery. There are few alternatives for these communities.

Response: The amendments as approved demonstrate NOAA's concern that the inshore sector has the opportunity to be included in the fishery and that it is possible to approve an amendement if the social benefits exceed the costs to the Nation. In the case of amendment 23, the social and other benefits exceed the costs to the Nation and, hence, the amendment was approved in its entirety. Amendment 18, on the other hand, demonstrated a benefit outweighing cost only for the "B" season of 1992. The Council has the opportunity to further review the 1993–1995 allocations for possible implementation of an amendment by the end of 1992 if the social and other benefits can be shown to outweigh the cost to the Nation.

Comment 33: It was appropriate not to consider limited entry as an alternative because a moratorium or a limited access system would merely preserve the status quo, which does little to solve the preemption problem faced by the inshore fleet, and disapproval of the inshore allocation should not be based on the desire to implement limited entry as an alternative as limited entry could be in debate for the next 4–6 years. The economic demise of the factory trawler fleet is inevitable if the status quo is allowed to continue, unless they continue to diversify into other fisheries. The issue before the Secretary is whether to permit the factory trawler fleet to economically destroy the inshore fleet while the Council debates over ITQs. It is not clear that amendments 18/23 will cause more economic disruption to the factory trawler fleet than will occur under the status quo. The inshore-offshore allocation is an interim, stabilizing measure that will allow public participation in discussions of limited entry without fear of massive economic disruption in the meantime. Preservation of traditional fleets, improved fleet management, concerns of bycatch and waste, increased food production, and socio-economic stability of coastal communities are enough to support approval of the Amendments.

Response: The Council has been urged to work as expeditiously as possible toward producing a method of allocating fish other than the current open access, olympic system. Limited entry and ITQs are some of the management measures being considered by the Council. The current allocation for the GOA and the 1992 "B" season allocation in the BSAI area will serve as a temporary solution while the other management measures are being reviewed.

Comment 34: There are severe conceptual deficiencies and measurement problems precluding the use of consumer and producer surplus as measures of net national benefits.

Response: Producer and consumer surplus are standard, well established measures of net national benefits in the analysis of public policy and public investment. There may be measurement problems for the analyst to overcome in a given instance, but these would relate to the quality of the data rather than to methodological or conceptual deficiencies in the approach. In the case of the NMFS cost-benefit analysis of amendments 18/23, the measure of benefits was confined to changes in producer surplus. Consumer surplus was not used principally because the dominant product, surimi, is mostly exported and the foreign consumer surplus measure would not apply to this analysis of net national U.S. benefits.

Comment 35: Inshore processing results in lower overall consumer prices, greater volume of finished products, and lower average costs of production. Factory trawlers on the other hand waste the public resource and produce a lower volume on food products at higher prices.

Response: The inshore sector appears to demonstrate a higher recovery rate at present. Inshore processors presently convert a higher percentage of fish from round weight to finished product. This was factored in the supplemental cost-benefit analysis and was taken into account by the Secretary when approving amendment 23 and the 1992 "B" season of amendment 18. However, the factory fleet has indicated that it expects to increase recovery rates while decreasing wastes as more is learned about the improved technology used by the inshore sector. NMFS data do

indicate that the offshore sector obtains a higher price; however, prices are becoming comparable between the inshore and offshore components. The current higher price of the offshore product may be a reflection of the fresher quality.

Comment 36: The proposed allocations do not demonstrate a net benefit to the nation, and possibly reflect a loss.

Response: The Secretary has made a determination that the amendments as approved would result in a net benefit to the Nation. In the GOA, the coastal communities are characterized by historic dependence on fishing and a very high proportion of those engaged in this activity are local residents. In this regard, the social benefits of amendment 23 offset the marginal economic losses. The 35 percent allocation approved for the 1992 "B" season in the BSAI area does not result in a significant net economic loss and the protection to be gained by the inshore sector in this area outweighs those losses. In both areas, the balance between social and other benefits to be gained by the inshore sector and net economic loss is justified.

Comment 37: The allocations to the inshore sector would create increased revenue and employment for the Nation as well as increased food availability and decreased wasted fish.

Response: While approval of amendment 23 and the 1992 "B" season of amendment 18 will result in net national benefits, the remaining years of amendment 18 could not be approved because current information does not indicate such a benefit for these years. Food production and waste were discussed for Comments 3 and 13(e), respectively, as well as for Comment 35.

Comment 38: The economic analysis contained in the RIR/IRFA was adequately responsive to the requirements set forth in the national standards and effectively supported approval of the proposed amendments. Maximizing consumer surplus of foreigners is not a feasible objective of American social, economic or political policy. For the BSAI, an increase of more than $246 million in sales revenue in the years 1992 to 1995 is a meaningful measure of the benefits to be realized by the Nation from implementation of the amendments. Therefore, it is in compliance with Executive Order 12291. And, since the allocation would promote the social economic stability of dependent coastal communities, national standards 1, 4, 5, and 7 are all satisfied.

Response: See responses to comments 10, 13, 28, and 32. As stated in these previous responses, the economic analysis does support approval of amendment 23 and the 1992 "B" season of amendment 18; however, it does not support approval of the allocations proposed for 1993 through 1995 of amendment 18. The current data concerning social and other benefits from implementation of the 1993 through 1995 allocations do not demonstrate that these benefits outweigh the costs to the Nation as a whole and, therefore, for 1993 through 1995 of amendment 18, Executive Order 12291 and the national standards are not satisfied. The Council has the opportunity to reevaluate the remainder of Amendment 18 for possible implementation of a revised plan by the end of 1992.

Comment 39: The analysis is inconsistent with the National Environmental Policy Act (NEPA) because it did not adequately consider all reasonable alternatives.

Response: NEPA requires that an SEIS include an evaluation of the effect of all reasonable alternatives on the human environment. The purpose of NEPA is to provide the public and the decisionmaker with a clear choice among the options. It requires substantial treatment of each alternative. NEPA does not dictate an amount of information that must be provided, but rather prescribes a level of treatment that in turn may require varying amounts of information to enable a reviewer to evaluate and compare alternatives. While the agency recognizes that the reasonable alternatives set forth in the SEIS were analyzed in varying degrees of detail, the SEIS contained sufficient analysis to allow for determinations to be made by the agency of the environmental effects of the proposed amendments.

Comment 40: The analysis is inconsistent with NEPA because the "no action" alternative misrepresents the fishery as it appeared in 1989, and further misrepresents the harvest proportions in the base year of 1989 by including 80 percent of the 1989 JVP catch, which was processed offshore, and freezer-longliner catches as "inshore" harvests.

Response: The Council chose to include the small freezer-longliner fleet (i.e., 125 feet in length overall or less) in the inshore definition because of their limited range. In addition, 80 percent of the former JVP boats apparently had inshore markets in 1990, the year in which the analysis was designed. The SEIS contained sufficient analysis of the reasonable alternatives to enable the agency and the public to evaluate the environmental impacts of those alternatives. While such documents almost always can be improved, in this case NOAA believes the Secretary and the public were provided with sufficient information regarding the effects of amendments 18/23, and that the SEIS satisfies the standards of NEPA.

Comment 41: The analysis is inconsistent with NEPA because the emphasis placed on one alternative in the analysis indicates that the Council had a preconceived solution and was not open to other alternatives.

Response: See response to comment 39.

Comment 42: The analysis is inconsistent with NEPA because there was no opportunity for the public to review and comment on the NMFS economic analysis that was supposed to fix the "fatally flawed" analysis submitted by the Council.

Response: The economic impact analysis prepared by the Council provided estimates of changes in sales, employment, and income that would occur as a result of the proposed allocations. The analysis was based on the use of an input-output (I–O) model that did not, however, address questions of economic efficiency and net national benefits. Because statutory national standards and Executive Order 12291 highlight efficiency as a criterion for utilization of fishery resources and stress the need for regulatory plans to analyze the extent to which net benefits are affected by a proposed action, NMFS conducted an independent economic analysis that examined the allocation issues in light of their effect on economic efficiency and net national benefits. The results of this study were developed within the framework of a cost-benefit anlaysis.

Indeed, the results of the NMFS economic study were not circulated for public comment prior to the decision on amendments 18/23 because the study was not based on any new data that were not previously available to the public. When the Secretary reviewed the findings of the Council, the results of the cost-benefit data were balanced against the quantified social benefits described in the administrative record. The results of the cost-benefit data confirmed the findings of the Council regarding amendment 23 and the 1992 "B" season of amendment 18. The study was based upon data provided by the Council and upon which the Council based its input-output model. The cost-benefit study results are currently available to the public.

Comment 43: The amendments are in compliance with NEPA. The SEIS/RIR/IRFA dated September 19, 1991, provides greater detail on environmental impacts, economic environment, and

associated consequences of the Western Alaska CDQ and concludes there are no critical environmental problems. It is unlikely the communities targeted by this program will be able to capture the benefits of the fishery without preferential allotment.

Response: NOAA agrees that the amendments are in compliance with NEPA and has approved those portions that are consistent with the objectives of the Magnuson Act.

Comment 44: The North Pacific Fishery Management Council has been held to a higher standard than any other Council ever has during the review process for amendments 18/23. All requirements to analyze social and economic benefits to the Nation were satisfied, and the analysis they provided is as good as any other.

Response: The allocations proposed by amendments 18/23 are controversial and many concerns were expressed by both sectors. NOAA must ensure that all concerns are addressed and that the amendments are in compliance with the Magnuson Act, the national standards, NEPA, the Endangered Species Act, and other applicable law. All Councils are held to these same standards and must provide sufficient information to satisfy all concerns. NOAA agrees that, although there is always room for improvement, the record was complete and there was sufficient information to approve amendment 23 and the 1992 "B" season of amendment 18.

Comment 45: The Secretary is not required to conduct a cost-benefit analysis.

Response: The Magnuson Act and Executive Order 12291 require that an analysis of costs and benefits must be prepared to determine if the potential benefits to society outweigh the potential costs. According to 40 CFR 1502.23 of the Council on Environmental Quality, a cost-benefit analysis should be incorporated as an aid in evaluating the environmental consequences when one is prepared. As explained in response to comment 4, an input-output model was prepared by the Council, and the cost-benefit analysis confirmed the conclusions of the input-output model regarding amendment 23 for GOA and the 1992 "B" season, only, of amendment 18 in the BSAI.

Comment 46: Since the benefits of the allocation outweigh the costs, disapproval based on an insufficient record (as a matter of law) would be incorrect. There is sufficient record for making the decision, which is in effect a policy decision at this point.

Response: NOAA agrees that the record was sufficient for making a decision and has approved amendment 23 in its entirety along with the 1992 "B" season of amendment 18. The Western Alaska CDQ program has been approved in concept and the Council will evaluate the program criteria prior to submission for approval through rulemaking.

Comment 47: The current olympic system of fishing increases the cost of operation because of the incentive to produce the product that yields the highest daily revenue, rather than the form most desirable in the U.S. market. This would be changed by the allocations.

Response: The products produced from pollock are dictated by the value of these products on the world market relative to their production cost, regardless of where the processing occurs or whether it is an olympic system of fishing.

Comment 48: Under the open access fishery, there is no "rent." Society should be concerned with the amount of productive resources that are expended to harvest fish, not just the price. In the free market system, the relative price of goods should equal the relative social cost. The prices of the finished product should be set by the market to be socially efficient.

Response: NOAA agrees that under conditions of open access and common property, the market fails and there is a distorted allocation of resources. Because of this concern, NOAA is encouraging the Council to develop a management regime that would induce the fishery to operate in a manner that would be more consistent with a free-market solution.

Comment 49: Shoreside processors have an economic incentive to utilize fish efficiently and, therefore, will produce a greater amount of finished product because of their higher recovery rate.

Response: According to the information before the Secretary at the time of approval, the shoreside processors presently convert a somewhat higher percentage of fish from round weight to finished product. This was factored into the supplemental cost-benefit analysis and taken into consideration by the Secretary.

Comment 50: Shore-based processing plants reduce cost and lower overall prices because of greater recovery rates and better utilization of byproducts, which means a greater volume of finished products, and less expensive building, maintenance, and staffing.

Response: See response to comment 49. In addition, the cost of production for the offshore and the inshore fleet was incorporated into the supplemental economic analysis and was therefore considered by the Secretary.

Comment 51: The inshore component is more efficient because it maximizes resource utilization due to a higher product recovery rate, a lower pollock discard rate, and a lower bycatch rate on halibut, which would allow the TACs of other target groundfish to be reached. Bycatch of PSC would be reduced if amendments 18/23 are approved, because the factory trawler fleet has higher bycatch rates than those vessels delivering to shore-based plants. Lower bycatch means more target species available for harvest.

Response: A reduction in groundfish bycatch would leave more of the target species available for harvest; however, there is no evidence to support the inshore claims that they experience reduced bycatch. The vessels that deliver to the inshore sector employ the same type of equipment used by the factory trawlers. Therefore, they are both subject to the same problems with catch of prohibited species. Bycatch of halibut, crab, and herring are controlled by PSC limits. While bycatch rates may differ among fisheries, total bycatch amounts are expected to continue at levels that approximate the PSC limits.

Comment 52: Bycatch data and the Council's bycatch prediction model were not used.

Response: The Council's bycatch prediction model was designed to assess the effects of PSC limits on species specific fisheries not related to inshore-offshore fishery definitions. Council analysts were hopeful that another model, the Arnarson Model, would be more useful in determining the impacts of bycatch on inshore-offshore allocations. However, the Arnarson Model was not used because of a lack of bycatch rate data.

Comment 53: The shoreside processing plant communities are dependent on the fishery as the only source of employment. Without the protection of the allocation to keep trawlers out of their waters and away from the fish, the inshore sector would experience reduced opportunities for jobs. This reduction in job opportunities would be bad for the economy of the coastal communities, creating local hardships. Incomes would decrease and residents would be unable to pay bills and support their families. Because of this, many would have to file for unemployment or move out of the area as the cost of living in Alaska is very high. Inshore investments would be lost. The allocations would provide needed community stability.

Response: NOAA recognizes the dependency of the coastal Alaska communities on the BSAI fisheries and has approved the 35 percent inshore allocation for the "B" season in 1992. The allocations as approved will prohibit the factory trawlers from fishing in the inshore waters, thereby providing protection to the inshore sector during this first year. For the remaining years of Amendment 18, 1993 through 1995, the Council will have time to examine further whether losses to the Nation will be offset by other benefits and if the allocations set for those years could be approved and implemented by the end of 1992.

Comment 54: Since the inshore sector hires its crew from Alaska, the allocations would, in effect, contribute to the coastal economy. Offshore trawlers, on the other hand, do not contribute to the economy of Alaska and do not provide any tax revenue to Alaska.

Response: According to Executive Order 12291, the economic benefits must be in favor of society as a whole, not a single area. However, if evidence exists indicating that the social or other benefits exceed the costs to the Nation, approval could result. The cost-benefit analysis conducted as a part of the review of the allocations showed that for the 1992 "B" season, a 35 percent allocation to the inshore sector would not result in a significant net economic loss to the Nation.

Comment 55: The inshore processors cannot compete with the trawlers because they are not mobile. The trawlers can go elsewhere to harvest fish.

Response: NOAA recognizes that protection for the inshore processing plants is needed because of the competitive advantage of the mobile offshore component. The approval of the CVOA and the 1992 "B" season will provide the needed protection without resulting in a significant net economic loss to the Nation.

Comment 56: The offshore sector is just looking for short-term profits. Most trawl workers are foreign and ship their products to Japan.

Response: It should be noted that Federal regulations require that no more than 25 percent of the unlicensed seamen on a domestic processor vessel operating in the EEZ may be aliens allowed to work in the United States under the Immigration and Nationality Act (46 U.S.C. 8103).

Comment 57: Factory trawlers are wasteful in that they discard, rather than trim, defective fillets, they produce only high quality surimi at low recovery rates, and only process the predominant fish sizes leading to inefficient use. Many factory trawlers do not utilize entire fish and engage in roe stripping. The factory fleet has a 22 percent discard rate for pollock while the inshore sector is less than 1 percent. This high discard rate results in the inability to maximize the retained harvest and/or production of other flat- and groundfish resources. Also, trawlers have a higher bycatch problem. The factory trawler halibut bycatch is 4.7 percent versus 1.72 percent for inshore (three times as high). Again, this has a negative effect on the ability to fish other groundfish species. The product recovery rate for offshore is 15 percent versus 20 percent for inshore. Therefore, the offshore factory trawlers show a rapid decline in recovery with increase in fish supply. On the other hand, an inshore allocation would (1) maximize pollock harvest through reduction of discards, (2) promote a greater ability to take TACs by reducing halibut bycatch rates, and (3) increase production of pollock primary products due to higher recovery rates.

Response: The allocations as approved will result in a greater amount of fish being available to the inshore sector. It has not been shown that the bycatch rates differ significantly between inshore and offshore catchers as the two utilize the same type of equipment, however, the inshore sector operates under conditions that tend to encourage higher product recovery rates. A standard that effectively prohibits roe stripping was implemented under amendment 14 for the BSAI area and amendment 19 for the GOA.

Comment 58: As the larger vessels force the smaller vessels off the fishing grounds, intense localized fishing could result. Implementation of amendments 18/23 could reduce the risk of localized pulse overfishing because fishing effort would be spread further geographically. In addition, trawlers overharvest and limit the amount of fish available for others. They take more (but use less) of the fish which leads to a depletion of the resource, destruction of stocks, premature closures, and shorter fishing seasons.

Response: See Comment 13(b). The allocations as approved are not expected to result in increased fishing effort or to negatively impact pollock stocks. Effective management of TACs will prevent resource depletion. However, there is no evidence to indicate that increased allocations to the inshore sector, over time, would not increase localized depletions or prevent early closures or shore-based overcapitalization. The potential problems of localized depletion will be addressed through further management actions as done in the past.

Comment 59: Factory trawlers are able to lower their costs by minimizing labor and capital costs and maximizing use of raw pollock, resulting in low product recovery rates. They have the ability to substitute raw fish for other factors of production thereby reducing private cost and wasting pollock in the economic sense because of their lower recovery rates.

Response: The best available information during Secretarial review indicated a higher recovery rate for the inshore sector at present and the amendments as approved reflect the importance of recovery rates. However, as indicated by the offshore sector, surimi technology is relatively new to the factory trawler fleet. The offshore sector indicates that it has overcome the initial inefficiencies and that recovery rates are expected to improve in the future.

Comment 60: NMFS has not been able to manage the large offshore fishery and, in the past, had decided not to open a fishery or to close a fishery early because it would not be able to prevent the factory fleet from exceeding the quota. The inshore fleet is small enough that reliable daily catch capacity can be predicted, and since its harvest is monitored using actual weights, not statistical extrapolations, it is easier to control. Therefore, inshore allocation would allow for the full quota to be reached.

Response: The allocations as approved will not change current measures of management. NMFS will continue to manage the fisheries taking excess harvesting capacity into consideration. It should be noted that the offshore factory trawlers are required to have 100 percent observer coverage that aids in the effective accounting and management of their take, both of groundfish and prohibited species.

Comment 61: The inshore sector states it is very concerned and conscientious about marine mammal protection.

Response: See Comment 13(c). Approval or disapproval of the amendments does not affect the need to protect marine mammals and NMFS will continue to provide additional fishery management as necessary.

Comment 62: With the 100 percent pollock allocation for the GOA, approximately 10 percent of the traditional offshore harvest will be redistributed to the inshore sector. However, management of a fleet as large as the offshore sector is very difficult because of the sea lion

mitigation measures. For example, the maximum a factory trawler could take if there was a 10 percent target fishery allocation in the GOA, would be 1,113 mt of pollock per quarter. The offshore sector can harvest 7,000 mt daily. NMFS would not be able to open and manage a fishery capable of taking 7,000 mt/day with a quota of 1,113 mt.

Response: NOAA agrees with the commenter in that the small amounts of pollock can be difficult to monitor and when such situations occur, directed fishing is closed, allowing only bycatch amounts to be harvested. Currently, fisheries are allocated quarterly and to three subareas in the West and Central GOA and, regardless of the processing sector, will require careful management to avoid exceeding allowances. Nonetheless, the offshore sector has been given an adequate amount of pollock to cover bycatch needs and amendment 23 will allow only inshore processors to receive pollock harvested during directed fishing.

Comment 63: The catch history of the inshore sector serves as an argument for approval of the inshore allocations. The inshore fleet dominated the Pacific cod fishery during the Americanization years (1987–91) and had an 81 percent average catch history during those years. The catch history of Pacific cod by the inshore sector would be greater than or equal to 90 percent if all the small factory longliners, small factory trawlers ("pocket trawlers"), existing mothership operations, and potential mothership operations that elect to cross over to inshore were included. Some of these are presented as being at-sea in the SEIS and should be figured into the inshore statistics. The catch history of pollock in the GOA inshore is 75 percent (if the roe-stripping incident of 1989, when 12 factory trawlers took 50 percent of the pollock TAC, is included). Otherwise, the Secretary is inappropriately rewarding the offshore for roe-stripping by inflating its pollock catch history. There is a 2.5 percent bycatch allowed to offshore and if all those that cross over to inshore are included ("pocket trawlers" and appropriate motherships), the allocation shift from offshore to inshore is about 10 percent. Therefore, based on these arguments, there is really no significant reallocation from offshore to inshore in the GOA.

Response: Fishing effort in the GOA has traditionally been by smaller harvesting vessels delivering catch to inshore processors, hence the approval of amendment 23 in its entirety. The definitions of "inshore" and "offshore" used in the comment are those that were proposed and were not the definitions that NMFS used to categorize catches as inshore or offshore prior to approval of these amendments. Therefore, to include the commenter's definitions as a part of the decision to approve the amendments is not appropriate.

Comment 64: The allocation in the BSAI area actually takes from the traditional users (the inshore) and gives to the new entrants (the factory fleet).

Response: NMFS data indicate that the shoreside processing of pollock harvested in the BSAI area was 28 percent in 1991. Therefore, the 35 percent allocation to the inshore sector in the 1992 "B" season does not differ significantly from the most recent pattern of processing pollock in the BSAI.

Comment 65: Factory trawlers have invested heavily in the development of the offshore fleet that essentially carried out the domestic fishery development mandate of the Magnuson Act. The inshore is trying to take over the fishery that the offshore industry developed; this penalizes offshore trawler owners for accomplishing what the government requested.

Response: With the enactment of the Magnuson Act of 1976, Congress specifically invited the U.S. fishing industry to begin to develop the under-utilized fishery resources off Alaska. Since that time, fishing effort in the GOA has traditionally been by smaller harvesting vessels that deliver catch to the inshore processors. The inshore sector takes an average of 78–89 percent of the pollock in the GOA and 78 percent of the Pacific cod. Therefore, approval of amendment 23, allocating 100 percent of the pollock and 90 percent of the Pacific cod in the GOA, continues this existing practice with little dislocation. In the BSAI area, the inshore sector has taken up to 28 percent of the pollock. Therefore, the 1992 "B" season of amendment 18, allocating 35 percent of the BSAI pollock catch to the inshore and 65 percent to the offshore, also stabilizes the fishery without substantial economic dislocation.

The purpose of the allocations is to protect the smaller, more localized fleets that largely supply to inshore processors from being preempted by the larger, more mobile offshore fleets in the future. Evidence of the vulnerability of coastal communities was demonstrated by the social and economic impacts of preemption due to the transfer of effort from the offshore fleet in 1989 in the GOA.

Comment 66: Amendments 18/23 are unnecessary because there is no evidence of preemption of one industry sector by another. There is no explanation of why the need to resolve inshore-offshore preemption is greater than the need to resolve preemption at other levles (e.g., within the inshore sector, or between individual vessels).

Response: The potential for preemption of the inshore sector by the offshore sector was demonstrated in March of 1989 in the GOA. NOAA recognizes the need for protection from this potential preemption, especially because of the dependence of Alaska coastal communities on groundfish harvests from the GOA. The inshore-offshore preemption issue received priority attention by the Council. NOAA recognizes that other forms of the preemption problem have developed. Therefore, NOAA is strongly urging the Council to devleop management programs that rely on market-driven allocations instead of direct government intervention. If this is done in the near future, the need to resolve preemption problems at other levels could be substantially reduced.

Comment 67: The offshore sector preempts the inshore. The current "olympic" system of fishing discriminates against the inshore sector because (1) the inshore sector would be capable of fishing year-round but is at a disadvantage when fisheries are shut-down while factory trawlers can take advantage of this time for repairs, and (2) they are immobile while factory trawlers can come in and fish and then move elsewhere when the fishery is closed (pulse fish). This leaves the inshore sector with poorer fishing opportunities. In addition, the factory trawlers have a long-run allocative advantage with the current olympic system because they are able to reduce private costs by substitution, are unable to operate year round so they can take advantage of closures, and are able to exploit other groundfish fisheries during closures. Therefore, the current regime allocates to the factory trawlers and away from the shore-based operations. Approval of the allocation is necessary to the inshore fleet because the regulatory environment is so uncertain, there is no way of knowing what will drive the offshore from the BSAI into the GOA. Preemption may be prevented by keeping the factory fleet from shifting to the Gulf during lull periods. When times are bad, factory trawlers tend to enter the traditional inshore areas. Exclusive registration does not resolve preemption as the offshore fleet may still choose the GOA and cause an even greater aggravation of the problem. Only inshore-exclusive registration would

prevent such a preemption. It is acknowledged, however, that intrasector preemption by large inshore boats will need to be addressed by a future plan amendment.

Response: See response to comment 66.

Comment 68: When the fleet became Americanized and the joint ventures were cut off, the traditional fleet began to look for shore-based processing plants in the BSAI area. Shipyard contracts tailored to meet the grandfather clause in the Fishing Vessel Anti-Reflagging Act resulted in factory trawlers being constructed in foreign shipyards. The legality of these transactions is being challenged and some of the vessel owners may lose their licenses. These events are leading to the displacement of the pioneers of the fishery. The 4-year average of the proposed allocations in the BSAI is approximately 40 percent and they should be allowed to retain at least that amount.

Response: See responses to comments 10, 13, 28, 32, and 38.

Comment 69: An additional solution to the problem of overcapitalization would be to keep all re-flagged vessels out of American waters, particularly inshore waters.

Response: Comment noted. Enforcement of the Commercial Fishing Industry Vessel Anti-Reflagging Act is under the jurisdiction of the U.S. Coast Guard, not the Secretary of Commerce.

Comment 70: The United States is the only place that still allows trawlers in its waters.

Response: Trawling is a legal gear in the United States and is used throughout the fisheries on the West, East, and Gulf coasts. Amendments 18/23 do not propose to change the method of catch, but to allocate the resource between inshore and offshore sectors that already use trawls as an effective measure of fishing.

Comment 71: The allocations should be approved since the 1991 Pacific whiting plan was, and the two are nearly identical.

Response: The approval of the Pacific whiting plan in 1991 is not germane to approval/disapproval of amendments 18/23. Each proposal must stand on its own merits. In addition, the magnitude of the allocations for the Pacific whiting issue does not equal the magnitude of the allocations for the GOA and the BSAI. Approval of the GOA and the 1992 "B" season in the BSAI is possible because the allocations will not differ significantly from recent harvest trends, as was the case with the 1991 Pacific whiting plan. However, the allocations proposed for the years 1993 through 1995 would increase the percentage well above the recent harvests for the inshore sector and, in this way, differs from the 1991 Pacific whiting plan.

Comment 72: Under premises of administrative law, amendments 18/23 should be disapproved to be consistent with the disapproval of the Pacific Council's 1992 inshore-offshore proposal for whiting.

Response: The two plans are not interdependent. Each must be evaluated based on the circumstances unique to each fishery and the costs and the benefits of the proposed action. While there are many procedural and substantive differences between the two Council proposals, the disapproved parts of amendment 18 and the whiting proposal were rejected because of insufficient documentation of national benefits to justify a substantial increase in the share assigned to the inshore sector.

Comment 73: Factory trawlers that deliver primary processed product to shore-based processing facilities in Washington State for secondary, value-added processing should be considered part of the inshore component of the industry. Council discussion indicated that this was intended to be included in the definition of "inshore." The proposed rule, however, does not clearly indicate this provision and should be changed to clarify that shoreside processing facilities in Washington, like those in Alaska, would benefit from the proposed amendments.

Response: Although the Council had lengthy discussion of what was meant by "inshore component," the proposed FMP amendment text approved by the Council and submitted to the Secretary does not indicate an intent to allow a factory trawler to deliver processed pollock or Pacific cod to a shore-based processing plant under the inshore definition. However, such a vessel would be considered an "inshore component" vessel for puposes of this action if it was less than 125 feet in length and processed less than 18 mt of groundfish per day, round weight, or if it acted as an inshore mothership by processing pollock and Pacific cod in one location in State of Alaska waters.

Comment 74: It will be important to document which processing vessels are operating in the "inshore" and "offshore" categories during the year by means of a declaration of intent. The proposed regulations, however, do not provide for such a declaration.

Response: Processor vessels will be classified as either "inshore component" or "offshore component" as a function of the check-in report required at §§ 672.5(c)(1) and 675.5(c)(1), and other reporting requirements. All processor vessels are required to report before receiving any groundfish from any reporting area, the reporting area and position in geographic coordinates where the receipt of groundfish is expected to occur. The first check-in report received from a processor vessel in a fishing year will determine the category of that vessel for the remainder of the fishing year. For enforcement purposes, subsequent weekly production reports of processed pollock or Pacific cod harvested from the GOA must be consistent with the first check-in report to avoid violation of §§ 672.7(g) or 675.7(h). Reliance on existing reporting requirements in this way causes less reporting burden than if processor vessel operators were required to submit a new separate declaration form.

Comment 75: Several comments concerned the implementation of the Western Alaska CDQ. It was noted that the western Alaska communities do not have the means or capital necessary for entry into the fisheries. Per capita income in western Alaska is two-thirds of that of Alaska as a whole, yet the cost of living is 50 percent higher than in Anchorage. Currently, these communities do not have self-sustaining cash economies and viable economic opportunities are needed. The BSAI groundfish fishery is the logical, and perhaps the only, place for expansion. The CDQ would allow western Alaskans to leverage their allocation into training, employment, fishing industry infrastructure, and an equity position in the fishery. With limited entry, IFQ, inshore-offshore allocations, vessel moratoria, and the variety of management measures necessary to control a mature fishery, the window of opportunity for the western Alaska communities to enter the fishery is closing. A directed program such as the CDQ is necessary to provide this opportunity. Approximately 60 communities are currently eligible to be a part of the program as defined. The Governor of Alaska will play a major role in the development and implementation of the program.

Response: See responses to comments 18 and 21.

Comment 76: The preamble and regulatory language for the Western Alaska CDQ should be expanded to include: (1) Justification (to provide a fair and reasonable opportunity for participation in the fishery); (2) consistency with the national standards (a lengthy discussion of compliance with numbers 1, 4, 5, and 7); (3) that there is no need to delay allocation until 1993 if the criteria used for development of the

halibut and sablefish community development programs are used; allocations could be available for the third and fourth quarters; and (4) that other provisions should include an allocation of bycatch, exemption from seasonal restrictions, and exemption from vessel moratorium.

Response: The Secretary has determined that the preamble adequately addressed the justification for the Western Alaska CDQ and it has been approved in concept. However, further development is requested of the Governor of Alaska, in consultation with the Council, prior to submission for approval through rulemaking.

Comment 77: The western Alaska communities are also interested in the Pacific cod fisheries, and although Pacific cod was removed from the program, an allocation for this species should be considered at some point.

Response: Comment noted. NMFS encourages the commenter to address this request to the Council.

Comment 78: Comments concerning the factory trawlers' claims that the allocation would be anti-free market and that the pollock resource should be allocated by the market were refuted by the inshore sector, which stated that the current fisheries constitute an open access "olympic" system and do not bear any resemblance to free market. In view of this, the proposal does not violate free market because a fundamental requirement for a free market is private ownership of property rights. In a privately held (free market) fishery, the owner would attempt to maximize profits by monitoring harvests and improving utilization based on the cost of the resource. Tendency toward excess capacity would be reduced and efficiency would be improved. The current system does not promote this tendency. Because the shore-based processors must pay for their fish (factory trawlers do not), they try to achieve the maximum economic return for each pound. Therefore, they utilize the valuable raw material more efficiently.

Response: NOAA agrees that the current style of fishing is an open access system and that the resource is essentially "free" for the taking. Because of this, one sector has been preempted by another and protection is necessary. The amendments as approved by the Secretary will provide a temporary solution for the inshore sector while a more permanent management measure can be examined by the Council that may lead to a free enterprise market.

Comment 79: The quality of pollock products produced by the offshore sector is superior to that produced inshore because the fish are processed sooner after they are caught and not after several days of traveling to the shore plants. This is important to the health of the consumer.

Response: NOAA has no information to suggest that either sector produces an unwholesome product.

Comment 80: The quality produced by both sectors, inshore and offshore, is much the same because, even though fish delivered to the shore-based plants are 24–28 hours old, they are stored in refrigerated seawater during this time. Fish from the factory trawlers, even though they are less than 12 hours old, are stored on deck or in dry, unrefrigerated bins below deck. In addition, ideally, the fish should be allowed to go through rigor mortis slowly and in a cold environment to avoid gaping, toughening, graying, shrinkage, and thaw rigor. This is a problem aboard factory trawlers that freeze fish prerigor. Another aspect of quality is based on the amount of space available to allow the processing of larger-sized fish and better access to fresh water to more effectively wash surimi. Also, the inshore processors have more room to house enough people for an effective quality control program in addition to a laboratory with a complete, separate bacteriology lab. In this way, shore-based processors can achieve a higher quality overall for finished products.

Response: Information indicates that the offshore fresh-frozen products are of a higher quality. This is evidenced by the fact that the offshore products command a higher price in the market.

Comment 81: The shoreside processing plants noted that, due to the scarcity of cold storage on factory trawlers, they have more incentive to produce the product that yields the highest daily revenue, rather than the most desirable product to the market.

Response: NOAA acknowledges that a company will produce the product that yields the greatest profitability. Due to the open access/common property nature of the fishery and resultant market failure, the most desirable product mix may not be produced.

Comment 82: The inshore sector commented that although the quality of surimi depends on the freshness of the fish, the inshore processing plants obtain better recovery rates because the factory trawlers pay nothing for their fish and have no incentive to increase their recovery rates.

Response: See response to comment 59. In addition, as new management measures are developed towards a free-market system, the importance of a higher recovery rate will be realized.

Comment 83: Although factory trawlers produce a more valuable surimi product, the shore-based processors have an advantage in producing fillets and blocks.

Response: Comment noted. NOAA has no information to indicate the value of fillets and blocks produced by the inshore processing plants is higher than those produced offshore.

Comment 84: The BSAI and the GOA should be treated separately based on the different impacts of preemption in these two fishery management areas.

Response: NOAA agrees with the comment.

Comment 85: Council discussion of the inshore-offshore issue generally focused on pollock and the preemption by factory trawlers of the inshore pollock fishery in the GOA. The issue of freezer/longliners never materialized in a substantial way in the analysis or Council discussion until its final meeting. That part of the proposed definition of "inshore" that includes catcher/processors that have less than 18 mt processing capacity and are less than 125 feet in length was not addressed and was not considered to be a major preemption concern. The proposed allocation of Pacific cod in combination with this definition would eliminate 18 freezer-longliners from the GOA while allowing about 93 other freezer-longliners that are under 125 feet to continue to operate in the GOA. The capacity and length restrictions are unnecessary; the capacity restriction alone is sufficient to resolve any potential preemption problem.

Response: The definition of "inshore component" is intended to prevent preemption of small freezer-longliners fishing for Pacific cod in the GOA by large freezer-longliners. After closure of the Pacific cod fishery in the GOA, the larger freezer-longliners could move on to other areas too distant from the home ports of smaller freezer-longliners. The Council recommended, and the Secretary approved, the 125 feet/18 mt criteria to distinguish small from large freezer-longliners for this purpose. Either the length or tonnage definitions alone would not adequately serve this purpose.

Comment 86: The intent of Congress in passing the Processor Preference Amendment to the Magnuson Act was expressly not intended to make the fishing industry subject to terms and conditions that might be established by the processing industry and not to force fishermen and processors into business arrangements they would not enter otherwise. This Congressional intent is likely to be violated because most

catcher vessels are owned by shore-based processors.

Response: NOAA has no verified data on the corporate relations between shore-based processing plants and the catcher vessels that deliver fish to shore plants. If vertical integration of catching and processing businesses leads to a restraint of trade, then it would be investigated for potential violation of anti-trust laws and regulations.

Comment 87: The process by which the allocations were reviewed is poor. It lacked consideration of local needs and inputs. Senators and congressmen have too much influence over the review process.

Response: The Secretary followed the review procedure specified in the Magnuson Act. The Secretary based the decision on the totality of the record, including nearly 1,100 comments, and was not disproportionately influenced by any single comment or set of comments.

Comment 88: Amendments 18/23 would "unAmericanize" the fisheries because they would return control of the fishery to foreign-owned firms.

Response: The Magnuson Act encouraged the "Americanization" of foreign fisheries off Alaska. Between 1977, when the Magnuson Act was first implemented, and 1990, the last year of joint venture fishing off Alaska, U.S. fishing and processing companies developed Alaska groundfish and crab fisheries that now provide billions of dollars worth of seafood for domestic use and export, and provide thousands of jobs. Although the Magnuson Act provided the basic conservation and management framework for this development, the U.S. "fish and chips" policy also played an important role. Under this policy, foreign companies that transferred (pollock) processing technology and invested in U.S. fish processing companies were rewarded preferential allocations of the total allowable level of foreign fishing within the EEZ. Some Japanese companies were especially cooperative under this policy, the result of which is that some shore-based processing firms in Alaska are owned in whole or in part by Japanese fish processing companies.

NOAA recognizes that some of these firms will benefit from implementing the Council's recommended plan for allocating pollock. This will not result in foreign control of the pollock fishery. The inshore pollock allocation in the BSAI area will benefit those foreign-owned processing plants only for the "B" season of 1992 and only marginally relative to their performance in 1991. In 1991, BS subarea pollock delivered to inshore plants accounted for about 28 percent of the total BS pollock harvested that year. This was a significant increase over the 17 percent processed in 1990. Based on this growth rate, these plants were expected to process in excess of 30 percent of the total BS pollock harvest in 1992 even without the specified inshore-offshore allocation. The principal benefit to operators of these plants from this action is that they are assured of no less than their expected performance. Hence, the offshore fleet will continue to have access to most (65 percent) of the available pollock quota in the BS and most (60 percent) of the available pollock off Alaska. Even if all of the shore-based processing plants were entirely owned by foreign companies, which is not the case, it is unlikely that they could collectively control the pollock market with control over, at best, 40 percent of the Alaska pollock harvest. Instead of control, the Secretary anticipates that the cooperative relationship among U.S., Japanese, and other foreign firms that have invested in the Alaska groundfish fisheries (both inshore and offshore) will continue to be beneficial for all parties involved.

Comment 89: The amendments would substantially affect employment. There would be reduced work for factory trawler crews from the Pacific northwest and for workers in supply and shipyard industries elsewhere in the country, which will reduce income in other businesses causing an overall detrimental effect on the national economy. The amendments would simply transfer processing jobs to Alaska. American processing jobs at sea will be lost to non-American jobs at shore plants—offshore processors must employ American citizens in at least 75 percent of the jobs but inshore plants do not have this requirement. Inshore processors hire mostly non-Alaskan and foreign workers who do not contribute to the economy or stability of Alaskan communities. Processing jobs in the offshore sector pay well and provide rewarding opportunities to persons who do not have advanced educations and otherwise would be less well-off or be less able to pay for an advanced education. The allocations would force many of the offshore processing work force out of their jobs and into welfare programs.

Response: NOAA agrees that there could have been a significant negative effect on employment in the offshore processing fleet and related support businesses if amendment 18 were approved in full. The principal reason for disapproving parts of this amendment was that potentially large negative economic losses were not fully considered or rationalized by the Council. The parts of amendments 18/23 that were approved by the Secretary will not significantly alter the relative proportions of pollock and Pacific cod that would have been harvested by the inshore and offshore sectors in the absense of these amendments. Therefore, the amendments as implemented by this action, are not expected to change employment patterns dramatically from the status quo.

Federal regulations require that no more than 25 percent of the unlicensed seamen on a processor vessel may be aliens allowed to work in the United States under the Immigration and Nationality Act (46 U.S.C. 8103). The same requirements would apply to processor vessels that are included by definition in the inshore category, but they do not apply to shore-based processing operations. The number of foreign aliens employed in shore-based plants is unknown. Nevertheless, processing plant workers demand goods and services in whatever community they work, regardless of the nationality of the work force or the location of its permanent residence. This demand will have a positive effect on the economy of a small community.

Comment 90: The amendments do not address the root problem of overcapitalization, which causes an "olympic" race for fish in which some fishermen necessarily will feel preempted, or out-competed for fish. The "olympic system" is inefficient and wasteful. Instead of solving the problem, the allocations would create two new races for fish with opportunity for preemption within each race. Exclusive registration or limited access measures would better deal with the overcapacity problem. The most efficient replacement for the "olympic system" is some type of market-based allocation such as an auction of permits or transferable quotas which would solve the race-for-fish and preemption problems, and produce economic rent for the Nation from the fisheries.

Response: See responses to comments 17 and 25. NOAA agrees that the olympic system is inefficient and wasteful in the sense that it fosters more investment in fishing enterprises than is necessary to catch the amount of fish available for harvest in any fishing year. Frequently, it is also the cause of allocation disputes between different groups of fishermen that could be resolved efficiently through a market-based scheme such as ITQs. However, changing the current olympic system to one in which fishing privileges are

market-driven would not have solved the immediate preemption problem described by the Council. In addition, the Magnuson Act currently prohibits the realization of economic rent from national fishery resources.

Comment 91: The amendments would enhance integration of catching and processing sectors which would force independent catcher vessel operators out of business. Shore-based processors have either acquired former JVP vessels or built new vessels to increase their control of the catcher fleet and depress exvessel market prices. Catcher vessels harvested an average of 65 percent of the total U.S. pollock catch during the period 1986–1990. Between 1988 and 1991, the exvessel price to fishermen for round pollock declined from a range of 10 to 14 percent of surimi prices to 5 percent, as shore-based processors increased their control over the catcher vessel fleet.

Response: Integration of fishing and processing by the inshore sector could happen under explicit inshore-offshore allocations or under the status quo without allocations. NOAA agrees that such vertical integration could result in a depressed exvessel price for pollock. Although this may be unfortunate for independent catcher vessel owners, it is unlikely to lead to market control and serious trade restraint problems. The world market for pollock and substitute products is more likely to affect exvessel values than industry integration. The Council considered two alternative forms of allocation that could have been more favorable to independent catcher vessel owners. One was allocation among vessel size categories (Alternative 4, SEIS section 3.3.4), and the other was allocation to vessels based on their capability to process fish onboard (Alternative 6, SEIS section 3.3.6). The Council rejected both alternatives as being less likely to achieve the principal objective of preventing preemption of the inshore sector than the preferred alternative. In addition, the Council estimated that the potential resource shares under Alternative 6 unduly restrict the offshore sector (SEIS section 3.3.6.1).

Comment 92: At the expense of others, the amendments simply protect the interests of shore-based processors. For BSAI pollock, five of the current seven inshore processors are foreign owned. Amendment 18 would guarantee control of much of the BSAI resource to three Japanese companies and strengthens their grasp and control of the world surimi market.

Response: See response to comment 88.

Comment 93: Investors in inshore processing had the same opportunities to invest in either inshore or offshore processing plants. If the inshore plants now prove to be a poor investment, then protection of those investments by amendments 18/23 would be tantamount to a penalty to the offshore industry to pay for the poor investment decisions of the inshore industry.

Response: The approved portions of the amendments provide an interim protection of a legitimate interest that inshore fishing and processing firms have in the pollock and Pacific cod resources off Alaska from offshore fishing and processing firms. The offshore firms have a clear advantage over the inshore fims because of their inherent mobility. Because of this mobility advantage, the offshore sector could take fish away from the inshore sector that would have otherwise been processed inshore. The approved action is not penalizing or taking fish from the offshore sector; instead it is intended to maintain harvest levels that most closely reflect recent levels.

Comment 94: Offshore processing is more efficient than inshore processing of pollock. Inshore processing produces more waste since many of the fish arrive at plants in a deteriorated condition making them unusable.

Response: Efficiency can be measured in different ways. For example, one fishing and processing operation may be more efficient than another because it extracts more net value from a given amount (tonnage) of fish. Alternatively, an operation that produces the most pounds of marketable product out of a ton of unprocessed fish may be considered the most efficient. In taking this action, NOAA is not expressing any preference for either inshore or offshore processing on the basis of efficiency. Fishing and processing activities have an inherent amount of waste associated with them for a variety of technical reasons. A concern of NOAA in this regard is to provide a regulatory climate in which the discard of unusable fish and fish parts is minimized, and that this discard does not cause pollution detrimental to the marine environment.

Comment 95: Amendments 18/23 would constrain free enterprise and open competition. Economic factors should control the decision of where pollock is delivered for processing and who remains in the fish processing business. The price of fish to consumers will increase because of reduced competition and increased control by the inshore sector.

Response: NOAA agrees that fishery resources should be allocated among fishermen based on economic factors. However, the open access/common property fishery results in a basic market failure that distorts allocation of fishery resources. The approved portions of amendments 18/23 partially mitigate for the market failure.

NOAA is strongly encouraging the Council to consider management programs that allocate fishery resources among competing users based on free market decisions instead of direct government intervention. NOAA notes that such programs do not provide the direct prevention of inter-sectorial preemption that the Council recommended on an interim basis for the pollock and Pacific cod fisheries off Alaska. The specific inshore-offshore allocations implemented by this action are not likely to adversely affect competition among fishermen and processors because the allocations are relatively consistent with the proportions of harvested pollock and Pacific cod between the two sectors in recent years.

Comment 96: The allocations would alter current exports and imports of fish products. Product types will change from fillets to surimi for export to Japan that will make less pollock available to domestic users. Profits received from increased surimi production in shore plants also would be exported to Japan because of Japanese ownership of the larger shore plants.

Response: The larger shore plants that are owned by Japanese companies primarily receive pollock harvested in the Bering Sea. As proposed by the Council, amendment 18 would have shifted a significant proportion of the total BSAI pollock harvest to these and other shore-based plants. If implemented as the Council recommended, a change in the proportions of different pollock products may have occurred, depending on the markets serviced by these plants. Instead, this action implements inshore-offshore allocations of BSAI pollock for only the 1992 "B" season, and establishes an inshore allocation roughly the same as it would have been without amendment 18. Therefore, the purpose of this action is to protect, from offshore preemption, the status quo share of the pollock resource that is delivered to inshore processors instead of increasing that share.

Comment 97: The amendment would alter the development of the Alaska groundfish fishery.

Response: Amendment 23 will protect the interests of established inshore fishing and processing companies operating on pollock and Pacific cod

resources harvested in the GOA. Development of the groundfish fishery in the GOA has followed the development of other fisheries in this area by being primarily shore-based. This is because the facilities used for processing groundfish were built on an existing infrastructure used for salmon, crab, halibut, herring, and other species. The allocations of GOA pollock and Pacific cod are roughly consistent with existing shore-based processing capacity and the proportional harvest of these resources between inshore and offshore sectors in recent years.

The development of the domestic fishery in the BSAI initially followed the model of the early foreign fisheries in this area by processing fish at sea. Shore-based processing of groundfish harvested in the Bering Sea was not based on an existing infrastructure. Hence, most of the domestic harvest of pollock and other groundfish in the BSAI area has been processed offshore. In recent years, new shore-based plants located in the Aleutian Islands have accounted for nearly 30 percent of the total BSAI area pollock harvest. Again, the interim inshore-offshore allocation of pollock is consistent with this demonstrated inshore processing capacity.

To a limited extent, groundfish development in the BSAI area will be affected by the CDQ program.

Comment 98: Inshore allocations proved ineffective in Iceland under a quota system. Product quality of the shore-based plants is uncertain and costs of production are greater than on factory trawlers. We should learn from their mistakes.

Response: This comment is not germane to amendments 18/23. However, for the commenter's information, Iceland went from an olympic system of open access, with a TAC of 290,000 mt of Pacific cod, in 1983 to an individual vessel quota system in 1984. The impetus for the change came from the Union of Boat-Owners who, in the face of declining catches and a TAC of 220,000 mt for 1984, requested a vessel quota system based on catch history. In a national survey conducted by the Fisheries Institute of the University of Iceland in 1990, 85 percent of those interviewed favored the quota system as it has been developed and refined. Neither factory trawlers nor catcher boats were discriminated against in the allocation of quota; the quotas were based on historic catch records of the vessels. There was no allocation to shore-plants per se, and patterns of landings have not changed significantly since the addition of factory trawlers to the Icelandic fleet. The issues raised in the comment appear to be more closely related to the availability of fish at different times of the year than to the management regime.

Comment 99: No consideration was given to the potential economic hardships and losses to the shipyards.

Response: Possible national economic impacts that could occur as a result of implementation of amendments 18/23 were discussed in the FSEIS as well as alternatives available to displaced catching and processing firms. The FSEIS specifically addresses the impacts of failure of individual firms and those who depend on them for business. In addition, whether an inshore-offshore allocation is approved or disapproved does not ensure the continuation of growth opportunities and therefore the need for additional or new vessels because the vessel owner has the option of using the shipyard of its choice.

Comment 100: Amendments 18/23 raise constitutional concerns under the Port Preference Clause of the U.S. Constitution.

Response: The Port Preference Clause is contained in Article 1 section 9 clause 6 of the Constitution. The Port Preference Clause states that "no preference shall be given by a regulation of commerce or revenue to the ports of one state over those of another * * *" and affects two types of government actions: regulation of commerce and regulation of revenue. No action of the Federal government has ever been set aside under this clause, because the clause requires explicit discrimination in favor of a particular state. Measures such as amendments 18/23 that have a legitimate rationale and benefit an industry sector rather than a state would not offend the Port Preference Clause.

Comment 101: Amendments 18/23 should have been considered a "major rule" under section 3(d) of Executive Order 12291.

Response: Documents provided by the Council, namely the SEIS, gave no evidence that the proposed action should be considered a "major rule" under the requirements of Executive Order 12291. The subsequent cost-benefit analysis developed by NMFS staff showed results that could possibly be interpreted as justification for designating the proposed action as "major," however, it was determined that amendments 18/23 as approved are not a "major rule" because they will not result in an annual effect on the economy of $100 million or more, will not result in a major increase in prices for consumers, individual industries, government agencies or regions and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. In any event, the analysis prepared for an RIR under NMFS guidelines most likely would already contain all the information and analysis necessary for the regulatory impact analysis that is required if the action is determined to be "major."

Comment 102: The regulatory burden is already too heavy; additional government intervention to achieve some questionable objective is not needed.

Response: See response to comments 6, 9, 12, 17, and 48. NOAA has suggested to the Council that they work towards a management program that will reply less on government intervention.

Comment 103: The amendments were not objectively developed due to conflicts of interest. Some Council members who favored the amendments have financial interests in the inshore sector. The amendments reflect greed and corruption of the Council, and manipulation of data by the Council staff to support preconceived choices.

Response: The Magnuson Act requires that each voting member of a Regional Fishery Management Council and the executive director of each Council must disclose any financial interest in any harvesting, processing, or marketing activity that is being or will be undertaken within any fishery over which the Council concerned has authority. Financial interests that must be disclosed include those held by the individual, their spouse, minor child, or partner; and any organization (other than the Council) in which the individual is serving as an officer, director, trustee, partner or employee. If the individual complies with the requirement to file a financial disclosure statement, he or she is exempt from criminal liability under section 208 of the United States Code.

In developing the Magnuson Act, Congress recognized the need to have members of the fishing community sit on the Council and bring with them to the meetings their fisheries knowledge and experience. It was understood that by requiring nominees with this type of background, some members may be voting on issues that would directly affect their fishing operations, positively or negatively. Regardless of the effect, Council members are not required to recuse themselves from a decision unless the matter is primarily of individual concern. At the time of the decision to adopt amendments 18/23 for

Secretarial review, all voting members of the Council and the Executive Director had properly updated financial disclosure forms on file in the Council office.

Numerous challenges have been raised regarding the sufficiency of the data contained in the documents and analyses prepared by the Council. The Secretary was aware of these challenges and conducted a separate cost-benefit analysis to review the findings of the Council regarding the economic effects of the amendments and net national benefits. Where the data from the cost-benefit analysis confirmed the Council's analysis in that the estimate social and other benefits from implementation of the amendments would outweigh the economic costs, the Secretary approved those measures. Where the cost-benefit data demonstrated that estimated economic losses far exceed those anticipated by the Council, the Secretary disapproved those portions.

Comment 104: The amendments would be inconsistent with U.S. obligations under the General Agreement on Tariffs and Trade (GATT).

Response: The amendments are consistent with the provisions of GATT because their implementing regulations do not restrict where delivery or sale of fish must occur. They restrict the receipt of fish by the offshore and inshore sectors in excess of the specified percentages. All prohibitions apply to the catching of fish by U.S. vessels in the EEZ and not to the location of delivery. For example, GOA Pacific cod could be delivered to shoreside operations in Canada and be considered inshore product. Consequently, the amendments do not violate GATT.

Classification

NOAA determined that amendment 23 to the FMP for the groundfish of the GOA, the pollock allocation for the 1992 "B" season, and the Western Alaska CDQ program portions of amendment 18 to the FMP are necessary for the conservation and management of the groundfish fisheries off Alaska. This final rule implementing approved portions of amendments 18 and 23 is published under section 305(a)(1) of the Magnuson Act that requires the Secretary to publish regulations that are necessary to carry out a plan or plan amendment. The Secretary has determined that amendment 23 and those portions of amendment 18 that were approved are consistent with the national standards, other provisions of the Magnuson Act, and other applicable law.

NOAA has determined that delaying the effectiveness of this final rule for 30 days under the Administrative Procedure Act, 5 U.S.C. 552(d), is impracticable and contrary to the public interest in orderly conduct of the fisheries in the EEZ. Amendment 23 was approved and amendment 18 was partially approved to resolve conflicts between the inshore and offshore components of the fishing industry by allocating amounts of pollock and GOA Pacific cod among them for limited periods of time. The GOA and BSAI pollock fisheries are scheduled to reopen on June 1, 1992. Without implementing regulations in place for the June 1 openings, NOAA has determined that the same fishery conservation and management problems that amendments 18/23 were to resolve would occur. NOAA delayed the scheduled opening of the second quarter GOA pollock fishery from March 30, 1992, to June 1, 1992, for these same reasons (57 FR 11272, April 2, 1992). To reopen the GOA and BSAI pollock fisheries without the allocations in this final rule would prevent implementation of amendments 18/23 as approved. Therefore, NOAA is waiving the 30-day delayed effectiveness period.

NMFS finalized an FSEIS for the FMP amendments; a notice of availability was published on March 20, 1992 (57 FR 9722). A copy of the FSEIS may be obtained from the Council (see ADDRESSES).

NOAA determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the FSEIS/RIR/FRFA prepared by the Council and a cost-benefit analysis prepared by NMFS staff. Copies of the FSEIS/RIR/FRFA and cost-benefit analysis can be obtained from the Council (see **ADDRESSES**).

The Council prepared an FRFA that describes the effects amendments 18/23 will have on small entities. NOAA concluded that this rule implementing amendment 23 and portions of amendment 18 will have a significant economic impact on a substantial number of small entities. A summary of this determination is contained in the proposed rule (56 FR 66009, December 20, 1991).

The existing collection-of-information requirement for check-in/check-out notices, has been approved by the Office of Management and Budget under the Paperwork Reduction Act (PRA) (control number 0648-0213). This final rule does not contain a collection-of-information requirement for the purposes of the PRA.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of Alaska. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. The State agencies agreed with this determination.

The final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

A formal section 7 consultation under the Endangered Species Act was initiated for amendment 18. In a biological opinion dated March 4, 1992, the Assistant Administrator for Fisheries, NOAA, determined that amendment 18 and its implementing regulations are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS. However, since the southeastern Bering Sea shelf is considered to be an important foraging habitat for Steller sea lions, NMFS will continue to evaluate the suitability of existing management measures for the BSAI fishery to ensure adequate protection of Steller sea lions and their essential habitats. The Regional Director determined that amendment 23 and its implementing regulations will not affect endangered or threatened species.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: May 28, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows

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

2. In § 672.2, new definitions of "catcher vessel," "inshore component," "offshore component," and "shoreside processing operation," are added in alphabetical order, and the existing definition of "processor vessel" is revised to read as follows:

§ 672.2 Definitions.

* * * * *

Catcher vessel means any vessel that is used to catch, take, or harvest groundfish that are iced, headed, gutted, bled, or otherwise retained as fresh fish product on board during any fishing year.

* * * * *

Inshore component (applicable through December 31, 1995) means that part of the U.S. groundfish fishery off Alaska that includes:

(1) All shoreside processing operations;

(2) All processor vessels in Alaska State waters (waters adjacent to the State of Alaska and shoreward of the EEZ) that process, at a single geographic location during a fishing year, pollock harvested in a directed fishery for pollock, or Pacific cod harvested in a directed fishery for Pacific cod in the Gulf of Alaska, and that submit a check-in notice and weekly production report as required at § 672.5(c) of this part; and

(3) All processor vessels that process, on a daily average during any weekly reporting period, less than 18 metric tons of Pacific cod harvested in the Gulf of Alaska and pollock in aggregate round weight equivalents, and are less than 125 feet (38.1 m) in length overall. For purposes of this definition, a single geographic location during a fishing year will be determined by the geographic coordinates reported on the most recent check-in notice in effect at the time of the first opening after May 31, 1992, of a directed fishery for Pacific cod in the Gulf of Alaska or pollock, unless a later check-in report is submitted during a directed fishery for Pacific cod in the Gulf of Alaska or pollock.

* * * * *

Offshore component (applicable through December 31, 1995) means all processor vessels in the U.S. groundfish fisheries off Alaska not included in the definition of "inshore component."

* * * * *

Processor vessel means, unless otherwise restricted, any vessel that has been issued a Federal groundfish vessel permit and that can be used for processing groundfish.

* * * * *

Shoreside processing operation means any person that has not been issued a Federal groundfish vessel permit for the current fishing year and that receives unprocessed groundfish from a catcher vessel. This definition does not include individuals who receive unprocessed groundfish from a catcher vessel for non-commercial use.

* * * * *

3. In § 672.7, a new paragraph (g) is added to read as follows:

§ 672.7 Prohibitions.

* * * * *

(g) *Applicable through December 31, 1995.* (1) Process pollock that were harvested in a Federal reporting area off Alaska in a directed fishery for pollock, or Pacific cod that were harvested in the Gulf of Alaska in a directed fishery for Pacific cod, on a processor vessel operating in Alaska State waters under the "inshore component" definition at § 672.2 in a location other than the first location at which these species are processed in any fishing year as reported in a check-in notice and weekly production report required at § 672.5(c).

(2) Operate any processor vessel to process pollock harvested in a Federal reporting area off Alaska in a directed fishery for pollock, or Pacific cod harvested in the Gulf of Alaska in a directed fishery for Pacific cod, under the "inshore component" and "offshore component" definitions at § 672.2 and § 675.2 of this chapter during the same fishing year.

4. In § 672.20, existing paragraphs (c)(1)(i) and (c)(1)(ii) are redesignated as paragraphs (c)(1)(i)(A) and (c)(1)(i)(B), respectively; new paragraphs (a)(2)(v), and (c)(1)(i) heading, and (c)(1)(ii) are added; and existing paragraph (c)(2) is revised to read as follows:

§ 672.20 General limitations.

(a) * * *

(2) * * *

(v) *Applicable through December 31, 1995.* (A) The DAP apportionment for pollock in all regulatory areas and for each quarterly reporting period described in paragraph (a)(2)(iv) of this section will be divided into inshore and offshore components. The inshore component will be equal to 100 percent of the pollock DAP in each regulatory area after subtraction of an amount, determined by the Regional Director, projected to be caught by the offshore component incidental to directed fishing for other groundfish species. If the Regional Director determines that the inshore component will not be able to process the entire amount of its allocation of pollock during a fishing year, then NMFS will publish a notice in the **Federal Register** that reallocates the projected unused amount of pollock to the offshore component.

(B) The DAP apportionment of Pacific cod in all regulatory areas will be divided into inshore and offshore components. The inshore component will be equal to 90 percent of the Pacific cod DAP in each regulatory area. If the Regional Director determines that the inshore component will not be able to process the entire amount of its allocation of Pacific cod during a fishing year, then NMFS will publish a notice in the **Federal Register** that reallocates the projected unused amount of Pacific cod to the offshore component.

(C) All processor vessels that operate in Alaska State waters under the "inshore component" definition in § 672.2 and process pollock that were harvested in a Federal reporting area off Alaska in a directed fishery for pollock, or Pacific cod that were harvested in the Gulf of Alaska in a directed fishery for Pacific cod, must remain at the first geographic location reported in any fishing year in the check-in notice required at § 672.5(c) during the remainder of the fishing year when pollock or Pacific cod harvested during directed fisheries for these species are being processed.

* * * * *

(c) * * *

(1) * * *

(i) *Applicable after December 31, 1995.* (A) * * *

* * * * *

(ii) *Applicable through December 31, 1995.* (A) As soon as practicable after consultation with the Council, NMFS will publish a notice in the **Federal Register** specifying for the succeeding fishing year proposed annual TAC amounts for each target species and the "other species" category and apportionments thereof among DAP, JVP, TALFF, and reserves, halibut prohibited species catch amounts, quarterly allowances of pollock, and allocations of Pacific cod TAC to inshore and offshore components for each regulatory area. This notice will also include the dates that directed fishing may commence for each quarterly allowance for pollock. The preliminary specifications will reflect as accurately as possible the projected changes in U.S. harvesting and processing capacity and the extent to which U.S. harvesting and processing will occur in the coming year. Public comment on these amounts will be accepted by the Secretary for 30 days after the notice is published in **Federal Register.** One-fourth of the preliminary specifications (not including the reserves and the first quarterly allowance of pollock), one-fourth of the inshore and offshore allocations of Pacific cod in each regulatory area, and one-fourth of the halibut prohibited species catch amounts will be in effect on January 1 on an interim basis and will remain in effect until superseded by a notice of final specifications in the **Federal Register.**

(B) *Notice of final specifications.* NMFS will consider comments received

on the proposed specifications during the comment period and, after consultation with the Council, will publish a notice in the **Federal Register** specifying the final annual TAC for each target species and the "other species" category and apportionments thereof, final halibut prohibited species catch amounts, final quarterly allowances for pollock, and inshore and offshore allocations of Pacific cod.

(2) *Notices prohibiting directed fishing*—(i) *Applicable after December 31, 1995.* If the Regional Director determines that the amount of a target species or "other species" category apportioned to a fishery or, with respect to pollock, to a quarterly allowance, is likely to be reached, the Regional Director may establish a directed fishing allowance for that species or species group. The amount of a species or species group apportioned to a fishery or, with respect to pollock, to a quarterly allowance, is the amount identified in the notice of specifications as provided in § 672.20(c)(1), as these amounts are revised by inseason adjustments, for that species or species group, as identified by regulatory area or district and as further identified according to any allocation of TALFF, the apportionment for JVP, the apportionment for DAP, the quarterly allowance of pollock and, if applicable, as further identified by gear type. In establishing a directed fishing allowance, the Regional Director shall consider the amount of that species or species group or quarterly allowance of pollock that will be taken as incidental catch in directed fishing for other species in the same regulatory area or district. If the Regional Director establishes a directed fishing allowance and that allowance is or will be reached before the end of the fishing year or, with respect to pollock, before the end of the quarter, NMFS will prohibit directed fishing for that species or species group in the specified regulatory area or district. No person may engage in directed fishing in violation of an applicable notice. If directed fishing is prohibited, the amount of any catch of that species or species group equal to or greater than the amount that constitutes directed fishing may not be retained and must be treated as a prohibited species under paragraph (e) of this section.

(ii) *Applicable through December 31, 1995.* If the Regional Director determines that the amount of a target species or "other species" category apportioned to a fishery, or with respect to pollock, to a quarterly allowance, or with respect to Pacific cod, to an allocation to the inshore or offshore component, is likely to be reached, the Regional Director may establish a directed fishing allowance for that species or species group. The amount of a species or species group apportioned to a fishery, or with respect to pollock, a quarterly allowance, or with respect to Pacific cod, to an allocation to the inshore or offshore component, is the amount identified in the notice of specifications as provided in § 672.20(c)(1). These amounts are revised by inseason adjustments, for a given species or species group, as identified by regulatory area or district and as further identified according to any allocation of TALFF, the apportionment of JVP, the apportionment for DAP, the quarterly allowance for pollock, or with respect to Pacific cod, to an allocation to the inshore or offshore component, and, if applicable, as further identified by gear type. In establishing a directed fishing allowance, the Regional Director should consider the amount of that species group, quarterly allowance of pollock, or allocation of Pacific cod to the inshore or offshore component that will be taken as incidental catch in directed fishing for other species in the same regulatory area or district. If the Regional Director establishes a directed fishing allowance and that allowance is or will be reached before the end of the fishing year or, with respect to pollock, before the end of the quarter, NMFS will prohibit directed fishing for the species or species group in the specified regulatory area or district. No person may engage in directed fishing in violation of an applicable notice. If directed fishing is prohibited, the amount of any catch of that species or species group equal to or greater than the amount that constitutes directed fishing may not be retained and must be treated as a prohibited species under paragraph (e) of this section.

* * * * *

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

5. The authority citation for 50 CFR part 675 continues to read as follows:

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

6. In § 675.2, new definitions of "catcher vessel," "inshore component," "offshore component," and "shoreside processing operation" are added in alphabetical order; and the existing definition for "processor vessel" is revised to read as follows:

§ 675.2 Definitions.

* * * * *

Catcher vessel means any vessel that is used to catch, take, or harvest groundfish that are iced, headed, gutted, bled, or otherwise retained as fresh fish product on board during any fishing year.

* * * * *

Inshore component (applicable through December 31, 1992) means that part of the U.S. groundfish fishery off Alaska that includes:

(1) All shoreside processing operations;

(2) All processor vessels in Alaska State waters (waters adjacent to the State of Alaska and shoreward of the EEZ) that process, at a single geographic location during a fishing year, pollock harvested in a directed fishery for pollock, or Pacific cod harvested in a directed fishery for Pacific cod in the Gulf of Alaska, and that submit a check-in notice and weekly production report as required at § 675.5(c) of this part; and

(3) All processor vessels that process, on a daily average during any weekly reporting period, less than 18 metric tons of Pacific cod harvested in the Gulf of Alaska and pollock in aggregate round weight equivalents, and are less than 125 feet (38.1 m) in length overall. For purposes of this definition, a single geographic location during a fishing year will be determined by the geographic coordinates reported on the most recent check-in notice in effect at the time of the first opening after May 31, 1992, of a directed fishery for Pacific cod in the Gulf of Alaska or pollock, unless a later check-in report is submitted during a directed fishery for Pacific cod in the Gulf of Alaska or pollock.

* * * * *

Offshore component (applicable through December 31, 1992) means all processor vessels in the U.S. groundfish fisheries off Alaska not included in the definition of "inshore component."

* * * * *

Processor vessel means, unless otherwise restricted, any vessel that has been issued a Federal groundfish vessel permit and that can be used for processing groundfish.

* * * * *

Shoreside processing operation means any person that has not been issued a Federal groundfish vessel permit for the current fishing year and that receives unprocessed groundfish from a catcher vessel. This definition does not include individuals who receive unprocessed groundfish from a catcher vessel for noncommercial use.

* * * * *

7. In § 675.7, a new paragraph (h) is added to read as follows:

§ 675.7 Prohibitions.

* * * * *

(h) *Applicable through December 31, 1992.* (1) Process pollock that were harvested in a Federal reporting area off Alaska in a directed fishery for pollock, or Pacific cod that were harvested in the Gulf of Alaska in a directed fishery for Pacific cod, on a processor vessel operating in Alaska State waters under the "inshore component" definition at § 675.2 in a location other than the first location at which these species are processed in any fishing year as reported in a check-in notice and weekly production report required at § 675.5(c).

(2) Operate any processor vessel to process pollock harvested in a Federal reporting area off Alaska in a directed fishery for pollock, or Pacific cod harvested in the Gulf of Alaska in a directed fishery for Pacific cod, under the "inshore component" and "offshore component" definitions at § 672.2 of this chapter and § 675.2 during the same fishing year.

8. In § 675.20, new paragraphs (a)(2)(iii), (a)(3)(i), and (a)(3)(ii) are added and new paragraph (a)(3)(iii) is added and reserved, to read as follows:

§ 675.20 General limitations.

(a) * * *

(2) * * *

(iii) *Applicable through December 31, 1992.* The 1992 DAP apportionment of pollock in each subarea for the second seasonal allowance defined in paragraph (a)(2)(ii) of this section will be apportioned 35 percent to the inshore component and 65 percent to the offshore component. The fishery for each component is separately subject to the directed fishing allowance and prohibitions authorized under paragraphs (a)(8) and (a)(9) of this section.

(A) If, during a fishing year, the Regional Director determines that either the inshore or offshore component will not be able to harvest and process the entire amount of pollock allocated to it, then the amount that the Regional Director projects will be unused by one component will be reallocated to the other component by notice in the **Federal Register.**

(B) All processor vessels that operate in Alaska State waters under the "inshore component" definition in § 675.2 and process pollock that were harvested in a Federal reporting area off Alaska in a directed fishery for pollock, or Pacific cod that were harvested in the Gulf of Alaska in a directed fishery for Pacific cod, must remain at the first geographic location reported in any fishing year in the check-in notice required at § 675.5(c) during the remainder of the fishing year when pollock or Pacific cod harvested during directed fisheries for these species are being processed.

(3) * * *

(i) *Applicable through December 31, 1995.* One half of the pollock TAC placed in the reserve for each subarea will be assigned to a Western Alaskan Community Development Quota (CDQ) for each subarea. Portions of the CDQ for each area may be allocated for use by specific western Alaska communities in accordance with community fishery development plans developed by the State of Alaska and approved by the Secretary in consultation with the Council. The Secretary may add any amount of a CDQ back to the nonspecific reserve if, after September 30, the Regional Director determines that amount will not be used during the remainder of the fishing year.

(ii) *Applicable through December 31, 1995.* Any amounts of the nonspecific reserve that are reapportioned to pollock as provided by paragraph (b) of this section must be apportioned between inshore and offshore components in the same proportion specified in paragraph (a)(2)(iii) of this section.

(iii) *Applicable through December 31, 1995: Criteria for fishery development plans.* [Reserved]

* * * * *

9. In § 675.22, a new paragraph (g) is added to read as follows:

§ 675.22 Time and area closures.

* * * * *

(g) *Catcher vessel operational area (applicable through December 31, 1992).* The offshore component of the groundfish fishery may not conduct directed fishing for pollock at any time in the Bering Sea subarea south of 56°00′ N. latitude, and between 163° 00′ and 168° 00′ W. longitude.

[FR Doc. 92-12880 Filed 5-28-92; 5:01 pm]
BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 911176-2018]

Groundfish of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for sablefish using hook-and-line gear in the West Yakutat district of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the share of the sablefish total allowable catch (TAC) assigned to hook-and-line gear in this district.

DATES: Effective 12 noon, Alaska local time (A.l.t.), May 30, 1992, through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, Fisheries Management Division, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the exclusive economic zone within the GOA is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The share of the sablefish TAC assigned to hook-and-line gear in the West Yakutat district, which is defined at § 672.2, is established by the final notice of specifications (57 FR 2844, January 24, 1992) as 3,553 metric tons.

Under § 672.24(c)(3)(i), the Director of the Alaska Region, NMFS, has determined that the share of the sablefish TAC assigned to hook-and-line gear in the West Yakutat district will be taken before the end of the year. Therefore, to provide adequate bycatch amounts of sablefish to ensure continued groundfish fishing activity by hook-and-line gear, NMFS is prohibiting directed fishing for sablefish by vessels using hook-and-line gear in the West Yakutat district, effective from 12 noon, A.l.t., May 30, 1992, through 12 midnight, A.l.t., December 31, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.24 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

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

Dated: May 28, 1992.

David S. Crestin,

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

[FR Doc. 92-12909 Filed 5-29-92; 11:06 am]
BILLING CODE 3510-22-M

50 CFR Part 675

[Docket No. 911172-2021]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific cod by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the annual secondary bycatch allowance of Pacific halibut for the Pacific cod trawl fishery in the BSAI has been caught.

DATES: Effective 12 noon, Alaska local time (A.l.t.), May 29, 1992, through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: David R. Cormany, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The annual secondary bycatch allowance of Pacific halibut to the Pacific cod trawl fishery, which is defined at § 675.21(g)(4)(v), was established by emergency rule (57 FR 11433, April 3, 1992) as 1,537 metric tons.

The Regional Director, Alaska Region, NMFS, has determined, in accordance with § 675.21(h)(1)(iv), that U.S. fishing vessels in the BSAI have caught the 1992 secondary bycatch allowance of Pacific halibut for the Pacific cod trawl fishery. Therefore, NMFS is prohibiting directed fishing for Pacific cod by vessels using trawl gear in the BSAI from 12 noon, A.l.t., May 29, 1992, until 12 midnight, A.l.t., December 31, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.21 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

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

Dated: May 28, 1992.

David S. Crestin,

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

[FR Doc. 92-12910 Filed 5-29-92; 11:24 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 107
Wednesday, June 3, 1992

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

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 615, and 627

RIN 3052-AA92

Organization; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Title V Conservators and Receivers

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), proposes for public comment regulations governing conservatorships and receiverships for which the Farm Credit System Insurance Corporation (Insurance Corporation) is appointed as conservator or receiver. These regulations reflect amendments to the Farm Credit Act of 1971 by the Agricultural Credit Act of 1987 providing that, after January 5, 1993, the Insurance Corporation will be the exclusive entity appointed as conservator or receiver of a Farm Credit System institution (System institution or Farm Credit institution). Also proposed are amendments to existing conservatorship and receivership regulations, which would continue to apply in situations where the Insurance Corporation is not appointed as conservator or receiver.

DATES: Comments must be received by July 6, 1992.

ADDRESSES: Comments should be submitted in writing, in triplicate, to Jean Noonan, General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:
Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444,
or
John J. Hays, FCA Examiner, Office of Examination, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: The Agricultural Credit Act of 1987 (Pub. L. 100-233) (1987 Act) amended the Farm Credit Act of 1971 (Act) by adding a new title V which provided for the establishment of the Insurance Corporation. New sections 5.51(5) and 5.58(10) of the Act empower the Insurance Corporation to act as conservator or receiver. The 1987 Act also amended section 4.12(b) of the Act to provide that, after January 5, 1993, the Insurance Corporation will be the exclusive entity to be appointed by the FCA as conservator or receiver of a System institution.

In new part 627, the Board proposed to set forth the powers and duties of the Insurance Corporation when it acts as conservator or receiver of a System institution. Other conservators or receivers will continue to be governed by the existing provisions in part 611, subparts K, L, M, and N of the regulations, as amended by these proposals.

The Board's decision to promulgate separate regulations for conservatorships and receiverships for which the Insurance Corporation is the conservator or receiver is based on fundamental differences between the Insurance Corporation and other persons or entities that have previously been appointed to the position. Such other persons have been deemed to be acting as agents of the FCA in the performance of certain duties and responsibilities. Such agency status is unnecessary for the Insurance Corporation, which has the status of a Federal agency in its own right.

In addition, the Board believes that, with a government agency acting as receiver, it is not necessary for the institution to retain a Farm Credit charter. Consequently, the proposed regulations would provide for the Farm Credit charter of an institution to be canceled when the institution is placed in receivership and for the Insurance Corporation to succeed automatically to the rights, titles, and privileges of the institution upon its appointment as receiver. Once the charter is canceled, there would be no further assessments for the FCA's administrative expenses. Existing institutions in receivership for which the Insurance Corporation is not appointed as receiver would continue to retain their charters until the receivership is terminated.

Finally, the proposed regulations would provide the Insurance Corporation with flexibility to perform its receivership functions and would relieve the FCA of most of its supervisory involvement in future receiverships.

The Board notes that conforming amendments would be made to the reporting provisions in the existing regulations in order to maintain consistency of treatment of all receiverships in this important area. However, whereas there would no longer be a mandatory annual examination requirement for receiverships for which the Insurance Corporation acts as receiver, the existing receiverships would continue to be examined. It is the intention of the Board to rescind the existing conservatorship and receivership regulations in part 611 upon the termination of the last receivership or conservatorship for which the Insurance Corporation is not acting as conservator or receiver.

The Board further notes that there is a currently outstanding proposal to amend the definition of insolvency in § 611.1156(b)(1). See 53 FR 43897, October 31, 1988. The Board has decided to take no action with respect to the proposed amendment or the existing regulation at this time other than to transfer the existing grounds for appointing a conservator or receiver to new part 627. A study of the definition of insolvency in the context of section 4.12 of the Act, along with the other grounds for appointment of a conservator or receiver, has been undertaken by the FCA in conjunction with its review of the capital adequacy regulations in part 615. Upon completion of this review, the Board will determine what action to take on the outstanding proposed definition.

The proposed regulations are discussed in more detail below. The most significant differences from existing regulations are described in the first part; the second part contains a section-by-section analysis and

identifies the provisions of existing regulations that served as the basis for provisions in new part 627 pertaining to the Insurance Corporation. The Board notes that many of the powers and procedures set forth in the existing regulations are restated in the proposed regulations for the Insurance Corporation. However, whereas the existing regulations contain separate procedures for banks and associations, these two sets of procedures would be combined into one set of procedures in part 627 that would apply to all types of institutions in conservatorship or receivership. Any distinctions in the provisions to account for the structural differences among institutions, such as the treatment of insured obligations in the case of a bank receivership, as made where appropriate.

I. Significant New Provisions and Revisions to Existing Requirements

A. Cancellation of Charter

The Board believes that it would be appropriate to cancel the charter of a System institution at the time an institution is placed in receivership, rather than at the end of the receivership as is currently done, and to provide that the Insurance Corporation automatically succeeds to all the rights, titles, and privileges of the failed institution. Cancellation of the charter at the outset of a receivership routinely occurs when a commercial bank or savings association is liquidated and a government agency—either the Resolution Trust Corporation (RTC) or the Federal Deposit Insurance Corporation (FDIC)—is appointed as receiver.

B. Auditing and Reporting Requirements

Existing regulations §§ 611.1168 and 611.1174 provide for an annual FCA examination of institutions in receivership and require the filing of call reports on a quarterly and an annual basis. It is the Board's view that, since the Insurance Corporation has its own independent statutory authority to examine institutions in receivership, FCA examinations are no longer necessary. Nonetheless, fairness dictates that the creditor, stockholders, and other interested parties be able to obtain periodic updates on the receivership. Therefore, the Board proposes to eliminate the annual examination requirement and replace it with a requirement that the receivership will be audited annually and that a report of the audit be made available to members of the public upon request.

The Board also proposes to eliminate the requirement for receiverships to file call reports with the FCA on a quarterly basis. Quarterly call reporting to the FCA and to stockholders may be unnecessarily expensive in the context of liquidating a receivership estate. Any significant financial information would be provided in the proposed annual report.

C. Priority of Claims

The priority of claims regulation has been revised to provide several new discretionary priorities for certain categories of claims. These provisions are modeled after the priority of claims regulations, originally adopted by the Federal Home Loan Bank Board and subsequently adopted by the FDIC, for savings association receiverships. Administrative expenses of the receiver would continue to have first priority.

The second, third, and fourth prorities are new. Second in priority would be administrative expenses of the institution incurred within 60 days of the commencement of the receivership, provided that the receiver determines the expenses to be reasonable and in the best interests of the receivership to pay. Such expenses would be limited to reimbursements to employees for business purposes and payments for the services of accountants, attorneys, appraisers, examiners, or management companies.

The third priority would be for claims for previously earned wages and salaries for employees that the receiver engages for a period of time after the commencement of the receivership, in order to help wind up the institution's affairs. The fourth priority would be for claims for wages and salaries of employees not engaged by the receiver to help wind up affairs. Payment of these two employee wage claim priorities would be within the discretion of the receiver, and three would be a limit of three thousand dollars ($3,000), which may be adjusted for inflation, on the amount that can be paid to a terminated employee not hired by the receiver.

The remaining categories of priority are identical to existing regulations.

The FCA Board believes that the new categories of priority payments, particularly the new authority pertaining to claims of the institution's employees, would give the receiver greater flexibility to carry out its receivership responsibilities more efficiently and effectively.

II. Section-by-Section Analysis

A. Part 627

The proposed regulations contain many of the provisons in existing subparts K, L, M, and N of part 611. The proposed regulations are in three subparts. Subpart A outlines general applicability of the new part and grounds for appointment or removal of conservators and receivers. Subpart B contains matters pertaining to receivers and receiverships, and subpart C contains matters pertaining to conservators and conservatorships.

Section 627.2700—General—Applicability

Proposed § 627.2700 would specify that the new part applies only to conservatorships and receiverships for which the Insurance Corporation is appointed as conservator or receiver. Existing conservatorships and receiverships would continue to be governed by applicable regulations in part 611.

Section 627.2705—Definitions

Proposed § 627.2705 contains definitions applicable to the new part. Paragraph (b) defines "Farm Credit institution(s)" or "institution(s)" and includes associations as well as the entities included in the definition of "bank" in existing § 611.1170(h). Paragraph (d) defines "Insurance Corporation" as the Farm Credit System Insurance Corporation. Paragraphs (c) and (e) specify that the references to the conservator in part 627 are references to the Insurance Corporation acting in such capacity.

Section 627.2710 [Reserved]

Proposed § 627.2710 is reserved for existing § 611.1156, which would be transferred to new party 627. Existing § 611.1156 sets forth the grounds for FCA appointment of a conservator or receiver. The existing regulation is being transferred to part 627 in order to preserve the outstanding proposal to amend the definition of insolvency in § 611.1156(b)(1). See 53 FR 43697, October 31, 1988.

Section 627.2715—Action for removal of conservator or receiver

Proposed § 627.2715 is similar to existing § 611.1158 and concerns actions that an institution's board may take to seek an order for the FCA Board to remove such conservator or receiver. If such order is granted, the cancellation of the institution's charter would be rescinded. The proposed regulation clarifies that this provision does not apply to voluntary liquidations.

Subpart B—Receivers and Receiverships

Subpart B includes proposed regulations §§ 627.2720 through 627.2765. These regulations pertain to receivers and receiverships and are a combination of the provisions in subpart L—Liquidations of Associations and subpart M—Liquidations of Banks of part 61.

Section 627.2720—Appointment of receiver

Proposed § 627.2720 combines provisions of existing regulations §§ 611.1160 and 611.1170, which pertain to the appointment of receivers for associations and banks, respectively. Provisions have been omitted pertaining to the role of an institution's board of directors in recommending a receiver for a voluntary liquidation and pertaining to termination of a receivership by the FCA Board. The paragraphs are reordered as appropriate. Paragraph (a) concerns the FCA Board approval over voluntary liquidations. The Board proposes to remove the requirement that the FCA consult with the district bank before placing an association in receivership.

Paragraph (b) combines §§ 611.1160(b) and 611.1170(b) of the existing regulations. Paragraph (c) is proposed to be modified from existing §§ 61.1160(e) and 61.1170(e) by omitting the agent relationship and the reference to the cancellation of the charter, removing the vesting of the receiver's responsibilities, and adding a provision that the Insurance Corporation shall be the sole entity to be appointed as conservator or receiver after January 5, 1993. As discussed in Part I above, the agent relationship between the Farm Credit Administration and the Insurance Corporation is not necessary. The vesting of the receivership responsibilities would be contained in other sections of the regulations, and the Board intends to rescind the charter of an institution in conjunction with appointing a receiver for the institution. Paragraph (d) combines existing §§ 611.1160(c) and 611.1170(d) but omits the provision regarding the receiver's acceptance of the appointment, since the Insurance Corporation will be the only receiver the Farm Credit Administration Board may appoint.

Paragraph (e) is new and directs a district bank to take steps to minimize the adverse effect of an association's liquidation on borrowers whose loans are purchased by or transferred to another System institution. This provision is mandated by section 4.12(a) and (c) of the Act.

Paragraph (f) combines existing §§ 611.1160(d) and 611.1170(c), omitting references to the suspension of directors and employees (which are covered elsewhere), and provides for cancellation of the charter upon the appointment of the receiver.

Section 627.2725—Powers and Duties of the Receiver

Proposed § 627.2725 is similar to §§ 611.1157(b), 611.1161, 611.1171 and also contains new provisions regarding and powers and duties of the receiver. Paragraph (a) outlines the general responsibilities of the receiver and incorporates new provisions that the receiver automatically succeeds to all rights, titles, powers and privileges of the institution with respect to the institution and assets; succeeds to the title to the books, records, and assets of any previous conservator or other legal custodian of such institution; and acts as the trustee of the receivership for the benefit of the creditors and stockholders of the institution. Paragraph (b) sets forth the specific powers with few modifications from existing § 611.1161(a)–(s), which is the model for this paragraph.

In addition, paragraph (b)(10) empowers the receiver to hire agents, and paragraph (b)(18) omits a provision authorizing the receiver to take action in the name of the institution in receivership. Since the Insurance Corporation will succeed to the rights, titles, and privileges of the institution, it may take action in its own name on behalf of the receivership.

Section 627.2730—Preservation of Equity

Proposed § 627.2730 combines §§ 611.1162 and 611.1172. Paragraph (d) from § 611.1172, which pertains to the authority of the Farm Credit System Financial Assistance Corporation (FAC) to purchase preferred stock, is omitted because the FAC will not have this authority after 1992.

Section 627.2735—Notice to Holders of Uninsured Accounts and Stockholders

Proposed § 627.2735 combines certain provisions from existing §§ 611.1163, 611.1166, and 611.1173, which require notices to be sent to holders of uninsured accounts and stockholders. Requirements for disclosure of information on borrowers' loans, including transfer and repayment, are omitted. Disclosure of such information could continue to be made by the receiver should the FCA or the receiver deems it to be necessary.

Section 627.2740—Creditors' Claims

Proposed § 627.2740 combines existing §§ 611.1164 and 611.1174 pertaining to creditors' claims. The provisions are similar to the existing regulations except that the receiver is not required to file a list of claims with the FCA. In addition, the provision in existing § 611.1174(b) regarding claims of bondholders and holders of similar obligations has been omitted. In its place is a provision that, if it is deemed necessary or appropriate, such holders would make claims in accordance with procedures formulated by the Insurance Corporation, after consultation with the FCA.

Sections 627.2745, 627.2750, and 627.2752—Priority of Claims

Proposed §§ 627.2745, 627.2750, and 627.2752 set forth the priorities of claims for associations, banks, and other Farm Credit institutions, respectively. The priorities of claims for associations and banks are similar to the existing provisions in §§ 611.1167 and 611.1174, with additional new provisions, explained above in Part I, pertaining to claims for certain business expenses and employee wages and salaries. The provisions in § 627.2752, which are new, provide priorities for System institutions other than banks and associations. The new provisions for other Farm Credit institutions are similar to the provisions for both associations and banks, as applicable.

Section 672.2755—Payment of Claims

Proposed § 627.2755 combines provisions of existing §§ 611.1167 and 611.1174 pertaining to the payment of claims, but omits references to purchase and assumption agreements that may be entered into by the receiver. Such action may be taken by the receiver pursuant to authorities granted in § 627.2725.

Section 627.2760—Inventory, Audit, and Reports

Proposed § 627.2760 combines certain provisions of existing §§ 611.1168 and 611.1175 pertaining to inventory, audit, and reports of receivership activities. As discussed above, the Board has decided to eliminate mandatory annual examinations in situations where the Insurance Corporation is appointed receiver, and also to eliminate most reporting requirements for all receiverships. The Board proposes to require an annual audit of receiverships.

Section 627.2765—Final Discharge and Release of the Receiver

Proposed § 627.2765 provides for the final discharge and release of the receiver. Provisions from existing

§§ 611.1169 and 611.1176 regarding the final report, the cancellation of the charter, examination requirements, storage of records, and approval of the receiver's accounts are omitted.

Subpart C—Conservators and Conservatorships

Subpart C contains proposed §§ 627.2770 through 627.2790 and sets forth regulations for conservators and conservatorships. These provisions are similar to those in subpart N of part 611. Certain conforming revisions are proposed that will be similar to the provisions in the receivership regulations for the Insurance Corporation. Provisions pertaining to the conservator's acceptance of the appointment, the status of the conservator as the FCA's agent, and the replacement of the conservator are omitted. Many of the supervisory provisions in existing subpart N of part 611 would not be retained in part 627.

Section 627.2770—Conservators

Proposed § 627.2770 sets forth general information about conservators and is similar to the relevant provisions of §627.1157(a)

Section 627.2775—Appointment of a Conservator

Proposed § 627.2775 is similar to existing § 611.1160. References to the conservator as agent of the FCA and replacement of the conservator are omitted.

Section 627.2780—Powers and Duties of Conservators

Proposed § 627.2780 is similar to existing § 611.1181 and sets forth the powers and duties of conservators, except that prior FCA approval requirements have been omitted.

Section 627.2785—Inventory, Examination, Audit, and Reports to Stockholders

Proposed § 627.2785 is similar to existing § 611.1182 pertaining to inventory, examination, audit and reports to stockholders, except that the proposed regulation does not specify the format by which the inventory is reported. An audit by a certified public accountant would be mandatory rather than optional, and the FCA prior approval of the accountant is omitted.

Section 627.2790—Final Discharge and Release of the Conservator.

Proposed § 627.2790 is similar to existing § 611.1183(a) pertaining to the final discharge and release of the conservator. The conservator would be required to provide a final report on its activities at the end of the conservatorship. The Board has determined that it is unnecessary to require by regulation an examination or audit to be performed at the end of a conservatorship, since the FCA Board is empowered by section 5.19(a) of the Act to determine when to require an examination of any institution.

B. Part 611

Section 611.1155—General

Section 611.1155 is proposed to be amended to specify that subparts K, L, M, and N will apply only to conservatorships and receiverships for which the Insurance Corporation is not appointed as conservator or receiver.

Section 611.1156—Grounds for Appointment of Conservators and Receivers

Existing § 611.1156, which sets forth the grounds for the appointment of a conservator or receiver of a Farm Credit institution, is proposed to be redesignated as § 627.2710 and amended to eliminate references in paragraph (a) to the Farm Credit System Assistance Board, which ceases existence at the end of 1992. It is anticipated that the final receivership regulations will not be adopted and become effective until 1993, at which time section 4.12(b) of the Farm Credit Act mandates that the Insurance Corporation will be the exclusive entity to be appointed as conservator or receiver of a Farm Credit institution. Since proposed part 627 would contain all provisions applicable to the appointment of the Insurance Corporation, it will be unnecessary to retain this regulation in part 611. Therefore, these regulations are proposed to be transferred to part 627. The currently outstanding proposal to amend § 611.1156(b)(1), as discussed above, would then be considered to be a proposal to amend § 627.2710(b)(1).

Sections 611.1166 and 611.1175—Inventory, Audit, and Reports to Stockholders

The Board proposes to amend these sections to remove existing reporting requirements for banks and associations in receivership, and to require the receiverships to make annual reports that will be available to the stockholders or interested members of the public. As discussed in Part I above, the reporting requirements would be revised to be the same as for receiverships governed by new part 627, but the existing examination requirements would not be revised for receiverships governed by part 611.

C. Part 615

The reference to existing § 611.1156 in § 615.5216 would be revised to reflect the proposed redesignation of that section as § 627.2710.

List of Subjects

12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

12 CFR Part 627

Agriculture, Banks, Banking, Claims, Rural areas.

For the reasons set forth in the preamble, parts 627, 611, and 615 of chapter VI, title 12 of the Code of Federal Regulations are proposed to be added and amended, respectively, as follows:

1. A new part 627 is added to read as follows:

PART 627—TITLE V CONSERVATORS AND RECEIVERS

Subpart A—General

Sec.
627.2700 General—applicability.
627.2705 Definitions.
627.2710 [Reserved]
627.2715 Action for removal of conservator or receiver.

Subpart B—Receivers and Receiverships

627.2720 Appointment of receiver.
627.2725 Powers and duties of the receiver.
627.2730 Preservation of equity.
627.2735 Notice to holders of uninsured accounts and stockholders.
627.2740 Creditors' claims.
627.2745 Priority of claims—associations.
627.2750 Priority of claims—banks.
627.2752 Priority of claims—other Farm Credit institutions.
627.2755 Payment of claims.
627.2760 Inventory, audit, and reports.
627.2765 Final discharge and release of the receiver.

Subpart C—Conservators and Conservatorships

627.2770 Conservators.
627.2775 Appointment of a conservator.
627.2780 Powers and duties of conservators.
627.2785 Inventory, examination, audit, and reports to stockholders.
627.2790 Final discharge and release of the conservator.

Authority: Secs. 4.2, 5.9, 5.10, 5.17, 5.51, 5.58 of the Farm Credit Act; 12 U.S.C. 2183, 2243, 2244, 2252, 2277a, 2277a–7.

Subpart A—General

§ 627.2700 General—applicability.

The provisions of this part shall apply to conservatorships and receiverships of Farm Credit institutions for which the Farm Credit System Insurance Corporation is appointed as conservator or receiver.

§ 627.2705 Definitions.

For purposes of this part the following definitions apply:

(a) *Act* means the Farm Credit Act of 1971, as amended.

(b) *Farm Credit institution(s)* or *institution(s)* means all associations, banks, service corporations chartered under title IV of the Act, the Federal Agricultural Mortgage Corporation, the Federal Farm Credit Banks Funding Corporation, and the Farm Credit System Financial Assistance Corporation.

(c) *Conservator* means the Farm Credit System Insurance Corporation acting in its capacity as conservator.

(d) *Insurance Corporation* means the Farm Credit System Insurance Corporation.

(e) *Receiver* means the Insurance Corporation acting in its capacity as receiver.

§ 627.2710 [Reserved]

§ 627.2715 Action for removal of conservator or receiver.

Upon the appointment of a conservator or receiver for a Farm Credit institution by the Farm Credit Administration Board pursuant to § 627.2710 of this part, the institution may, within 30 days of such appointment, bring an action in the United States District Court for the judicial district in which the home office of the institution is located, or in the United States District Court for the District of Columbia, for an order requiring the Farm Credit Administration Board to remove such conservator or receiver and, if the charter has been canceled, to rescind the cancellation of the charter. Notwithstanding any other provision of subpart B or C of this part, the institution's board of directors is empowered to meet subsequent to such appointment and authorize the filing of an action for removal. An action for removal may be authorized only by such institution's board of directors.

Subpart B—Receivers and Receiverships

§ 627.2720 Appointment of receiver.

(a) The board of directors of a Farm Credit institution, by the adoption of an appropriate resolution, may vote to liquidate the institution, and upon approval of the resolution by the Farm Credit Administration Board, the Board may, by order, place the Farm Credit institution in receivership.

(b) The Farm Credit Administration Board may, in its discretion, appoint ex parte and without notice a receiver for any Farm Credit institution in accordance with the grounds for appointment set forth in § 627.2710 of this part.

(c) The voluntary or involuntary liquidation of a Farm Credit institution shall be conducted by the receiver. After January 5, 1993, the Insurance Corporation shall be the sole entity to be appointed as receiver.

(d) Upon the appointment of the Insurance Corporation as receiver, the Chairman of the Farm Credit Administration Board shall immediately notify the institution, and its district bank in the case of an association, and shall publish a notice of the appointment in the **Federal Register**.

(e) In the case of the voluntary or involuntary liquidation of an association, the district bank shall institute appropriate measures to minimize the adverse effect of the liquidation on those borrowers whose loans are purchased by or otherwise transferred to another System institution.

(f) Upon the issuance of the order placing a Farm Credit institution into liquidation, the Farm Credit Administration Board shall cancel the institution's charter. All rights, privileges, and powers of the board of directors, officers, and employees of the institution shall be vested exclusively in the receiver.

§ 627.2725 Powers and duties of the receiver.

(a) *General.* (1) Upon appointment as receiver, the receiver shall take possession of a Farm Credit institution pursuant to 12 U.S.C. 2183 and § 627.2710 of this part in order to wind up the business operations of such institution, collect the debts owed to the institution, liquidate its property and assets, pay its creditors, and distribute the remaining proceeds to stockholders. The receiver shall exercise all powers necessary to the efficient termination of an institution's operation as provided for in this subpart.

(2) Upon its appointment as receiver, the receiver automatically succeeds to—

(i) All rights, titles, powers and privileges of the institution and of any stockholder, officer, or director of such institution with respect to the institution and the assets of the institution; and

(ii) Title to the books, records, and assets of any previous conservator or other legal custodian of such institution.

(3) The receiver of a Farm Credit institution serves as the trustee of the receivership estate and conducts its operations for the benefit of the creditors and stockholders of the institution.

(b) *Specific powers.* The receiver may:

(1) Exercise all powers as are conferred upon the officers and directors of the institution under law and the former charter, articles, and bylaws of the institution.

(2) Take any action the receiver considers appropriate or expedient to carry on the business of the institution during the process of liquidating its assets and winding up its affairs.

(3) Extend credit to existing borrowers as necessary to honor existing commitments and to effectuate the purposes of the receivership.

(4) Borrow such sums as necessary to effectuate the purposes of the receivership.

(5) Pay any sum the receiver deems necessary or advisable to preserve, conserve, or protect the institution's assets or property or rehabilitate or improve such property and assets.

(6) Pay any sum the receiver deems necessary or advisable to preserve, conserve, or protect any asset or property on which the institution has a lien or in which the institution has a financial or property interest, and pay off and discharge any liens, claims, or charges of any nature against such property.

(7) Investigate any matter related to the conduct of the business of the institution, including, but not limited to, any claim of the institution against any individual or entity, and institute appropriate legal or other proceedings to prosecute such claims.

(8) Institute, prosecute, maintain, defend, intervene, and otherwise participate in any legal proceeding by or against the institution or in which the institution or its creditors or members have any interest, and represent in every way the institution, its members, and creditors.

(9) Employ attorneys, accountants, appraisers, and other professionals to give advice and assistance to the receivership generally or on particular matters, and pay their retainers, compensation, and expenses, including litigation costs.

(10) Hire any agents or employees necessary for proper administration of the receivership.

(11) Execute, acknowledge, and deliver, in person or through a general or

specific delegation, any instrument necessary for any authorized purpose, and any instrument executed under this paragraph shall be valid and effective as if it had been executed by the institution's officers by authority of its board of directors.

(12) Sell for cash or otherwise any mortgage, deed of trust, chose in action, note contract, judgment or decree, stock, or debt owed to the institution, or any property (real or personal, tangible or intangible).

(13) Purchase or lease office space, automobiles, furniture, equipment, and supplies, and purchase insurance, professional, and technical services necessary for the conduct of the receivership.

(14) Release any assets or property of any nature, regardless of whether the subject of pending litigation, and repudiate, with cause, any lease or executory contract the receiver considers burdensome.

(15) Settle, release, or obtain release of, for cash or other consideration, claims and demands against or in favor of the institution or receiver.

(16) Pay out of the assets of the institution, all expenses of the receivership and all costs of carrying out or exercising the rights, powers, privileges, and duties as receiver.

(17) Pay out of the assets of the institution all approved claims of indebtedness in accordance with priorities established in this subpart.

(18) Take all actions and have such rights, powers, and privileges as are necessary and incident to the exercise of any specific power.

(19) Take such actions, and have such additional rights, powers, privileges, immunities, and duties as the Farm Credit Administration Board authorizes by order or by amendment of any order or by regulation.

(c) The receiver of a bank is also empowered to pay claims of holders of notes, bonds, debentures, or other obligations issued by the bank under 12 U.S.C. 2153 (c) or (d) in accordance with procedure specified by the Insurance Corporation pursuant to § 627.2740(d) of this part.

§ 627.2730 Preservation of equity.

(a) Except as provided for upon final distribution of the assets of the institution, no capital stock, participation certificates, equity reserves, or other allocated equities of an institution in receivership shall be issued, allocated, retired, sold, distributed, transferred, assigned, or applied against any indebtedness of the owners of such equities.

(b) Immediately upon the adoption of a resolution by its board of directors to liquidate voluntarily the institution, the capital stock, participation certificates, equity reserves, and allocated equities of the institution shall not be issued, allocated, retired, sold, distributed, transferred, assigned, or applied against any indebtedness of the owners of such equities until such time as the stockholders of the institution or the Farm Credit Administration Board disapproves such resolution. In the event the resolution is approved by the stockholders of the institution and the Farm Credit Administration Board, and the institution is placed in receivership, the provisions of paragraph (a) of this section shall govern further disposition of the equities of the institution.

(c) Notwithstanding paragraphs (a) and (b) of this section, eligible borrower stock shall be retired in accordance with section 4.9A of the Act.

§ 627.2735 Notice to holders of uninsured accounts and stockholders.

(a) Upon placing an institution in liquidation, the receiver shall immediately notify every borrower who has an uninsured account (voluntary or involuntary) that the funds ceased earning interest when the receivership was instituted and will be applied against the outstanding indebtedness of any loans of such borrower unless, within 15 days of such notice, the borrower directs the receiver to otherwise apply such funds in the manner provided for in existing loan documents.

(b) As soon as practicable after the receiver takes possession of the institution, the receiver shall notify, by first class mail, each holder of stock and participation certificates of the following matters:

(1) The number of shares such holder owns;

(2) That the stock and other equities of the institution may not be retired or transferred until the liquidation is completed, whereupon the receiver will distribute a liquidating dividend, if any, to the owners of such equities; and

(3) Such other matters as the receiver or the Farm Credit Administration deems necessary.

§ 627.2740 Creditors' claims.

(a) The receiver shall publish promptly a notice to creditors to present their claims against the institution, with proof thereof, to the receiver by a date specified in the notice, which shall be not less than 90 calendar days after the first publication. The notice shall be republished approximately 30 days and 60 days, respectively, after the first publication. The receiver shall promptly send, by first class mail, a similar notice to any creditor shown on the institution's books at the creditor's last address appearing thereon. Claims filed after the specified date shall be disallowed, except as the receiver may approve them for full or partial payment from the institution's assets remaining undistributed at the time of approval.

(b) The receiver shall allow any claim that is timely received and proved to the receiver's satisfaction. The receiver may disallow in whole or in part any creditor's claim or claim of security, preference, or priority which is not proved to the receiver's satisfaction or is not timely received and shall notify the claimant of the disallowance and reason therefor. Sending the notice of disallowance by first class mail to the claimant's address appearing on the proof of claim shall be sufficient notice. The disallowance shall be final, unless, within 30 days after the notice of disallowance is mailed, the claimant files a written request for payment regardless of the disallowance. The receiver shall reconsider any claim upon the timely request of the claimant and may approve or disapprove such claim in whole or in part.

(c) Creditors' claims that are allowed shall be paid by the receiver from time to time, to the extent funds are available therefor and in accordance with the priorities established in this subpart and in such manner and amounts as the receiver deems appropriate. In the event the institution has a claim against a creditor of the institution, the receiver shall offset the amount of such claim against the claim asserted by such creditor.

(d) The claims of holders of notes, bonds, debentures, or other obligations issued by a bank under 12 U.S.C. 2153 (c) or (d) shall be made, if deemed necessary or appropriate, in accordance with procedures formulated by the Insurance Corporation. In the formulation of such procedures, the Insurance Corporation shall consult with the Farm Credit Administration.

§ 627.2745 Priority of claims—associations.

The following priority of claims shall apply to the distribution of the assets of an association in liquidation:

(a) All costs, expenses, and debts incurred by the receiver in connection with the administration of the receivership.

(b) Administrative expenses of the association, provided that such expenses were incurred within 60 days prior to the receiver's taking possession,

and that such expenses shall be limited to reasonable expenses incurred for services actually provided by accountants, attorneys, appraisers, examiners, or management companies, or reasonable expenses incurred by employees which were authorized and reimbursable under a pre-existing expense reimbursement policy, that, in the opinion of the reciever, are of benefit to the receivership, and shall not include wages or salaries of employees of the association.

(c) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver by an employee of the association whom the receiver determines it is in the best interest of the receivership to engage or retain for a reasonable period of time.

(d) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver, up to a maximum of three thousand dollars ($3,000) per person as adjusted for inflation, by an employee of the association not engaged or retained by the receiver. The adjustment for inflation shall be the percentage by which the Consumer Price Index (as prepared by the Department of Labor) for the calendar year preceding the appointment of the receiver exceeds the Consumer Price Index for the calendar year 1992.

(e) All claims for taxes.

(f) All claims of creditors, including the district bank, which are secured by assets or equities of the association in accordance with applicable Federal or State law.

(g) All claims of the district bank other than those provided for in paragraph (f) of this section, based on the financing agreement between the association and the bank, including interest accrued before and after the appointment of the receiver, minus any setoff for stock or other equity of the district bank owned by the association made in accordance with this paragraph or paragraph (f) of this section. Prior to making such setoff, the district bank must obtain the approval of the Farm Credit Administration Board for the retirement of such equities.

(h) All claims of general creditors.

§ 627.2750 Priority of claims—banks.

The following priority of claims shall apply to the distribution of the assets of a bank in liquidation:

(a) All costs, expenses, and debts incurred by the receiver in connection with the administration of the receivership.

(b) Administrative expenses of the bank, provided that such expenses were incurred within 60 days prior to the receiver's taking possession, and that such expenses shall be limited to reasonable expenses incurred for services actually provided by accountants, attorneys, appraisers, examiners, or management companies, or reasonable expenses incurred by employees which were authorized and reimbursable under a pre-existing expense reimbursement policy, that, in the opinion of the receiver, are of benefit to the receivership, and shall not include wages or salaries of employees of the bank.

(c) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver by an employee of the bank whom the receiver determines it is in the best interest of the receivership to engage or retain for a reasonable period of time.

(d) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver, up to a maximum of three thousand dollars ($3,000) per person as adjusted for inflation, by an employee of the bank not engaged or retained by the receiver. The adjustment for inflation shall be the percentage by which the Consumer Price Index (as prepared by the Department of Labor) for the calendar year preceding the appointment of the receiver exceeds the Consumer Price Index for the calendar year 1992.

(e) All claims for taxes.

(f) All claims of creditors which are secured by specific assets or equities of the bank, with priority of conflicting claims of creditors within this same class to be determined in accordance with priorities of applicable Federal or State Law.

(g) All claims of holders of bonds issued by the bank individually to the extent such are collateralized in accordance with 12 U.S.C. 2154.

(h) All claims of holders of consolidated and Systemwide bonds and claims of the other Farm Credit banks arising from their payments pursuant to 12 U.S.C. 2155.

(i) All claims of general creditors.

§ 627.2752 Priority of claims—other Farm Credit institutions.

The following priority of claims shall apply to the distribution of the assets of an institution, other than a bank or association, in liquidation:

(a) All costs, expenses, and debts incurred by the receiver in connection with the administration of the receivership.

(b) Administrative expenses of the institution, provided that such expenses were incurred within 60 days prior to the receiver's taking possession, and that such expenses shall be limited to reasonable expenses incurred for services actually provided by accountants, attorneys, appraisers, examiners, or management companies, or reasonable expenses incurred by employees which were authorized and reimbursable under a pre-existing expense reimbursement policy, that, in the opinion of the receiver, are of benefit to the receivership, and shall not include wages or salaries of employees of the institution.

(c) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver by an employee of the institution whom the receiver determines it is in the best interest of the receivership to engage or retain for a reasonable period of time.

(d) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver, up to a maximum of three thousand dollars ($3,000) per person as adjusted for inflation, by an employee of the institution not engaged or retained by the receiver. The adjustment for inflation shall be the percentage by which the Consumer Price Index (as prepared by the Department of Labor) for the calendar year preceding the appointment of the receiver exceeds the Consumer Price Index for the calendar year 1992.

(e) All claims for taxes.

(f) All claims of creditors which are secured by specific assets or equities of the institution, with priority of conflicting claims of creditors within this same class to be determined in accordance with priorities of applicable Federal or State law.

(g) All claims of general creditors.

§ 627.2755 Payment of claims.

(a) All claims of each class described in § 627.2745, § 627.2750, or § 627.2752 of this part, respectively, shall be paid in full, or provisions shall be made for such payment, prior to the payment of any claim of a lesser priority. If there are insufficient funds to pay in full any class of claims described in § 627.2745, distribution on such class shall be on a pro rata basis.

(b) Following the payment of all claims, the receiver shall distribute the remainder of the assets of the institution to the owners of stock, participation certificates, and other equities in accordance with the priorities for

impairment set forth in the bylaws of the institution.

(c) Notwithstanding this section, elgible borrower stock shall be retired in accordance with section 4.9A of the Act.

§ 627.2760 Inventory, audit, and reports.

(a) As soon as practicable after taking possession of an institution, the receiver shall make an inventory of the assets and laibilities as of the date possession was taken.

(b) The institution in receivership shall be audited on an annual basis by a certified public acountant selected by the receiver.

(c) With respect to each receivership, the receiver shall make an annual accounting or report, as appropriate, available upon request to any stockholder of the institution in receivership or any member of the public, with a copy provided to the Farm Credit Administration.

(d) Upon the final liquidation of the institution, the receiver shall send to each stockholder of record a report summarizing the disposition of the assets of the receivership and claims against the receivership.

§ 627.2765 Final discharge and release of the receiver.

After the receiver has made a final distribution of the assets of the receivership, the receivership shall be terminated and the receiver shall be finally discharged and released.

Subpart C—Conservators and Conservatorships

§ 627.2770 Conservators.

(a) The Insurance Corporation shall be appointed as conservator by the Farm Credit Administration Board pursuant to section 4.12 of the Act and § 627.2710 of this part to take possession of an institution in accordance with the terms of the appointment. Upon appointment, the conservator shall direct the institution's further operation until the Farm Credit Administration Board decides whether to place the institution into receivership. Upon correction or resolution of the problem or condition that provided the basis for the appointment and upon a determination by the Farm Credit Administration Board that the institution can be returned to normal operations, the Farm Credit Administration Board may turn the institution over to such management as the Farm Credit Administration Board may direct.

(b) A conservator shall exercise all powers necessary to continue the ongoing operations of the institution, to conserve and preserve the institution's assets and property, and otherwise protect the interests of the institution, its stockholders, and creditors as provided in this subpart.

§ 627.2775 Appointment of a conservator.

(a) The Farm Credit Administration Board may appoint ex parte and without notice a conservator for any Farm Credit institution provided that one or more of the grounds for appointment as set forth in § 627.2710 exist.

(b) Upon the appointment of a conservator, the Chairman of the Farm Credit Administration shall immediately notify the institution and, in the case of an association, the district bank, and notice of the appointment shall be published in the **Federal Register**. As soon as practicable after the conservator takes possession of the institution, the conservator shall notify, by first class mail, each holder of stock and participation certificates in the institution of the establishment of the conservatorship and shall describe the effect of the conservatorship on the institution's operations and on the borrower's loan and equity holdings.

(c) Upon the issuance of the order placing a Farm Credit institution in conservatorship, all rights, privileges, and powers of the members, board of director, officers, and employees of the institution are vested exclusively in the conservator.

(d) The conservator is responsible for conserving and preserving the assets of the institution and continuing the ongoing operations of the institution until the conservatorship is terminated by order of the Farm Credit Administration Board.

(e) The Board may, at any time, terminate the conservatorship and direct the conservator to turn over the institution's operations to such management as the Board may designate, in which event the provisions of this subpart shall no longer apply.

§ 627.2780 Powers and duties of conservators.

(a) The conservator of an institution serves as the trustee of the institution and conducts its operations for the benefit of the creditors and stockholders of the institution.

(b) The conservator may, with respect to Farm Credit institutions, exercise the powers that a receiver of an institution may exercise under any of the provisions of § 627.2725(b) of this part, except § 627.2725(b)(2) and (b)(17). In interpreting those paragraphs for purposes of this section, the terms "conservator" and "conservatorship" shall be read for "receiver" and "receivership."

(c) The conservator may extend credit to new and existing borrowers as is necessary to the continuing operation of the institution and to effectuate the purposes of the conservatorship.

(d) The conservator may also take any other action the conservator considers appropriate or expedient to the continuing operation of the institution.

§ 627.2785 Inventory, examination, audit, and reports to stockholders.

(a) As soon as practicable after taking possession of a Farm Credit institution the conservator shall make an inventory of the assets and liabilities of the institution as of the date possession was taken. One copy of the inventory shall be filed with the Farm Credit Administration.

(b) The institution in conservatorship shall be examined by the Farm Credit Administration in accordance with section 5.19 of the Act. The institution shall also be audited by a certified public accountant in accordance with part 621 of this chapter.

(c) Each institution in conservatorship shall prepare and file with the Farm Credit Administration financial reports in accordance with the requirements of part 621 of this chapter. The conservator of the institution shall provide the certification required in § 621.12 of this chapter.

(d) Each institution in conservatorship shall prepare and issue published financial reports in accordance with provisions of part 620 of this chapter, and the certifications and signatures of the board of directors or management provided for in §§ 620.2(b), 620.2(c), and 620.5m(2) of this chapter shall be provided by the conservator of the institution.

§ 627.2790 Final discharge and release of the conservator.

At such time as the conservator shall be relieved of its conservatorship duties, the conservator shall file a report on the conservator's activities with the Farm Credit Administration. The conservator shall thereupon be completely and finally released.

PART 611—ORGANIZATION

2. The authority citation for part 611 is revised to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 5.9, 5.10, 5.17, 7.0–7.13, 8.5(e) of the Farm Credit Act; 12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2243, 2244, 2252, 2279a–2279f–1, 2279aa–5(e); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638.

Subpart K—Appointment of Conservators and Receivers

§ 611.1155 [Amended]

3. Section 611.1155 is amended by adding two sentences to the end of the existing text to read "Subparts K, L, M, and N of this part shall not apply to conservatorships or receiverships for which the Farm Credit System Insurance Corporation is appointed as conservator or receiver. Such conservatorships and receiverships shall be governed by part 627 of this chapter."

§ 611.1156 [Redesignated]

4. Section 611.1156 is redesignated as § 627.2710, and paragraph (a) of newly designated § 627.2710 is revised to read as follows:

§ 627.2710 Grounds for appointment of conservators and receivers.

(a) Upon a determination by the Farm Credit Administration Board of the existence of one or more of the factors set forth in paragraph (b) of this section, with respect to any bank, association, or other institution of the System, the Farm Credit Administration Board may, in its discretion, appoint a conservator or receiver for such institution. After January 5, 1993, the Insurance Corporation shall be the sole entity to be appointed as conservator or receiver.

* * * * *

§ 611.1157 [Amended]

5. Section 611.1157 is amended by removing the reference "§ 611.1156 of this part" and adding in its place, the reference "§ 627.2710 of this chapter" in paragraphs (a) and (b).

Subpart L—Liquidation of Associations

§ 611.1160 [Amended]

6. Section 611.1160 is amended by removing the reference "§ 611.1156 of this part" and adding in its place, the reference "§ 627.2710 of this chapter" in paragraphs (b) and (g).

7. Section 611.1168 is amended by removing paragraphs (c), (d), and (e); by redesignating paragraph (f) as new paragraph (d); and by adding new paragraph (c) to read as follows:

§ 611.1168 Inventory, examination, audit, and reports to stockholders.

* * * * *

(c) The receiver shall make an annual accounting or report, as appropriate, available upon request to any stockholder of the association in receivership or any member of the public.

* * * * *

Subpart M—Liquidation of Banks

§ 611.1170 [Amended]

8. Section 611.1170 is amended by removing the reference "§ 611.1156 of this part" and adding in its place, the reference "§ 627.2710 of this chapter" in paragraphs (b) and (g).

9. Section 611.1175 is amended by removing paragraphs (c), (d), and (e); by redesignating paragraph (f) as new paragraph (d); and by adding new paragraph (c) to read as follows:

§ 611.1175 Inventory, examination, audit, and reports to stockholders.

* * * * *

(c) The receiver shall make an annual accounting or report, as appropriate, available upon request to any stockholder of the bank in receivership or any member of the public.

* * * * *

Subpart N—Conservators and Conservatorships of Banks and Associations

§ 611.1180 [Amended]

10. Section 611.1180 is amended by removing the reference "§ 611.1156" and adding in its place, the reference "§ 627.2710 of this chapter" in paragraph (a).

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

11. The authority citation for part 615 is revised to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26 of the Farm Credit Act; 12 U.S.C. 2013, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6; sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart H—Capital Adequacy

§ 615.5216 [Amended]

12. Section 615.5216 is amended by removing the reference "§ 611.1156" and adding in its place, the reference "§ 627.2710 of this chapter" in paragraph (b).

Dated: May 27, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92–12821 Filed 6–2–92; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[PS–1–89]

RIN 1545–AM88

Limitation on Passive Activity Losses and Credits; Definition of Activity

AGENCY: Internal Revenue Service, Treasury.

ACTION: Change of the date, time, and location of public hearing on proposed regulations; extension of time to submit requests to speak and outlines of oral comments.

SUMMARY: This document provides notice of a change of the date, time, and location of the public hearing, and an extension of time to submit requests to speak and outlines of oral comments for the public hearing on proposed regulations relating to the definition of an activity for purposes of applying the limitations on passive credits.

DATES: The public hearing will be held on Thursday, September 3, 1992, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Thursday, August 13, 1992.

ADDRESSES: The public hearing will be held in room 2615, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (PS–1–89), room 5228, Washington, DC 20044.

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

SUPPLEMENTARY INFORMATION: A notice of public hearing appearing in the Federal Register for Friday, May 15, 1992 (57 FR 20805), announced, among other things, that a public hearing relating to proposed regulations under section 469 of the Internal Revenue Code would be held on Friday, July 24, 1992, beginning at 1:30 p.m., in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC, and that requests to speak and outlines of oral comments should be received by Monday, July 6, 1992. The proposed regulations were published in the Federal Register for Friday, May 15, 1992 (57 FR 20802).

There has been a change in the date, time, and location of the public hearing, and an extension of time to submit requests to speak and outlines of oral comments. The hearing will be held on Thursday, September 3, 1992, at 10 a.m., in room 2615, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washingotn, DC. The requests to speak and outlines of oral comments must be received on Thursday, August 13, 1992.

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

In all other respects the details regarding the hearing will remain the same.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

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

[FR Doc. 92-12895 Filed 6-2-92; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 24

[Notice No. 740; Ref: T.D. ATF-299; Notice Nos. 543 and 584]

RIN: 1512-AA89

Materials and Processes Authorized for the Production of Wine and for the Treatment of Juice, Wine and Distilling Material; Also, Revised Alcohol Tolerance on Labels of Wine Under 7 Percent Alcohol by Volume (90F-260T)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice solicits comment from winemakers, consumers and other interested parties as to whether, pursuant to the provisions of section 5382 of the Internal Revenue Code of 1986, the use of certain materials and processes is acceptable in "good commercial practice" in the production, cellar treatment, and finishing of wine. If these new materials and processes are found to be acceptable, then a final rule will be published adding these new materials to the wine treating material regulations.

ATF is also proposing to revise 27 CFR 24.257(a)(4) to change the alcohol tolerance which is allowed on wine labels where the wine contains less than 7 percent alcohol by volume.

DATES: Written comments to this notice must be received by July 6, 1992.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221 (*Attn: Notice No. 740*). Copies of the proposed regulation and any written comments received will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, room 6300, 650 Massachusetts Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert White or Jim Hunt, Coordinators, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Ave., NW., Washington, DC 20226 (202-927-8230).

SUPPLEMENTARY INFORMATION:

Background

Since 1981, ATF has been reviewing the wine treating materials and processes which were previously prescribed in title 27, Code of Federal Regulations, part 240, subpart ZZ, and which are currently prescribed in title 27, Code of Federal Regulations, part 24, subpart L. This review was undertaken in an effort to revise the regulations in this subpart to include newly developed materials and processes in use by the wine industry and to delete materials and processes which are considered to be no longer acceptable in "good commercial practice" among wine producers, such as materials and processes no longer in use in the U.S. or elsewhere. Notice No. 543, published in the Federal Register of September 24, 1984 (49 FR 37527), proposed the addition or deletion of, and, in some instances, revised usage levels for, materials and processes intended for use in the production and cellar treatment of wine. In the same issue of the Federal Register in which Notice No. 543 appeared, ATF published T.D. ATF-182 (49 FR 37510). This Treasury decision promulgated regulations which updated the materials and processes authorized for use in the production and treatment of wine, juice, and distilling material, established a procedure for providing agency sanction of experimentation with newly developed materials and processes, and revised the procedure for adding, altering, or deleting materials and processes employed in the treatment of wine.

Following the issuance of Notice No. 543, ATF published in the Federal Register of March 7, 1986 (51 FR 8098), a notice (Notice No. 584) proposing extensive revisions to the regulations in part 240 for the production of wine. The purpose of the proposed revisions was to simplify, to modernize, and, where possible, to liberalize the wine regulations to achieve a reduced regulatory burden and a resource savings for the regulated wine industry and the Federal Government. Notice No. 584 also proposed the recodification of the regulations in part 240 into a new part 24.

On June 19, 1990, ATF published in the Federal Register (55 FR 24974) a Treasury decision (T.D. ATF-299) which totally revised the wine regulations and recodified part 240 into a new part 24. As part of this overall recodification, the Treasury decision revised the wine treating material regulations in §§ 240.1051, 240.1051a, and 240.1051b and recodified these sections into 24.246, 24.247, and 24.248. These regulation changes updated the lists of materials and processes authorized for use in the production of wine and in the treatment of wine, juice and distilling material. The preamble of the Treasury decision contained a listing of the commenters to Notice Nos. 543 and 584 and a detailed summary of the comments received with the exception of the comments on sulfites. Further action concerning the maximum permissible level of sulfites in wine was not taken due to the proposal (53 FR 51065) by the Food and Drug Administration (FDA) to lower the maximum level of sulfiting agents in wine from 350 parts per million (ppm) to 275 ppm. ATF is still awaiting final action by FDA before proceeding further in this area.

Since T.D. ATF-299 was published, there have been requests to use several new wine treating materials and processes as well as requests to change the limitations on some currently approved wine treating materials and processes. ATF is also considering delisting several wine treating materials because we do not feel that these materials are currently being used by wine producers.

ATF is issuing this notice of proposed rulemaking in order to obtain public comment on the following specific proposals:

(1) Delisting of ammonium carbonate as a yeast nutrient for the fermentation of wine;

(2) Delisting of the proteolytic enzymes to reduce or to remove heat labile proteins;

(3) Reduction of the pH limitation from 3.0 to 2.5 for ion exchange;

(4) Increasing the residual level of copper which can be contained in finished wine from 0.2 to 0.5 part per million when copper sulfate is added to

wine to remove hydrogen sulfide and/or mercaptans;

(5) Allowing the use of dimethyl dicarbonate (DMDC) in finished wine in the process of being bottled at a level not to exceed 200 parts per million; also allowing the use of DMDC in bulk wine being held for bottling between the time of the final "bottle polish" filtration and the actual filling of the bottles if the total quantity of DMDC in the wine at no time exceeds 200 ppm;

(6) Allowing the use of polyvinylpolypyrrolidone (PVPP) to remove excess color from wine and/or juice at a level not to exceed 60 pounds of PVPP per 1,000 gallons of wine or juice. All PVPP must be filtered out of the treated wine;

(7) Allowing the use of tartaric acid to reduce the pH of juice and/or wine where ameliorating material is used in the production of grape wine;

(8) Delisting of carbohydrase (*alpha*-Amylase), carbohydrase (*beta*-Amylase), and carbohydrase (Glucoamylase, Amyloglucosidase) enzymes to convert starches to fermentable carbohydrates;

(9) Delisting the use of hydrogen peroxide to remove color from the juice of red and black grapes;

(10) Allowing the use of pasteurized milk to clarify white wine;

(11) Allowing the use of low Brix juice produced by thermal gradient processing in the production of wine;

(12) Allowing the additional use of calcium carbonate (with or without calcium salts or tartaric and malic acids) to reduce excess natural acidity in high acid juice prior to or during fermentation;

(13) Allowing the additional use of potassium carbonate and/or potassium bicarbonate to reduce excess natural acidity in high acid juice prior to or during fermentation;

(14) Allowing the unrestricted use of oxygen and compressed air in juice and wine rather than restricting their use to baking or maturing wine and aeration of sherry as currently authorized in § 24.246.

In addition, ATF wants comments concerning its proposal to revise 27 CFR 24.257(a)(4) to change the alcohol tolerance which is allowed on wine labels where the wine contains less than 7 percent alcohol by volume. The new tolerance would be plus or minus .75 percent by volume rather than the currently stated 10 percent of the alcohol content stated on the label. During the comment period, members of the wine industry, consumers and other interested parties have the opportunity to submit comments regarding these specific proposals. In regard to the wine treating material (and processes) proposals, it will be particularly useful to obtain comments on whether these wine treatments are being used in the U.S. or elsewhere and whether such treatments are in accordance with good commercial practice. The review of the comments received in response to this notice will be a factor in ATF's decision whether or not to hold a public hearing.

Ammonium carbonate

Ammonium carbonate is currently listed in 27 CFR § 24.246 as a yeast nutrient to facilitate fermentation of wine. ATF believes that ammonium phosphate is the yeast nutrient most commonly used among winemakers and that ammonium carbonate is no longer being used by wine producers. ATF desires to know whether ammonium carbonate is currently being used in the production of wines in the United States or elsewhere. Accordingly, ATF seeks comment on whether ammonium carbonate is currently in use as a wine treating material.

Proteolytic Enzymes

In 1982, U.S. wine producers were encouraged by research academicians and enologists whose initial studies (e.g., Sears, A.E., "Specific Characteristics of Various Proteases," Proceedings of the 6th Wine Industry Technical Seminar, Santa Rosa, CA, 1980) showed promising results from the use of proteolytic enzymes in the production of wine. Based on this early information, ATF listed the proteolytic enzymes in T.D. ATF-182. Section 24.246 currently authorizes the use of proteolytic enzymes to reduce or to remove heat labile proteins. However, since publication of the Treasury decision in September of 1984, ATF has received information that proteolytic enzymes are no longer in use in the U.S. wine industry. ATF requests comment as to whether the proteolytic enzymes are being used by winemakers in the U.S. or elsewhere for the intended technical effect of reducing or removing heat labile proteins.

Ion Exchange

One commenter to Notice No. 584 suggested that the limitation for reduction of pH by ion exchange be changed from the currently prescribed pH of 3.0 to pH 2.5. The reason given for requesting this change was that "many times it is necessary to go below pH 3 to remove potassium." ATF requests comment as to whether this suggestion should be incorporated into existing regulations for the use of ion exchange in the treatment of wine and juice in the United States. In addition, ATF requests comment on whether this change should be allowed for all wines and juices or whether it should be restricted to other than *Vitis vinifera* wines and juices only.

Copper Sulfate

Regulations in 27 CFR 24.246 prescribe a residual level limitation of 0.2 part per million of copper in wine when copper sulfate is added to wine to remove hydrogen sulfide and/or mercaptans. This limitation does not take into consideration the level of copper present in untreated wine prior to the addition of copper sulfate. Studies of the use of copper sulfate in the treatment of wine (e.g., Thoukis, George, Chemistry of Wine Stabilization: A Review, IN: Chemistry of Winemaking, A.D. Webb, Ed., American Chemical Society, Washington, D.C., 1974) reveal that the treated wine is stable with residual copper levels not exceeding 0.5 part per million. An increase from 0.2 to 0.5 part per million in residual copper, if authorized, would provide winemakers added flexibility in the use of copper sulfate and would eliminate the need to employ additional treatment to reduce the residual copper to 0.2 part per million. ATF requests comment regarding whether an increase in residual copper to 0.5 part per million is acceptable in good commercial practice among winemakers.

Dimethyl Dicarbonate (DMDC)

In June of 1988, ATF received an application from a winery to use dimethyl dicarbonate (DMDC) in all standardized wines. The winery application stated that DMDC has proven useful in wine as a cold beverage sterilant effective against yeast, bacteria and molds. DMDC acts by inactivating enzymes in the micro-organisms present in the wine. At least 96 percent of the remaining DMDC hydrolyzes in the wine, forming principally carbon dioxide and methanol.

The application further stated that compared to other stabilization methods, such as flash pasteurization and chemical methods, DMDC is more effective in controlling problematic micro-organisms and does not lead to the development of resistant strains. Additionally, DMDC has no effect on the taste, color or odor of wine, unlike flash pasteurization or other chemical preservatives. Furthermore, the application stated that the use of DMDC will reduce the amount of sulfites present in wine because of the synergistic action of DMDC and sulfur dioxide.

The winery application was submitted under former 27 CFR 240.1053 (Application for use of new treating material or process). This section of regulations has since been recodified and can now be found in 27 CFR 24.250. All required information was submitted with the application except for documentary evidence of the U.S. Food and Drug Administration's (FDA's) approval of the material for its intended purpose in the amounts proposed for the particular treatment contemplated.

In the October 21, 1988, issued of the Federal Register, 53 FR 41325, FDA published a final rule amending the food additive regulations by adding 21 CFR 172.133 to provide for the safe use of DMDC as a yeast inhibitor in wines. The effective date was October 21, 1988.

FDA's final rule states, in part, that DMDC (CAS Reg. No. 4525-33-1) may be safely used in wine in accordance with the following conditions:

(a) The additive meets the following specifications:

(1) The additive has a purity of not less than 99.8 percent as determined by the titration method specified in 21 CFR 172.133(a)(1).

(2) The additive contains not more than 2,000 parts per million (0.2 percent) dimethyl carbonate as determined by a method entitled "Gas Chromatography Method for Dimethyl Carbonate Impruity in Dimethyl Dicarbonate," which is incorporated by reference in accordance with 5 U.S.C. 552(a).

(b) The additive is used or intended for use as an inhibitor of yeast in wine under normal circumstances of bottling where the viable yeast count has been reduced to 500 per milliliter or less by current good manufacturing practices such as flash pasteurization or filtration. The additive may be added to wine in an amount not to exceed 200 parts per million (ppm).

Upon receiving notification of FDA's approval of DMDC for use in wine, ATF approved the winery application to use DMDC in all standardized wines subject to all FDA restrictions on its use. We will consider applications to use DMDC from other wineries on a case by case basis until final action is taken on DMDC after reviewing the comments received regarding this notice. It it is determined, after reviewing the comments, that the use of DMDC in wine under normal circumstances of bottling at a level not to exceed 200 ppm is acceptable in good commercial practice among winemakers, then we will add DMDC to the list of authorized wine treating materials in 27 CFR 24.246.

ATF has received additional inquiries from the wine industry concerning other possible uses of DMDC. These uses include adding DMDC to bulk wine being held for bottling between the time of the final "bottle polish" filtration and the actual filling of the bottles, adding DMDC to fruit juice and/or wine coolers, and adding DMDC to dealcoholized wine (less than ½ percent of alcohol) and/or low alcohol wine (less than 7 percent alcohol).

ATF contacted FDA concerning these requests and received the following reply. FDA has no objection to the use of DMDC to treat wines being held in tanks between the time of the final "bottle polish" filtration and the actual filling of the bottles as long as the requirements in 21 CFR 172.133 are complied with.

Furthermore, as long as the addition of DMDC to wine in a closed storage tank is the last processing step before bottling, FDA has determined that this use of DMDC constitutes "normal circumstances of bottling" as specified in § 172.133. Although the wine to be treated with DMDC in this manner must be finished and must not undergo any additional manufacturing processes, FDA has determined that the finished wine treated with DMDC may be blended with another wine as long as the 200 parts per million (ppm) overall limitation on the addition of DMDC to wine is not exceeded.

In regard to the use of DMDC in wine coolers, dealcoholized wine (below ½ percent alcohol) and low alcohol wine (below 7 percent alcohol), FDA stated that these uses are not permitted at the present time. FDA stated that their approval of DMDC in wine only applied to standard wine with an alcohol content of 7 percent by volume or above. FDA indicated that the reason their approval only applies to this type of wine is because it was the only type of wine for which data was supplied by the petitioners when requesting approval of the use of DMDC in wine. FDA indicated that these other uses of DMDC may very well be approved once the proper food additive petition, with supporting data, is filed with FDA for these other types of wine or wine products.

ATF cannot approve the use of DMDC in wine coolers and low alcohol wine until FDA approves the use of DMDC in these products. Proprietors who wish to experiment with the use of DMDC in these products should file an application with the Regional Director (Compliance) under the provisions of 27 CFR 24.249 setting forth in detail the experimentation to be conducted and the facilities and equipment to be used. In regard to dealcoholized wine and/or fruit juice, only FDA approval is required.

Polyvinylpolypyrrolidone (PVPP)

ATF has received an application from a winery to use polyvinylpolypyrrolidone (PVPP) to remove excess color from "blush" type wines. The application requested that up to 60 pounds of PVPP per 1,000 gallons (7.16 g/L) of wine be authorized for use. The winery submitting the application feels that PVPP has an advantage over some currently approved color removal methods in that it has less effect on the vinous character of the wine than some of the other methods. The winery states that PVPP is a well known material which leaves no treatment residues in the wine, as it is completely insoluble in wine. PVPP simply attracts the undesirable components of the wine to itself. The winery states that all PVPP will be filtered out of the treated wine.

Before and after samples of "blush" wine treated with up to 60 pounds of PVPP per 1,000 gallons of wine were analyzed by the ATF laboratory. The laboratory evaluation data revealed no significant change in the wine other than the visible color change and the reduction of the spectrophotometric measurement resulting from the PVPP treatment. The analysis also indicated that all PVPP has been removed from the treated wine.

After analyzing the application, including the laboratory results of the before and after samples of the treated wine, ATF approved the winery application to use up to 60 pounds of PVPP per 1,000 gallons of wine for the purpose of removing color from red or black wine or red or black juice. Our approval was contingent on the winery following the prescribed conditions listed in Food and Drug Administration (FDA) regulations at 21 CFR 173.50 with the exception that PVPP may be used as a stabilizing agent and to remove color from red or black wine and red or black juice rather than just as a clarifying agent.

We will consider applications from other wineries to use PVPP to remove color from juice/wine on a case by case basis until final action is taken on PVPP after thoroughly reviewing the comments received regarding this notice. If it is determined, after reviewing the comments, that the use of PVPP to remove color from juice/wine is acceptable in good commercial practice among winemakers at a maximum level of 60 pounds per 1,000 gallons of juice/wine, then we will add this additional use of PVPP to the list of authorized wine treating materials in 27 CFR 24.246.

Use of Acid to Correct Natural Deficiencies (Section 24.182)

ATF is proposing to revise § 24.182(a) to allow the use of tartaric acid to reduce the pH of juice or wine where amelioration material is used in the production of grape wine. This would provide wineries with an alternative method to reduce pH if they do not wish to use the ion exchange method. Currently, wineries cannot add tartaric acid to their juice or wine if they are going to ameliorate their wine. This proposal, if adopted as a final rule, would allow wineries who have ameliorated, or who are going to ameliorate, their wine to use tartaric acid to lower their pH. However, if tartaric acid is used to reduce the pH, the fixed acid level of the juice shall be measured prior to the addition of any tartaric acid to determine the maximum quantity of ameliorating material allowed. ATF would like comments on whether the use of tartaric acid to reduce the pH of grape juice/wine where ameliorating material is used is in accordance with good commercial practice. We also request comment on what limit should be placed on the reduction of pH of the juice/wine if this proposal is adopted. We are tentatively proposing that the pH cannot be reduced below 3.0 when adding tartaric acid to ameliorated grape juice or wine (we are proposing a 2.5 limit for ion exchange). We would also like comments on whether a 3.0 limit would be consistent with good commercial practice and whether there should be a different limit for *Vitis vinifera* wine versus wine made from other grapes. ATF is also proposing to revise § 24.182(b) to make this paragraph clearer. Several persons have questioned the meaning of § 24.182(b) in regard to the quantity of acids which can be added either prior to or during fermentation. Some proprietors have interpreted the first sentence of § 24.182(b) to mean that any amount of acids can be added to juice/wine prior to or during fermentation. These proprietors have pointed out that the limitation on the quantity of fixed acid in the finished wine is not stated until the second sentence which prescribed the types of acids which can be added to wine after fermentation is completed. The limitation prescribed is that the fixed acid level of the finished wine (calculated as tartaric acid) may not exceed 9.0 grams per liter. An exception to this limitation for high solids wine is also stated in this paragraph. Prior regulations on this subject may have been clearer because, at that time, a comma was used to divide what is now the first two sentences of § 24.182(b). Since in prior regulations these first two sentences were just one extremely long sentence, it was easier to see that the limitation on the quantity of fixed acid in the finished wine included any acid added to correct natural deficiencies whether the acid was added prior to, during, or after fermentation. Since it appears that § 24.182(b) is ambiguous as currently written, ATF proposes to revise this paragraph to make clear that all acid added to wine to correct natural deficiencies, whether added before, during, or after fermentation, is to be included when determining whether the fixed acid level of the finished wine (calculated as tartaric acid) exceeds the prescribed limitation.

Carbohydrase Enzymes

ATF requests comments on whether the following carbohydrase enzymes should be removed from the wine treating material list in 27 CFR 24.246: *alpha*-Amylase, *beta*-Amylase, Glucoamylase, and Amyloglucosidase. currently, these enzymes are listed both in the wine treating material list and in 27 CFR 24.247 (Materials authorized for the treatment of distilling material). ATF would like to know whether these enzymes are being used by wine producers in the treatment of wine/juice for the stated purpose of converting starches to fermentable carbohydrates or whether these enzymes are only being used in the treatment of distilling material. If it is determined that these carbohydrase enzymes are only being used in the treatment of distilling material, then these enzymes will be removed from 27 CFR 24.246, and only retained in 27 CFR 24.247.

Hydrogen Peroxide

In T.D. ATF-299, ATF stated that hydrogen peroxide was not being removed from the list of authorized wine treating materials at that time because it was still being used by a few wineries to remove color from the juice of red and black grapes. However, we stated that ATF continues to have some reservations about the chemical changes resulting from the use of hydrogen peroxide to decolorize juice. One problem which has been brought up by several industry members is that hydrogen peroxide is a strong oxidizing agency which will add carbonyl groups, convert ketones and aldehydes to acids, break chains, interrupt resonance structures of many phenolic molecules, and give rise to quinoid structures which can quickly polymerize. In addition, the Wine Institute, which represents hundreds of wineries, does not consider the use of hydrogen peroxide to remove color from the juice of red and black grapes to be in accordance with good commercial practice.

Therefore, we are again requesting comments from all interested parties concerning whether the use of hydrogen peroxide to decolorize grape juice is considered to be in accordance with good commercial practice. Updated information will be particularly useful since the last comments we received on the use of hydrogen peroxide to decolorize the juice of red and black grapes were in the spring of 1985.

Pasteurized Milk

ATF has approved several applications from wineries under 27 CFR 24.249 to experiment with the use of pasteurized milk as a fining agent for white wine. We have allowed white wine to be fined with up to 2.0 liters of pasteurized milk per 1,000 liters of wine (0.2 percent V/V). Within this limitation, we have allowed the wineries to sell the treated wine or to use it in any commercial purpose. We have received several favorable responses from the wineries concerning their experimentation with pasteurized milk to fine white wine. We request comments from all interested persons concerning whether the use of pasteurized milk to fine white wine is considered to be in accordance with good commercial practice.

Thermal Gradient Processing Applied to Grape Juice

ATF has approved a winery application to apply thermal gradient technology, currently used for wine, to grape juice. The process involves taking a typical Brix juice and separating it into a low sugar fraction and a high sugar fraction. Both the low Brix and high Brix fractions will be used in wine production. While the high Brix fraction has a Brix level usually associated with concentrate, the winery stated that it is simply high Brix juice. The winery stated the high Brix juice would not be diluted with water for use in wine production.

The ATF Laboratory conducted tests, including organoleptic tests, on the low Brix juice and determined that a significant distinction could be made between low Brix juice produced by thermal gradient technology and low Brix juice produced by adding water to the juice. Consequently, we approved the winery application.

ATF is proposing to expand the use of thermal gradient processing in 27 CFR 24.248 to include the production of low Brix juice for use in wine production. We request comment concerning whether the use of thermal gradient

processing to produce low Brix juice is considered to be in accordance with good commercial practice when the juice is used in the production of wine.

Calcium Carbonate, Potassium Carbonate and/or Potassium Bicarbonate to Reduce Acidity in Juice

Currently, calcium carbonate (with or without calcium salts of tartaric and malic acids) and potassium carbonate and/or potassium bicarbonate are authorized by 27 CFR 24.246 to be used to reduce the excess natural acids in high acid wine. Recently, we received a request to use these wine treating materials earlier in the process by adding them, separately or in combination, to juice for the purpose of reducing the excess natural acidity in high acid juice prior to or during fermentation. Some winemakers state that the earlier in the process you reduce the acid, the better off you are. The current limitation on these wine treating materials states that the natural or fixed acids in the wine shall not be reduced below 5 parts per thousand (5 g/L). If the proposal on calcium carbonate and potassium carbonate and/or potassium bicarbonate is adopted, this limitation will remain the same except that it will apply to juice as well as to wine. We would appreciate receiving comments on this proposal from all interested parties. If it is determined, after reviewing the comments, that the use of these wine treating materials in juice to reduce the acidity level is acceptable in accordance with good commercial practice, then we will add these additional uses of these materials to the wine treating material list in 27 CFR 24.246.

Oxygen and Compressed Air

Currently, the wine treating material regulations at § 24.246 authorize the use of oxygen and compressed air in the baking or maturing of wine and the aeration of sherry. The "Reference or limitation" column of this regulation states that oxygen and compressed air may be used provided it does not cause changes in the wine other than those occurring during the usual storage in wooden cooperage over a period of time. We have recently been asked by a winemaker to allow the use of oxygen and compressed air in juice in order to oxidize the pigments in the juice so the pigments can be more easily removed in order to produce "blush" type wines. This request has led us to reevaluate the purpose for the restrictions on the use of oxygen and compressed air in § 24.246. We request comment from all interested parties concerning whether the current restrictions on oxygen and compressed air should be removed. If, after reviewing the comments, it appears that the restrictions on oxygen and compressed air in § 24.246 currently serve no useful purpose, we will eliminate the restrictions and simply state that oxygen and compressed air can be used in juice and wine.

Revised Alcohol Tolerance on Labels of Wines under 7 Percent Alcohol by Volume

The Federal Alcohol Administration Act (FAA) regulations contain labeling requirements for wines with an alcohol content of 7 percent by volume and above. The requirements for labeling wines under 7 percent alcohol by volume are in the Internal Revenue Code (IRC) wine regulations. During the revision of the IRC wine regulations, ATF determined that there was no specific provision for an alcohol tolerance on labels for wines under 7 percent by volume. The tolerances in alcohol content provided for in former 27 CFR 240.579 were those allowed under 27 CFR part 4, and, therefore, were not applicable to wine having less than 7 percent alcohol by volume. A notice of proposed rulemaking (Notice No. 584) for the revision and recodification of the IRC wine regulations was published in the Federal Register on March 7, 1986. In that notice, ATF proposed an alcohol label tolerance for wines under 7 percent alcohol by volume of plus or minus 10 percent of the alcohol content stated on the label. At the time, wines under 7 percent alcohol by volume were wine cooler products with an alcohol content of 5 to 7 percent, which would have allowed for an alcohol tolerance of .5 to .7 percent by volume. One comment was submitted on this proposal stating that it might be preferable to have an alcohol tolerance of 1 percent, but the comment seemed to be more of an opinion rather than an objection to the wine label alcohol tolerance proposed.

On June 19, 1990, ATF published T.D. ATF-299 in the Federal Register adopting the proposal in Notice No. 584 to allow a tolerance of plus or minus 10 percent of the alcohol content stated on the label for wines under 7 percent alcohol by volume. Soon after the final rule was published, we were advised that the alcohol tolerance for wines under 7 percent alcohol by volume was too low and it would be very difficult to meet this tolerance for wine cooler products at 5 percent alcohol by volume and nearly impossible for the new light wine cooler products with an alcohol content of 2 to 3 percent by volume. A petition was submitted to allow a label tolerance for alcohol content of 1 percent by volume.

After carefully considering the evidence submitted by the petitioner and other information concerning an alcohol tolerance for wines under 7 percent, we agree that the alcohol tolerance of 27 CFR 24.257(a)(4) allowing a plus or minus 10 percent of the alcohol content stated on the label for wines under 7 percent alcohol by volume should be increased.

However, since wines 7 to 14 percent alcohol by volume in the FAA Act regulations are allowed an alcohol tolerance of 1.5 percent by volume from that stated on the label, we believe an alcohol tolerance of 1 percent for wines under 7 percent alcohol by volume may be considered too high. Therefore, we are proposing and requesting comment on a label alcohol tolerance of .75 percent for wines under 7 percent alcohol by volume.

Public Participation

Comments to this notice may address any one or all of the proposals. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date. ATF will not recognize any material or comment as confidential. Comments may be disclosed to the public. Any material which the respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The names of commenters are not exempt from disclosure.

Written comments will be available for public inspection during normal business hours at the following address: ATF Reading Room, Office of Public Affairs and Disclosure, room 6300, 650 Massachusetts Ave., NW., Washington, DC.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. A

copy of this proposed regulation has been submitted to the Administrator of the Small Business Administration for comment on the impact of such regulation on small business pursuant to section 7805(f) of the Internal Revenue Code of 1986.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

Drafting Information

The principal author of this document is Robert L. White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms. ATF Wine Technical Advisor Richard M. Gahagan and ATF Chemist Randolph H. Dyer have provided significant technical assistance in the evaluation and review of data pertinent to the preparation of this document.

List of Subjects in 27 CFR Part 24

Administrative practice and procedure, Authority delegations, Claims, Electronic funds transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Transportation, Warehouse, Wine and vinegar.

Authority and Issuance

27 CFR part 24-Wine is amended as follows:

PART 24—WINE

Par. 1. The authority citation for part 24 continues to read as follows:

Authority: 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356–5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2. Section 24.182 is amended to revise paragraphs (a) and (b) to read as follows:

§ 24.182 Use of acid to correct natural deficiencies.

(a) *General.* Acids of the kinds occurring in grapes or other fruit (including berries) may be added within the limitations of § 24.246 to juice or wine in order to correct natural deficiencies; however, no acid may be added to juice or wine which is ameliorated to correct natural deficiencies except that in the production of grape wine, tartaric acid my be used to reduce the pH of the juice or wine. If tartaric acid is used to correct the pH of grape juice or wine, the fixed acid level of the juice shall be measured prior to the addition of any tartaric acid to determine the maximum quantity of ameliorating material allowed. In addition, when using tartaric acid to reduce the pH of ameliorated grape juice or wine, the pH cannot be reduced below 3.0.

(b) *Grape wine.* Tartaric acid or malic acid, or a combination of tartaric acid and malic acid, may be added prior to or during fermentation, to grapes or juice from grapes. In addition, after fermentation is completed, citric acid, fumaric acid, malic acid, lactic acid or tartaric acid, or a combination of two or more of these acids, may be added to correct natural deficiencies. However, the use of these acids, either prior to, during or after fermentation, may not increase the fixed acid level of the finished wine (calculated as tartaric acid) above 9.0 grams per liter. In cases where the wine contains 8.0 or more grams of total solids per 100 milliliters of wine, acids may be added to the extent that the finished wine does not contain more than 11.0 grams per liter of fixed acid (calculated as tartaric acid).

* * * * *

Par. 3. Section 24.246 is amended in the table by removing the entry for ammonium carbonate, carbohydrase (*alpha*-Amylase), carbohydrase (*beta*-Amylase), carbohydrase (Glucoamylase, Amyloglucosidase), protease (general), protease (Bromelin), protease (Ficin), protease (Papain), protease (Pepsin), protease (Trypsin) and hydrogen peroxide; by revising the entry for calcium carbonate, copper sulfate, oxygen and compressed air, polyvinylpolypyrrolidone (PVPP), potassium carbonate and/or potassium bicarbonate and tartaric acid; and by adding the entry for dimethyl dicarbonate and milk (pasteurized) to read as follows:

§ 24.246 Materials authorized for treatment of wine and juice.

* * * * *

Materials	Use	Reference or limitation
*	*	*
Calcium carbonate (with or without calcium salts of tartaric and malic acids).	To reduce the excess natural acids in high acid wine, and in juice prior to or during fermentation.	The natural or fixed acids shall not be reduced below 5 g/L. 21 CFR 184.1069 and 184.1099, and 184.1191 (GRAS).
	A fining agent for cold stabilization	The amount used shall not exceed 30 lbs/1000 gals. (3.59 g/L) of wine.
*	*	*
Copper sulfate	To remove hydrogen sulfide and/or mercaptans from wine.	The quantity of copper sulfate added (calculated as copper) shall not exceed 0.5 part copper per million parts of wine (0.5 mg/L) with the residual level of copper not to be in excess of 0.5 part per million (0.5 mg/L). 21 CFR 184.1261 (GRAS).
*	*	*
Dimethyl Dicarbonate	To sterilize and to stabilize standard wine	Must meet the conditions prescribed by FDA in 21 CFR 172.133. DMDC may be added to standard wine containing between not less than 7 percent and not more than 24 percent alcohol in an amount not to exceed 200 parts per million (ppm).
*	*	*

Materials	Use	Reference or limitation
Milk (pasteurized)	Fining agent for white wine	The amount used shall not exceed 2.0 liters of pasteurized milk per 1,000 liters of white wine (0.2 percent V/V).
* * * *	* * * *	* * *
Oxygen and compressed air	May be used in juice and wine	None.
Polyvinylpolypyrrolidone (PVPP)	To clarify and to stabilize wine	The amount used shall not exceed 6.7 lbs/1,000 gals. (0.8 g/L) of wine and shall be removed during filtration. PVPP may be used in a continuous or batch process. The amount used to clarify and stabilize wine shall be included in the total amount of PVPP used to remove color from red or black wine/juice. 21 CFR 173.50.
	To remove color from red or black wine or juice	The amount used to treat the wine, including the juice from which the wine was produced, shall not exceed 60 lbs/1,000 gals. (7.19 g/L) and shall be removed during filtration. PVPP may be used in a continuous or batch process. The finished wine shall retain vinous character and shall have color of not less than 0.6 Lovibond in a one-half inch cell or not more than 95 percent transmittance per **AOAC Method 11.003-11.004 (14th Ed.). 21 CFR 173.50.
* * * *	* * * *	* * *
Potassium carbonate and/or potassium bicarbonate.	To reduce excess natural acidity in wine, and in juice prior to or during fermentation.	The natural or fixed acids shall not be reduced below 5 parts per thousand (5 g/L). 21 CFR 184.1619 and 184.1613 (GRAS).
* * * *	* * * *	* * *
Tartaric acid	To correct natural acid deficiencies in grape juice/wine and to reduce the pH of grape juice/wine where ameliorating material is used in the production of grape wine.	Use as prescribed in 27 CFR 24.182 and 24.192. 21 CFR 184.1099 (GRAS).
* * * *	* * * *	* * *

Par. 4. Section 24.248 is amended in the table by revising item 6 under the "reference or limitation" heading for ion exchange and by revising the entry for thermal gradient processing to read as follows;

§ 24.248 Processes authorized for the treatment of wine, juice, and distilling material.

* * * * *

Processes	Use	Reference or limitation
* * * *	* * * *	* * *
Ion exchange	* * *	* * *
		6. Treatment does not reduce the pH of the juice or wine to less than pH 2.5 nor increase the pH to more than pH 4.5.
* * * *	* * * *	* * *
Thermal gradient processing	To separate wine into low alcohol and high alcohol wine fractions;.	The fractions derived from such processing shall retain vinous character. Such treatment shall not increase the alcohol content of the high alcohol fraction to more than 24 percent by volume. The addition of water other than that originally present in the wine prior to processing will render standard wine "other than standard."
* * * *	* * * *	* * *
	To separate juice into low Brix and high Brix juice fractions.	The low Brix fraction derived from such processing may be used in wine production. The high Brix fraction derived from such processing shall not be diluted with water for use in wine production.
* * * *	* * * *	* * *

Par. 5. Section 24.257(a)(4) is revised to read as follows:

§ 24.257 Labeling wine containers.

(a) * * *

(4) The alcohol content as percent by volume or the alcohol content stated in accordance with 27 CFR part 4. For wine with less than 7 percent alcohol by volume stated on the label there is allowed an alcohol content tolerance of plus or minus .75 percent by volume; and

* * * * *

Dated: Jan. 22, 1992.

Daniel R. Black,

Director.

Approved : May 4, 1992.

Peter K. Nunez,

Assistant Secretary, (Enforcement).

[FR Doc. 92-12515 Filed 6-2-92; 8:45 am]

BILLING CODE 4810-13-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8-92-15]

Drawbridge Operation Regulations; Bayou Des Allemands, LA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is considering a change to the regulation governing the operation of the swing span bridge on LA 631, across Bayou Des Allemands, mile 13.9, at Des Allemands, in St. Charles Parish, Louisiana, by requiring at least four hours advance notice for an opening of the draw. The present regulation requires that the draw shall open on signal; except that from 9 p.m. to 5 a.m. the draw shall open on signal if at least 12 hours notice is given.

This action will provide relief to the bridge owner and should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before July 6, 1992.

ADDRESSES: Comments should be mailed to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130-3396. The Comments and other materials referenced in this notice will be available for inspection and copying in room 1313 at this address. Normal office hours are between 8 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, at the address given above, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in the light of comments received.

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and LT J.A. Wilson, project attorney.

Discussion of Proposed Regulation

Vertical clearance of the bridge in the closed to navigation position is 5 feet above high tide and 8 feet above low tide. Navigation through the bridge consists of barge tows, commercial fishing boats and recreational craft, primarily fishing vessels. Data submitted by LDOTD show that during the one year period beginning April 1991 and ending March 31, 1992 the monthly average was 13 openings; approximately 1 opening every three days.

Considering the few vessels that pass the bridge, the Coast Guard feels that vessel operators should be able to give the bridge owner four hours notice for a bridge opening with little or no expense or inconvenience to themselves.

Federalism Implications

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

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034: February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that the proposed regulation should create very little or no economic hardship or inconvenience to vessels using the waterway. In addition, mariners requiring the bridge openings are repeat users of the waterway and giving the bridge owner advance notice should involve little or no additional expense to them. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This proposed rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.5 of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking document.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposed to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to reads as follows:

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

2. Part 117 is amended by revising § 117.439 to read as follows:

§ 117.439 Des Allemands Bayou.

The draw of the S631 bridge, mile 13.9 at Des Allemands, shall open on signal if at least four hours notice is given.

Dated: May 14, 1992.

T.D. Fisher,

Captain, U.S. Coast Guard Commander, 8th Coast Guard Dist. Acting.

[FR Doc. 92-12912 Filed 6-2-92; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

CGD1-92-037

Safety Zone: Mount Hope Bay, RI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary safety zones in Mount Hope Bay, in the vicinity of Fall River, MA, for activities associated with Fall River Celebrates America 1992, to take place July 17-19, 1992. Safety zones are proposed for two events during the weekend: For the tall ships parade on Friday, July 17, 1992, and for the fireworks display the evening of July 18, 1992. These safety zones are needed to promote the safe navigation of vessels in Mount Hope Bay in anticipation of an increased volume of vessel traffic due to spectator craft attending the events. The safety zones will serve to limit access to the areas in which each event takes place, in order to protect the event participants, as well as spectator craft and other vessels in the vicinity, from the inherent dangers of these marine events.

DATES: Comments must be received on or before July 1, 1992.

ADDRESSES: Comments should be mailed to the Commanding Officer, Marine Safety Office Providence, John O'Pastore Federal Building, Providence, RI, 02903-1790, or may be delivered to room 217 at the above address between 7:30 a.m. and 4 p.m., Monday through Friday, except federal holidays. The telephone number is (401) 528-5335. The Marine Safety Office maintains a public docket for this rulemaking. Comments will become part of this docket and will

be available for inspection or copying at room 217, Marine Safety Office Providence.

FOR FURTHER INFORMATION CONTACT: LTJG Tina Burke at (401) 528-5335.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (GCD1 92-037) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Office Providence at the address under "ADDRESSES." If it determines that the opportunity for oral presentation will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this document are LTJG Tina Burke, Project Manager, LCDR J. Astley, Project Counsel, District Legal Office.

Background and Purpose

Fall River Celebrates America is a festival held annually in Fall River, MA, which entails several events, both waterside and landside, throughout an entire weekend. This year's celebration will be held July 17-19, 1992. The celebration is an important event for the town of Fall River, as it draws numerous people to the area for the weekend, increasing tourism and economically benefitting the town.

The Coast Guard received applications for marine events for Fall River Celebrates America 1992 on March 26, 1992. After review of the event applications, the Coast Guard proposes to establish temporary safety zone regulations in Mount Hope Bay for the period July 17-18, 1922. These safety zones are necessary to place a measure of control over vessel movements in the vicinity of the various events in order to ensure the safety of event participants, spectator craft, and other vessels transiting the waterway. They are necessary in light of the limited size of the affected waterway and the expected number of spectator craft (more than 200 for each event), which will greatly increase the congestion in the waterway and create a larger potential for marine accidents. The waterside events include a parade of tall ships through Mount Hope Bay to the Fall River State Pier and a fireworks display in Mount Hope Bay. Marine Safety Office Providence distributed a Marine Safety Information Bulletin to persons likely to be affected by the proposed safety zone regulations on April 6, 1992. The Bulletin explained the celebration, the schedule of events for the weekend, and the Coast Guard's intention to establish safety zones around particular events. The proposed regulations provide specific guidance on safety zones that will be in effect of the period specified.

Chronologically, the events planned for this period are as follows:

(1) Tall ships parade, July 17, 1992. The parade of tall ships provides the kick-off for the Fall River Celebrates America festival. It is significant because it allows the public to view the tall ships under sail before they moor in Fall River for the weekend. The parade will gear up public interest for the upcoming weekend of events. Approximately five tall ships are expected to participate in the parade. These ships will muster just north of the Mount Hope Bridge and will transmit the Mount Hope Bay Channel, from the Mount Hope Bay Junction Lighted Gong Buoy "MH" to the Fall River State Pier. The parade is scheduled to take place between 4:30 p.m. and 6:30 p.m. The Coast Guard plans to establish a moving safety zone, from 200 yards ahead of the lead vessel in the parade, to 100 yards astern of the last vessel in the parade, and 200 yards abeam of each parading vessel. This safety zone will be in effect for the duration of the parade until each vessel is safety moored. This zone is needed to protect the tall ships, recreational boaters, spectators, and other vessel traffic from damage due to collision, or personal injury to persons onboard these vessels, that is likely when tall ships maneuver among other vessels in constricted waters.

Implementation of this zone will close the affected portions of Mount Hope Bay to navigation by deep draft vessels while the zone is in effect. Entry into the moving safety zone is prohibited unless authorized by the Captain of the Port (COTP) Providence.

(2) *Fireworks, July 18, 1992.* On the evening of July 18, 1992, Fall River Celebrates America will be sponsoring a fireworks display that will take place in Mount Hope Bay, in the vicinity of Mount Hope Bay Channel Buoy 17. Two fireworks barges will be anchored in approximate positions (41-42-42N, 71-09-52W) and (41-42-38N, 71-09-55W), from which the fireworks will be initiated. The fireworks are scheduled to take place between 9:30 p.m. and 10:15 p.m. The Coast Guard will establish a safety zone in Mount Hope Bay to encompass the area of water within a three hundred (300) yard radius around each fireworks barge. The safety zone will be in effect between 9:30 p.m. and 10:15 p.m., for the duration of the fireworks display. This safety zone is needed to protect fireworks barges and attending tugs, spectator craft, and other vessels or personnel in the area, from the hazard associated with explosive-laden barges and the display itself. Implementation of this zone will close the affected portion of the Mount Hope Bay Channel to navigation by deep draft vessels while the zone is in effect.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. The Coast Guard expects the economic impact of this proposal to be minimal because these regulations will be in effect only for small segments of a two day period, specifically for two hours on Friday, July 17, 1992, and for one hour on Saturday, July 18, 1992. The fact that the time periods for the safety zones are limited, as well as the advance notice that was given to potentially affected entities concerning the events and proposed safety zones, allow the impacted vessel traffic to schedule transits and operations around the planned activities with minimal hardship. The entities most likely to be affected are large commercial ships and barges in or outbound from Fall River terminals, fishing vessels, and recreational vessels. Only a limited number of large commercial vessels, approximately four or five, transit the impacted waters per week. Because of their limited number and the advance notice given, these vessels will not be heavily impacted. Fishing and recreational vessels have shallow drafts such that they are able to transit the waters around the regulated areas. These vessels have alternate routes available outside the main shipping channel and outside the safety zones in which they may transit or conduct operations. Furthermore, in the case of the tall ships parade safety zone,

vessels will be able to transit the area as soon as the moving zone passes. The impact that this safety zone will have on the waterway will be very short-lived.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons outlined in the REGULATORY EVALUATION, the Coast Guard expects the impact to be minimal on all entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant impact on a substantial number of small entities. If, however, you think that your business qualifies as a small entity and that this proposal will have a significant economic impact on your business, please submit a comment (see "**ADDRESSES**") explaining why you think your business qualifies and in what way and to what degree this proposal will economically affect your business.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concludes that under section 2.B.2.C of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "**ADDRESSES.**"

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulations

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is proposed to be amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-6, and 160.5.

2. A new § 165.T01-037-1 is added to read as follows.

§ 165.T01-037-1 Safety Zone: Mount Hope Bay, RI.

(A) *Location.* The following area is a safety zone: While transiting Mount Hope Bay, RI: a moving safety zone around the Fall River Celebrates America tall ships parade, extending a distance of two hundred (200) yards ahead of the lead vessel in the parade to one hundred (100) yards astern of the last vessel in the parade, and two hundred (200) yards abeam of each parading vessel. The zone of enforcement will be initiated at Mount Hope Bay Junction Lighted Gong Buoy MH (LL 17330), the start of the parade, and will end at the State Pier, Fall River, MA, after each parading vessel is safely moored.

(b) *Effective date.* This section is effective at 4:30 p.m. on July 17, 1992, and will terminate at 6:30 p.m. on July 17, 1992, unless terminated sooner by the Coast Guard Captain of the Port Providence.

(c) *Regulations.* The general regulations governing safety zones contained in § 165.23 apply.

3. A new § 165.T01-037-2 is added to read as follows:

§ 165.T01-037-2 Safety Zone: Mount Hope Bay, RI

(a) *Location.* The following area is a safety zone: The area within a three hundred (300) yard radius around each of two fireworks barges, anchored in approximate positions (41-42-42N, 71-09-52W), and (41-42-38N, 71-09-55W).

(b) *Effective date.* This section is effective while the Fall River Celebrates America fireworks are in progress, between the hours of 9:30 p.m. and 10:15 p.m. on July 18, 1992, unless terminated sooner by the Captain of the Port Providence.

(c) *Regulations.* The general regulations governing safety zones contained in § 165.23 apply.

Dated: May 20, 1992.

H. D. Robinson,

Captain, U.S. Coast Guard, Captain of the Port, Providence, RI.

[FR Doc. 92-12811 Filed 6-2-92; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180 and 185

[PP 0E3902 and FAP 0H5599/P545; FRL-4070-1]

RIN 2070-AC18

Pesticide Tolerances for Lambda-Cyhalothrin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that tolerances be established for residues of the insecticide lambda-cyhalothrin in or on the food commodity dried hops, that tolerances be increased for the insecticide lambda-cyhalothrin in or on the raw agricultural commodities fat of cattle, goats, horses, and sheep and milk. The proposed regulations to establish and increase maximum permissible levels for residues of the insecticide were requested pursuant to petitions submitted by ICI Agricultural Products.

DATES: Comments, identified by the document control number [PP 0E3902 and FAP 0H5599/P545], must be received on or before July 2, 1992.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m.,

Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 15, Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, 703-305-6100.

SUPPLEMENTARY INFORMATION: On August 21, 1990, ICI Agricultural Products, Wilmington, DE 19897, submitted pesticide petition (PP) 0E3902 proposing to increase a tolerance under section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a(e)) in or on the raw agricultural commodities fat of cattle, goats, horses, and sheep at 0.02 part per million (ppm) and milk fat at 0.25, and establish a food additive regulation under section 409(b) of the FFDCA (21 U.S.C. 348(b)) for the insecticide lambda-cyhalothrin, [1 α (S*),3 α(Z)]-(±)-cyano(3-phenoxyphenyl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethycyclopropanecarboxylate, in or on the food commodity dried hops imported from Germany at 10.0 ppm. The data submitted in the petition and other relevant material have been evaluated.

The toxicology data considered in support of the tolerance include a 12-month oral toxicity study in dogs with a no-observed-effect level (NOEL) of 0.5 mg/kg/day; 24-month rat and mouse chronic feeding/oncogenicity studies with systemic NOEL's of 2.5 mg/kg/day and 15 mg/kg/day with no oncogenic effects observed at dose levels up to and including 12.5 mg/kg/day and 75 mg/kg/day, the highest dose levels tested for rats and mice, respectively. No developmental effects were observed in rats and rabbits at dose levels up to and including 15 mg/kg/day (rats) and 30 mg/kg/day (rabbits) (the highest dose levels tested). The following genotoxicity tests were negative: a gene mutation assay (Ames), a mouse micronucleus assay (other genotoxicity assays), an in vitro cytogenics assay in human lymphocytes, and a gene mutation study in lymphoma cells.

The acceptable Reference Dose (RfD) based on a NOEL of 0.5 mg/kg body weight/day from a three-generation reproduction study and a safety factor of 100 is 0.005 mg/kg body weight/day. The theoretical maximum residue contribution from the proposed tolerances is 0.000129 mg/kg body weight/day; this is equivalent to about 2.60 percent of the RfD. The Dietary Risk Evaluation System (DRES) chronic exposure analysis used tolerance level residues and 100 percent crop treated to estimate the Theoretical Maximum Residue Contribution (TMRC) for the overall U.S. population and 22 population subgroups. The TMRC for the overall U.S. population from published uses only is 0.000240 mg/kg bwt/day, which represents 4.8 percent of the RfD. The proposed use of lambda-cyhalothrin on dried hops (and the resulting secondary residues in meat and milk) would contribute an exposure of 0.000145 mg/kg bwt/day, or 2.9 percent of the RfD; this would raise the TMRC for the overall population to 0.000385 mg/kg bwt/day, or 7.7 percent of the RfD. The TMRC from published uses for the subgroup most highly exposed, nonnursing infants less than 1 year old, is 0.000962 mg/kg bwt/day, or 19 percent of the RfD. The proposed use contributes 0.000344 mg/kg bwt/day (7 percent of the RfD) and raises the TMRC to 0.001306 mg/kg bwt/day, or 26 percent of the RfD. These exposure estimates are likely to be overestimates given the assumptions used in the analysis (tolerance level residues, 100 percent crop treated). Generally speaking, the Agency has no cause for concern if anticipated residue contribution for all published and proposed tolerances is less than the RfD.

The metabolism of the chemical in plants and animals is adequately understood for this use. Any secondary residues occurring in meat and meat byproducts will be covered by existing tolerances. There is no reasonable expectation of finite residues in poultry commodities; therefore, no tolerances are necessary as this time. An analytical method (gas liquid chromatography with an electron capture detector) is available for enforcement. Prior to its publication in the Pesticide Analytical Manual, Vol. II, the enforcement methodology is being made available in the interim to anyone who is interested in pesticide enforcement when requested from: By mail: Calvin Furlow, Public Information Branch (H7506C), Field Operations Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 242, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-4432.

Based on the above information, the Agency concludes that the proposed tolerances will protect the public health and use of the pesticide in accordance with the terms of the proposed food additive regulation will be safe. The pesticide is considered capable of achieving the intended physical or technical effect. Therefore, the tolerances and food additive regulation are established as set forth below.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 0E3902 and FAP 0H5599/P545]. All written comments filed in response to this document will be available in the Public Docket and Freedom of Information Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food additive regulations or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180 and 185

Administrative practice and procedure, agricultural commodities, food additives, peticides and pests, recording and recordkeeping requirements.

Dated: May 27, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that chapter I of title 40 of the Code of Federal Regulations be amended as follows:

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.438 in the table therein by revising the commodities fat of cattle, goats, horses and sheep and milk to read as follows:

§ 180.438 [1α (S*),3α(Z)]-(±)-cyano(3-phenoxyphenyl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate; tolerances for residues.

(a) * * *

Commodity	Parts per million
Cattle, fat	0.02
* * * * *	
Goats, fat	0.02
* * * * *	
Horses, fat	0.02
* * * * *	
Milkfat (reflecting 0.01 ppm in whole milk)	0.25
* * * * *	
Sheep, fat	0.02
* * * * *	

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 185.1310 by adding new paragraph (b), to read as follows:

§ 185.1310 [1 α (S*),3α(Z)]-(±)-cyano (3-phenoxyphenyl)methyl 3-(2-chloro-3,3,-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate.

* * * * *

(b) A food additive tolerance is established for residues of the insecticide [1 α (S*),3 α(Z)]-(±)-cyano-(3-phenoxylphenyl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate as follows:

Commodity	Parts per million
Hops, dried	10.0

[FR Doc. 92-12928 Filed 6-2-92; 8:45 am]

BILLING CODE 6560-50-F

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105, 106, and 107

Implementation of the Ethics Reform Act of 1989, Title VII

AGENCY: Committee Management Secretariat (GSA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advance notice requests public participation in the formulation of proposed General Services Administration (GSA) regulations pursuant to implementing the Ethics Reform Act of 1989 (Pub. L. 101-194), Title VII, which provides for an advisory committee known as the Citizens' Commission on Public Service and Compensation.

The Commission is responsible for recommending pay levels for Members of Congress, judges, and senior level Executive Branch officials. In addition, the Commission will review recruitment or retention problems and any public policy issues involved in maintaining appropriate ethical standards relating to any offices or positions within the Federal public service. The President shall consider the report of the Commisison and then transmit his own recommendations to Congress by January 3 of the first calendar year beginning after the date on which the Commission submits its report.

DATES: Comments must be received on or before July 6, 1992.

ADDRESSES: Written comments should be submitted to the Committee Management Secretariat (mailing address: General Services Administration (CAM), 1730 K Street, NW., suite 816, Washington, DC 20006). Comments will be available for examination at the Committee Management Secretariat, at the location specified above.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Neff, Committee Management Secretariat, (202) 632-1135.

SUPPLEMENTARY INFORMATION: Section 701(b) of title VII (2 U.S.C. 352) relating to the composition of the Citizens' Commission on Public Service and Compensation requires, in part, that the Administrator of General Services appoint five members of the Commission. The Act requires the procedures required under this section to be designed in such a way as to provide for maximum geographic diversity, and the selection of members by lot from among names randomly generated from voter registration lists. Other members of the Commission shall be appointed by the President of the United States, the President pro tempore of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the United States.

GSA will design the regulations in such a manner as to ensure the objectivity and randomness of the selection process. It is anticipated that this process will be complete by October 31, 1992.

Dated: May 18, 1992.

Carlene Bawden,

Associate Administrator for Administration.

[FR Doc. 92-12569 Filed 6-2-92; 8:45 am]

BILLING CODE 6820-34-M

FEDERAL MARITIME COMMISSION

46 CFR PART 580

[Docket No. 92-25]

Regulation of Military Rates Under the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission ("Commission" or "FMC") is considering whether military rates should be exempted from the filing requirements of section 8 of the Shipping Act of 1984 ("1984 Act ") and possibly also section 10 of that Act, or, alternatively, be made fully subject to the requirements of section 8 of the Act. The purpose of this advance notice is to solicit comments and information from the public regarding the treatment of military rates by the Commission.

DATES: Comments are due July 20, 1992.

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

ADDRESSES: Comments (original and 15 copies) are to be submitted to Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L St., NW., Washington, DC 20573.

SUPPLEMENTARY INFORMATION: Since the end of World War II, part of the armed forces' need for ocean transportation between the United States and foreign countries has been met by U.S.-flag commercial ocean carriers. Originally, this ocean transportation was procured on behalf of the armed forces by the Army Transportation Corps. Later, this function was taken over by the Military Sea Transportation Service. Today, it is the responsibility of the Military Sealift Command ("MSC").

MSC is responsible for arranging ocean transportation services for all components of the Department of Defense ("DOD"). Although MSC can utilize commercial tariff rates and service contracts for the carriage of DOD cargo, most DOD cargo moves pursuant to rates contained in special contractual arrangements or "tenders" which MSC enters into with carriers.

These tenders are the result of a bid process. MSC is charged with selecting the bid that is "most advantageous to the United States, considering only price * * * and price related factors . . . ." 10 U.S.C. 2305(b)(3). Arrangements for the carriage of military cargo are subject to the provisions of the Cargo Preference

Act of 1904, *id.* 2631, which provides that:

Only vessels of the United States or belonging to the United States may be used in the transportation by sea of supplies bought for the Army, Navy, Air Force, or Marine Corps. However, if the President finds that the freight charged by those vessels is excessive or otherwise unreasonable, contracts for transportation may be made as otherwise provided by law. Charges made for the transportation of those supplies by those vessels may not be higher than the charges made for transporting like goods for private persons.

Historically, most cases involving military rates that have come before the Commission have focused on whether the military rates resulting from this bid process were unreasonably low. Section 18(b)(5) of the Shipping Act, 1916 ("1916 Act"), 46 U.S.C. 817(b)(5) (1982), authorized the Commission to * * *

* * * disapprove any rate or charge filed by a common carrier by water in the foreign commerce of the United States or conference of carriers which, after hearing, it finds to be so unreasonably high or low as to be detrimental to the commerce of the United States.

There was no exception in the 1916 Act permitting ocean carriers in the U.S. foreign commerce to provide service to agencies of the government at reduced rates. In order to assure that military rates complied with the provisions of section 18(b)(5), the Commission, in 1972, adopted regulations (General Order 29) requiring military rates to be set at a level that would enable them to recover fully distributed costs. Regulations Governing Level of Military Rates, 13 S.R.R. 411 (1972). A number of proceedings were instituted pursuant to section 18(b)(5) and General Order 29, however none resulted in a final Commission decision.[1] This was largely due to the fact that the military rate tenders under investigation only remained in effect for six months. Thus the cases were rendered moot before a final decision could be issued. In addition to cases brought pursuant to section 18(b)(5) of the 1916 Act, there were other cases involving military rates brought under other sections of the 1916 Act. E.g., Violations of Sections 14 Fourth, 16 First and 17, Shipping Act, 1916, in the Nonassessment of Fuel Surcharges on Military Sealift Command (MSC) Rates Under the MSC Request for Rate Proposals (RFP) Bidding System, 15 F.M.C. 92 (1972).

General Order 29 remained in effect until 1982, when it was temporarily suspended by the Commission after the conditions which had led to its promulgation were found to no longer exist. A year later, General Order 29 was suspended indefinitely. Indefinite Suspension of Regulations Governing Level of Military Rates, 21 S.R.R. 1177 (1982). Section 20 of the Shipping Act of 1984 ("1984 Act") amended the 1916 Act to limit its scope to the domestic offshore trades. Section 18(b)(5), which only applied to the foreign trades, was repealed. No provision similar to section 18(b)(5) was included in the 1984 Act. Accordingly, the Commission rescinded General Order 29 shortly after the 1984 Act became law.[2]

Although there is no longer any statutory authority to regulate the level of military rates in the foreign trades, military rates remain subject to the prohibitions of section 10 of the 1984 Act, 46 U.S.C. app. 1709, including the anti-discrimination and anti-rebate provisions. Since 1984, there have been no proceedings brought under the provisions of section 10. The Commission has exempted military rate tenders from its regulations governing tariff notice form and content. 46 CFR 580.1(d).

The Commission is considering whether changes should be made to the regulatory scheme applicable to military rates. If the FMC's treatment of military rates is seen as making meaningful rate comparisons difficult or as being unfair, disadvantageous or prejudicial to MSC, U.S.-flag carriers or any other party, the Commission could remove format exemptions presently enjoyed by U.S.-flag operators filing military rates and require such rates to be published in exactly the same manner and format as commercial rate, *e.g.*, tariffs and service contracts.

Alternatively, if military rates do not present such difficulties or problems, or, given their nature, do not otherwise raise the sort of issues that the 1984 Act was intended to address, a full or partial exemption from 1984 Act requirements may be warranted. The exemption could be limited to the tariff filing requirements of section 8, 46 U.S.C. app. 1707, or might extend to the provisions of section 10 as well.

The Commission believes that the regulatory treatment of military rates under the 1984 Act can best be explored through the issuance of this Advance Notice of Proposed Rulemaking to solicit the views of governmental bodies, carriers, shippers, and any other interested members of the public. While the Commission requests comments on the specific issues set forth below, it also invites interested persons to submit views and information on any matter that relates to the broader issue of the FMC's treatment of military rates.

Issues Upon Which Specific Comments Are Requested

1. What is the cost of filing military tenders or quotations with the Commission?

2. Do interested parties use tenders or tariffs on file with the Commission as a source of information regarding military rates or is this information obtained directly from MSC?

3. Is the filing of a military tender or tariff with the Commission necessary in order to bring an action involving military rates under the 1984 Act?

4. Given that past proceedings have focused on the level of military rates and that the Commission no longer has any authority to regulate the level of rates in the foreign trades, is there any valid regulatory purpose in subjecting military rates to any or all of the requirements of the 1984 Act?

5. What are the differences between the transportation service provided under military tenders and the service provided to commercial customers by U.S.-flag ocean carriers pursuant to tariffs or service contracts? Is it possible to compare the two?

[1] Docket No. 71-35, Investigation of Competitive Procurement Practices on Military Cargo; Docket No. 72-10, American Export Isbrandtsen Lines, Inc. v. Military Sealift Command; Docket No. 72-23, American President Lines, Inc., American Mail Line, Inc., Sea-Land Service, Inc., and United States Lines, Inc.—Possible Violations of Section 18(b)(5) of the Shipping Act, 1916; Docket No. 72-64, American Export Line, Inc., Sea-Land Service, Inc. and United States Lines, Inc.—Possible Violations of Section 18(b)(5) of the Shipping Act, 1916, in Connection with Rates on Military Cargo; Docket No. 72-65, American Mail Line, Inc., American President Lines and Sea-Land Service, Inc.—Possible Violations of Section 18(b)(5) of the Shipping Act, 1916, in Connection with Rates on Military Cargo; Docket No. 73-57, Sea-Land Service, Inc.—Possible Violations of Section 18(b)(5) of the Shipping Act, 1916, in Connection with Rates on Military Cargo; Docket No. 73-58, United States Lines, Inc. Violation of Section 18(b)(5) of the Shipping Act, 1916, in Connection with Rates on Military Cargo—Order to Show Cause; and Docket No. 75-14, Pacific Far East Line, Inc.—Possible Violations of Section 18(b)(5) of the Shipping Act, 1916, in Connection with Rates on Military Cargo.

[2] Section 6 of the Intercoastal Shipping Act, 1933, 46 U.S.C. 846, originally permitted carriers in the domestic offshore trades to provide transportation to the government at free or reduced rates. After repeal of section 6 in 1974, the reasonableness of certain military rates in the domestic offshore trades was challenged under section 18(a) of the 1916 Act, *id.* 817(a), in several Commission proceedings. Department of Defense and Military Sealift Command v. Matson Navigation Company, 19 F.M.C. 503, reconsideration denied, 20 F.M.C. 24 (1977); Puerto Rico Maritime Shipping Authority—Rates on Government Cargo, 21 F.M.C. 188, reconsideration denied, 21 F.M.C. 502 (1978); Sea-Land Service, Inc.—Rates on Government Cargo, 21 F.M.C. 905 (1979), and Seatrain Gitmo, Inc.—Rates on Government Cargo, 21 F.M.C. 894 (1979). Since 1979 there have been no cases brought under section 18(a) of the 1916 Act involving military rates.

6. What, if any, is the legal or economic basis for treating rates offered to MSC different from those offered commercial shippers from a regulatory perspective?

7. What, if any, would be the impediments to the Commission requiring military rate tenders to be filed as service contracts, as provided in section 8(c) of the 1984 Act? Could such arrangements be filed under section 8(a)(E) as loyalty contracts defined in section 3(14) of the Act?

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-12898 Filed 6-2-92; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR 391

[FHWA Docket No. MC-92-27]

Qualification of Drivers; Waiver Applications; Vision

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Receipt of waiver applications; request for comments.

SUMMARY: This notice announces the receipt of applications by drivers for waiver of the FHWA's vision requirements, 49 CFR 391.41(b)(10), pursuant to the notice of intent to accept applications for waivers published in the **Federal Register** (57 FR 10295) on March 25, 1992. The FHWA seeks comments on its intent to waive its vision requirements for drivers that meet certain conditions, some of which have been changed since the March 25 notice. Under the amended conditions listed below, drivers with moving violations in the past three years may be eligible for the proposed waiver program, provided all of the proposed program's other conditions, listed below, are met. To conform with the March 25 notice and to expedite the waiver process, the FHWA will continue to accept applications for waiver of the vision requirements until September 21, 1992. After the comment period has closed and the comments have been analyzed, the FHWA will publish in the **Federal Register** a notice of final disposition on the waiver program.

DATES: Comments must be received on or before July 6, 1992.

ADDRESSES: Submit written, signed comments to FHWA docket No. MC-92-27, room 4232, HCC-10, Office of Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal holidays. If anyone desires notification that the FWHA received their comments, they must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas or Mrs. Eliane Viner, (202) 366-2981, Office of Motor Carrier Standards, or Mr. Eric A. Kuwana or Mr. Raymond W. Cuprill, Office of Chief Counsel, (202) 366-0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m, e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Waiver Background

On March 25, 1992, the FHWA published a notice in the **Federal Register** (57 FR 10295) to announce its intent to accept applications for a waiver of the vision requirements, as contained in the Federal Motor Carrier Safety Regulations (FMCSRs), 49 CFR 391.41(b)(10). The notice set forth a program that would waive the vision requirements for drivers who meet certain conditions. Although the March 25 notice outlined the proposed waiver program, this notice and request for comments modifies some of the program's conditions and clarifies its details.

Concurrent Rulemaking

Drivers of commercial motor vehicles have been required to meet Federal vision requirements since 1937. Although the FHWA has conducted many studies on the relationship between vision disorders and driving safety in the past twenty years, the current vision requirements have not been modified since 1971. The proposed waiver program complements a concurrent rulemaking, initiated by an advance notice of proposed rulemaking (ANPRM) on February 28, 1992 (57 FR 6793), to review the FHWA's vision requirements, as contained in the driver qualification requirements of the FMCSRs, 49 CFR part 391. Although the comment period on the ANPRM remained open until April 28, 1992, the FHWA published its intent to accept applications for waivers on March 25 to given early notice to applicants and to expedite the entire process. The proposed waiver program is not a substitute for the substantive rulemaking initiated by the ANPRM of February 28.

As part of the concurrent rulemaking process initiated by the February 28 ANPRM, the FHWA had contracted with Ketron, Inc. to study the relationship between visual disorders and commercial motor vehicle safety. Although copies of the Ketron study are now available for distribution and a copy has been placed in the docket, the FHWA believes that the study, even with public comment to the ANPRM, provides an insufficient foundation to determine the safe levels for the vision requirements for drivers. While it is the FHWA's intent to analyze the comments to the ANPRM of February 28, the Ketron study illuminated a problem—the lack of empirical data on the link between vision disorders and commercial motor vehicle safety. As explained in the notice of March 25, the proposed waiver program will enable the FHWA to conduct a study comparing a group of experienced, visually deficient drivers with a control group of experienced drivers who meet the Federal vision requirements. This study will provide the empirical data that the Ketron study has not.

Statutory Authority

Congress authorized the Secretary of Transportation, after notice and an opportunity for comment, to waive application of any regulation with respect to any person or class of persons if the Secretary determines that such a waiver (1) is not contrary to the public interest and (2) is consistent with the safe operation of commercial motor vehicles. This authority was granted by section 206(f) of the Motor Carrier Safety Act of 1984 (Pub. L. 98-554, 98 Stat. 2832, 2835, 49 U.S.C. app. 2505(f)). The FHWA, in proposing the waiver program, does so with the belief that the necessary findings can be made for the waiver program.

Although the March 25 notice of intent to accept applications for waivers barred applications from persons with a conviction for a single moving violation in a commercial motor vehicle within the past four years, the applications and inquiries received have demonsrated a need to relax that prohibition. First, all driving records, and other written documentation, are required to go back for only three years instead of four years. Applicants with no more than two moving violations in a commercial motor vehicle may now be eligibile to apply to the proposed program under the amended conditions. These conditions are only proposed and may undergo

further change before finally approved after the public comment period. The FHWA continues to believe that the stringent conditions, as proposed and listed below, will ensure that only drivers whose visual deficiency is limited to one eye, which meets the present standard in many States, and who have demonstrated their ability to safely operate a commercial motor vehicle for a number of years will be eligible for a waiver.

The applicants are required to have three years of driving experience in a CMV with a record that shows (1) No involvement in a reportable accident in a CMV in which the applicant was cited for a moving traffic violation; (2) no suspensions or revocations of their driver's license for violations in any motor vehicle; (3) no convictions for a disqualifying offense, as described in 49 CFR 383.51, (i.e. (i) driving a commercial motor vehicle while under the influence of alcohol or a controlled substance; (ii) leaving the scene of an accident involving a commercial motor vehicle; and (iii) the commission of a felony involving the use of a commercial motor vehicle.) or more than one serious traffic violation, as that term is defined in 49 CFR 383.5, (i.e. excessive speeding, reckless driving, improper or erratic lane changes, following the vehicle ahead too closely, or a violation arising in connection with a fatality, while driving a commercial motor vehicle); and (4) no more than two convictions for any other moving traffic violations while driving a commercial motor vehicle. These conditions will limit the eligible pool to responsible, low-risk drivers.

The FHWA believes that the waiver program's conditions are cautiously designed and will enable the FHWA to find that such waivers are "consistent with the safe operation of commercial motor vehicles." The FHWA believes, that because it will be consistent with the national policy to facilitate the employment of qualified individuals with disabilities, the waiver program will be in the "public interest."

Applications

Many of the applications received to date are missing information critical to any future decision on whether to grant a waiver for that individual. The FWHA suggests that future applicants use plain paper (there is not application form), include all the supporting documents (such as the DMV record), and use the format set out below.

Vital Statistics

Name of Applicant: (First name, middle initial, last name)
Address: (House number and street name) City, State, and zip code:
Telephone number: (Area code and number)
Sex: (Male or female)
Date of birth: (Month, day, and year)
Age:
Social Security number:
State driver's license number: (Issuing State and license number)
Driver's license classification code:
Driver's license date of issuance: (Month, day, and year)

Experience

Number of years driving straight trucks:
Approximate number of miles driving straight trucks:
Number of years driving tractor-trailer combinations:
Approximate number of miles driving tractor-trailer combinations:
Number of years driving buses:
Approximate number of miles driving buses:

Anticipated Post-Waiver Operations

Employer's name: (If applicable)
Employer's address:
Employer's telephone number:
Type of vehicle to be operated: (Straight truck, tractor-trailer combination, bus)
Commodities to be transported: (e.g., general freight, liquids in-bulk (in cargo tanks), steel, dry-bulk, large heavy machinery, refrigerated products)
States in which you will drive:
Estimated number of miles you will drive per year:
Estimated number of daylight driving hours per week:
Estimated number of nighttime driving hours per week:

Document in Writing

(1) You now possess a valid "intrastate" CDL or possessed a license to operate a CMV (non-CDL) after April 1, 1990 (e.g., a photostatic copy of the driver's license or certification from the State licensing agency);

(2) You operated a CMV for the three year period immediately preceding: (i) the date of this application if you are currently licensed to drive a CMV; or (ii) the date (after April 1, 1990) you last held a valid license to operate a CMV (for example, a signed statement from the applicant's employer or a certified statement from the applicant, in the event the applicant was operating as a motor carrier);

(3) Your driving record for that three year period:

(A) Contains no suspensions or revocations of your driver's license for the operation of any motor vehicle (including your personal vehicle);

(B) Contains no involvement in a reportable accident for which you received a citation for a moving traffic violation;

(C) Contains no convictions for a disqualifying offense or more than one serious traffic violation while driving a commercial motor vehicle, which disqualified, or should have disqualified, the applicant in accordance with the driver disqualification provisions of 49 CFR 383.51.

(D) Contains no more than two convictions for any other moving traffic violations in a commercial motor vehicle.

(4) You have been examined by an ophthalmologist or an optometrist and that person, in writing, has:

(a) Identified and defined the visual deficiency;

(b) Certified that the visual deficiency has not worsened since the last vision examination required by your State's driver licensing agency;

(c) Certified that your visual acuity is at least 20/40 (Snellen), corrected or uncorrected, in the better eye; and

(d) Certified that in his/her opinion, you are able to safely perform the driving tasks required to operate a commercial motor vehicle.

There are a few application details which need to be clarified. If the applicant is currently licensed to drive a CMV (*e.g.*, holds a valid Commercial Driver's License), the four requirements in the "document in writing" section must go back three years from the date of the application for waiver. If the applicant is not currently licensed to drive a CMV, the four requirements in the "document in writing" section must go back three years from the date (after April 1, 1990) when the applicant last possessed a valid license to operate a CMV. The documentation required above must be in writing, and where applicable, be on forms or letterhead of the State licensing agency or the reviewing ophthalmologist or optometrist.

As examples of the applications received to date, the FHWA cites the following information taken from two applications for waiver of the vision requirements. Mr. Jimmy D. Hamilton of Houston, Texas, has driven a CMV for more than twenty years. Because of amblyopia, he has 20/200 (Snellen) vision in his right eye. His vision in the left eye is 20/20 uncorrected, and he has full and unrestricted fields of vision. Ms. Alyce L. Hill of Crump, Tennessee, has driven a CMV over 500,000 miles in seven years of operation. Similar to Mr. Hamilton, she has amblyopia in her left eye resulting in 20/200 (Snellen) vision.

Her vision in the right eye is 20/15 uncorrected, and she has a 180 degree field of vision. According to their applications, neither driver has been at fault for an accident or received a citation for a moving traffic violation during the past three years. These drivers are examples of the safe, experienced drivers who would benefit greatly from the proposed waiver program.

Waivers

The FHWA emphasizes that, under the changed conditions listed above, drivers with moving violations during the past three years may be eligible for the proposed waiver program. The waiver issued to any driver will contain all the pertinent conditions on its face.

Request for Comments

The FHWA requests additional comments from interested parties, medical specialists, motor carriers, associations, and the public on whether the proposed waiver program would be in the public interest and consistent with the safe operation of commercial motor vehicles. Please submit comments to the address listed above. After the comment period to this notice closes, the FHWA will review the dockets from the ANPRM and this notice. The FHWA will then issue a notice of final disposition on the waiver program. (49 U.S.C. app. 2505; 49 U.S.C. 504 and 3102; 49 CFR 1.48)

Issued on: May 29, 1992.

T.D. Larson,

Administrator.

[FR Doc. 92-12978 Filed 6-2-92; 8:45am]

BILLING CODE 4910-22-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1023

[Ex Parte No. MC-100 (Sub. 6)]

Single State Insurance Registration; Notice

AGENCY: Interstate Commerce Commission.

ACTION: Advance notice of proposed rulemaking; extension of comment due date.

SUMMARY: By notice published at 57 FR 20072 (May 11, 1992) the Commission asked interested persons to submit comments by June 10, 1992, on the formulation of revised regualtions for use in registering interstate operating authority with a single State insurance registration system. By letters filed May 22, 1992, the National Conference of State Transportation Specialists (NCSTS) and the Base State Registration Plan have asked the Commission to extend the comment period by 30 days to July 10, 1992. Petitioners state they soon will be attending the NCSTS annual meeting, which will provide an opportunity for comments to be developed on administering a new single State insurance registration program. The 30-day extension will be granted.

DATES: Comments are due July 10, 1992.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. MC-100 (Sub-No. 6) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Kenneth H. Schwartz: (202) 927-5316

or

Richard B. Felder: (202) 927-5610 (TDD for the hearing impaired: (202) 927-5721).

Decided: May 29, 1992.

By the Commission, Sidney L. Strickland, Jr., Secretary.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-12961 Filed 6-2-92; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 57, No. 107
Wednesday, June 3, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 91-0 N]

National Advisory Committee on Microbiological Criteria for Foods; Renewal

This notice announces the renewal of the National Advisory Committee on Microbiological Criteria for Foods. The Committee is being renewed in cooperation with the Department of Health and Human Services (HHS), and was recommended by a 1985 report of the National Academy of Sciences (NAS) Committee on Food Protection, Subcommittee on Microbiological Criteria, "An Evaluation of the Role of Microbiological Criteria for Foods."

USDA is charged with the enforcement of the Federal Meat and Inspection Act (FMIA), the Poultry Products Inspection Act (PPIA), and the Egg Products Inspection Act (EPIA). Under these Acts, USDA is responsible for the wholesomeness and safety of meat, poultry, egg products and products thereof intended for human consumption. Similarly, the Secretary of HHS is charged with the enforcement of the Federal Food, Drug, and Cosmetic Act. Under this Act, HHS is responsible for ensuring the safety of human foods and animal feeds.

In order to continue to meet the responsibilities under the FMIA, PPIA, EPIA, and the FFDCA, the National Committee on Microbiological Criteria for Foods is being renewed. The Committee will be tasked with advising and providing recommendations to the Secretaries on the development of microbiological criteria by which the safety and wholesomeness of food can be assessed, including criteria for microorganisms that indicate whether foods have been processed using good manufacturing practice.

Renewal of this Committee is in the public interest because the development of a sound public policy in this area can best be accomplished by a free and open exchange of information and ideas among Federal, State, and local agencies; the industry; the scientific community; and other interested parties.

Members will be appointed by the Secretary of USDA after consultation with the Secretary of HHS. Because of their interest in the microbiological criteria for foods, advice on membership appointments will be requested from the Department of Commerce's National Marine Fisheries Service, and the Department of Defense's Army Surgeon General's Office. Nominations for membership are based primarily on expertise in food science, microbiology, and other relevant disciplines.

For additional information, please contact Ms. Rhonda S. Nally, Director, Executive Secretariat, USDA, Food Safety and Inspection Service, room 3175, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250, telephone (202) 720-9150.

Comments on this renewal may be sent to the contact person listed above.

Done in Washington, DC, this 21st day of May 1992.

Charles R. Hilty,

Assistant Secretary for Administration.

[FR Doc. 92-12922 Filed 6-2-92; 8:45 am]

BILLING CODE 3410-37-M

Agricultural Marketing Service

[TB-92-15]

Burley Tobacco Advisory Committee—Notice of Committee Renewal

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of committee renewal.

SUMMARY: Notice is hereby given that the Secretary of Agriculture has renewed the Burley Tobacco Advisory Committee for an additional period of 2 years.

FOR FURTHER INFORMATION CONTACT: Ernest L. Price, Director, Tobacco Division, AMS, USDA, 300 12th Street, SW., room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 205-0567.

SUPPLEMENTARY INFORMATION: The Committee, which reports to the Secretary through the Assistant Secretary for Marketing and Inspection Services, recommends opening dates and selling schedules for the burley marketing area which aid the Secretary in making an equitable apportionment and assignment to tobacco inspectors. The Committee consists of 39 members; 21 producers, 10 warehousemen, and 8 buyers, representing all segments of the burley tobacco industry and meets at the call of the Secretary. The Secretary has determined that renewal of this Committee is in the public interest.

This notice is given in compliance with the Federal Advisory Committee Act (5 U.S.C. app.).

Done in Washington, DC, this 26th day of May, 1992.

Charles R. Hilty,

Assistant Secretary for Administration.

[FR Doc. 92-12923 Filed 6-2-92; 8:45 am]

BILLING CODE 3410-02-M

[TB-92-12]

Flue-Cured Tobacco Advisory Committee—Notice of Committee Renewal

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of committee renewal.

SUMMARY: Notice is hereby given that the Secretary of Agriculture has renewed the Flue-Cured Tobacco Advisory Committee for an additional period of 2 years.

FOR FURTHER INFORMATION CONTACT: Ernest L. Price, Director, Tobacco Division, AMS, USDA, 300 12th Street, SW., room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 205-0567.

SUPPLEMENTARY INFORMATION: The Committee, which reports to the Secretary through the Assistant Secretary for Marketing and Inspection Services, recommends opening dates and selling schedules for the flue-cured marketing area which aid the Secretary in making an equitable apportionment and assignment of tobacco inspectors. The Committee consists of 39 members; 21 producers, 10 warehousemen, and 8 buyers, representing all segments of the flue-cured tobacco industry and meets at the call of the Secretary. The

Secretary has determined that renewal of this Committee is in the public interest.

This notice is given in compliance with the Federal Advisory Committee Act (5 U.S.C. app.).

Done in Washington, DC, this 26th day of May, 1992.

Charles R. Hilty,

Assistant Secretary for Administration.

[FR Doc. 92-12924 Filed 6-2-92; 8:45 am]

BILLING CODE 3410-02-M

Agricultural Research Service

Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agriculture Research Service, intends to grant to Crop Genetics International, Hanover, Maryland, an exclusive license to U.S. Patent Application Serial No. 07/633,815, "Benomyl Tolerant Strains of the Fungus *Verticillium lecanii* and Methods of Use for Biocontrol," filed December 26, 1990, and U.S. Patent Application Serial No. 07/645,438, "Method and Composition for Controlling the Soybean Cyst Nematode with a Sex Pheromone and Analogs Thereof," filed January 24, 1991. Notice of Availability for both inventions was given on April 3, 1991, in the *Federal Register*.

DATES: Comments must be received August 3, 1992.

ADDRESSES: Send comments to: USDA-ARS-Office of Cooperative Interactions, Beltsville Agricultural Research Center, Baltimore Boulevard, Building 005, room 403, BARC-W, Beltsville, Maryland 20705-2350.

FOR FURTHER INFORMATION CONTACT: M. Ann Whitehead of the Office of Cooperative Interactions at the Beltsville address given above; telephone: COMM: 301-504-6786, (FTS) 8-301-504-6786.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to these inventions are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license these inventions as said company has submitted a complete and sufficient application for a license.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

W.H. Tallent,

Assistant Administrator.

[FR Doc. 92-12878 Filed 6-2-92; 8:45 am]

BILLING CODE 3410-03-M

Foreign Agricultural Service

Sharing of United States Agricultural Expertise with Emerging Democracies

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the contact point within the U.S. Department of Agriculture with respect to activities to be pursued in order to share U.S. agricultural expertise with emerging democracies.

DATES: This notice is effective immediately.

FOR FURTHER INFORMATION CONTACT: Coordinator, Eastern Europe and Soviet Secretariat, Foreign Agricultural Service, U.S. Department of Agriculture, room 6506 South Building, Washington, DC 20250; Tel. (202) 720-0368,Fax (202) 690-4369.

SUPPLEMENTARY INFORMATION: This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The Food, Agriculture, Conservation, and Trade Act of 1990, as amended (1990 Act), provides, in part, for the sharing of United States agricultural expertise with emerging democracies. Subsection (f) of section 1542 of the 1990 act provides that an emerging democracy means any country that the President determines is taking steps toward (1) political pluralism, based on progress toward free and fair elections and a multi-party political system; (2) economic reform, based on progress toward a market-oriented economy; (3) respect for internationally recognized human rights; and (4) a willingness to build a friendly relationship with the United States. Most of the countries are in Eastern Europe and the newly independent States of the former Soviet Union.

Specifically, subsection (d) of section 1542 of the 1990 Act provides that, for each of the ficsal years 1991 through 1995, the Secretary, in order to develop, maintain, or expand markets for United States agricultural products, is directed to make available to at least three emerging democracies in each fiscal year the expertise of the United States to assess, recommend, and identify projects to enhance their food and rural business systems needs. Subsection (d) of section 1542 provides that these assessments, recommendations, and identifications will be made by teams consisting primarily of agricultural consultants and government officials, expert in assessing the food and rural business systems of other countries, who will be chosen by, and receive assistance from, the Secretary. The authority to choose assessment team members has been delegated to the Administrator, Foreign Agricultural Service (FAS).

An assessment team will travel to an emerging democracy to conduct assessments, make recommendations, and identify opportunities and projects which will provide for the development, maintenance, or expansion of markets for United States agricultural exports. Each team will report its findings to the advisory committee (composed of representatives of the various sectors of the food and rural business systems of the United States who will be selected in accordance with the provisions of the Federal Advisory Committee Act) which will advise the Secretary as to which recommendations, opportunities, and projects should receive technical assistance to bring about their implementation. If the Secretary determines that the Department does not possess the expertise to provide such technical assistance, the Department will either contract, enter in a cooperative agreement, or request participation from the public in some other form to provide the technical assistance needed.

Subsection (d) of section 1542 of the 1990 Act also provides that the Secretary shall provide the necessary subsistence expenses in, and the transportation expenses to, the United States of individuals designated by emerging democracies to consult with food and rural business systems experts in the United States to enhance such systems in the emerging democracies. The non-governmental experts with whom the individuals designated by the emerging democracies would be consulting are requested to share in the costs incurred by such individuals. Subsection (d) of section 1542 of the 1990 Act further provides that the Secretary provide for necessary

subsistence expenses in emerging democracies and necessary transportation expenses to emerging democracies of United States agricultural producers and other individuals knowledgeable in agricultural and agribusiness matters to assist in transferring their knowledge and expertise to entities in emerging democracies.

Accordingly, the Administrator, FAS, hereby requests experts in the areas of assessing the food and rural business systems of other countries who are interested in (1) participating in an assessment team, (2) consulting with, and sharing in the costs of, individuals designated by emerging democracies to consult with such experts in the United States about enhancing such systems in emerging democracies, or (3) transferring their agricultural and agribusiness knowledge and expertise to emerging democracies to contact the Eastern Europe and Soviet Secretariat at the address and phone number listed above.

Signed At Washington, DC on May 21, 1992.

Duane Acker,

Administrator, Foreign Agricultural Service.

[FR Doc. 92-12877 Filed 6-2-92; 8:45 am]

BILLING CODE 3410-10-M

Federal Crop Insurance Corporation

[Doc No. 0556s]

Request for Comments on the Insurability of Acreage Which Is Destroyed or put to Another use To Comply With Other U.S. Department of Agriculture (USDA) Programs

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of extension of comment period.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) publishes this notice to extend the time allowed for comments regarding acreage which is destroyed or put to another use to comply with other U.S. Department of Agriculture (USDA) programs. FCIC, in seeking public comment regarding its intent to enforce its policy provisions regarding payment of premium on acreage which is destroyed or put to another use to comply with other USDA programs, is extending the comment period provided by the original public notice published in the **Federal Register** on April 30 1992, at 57 FR 18462.

EXTENDED DATE: Written comments, data, and opinions on this notice must be submitted not later than August 31, 1992, to be sure of consideration.

ADDRESSES: Written comments on this notice should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (703) 235-1168.

SUPPLEMENTARY INFORMATION: The original notice for public comment published at 57 FR 18462, provided that written comments would be accepted until not later than June 1, 1992. Several commenters have requested additional time to further study the issue. FCIC has determined to grant such additional time and publishes this notice for that purpose.

In order to fully inform the reader, FCIC herewith republishes the background information appearing in the original notice, as follows:

FCIC crop insurance policies provide protection for crops from the date they are planted to the time they are damaged, harvested, or the insurance period ends. This insurance protection is provided in exchange for a premium paid by the insured farmer. If the crop is damaged beyond the policy's guarantee threshold, an indemnity is paid to the farmer.

Under the terms and conditions of each crop insurance policy, the premium is earned and payable at the time of planting. As an accommodation to farmer cash flow considerations, FCIC has historically permitted premiums to be paid at the time of harvest.

Crop insurance policies also require an insured farmer to notify the insurer of any intent to abandon, destroy, or convert the crop to another use. This notification enables the insurer to assess the status of the crop, anticipated production, and the level of indemnity if one is required.

FCIC has identified a situation which does not appear to be consistent with intended crop insurance terms and conditions. This situation involves wheat, and other similar crops, which are planted, insured, and then subsequently destroyed to comply with other USDA requirements, or converted to other uses such as grazing when market prices for cattle are attractive.

In this situation, a past practice has developed which permitted farmers to plant wheat, obtain insurance protection as of the planting date, receive insurance coverage for several months, and then decide to destroy the acreage to comply with other USDA programs or graze the wheat. When the acreage was destroyed or grazed, the farmer was permitted to revise the required acreage report after the final reporting date and was not required to pay the premium for the insurance protection received.

This practice violates crop insurance terms and conditions in several ways:

(1) Premiums are earned and payable at the time of planting. It is not appropriate to waive premiums after coverage has been provided. To do so is tantamount to providing insurance policy protection for free.

(2) The final acreage report date establishes the commitment the insurer makes to the farmer and the premium the farmer must pay. The insurer is not able to unilaterally alter the insurance commitment after the final acreage report date, nor should the farmer be able to do so.

(3) The farmers decision to abandon, destroy, or convert acreage to another use requires notice to the insurer to enable the insurer to assess the status of the crop. Farmers need to adhere to this requirement.

(4) This practice is not actuarially sound nor consistent with insurance principles. Adverse selection against the insurer results when indemnities are required for crop failure and no premiums are paid for crop success on acreage converted to another use.

FCIC recognizes that there are practical reasons for farmers to support continuation of this practice. Clearly, the free insurance protection is attractive. The ability to judge the relative merits of crop insurance, other USDA programs, or other uses (grazing) at a time when crop and market conditions are known, is attractive to farmers. However, this practice places insurers in serious financial jeopardy.

As a result, FCIC is providing advance notice of plans to enforce these crop insurance policy terms, beginning with its 1993 crop year. Henceforth, FCIC plans to require premiums to be paid for the acreage insured as of the final acreage reporting date. FCIC plans to assess production to count at the guarantee level for any acreage destroyed, or converted to another use, when proper and timely notice is not given by the insured farmer.

FCIC is mindful that there may be other methods available to address this situation. In order to reach a determination which is equitable for insured farmers, the insurance industry, FCIC and the taxpayer, FCIC is seeking comments from all interested parties. Written comments should be sent to Peter F. Cole, Secretary, Federal Crop

Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250.

Written comments must be received by FCIC not later than August 31, 1992, to be sure of consideration. All written comment received pursuant to this notice will be available for public inspection and copying in the Office of the Manager at the above address, during regular business hours, Monday through Friday.

Done in Washington, DC, on May 18, 1992.

James E. Cason,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 92-12952 Filed 6-2-92; 8:45 am]

BILLING CODE 3410-08-M

Forest Service

Proposed Valbois Resort, Boise National Forest, Cascade Reservoir, Valley County, Idaho

AGENCY: Forest Service (USDA).

ACTION: Notice of intent to prepare a supplement to the final environmental impact statement (EIS) for Valbois, the resort at Cascade Lake, Valley County, Idaho.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Forest Service will serve as the lead agency in the preparation of a supplement to the final EIS for a resort development, Valbois, proposed for development on National Forest System (approximately 2,800 mountainside acres), Bureau of Reclamation (Reclamation) administered (about 75 shoreline acres), and private (580 or more acres) lands located on the west side of Cascade Reservoir in south-central Idaho. The resort, as presented by the proponents for consideration in the final EIS, would be a year-round destination resort including land and water related recreation opportunities, lodging, service and support facilities, and commercial operations.

Reclamation was a cooperating agency in the EIS concerning the proposed resort. Reclamation will also be a cooperating agency in the preparation of the supplement. Because of the significance of issues related to the shoreline development and Cascade Reservoir operation and use, Forest Service and Reclamation will jointly guide the preparation, content, and processing of the supplement to the final EIS. The U.S. Army Corps of Engineers has also requested to be a cooperating agency in the supplement preparation in relation to its Clean Water Act permitting responsibilities. The decisions to be made by the participating agencies will be whether or not to authorize construction and operation of private recreation facilities on the Federal lands referenced above, and if authorized, the extent and location of the facilities.

SUBMIT WRITTEN COMMENTS TO: Mr. Ronn Julian, District Ranger, Cascade Ranger District, Boise National Forest, P.O. Box 696, Cascade, ID 83611

FOR FURTHER INFORMATION CONTACT THE ABOVE, OR: Mr. Douglas James, Regional Environmental Officer Pacific Northwest Region, Bureau of Reclamation, Box 043, 550 West Fort Street, Boise, ID 83724

SUPPLEMENTARY INFORMATION: The final EIS for the Valbois proposal was filed January 18, 1991. Forest Service issued its Record of Decision (ROD) with the final EIS. Reclamation's ROD was issued September 11, 1991, following completion of the Forest Service appeal process. Neither Forest Service or Reclamation approved an alternative that provides for development. Instead, they decided to allow the Valbois proponents to proceed with further studies and planning to provide further specific information and revised or enhanced development alternatives that could be further evaluated for technical and environmental soundness. No construction activity has been permitted by either agency. Forest Service proposed to use its master planning processes to address site specific development considerations. Reclamation agreed to use the master planning process provided it would produce the complete and detailed information needed to evaluate the proposed resort's impact on the environment and other public uses of Reclamation administered resources in the Cascade area. The RODs also required that further environmental evaluation, review, and National Environmental Policy Act (NEPA) compliance would be accomplished prior to any decision on the appropriateness of proceeding with resort development on the federal lands.

Alternatives: The supplement to the final EIS will consider a wide range of alternatives. The following list is a result of consideration of comments received during and subsequent to the final EIS process. All of these and others that may be suggested will be considered in the public scoping process, joint agency review of the master planning findings, and the development and public review of the supplement to the final EIS. Forest Service and Reclamation have not designated a preferred alternative.

- The Valbois proponents proposed development. It will include modifications to meet environmental and technical concerns presented in the RODs and master planning approval documents; other changes resulting from master planning activities; and commitment to mitigation measures and monitoring requirements.
- No Action. Use of Federal lands for the proposed resort would not be permitted. The Valbois proponents indicate that the four season resort concept will not be implementable without approval from both Forest Service and Reclamation to use Federal lands in the development.
- Alternative resort sites. Consideration will be given to other locations at which resort facilities similar to all or parts of the Valbois proposal could be developed that would serve the same publics.
- Resort at the Valbois site without resort related shoreline facilities. No marina or other lakefront facilities would be constructed by the proponents at the proposed Valbois site. The rest of the Valbois proposal would be developed essentially as presented by Valbois proponents.
- Other alternative resort facility mixes. A resort at the Valbois site with reduced emphasis on waterfront, skiing, residential or other facilities.

Scoping: The range of alternatives proposed for consideration will be subject to review, comment, additions, and revisions by the public and other agencies and organizations during a scoping period that begins with this notice and will continue for several months as the Valbois master planning process is carried out. Public meetings will be scheduled during the scoping period and announced by letter and through news organizations in southwestern Idaho. Written comments concerning the proposed development, alternatives, and related environmental issues are invited at any time. Please provide them to the Cascade District Ranger at the address provided above.

Anyone interested in more information concerning the Valbois proposal, the studies underway, or the environmental issues should contact the Forest Service or Reclamation offices listed above. The agencies encourage comment from individuals, governmental agencies, and organizations that will assist them in the analysis and decision-making processes related to the Valbois proposal.

RESPONSIBLE OFFICIAL: The responsible official for the Forest Service is the Forest Supervisor, Boise National Forest.

A schedule for filing and distribution for public review of the draft supplement to the final EIS is not available. Progress in the Valbois master planning process and the scoping activities will dictate the timing of the document. It is probable that the earliest date for issuing the draft supplement for public review would be in the spring of 1993.

When the supplement to the final EIS is issued, the comment period will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in the proposed action participate at that time. To be the the most helpful, comments on the draft supplement to the final EIS should be as specific as possible and may address the adequacy of the supplement or the merits of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of NEPA [40 CFR 1503.3]).

In addition, Federal court decisions have established that a reviewer of draft NEPA compliance documents must structure their participation in the environmental review of a proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yanker, Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519,553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after the completion of the final NEPA compliance document. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc*, v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the agency or agencies at a time when it can meaningfully consider them and respond to them in the final document.

Dated: May 28, 1992.

Stephen P. Mealey,

Forest Supervisor, Boise National Forest.

[FR Doc. 92-12899 Filed 5-29-92; 8:45 am]

BILLING CODE 3410-11-M

National Urban and Community Forestry Advisory Council; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Washington, DC, June 16, 1992, 9 a.m., to 11:30 a.m., and in Alexandria, Virginia, June 17, 1992, 8 a.m., to 5 p.m.; and June 18, 1992, 8 a.m. to 12 p.m. The Council is comprised of 15 members appointed by the Secretary of Agriculture. The purpose of the meeting is for the Committee to begin development of the National Urban and Community Forestry Action Plan and develop criteria for the urban and community forestry challenge cost-share program. William Kruidenier of the International Society of Arboriculture will Chair this meeting which is open to the public. However, participation is limited to Forest Service personnel and Committee members. Persons who wish to bring urban and community forestry matters to the attention of the Committee may file written statements with the Committee before or after the meeting.

DATES: The meeting will be held June 16, 1992 through June 18, 1992.

ADDRESSES: The meeting will be held at the USDA Administration Building, Williamsburg Conference Room, 12th and Jefferson Drive SW., Washington, DC, June 16, 1992, and at the Best Western Old Colony Inn, 625 First Street, Alexandria, Virginia, June 17 and 18, 1992.

Send written statements to Brian McGuire, National Urban and Community Forestry Advisory Council, c/o Forest Service—Cooperative Forestry, USDA, P.O. Box 96090, Washington, DC 20090-6090, or phone (202) 205-1689.

FOR FURTHER INFORMATION CONTACT: Brian McGuire, Cooperative Forestry Staff (202) 205-1689.

Dated: May 29, 1992.

F.A. Dorrell,

Acting Deputy Chief, State and Private Forestry.

[FR Doc. 92-12925 Filed 6-2-92; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-508-604]

Industrial Phosphoric Acid From Israel; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by the petitioner and one respondent, the Department of Commerce has conducted an administrative review of the antidumping duty order on industrial phosphoric acid from Israel. The review covers one manufacturer/exporter of this merchandise to the United States and the period August 1, 1990 through July 31, 1991.

The company under review, Haifa Chemicals (Haifa), did not respond to the Department's questionnaire. Therefore, we are using best information otherwise available for cash deposit and appraisement purposes. As best information for Haifa, we preliminarily determine the dumping margin to be 6.82 percent *ad valorem*, the highest dumping margin for any company under the order.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: June 3, 1992.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On August 21, 1991, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (56 FR 41506) of the antidumping duty order on industrial phosphoric acid from Israel (52 FR 31057; August 19, 1987) for the period August 1, 1990 through July 31, 1991. On August 27, 1991, the petitioners, FMC Corporation and Monsanto Company, requested an administrative review of two manufacturers/exporters, Negev Phosphates, Ltd. and Haifa Chemicals Ltd. On August 30, 1991, Negev Phosphates (Negev) also requested a review. We initiated the review of the two manufacturers/exporters on September 24, 1990 (54 FR 39032). Subsequent to the initiation of this administrative review, Negev was revoked from the antidumping duty order in the final results of the previous administrative review (57 FR 10008). As such, the review with respect to Negev is terminated. The Department has now conducted the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of industrial phosphoric acid (IPA). This merchandise is currently classifiable under item number 2809.20.00 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers Haifa Chemicals, Ltd., a manufacturer/exporter to the United States of Israeli industrial phosphoric acid, and the period August 1, 1990 through July 31, 1991. Haifa did not respond to the Department's questionnaire. Therefore, we used best information available for assessment of antidumping duties and cash deposit purposes. Best information is the highest margin for a company under the order, 6.82 percent.

Preliminary Results of Review

We preliminarily determine that the following margin exists for the period August 1, 1990 through July 31, 1991:

Manufacturer/exporter	Margin (percent)
Haifa Chemicals	6.82

Parties to the proceeding may request disclosure and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested,will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e).

The Department will publish the final results of the administrative review including the results of its analysis of issues raised in any case or rebuttal briefs or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from Israel entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act; (1) The cash deposit rate for the reviewed companies which remain subject to the order will be that established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the original less-than-fair-value investigation, the cash deposit rate will continue to be the company-specific rate published in the final determination covering the most recent period; (3), if the exporter is not a firm covered in this review, previous reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, or if not covered in this review, the most recent review period or the original investigation; and (4) the cash deposit rate for any future entries from all manufacturers or exporters who are not covered in this or prior administrative reviews, and who are unrelated to the reviewed firms or any previously reviewed firm will be the "All Others" rate established in the final results of the previous administrative review, since we do not use best information available rates in establishing the all other rate. This rate represents the highest rate for any firm (whose shipments to the United States were reviewed) in the most recent administrative review, other than those firms receiving a rate based entirely on best information available. These deposit requirements, when imposed, shall remain in effect until the publication 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 19 CFR 353.22.

Dated: May 29, 1992.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-12974 Filed 6-2-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-533-806, A-437-802]

Initiation of Antidumping Duty Investigations; Sulfanilic Acid From India and the Republic of Hungary

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 3, 1992.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins or Stefanie Amadeo, 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) 377-1756 or (202) 377-1174, respectively.

INITIATION OF INVESTIGATIONS:

The Petitions

On May 7, 1992, we received petitions filed in proper form by R-M Industries (petitioner). In accordance with 19 CFR 353.12, the petitioner alleges that sulfanilic acid from India and the Republic of Hungary (Hungary) is being, or is likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

The petitioner has stated that it has standing to file the petitions because it is an interested party, as defined under section 771(9)(C) of the Act, and because the petitions were filed on behalf of the U.S. industry producing the product subject to these investigations. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, these petitions, it should file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements are contained in 19 CFR 353.14.

Scope of Investigations

The products covered by these investigations are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and refined sodium salt of sulfanilic acid (sodium sulfanilate).

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble material present in the sulfanilic acid. All grades are available as dry, free flowing powders.

Technical sulfanilic acid, classifiable under the subheading 2921.42.24.20 of the Harmonized Tariff Schedule of the United States (HTSUS), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, classifiable under the HTSUS subheading 2921.42.24.20, contains 98

percent minimum sulfanilic acid, 0.5 percent maximum aniline and 0.25 percent maximum alkali insoluble materials. Refined sodium salt of sulfanilic acid (sodium sulfanilate), classifiable under the HTSUS subheading 2921.42.70, is a granular or crystalline material containing 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these investigations is dispositive.

United States Price and Foreign Market Value

India

Petitioner based its estimates of United States price (USP) on quoted prices for all three grades of sulfanilic acid, c&f U.S. port of entry. According to petitioner, the price quotations are for subject merchandise which was sold in the United States after importation, by or for the account of the exporter; therefore, petitioner calculated exporter's sales price (ESP) based on c&f U.S. port of entry price quotations. Petitioner reduced the quoted USPs for foreign inland freight, foreign handling, ocean freight, and U.S. brokerage and handling charges. Petitioner also reduced the quoted USPs for commissions incurred in the United States. No further adjustments were made to the quoted USPs.

Petitioner's estimate of foreign market value (FMV) is based on f.o.b. observed prices in India for all three grades of sulfanilic acid. No adjustments were made to the observed Indian prices.

The Republic of Hungary

Petitioner based on its estimate of USP on the f.a.s. import values of sulfanilic acid, as reflected in official import statistics. To arrive at the ex-factory USP, petitioner subtracted foreign handling and inland freight charges from the import values. No further adjustments were made to the estimated USP.

Petitioner contends that the FMV of Hungary-produced imports subject to this investigation must be determined in accordance with section 773(c), concerning non-market economy (NME) countries. Pursuant to § 771(18), Hungary is presumed to be a NME and the Department has treated it as such in previous investigations (see, Final Determination of Sales at Less Than Fair Value: Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the Hungarian People's Republic, 52 FR 17428, (May 8, 1987)). Parties will have the opportunity to raise this issue and provide relevant information and argument on it and on whether FMV should be based on prices or costs in the NME in the course of this investigation. The Department further presumes, based on the extent of central control in a NME, that a single antidumping margin, should there be one, is appropriate for all exporters. Only if individual NME exporters can demonstrate an absence of central government control with respect to the pricing of exports, both in law and in fact, will they be entitled to separate, company-specific rates. (See, final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588, (May 6, 1991), for a discussion of the information the Department considers appropriate in this regard.)

In accordance with section 773(c), FMV in NME cases is based on NME producers' factors of production (valued in a market economy country). Absent evidence that the Hungarian government has selected which factories produce for the United States, for purposes of this investigation we intend to base FMV only on those factories in Hungary which are known to produce sulfanilic acid for export to the United States.

Petitioner calculated FMV on the basis of the valuation of the factors of production. In valuing the factors of production, petitioner used Malaysia as a surrogate country. For purposes of this initiation, we have accepted Malaysia as having a comparable economy and being significant producer of comparable merchandise, pursuant to section 773(c)(4) of the Act.

Petitioner used its own factors for raw material inputs, electricity, and fuel oil for constructed value (CV). The raw material and energy factors for technical and sodium salt are based on petitioner's actual experience during 1991. The raw material and energy factors for refined grade sulfanilic acid are the same as petitioner actually experienced from 1986 through 1989 when this product was produced by petitioner. Overhead expenses are expressed as a percentage of labor, raw materials, electricity and fuel oil as experienced by petitioner. The labor factors for all three grades are based on petitioner's experience.

Petitioner based labor and electricity values on wage rates and energy rates in Malaysia. Since fuel oil is a world commodity, petitioner based fuel oil cost on the actual cost incurred by petitioner. Petitioner based the value of raw material costs for caustic soda, sulfuric acid, and aniline on Malaysian values. Petitioner based raw material costs for activated carbon on its own costs for 1991.

Pursuant to section 773(c), petitioner added the statutory minima of ten percent for general expenses and eight percent for profit to CV.

Petitioner alleges dumping margins ranging from 60.6% to 114.8% for sulfanilic acid from India, and 58.6% for Hungary. We recalculated the dumping margin for Hungary in order to correct a mathematical error by petitioner; the recalculated margin is 58.14%.

Petitioner also alleges that "critical circumstances" exist, within the meaning of section 733(e) of the Act, with respect to imports of the subject merchandise from Hungary.

Initiation of Investigations

We have examined the petitions on sulfanilic acid from India and Hungary, and have found that the petitions meet the requirements of 19 CFR 353.13(a). Therefore, we are initiating antidumping duty investigations to determine whether imports of sulfanilic acid from the above-referenced countries are being, or are likely to be, sold in the United States to less than fair value.

ITC Notification

Section 732(d) of the Act requires us to notify the International Trade Commission (ITC) of these actions and we have done so.

Preliminary Determinations by the International Trade Commission

The ITC will determine by June 22, 1992, whether there is a reasonable indication that imports of sulfanilic acid from India and/or Hungary are materially injuring, or threaten material injury to, a U.S. industry. Any ITC determination which is negative will result in the respective investigation being terminated; otherwise, the investigations will proceed to conclusion in accordance with the statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: May 28, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-12977 Filed 6-2-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-834-803, A-835-802, A-821-802, A-842-802, A-823-802, A-844-802, A-831-802, A-832-802, A-822-802, A-833-802, A-841-802, A-843-802]

Preliminary Determinations of Sales at Less Than Fair Value: Uranium From Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan; and Preliminary Determinations of Sales at Not Less Than Fair Value: Uranium From Armenia, Azerbaijan, Byelarus, Georgia, Moldova and Turkmenistan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 3, 1992.

FOR FURTHER INFORMATION CONTACT: Larry Sullivan or Carole A. Showers, Investigations, Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202 377-0114 or 377-3217, respectively.

PRELIMINARY DETERMINATIONS: We preliminarily determine that imports of uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). Because respondents failed to provide adequate information in a timely manner, we have based our preliminary LTFV calculations on the best information otherwise available (BIA). The estimated margins are shown in the "Suspension of Liquidation" section of this notice. In addition, we preliminarily determine that uranium from Armenian, Azerbaijan, Byelarus, Georgia, Moldova and Turkmenistan is not being, nor is it likely to be, sold in the United States at less than fair value, as provided for in section 733 of the Act.

Case History

Since the publication of the notice of initiation in the **Federal Register** (56 FR 63711, December 5, 1991), the following events have occurred.

A. General

On December 10, 1992, the Department received a letter of appearance on behalf of Techsnabexport Ltd. (Tenex), the sole exporter of the subject merchandise during the period of investigation, NUEXCO Trading Corporation (NUEXCO), and Global Nuclear Services and Supply Ltd. (GNSS) (collectively referred to herein as Tenex).

On December 23, 1991, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination.

On December 25, 1991, the Union of Soviet Socialist Republics (USSR) dissolved and the United States subsequently recognized the 12 newly independent states (NIS) which emerged. The Russian Federation was the only NIS which had a diplomatic facility in the United States at that time. In early January 1992, the U.S. State Department informed us that the Russian Embassy was acting as a liaison to the other NIS. On January 16, 1992, the Department presented antidumping duty questionnaires to Tenex and to the Embassy of the Russian Federation for service on the Russian Federation, the Russian Ministry of Atomic Power and Industry, and the other eleven constituent republics of the former USSR (Armenia, Azerbaijan, Byelarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan).

We were notified on January 23, 1992, by officials of the Russian Embassy, of their willingness to transmit the questionnaires to all other NIS except Byelarus and Ukraine, which maintained United Nations missions in New York. We served the questionnaire on those missions on January 29, 1992. On January 30, 1992, the Department sent questionnaires to the United States Embassy in Moscow which serviced copies of the questionnaire on the permanent representative to the Russian Federation of each NIS. These questionnaires were served on February 10 and 11, 1992.

B. Requests for Extension

On February 3, 1992, pursuant to a request by Tenex, the Department extended its deadline for Section A of the questionnaire until February 12, 1992. On February 12, pursuant to another request by Tenex, the Department extended the deadline for Section A responses to February 21 (for uranium concentrate and enriched uranium) and February 28 (for uranium hexafluoride). On February 20, 1992, Tenex requested, and the Department granted, an extension until March 13, for the response to Sections C and D of the questionnaire. On March 11, 1992, Tenex requested yet another extension for its response to Sections C and D, which was denied by the Department. We received Section A responses for Tenex on February 21 and 28, 1992. We received a response to Sections C and D on March 13, 1992. We issued a deficiency letter for Section A on March 20, 1992, and received a response to that letter on April 3, 1992. We issued a deficiency letter for Sections C and D on April 13, 1992, which requested Tenex to report U.S. price data as purchase price (PP) sales instead of exporter's sales price (ESP) sales. We also notified Tenex of the severe deficiencies in its foreign market value (FMV) data. We received a response to this letter on April 30, 1992. On May 7, 1992, we received a submission from Tenex arguing that the proper basis for reporting U.S. sales is ESP, not PP as the Department determined.

On February 4, 1992, we received letters from the U.N. missions of Byelarus and Ukraine requesting an extension for their responses to the questionnaire. On February 5, 1992, the Department extended the deadline for Section A responses to February 25 for Ukraine and Byelarus, and, *sua sponte*, to February 12 for Russia and the Ministry of Atomic Energy and February 19 for the other NIS. On February 26, the Department extended the deadline for Ukraine and Byelarus and again, *sua sponte*, extended the deadlines for the other NIS (except Russia) until March 9 for Section A responses and April 1 for responses to Sections C and D. On March 30, 1992, the Department granted a final *sua sponte* extension until April 15, 1992, for the questionnaire responses of all the NIS (except Russia). On May 15, 1992, the Department received a cable from the U.S. Embassy in Dushanbe, Tajikistan, relaying a request from the President of Tajikistan. The President stated that the questionnaire response would have been completed but for the just concluded revolutionary disturbances in his country. The President requested a 30 day extension to complete the questionnaire. Based on these extraordinary circumstances, the Department granted this extension on May 20, 1992. Petitioners objected to any extension in a letter dated May 22, 1992.

C. Critical Circumstances

On January 29, 1992, we received from petitioners an allegation of critical circumstances, which was amended on January 30, 31, and February 7, 1992. On February 26, 1992, we issued a questionnaire regarding critical circumstances to Tenex and all NIS. Tenex' response to this questionnaire was included in its March 13, 1992 response. On May 15, 1992, Tenex attempted to refute petitioners' claims regarding the massiveness of the imports of uranium.

D. Dissolution of the Soviet Union and Postponement of the Preliminary Determination

As stated above, the USSR dissolved and 12 NIS were recognized as successor states. We received submissions from petitioners on January 9, 24, and February 13, and from Tenex, on January 10, February 7, and 14, concerning the issue of whether the Department should continue or terminate this investigation in light of the dissolution of the USSR and the emergence of 12 newly independent successor states. On March 25, 1992, the Department issued a notice postponing the preliminary determination in this investigation 30 days because we found it to be "extraordinarily complicated" as defined under section 733(c)(1)(B) of the Act (57 FR 11064, April 1, 1992). In that notice, the Department also gave notice that it intended to continue this investigation with respect to the NIS of the former USSR. We postponed the preliminary determination an additional ten days because additional time was needed (57 FR 21646, May 21, 1992).

E. Best Information Available

On March 18 and 24, and April 23 and 24, 1992, petitioners requested that the Department use best information available (BIA) in making its preliminary determination because no responses had been received from a producer or country, the home market factors submitted by Tenex were untimely and uncertified, and the U.S. price data submitted by Tenex were materially deficient. Petitioners' provided new data to be used for BIA. Tenex contested petitioners' arguments and offered its own analysis of BIA for FMV in submissions dated April 15, May 7, 8, and 15, 1992. On May 15, 1992, petitioners objected to the BIA submissions of Tenex on the basis that, *inter alia*, Tenex had failed to provide the Department with the data sought in the questionnaire and, therefore, had no right to submit information on BIA. Tenex urged the Department to consider its submission and another made at the Department's request by Maine Yankee Atomic Power Company and Vermont Yankee Nuclear Power Corporation (The Yankee Group), on May 7, 1992, in determining the appropriate basis for BIA. On April 21, 1992, we received a requested submission from a group of electric utilities which includes Consumers Power Company, Energy Operations Inc., Florida Power & Light Company, New Hampshire Yankee Division of Public Service Company of New Hampshire, New York Power Authority, Public Service Electric & Gas Company, Union Electric Company, Virginia Power, and Wisconsin Electric Power Company (the Electric Utilities), suggesting various factors which the Department should take into account when analyzing the FMV data. By letter dated May 22, 1992, petitioners rebutted the Yankee Group's BIA submission.

F. Class or Kind

By submissions dated January 10, March 13, and April 24, 1992, Tenex argued that the subject merchandise constitutes three classes or kinds of merchandise. On April 21, 1992, the Electric Utilities responsed to a request by the Department by submitting information regarding class or kind. Petitioners argued, in submissions dated January 24 and March 27, that the subject merchandise constitutes one class or kind as indicated in the petition. On May 21, 1992, we received a requested submission from the Department of Energy (DOE) supporting a finding of one class or kind of merchandise.

G. Responses From Non-Producing Countries

On March 23, 1992, the Department received a fax from the State Committee for Foreign Economic Relations in Mensk, Byelarus. However, the fax was not easily legible so the Department requested a more legible response. On April 10, 1992, we received a cable from the U.S. Embassy in Mensk which stated that Embassy officials contacted Byelarus officials regarding the Department's questionnaire. The officials stated that Byelarus does not mine, produce or store uranium. The officials also stated that they had previously sent a letter to the Department with the same response.

On April 21, 1992, the Department received a cable from the U.S. Embassy in Yerevan, Armenia, which contained the text of a letter from the Armenian Minister of Energy and Fuel to the Department. The letter stated that Armenia did not produce, export or stockpile uranium during the POI.

On April 28, 1992, we received a cable from the U.S. Embassy in Ashkhabad, Turkmenistan, in which Turkmenistan officials are quoted as stating that Turkmenistan's only uranium producing site was closed in 1957 and that presently Turkmenistan does not produce, process or export uranium. On May 19, 1992, the Department received a letter from the Chief of the Section for Extraordinary Situations of the State Commission of Turkmenistan stating that Turkmenistan does not engage in uranium dvelopment or export.

On May 4, 1992, the Department received a cable from the U.S. Embassy in Baku, Azerbaijan, relaying a message from the Chairman of the State Committee of the Azerbaijani Republic in Geology and Mineral Resources stating that Azerbaijan does not mine uranium. On May 28, 1992, we received a fax from the U.S. Embassy in Moscow which contained a copy of a letter sent to it from the Azerbaijani permanent representative in Moscow. This letter stated that no uranium or uranium-containing materials were exported to the United States from Azerbaijan.

On May 5, 1992, the Department received a cable from the U.S. Embassy in Moscow relaying a communication from the Ministry of Foreign Economic Relations of Moldova which stated that Moldova did not produce, export or store uranium during the POI. This cable aslo relayed a telephone message from the U.S. Embassy in Tblisi, Georgia, where no cable capability exists yet. An Embassy official spoke with the Deputy Minister of Industry who stated that no uranium business exists in Georgia.

We instructed these embassies by cable that department regulations require that the Department receive a response and that the response be certified.

Scope of Investigations

The merchandise covered by these investigations constitutes one class or kind of merchandise (see "Class or Kind" section of this notice). The merchandise covered by these investigations includes natural uranium in the form of uranium ores and concentrates; natural uranium metal and natural uranium compounds; alloys, dispersions (including cermets), ceramic products and mixtures containing natural uranium or natural uranium compounds; uranium enriched in U235 and its compounds; alloys, dispersons (including cermets), ceramic products, and mixtures containing uranium enriched in U235 or compounds or uranium eniched in U235. The uranium subject to these investigations is provided for under subheadings 2612.10.00.00, 2844,10.10.00, 2844.10.20.10, 2844.10.20.25, 2844.10.20.50, 2844.10.20.55, 2844.10.50.00, 2844.20.00.10, 2844.20.00.20, 2844.20.00.30, and 2844.20.00.50, of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

On May 21, 1992, the DOE requested that the Department determine whether highly enriched uranium (HEU) is

covered by the scope of these investigations. The petition does not include HEU in its scope and implies that HEU is not covered. Therefore, we preliminarily determine that HEU is not within the scope of this investigation.

Class or Kind

As noted above, Tenex argues that the subject merchandise constitutes three classes or kinds of merchandise, *i.e.*, (1) uranium ore and concentrates, (2) uranium hexafluoride (UF_6), and (3) enriched uranium product (EUP). Petitioners, however, maintain that a finding of one class or kind of merchandise is appropriate. At the Department's request, the DOE and the Electric Utilities submitted arguments regarding class or kind, the former arguing for one class or kind and the latter contending that the subject merchandise constitutes four classes or kinds of merchandise, *i.e.*, the three mentioned above and nuclear fuel assemblies.

Based on an analysis of the comments on class or kind submitted during this proceeding, we have determined that the product under investigation constitutes a single class or kind of merchandise (see Memorandum from Team to Francis J. Sailer, dated May 27, 1992). We based our analysis on the "*Diversified*" criteria (see, *Diversified Products Corp.* v. *United States*, 6 CIT 155 (1983)) and case precedent.

Period of Investigation

The period of investigation (POI) is June 1 through November 30, 1991.

Best Information Available

We have determined, in accordance with section 776(c) of the Act, that the use of BIA Is appropriate in six of these investigations. In deciding whether to use BIA, section 776(c) provides that the Department may take into account whether the respondent provided the information requested in a timely manner and in the form required.

While Tenex submitted certain information with respect to U.S. price, it completely failed to provide any factors of production information in its questionnaire response, despite extensive efforts by the Department to obtain such information.

While we eventually received a partial response from Tenex with regard to factors of production information, that response was unusable for many reasons. First, on its face the information provided in the response was severly deficient in that it did not provide the data requested by the Department in its questionnaire. Second, Tenex is not a producer of the subject merchandise, merely an exporter, and as such does not have first-hand knowledge of the production enterprises. Verification of second-hand knowledge would be a futile endeavor. Third, the response was not certified by officials at the production enterprises, although the Department did receive an untimely certification two months after the information was filed from an official of only one of several production enterprises in question. The absence of information from the appropriate source necessary to establish FMV rendered the responses provided by Tenex unusable and precipitated the Department's use of BIA. Except for the responses we received from Armenia, Azerbaijan, Byelarus, Georgia, Moldova and Turkmenistan, which informed us that these countries were not producers or exporters of uranium, we received no information or questionnaire responses from any other NIS. Therefore, we have used the information submitted in the petition and detailed in our initiation notice as the best information available for the preliminary determinations with respect to Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan. This information was modified, as appropriate, according to submissions of petitioners and two parties from which the Department solicited information (see "United States Price" and "Foreign Market Value" sections, below, and Memorandum from Linda K. Eads and Lawrence P. Sullivan to Marie Parker and Susan H. Kuhback dated May 27, 1992).

Petitioners have argued that the Department should not consider the submission of the Yankee Group, because this submission was not filed by an interested party. In addition, petitioners assert that these are not the type of comments which the Yankee Group is qualified to provide because it is not involved in any manner in the production of enriched uranium. Finally, petitioners question the validity of any information submitted by the Yankee Group in light of the contract that it has with Tenex.

The Department requested the Yankee Group to make its submission in accordance with 19 CFR 353.31(b)(1). While the Yankee Group is not a producer of the subject merchandise, it is a purchaser of uranium concentrate and enriched uranium and has experience with the firms in the industry. Furthermore, as an active participant in the uranium market, it has ready access to publicly available industry information. The Department has critically analyzed all BIA submissions and has accepted the arguments and proposals which we found substantiated and appropriate.

Tenex also submitted a detailed analysis of BIA and an addendum to that analysis. It is the Department's position that a respondent's obligation is to respond adequately to the questionnaire, not to provide information which estimates the information which it should have provided but did not. Therefore, we have not considered the submissions of Tenex regarding BIA.

Tenex has argued that it should not be held responsible for the lack of response from the production enterprises and, therefore, it should not be penalized for the inaction of those entities. However, in an NME case, the Department presumes central control of all production and exporting facilities (see, *e.g.*, Final Determination of Sales at Less Than Fair Value; Tungsten Ore Concentrates from the People's Republic of China, 56 FR 47738 (September 20, 1991)). Therefore, we consider there to be one respondent in each NME country. Thus, the Department holds each country's central government responsible for providing an adequate response to all sections of the Department's questionnaire. With respect to each country under investigation, the Department requires a response which provides complete and accurate data on U.S. sales and factors of production in order to consider any response for a determination. Tenex' response represents only a part of the information required by the Department to perform a less than fair value analysis, and is, therefore, materially deficient.

As noted above in the "Case History" section, we have received responses from certain NIS, either directly or through our embassies in those countries. These responses indicate that these countries do not produce, export or stockpile uranium. Under normal circumstances, we would require all of these responses to be in writing and properly certified. However, as recognized in the notices of postponement of this investigation (57 FR 11064, April 1, 1992, and 57 FR 21646, May 21, 1992), these investigations are "extraordinarily complicated," largely due to the confusion and turmoil surrounding the dissolution of a political entity and its replacement with 12 separate successors. The dissolution of the USSR has made communication between the Department and the NIS extremely difficult, if not at times impossible. The recent establishment of U.S. diplomatic facilities in the NIS has eased these difficulties, albeit limitedly.

In addition, based on information submitted by petitioners and sourced from a Central Intelligence Agency publication (The Soviet Energy Atlas, January 1985), Armenia, Azerbaijan, Byelarus, Georgia, Moldova and Turkmenistan do not mine or produce uranium. Therefore, we have determined that, for purposes of our preliminary determinations, Armenia, Azerbaijan, Byelarus, Georgia, Moldova and Turkmenistan have adquately responded that their respective countries did not produce, export or stockpile uranium during the POI. For purposes of our final determinations, however, we will require a certified response to this effect. In addition, these responses will be subject to verification.

Fair Value Comparisons

After the initiation of this investigation, the country identified in the petition, the USSR, was dissolved and its territory divided between 12 independent states. The United States has officially recognized each of these states as a sovereign nation. Accordingly, the Department is severing the investigation into 12 separate investigations and, to the extent possible, will calculate for each independent state, except the six non-producing NIS, a separate foreign market value and U.S. price.

To determine whether sales of uranium from the former USSR to the United States were made at less than fair value, we compared the United States prices (USP) to the FMV, as specified in the "United States Price" and "Foreign Market Value" sections of this notice. Both USP and FMV are based on BIA, as stated in the section above.

It is the Department's practice to base BIA on an average margin, as opposed to the highest calculated margin, when we determine that respondents have attempted to cooperate with the Department's investigation (see Preliminary Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From Taiwan, 57 FR 17892 (April 28, 1992)). As the Department indicated in its first notice of postponement (57 FR 11064, April 1, 1992), we believe that Tenex has attempted to cooperate in this investigation because they are the sole exporter and attempted to provide the Department with complete USP data. Therefore, we base the preliminary margin on an average of the two calculated margins.

United States Price

Petitioners' estimate of USP is based on an estimated weighted average f.o.b. import price taken from U.S. Bureau of Census statistics on imports of natural and enriched uranium from the former USSR during the period January 1990 through August 1991.

Foreign Market Value

Petitioners allege, and the Department determined, that the former USSR was a nonmarket economy country during the POI within the meaning of section 773(c) of the Act (see Memorandum from David Mueller to Carole Showers dated March 24, 1992). In accordance with section 771(18)(C) of the Act, any determination that a foreign country is an NME shall remain in effect until revoked. This presumption covers a geographic area, each part of which assumes the previous NME character in the event of dissolution. Therefore, each NIS will continue to be treated as an NME until this presumption is overcome. In these investigations, no information has been presented which would require the Department to revoke the NME status of any of the NIS.

Accordingly, petitioners calculated FMV on the basis of constructed value (CV), using the factors of production methodology specified in section 773(c)(3) of the Act. Petitioners calculated separate CVs for mined and enriched uranium.

We have followed the methodology used in the initiation of this investigation (56 FR 63711, 63712), except in the following instances: (1) For mined uranium, we valued labor in Namibia instead of Portugal because Namibia is the preferred surrogate country and the Namibian labor value is uranium-specific. Additionally, an adjustment to a Canadian factor based upon differential labor rates was accordingly revised, and (2) for enriched uranium, we did not allow a 1991 projected production adjustment to the 1990 values for depreciation, research and development, and selling, general and administrative expenses.

Critical Circumstances

Petitioners allege that "critical circumstances" exist with respect to imports of uranium from the former USSR. Section 733(e)(1) of the Act provides that critical circumstances exist when we determine that there is a reasonable basis to believe or suspect the following:

(1) That there is a history of dumping of the same class or kind of merchandise, or that the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise at less than fair value; and

(2) That there have been massive imports of the subject merchandise over a relatively short period.

To determine whether imports have been massive over a relatively short period, we based our analysis on official statistics of the Department, as BIA, for equal periods immediately preceding and following the filing of the petition. Because we used BIA with respect to the LTFV analysis, we have no cause to use or verify any of the data submitted by Tenex. Therefore, we did not use Tenex' shipment information in our critical circumstances analysis.

The time period we used for comparison purposes begins in December 1991, the first complete month after the petition was filed (November 8, 1991). We began the comparison period in December 1991 because the subject merchandise is transported by ship from the former Soviet Union to the United States, a journey of 17 days to over one month, according to data submitted by petitioners. Therefore, any subject merchandise shipped on or after the filing date of the petition would almost certainly enter the United States after December 1, 1991. Likewise, any shipments leaving the former USSR before that date would enter the United States before December 1, 1991. Based on available statistics, and in accordance with our regulations (19 CFR 353.16(g)), we determine it appropriate to use for comparison the period December 1991 through March 1992.

We compared the quantity of imports during the comparison period to the imports during the immediately preceding period (the "base period") of comparable duration (*ie.*, August through November 1991).

Under 19 CFR 353.16(f)(2), unless the imports in the comparison period have increased by at least 15 percent over the imports during the base period, we will not consider the imports "massive." Our analysis indicates that shipments from the former USSR have increased by considerably more than 15 percent.

Since this shows evidence of massive imports over a relatively short period of time, we need to consider whether there is a history of dumping or whether there is reason to believe or suspect that importers of this product knew or should have known that it was being sold at less than fair value. We examined recent antidumping cases and found that there are currently no findings of dumping in the United States or elsewhere on the subject merchandise by former Soviet producers.

We then examined the magnitude of the dumping margins in these investigations. It is our standard

practice to impute knowledge of dumping under section 733(e)(1)(A)(ii) of the Act, when the estimated margins are of such a magnitude that the importer should have realized that dumping existed with regard to the subject merchandise. Normally, in purchase price sales, we consider estimated margins of 25 percent or greater to be sufficient, and in exporter's sales price sales, margins of 15 percent or greater to be sufficient to impute knowledge of dumping. See, e.g. Final Determination of Sales at Less than Fair Value: High-Tenacity Rayon Filament Yarn from Germany (Yet to be published). Using these criteria, we have found that the preliminary margins in these investigations are sufficient to impute knowledge of dumping. Therefore, we find that the requirements of section 733(e)(1) are met and we preliminarily determine that critical circumstances exist with respect to imports of uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan. For Armenia, Azerhaijan, Byelarus, Georgia, Moldova and Turkmenistan, we have determined that the requirements of section 733(e)(1) are not met. Therefore, critical circumstances do not exist with respect to these countries.

Verification

As provided in section 776(b) of the Act, we will verify all the non-BIA information used in reaching our final determinations.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of uranium, as defined in the "Scope of Investigations" section of this notice, from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan that are entered, or withdrawn from warehouse, for consumption 90 days prior to or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to 115.82 percent on all entries of uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan. This suspension will remain in effect until further notice. Due to our preliminary negative determinations with respect to Armenia, Azerbaijan, Byelarus, Georgia, Moldova, and Turkmenistan, we are not suspending liquidation of entries of uranium from these countries.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determinations. If our final determinations are affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to these investigations. We will allow the ITC access to all privileged and business proprietary information in our files provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

Public Comment

In accordance with 19 CFR 353.38, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on these preliminary determinations on August 3, 1992, at 2 p.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to request a hearing must submit such a request within ten days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone, the time, date, and place of the hearing 48 hours before the scheduled time.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of the business proprietary version and five copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than July 23, 1992. Ten copies of the business proprietary version and five copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than July 30, 1992. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with section 353.38 of the Commerce Department's regulations and will be considered if received within the time limits specified above.

These determinations are published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15.

Dated: May 28, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-12973 Filed 6-2-92; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Adminstration

[C-533-807]

Initiation of Countervailing Duty Investigation: Sulfanilic Acid From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 3, 1992.

FOR FURTHER INFORMATION CONTACT: Rick Herring or Magd Zalok, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, Room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3530 or (202) 377-4162, respectively.

Initiation

The Petition

On May 8, 1992, the R-M Industries Corporation filed with the Department of Commerce (the Department) a countervailing duty petition on behalf of the United States industry producing sulfanilic acid. In accordance with 19 CFR 355.12, the petitioner alleges that producers and exporters of sulfanilic acid in India receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act).

Allegation of Subsidies

Petitioner alleges that the following programs provide subsidies to producers of the subject merchandise in India:

1. Preferential Export Financing Through Export Packing Credits
2. Preferential Post-Shipment Financing
3. Income Tax Deduction for Exporters
4. Import Duty Exemptions Available Through Advance Licenses
5. Import Replenishment (REP) Licenses
6. Excess Drawback of Import Duties
7. Market Development Assistance (MDA) Grant
8. Diesel Oil Subsidies
9. Sales of Additional Licenses
10. Grants Under the Central Investment Subsidy Scheme (CISS)
11. Extension of Free Trade Zones

12. Import Duty Exemptions Available to 100 percent Export Oriented Units
13. Preferential Waste Disposal Rates

Because India is a "country under the Agreement" within the meaning of section 701(b) of the Act, title VII of the Act applies to this investigation. Accordingly, the U.S. International Trade Commission (ITC) must determine whether imports of the subject merchandise from India materially injure, or threaten material injury to, the U.S. industry.

The petitioner has stated that it has standing to file the petition because it is an interested party as defined in section 771(9)(c) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the products subject to this investigation. If any interested party, as described under paragraphs (C) (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential countervailing duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 355.14.

Initiation of Investigation

Under section 702(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition properly alleges the basis on which a countervailing duty may be imposed under section 701(a) of the Act, and whether the petition contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on sulfanilic acid from India and have found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702 of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of sulfanilic acid receive subsidies. In accordance with section 702(d) of the Act, we are also notifying the ITC of this action.

In this investigation, we are not investigating transportation subsidies alleged to be benefitting producers of the subject merchandise in India. Petitioner's allegation regarding transportation subsidies is based on the allegation made by a petitioner in a previous countervailing duty investigation involving India (see, Petition for the Imposition of Antidumping and Countervailing Duties regarding Ibuprofen from India, Case number C-533-804, filed on July 31, 1991), which maintained that a single company received preferential rates for transportation from a state-owned shipping company. Petitioner, in the instant case, however, failed to provide any information that this program is available to more than the single company alleged to receive the benefit in the ibuprofen investigation. Therefore, absent further information, we have no basis for investigation of this program.

Scope of Investigation

The products covered by this investigation are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and refined sodium salt of sulfanilic acid (sodium sulfanilate).

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free flowing powders.

Technical sulfanilic acid, classified under the subheading 2921.42.24.20 of the *Harmonized Tariff Schedule of the United States* (HTSUS), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, classified under the HTSUS subheading 2921.42.24.20, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline and 0.25 percent maximum alkali insoluble materials. Refined sodium salt of sulfanilic acid (sodium sulfanilate), classified under the HTSUS subheading 2921.42.70, is a granular or crystalline material containing 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

ITC Notification

Section 702(d) of the Act requires us to notify the ITC of these actions and we have done so.

Preliminary Determination by the ITC

The ITC will determine, by June 22, 1992, whether there is a reasonable indication that an industry in the United States is being materially injured, or is threatened with material injury, by reason of imports from India of sulfanilic acid. If the ITC determination is negative, this investigation will be terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to 702(c)(2) of the Act and 19 CFR 355.13(b).

Dated: May 27, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-12976 Filed 6-2-92; 8:45 am]

BILLING CODE 3510-DS-M

Foreign-Trade Zones Board

[Order No. 578]

Resolution and Order Approving With Restriction the Application of the Culpeper-County Chamber of Commerce, Inc., for a General-Purpose Foreign-Trade Zone and Special-Purpose Subzones for ITT Corporation, ITT Teves Division Plant (Auto Brake Parts) and for Rochester Corporation Plant (Steel and Fiber Optic Cable); Culpeper County, VA

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Culpeper-County Chamber of Commerce, Inc., filed with the Foreign-Trade Zones Board (the Board) on May 25, 1990, and amended on August 2, 1991, requesting a grant of authority to establish a general-purpose foreign-trade zone in Culpeper County, Virginia, adjacent to the Front Royal Customs port of entry, and for subzone status at the ITT Teves plant and the Rochester Corporation plant in Culpeper County, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal as amended, would be in the public interest if approval of the general-purpose zone is limited to the Montanus site and if approval of subzone status for the Rochester plant is given subject to a restriction requiring that privileged

foreign status shall be elected on all foreign merchandise admitted to that subzone site, approves the application, subject to the foregoing limitation and restriction.

Approval is subject to the FTZ Act and FTZ Board's regulations (as revised, 56 FR 50790–50808, 10/8/91), including § 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority to Establish a Foreign-Trade Zone and Special-Purpose Subzones Culpeper County, VA

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the stablishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when general-purpose zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Culpeper-County Chamber of Commerce, Inc. (the Grantee), a Virginia non-profit corporation, has made application (filed 5–25–90, FTZ Docket 20–90, 55 FR 23119, 6–6–90) to the Board, requesting the establishment of a general-purpose foreign-trade zone in Culpeper, Virginia, adjacent to the Front Royal Customs port of entry, and requesting subzone status at the ITT Corporation, ITT Teves Division plant (auto brake components) and at the Rochester Corporation plant (steel and fiber optic cable), located in Culpeper County;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied and that the proposal would be in the public interest if approval were given subject to the limitation and restriction in the resolution accompanying this action;

Now, Therefore, the Board hereby grants to the Grantee the privilege of establishing a general-purpose foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone 185, at the Montanus site described in the application, and special-purpose subzone status at the ITT Teves plant and at the Rochester Corporation plant designated as Subzone Nos. 185A and 185B, respectively, at the locations described in the application, subject to the limitation and restriction described in the resolution accompanying this action, and to the FTZ Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28.

Signed at Washington, DC, this 22 day of May, 1992, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Barbara H. Franklin,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–12975 Filed 6–2–92; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Permitting Entry of Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

May 28, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs permitting entry of certain textile products.

EFFECTIVE DATE: May 1, 1992.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, 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).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to permit entry of textile products, produced or manufactured in Taiwan and exported from Taiwan during the period May 1, 1992 through May 31, 1992, which are visaed as 347, 348 or 347/348 and 647, 648 or 647/648. Textile products exported from Taiwan on and after June 1, 1992 must be visaed as Categories 347–K/348–K, 347–W/348–W, 647–K/648–K and 647–W/648–W or the correct part-category corresponding to the actual shipment.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 14390, published on April 20, 1992.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 28, 1992.

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 April 14, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns, among other things, visa requirements for cotton and man-made fiber textile products in Categories 347/348 and 647/648, produced or manufactured in Taiwan and exported on and after May 1, 1992.

Effective on May 1, 1992, you are directed to permit entry of merchandise produced or manufactured in Taiwan which is visaed as Categories 347, 348 or 347/348 and 647, 648 or 647/648 and exported from Taiwan during the period May 1, 1992 through May 31, 1992.

Textile products produced or manufactured in Taiwan and exported from Taiwan on and after June 1, 1992 must be visaed as Categories 347–K/348–K [1], 347–W/348–W [2], 647–K/648–K [3] and 647–W/648–W [4] or the

[1] Category 347–K: all HTS numbers except those in Category 347–W; Category 348–K: all HTS numbers except those in Category 348–W.

[2] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.4020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.3020, 6210.40.2035, 6211.20.1520, 6211.20.3010 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.3030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.3010, 6204.69.9010, 6210.50.2035, 6211.20.1550, 6211.20.6010, 6211.42.0030 and 6217.90.0050.

[3] Category 647–K: all HTS numbers except those in Category 647–W; Category 648–K: all HTS numbers except those in Category 648–W.

[4] Category 647–W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2010, 6203.49.2030, 6203.49.2040, 6203.49.2060, 6203.49.3030, 6210.40.1035, 6211.20.1525, 6211.20.3030 and 6211.33.0030; Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.3030, 6204.69.9030, 6210.50.1035, 6211.20.1555, 6211.20.6030, 6211.43.0040 and 6217.90.0060.

correct part-category corresponding to the actual shipment.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls 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. 92-12940 Filed 6-2-92; 8:45 am]

BILLING CODE 3510-DR-F

CONSUMER PRODUCT SAFETY COMMISSION

Technical Advisory Group for Cigarette Fire Safety; Notice of Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting.

SUMMARY: The Technical Advisory Group for Cigarette Fire Safety will meet on June 15, 1992, in Gaithersburg, Maryland. The purpose of the meeting is to discuss current research to develop a test method to measure cigarette ignition propensity and matters related to implementation of the Fire Safe Cigarette Act.

DATES: The meeting will be from 9:15 a.m. to 4 p.m. on June 15, 1992.

ADDRESS: The meeting will be in room B-119, Building 224, National Institute of Standards and Technology, Gaithersburg, Maryland.

FOR A RECORDED MESSAGE CONTAINING THE LATEST INFORMATION ABOUT THE TIME AND LOCATION OF THE MEETING CALL: (301) 504-0709.

FOR FURTHER INFORMATION CONTACT: Beatrice M. Harwood, Directorate for Epidemiology, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504-0470.

SUPPLEMENTARY INFORMATION: The Fire Safe Cigarette Act of 1990 (FSCA) (Pub. L. 101-352, 104 Stat. 405) directs the Commission, with assistance from the National Institute of Standards and Technology (NIST) and the Department of Health and Human Services, to conduct research concerning the feasibility of a performance standard to address the propensity of cigarettes to act as an ignition source. The FSCA also establishes an advisory committee, the Technical Advisory Group for Cigarette Fire Safety, to advise and work with the Commission and NIST in the implementation of that act.

The Technical Advisory Group for Cigarette Fire Safety will meet on June 15, 1992, to discuss current research to develop a test method to measure cigarette ignition propensity; the status of a cigarette fire incident study; plans to evaluate the possible health effect of cigarettes with reduced ignition propensity; and other administrative and operational plans to implement the FSCA.

The meeting will be open to observation by members of the public, but only members of the Technical Advisory Group for Cigarette Fire Safety may participate in the discussion. Persons who desire to submit written statements or questions for consideration by the Technical Advisory Group, before or after the meeting, should address them to the Technical Advisory Group for Cigarette Fire Safety, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

Dated: May 29, 1992.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 92-12972 Filed 6-2-92; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Scientific Advisory Group on Effects (SAGE) Meeting

SUMMARY: The Scientific Advisory Group on Effects announces a closed session meeting.

DATES: The meeting will be held at 0830, Tuesday and Wednesday, 16-17 June 1992.

ADDRESSES: The meeting will be held at DASIAC, 2560 Huntington Avenue, Suite 500, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: LtCol Vayl Oxford, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310, (703) 325-7006.

SUPPLEMENTARY INFORMATION: The mission of the SAGE is to provide the Director, Defense Nuclear Agency, with technical advice on matters related to nuclear weapons effects. The group reviews and evaluates long-range plans for the development and improvement of nuclear weapons effects data and the adequacy of current DNA RDT&E programs.

In accordance with section 10(d) of Public Law 92-463, as amended (5 U.S.C. app. II 10(d) (1988), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988) and that accordingly, this meeting will be closed to the public.

Dated: May 28, 1992.

P. H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-12869 Filed 6-2-92; 8:45 am]

BILLING CODE 3810-01-M

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: Department of Defense Standard Tender of Freight Services; MTMC Form MT 364-R; OMB No. 0704-0261.

Type of Request: Reinstatement.

Average Burden Hours/Minutes per Response: 45 minutes.

Responses per Respondent: 13.

Number of Respondents: 1,173.

Annual Burden Hours: 11,436.

Annual Responses: 15,249.

Needs and Uses: The information, in uniform format, is used to determine freight transportation charges, accessorial and security service cost, to select carriers for 1.2 million GBL freight shipment annually. Respondents are freight carriers of all modes, except air cargo.

Affected Public: Small businesses or organizations; business or other for profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written request for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: May 28, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-12868 Filed 6-2-92; 8:45 am]

BILLING CODE 3810-01-M

Manual for Courts-Martial; Proposed Amendments

ACTION: Notice of proposed amendments.

SUMMARY: The Department of Defense is considering recommending changes to the Manual for Courts-Martial, United States, 1984, Executive Order No.12473, as amended by Executive Order Nos. 12484, 1250, 12586, 12708, and 12767. The proposed changes are part of the 1992 annual review required by the Manual for Courts-Martial and DoD directive 5500.17, "Review of the Manual for Courts-Martial," January 23, 1985.

The proposed changes reflected in this notice would amend the following rules in Part II (Rules for Courts-Martial): R.C.M. 705, Pretrial agreements (change to discussion and analysis); R.C.M. 912, Challenge of selection of members; examination and challenge of members (change to discussion and analysis); R.C.M. 1001, Presentencing procedure; R.C.M. 1004, Capital cases. The proposed changes would also amend the following rules in Part III (Military Rules of Evidence): M.R.E. 304, Confessions and admissions (change to analysis); M.R.E. 404, Character evidence not admissible to prove conduct, exceptions, other crimes. The proposed changes would also amend the following paragraphs of Part IV (Punitive Articles): Para. 19c—Article 95 (Resistance, breach of arrest, and escape)—clarify flight from apprehension; Para. 44(1)—Article 119 (manslaughter)—Maximum punishment.

The proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, "Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon, "May 21, 1964, and do not constitute the official position of the Department of Defense, the Military Departments, or any other government agency.

This notice is provided in accordance with DoD Directive 5500.17, "Review of the Manual for Courts-Martial," January 23, 1985. This notice is intended only to improve the internal management of the federal government. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

ADDRESSES: Copies of the proposed changes, and the accompanying Discussion and analysis, may be examined at the Air Force Legal Services Agency, Military Justice Division (JAJM), Bldg. 5683, Bolling Air Force Base, Washington, DC 20332-6128. A copy of the proposed changes and accompanying Discussion and Analysis may be obtained by mail upon request from the foregoing address, ATTN: Major Craig A. Smith.

DATES: Comments on the proposed changes must be received not later than August 17, 1992 for consideration by the Joint Service Committee on Military Justice.

FOR FURTHER INFORMATION CONTACT: Major Craig A. Smith, (202) 767-1539.

Dated: May 29, 1992.

I.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-12939 Filed 6-2-92; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board of the Space and C ^{3} I Panel of 1992 Summer Study on Global Reach/Global Power will meet on 24-25 June 1992 from 8 a.m. to 5 p.m. at HQ TAC Langley AFB, VA.

The purpose of this meeting is to receive briefings, hold discussions and begin report writing on projects related to Space and C ^{3} I in support of Global Reach/Global Power. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92-12865 Filed 6-2-92; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Draft Supplemental Environmental Impact Statement for Base Realignment at Fort Huachuca, Arizona; Availability

AGENCY: Department of Defense, United States Army.

SUMMARY: The recommendation to retain Headquarters, U.S. Army Information Systems Command (USAISC) and its subordinate supporting elements at Fort Huachuca, Arizona was mandated by Public Law 101-510 (BRAC 91), the Defense Base Closure and Realignment Act of 1990. This action is additional to the consolidation of the U.S. Army Intelligence School, Fort Devens with the U.S. Army Intelligence Center and School at Fort Huachuca, as mandated by Public Law 100-526 (BRAC I). This document focuses on the additional environment and socioeconomic impacts and mitigations associated with retaining the personnel associated with USAISC at Fort Huachuca, Arizona. Additional actions that may be taken unrelated to this realignment may affect the number of positions at Fort Huachuca and the impacts are projected in this document.

No long-term adverse ecological or environmental health effects are expected due to the retention of Headquarters, USAISC and its subordinate supporting elements. The increased population is expected to be a net positive impact on the local economy. Proposed construction projects will not significantly impact environmental resources.

SCOPING: A scoping meeting was held in Sierra Vista on September 25, 1991. Public notices requesting input and comments from the public were issued in the regional area surrounding Fort Huachuca.

A public hearing will be held in Sierra Vista concerning this draft Supplemental Environment Impact Statement (SEIS). The public will receive notice of the meeting details in the near future. The purpose of the hearing is to give individuals or groups the opportunity to comment, either orally or in writing, on the environmental, social and economic impacts of the proposed realignment as presented in the draft SEIS.

The public is encouraged to comment on the Draft Supplemental Environmental Impact Statement. Copies of the Draft Supplemental Environmental Impact Statement can be requested by contacting Mr. Alex Watt, (213) 894-5088 or by writing to: United States Army Corps of Engineers, Los Angeles District, ATTN: CESPL-PD-RN, P.O. Box 2711, Los Angeles, CA 90053-2325. Written public comments and suggestions received within 45 days of

this Notice of Availability will be addressed in the final SEIS.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (IL&E).

[FR Doc. 92-12905 Filed 6-2-92; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 6, 1992.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Cary Green, (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: May 29, 1992.

Cary Green,

Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Application for Grants Under the Graduate Assistance in Areas of National Need Program.
Frequency: Annually.
Affected Public: : Non-profit Institutions.
Reporting Burden:
Responses: 280.
Burden Hours: 11,200.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by colleges and universitites to apply for funding under the Graduate Assistance in Areas of National Need Program. The Department uses the information to make grant awards.

Office of Policy and Planning

Type of Review: New.
Title: Evaluation of the Student Literacy Corps.
Frequency: One-time.
Affected Public: Non-profit institutions.
Reporting Burden:
Responses: 713.
Burden Hours: 535.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: The data collected by this survey will be used to describe and assess the operations and effects of the Student Literacy Corps Program. In addition, the data will identify innovative and noteworthy practices in the administration and operation of college based literacy programs and assist ED in designing future student service initiatives.

[FR Doc. 92-12950 Filed 6-2-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of the Argentine Republic concerning Civil Uses of Atomic Energy, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the retransfer of 45,960 kilograms of heavy water from Italy to Argentina for use in the Atucha and Embalse power reactors. Retransfer document MB#10 RTD/AR(EU)-3, has been assigned to this retransfer request.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC, on May 28, 1992.

Salvador N. Ceja,

Acting Director, Office of Nuclear Nonproliferation Policy.

[FR Doc. 92-12970 Filed 6-2-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

State of Wyoming; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

[Docket No. JD92-06705T; Wyoming-28]

May 27, 1992.

Take notice that on May 20, 1992, the Wyoming Oil and Gas Conservation Commission (Wyoming) submitted the above-referenced notice of determination pursuant to section 271.703(c)(3) of the Commission's

regulations, that the Dakota Formation underlying portions of Sweetwater, Lincoln and Uinta Counties, Wyoming, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The notice covers approximately 510,444 acres described on the attached appendix.

The notice of determination also contains Wyoming's and the Bureau of Land Management's findings that the referenced portion of the Dakota Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

Sweetwater, Lincoln and Uinta Counties, Wyoming

Township 23 North, Ranges 111, 112 and 113 West, 6th P.M. All
Township 23 North, Range 110 West, 6th P.M. All of Sections 4–9, 16–21, and 28–33
Township 22 North, Ranges 113 and 112 West, 6th P.M. All
Township 22 North, Range 111 West, 6th P.M. All of Sections 1–24, 26–34 and 36
Township 22 North, Range 110 West, 6th P.M. All of Sections 4–9, 16–21, 28–29, and 31–33
Township 21 North, Range 113 West, 6th P.M. All
Township 21 North, Range 112 West, 6th P.M. All except the N/2 of Section 21
Township 21 North, Range 111 West, 6th P.M. All of Sections 2–36
Township 21 North, Range 110 West, 6th P.M. All of Sections 4–9, 16–21, and 28–33
Township 20 North, Range 114 West, 6th P.M. All of Sections 1–4, 9–16, 21–28, and 33–36
Township 20 North, Range 113 West, 6th P.M. All
Township 20 North, Range 112 West, 6th P.M. All of Sections 1–12, N/2 of 13, 14–16, S/2 of 17, 18–20, S/2 of 21, 22–24, N/2 of 25, 26, S/2 of 27, 28, 30–32, S/2 of 33, and 34–36
Township 20 North, Range 111 West, 6th P.M. All
Township 19 North, Range 114 West, 6th P.M. All of Sections 1–4, 9–16, 21–28, and 33–36
Township 19 North, Range 113 West, 6th P.M. All
Township 19 North, Range 112 West, 6th P.M. All of Sections 1–3, N/2 of 4, 5–9, N/2 of 10, S/2 of 11, 12–14, E/2 of 15, 16–21, E/2, SW/4 and SE/4 of NW/4 of 22, 23–34, S/2 of 35 and S/2 of 36
Township 19 North, Range 111 West, 6th P.M. All except N/2 of Section 31
Township 18 North, Range 114 West, 6th P.M. All of Sections 1–4, 9–16, 21–28, and 33–36
Township 18 North, Range 113 West, 6th P.M. All except N/2 of Section 24 and N/2 of Section 35
Township 18 North, Range 112 West, 6th P.M. All of Sections 1, 2, S/2 of 3, 4–6, N/2 of 7, 8–11, S/2 of 12, 13, 14, S/2 of 15, 16–30, S/2 of 31, 32, S/2 of 33, and 34–36
Township 18 North, Range 111 West, 6th P.M. All
Township 17 North, Range 114 West, 6th P.M. All of Sections 1–4 and 9–16
Township 17 North, Range 113 West, 6th P.M. All of Sections 1–18
Township 17 North, Range 112 West, 6th P.M. All of Sections 1–12 and 18
Township 17 North, Range 111 West, 6th P.M. All of Sections 1–12

[FR Doc. 92–12887 Filed 6–2–92; 8:45am]

BILLING CODE 6717-01-M

[Docket No. RS92-28-000]

Algonquin Gas Transmission Co. Pre-Compliance Filing Conference

May 28, 1992.

Take notice that on June 4, 1992, a Pre-Compliance Filing Conference will be convened in the captioned restructuring docket in accordance with the provisions of Order No. 636. This Pre-Compliance Filing Conference is being held so that Algonquin Gas Transmission Corporation (Algonquin) can present the Commission and the intervenors in this proceeding with a summary of Algonquin's proposals for full compliance with the rule. In a letter to the Secretary of the Commission dated May 8, 1992, Algonquin stated that it expects to file its Order No. 636 compliance filing in time to permit Algonquin to implement Order No. 636 restructuring on its system on November 1, 1992.

The Pre-Compliance Filing Conference is being convened to discuss Algonquin's proposed Order No. 636 compliance filing and rates and to discuss issues raised by Algonquin's summary of compliance, which was circulated to all parties on May 15, 1992. Specifically, topics of discussion will include:

1. The details of Algonquin's new unbundled, open access "no notice" firm transportation service as well as its open access firm transportation services and interruptible transportation services;

2. The intent of customers to retain, reduce, or terminate their rights to firm transportation capacity on Algonquin's system so that Algonquin can then follow the procedures set out in Order No. 636;

3. The allocation of capacity on Algonquin's system;

4. The operating terms and conditions that Algonquin will include in its tariff to enable it to maintain reasonable operational control and system integrity while providing "no notice" transportation as well as other reliable services;

5. The reallocation of capacity released by current capacity holders;

6. The details of assigning firm upstream transportation and storage capacity;

7. The details of nominating, scheduling, resolving imbalances and curtailment;

8. Rates;

9. The allocation of transition costs; and

10. All other issued listed in 18 CFR 284.14 (b)(1), as promulgated in Order No. 636.

The conference will be held at 10 a.m. at the Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia. All interested parties are invited to attend. Attendance at the conference however, will not confer party status. For additional information regarding the conference, interested parties can call Rebecca S. Haney at (617) 560–1376 or David T. Andril at (202) 639–6542.

Lois D. Cashell,

Secretary.

[FR Doc. 92–12888 Filed 6–2–92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-5-23-000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 28, 1992.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on May 22, 1992 certain revised tariff sheets included in Appendix A attached to the filing. Such sheets are proposed to be effective as indicated on Appendix A.

The purpose of the instant filing is to track rate changes attributable to storage services purchased from Columbia Gas Transmission (Columbia) under its Rate Schedule WS the costs of which are included in the rates and charges payable under ESNG's Rate Schedule CWS—Columbia Winter Service.

The instant filing also revises the billing amounts shown on Fourth Revised Sheet No. 6B to comply with the provisions of ordering Paragraph (B) of

the Commission's August 26, 1988 order in ESNG's Docket No. RP88-226-000. The referenced order requires ESNG to file revised billing amounts to "track" any modifications to Transcontinental Gas Pipe Line Corporation's (Transco) take-or-pay charges ordered by the Commission. Transco filed on May 1, 1992 a recalculation of its LPSP charges for the Annual Recovery Period June 1, 1992 through May 31, 1993.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 and rule 214 of the Commission's Rule of Practice and Procedure (18 C.F.R. § 385.211 and § 385.214). All such motions or protests should be filed on or before June 4, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-12889 Filed 6-2-92; 8:45 am]

BILING CODE 6717-01-M

[Docket No. TM92-8-37-000]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

May 28, 1992.

Take notice that on May 21, 1992, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following tariff sheets:

Second Revised Volume No. 1

Nineteenth Revised Sheet No. 10
Eighteenth Revised Sheet No. 11
Thirteenth Revised Sheet No. 13

First Revised Volume No. 1-A

Thirteenth Revised Sheet No. 201

Original Volume No. 2

Twenty-Eighth Revised Sheet No. 2.3

Northwest states that the purpose of this filing is to update its Commodity SSP Surcharge effective July 1, 1992, to reflect (1) interest applicable to April, May and June 1992, and (2) the amortization of principal and interest. The proposed Commodity SSP Charge contained in this instant filing is 3.98¢ per MMBtu for the three months commencing July 1, 1992. Northwest states that this instant filing, and the Commodity SSP Surcharge included herein, was prepared in a manner consistent with the provisions of Commission orders, issued in Docket Nos. TM91-8-37 and TM92-2-37, which relate to the level of billing determinants to be used in the calculation of the Commodity SSP Surcharge.

Northwest has challenged the Commission's orders requiring it to calculate its Commodity SSP Surcharge based upon billing determinants other than those approved in the settlement of Phase I of Docket No. RP88-47. Northwest reserves the right and gives notice that it will refile its Commodity SSP Surcharge rates for any affected periods, including the three months beginning July 1, 1992, should Northwest ultimately be successful in its court appeals.

Northwest states that a copy of this filing has been served upon all parties of record in Docket No. RP89-137 and upon Northwest's jurisdictional customer list and affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene of protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 4, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-12890 Filed 6-2-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-175-000]

Pan-Alberta Gas (U.S.) Inc., Tariff Changes

May 28, 1992.

Take notice that on May 21, 1992, Pan-Alberta Gas (U.S.) Inc. ("PAG-US") (formerly NATGAS U.S. INC.), 500, 707 Eighth Avenue, SW., Calgary, Alberta, Canada T2P 3V3, tendered for filing in Docket No. RP92-175-000 Fifth Revised Sheet No. 4 Superceding Fourth Revised Sheet No. 4 to its FERC Gas Tariff Original Volume No. 2.

PAG-US states that it is submitting Fifth Revised Sheet No. 4 (1) to reflect a decrease in demand charges during the forthcoming demand charge period (July 1, 1992 through December 31, 1992) for Canadian gas purchased by PAG-US from Northwest Alaskan Pipeline Company ("Northwest Alaskan") and resold to Northern Natural Gas Company ("Northern") under Rate Schedule X-1; and (2) to reflect a downward adjustment in its demand charges to Northern for prior periods.

PAG-US requests that Fifth Revised Sheet No. 4 become effective on July 1, 1992.

In addition, PAG-US has notified the Commission that, unless the Commission directs otherwise, it intends upon acceptance of its filing by the Commission, to make a one-time payment to Northern reflecting Northern's allocated share (plus interest) of the one-time payment received by PAG-US from Northern Border Pipeline Company pursuant to the Commission's order of April 9, 1992 in *Northern Border Pipeline Company*, FERC Docket No. RP92-139-000.

PAG-US states that a copy of this filing has been served on Northern.

Any person desiring to be heard or to protest said filing should file a petition 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 & Procedure. All such petitions or protests should be filed on or before June 4, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-12891 Filed 6-2-92; 8:45 pm]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 92-52-NG]

Continental Energy Marketing Ltd.; Application to Export Natural Gas to Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application for blanket authorization to export natural gas to Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on April 16, 1992, of an application filed by Continental Energy Marketing Ltd. (Continental) requesting blanket authorization to export up to 75 Bcf of natural gas to Canada over a two-year term beginning with the date of first delivery. Continental intends to use existing U.S. pipeline facilities which interconnect with Canadian pipeline facilities at various points on the U.S./Canadian border. Continental states that it will submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, July 6, 1992.

ADDRESSES: Office of Fuels Programs, Fossile Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Charles E. Blackburn, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7751.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0503.

SUPPLEMENTARY INFORMATION:

Continental, a Canadian corporation with its principal place of business in Calgary, Alberta, Canada, intends to purchase natural gas from a range of natural gas producers and marketers, primarily located in the U.S. Gulf Coast and Oklahoma regions. The proposed natural gas exports would be sold to various local distribution companies, pipelines, marketers, and end-users. Continental states that the proposed exports would be made under arrangements negotiated within a bidding process or other competitive framework and that a reliable, competitive, and flexible combination of price, volume, and transportation will be presented to potential buyers.

This export application will be reviewed under section 3 of the NGA and the authority contained in DOE Delegation Order Nos. 0204-111 and 0102-127. In deciding whether the proposed export is in the public interest, domestic need for the natural gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangement. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedure

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may requests that additional procedures be provided, such as additional written comments, as oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Continental's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on May 22, 1992.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-12870 Filed 6-2-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Conservation and Renewable Energy

[Case No. F-046]

Energy Conservation Program for Consumer Products; Decision and Order Granting a Waiver From the Furnace Test Procedure to Amana Refrigeration, Inc.

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. F-046)

granting a Waiver to Amana Refrigeration, Inc. (Amana) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting Amana its Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its GUI, GCI, and GSI series of induced draft furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Amana has been granted a Waiver for its GUI, GCI, and GSI series of induced draft furnaces, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, May 27, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

In the Matter of: The Amana Refrigeration, Inc. (Case No. F-046).

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedures waiver process to allow the Assistant Secretary for Conservation and Renewal Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Intrim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Amana filed a "Petition for Waiver," dated January 9, 1992, in accordance with § 430.27 of 10 CFR part 430. DOE published in the **Federal Register** on April 13, 1992, Amana's petition and solicited comments, data and information respecting the petition. 57 FR 12810. Amana also filed an "Application for Interim Waiver" under § 430.27(g) which DOE granted on April 6, 1992. 57 FR 12810, April 13, 1992.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." DOE consulted with The Federal Trade Commission (FTC) concerning the Amana Petition. The FTC did not have any objections to the issuance of the waiver to Amana.

Assertion and Determinations

Amana's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Amana requests the allowance to test using a 30-second blower time delay when testing its GUI, GCI, and GSI series of induced draft furnaces. Amana states that since the 30-second delay is indicative of how those models actually operate and since such a delay results in an improvement in efficiency of approximately 0.8 percent, the petition should be granted.

Under specific circumstances, the DOE test procedure contain exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Amana indicates that it is unable to take advantage of any of these exceptions for its GUI, GCI, and GSI series of induced draft furnaces.

Since the blower controls incorporated on the Amana furnaces are designed to impose a 30-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 30-second blower time delay when testing the Amana GUI, GCI, and GSI series of induced draft furnances. Accordingly, with regard to testing the GUI, GCI, and GSI series of induced draft furnaces, today's Decision and Order exempts Amana from the existing provisions regarding blower controls and allows testing with the 30-second delay.

It is, therefore, ordered that: (1) The "Petition for Waiver" filed by Amana Refrigeration, Inc. (Case No. F-046) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of appendix N of 10 CFR part 430, subpart B, Amana Refrigeration, Inc. shall be permitted to test its GUI, GCI, and GSI series of induced draft furnances on the basis of the test procedure specified in 10 CFR part 430, with modifications set forth below:

(i) Section 3.0 of appendix N is deleted and replaced with the following pargraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103-82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE 103-82. After equilibrium conditions are

achieved following the cool-down test and the required measurements performed, turn on the furnaces and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, Amana Refrigeration, Inc. shall comply in all respects with the test procedures specified in appendix N of 10 CFR part 430, subpart B.

(3)The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the GUI, GCI, and GSI series of induced draft furnaces manufactured by Amana Refrigeration, Inc.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective (Insert Date of Issuance), this Waiver supersedes the Interim Waiver granted Amana Refrigeration, Inc. on April 6, 1992. 57 FR 12810, April 13, 1992 (Case No. F-046).

Issued In Washington, DC, May 27, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 92-12967 Filed 6-2-92; 8:45 am]

BILLING CODE 6450-01-M

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of DOE Furnace Test Procedures From Carrier Corp. (Case No. F-050)

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Carrier Corporation (Carrier) from the existing Department of Energy (DOE) test procedure regarding blower time delay for the company's 58WAV/395CAV, 58ZAV/376CAV, 58PAV/383KAV, 58RAV/373LAV, GB1A, and GB3A series of induced draft furnaces.

Today's notice also publishes a "Petition for Waiver" from Carrier. Carrier's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. Carrier seeks to test using a blower delay time of 45 seconds for its 58WAV/395CAV, 58ZAV/376CAV, 58PAV/383KAV, 58RAV/373LAV, GB1A, and GB3A series of induced draft furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. DOE is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than July 6, 1992.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F-050, Mail Stop CE-90, room 6B-025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0561.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION:

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 50 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On March 4, 1992, Carrier filed an Application for Interim Waiver

regarding blower time delay. Carrier's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Carrier requests the allowance to test using a 45-second blower time delay when testing its 58WAV/395CAV, 58ZAV/376CAV, 58PAV/383KAV, 58RAV/373LAV, GB1A, and GB3A series of induced draft furnaces. Carrier states that the 45-second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately 0.6 percent. Since current DOE test procedures do not address this variable blower time delay, Carrier asks that the Interim Waiver be granted.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 55 FR 3253, January 31, 1990, and 56 FR 2920, January 25, 1991; Trane Company, 54 FR 19226, May 4, 1989, and 56 FR 6021, February 14, 1991; Lennox Industries, 55 FR 50224, December 5, 1990; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991; Inter-City Products Corporation, 55 FR 51487, December 14, 1991, and 56 FR 63945, December 6, 1991; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, and 56 63940, December 6, 1991; Snyder General Corporation, 56 FR 45960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991; Armstrong Air Condition, 57 FR 899, January 9, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; and The Ducane Company, 56 FR 63943, December 6, 1991. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Carrier an Interim Waiver for its 58WAV/395CAV, 58ZAV/376CAV, 58PAV/383KAV, 58RAV/373LAV, GBIA, and GB3A series of induced draft furnaces. Pursuant to paragraph (e) of section 430.27 of the Code of Federal Regulations Part 430, the following letter granting the Application for Interim Waiver to Carrier was issued.

Pursuant to paragraph (b) of 10 CFR Part 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC, May 27, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Mr. Edward A. Baily,

Vice-President, Government and Industry Relations, Carrier Corporation, P.O. Box 4808, Syracuse, New York 13221

Dear Mr. Baily: This is in response to your March 4, 1992, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedure regarding blower time delay for the Carrier Corporation (Carrier) 58WAV/395CAV, 58ZAV/376CAV, 58PAV/383KAV, 58RAV/373LAV, GB1A, and GB3A series of induced draft furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Carrier Corporation, 53 FR 48574, December 1, 1988, 55 FR 3253, January 31, 1990, and 56 FR 2920, January 25, 1991; Trane Company, 54 FR 19226, May 4, 1989, and 56 FR 6021, February 14, 1991; Lennox Industries, 55 FR 50224, December 5, 1990; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991; Inter-City Products Corporation, 55 FR 51487, December 14, 1991, and 56 FR 63945, December 6, 1991; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, and 56 FR 63940, December 6, 1991; Snyder General Corporation, 56 FR 45960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991; Armstrong Air Condition, Inc., FR 899, January 9, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; and The Ducane Company, 56 FR 63943, December 6, 1991.

Carrier's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Carrier will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Carrier's Application for an Interim Waiver from the DOE test procedure for its 58WAV/395CAV, 58ZAV/376CAV, 58PAV/383KAV, 58RAV/373LAV, GB1A, and GB3A series of induced draft furnaces regarding blower time delay is granted.

Carrier shall be permitted to test its 58WAV/395CAV, 58ZAV/376CAV, 58PAV/383KAV, 58RAV/373LAV, GB1A, and GB3A series of induced draft furnaces on the basis of the test procedures specified in 10 CFR part 430, subpart B, appendix N, with the modification set forth below.

(i) Section 3.0 in appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

J. Michael Davis, P.E.

Assistant Secretary, Conservation and Renewable Energy.

March 4, 1992.

The Assistant Secretary for Conservation and Renewable Energy, United States Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585

Subject: *Petition for Waiver and Application for Interim Waiver*

Gentlemen: This is a Petition for Waiver and Application for Inteim Waiver which are submitted pursuant to Title 10 CFR 430.27 as amended November 14, 1986. Waiver is requested from Test Procedures for Measuring the Energy Consumption of

Furnaces found in Appendix N to Subpart B of Part 430.

Under the existing Test Procedure, a 1.5 minute time delay between burner and blower startup is required. Carrier requests a waiver from the specified 1.5 minute delay. In its place, we request the use of a 45-second delay on Carrier's line of 58WAV/395CAV, 58ZAV/376CAV, 58PAV/383KAV, 58RAV/373LAV, GB1A and GB3A induced draft furnaces.

The time delay in all lines of equipment is fixed within the furnace control, and cannot be adjusted by the installer or servicer.

The current test procedures do not credit Carrier for the energy savings associated with the shorter blower time delays. Test data on our mid-efficiency furnaces show a 7.9% decrease in the heat-up cycle energy loss when using the 45-second delay, resulting in an increase in AFUE of approximately 0.6 AFUE points. Confidential supporting test data is available upon request.

Carrier is confident that a waiver will be granted for public policy reasons in the light of previous rulings in which DOE granted waivers of this type to Lennox Industries, Inter-City Products, Amana, Rheem Manufacturing, and the Trane Company. In addition, an interim waiver of this type was recently granted to Goodman and Snyder-General. Lastly, the proposed ASHRAE 103-88 allows the use of non-adjustable blower-on-delays in place of the specified 90 seconds. Both DOE and NIST were instrumental in the development of Standard 103-88, and suggested it be included so as to address furnaces with fixed blower-on-delays.

Respectfully,

Edward A. Baily,

Vice President, Government & Industry Relations.

[FR Doc. 92-12969 Filed 6-2-92; 8:45 am]

BILLING CODE 6450-01-M

Energy Conservation Program for Consumer Products; Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of Furnace Test Procedures From Clare Brothers (Case No. F-047)

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Clare Brothers (Clare) from the existing Department of Energy (DOE) test procedure for furnaces regarding blower time delay for the company's MEMC, HEDF, HEHF, HEG, and HEMB lines of gas furnaces.

Today's notice also publishes a "Petition for Waiver" from Clare. Clare's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. Clare seeks to test using a blower delay time of 60 seconds for its MEMC, HEDF, HEHF, HEG, and HEMB lines of gas furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. DOE is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than July 6, 1992.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F-047, Mail Stop CE-90, room 6B-025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0561.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-43, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On January 30, 1992, Clare filed an Application for Interim Waiver regarding blower time delay. Clare's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Clare requests the allowance to test using a 60-second blower time delay when testing its MEMC, HEDF, HEHF, HEG, and HEMB lines of gas furnaces. Clare states that the 60-second delay is indicative of how these furnaces actually operate. Since current DOE test procedures do not address this variable blower time delay, Clare asks that the Interim Waiver be granted.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 55 FR 3253, January 31, 1990, and 56 FR 2920, January 25, 1991; Trane Company, 54 FR 19226, May 4, 1989, and 56 FR 6021, February 14, 1991; Lennox Industries, 55 FR 50224, December 5, 1990; DMO

Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991; Inter-City Products Corporation, 55 FR 51487, December 14, 1991, and 56 FR 63945, December 6, 1991; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, and 56 FR 63940, December 6, 1991; Snyder General Corporation, 56 FR 45960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992; Thermo Proucts, Inc., 57 FR 903, January 9, 1992; and The Ducane Company, 56 FR 63943, December 6, 1991. Thus, it appears likely that the Petititon for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Clare an Interim Waiver for its MEMC, HEDF, HEHF, HEG, and HEMB lines of gas furnaces. Pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations part 430, the following letter granting the Application for Interim Waiver to Clare was issued.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC, May 20, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Mr. Kenneth R. MacIntyre,

Director of Engineering, Clare Brothers, 223 King Street East, Cambridge, Ontario, Canada N3H4T5

Dear Mr. MacIntyre: This is in response to your January 30, 1992, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedure for furnaces regarding blower time delay for Clare Brothers (Clare) MEMC, HEDF, HEHF, HEG, and HEMB lines of gas furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 55 FR 3253, January 31, 1990, and 56 FR 2920, January 25, 1991; Trane Company, 54 FR 19226, May 4, 1989, and 56 FR 6021, February 14, 1991; Lennox Industries, 55 FR 50224, December 5, 1990; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991; Inter-City Products Corporation, 55 FR 51487, December 14, 1991, and 56 FR 63945, December 6, 1991; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, and 56 63940, December 6, 1991; Snyder General Corporation, 56 FR 45960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; and The Ducane Company, 56 FR 63943, December 6, 1991.

Clare's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Clare will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Clare's Application for an Interim Waiver from the DOE test procedure for its MEMC, HEDF, HEHF, HEG, and HEMB lines for gas furnaces regarding blower time delay is granted.

Clare shall be permitted to test its MEMC, HEDF, HEHF, HEG, and HEMB line of gas furnaces on the basis of the test procedures specified in 10 CFR part 430, subpart B, appendix N, with the modification set forth below.

(i) Section 3.0 in appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t−), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furance is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t−), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

J. Michael Davis, P.E.

Assistant Secretary, Conservation and Renewable Energy.

30 January 1992

Assistant Secretary, Conservation and Renewable Energy, United States Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, U.S.A.

Gentlemen: This is a petition for waiver and petition for interim waiver submitted pursuant to Title 10 CFR Part 430.27. Waiver is requested from the furnace test procedure found at Appendix N to Subpart B of Part 430. The test procedure requires a 1.5 minute delay between burner "ON" and blower "ON". Clare is requesting authorization to use a 60 second delay instead of 1.5 minutes. Clare will be manufacturing series of furnace models with an electronic blower control that controls blower operation on a timing sequence as opposed to temperature. The Clare models which will incorporate these controls are noncondensing MEMC series upflow, and condensing furnace series HEDF downflow, HEHF horizontal, HEG lowboy and HEMB upflow. Improved energy efficiency on these models is achieved by the fixed timing controls installed in these models that activate the circulating air blower 60 seconds after the burner is "ON". Under the Appendix N procedures, the stack temperature is allowed to climb at a faster rate than it would with a 60 second blower "ON" time, allowing energy to be lost to the vent system. This waste of energy would not occur in normal operation. If this petition is granted the true blower "ON" time delay would be used in the measurement of AFUE. Proposed ANSI/ASHRAE 103–1988, paragraph 9.6.1 specifically addresses the use of timed blower operation.

Current prescribed test procedures prohibit Clare from taking credit for the saved energy, thus providing inaccurate comparative data.

Several other furnace manufactureres have been granted a waiver to permit calculations based on timed blower operation.

Confidential comparative test data is available to you on request, confirming that there are energy savings.

Manufacturers that market simuar products are being sent a copy of this petition for waiver and interim waiver.

Yours sincerely,
Kenneth R. Macintyre,
Director of Engineering.
[FR Doc. 92-12968 Filed 6-2-92; 8:45 am]
BILLING CODE 6450-01-M

Issuance of Decisions and Orders During the Week of May 4 Through May 8, 1992

Office of Hearings and Appeals

During the week of May 4 through May 8, 1992, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Barton Kaplan, 5/6/92, LFA-0206

On April 16, 1992, Barton Kaplan filed an Appeal from a determination issued to him on March 13, 1992, by the Acting Chief of Freedom of Information and Privacy Acts (Acting Chief) of the Office of Administrative Services of the Department of Energy (DOE). In that determination, the Acting Chief denied Mr. Kaplan's request for information pursuant to the Freedom of Information Act (FOIA), stating that the DOE had no documents which were responsive to the request. In considering the Appeal, the DOE confirmed that the Acting Chief followed procedures which were reasonably calculated to uncover all material within the scope of Mr. Kaplan's February 4, 1992 request and that no responsive documents were in the possession of the DOE. Accordingly, the DOE denied Mr. Kaplan's Appeal.

James L. Schwab, 5/7/92, LFA-0207

James L. Schwab filed an Appeal from a determination issued by the Department of Energy's (DOE) Albuquerque Field Office (Albuquerque). In his Appeal, Schwab contended that Albuquerque had released a different document to him instead of the document he requested. The DOE's Office of Hearings and Appeals found that Schwab's contentions were meritless and denied his Appeal.

K.D. Moseley, 5/5/92, LFA-0203

K.D. Moseley filed an Appeal from a determination issued by the Inspector General's Office (IG) of the Department of Energy (DOE). Although Moseley filed his FOIA request with the U.S. Postal Service, two responsive documents which were created by the DOE-IG were referred back to the IG for review. The DOE determined that the IG properly withheld the inspectors' names, phone numbers, and names of witnesses under Exemption 7(C). However, the DOE remanded the matter to the IG for a determination as to whether pronouns, dates, places, and other miscellaneous information which were withheld could be released.

Southwest contract Compliance Foundation, 5/7/92, LFA-0202

The Southwest Contract Compliance Foundation (SCCF) filed an Appeal from three determinations issued by the Western Area Power Administration (WAPA) of the Department of Energy (DOE). The determinations denied, in part, three Requests for Information seeking the release of two WAPA contractors' certified payroll records, which SCCF submitted under the Freedom of Information Act. WAPA released a redacted copy of the certified payroll records for one of the contractors from which the employee names, addresses and social security numbers were deleted, but could find no payroll records for the other. WAPA determined, pursuant to Exemption 6 of the FOIA, that disclosure of redacted information would violate the privacy interest of the employees and would not be in the public interest. In considering the Appeal, the DOE found that the public interest was outweighed by the privacy interests of employees in preventing the disclosure of their names, addresses and social security numbers. The DOE also found that WAPA had made an adequate search. Accordingly, SCCF's appeal was denied.

Request for Exception

J.M. Davis Industries, Inc., 5/6/92, LEE-0034

J.M. Davis Industries, Inc. filed an Application for Exception from the requirement that it file Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." The DOE determined that J.M. Davis did not meet the standards for exception relief because it was not experiencing a serious hardship or gross inequity as a result of the reporting requirements. Accordingly, exception relief was denied.

Motion for Reconsideration

Consolidated Edison Co. of New York, et al., 5/7/92, LER-0008

The DOE issued a Decision and Order denying a Motion for Reconsideration and Modification filed on behalf of Consolidated Edison Co. of New York, *et al.* The Motion requested the reconsideration of a Decision and Order implementing procedures for the disbursement of $9,000,000, plus accrued interest, obtained by the DOE under the terms of a Consent Order entered into with the Anchor Gasoline Corporation (Anchor) on September 22, 1988. Specifically, the Motion requested that the filing deadline for crude oil claims, which was extended in the Anchor Decision from June 30, 1992 to June 30, 1994, not be adjusted. The DOE found the Motion to be without merit, and retained the June 30, 1991 deadline.

Refund Applications

GAF Corporation 5/4/92, RF272-48671; RD272-48671

The DOE issued a Decision and Order granting an Application for Refund filed by GAF Corporation, a producer of building materials, in the Subpart V crude oil refund proceeding. A group of States and Territories (States) objected to the application on the grounds that the applicant was able to pass through increased petroleum costs to its customers. In support of their objection, the States asserted that GAF's sales and profits rose during the refund period, and that the price of roofing products generally rose concurrent with increases in petroleum product prices. In addition, the States submitted an affidavit of an economist stating that, because of the relative elasticities of supply and demand, nearly every industry passes through a portion of its cost increases. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. The DOE also denied the States' Motion for Discovery, finding that discovery was not warranted where the States had not presented evidence sufficient to rebut the applicant's presumption of injury. The refund granted to the applicant in this Decision was $1,411,568.

Howell Asphalt Company, 5/7/92, RF272-24799; RD272-24799

The DOE issued a Decision and Order granting an Application for Refund filed by Howell Asphalt Company, a highway construction company, in the Subpart V crude oil refund proceeding. A group of States and Territories (States) objected to the application on the grounds that the applicant was able to pass through increased petroleum costs to its customers. In supoort of their objection, the States submitted an affidavit of an economist stating that, in general, the construction industry was able to pass through increased petroleum costs. The DOE determined that the evidence offered by the States was insufficient to

rebut the presumption of end-user injury and that the applicant should receive a refund. The DOE also denied the States' Motion for Discovery, finding that discovery was not warranted where the States had not presented evidence sufficient to rebut the applicant's presumption of injury. The refund granted to the applicant in this Decision was $24,591.

Tri County Asphalt Corp., 5/4/92, RA272-00047

The DOE issued a Supplemental Order concerning a Decision and Order dated January 16, 1991, granting a refund to Tri County Asphalt Corp. (Tri County), Case No. RF272-10915. In that Decision, the DOE granted Tri County a crude oil refund totalling $3,942. Subsequently, on February 21, 1991, the DOE issued a Supplemental Order, Case No. RC272-114, correcting a mathematical error in the earlier Decision, and reducing the refund granted to Tri County to $3,492. The DOE determined that Tri County was eligible to receive a refund for: (1) 2,909,626 gallons of gasoline, middle distillates and propane mistakenly deducted by the DOE from the firm's original claim; (2) 31,726,432 gallons of liquid asphalt claimed by Tri County but never considered by the DOE; and (3) 13,500,000 gallons of various petroleum products purchased by Tri County between August 1973 and December 1975 which was not claimed in the firm's original application. The DOE granted Tri County an additional refund of $38,509 based on these purchases.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Abitibi-Price Corp.	RF272-1697	05/06/92
Abitibi-Price Corp.	RF272-1697	
Aminoil U.S.A., Inc./ Jim Thomas Enterprises, Inc	RR139-11	05/04/92
Atlantic Richfield Co./Hoggarth ARCO *et al*	RF304-3715	05/04/92
Atlantic Richfield Co./Ken's Service Center *et al*	RF304-12770	05/04/92
Atlantic Richfield Co./North City ARCO	RF304-13011	05/07/92
Pointville ARCO	RF304-13012	
Willits Motor Co.	RF304-13013	
Atlantic Richfield Co./Street's ARCO *et al*	RF304-12084	05/06/92
Empire Gas Corp./John Rostine	RF335-24	05/04/92
Delores H. Hamilton	RF335-54	
Exxon Corp./Ramsey Exxon *et al*	RF307-10195	05/05/92
Massachusetts Turnpike Authority *et al*	RF272-77488	05/05/92
Orangeville C U School Dist 20 *et al*	RF272-78844	05/05/92
Reinauer Petroleum Co./Beisler-Weidmann Co.	RF341-18	05/06/92
Denis Jerram	RF341-19	
Shell Oil Co./Daniel Baker Oil Co., Inc	RF315-9585	05/04/92
Texaco Inc./Frank's Texaco *et al*	RF321-14574	05/05/92
Texaco Inc./Frank's Service Station *et al*	RF321-3105	05/05/92
Texaco Inc./Walt's Texaco Station *et al*	RF321-1473	05/04/92
West Virginia Department of Highways	RF272-69948	05/06/92

Dismissals

The following submissions were dismissed:

Name and Case No.

Andy's Texaco; RF321-4796
Arrow Automotive Co.; RF321-10653
Art's Texaco; RF321-4804
Barrie Texaco Service Station; RF321-10875
Battlefield Service Center; RF321-10684
Beauvais Texaco; RF321-9191
Bill Dennis Texaco; RF321-10662
Bloomingdale Texaco; RF321-2178
Blount County Commission; RF272-89950
Burnett's Texaco; RF321-9190
Canoga Park Car Wash; RF321-10897
Carolina Texaco Service; RF321-10629
Cavalier's Texaco; RF321-11658
Centerville City, SD; RF272-69473
Charles Walker Texaco; RF321-10850
City of Pryor, OK; RF272-68142
City of Woodland; RF321-18449
Clay's Texaco; RF321-10865
Cline's Texaco; RF321-10626
Clyd's Texaco Service Station; RF321-10687
Cochran's Texaco; RF321-10630
Coffman's Texaco; RF321-10633
Conway Dyno Alignment Service; RF321-10642
Cortigeano's Texaco; RF321-10645
Dale City Arco, Inc.; RF304-88
Darrell's Texaco Service; RF321-10635
David Webster's Texaco; RF321-10863
David Williams Texaco; RF321-10870
Davlyn Industries, Inc.; RF272-65768
Dees' Midwest Truck Stop; RF321-10659
Dillow Bros. Texaco; RF321-10677
Doan's Texaco; RF321-10678
Dodge Lakeshore Texaco; RF321-10660
Dodge's Texaco; RF321-10661
Douglas Davidson Texaco; RF321-10655
Dunaway's Texaco; RF321-10668
Ed Steingraber's Texaco; RF321-10884
Ed's Texaco; RF321-7719
Ed's Texaco #1; RF321-10839
Ed's Texaco #2; RF321-10840
Four Points Texaco, Inc.; RF321-10873
Frisinger's North End Texaco; RF321-10637
Gates Texaco; RF321-9189
H.B. Powell Texaco Service; RF321-10609
H.J. Saoliner Oil Co.; RF321-10603
Haak's Texaco; RF321-10604
Harold West Texaco; RF321-10666
Harry Cole Texaco; RF321-10634
Heidle's Texaco Service Station; RF321-10989
Henry Toup's Texaco Service; RF321-10838
Hutterian Brethren in N.Y., Inc.; RF272-90120
Jack W. Trout; RF346-40
Jim's Texaco; RF321-7716
Joe Crain's Texaco; RF321-10648
John's Texaco; RF321-5028
John's Texaco Service; RF321-10833
Len's Southside Texaco; RF321-10657
Leslie's Texaco; RF321-10639

McNeill's Gulf Grocery and Service Station; RF300-15419
Mid-City Texaco; RF321-10851
Midland Texaco; RF321-11891
Montaup Electric Company; RF336-42
Mt. View Texaco; RF321-18471
Nixon Texaco; RF321-8932
O.B.'s Texaco; RF321-10689
Preston A. Dassell; RF321-11862
Princetion University; RF272-88262
Reid Bros. Oil, Inc.; RF321-10612
Reynolds Texaco & Used Cars; RF321-7715
Rivers Texaco; RF321-10882
Ron Crumley Texaco; RF321-10651
Roy Guerin's Texaco; RF321-7720
Roy's Texaco Service; RF321-10889
Russ's Texaco Service Center; RF321-10898
Sam Denaro's Texaco; RF321-10661
Shenco, Inc.; RF300-14514
Simpson Construction Co.; RF272-86104
Spruill's Texaco Service Station; RF321-2057
Tabor Texaco; RF321-10890
Tenney's Texaco Station; RF321-10829
Teter's Texaco; RF321-10831
Therien's Texaco; RF321-1911
Van Kleeck's Service Station ; RF321-10843
Vicksburg Oil & Gas; RF321-10858
Vowell Texaco; RF321-10848
Walter's Texaco Service; RF321-10854
Wathke's Interstate Texaco; RF321-10860
Way's Texaco; RF321-10862
Welch's Texaco Service Station; RF321-10864
West End Texaco; RF321-10868
West Side Texaco; RF321-18152
Westwood Texaco Service; RF321-10883
Xiggores East Side Texaco; RF321-10881

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management*: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: May 27, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92-12971 Filed 6-2-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 92-35-LNG]

Yukon Pacific Corp.; Application To Transfer Long-Term Export Authorization to Yukon Pacific Co., L.P.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed by Yukon Pacific Corporation (Yukon Pacific) on March 10, 1992, requesting authorization to transfer to Yukon Pacific Company, L.P. (YPLP), the export authorization granted Yukon Pacific in DOE/FE Opinion and Order No. 350 as modified in Order 350-A (collectively referred to as Order 350). See 1 FE ¶ 70,259 (November 16, 1989) and ¶ 70,303 (March 8, 1990). Under the terms of these orders, Yukon Pacific is authorized to export from the United States 350 million metric tons of liquified natural gas (LNG) over a twenty-five year term to the Pacific Rim countries of Japan, South Korea, and the Republic of China (Taiwan).

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, July 6, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Peter Lagiovane, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-8116.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Yukon Pacific is an Alaska corporation headquartered in Anchorage, Alaska. The corporation was formed in 1984 to construct, own, and operate the Trans-Alaska Gas System (TAGS). CSX Corporation of Richmond, Virginia currently holds a controlling interest in Yukon Pacific. Yukon Pacific and CSX recently concluded that a limited partnership would serve as the best vehicle for meeting the future management and financing needs of the TAGS project. Accordingly, on October 31, 1991, YPLP, a Delaware limited partnership, was formed. Yukon Pacific will serve as the sole managing partner of YPLP and as such will be responsible for the daily operation of the TAGS project. All of the limited partnership interests of YPLP are held by Starr of Alaska, Inc., a wholly owned subsidiary of CSX and YPLP's sole limited partner.

In the current application, Yukon Pacific states that since it will be responsible for maintaining bonds and insurance for the project and will continue to serve as the managing partner of YPLP, transfering the export authorization will not affect the basis upon which the authorization was granted, nor will it negate any of the benefits, identified by FE in Order 350, that are expected to flow from the TAGS export project. Moreover, since Starr of Alaska is under the control of CSX as a wholly owned subsidiary, Yukon Pacific asserts that control of the TAGS project will continue to reside with CSX, just as it did at the time DOE issued Order 350.

The application to transfer export authority will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-127. In Order 350, DOE found the Yukon Pacific export arrangement to not be inconsistent with the public interest. Inasmuch as the proposed transfer does not change the export arrangement, intervenors should limit their comments to the effect the transfer might have on that arrangement.

NEPA Compliance.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Yukon Pacific's application is available for A copy of Yukon Pacific's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on May 22, 1992.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Fossil Energy.

[FR Doc. 92-12632 Filed 6-2-92; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Salt Lake City Area Integrated Projects (SLCA/IP) Electric Power Marketing Environmental Impact Statement (EIS)

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of availability of Purpose and Need Statement and description of alternatives, and announcement of public information meetings.

SUMMARY: The Department of Energy, Western Area Power Administration (Western), announced its intent to prepare a SLCA/IP Electric Power Marketing EIS in the **Federal Register** April 4, 1990 (55 FR 12550). In subsequent **Federal Register** notices published September 20, 1990 (55 FR 38747) and again on November 9, 1990 (55 FR 47125), Western announced and then extended its scoping period and public meetings. Western held three public meetings announced in the **Federal Register** on May 1, 1991 (56 FR 19998) to outline the scope for the EIS.

Western now announces the availability of the EIS Purpose and Need Statement and description of alternatives which will be mailed to all interested parties. Western will hold five public meetings to describe the Purpose and Need Statement and alternatives, and to allow the public to ask questions and provide comments. The comment period will last until July 10, 1992. Western has provided all interested parties on its EIS Mailing list with information on the availability of the Purpose and Need Statement, the alternatives, and the dates for the public meetings and comment period. Copies of the Purpose and Need Statement and description of alternatives may be obtained from David Sabo at the address given below.

DATES: Public information meetings will be held as follows. All meetings begin at 7 p.m.

- June 2: Red Lion Inn Hotel, 255 South West Temple, Salt Lake City, Utah.
- June 3: YWCA of the USA, 9440 North 25th Ave., Phoenix, Arizona.
- June 4: Flagstaff High School, 400 West Elm, Flagstaff, Arizona.
- June 9: Albuquerque Convention Center, 401 2nd Street NW., Albuquerque, New Mexico.
- June 10: Denver West Marriott, 1717 Denver West Marriott Boulevard, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. David Sabo, Manager, Environmental and Public Affairs, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147-0606, (801) 524-5493.

Issued at Golden, Colorado, May 20, 1992.

William H. Clagett,

Administrator.

[FR Doc. 92-12964 Filed 6-2-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-66161; FRL 4055-8]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by September 1, 1992, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (H7502C), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 210, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 40 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000270-00223	Whitmire's No Chew	Benzyl diethyl ((2,6-xylylcarbamoyl)methyl) ammonium benzoate Essential oils Thymol
000352-00490	Atrazine 4L Herbicide	2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine
000352-00494	Atrazine 90DF Herbicide	2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine
000400-00415	Olin Terraclor Soil Fungicide 30% Granular	Pentachloronitrobenzene
000464 FL-77-0021	Dow Formula 40	Alkanol* amine 2,4-dichlorophenoxyacetate *(salts of the ethanol and
000464 FL-77-0025	Lorsban 4E	Aromatic petroleum derivative solvent *O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
000464 FL-81-0037	DMA 4 Herbicide	Dimethylamine 2,4-dichlorophenoxyacetate
000746-00124	Rat and Mouse Killer	3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin
001022-00008	Permatox 10-S	Borax Pentachlorophenol, sodium salt
001022-00465	Permatox 101	Pentachlorophenol, sodium salt Phenylmercuric acetate
001022-00481	Permatox 101	Pentachlorophenol, sodium salt
001022-00527	Mitrol G-ST	Pentachlorophenol, sodium salt
001471 FL-84-0008	Treflan E.C.	Trifluralin (α,α,α,-trifluro-2,6-dinitro-*N,N*-dipropyl-*p*-toluidine) Trifluralin (α,α,α,-trifluro-2,6-dinitro-*N,N*-dipropyl-*p*-toluidine)
002791-00043	Carpet Flea Powder	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins Silica gel
004758-00089	Holiday True Fog	Aliphatic petroleum hydrocarbons (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins Sesame oil
006653-00001	Sylvan Dell Brand Flavorized Rat Kakes	3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin
006720 FL-79-0027	SMCP Standard 2,4-D Amine	Dimethylamine 2,4-dichlorophenoxyacetate
007173 NJ-85-0001	Rozol Paraffinized Pellets	2-((*p*-Chlorophenyl)phenylacetyl)-1,3-indandione
007173 NJ-85-0002	Rozol Rodenticide Ground Spray Concentrate	2-((*p*-Chlorophenyl)phenylacetyl)-1,3-indandione
009319-00011	AT-90	3-Amino-*s*-triazole
010182 AZ-85-0005	Cymbush 3E Insecticide	Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
011556-00069	Sendran Liquid Tick and Flea Dip for Dogs and Cats	o-Isopropoxyphenyl methylcarbamate
033816-00001	Douse	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
049585-00007	Chacon Fruit & Vegetable Dust	1-Napthyl-*N*-methylcarbamate *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate Sulfur
049585-00008	Chacon Rose & Flower Dust Multipur Insect Fungicide	1-Napthyl-*N*-methylcarbamate *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate Sulfur
055947-00124	Houseplant Insect Mist	(5-Benzyl-3-furyl)methyl 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate Isopropyl (2E,4E)-11-methoxy-3,7,11-trimethyl-2,4-dodecadienoate
055947-00125	Zoecon Insect and Mite Houseplant Mist Concentrate	(5-Benzyl-3-furyl)methyl 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate Isopropyl (2E,4E)-11-methoxy-3,7,11-trimethyl-2,4-dodecadienoate
055947-00126	Zoecon Insect and Mite Houseplant Mist	(5-Benzyl-3-furyl)methyl 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate Isopropyl (2E,4E)-11-methoxy-3,7,11-trimethyl-2,4-dodecadienoate
063935 FL-89-0042	Dual 8E Herbicide	2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-4-methylphenyl)acetamid

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this ninety-day period. The following Table 2, includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000270	Farnam Companies Inc., 301 W. Osborn Rd., Phoenix, AZ 85067.
000352	E.I. Du Pont Denemours & Co., Inc., Agricultural Products Department, Box 80038, Wilmington, DE 19880.
000400	Uniroyal Chemical Co. Inc., 74 Amity Rd., Bethany, CT 06524.
000464	The Dow Chemical Co., Reg. Compliance / Health & Environmental, 1803 Building, Midland, MI 48674.
000746	Imperial Inc., Agent For: MFA Oil Co., Box 98, Shenandoah, IA 51601.
001022	Chapman Chemical Co., Box 9158, Memphis, TN 38109.
001471	Elanco Products Co., Box 708, Greenfield, IN 46140.
002781	Happy Jack Inc., Box 475, Snow Hill, NC 28580.
004758	Pet Chemicals, Box 18993, Memphis,, TN 38181.
006653	Goulds Dell Prod, 1318 Commerce Park Dr., Williamsport, PA 17701.
006720	Southern Mill Creek Products, 5414 North 56th Street, Tampa, FL 33610.
007173	Liphatech, Inc., 3600 W. Elm St., Milwaukee, WI 53209.
009319	Custom Chemicides, Box 11216, Fresno, CA 93772.
010182	ICI Americas Inc., Agricultural Products, New Murphy Rd. & Concord Pike, Wilmington, DE 19897.
011556	Miles Inc., Agriculture Division, Animal Health Products, Box 390, Shawnee Mission, KS 66201.
033816	T.F.G. Associates, 7518 North 13th Ave., Suite 21, Phoenix, AZ 85021.
049585	Alljack & Co., 377 Amelia, Plymouth, MI 48170.
055947	Sandoz Agro, Inc., 1300 E. Touhy Ave., Des Plaines, IL 60018.
063935	Third Party Registrations, Inc., Box 140097, Orlando, FL 32814.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before September 1, 1992. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1-year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s).

Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

Dated: May 26, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 92-12929 Filed 6-2-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-00319; FRL-4066-4]

Notice of Availability of the Pesticide Handlers Exposure Data Base through Versar, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: A Task Force comprised of EPA, Health and Welfare Canada (HWC), and National Agricultural Chemicals Association (NACA) has developed a generic data base that estimates exposures to mixers, loaders, and applicators of pesticides. This notice announces the availability of the Pesticide Handlers Exposure Data Base (PHED). PHED provides registrants, regulatory agencies, and the public with a substantial body of data on which to base evaluations of the potential exposures for a variety of application methods, crop types and formulations.

ADDRESSES: Copies of the PHED can be ordered from Tim Leighton, Versar Inc., 6850 Versar Center, Springfield, VA 22151, (1-800-283-7727).

FOR FURTHER INFORMATION CONTACT: John T. Tice, Health Effects Division (H7509C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 807, Crystal Mall #2, 1921 Jefferson Davis Highway, Crystal City, VA, (703-305-7975).

SUPPLEMENTARY INFORMATION: This generic pesticide field worker exposure data base was conceived by a Task Force when it was determined that exposure to pesticide users is primarily a function of the physical parameters of handling and application (e.g., formulation type and mixing/loading/application procedures), rather than of the chemical properties of the active ingredient. The Task Force felt there were many uses and benefits to a generic data base. The most significant benefit is that it allowed exposure and risk assessments to be conducted with a greater degree of certainty, since exposure estimates were based on a larger number of observations than were available from a single exposure study. Secondly, the data base will be a useful research tool for determining and comparing the influences of different parameters on pesticide exposures. Thirdly, pesticide registrants will be able to use the data base and make risk management decisions at the product design stage, prior to the registration stage. Lastly, the cost of pesticide exposure evaluations will be reduced as data are produced for exposure scenarios.

The current version of PHED is being released to the public with the full knowledge and understanding of the Task Force that there are a number of limitations to the data base that will not be solved in this iteration. Enhancements of PHED including improvements in processing time and an increase in the number of data records in the data base, are expected to occur over the next two to three years. Furthermore, the Task Force does not expect the data base to solve all exposure estimation problems for pesticide use. More studies will need to be conducted. Also, improved methodology is critical, particularly in the area of dermal exposure monitoring. However, the availability of pesticide exposure data, organized and compiled in an accessible form in PHED, will allow decisions to be made with greater confidence and will direct future research and monitoring efforts in the most productive directions.

PHED contains over 800 data records for workers engaged in pesticide mixing/loading and application procedures. It also contains procedures for selecting and subsetting data for specific purposes or for entering and using data from other field exposure studies. The PHED program contains the statistical capability to perform univariate (e.g., to obtain means, percentiles, confidence intervals), correlation, or regression statistics. Pesticide exposures (e.g., milligrams per day per pound of active ingredient handled) can be estimated for any given combination of factors that define an exposure scenario such as: application method, mixing/loading method, level of protective clothing, formulation type, and cab type.

Currently, PHED will run only in Revelation G or a run-time version Revelation (G2B) which must be purchased separately through a local software dealer. Revelation is a product of ELF Software, 1419 Commerce Avenue, Longview WA 98632, 1-800-422-2511. NOTE: PHED will not operate with Advanced Revelation.

Dated: May 21, 1992.

Richard D. Schmitt,

Acting Director, Health Effects Division, Office of Pesticide Programs.

[FR 92-12826 6-2-92; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-140181; FRL-4059-8]

Access to Confidential Business Information to Certain Contractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intended transfer of confidential business information to contractors.

SUMMARY: EPA intends to transfer confidential business information (CBI) collected from the pulp, paper, and paperboard manufacturing industry to two contractors. Transfer of the information will allow the contractors to assist EPA in developing regulations for the land application of sludge from pulp and paper mills using chlorine and chlorine-derivative bleaching processes under the Toxic Substances Control Act (TSCA), section 6. The information being transferred was collected under the authority of section 308 of the Clean Water Act (CWA), section 114 of the Clean Air Act (CAA), and section 3007 of the Resource Conservation and Recovery Act (RCRA). Interested persons may submit comments on this intended transfer of information to the addresses noted below.

DATES: Comments on the transfer of data are due June 15, 1992.

ADDRESSES: Comments on transfer of data collected under section 308 of CWA, section 114 of CAA, and section section 3007 of RCRA may be sent to Lynne Blake-Hedges, Regulatory Impacts Branch, Economics and Technology Division (TS-779), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Lynne Blake-Hedges at (202) 260-7241 for general information and Scott Sherlock at (202) 260-1536 for information regarding uses of CBI under TSCA authority.

SUPPLEMENTARY INFORMATION: EPA intends to transfer information, including CBI, to two contractors: Eastern Research Group, Inc. (ERG), 6 Whittmore St., Arlington, MA 02174 and ABT Associates (ABT), 4800 Montgomery Lane, Suite 500, Bethesda, MD 20814.

More specifically, the information being transferred to the contractors includes the following information collected under the authority of section 114 of CAA, section 308 of CWA, and section 3007 of RCRA: Information collected through questionnaires and surveys of the industry; all joint EPA-industry studies; site visit reports; monitoring and test data; test reports and sampling episodes reports; and analytical summaries of this information and data.

EPA also intends to transfer to ABT and ERG all information listed above (including CBI) that may be collected or developed in the future under the authorities listed above. This information is necessary to enable ABT and ERG to carry out the work required by their contracts to support EPA's development of regulations for the pulp, paper, and paperboard industry. The contractors, contract numbers, and type of support to be provided to EPA are listed in the following table:

EPA Office Receiving Support	Contractor	Contract No.	Type of Support
OPPTS/OPPT/ETD	ERG, Arlington, MA	68-D9-0169	Economic
OPPTS/OPPT/ETD	ERG, Arlington, MA	68-D0-0020	Economic
OPPTS/OPPT/ETD	ABT, Bethesda, MD	68-D9-0169	Economic
OPPTS/OPPT/ETD	ABT, Bethesda, MD	68-D0-0020	Economic

EPA Office Receiving Support	Contractor	Contract No.	Type of Support
OPPTS/OPPT	ABT, Bethesda, MD	68-C0-0093	Technical
OSWER/OSW	ABT, Bethesda, MD	68-C0-0093	Technical

In the case of information claimed to be proprietary and, therefore, confidential, all regulations and confidentiality agreements apply. This transfer would not affect the status of this information as information claimed to be proprietary. The relevant contracts contain all confidentiality provisions required by EPA's confidentiality regulations. Need for access to the information shall continue until September 30, 1993.

In accordance with those regulations, companies who have submitted information claimed to be confidential have until June 15, 1992 to comment on EPA's proposed transfer of this information to ERG and ABT for the proposed outlined above.

Dated: May 27, 1992.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc 92-12930 Filed 6-2-92; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-59307B; FRL-4068-1]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME 92-9. The test marketing conditions are described below.

EFFECTIVE DATE: May 28, 1992.

FOR FURTHER INFORMATION CONTACT: Vicki Anderson, New Chemicals Branch, Chemical Control Division (TS-794), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-611, 401 M St. SW., Washington, DC 20460, (202) 260-4142.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME-92-9. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-92-9. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME-92-9

Date of Receipt: April 15, 1992.

Notice of Receipt: April 28, 1992 (57 FR 17908).

Applicant: Confidential.

Chemical: (G) Alkylamine.

Use: (G) Flotation Agent.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: 6 months, commencing on first day of commercial manufacture.

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: May 28, 1992.

Linda Vlier Moos,

Acting Director, Chemical Control Division, Office of Toxic Substances

[FR Doc. 92-12931 Filed 6-2-92; 8:45 am]

BILLING CODE 6560-50-F

ENDANGERED SPECIES COMMITTEE

Decision

AGENCY: Endangered Species Committee.

ACTION: Notice of decision.

SUMMARY: The Endangered Species Committee held a public meeting on Thursday, May 14, 1992 in Washington, DC, to consider and determine the application of the Bureau of Land Management (BLM) for exemption from the provisions of the Endangered Species Act for 44 timber sales from its FY 1991 timber sales program. By a vote of five to two, the Committee decided on the record to exempt 13 of the 44 timber sales, subject to mitigation and enhancement measures to be undertaken by the BLM. The decision of the Committee is set forth below.

SUPPLEMENTARY INFORMATION: A notice in the September 25, 1991 **Federal Register**, 56 FR 48546, advised that the Bureau of Land Management filed an application with the Secretary of the Interior seeking exemption under section 7 of the Endangered Species Act that would permit the Bureau to hold timber sales on 44 tracts remaining in its 1991 timber sales program in Oregon.

A notice in the October 22, 1991 **Federal Register**, 56 FR 55462, advised that on October 1, 1991, the

Secretary of the Interior, who is also the Chairman of the Endangered Species Committee, determined that the threshold requirements concerning the application have been met and that a hearing would be conducted.

The Secretary of the Interior designated Harvey C. Sweitzer, an Administrative Law Judge, to conduct the evidentiary hearing. The Administrative Law Judge was assisted by the staff of the Endangered Species Committee, which includes the Division of General Law, Office of the Solicitor, Department of the Interior, and the Office of Program Analysis, Department of the Interior. The evidentiary hearing began on January 8, 1992 and concluded on January 30, 1992, in Portland, Oregon. See 56 FR 57633, November 13, 1991, the **Federal Register** notice that appointed the Administrative Law Judge and established the date of the hearing. An additional public hearing was conducted on February 12–13, 1992, in Portland. See 57 FR 4010, February 3, 1992, the **Federal Register** notice that established the date and location of the public hearing.

The Endangered Species Act requires the Chairman to submit a report to the Committee summarizing the hearing record and addressing specific criteria. The Secretary submitted the report to the Committee on April 29, 1992.

The viewing rooms in Portland and Washington, DC, in which the record was available for public inspection, have been closed.

FOR FURTHER INFORMATION CONTACT: Jon H. Goldstein, (202) 208–4077.

John E. Schrote,

Assistant Secretary—Policy, Management and Budget, and Staff to the Chairman, Endangered Species Committee.

Application for Exemption by the Bureau of Land Management To Conduct 44 Timber Sales in Western Oregon

Decision

Deny 31 and allow 13 of 44 timber sales for which exemption in sought. Specific sales that meet the criteria as discussed below will be allowed.

Proceedings of the Committee

Pursuant to the Endangered Species Act (ESA), 16 U.S.C. 1530 et seq., and its implementing regulations, 50 CFR subchapter C, the Secretary of the Interior convened the Endangered Species Committee (Committee) after making certain threshold determinations on October 1, 1991. An evidentiary hearing was held January 8–30, 1992 in Portland, Oregon. The Secretary presented his report summarizing the record on April 29, 1992. On May 14, 1992, the Committee decided to grant the exemption in part.

Proposed Agency Action

In this case, the Bureau of Land Management (BLM) is both the applicant and the action agency. BLM seeks exemption for 44 proposed timber sales from its FY 1991 timber sales program. As a result of its consultations under section 7 of the Endangered Species Act, the Fish and Wildlife Service (FWS) found that these 44 sales were likely to jeopardize the continued existence of the northern spotted oil.

As the BLM's application shows, 44 individual sales were submitted to FWS for consultations under section 7. FWS issued a single document containing separate biological opinions that addressed the sales. The record does not contain any unity of approach among the parties on this matter, although most analysis and data appeared to analyze some aggregate number of sales. Based on the complex nature of the timber sales program and the consultations under the ESA, as well as on the structure and complexion of the evidence received by the Committee, the Committee determined that the application seeks one exemption with 44 subparts. The Committee has analyzed the record sale by sale and in the aggregate in light of the exemption criteria.

Basis for Decision

Reflecting the provisions of section 7(h) that all criteria must be met to exempt an agency action, the Committee applied the exemption criteria one by one in such a manner that failure to meet any one criterion eliminated the sale from further consideration for exemption. However, the Committee noted each criterion under which a sale would be eliminated.

The Committee's decision to grant a partial exemption allowing 13 sales is based on its determinations that:

(i) For a limited number of the 44 sales, a reasonable and prudent alternative exists, because of the proximity and comparability of some sales from the FY 1992 timber sales program that received "no jeopardy" opinions from the FWS after consultations under section 7 of the ESA. For the rest of the FY 1991 sales, there are no reasonable and prudent alternatives.

(ii) The benefits of the 13 specific timber sales clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and the sales are in the public interest.

(iii) The sales are of regional significance in that their economic effects have, at a minimum, county-wide impact in the two counties in which they are located.

(iv) The Committee finds no evidence in the record demonstrating that the BLM has made any irreversible or irretrievable commitment of resources.

These determinations were made on the record and are summarized below.

Criterion 1: Reasonable and Prudent Alternatives to the Agency Action

The record contains significant evidence that FY 1992 timber sales that received "no jeopardy" opinions from the FWS after consultation under the ESA could constitute reasonable and prudent alternatives. Of these 82 sales, 32 are located in the BLM resource areas that include the 44 FY 1991 sales for which exemption is sought. The Committee finds that proximity to and relative comparability with the exemption sales are important factors in determining which FY 1992 sales are reasonable and prudent. Of these 32, however, three are in critical habitat units and are now the subject of consultation regarding possible adverse modification of critical habitat. Further, 13 of the remaining 32 FY 1992 sales are in informal conferencing with FWS for the marbled murrelet, leaving 16 for consideration as reasonable and prudent alternatives.

The Committee compared these FY 1992 sales against the FY 1991 sales for which BLM seeks exemption that are in the same resource areas due to proximity, comparability and impact on jobs. Comparability of sales is based on board footage, as summarized in Chapter 1, Table 1.2, in the Secretary's report. The distribution of these 16 sales among the resource areas is such that only 12 can serve as reasonable and prudent alternatives.

Ten of the 16 FY 1992 sales serve as reasonable and prudent alternatives for 10 FY 1991 sales located in various resource areas. The other six FY 1992 sales are located in the South Umpqua Resource Area. Two of these six sales serve as reasonable and prudent alternative to the single FY 1991 sale in that resource area. These are no other FY 1991 sales in that resource area for which any of the other four FY 1992 sales can serve as reasonable and prudent alternatives.

Accordingly, the Committee denies exemption for those 11 FY 1991 sales for which reasonable and prudent alternatives exist in the FY 1992 sales. The following 11 FY 1991 sales are denied exemption, based on the

existence of reasonable and prudent alternatives:

Yamhill Resource Area: Back in the Saddle, Kitchen Door, Tigger Too, and Rootballs.
Drain Resource Area: Barneys Peak.
Tioga Resource Area: Green Cedar.
Dillard Resource Area: Pea Gravel Clay and Salty Dog.
South Valley Resource Area: Fox Hollow and and Stennets Fawn Farm.
South Umpqua Resource Area: Horse Heaven.

The Committee recognizes that the FY 1992 sales currently are enjoined pending the outcome of continuing litigation in the Court of Appeals for the Ninth Circuit.

Criterion 2: The Benefits of the Remaining FY 1991 Sales Clearly Outweigh the Benefits of Alternative Courses of Action Consistent With Conserving the Species or its Critical Habitat, and the Sales Are in the Public Interest

Alternative courses of action would include the reasonable and prudent alternatives, as well as those discussed in chapter 3 of the Secretary's Report. Tables 2.1, 2.2, 3.1 of the Secretary's report provide the model for comparing these benefits. After analyzing the quantitative and qualitative data for the sales in the aggregate, the Committee finds that the benefits of the sales "clearly ouweigh" the benefits of alternative courses of action consistent with conserving the species or its habitat. In particular, the stumpage benefits of conducting the sales are significantly greater than the stumpage benefits of not conducting the sales. In addition, the total benefits of the sales are much greater than total benefits of not holding the sales.

The location of a sale in designated critical habitat or a designated conservation area (DCA) in the Recovery Plan for the Northern Spotted Owl (draft) was used as the determinant or "public interest." Accordingly, the Committee finds that the following 12 sales falling within the boundaries of designated critical habitat or a DCA are not in the public interest, and thus are denied exemption:

Northside, Renhaven, Elk 24, Brownson Headwater, Young Leo, Alma Ranch, Table Creek, Eddy Whittaker, Clabber Creek, Amberson Creek, Herb Cluster, 33 and 1.

The Committee finds that the following sale, which was denied under criterion 1, also would be denied exemption as not in the public interest because it falls within the species' critical habitat:

Horse Heaven.

The Committee finds that the sales that were not eliminated under criteria 2 and 3 are in the public interest, because they will provide important benefits in terms of county revenues and continued employment for the affected region, which clearly outweigh those of alternative courses of action.

Criterion 3: The Sales Are of Regional or National Significance

The economic impact information in the record measured the impacts of the sales in terms of the county in which the sales are located. On a sale-by-sale basis, the effects can be county-wide, or may extend beyond the boundaries of any single county, depending on the location of and amount of timber in a given sale. The Committee finds that county-wide impact constitutes regional significance.

The Committee examined a number of factors to determine those sales that would be regionally significant. The Committee reviewed the proposed sales in the context of those counties in which the direct timber jobs associated with the sales are high in comparison to non-timber employment, as set out in Tables 4.8, 4.9 and 4.10 in the Secretary's Report; against county-wide unemployment figures, as set out in Table 4.2; against the relative reliance of counties budgets upon timber sale revenues, as demonstrated in Tables 4.3, 4.4 and 4.6 of the Secretary's Report; and in light of other pertinent information related to the counties involved in the sales.

There were two separate "screens" used for this analysis. First, the remaining sales (those that were not eliminated under either criteria 1 and 2) were evaluated against criteria that constituted a measure of relative size and importance economically and a measure of relative impact on the owl and its habitat. Under this test, sales were deemed to be not of regional significance if they resulted in low county revenue sharing, low timber volume, or high impact on the owl or its habitat (take of owls and/or significant modification of dispersal habitat).

Accordingly, the Committee denies the following six sales under this analysis:

Cross Out, Callahan 20 Cleanup, Last Yankee, Lake Creek, Independence, Luts Breakout.

The following sales, which were denied under criteria 1 and 2, also would be denied under this analysis:

Green Cedar, Salty Dog, Fox Hollow, Back in the Saddle, Clabber Creek, Alma Ranch, Table Creek, Eddy Whittaker.

Second, the Committee evaluated several economic characteristics of six counties involved in the 44 sales to determine if certain counties would be more greatly affected by loss of some or all of the sales. Coos County and Douglas County were highest of all six counties in terms of unemployment, timber employment relative to total employment, percentage of county budgets from O&C revenues, percent of county budgets represented by the remaining sales (not eliminated in criteria 1 and 2), and timber jobs derived from the sales relative to total timber employment.

Using "county" as a region, the Committee determines that the remaining sales falling in Lane, Lincoln, Yamhill and Polk Counties are not of regional significance. Accordingly, the Committee denies exemption to two sales:

Chopped Hamm, Weiss Road.

Under this analysis, additional sales already denied under criteria 1, 2, or the first screen in criterion 3 also would have been denied exemption:

Fox Hollow, Alma Ranch, Lake Creek, Young Leo, Table Creek, Stennets Fawn Farm, Eddy Whittaker, Back in the Saddle, Kitchen Door, Tigger Too, Rootballs, 33 and 1.

After examining and applying these several factors, the Committee determines that the resulting exempted sales are regionally significant. The resulting exempted sales are located in Douglas and Coos Counties, which are more timber-dependent than the other counties and will experience the largest relative economic effects, both in terms of employment and county share of O & C timber receipts. (While Lincoln County's timber employment dependence generally is comparable to that of Douglas and Coos Counties, the sole FY 1991 timber sale in Lincoln County was denied exemption due to the existence of a comparable and proximate FY 1992 sale that may be substituted as a reasonable and prudent alternative under the first criterion.)

Criterion 4: There Has Been No Irreversible or Irretrievable Commitment of Resources

The Committee found no evidence in the record demonstrating that the BLM has made any irreversible or irretrievable commitment of resources.

Sales To Be Exempted

As a result of applying the exemption criteria, the Committee finds for 13 sales that there are no reasonable and prudent alternatives, that the benefits

clearly outweigh the benefits of alternative courses of actions, that they are of regional significance, and that the Bureau of Land Management has not made any irreversible or irretrievable commitment of resources. Accordingly, the Committee grants exemptions for the following 13 sales:

Prego, Moore Coon, Pita Ridge, King Smith, Fall Apart, Chicken Deluxe, Halfway Oxbow, Devore Mountain, Windy, Bateman & Robin, North Sand Creek, Four Gates, Camas Valley West.

Mitigation Measures

The Committee adopts all of BLM's suggestions for mitigation measures to be performed by BLM as integral parts of the exempted sales, modified to maximize the use of land exchange first, rather than acquisition. Additionally, the Committee adopts the mitigation measures set forth on the attachment to this Decision.

Section 7(k) of the ESA

The Committee adopts the recommendations of Counsel to the Committee in his memorandum of April 29, 1992. The Committee therefore declines to issue a finding as to the legal adequacy of BLM's environmental documentation under the National Environmental Policy Act. The Committee is satisfied that an environmental impact statement (EIS) has been previously prepared and that environmental assessments addressing each sale have been tiered to that EIS. The Committee also has reviewed additional evidence in the record regarding the quality and content of the environmental documentation. The Committee believes that the record is complete regarding the environmental issues and accepts the Chairman's conclusion that the requirements of section 7(k) are met.

Order

On the basis of the findings stated above, the Committee grants exemptions for 13 of the 44 FY 1991 timber sales, provided that the mitigation and enhancement measures recommended by BLM, as well as those set forth on the attached addendum, are funded concurrently with the execution of the sales.

Signed on behalf of the Endangered Species Committee:

Date: May 15, 1992.

Manuel Lujan, Jr.

Chairman.

Attachment.

Endangered Species Committee Amendment

As a measure of mitigation for the granting of these 13 exemptions, the Endangered Species Committee (ESC) directs BLM to implement the final recovery plan for the Northern Spotted Owl as expeditiously as possible.

The ESC further directs BLM to use the recovery plan for the Northern Spotted Owl as the basis for its decadal plan. This plan should adequately address concerns about the recovery of the Northern Spotted Owl and shall be consistent with the best available scientific and commercial data, which includes the scientific evidence and information collected by the Inter-Agency Scientific Committee, during the critical habitat rule and draft recovery plan, and as it develops. No single timber sale shall be offered until the decadal plan has gone through a 60-day comment period and has been approved by the DOI. If approval of the decadal plan is delayed beyond the initial comment period and if that delay is beyond the control of the DOI, then sales that are not inconsistent with the Recovery Plan may continue.

The BLM must submit its 1993 annual and decadal plans for consultation as a whole. If BLM, in consultation with FWS, is unable to identify appropriate time [sic] management and owl conservation strategies that will not jeopardized the continued existence of the Northern Spotted Owl, it is the ESC's desire that the FWS issue and opinion on the plan as a whole and not on individual sales. If FWS concurrence is not forthcoming, the BLM could once again apply to the ESC for an exemption from the requirements of section 7 of the ESA.

[FR Doc. 92-12960 Filed 6-2-92; 8:45 am]

BILLING CODE 4310-10-M

FEDERAL RESERVE SYSTEM

Jones Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 26, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Jones Bancorp, Inc., Marcellus, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of G.W. Exchange Bank, Marcellus, Michigan.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Bigfork Bancshares, Inc., Bigfork, Minnesota; to become a bank holding company by acquiring 99.2 percent of the voting shares of First State Bank of Bigfork, Bigfork, Minnesota, and thereby indirectly acquire First State Bank of Bigfork, Bigfork, Minnesota.

2. Bowbells Holding Company, Bowbells, North Dakota; to acquire 100 percent of the voting shares of First National Bank, Minot, North Dakota, a *de novo* bank.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Broadmoor Capital Corporation, Colorado Springs, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank at Broadmoor, Colorado Springs, Colorado.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. West One Bancorp, Boise, Idaho, and West One Bancorp, Washington, Bellevue, Washington; to acquire 100 percent of the voting shares of Yakima Valley Bank, Yakima, Washington.

Board of Governors of the Federal Reserve System, May 28, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-12906 Filed 6-2-92; 8:45 am]

BILLING CODE 6210-01-F

Professional Bancorp, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 17, 1992.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Professional Bancorp, Inc., Santa Monica, California; to acquire BBH Qualified Plans, Inc., Pasadena, California, and thereby engage in data processing, pursuant to § 225.25(b)(7) of the Board's Regulation Y, and trust company functions, pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 28, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-12901 Filed 6-2-92; 8:45 am]

BILLING CODE 6210-01-F

Earlene Whitaker, et al.; Change in Bank Control Notices; Acquisitions 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 the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 23, 1992.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Earlene Whitaker to acquire 32.2 percent, Earlene Whitaker Trust to acquire 19.4 percent, and O.R. Whitaker Trust to acquire 28.8 percent, with Loretta Winkler and J.H. Hay as co-trustees, all located in Liberal, Kansas, of the voting shares of Citizens Financial Corporation, Inc., Liberal, Kansas, parent of Citizens State Bank, Liberal, Kansas.

2. Basil G. Taylor and/or Danna L. Taylor, Watonga, Oklahoma, to acquire an additional 1.27 percent, for a total of 25 percent, and Cecil J. Benway and/or Margaret Benway, Watonga, Oklahoma, to acquire an additional 1.27 percent, for a total of 25 percent, of the voting shares of First State Bancorporation of Watonga, Watonga, Oklahoma, and thereby indirectly acquire First State Bank, Watonga, Oklahoma.

Board of Governors of the Federal Reserve System, May 28, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-12902 Filed 6-2-92; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scot-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 051192 AND 052292

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN No.	Date terminated
HSBC Holdings plc, Midland Bank plc, Midland Bank plc	92-0864	05/11/92
United Trust, Inc., John K. Cantrell and Mildred G. Cantrell, Commonwealth Industries Corporation	92-0866	5/11/92
Kubota Corp., Silicon Graphics, Inc., Silicon Graphics, Inc	92-0908	05/11/92
The Reynolds and Reynolds Company, Norick Investment Company A Limited Partnership, Norick Brothers, Inc	92-0875	05/12/92
Medco Containment Services, Inc., COMNET Corporation, COMNET Corporation	92-0911	05/12/92
Fidelity National Financial, Inc., Meridian Bancorp, Inc., Meridian Title Insurance Company	92-0858	05/13/92

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 051192 AND 052292—Continued

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN No.	Date terminated
Saint Luke's Hospital of Kansas City, Spelman Health Services, Inc., Spelman Health Services, Inc	92-0909	05/13/92
Dresser Industries, Inc., Gonzalo Vazquez, AVA International Corp	92-0677	05/14/92
Tyco Toys, Inc., Martin Scheman, Illco Toy Co. U.S.A. Inc., Illco International	92-0933	05/14/92
Ben Hill Griffin, Jr. Revocable Intervivos Trust #1, Stoneridge Resources, Inc., Orange-co, Inc	92-0857	05/15/92
American Cable TV Investors 5, Ltd., Steven J. Simmons, Simmons Communications Company, L.P	92-0881	05/15/92
Don G. Angell, The Hillhaven Corporation, First Healthcare Corporation	92-0918	05/15/92
Rite Aid Corporation, Hannaford Bros. Co. Wellby Super Drug Stores, Inc	92-0934	05/15/92
Household International, Inc., Craig-Hallum Corporation, Craig-Hallum Corporation	92-0935	05/15/92
Newell Co., Stuart Hall Company, Inc., Stuart Hall Company, Inc	92-0938	05/15/92
Welsh, Carson, Anderson & Stowe V, L.P., Joint Venture Corporation, Joint Venture Corporation	92-0946	05/15/92
Welsh, Carson, Anderson & Stowe V, L.P., Citicorp, Citicorp Establishment Services	92-0947	05/15/92
BancPLUS Acquisition Corporation, Sam M. Stewart, CFC, Inc	92-0950	05/15/92
The 1818 Fund, L.P., Dorr-Oliver Incorporated, Dorr-Oliver Incorporated	92-0952	05/15/92
Tribune Company, Taft Broadcasting Partners Limited Partnerships, WPHL-TV, Inc	92-0961	05/15/92
Sears, Roebuck and Co., Melvin Simon, Natick Mall Associates	92-0976	05/15/92
Kobe Steel, Ltd., Halstead Industries, Inc., Halstead Industries, Inc	92-0854	05/18/92
Deere & Company, Re Capital Corporation, Re Capital Corporation	92-0891	05/18/92
Ethyl Corporation, Amoco Corporation, Amoco Petroleum Additives Company	92-0927	05/18/92
Merrill Lynch Capital Appreciation Company Limited II, Wherehouse Partners, WEI Holdings, Inc	92-0959	05/18/92
Merrill Lynch Capital Appreciation Company Limited II, Grammy Corporation, Grammy Corporation	92-0967	05/18/92
Code, Hennessy & Simmons Limited Partnership, DWG Corporation, National Frame and Picture Co	92-0928	05/20/92
Alco Standard Corporation, Sterling Capital Ltd., Sterling Capital Ltd	92-0960	05/20/92
First Brands Corporation, Dennis Markel, A&M Pet Products, Inc	92-0965	05/20/92
First Brands Corporation, Anan A. Anabtawi, A&M Pet Products, Inc. and Eurofin Inc	92-0966	05/20/92
Allied-Lyons PLC, William Hill Wine Company, William Hill Wine Company	92-0970	05/20/92
The Liberty Corporation, Mr. Joe Lewis Allbritton, Pierce National Life Insurance Company	92-0977	05/20/92
Genuine Parts Company, I. Gary Davis, Davis & Wilmar, Inc	92-0889	05/22/92
Mr. Ferrucio Fabri, Mr. Chak Fu Chan, Parc 51 Associates	92-0968	05/22/92
The ARA Group, Inc., William J. Steinberg, M.D., Coordinated Health Services, Inc	92-0974	05/22/92
Wings Holdings, Inc., HAL, Inc., Hawaiian Airlines, Inc	92-0975	05/22/92
General Electric Company, Chrysler Corporation, Chrysler Capital Corporation	92-0978	05/22/92
Bacardi International Limited, Bacardi Imports, Inc., Bacardi Imports, Inc	92-0981	05/22/92
Bacardi International Limited, Bacardi Corporation, Bacardi Corporation	92-0982	05/22/92
Craig O. McCaw, Richard E. O'Krepki, General Communications Systems, Inc	92-0983	05/22/92
Sterling Chemicals, Inc., Tenneco Inc., Tenneco Canada Inc. and voting stock of 982174 Ontario	92-0984	05/22/92
Liz Claiborne, Inc., Russ Togs, Inc., Debtor, Russ Togs, Inc	92-0985	05/22/92
AXA, The Equitable Companies Incorporated, The Equitable Companies Incorporated	92-0986	05/22/92
Chris-Craft Industries, Inc., Pinelands, Inc., Pinelands, Inc	92-0992	05/22/92
Mr. Omar Z. Al Askari, Crystal Brands, Inc., Crystal Brands, Inc	92-1000	05/22/92
AMR Corporation, Carl C. Icahn, Trans World Airlines, Inc	92-1001	05/22/92
AMR Corporation, UAL Corporation, Air Wisconsin, Inc	92-1006	05/22/92

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 92-12921 Filed 6-2-92; 8:45 am]

BILLING CODE 6750-01-M

[File No. 921 0015]

The Vons Companies, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a California-based national grocery chain to sell its Madonna Road supermarket in San Luis Obispo to an FTC-approved purchaser who will operate the store as a supermarket. The respondent would also be required, for a period of 10 years, to obtain FTC approval before making similar acquisitions.

DATES: Comments must be received on or before August 3, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Steven Newborn, FTC/S-2308, Washington, DC 20580, (202) 326-2815; or Paul Roark, Los Angeles Regional Office, Federal Trade Commission, 11000 Wilshire Blvd., suite 13209, Los Angeles, Ca. 90024, (310) 575-7890.

SUPPLEMENTARY INFORMATION: Pursuant to seciton 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § .2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to divest, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Divest and To Cease and Desist

In the matter of The Vons Companies, Inc., a corporation. The Federal Trade Commission having initiated an investigation of the acquisition by The Vons Companies, Inc., of eighteen retail grocery stores from Williams Bros. Markets, Inc., and it now appearing that The Vons Companies, Inc., hereinafter sometimes referred to as "proposed respondent" or "Vons," is willing to enter into an agreement containing an

order to divest certain assets and to cease and desist from certain acts,

It is hereby agreed by and between proposed respondent, by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent Vons is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan with its executive offices and principal place of business located at 618 South Michillinda Avenue, Arcadia, California, 91007.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement pruposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to divest and to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

As used in this order, the following definitions shall apply:

A. *Acquisition* means the acquisition by Vons of eighteen supermarkets from Williams Bros. Markets, Inc., in San Luis Obispo and Santa Barbara Counties in California.

B. *Property to be divested* means the supermarket at 1314 Madonna Road, San Luis Obispo, California, and shall include the supermarket business and all assets, title, leases, properties, interests, business, goodwill, rights and privileges, of whatever nature, tangible and intangible, except for the name "William Bros." and any other registered or unregistered trademarks and tradenames, and, at the option of the purchaser, all fixtures, equipment and inventory (except private label inventory) generally located at and utilized in any way in conjunction with the retail sale of food and groceries at such supermarket.

C. *Respondent* or *Vons* means The Vons Companies, Inc., subsidiaries, divisions and groups, and their respectiver directors, officers, employees, agents, partners, and representatives, and any successors or assigns of any of the foregoing.

D. *Supermarket* means a retail grocery store of 10,000 or more square feet that carries a wide variety of food and grocery items in particular product categories, including bread and dairy products; refrigerated and frozen food and beverage products; fresh and prepared meats and poultry; produce, including fresh fruits and vegetables; shelf-stable food and beverage products, including canned and other types of packaged products; staple food stuffs, which may include salt, sugar, flour, sauces, spices, coffee, and tea; and other grocery products, including nonfood items, which may include soaps, detergents, paper goods, and other household products, and health and beauty aids.

E. *Eligible Person* means Albertson's, Inc., Certified Grocers of California Ltd., Food 4 Less Supermarkets, Inc., Scolari of California, Inc, and Joie Scolari, and their respective successors, assigns, subsidiaries, divisions and groups.

II

It is ordered that,

A. Within twelve (12) months of the date this order becomes final, respondent shall divest, absolutely and in good faith, the Property to be Divested.

B. The divestiture shall be made only to (1) an eligible person or to (2) an acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture is to ensure the continuation of the Property to be Divested as an ongoing viable enterprise, engaged in the supermarket business, and to remedy the lessening of competition alleged in the Commission's complaint.

III

It is further ordered that respondent shall take such action as is necessary to maintain the viability and marketability of the Property to be Divested and shall not cause or permit the destruction, removal, wasting, deterioration or impairment of the Property to be Divested except in the ordinary course of business and except for ordinary wear and tear.

IV

It is further ordered that:

A. If respondent has not divested absolutely and in good faith and with the Commission's prior approval, the Property to be Divested as required by Paragraph II of this order within twelve (12) months of the date this order becomes final, respondent shall consent to the appointment of a trustee by the

Commission to divest the Property to be Divested. In the event the Commission or the Attorney General brings an action pursuant to 5(*1*) of the Federal Trade Commission Act, 15 U.S.C. 45(*1*), or any other statute enforced by the Commission, respondent shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Paragrtaph 5(*1*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Vons to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph IV.A. of this order, respondent shall consent to the following terms and conditions regarding the trustee's powers, authorities, duties and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall, subject to the prior approval of the Commission, have the exclusive power and authority to divest the Property to be Divested.

3. The trustee shall have eighteen (18) months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the eighteen/month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission, or by the Court for a court-appointed trustee.

4. The trustee shall have full and complete access to the personnel, books, records and facilities relating to the Property to be Divested, or any other relevant information, as the trustee may reasonably request. Respondent shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or the court for a court-appointed trustee.

5. Subject to respondent's absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in Paragraph II.B of this order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each acquiring entity for the divestiture of the Property to be Divested. The divestiture shall be made in the manner set out in Paragraph II; provided, however, that if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by respondent from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of respondent and the trustee's power shall be terminated. The trustee's compensation shall be based at least in a significant part on a commission arrangement contingent on the trustee's divesting the Property to be Divested.

7. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this order.

8. Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, respondent shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph IV.A of this order.

10. The Commission or, in the case of a court-appointed trustee, the court may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the Property to be Divested.

12. The trustee shall report in writing to respondent and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

V

It is further ordered that, within ninety (90) days after the date this order becomes final and every sixty (60) days thereafter until respondent has fully complied with Paragraph II of this order, respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying or has complied with the order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of all substantive contacts or negotiations for the divestiture required by this order, including the identity of all parties contacted. Respondent also shall include in its compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports, and recommendations concerning divestiture.

VI

It is further ordered that, for a period of ten (10) years after the date this order becomes final, respondent shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, without the prior approval of the Commission:

A. Any supermarket or leasehold interest in any supermarket in San Luis Obispo County, California, or any facility that has operated as a supermarket in San Luis Obispo County within six (6) months of the date of the accepted offer of purchase, or any equity or other interest in or the stock or share capital of any entity that owns any interest in or operates any supermarket in San Luis Obispo County, or any equity or other interest in or the stock and share capital of any entity that owned any interest in or operated any supermarket in San Luis Obispo County within six (6) months of the date of the accepted offer of purchase;

B. Any supermarket or leasehold interest in any supermarket anywhere in the United States that has operated as a supermarket within six (6) months of the

date of the accepted offer of purchase if Vons, directly or indirectly, has within nine (9) months of the date of the accepted offer closed or sold all of its supermarkets (which must be at least one) within seven miles of the supermarket to be acquired, to a purchaser other than an ongoing viable enterprise engaged in the supermarket business in a manner consistent with such purchaser continuing to operate such supermarket as an ongoing, viable supermarket; and

C. Provided, however, that Paragraphs VI.A and B shall not be deemed to require prior approval by the Commission of the construction of new facilities by Vons. Provided further that acquisitions resulting in an interest of not more than 1% of the outstanding voting securities of publicly traded companies, solely for the purpose of investment, or an interest of not more than 5% of the outstanding voting securities of Certified Grocers of California, Ltd. solely for the purpose of investment are not subject to Paragraphs VI.A and B of this order; acquisitions of voting securities of a publicly traded company shall not be subject to Paragraphs VI.A and B of this order solely by reason of the ownership, directly or indirectly, by such publicly traded company of less than 5% of the outstanding voting securities of a company that owns an interest in or operates a supermarket; and

Beginning on August 29, 1992, and annually thereafter for ten (10) years, the respondent shall file with the Commission a verified written report of respondent's compliance with sections A and B of this Paragraph.

VII

It is further ordered that, for the purpose of determining or securing compliance with this order, subject to any legally recognized privilege, and upon written request with reasonable notice, respondent shall permit any duly authorized representative or representatives of the Commission:

A. Access, during the office hours of respondent and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order;

B. Upon five (5) days' notice to interview officers or employees of respondent, who may have counsel present, regarding such matters.

VIII

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in its organization, such as dissolution, assignment or sale resulting in the emergence of a successor, the creation or dissolution of subsidiaries, or any other change, that may affect compliance obligations arising out of this order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from The Vons Companies, Inc. ("Vons").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The proposed complaint in this matter alleges that Vons owns and operates retail supermarkets throughout the country. On or about September 3, 1991, Vons and Williams Bros. Markets, Inc., entered into a letter of understanding for the acquisition by Vons of the Williams Bros. supermarkets in the central coast area of California, including the city of San Luis Obispo. On or about December 31, 1991, Vons and Williams Bros., entered into a formal agreement transferring the assets and operations of the supermarkets to Vons. On or about January 28, 1992, the acquisition was consummated.

The proposed complaint further alleges that on or about September 6, 1991, after Vons had entered into a letter of intent to purchase the Williams Bros. stores, Vons agreed to sell its store in San Luis Obispo to a drugstore operator. On or about September 12, 1991, it entered into a formal agreement with the drugstore operator. On or about September 30, 1991, escrow closed on the transaction.

The proposed complaint alleges that the two transactions described above were inextricably intertwined: the second would not have been made but for the first. Vons sacrificed short run profits to secure market power in the relevant market by agreeing to sell its store in the city of San Luis Obispo to a person that did not intend to operate it as a supermarket for a lower price than it was offered by a person who did intend to operate it as a supermarket.

The proposed complaint further alleges that acquisition of Williams Bros. by Vons substantially increased concentration in the already highly concentrated San Luis Obispo supermarket relevant market. Vons has approximately 50% of the market. Moreover, entry into the relevant market is difficult. Prior to the transactions described above, Vons and Williams Bros. were actual competitors in the relevant market.

The effects of the acquisition may be substantially to lessen competition in the relevant market in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by eliminating direct competition between Vons and Williams Bros.; by eliminating Williams Bros. as a substantial independent competitive force; by facilitating the reduction of capacity in the relevant markets through Vons' sale of its store in San Luis Obispo to a buyer not intending to operate it as a supermarket; and by significantly enhancing the likelihood of collusion, or interdependent coordination among retail supermarkets.

The proposed order requires, among other things, that the proposed respondent shall:

A. Within twelve (12) months of the date this Order becomes final, divest the supermarket at 1314 Madonna Road, San Luis Obispo, CA.

B. Divest the property only to an acquirer that receives the prior approval of the Commission or to an eligible purchaser listed in the order.

C. Take such action as is necessary to maintain the viability and marketability of the property to be divested.

D. Consent to the appointment of a trustee by the Commission to divest the property, in the event that respondent fails to divest in accordance with the Order within twelve (12) months.

E. For a period of ten (10) years after the date the order becomes final, cease and desist from acquiring any supermarket within San Luis Obispo County, CA without the prior approval of the Commission.

F. For a period of ten (10) years after the date the Order becomes final, cease and desist from acquiring any supermarket, anywhere in the country without prior approval from the Commission, if Von's, within nine (9) months of the date of the acquisition, has closed or sold to a non-supermarket purchaser all of the stores it operated within seven (7) miles of the acquired store.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of

the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Azcuenaga in re the Vons Companies, Inc. (File No. 921-0015)

I concur in the Complaint and Order insofar as they are based on section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, but do not reach the question whether the Williams Bros. acquisition also violated section 7 of the Clayton Act, 15 U.S.C. 18.

[FR DOC. 92-12942 Filed 6-2-92; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92E-0169]

Determination of Regulatory Review Period for Purposes of Patent Extension; Omniflox®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Omniflox® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joel P. Sparks, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Omniflox®. Omniflox® (temafloxin hydrochloride) is indicated for the treatment of adults with mild to moderate infections caused by susceptible strains of designated microorganisms in lower respiratory tract infections, skin and skin structure infections, prostatitis, and urinary tract infections. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Omniflox® (U.S. Patent No. 4,730,000) from Abbott Laboratories, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated April 29, 1992, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Omniflox® represented the first commercial marketing of the product under section 505 of the Federal Food, Drug, and Cosmetic Act. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Omniflox® is 1,449 days. Of this time, 658 days occurred during the testing phase of the regulatory review period, while 791 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective*: February 11, 1988. The applicant claims February 10, 1988, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was February 11, 1988, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: November 30, 1989. The applicant claims November 29, 1989, as the date the new drug application (NDA) for Omniflox® (NDA 20-043) was filed. However, FDA records indicate that NDA 20-043 was submitted on November 30, 1989.

3. *The date the application was approved*: January 30, 1992. FDA has verified the applicant's claim that NDA 20-043 was approved on January 30, 1992.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 328 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before August 3, 1992, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 30, 1992, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 21, 1992.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 92-12941 Filed 6-2-92; 8:45 a.m.]

BILLING CODE 4160-01-F

Centers for Disease Control

[Program Announcement Number 238]

Grant for Injury Control Training and Demonstration Center; Availability of Funds for Fiscal Year 1992

Introduction

The Centers for Disease Control, the Nation's prevention agency, announces the availability of grant funds in Fiscal Year 1992 for the establishment of a new injury control training and demonstration center. The center will address the special needs of trauma victims in rural communities where economic conditions are depressed and where common occupations, including underground mining and family farming, are associated with an increased risk for severe injuries. This center will develop a training, research and services program for injury control, encompassing prevention, acute medical care and rehabilitation services, with an overall mission to reduce morbidity, mortality, disability and health care costs associated with traumatic injury.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. The announcement is related to the priority area of unintentional injuries. (For ordering a copy of Healthy People 2000, see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under sections 301 and 391 of the Public Health Service Act [42 U.S.C. 241 and 280b], as amended. Program regulations are set forth in title 42 of the Code of Federal Regulations, part 52.

Eligible Applicants

Eligible applicants include all non-profit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, and other public and private organizations, state and local health departments and small, minority businesses are eligible for this grant.

Availability of Funds

Approximately $890,000 is available in Fiscal Year 1992 to fund one new injury control training and demonstration center. It is expected that the award will begin on or about September 30, 1992, and will be made for a 12-month budget period, with a project period of up to 3 years. Funding estimates may vary and are subject to change. Continuation of funding for future years will be made on the basis of satisfactory progress, including the achievement of milestones towards development of the training, research and services components of the center, and the availability of federal funds.

Purpose

The purpose of this grant program is to establish a new injury control training and demonstration center to serve a rural community where economic conditions are depressed. An increased risk of severe injury exists in these communities where a relatively large proportion of the work force are underground miners, family farmers and other rural workers.

Program Requirements

The following are essential requirements for establishing the new injury control training and demonstration center:

1. Ability to establish a center that is principally based at a Level I trauma center that has established linkages with isolated, rural hospitals that provide medical care services in communities where economic conditions are depressed and where many residents work in occupations, including underground mining and family farming, that have an increased risk for severe injuries.
2. A full-time director/coordinator at the Level I trauma center with authority and responsibility to carry out the requirements of the program.
3. Ability to provide qualified staff, other resources, and knowledge to implement the components of the program.
4. Availability of state-of-the-art telecommunications on a 24-hour basis that facilitates (a) consultations with medical specialists, (b) linkages to major medical and injury control research centers, and (c) transmission of diagnostic information.
5. A plan to develop an applied research program in rural trauma care and EMS systems to enhance and extend prevention, acute care and rehabilitation services. Possible research applications include more effective public education in injury prevention, quicker public access to emergency services, demonstrable enhancements of telecommunications capacity for prehospital emergency care providers, equipment and methods for expeditious transport of injured persons from the scene of injury to the most appropriate receiving hospital, more timely and effective use of resuscitative interventions by prehospital and hospital personnel who treat traumatically injured persons, closer integration of acute care and rehabilitation services, and improvements in trauma care and EMS surveillance systems to facilitate evaluation of clinical performance.
6. Demonstrated capacity to establish and maintain training and continuing education programs for emergency physicians, surgeons, trauma nurses, physician assistants, emergency medical technicians, and first responders so that providers at all phases and levels of service are capable of rendering trauma care that meets recognized national standards. Training programs for emergency medical technicians and first responders should reflect current standard curricula for prehospital care. Teaching programs for physicians and trauma nurses should include instruction in advanced methods for resuscitation and stabilization of critically injured patients. Training in medical control and EMS operations should be a priority for these physicians who provide medical direction to prehospital personnel.
7. Ability to develop and maintain a population-based trauma registry with uniform case criteria and data elements, to be used for trauma care assessment and injury surveillance. This trauma care data system should include process and outcome measures for prehospital, hospital and rehabilitation services as well as data describing the cause of injury and contributing factors. It should also provide appropriate data collection, analysis, and reporting mechanisms for ongoing trauma care system monitoring and evaluation, including assessment of long-term sequelae of injury and the effectiveness of acute care and rehabilitation services.
8. Effective, well-defined working relationships with regional and state health agencies that have responsibility for EMS and trauma care services.
9. A plan to ensure continuation of the injury control training and demonstration center beyond expiration of grant support.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. The applicant's understanding of the problem of addressing rural trauma care issues (5%).
2. Technical merit and comprehensiveness of proposed approach to establishing the new injury control training and demonstration center as outlined in this announcement, including summary descriptions [i.e., goals and objectives, rationale, methods

and potential outcomes) of all projects proposed for applied research, training and continuing education, trauma registry, and injury prevention/intervention activities (30%).

3. Relevance of the proposal to the scope and activities described in this announcement (25%).

4. Training and experience of the proposed program director(s) and staff. The program director(s) must have an appropriate medical training in the field of rural trauma care and technical expertise in medical supervision and trauma patient management. The program director(s) must also provide assurances of major time commitment to the program (15%).

5. Appropriateness of facilities, telecommunication systems, and linkages with isolated rural community hospitals as described in this announcement (15%).

6. Proposed implementation plan with milestones and schedule for initiating and accomplishing the major activities of the grant (10%).

Executive Order 12372 Review

Applications are not subject to review by Executive order 12372.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.136.

Application Submission and Deadline

The original and five copies of the application PHS Form 398 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., room 300, Mailstop E-14, Atlanta, Georgia 30305, on or before July 31, 1992.

1. Deadlines

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the independent review group.

Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service.

Private metered postmarks shall not be acceptable as proof of timely mailing.

2. Late Applications

Applications which do not meet the criteria in 1.a. or 1.b. above are considered late. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, business management technical assistance, and an application package may be obtained from Adrienne McCloud, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E-14, Atlanta, Georgia 30305, (404) 842-6634.

Scientific or technical assistance may be obtained from Daniel A. Pollock, M.D., Biometrics Branch, Division of Injury Control, National Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road NE., Mailstop F-36, Atlanta, Georgia 30333, (404) 488-4656.

Programmatic technical assistance may be obtained from Paul Burlack, Division of Injury Control, National Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop F-36, Atlanta, Georgia 30333, (404) 488-4662.

Please refer to Announcement Number 238 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone (202) 783-3238).

Dated: May 22, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92-12897 Filed 6-2-92; 8:45 am]

BILLING CODE 4160-18-M

[Announcement Number 235]

Injury Community Demonstration Projects for the Evaluation of Youth Violence Prevention Programs; Availability of Funds for Fiscal Year 1992

Introduction

The Centers for Disease Control, the Nation's prevention agency, announces the availability of Fiscal Year 1992 funds for cooperative agreements for the prevention of deaths and injuries associated with youth violence in high-risk communities. These projects will develop, implement, and evaluate multi-faceted, community-based prevention programs to reduce the incidence of interpersonal violent behavior and associated injuries and deaths among adolescents and young adults in high-risk communities.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Violent and Abusive Behavior. (For ordering a copy of Healthy People 2000, see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

Authority

This program announcement is authorized under section 391 (42 U.S.C. 380b) of the Public Health Service Act, as amended.

Eligibility

Eligible applicants are state and local health departments, national organizations working at the community level, community-based organizations, research institutions, universities, colleges, and other nonprofit entities with a demonstrated capacity for working with youth in high-risk communities. Regardless of the type of organization from which the application originates, applicants must be able to demonstrate that they have established a working partnership involving, at a minimum, a community-based organization, a university or other academic institution, and a state or local health department.

Availability of Funds

Approximately $750,000 is available in Fiscal Year 1992 to fund up to two projects to evaluate multi-faceted community-based youth violence prevention programs. Awards are expected to range from $325,000 to $425,000 with an average award of $375,000 for each 12-month budget period. Funds are expected to be awarded on or about September 30, 1992, for up to a 5-year project period. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Purpose

The purpose of this project is to design, implement, and determine the effectiveness of multifaceted,

community-based youth violence prevention programs in reducing the incidence of interpersonal violent behavior and associated injuries and deaths among adolescents and young adults in high-risk communities.

Youth violence prevention programs will involve collaboration among several different sectors of the community, including (at a minimum) a community-based organization, state and/or local health department, and an academic institution. The population in which these violence prevention programs should attempt to reduce violence is adolescents and young adults. The recipient will define the specific age span that will constitute "adolescents and young adults" for the purposes of this prevention program. The target population for the interventions which comprise the violence prevention program, however, may differ from the population in which the program is attempting to reduce violence. For example, interventions could be targeted towards parents of youth (to enlist their aid in preventing youth violence) or towards young children (with the aim of reducing their violent behavior during adolescence and young adulthood).

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A., below and CDC will be responsible for conducting activities under B., below:

A. Recipient Activities

1. Year 1.

a. Convene local planning groups (LPGs) that will advise and consult on the scientific and practical aspects for the proposed intervention and evaluation activities. This group will collaborate with the applicant in all phases of the project. The LPG must include, at a minimum, a behavioral scientist with experience in intervention evaluation, an experienced epidemiologist, and representatives from the participating state or local health department, community-based organization(s), academic institution(s), and other community agencies concerned with youth violence.

b. Develop procedures for collecting and compiling information relevant to the proposed project. This information should include, but not be limited to a description of the target population; identification of barriers to youth violence prevention; identification of facilitators of violent behavior, and/or facilitators of injury *given* violent behavior; descriptions of new and existing candidate interventions for the proposed youth violence prevention program (including a description of the mechanism by which each intervention would contribute to the prevention of injuries from violence, and evidence—whether empirical, theoretical, or anecdotal—that the intervention may be effective).

c. At the end of the first year provide, in collaboration with participating institutions, a summary of the following information:

i. In light of the above findings, identify a final target population and a diverse but complementary set of promising, culturally sensitive preventive interventions for inclusion in the youth violence prevention program beginning in year 2.

ii. Modify the analysis plan submitted with the application to reflect the above findings and decisions and input from the collaborating partners. Develop a final written scientific protocol for evaluating the planned youth violence prevention program. This protocol will contain the following elements:

1. Statement of the questions to be answered (hypotheses to be tested);

2. Description of any individual intervention, or set of interventions, to be evaluated;

3. Specific process and outcome data that will be collected and analyzed, including data collected for purposes of program monitoring and management;

4. Description of methods (both scientific and operational) for collecting process and outcome data;

5. Description of how data will be maintained (i.e., in what databases); and

6. Description of statistical techniques that will be used to analyze the data.

d. Develop and pilot test instruments for data collection for program monitoring and effectiveness evaluation.

e. Establish baseline rates of violent behavior and associate injuries and deaths, as well as any other key study indicators, within the chosen target population.

f. Establish, in collaboration with CDC, goals and realistic, measurable, time-oriented objectives for all remaining phases of the project.

2. Years 2 and Beyond

a. Develop and implement the selected interventions as part of a coordinated, community-based youth violence prevention program.

b. Collect and compile program monitoring and prevention effectiveness data in an ongoing fashion. Compile "lessons learned" from project demonstration.

c. Collaborate with CDC in the conduct of the final scientific evaluation of the effect of the program on rates of youth violence and associated injuries and deaths.

B. CDC Activities:

1. Provide consultation and technical assistance in problem assessment and defining the target population; the evaluation of coverage, cost, and impact of current and potential interventions; and design of scientific protocols.

2. Collaborate in the design of all phases of the demonstrations. Provide consultation on data collection instruments and procedures, and provide coordination of research, evaluation, and intervention activities between and among the sites.

3. Collaborate in the data collection and analysis of information collected from these studies and other related activities.

4. Monitor data collection and analysis of information collected from evaluation, and provide technical assistance in establishing standardized data collection and reporting systems to monitor program activities and costs of interventions.

5. Provide up-to-date scientific information about youth violence prevention and coordinate with related activities in CDC's national youth violence prevention program.

6. Assist in the transfer of information and methods developed in these projects to other prevention programs through CDC's national youth violence prevention program.

Review and Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria (Maximum 100 total points):

1. The extent to which the community and target population has a high incidence of interpersonal violent behavior among youth and has been affected by deaths and injuries associated with youth violence. (35 points)

2. The extent to which the applicant has demonstrated that a full working partnership for the design, implementation, and evaluation of the project has been established between—at a minimum—a community-based organization, a university or other academic institution, and a state or local health department; and the extent to which the applicant or full working partner provides evidence of other, beneficial collaborative relationships between service providers and researchers and between government, health, and community-based organizations who are or will be

involved in the design, implementation, and evaluation of the project. (10 points)

3. The quality of the applicant's proposed analysis plan, i.e., the plan to design and evaluate a program of interventions that will prevent deaths and injuries associated with youth violence; and the degree to which the proposed interventions are realistic and meet the intended purposes of the funding. (15 points)

4. The extent to which the applicant demonstrates the interest, ability, and willingness to collaborate with CDC and other funded projects in the design and evaluation of the prevention program that may require incorporating, changing, or eliminating certain activities proposed by the applicant. (10 points)

5. The extent to which the applicant or full working partner demonstrates knowledge of evaluation research methods, applied epidemiologic and behavioral research in the area of youth violence, ability to collect data on the target population, and ability to analyze both quantitative and qualitative data; and the extent to which the applicant or full working partner demonstrates the capacity to initiate and complete effective epidemiologic, behavioral, and evaluation research in the area of youth violence prevention. (10 points)

6. The extent to which the applicant or full working partner demonstrates that they have access to the target population for the proposed prevention program, an understanding of the community and the target population, and has experience in management and delivery of high-quality interventions at the community level to the target population. (10 points)

7. The extent to which the applicant's proposed staff and facilities meet project requirements, the extent to which the applicant can demonstrate that institutional barriers will not impede the initiation, implementation, and completion of the project (through letters of support from the head administrative office of the organization where the project will be carried out outlining specifically how the project will be supported institutionally, including endorsement of the timeline, project staff requirements, collaborative and contractual relationships, and other requirements of the project included in the proposal), and the extent to which the applicant proposes to involve appropriate researchers and other personnel who reflect the racial/ethnic makeup of the target population. (10 points)

8. Consideration will also be given to the extent to which the budget request is clearly explained, adequately justified, reasonable, sufficient for the proposed project activities, consistent with the intended use of the cooperative agreement funds, the extent to which the applicant is contributing its own resources to youth violence prevention activities, and the extent to which the applicant is working to establish a self sufficient prevention program within the community. (Not Scored)

Other Requirements

A. Paperwork Reduction Act

Projects funded through this cooperative agreement mechanism that involve collection of information from 10 or more individuals will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

B. Human Subjects and Confidentiality

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institution review committee(s). The applicant will be responsible for providing assurance with the appropriate guidelines and form provided in the application kit.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. Executive Order 12372 sets up a system for state and local government review of proposed federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., room 300, Mailstop E-14, Atlanta, Georgia 30305, no later than 60 days after the application deadline. The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number (CFDA) for this project is 93.262.

Application Submission and Deadline

The originial and two copies of the application PHS Form 5161-1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., room 300, Mailstop E-14, Atlanta, Georgia 30305, on or before July 31, 1992.

1. Deadlines

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the independent review committee. For proof of timely mailing, applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.

2. Late Applications

Applications that do not meet the criteria in 1.a. or 1.b. above are considered late. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, business management technical assistance, and an application package may be obtained from Adrienne McCloud, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Mailstop E-14, Atlanta, Georgia 30305, (404) 842-6634.

Programmatic assistance may be obtained from Timothy N. Thornton, Division of Injury Control, National Center for Environmental Health and Injury Control, Mailstop F-36, Centers for Disease Control, Atlanta, Georgia 30333, (404) 488-4662.

Scientific assistance may be obtained from Patrick W. O'Carroll, M.D., M.P.H., Division of Injury Control, National Center for Environmental Health and Injury Control, Mailstop F-36, Centers

for Disease Control, Atlanta, Georgia 30333, (404) 488-4646.

Please refer to Announcement Number 235 when requesting information and submitting any application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone (202) 783-3238).

Dated: May 28, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92-12896 Filed 6-2-92; 8:45 pm]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 92F-0218]

BP Chemicals, Ltd.; Filing of Food Additive Petition (Animal Use)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that BP Chemicals, Ltd., has filed a petition proposing that the regulations for use of food additives in animal feed and drinking water be amended to provide for use of formic acid in feed ingredients and in complete poultry feed as an antimicrobial agent when in an amount not to exceed 1.5 percent of the finished feed.

DATES: Written comments by August 3, 1992.

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

FOR FURTHER INFORMATION CONTACT: Woodrow M. Knight, Center for Veterinary Medicine (HFV-226), Food and Drug Administration,7500 Standish Pl., Rockville, MD 20855, 301-295-8731.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2226) has been filed by BP Chemicals, Ltd., Research & Development Dept., Hull Laboratory, Salt End, Hull HU 12-8 DS United Kingdom. The petition proposes that § 573.480 *Formic acid* (21 CFR 573.480) be amended to provide for use of formic acid in feed ingredients and in complete poultry feed as an antimicrobial agent for reducing *Salmonella* in an amount not to exceed 1.5 percent of the finished feed.

The potential environmental impact of this action is being reviewed. The environmental assessment prepared by the petitioner may be seen at the Dockets Management Branch (address above). Comments from the public are invited. Comments received by August 3, 1992 will be considered. 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 27, 1992.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 92-12946 Filed 6-2-92; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92N-0234]

Royce Laboratories, Inc.; Withdrawal of Approval of Six Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of six abbreviated new drug applications (ANDA's) held by Royce Laboratories, Inc. (Royce), 16600 Northwest 54th Ave., Miami, FL 33014. Royce has agreed in writing to permit FDA to withdraw approval of the applications, and has waived its opportunity for a hearing. This action stems from the discovery of discrepancies concerning the data submitted to obtain approval of the applications.

EFFECTIVE DATE: June 3, 1992.

FOR FURTHER INFORMATION CONTACT: Diane M. Sullivan, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8041.

SUPPLEMENTARY INFORMATION: Recently, FDA became aware of discrepancies concerning the data used to support approval of the following ANDA's held by Royce:

ANDA 71-722: Haloperidol Tablets, .05 milligram (mg);

ANDA 71-723: Haloperidol Tablets, 1 mg;

ANDA 71-724: Haloperidol Tablets, 2 mg;

ANDA 71-725: Haloperidol Tablets, 5 mg;

ANDA 72-121: Haloperidol Tablets, 10 mg; and

ANDA 72-122: Haloperidol Tablets, 20 mg.

Royce has conducted an internal audit confirming data discrepancies discovered by the agency. Subsequently, in a letter dated May 1, 1992, Royce requested withdrawal of the ANDA's.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of the ANDA's listed above, and all amendments and supplements thereto, is withdrawn, effective June 3, 1992. Distribution of these products in interstate commerce without an approved application is illegal and subject to regulatory action.

Dated: May 26, 1992.

Gerald F. Meyer,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 92-12947 Filed 6-2-92; 8:45 am]

BILLING CODE 4160-01-F-

[Docket No. 88D-0026]

Tamper-Resistant Packaging Requirements for Certain Over-the-Counter Human Drug Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of revised Compliance Policy Guide (CPG) 7132a.17 entitled "Tamper-Resistant Packaging Requirements for Certain Over-the-Counter (OTC) Human Drug Products." The CPG provides updated guidance to FDA district offices on the requirements for tamper-resistant packaging for OTC drug products for human use.

ADDRESSES: A copy of revised CPG 7132a.17 entitled "Tamper-Resistant Packaging Requirements for Certain Over-the-Counter (OTC) Human Drug Products" may be ordered from National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Orders must reference NTIS order number PB 92-174002 and include payment of $12.50 for each copy of the document. Payment may be made by check, money order, charge card (American Express, VISA, or MasterCard), or billing arrangements made with NTIS. Charge card orders

must include the charge card account number and expiration date. For telephone orders or further information on placing an order, call NTIS at 703-487-4650. CPG 7132a.17 is available for public examination in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Lana J. Ragazinsky, Center for Drug Evaluation and Research (HFD-336), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8107.

SUPPLEMENTARY INFORMATION: FDA has revised CPG 7132a.17 to update internal guidance to FDA district offices on the requirements for tamper-resistant packaging for OTC drug products for human use. The CPG reviews packaging systems, capsule sealing technologies, and location of the tamper-resistant packaging labeling statement(s).

The statements made in the CPG are not intended to create or confer any rights, privileges, or benefits on or for any private person, but are intended merely for internal guidance.

This notice is issued under 21 CFR 10.85.

Dated: May 21. 1992.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 92-12944 Filed 6-2-92; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Privacy Act of 1974; System of Records

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, called "Medicare Supplier Identification File," HHS/HCFA/BPO No. 09-70-0529. We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires only that the "routine uses" portion of the system be published for comment, HCFA invites comments on all portions of this notice.

DATES: HCFA filed a new system report with the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), on May 28, 1992. Pursuant to paragraph 4(b)(4) of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records about Individuals," dated December 24, 1985 (50 FR 52730), we are requesting a waiver from OMB of the 60-day advance notice requirement because of the legislative requirement for implementing the change. The effective date of the legislation requiring the disclosure of ownership was January 1, 1992 for all new suppliers. HCFA, however, was unable to develop and obtain approval of the standard form necessary to capture the data required for disclosure of ownership and satisfy the requests of the Office of Inspector General in time to meet the due date. Therefore, in the absence of a denial of the waiver by OMB, the new system of records including routine uses will become effective July 27, 1992, unless comments received should lead HCFA to decide otherwise.

ADDRESSES: The public should address comments to Richard A. DeMeo, HCFA Privacy Act Officer, Office of Budget and Administration, Health Care Financing Administration, 2-H-4 East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Jane Herlocker, Project Officer, Bureau of Program Operations, Health Care Financing Administration, 6325 Security Boulevard, Baltimore, Maryland 21207. Her telephone number is 410-966-7412.

SUPPLEMENTARY INFORMATION: To be eligible for payment for supplies and services furnished to Medicare beneficiaries, a supplier must obtain a billing number by completing the application form ("Medicare Supplier Number Application"—HCFA-192) from the Medicare carrier. As part of the process to obtain a billing number, HCFA requires information about persons having ownership or control interest in a supplier to comply with section 1124A of the Social Security Act, 42 USC section 1320a-3a as added by section 4164 of the Omnibus Reconciliation Budget Act (OBRA) of 1990, Public Law No. 101-508, which requires suppliers to disclose information about owners and managing employees.

In this system of records, HCFA is limiting its collection of information to suppliers of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS.) A "supplier" of DMEPOS is an entity or individual, including a physician or part A provider, which sells or rents Part B covered items to Medicare beneficiaries and which meet the standards which Medicare established and are found on the application form ("Medicare Supplier Number Application", HCFA-192). Other suppliers and providers of services are required by this legislation to disclose ownership information of their entities; other privacy systems of records may be established as appropriate.

Section 1124A(a)(3) of the Social Security Act (the Act) defines ownership or control interest as "a person who (A)(i) has directly or indirectly (as determined by the Secretary in regulations) an ownership of 5 per centum or more in the entity; or (ii) is the owner of a whole or part interest in any mortgage, deed of trust, note, or other obligation secured (in whole or in part) by the entity or any of the property or assets thereof, which whole or in part interest is equal to or exceeds 5 per centum of the total property and asset of the entity; or (B) is an officer or director of the entity, if the entity is organized as a corporation; or (C) is a partner in the entity, if the entity is organized as a partnership." "Control interest" also includes any person meeting the above definitions for an entity which is involved in a joint venture which is seeking to qualify as a supplier and receive a billing number.

Section 1124A of the Act defines managing employee to mean "an individual, including a general manager, business manager, administrator, and director, who exercises operational or managerial control over the entity or who directly or indirectly conducts the day-to-day operations of the entity."

Suppliers also are required to disclose ownership of a subcontractor. A subcontractor is defined in 42 CFR 420.201 as "(1) an individual, agency, or organization to which a disclosing entity has contracted or delegated some of its management functions or responsibilities of providing medical care to its patients."

The legislation defines in section 1124A of the Act a disclosing Part B provider to mean an entity receiving payment on an assignment-related basis for furnishing items or services for which payment may be made under Part B of Title XVIII. The HCFA Notice of Proposed Rule Making (NPRM) titled "Medicare Program: Carrier Jurisdiction for Claims for Durable Medical

Equipment, Prosthetics, Orthotics, and Other Issues Involving Suppliers" (56 FR 56612) changes the definition to include all suppliers, not just those receiving payment on assignment-related basis. Also included in the NPRM are standards for a supplier to receive a billing number. HCFA is using these standards in lieu of a definition for a supplier of DMEPOS.

Prior to the OBRA legislation, Medicare lacked such a requirement to collect ownership information and received criticism from the Office of Inspector General (OIG) for this deficiency. Without the requirement to collect ownership information, Medicare carriers were unable to cross-check owner and managing employee names against the sanctions listing from the OIG. Thus, individuals who had owned suppliers which were sanctioned or identified as having questionable business practices were able to reenter the Medicare program by changing the name of the business and reincorporating.

To achieve consistency in data requirements, HCFA developed a standard form, "Medicare Supplier Number Application"—(HCFA-192 which OMB approved on December 24, 1991, with the OMB No. 0938-0594), specifically to meet the disclosure requirements of section 1124A of the Act. The form HCFA-192 is designed to capture business and ownership information from suppliers. The information on this application is the source for the "Medicare Supplier Identification File." The application and the subsequent file provide an ongoing collection of data necessary to identify suppliers of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) who are eligible to submit claims for items provided to Medicare beneficiaries. In conjunction with the HCFA plan to regionalize the processing of DMEPOS claims, the new DMEPOS regional carriers will collect the ownership information for those suppliers.

The local carriers will continue to collect business and ownership information for three other types of suppliers—ambulance companies, imaging technology companies, and independent physiological laboratories. To comply with the requirement for disclosure of ownership and managing employees for those three types of suppliers, HCFA will instruct the carriers to use local forms to collect the ownership and managing employee information.

The Medicare Supplier Identification File will contain all the business and ownership data from the HCFA-192 and provide each carrier the ability to issue billing numbers only to suppliers eligible to receive Medicare payments. It will also allow the Medicare carrier to check the name of the supplier and the names of the owners and the managing employees against the sanctions listings from the OIG to ascertain that the business and the owners and managing employees do not appear on the OIG listings which contain both supplier business names and individuals' names.

This system of records will not have an unfavorable effect on the privacy or personal rights of individuals. The proposed routine uses in this new system of records meet the compatibility criteria of the Privacy Act.

Dated: May 19, 1992.

William Toby, Jr.,

Acting Administrator, Health Care Financing Administration.

09-07-0529

SYSTEM NAME:

Medicare Supplier Identification File, HHS, HCFA, BPO.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Casrriers under contract to the HCFA will maintain the records. Contact System Manager for location of system of records. In addition, records for suppliers of DMEPOS will be collected and retained at a national level at a contractor to be selected later. The HCFA Data Center may also retain an electronic file of this system of records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Information on owners, managing employees, and subcontractors of suppliers of DMEPOS, ambulance companies, imaging technology companies, and independent physiological laboratories which provide services or supplies to Medicare beneficiaries will be collected.

CATEGORIES OF RECORDS IN THE SYSTEM:

This collection of data will identify individuals who are owners, managing employees, or subcontractors in companies which supply DMEPOS, ambulance companies, imaging technology companies, and independent physiological laboratories. This collection will maintain information on the owners, managing employees, and subcontractors; i.e., names of the individuals, business location, unique physician identification number (UPIN) or social security number, specialty code, employer identification number, and type of billing.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 1124, 1124A, 1126, and 1833(e) the Act.

PURPOSE(S):

The system will identify supplier businesses which are eligible to receive Medicare payments for items and services furnished to Medicare beneficiaries as well as owners, managing employees, and subcontractors in those suppliers. The system will facilitate the identification of business owners who have been sanctioned by the OIG and/or have questionable business practices within the Medicare program. The system will also identify those owners and managing employees whose businesses carriers' audits and reviews cite as employing billing practices which could breach Medicare standards. The carriers will be able to review questionable claims before payment; this process has been found to be more efficient than postpayment reviews.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH RECORDS:

Disclosure may be made:

1. 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. To a Medicaid State agency or its fiscal agent to assist in enforcing Medicare and Medicaid sanctions;

3. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when

(a) (HHS), or any component thereof; or

(b) Any HHS employee in his or her individual official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or,

(d) The United States or agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components;

is party to litigation or has an interest in such litigation, and HHS has determined that the use of such records by the Department of Justice, the tribunal, or other party is relevant and necessary to the litigation and would help in the effective representation to 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.

4. To a contractor for the purposes of collating, analyzing, aggregating or otherwise refining or processing records in this system of for developing, modifying and/or manipulating automated data processing (ADP) software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications system containing or supporting records in the system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic media, e.g., tape, electronic imaging, disk, microfilm, and hard copy paper.

RETRIEVABILITY:

The records are retrievable by business name, owner's name, owner's social security number of UPIN, managing employee's name, employer identification number or other tax reporting number, business address, and carrier assigned billing numbers.

SAFEGUARDS:

Access is limited to authorized personnel and HCFA contractor employees in the performance of their duties. HHS contractors are required to comply with the provisions of the Privacy Act, and are required to sign Assurance of Confidentiality Forms (or Data Security Statements) that are kept on file by the contractor.

The carriers will maintain all records in secure areas accessible only to authorized employees and will notify all employees having access to records of the criminal sanctions for unauthorized disclosure of information on individuals. For computerized records, the carriers will initiate ADP system security procedures required by the HHS *Information Resources Manual,* Circular #10, Automated Information Systems Security Programs, (e.g., use of passwords) and the National Institute of Standards and Technology Federal Information Processing Standards. Similar standards will be provided if any records are transferred to HCFA central office.

RETENTION AND DISPOSAL:

Suppliers complete the form to apply for a billing number in the Medicare program, to update information on the initial request, and to reenroll as Medicare requires every 3 years. The paper copies and/or microfilm or electronically imaged copies are kept indefinitely. The magnetic media file which is used in the day-to-day operations is updated as required for updates, deactivation, or reenrollment. Although records may be deactivated when the supplier ceases to bill Medicare, the carriers will keep all records indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Bureau of Program Operations, Health Care Financing Administration, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURE:

Inquiries and requests for records information for suppliers of DMEPOS should be directed to the carrier which will maintain the national file (This carrier will be named no earlier than October 1992) or, for other types of suppliers, to the carrier servicing the supplier's geographic area. If an individual wishes to determine if he or she is included in a record in the system, that person must provide the business name of the supplier, employer identification number, and the business address. Information on individuals within the system will be released only to authorized individuals.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requestors should reasonably specify the record contents being sought. (These access procedures are in accordance with Department regulation (45 CFR 5.b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

Contact the Systems Manager at the address specified above and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the contest; and give any supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7.)

RECORD SOURCE CATEGORIES:

Information contained in these records is received from the application which the suppliers complete to obtain Medicare billing numbers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 92-12900 Filed 6-2-92; 8:45 am]

BILLING CODE 4120-03-M

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Methyl Bromide

The HHS' National Toxicology Program (NTP) announces the availability of the NTP Technical Report on toxicology and carcinogenesis studies of methyl bromide, widely used as an insecticidal fumigant in food supplies, warehouses, barges, building, furniture, and in quarantine situations. Methyl bromide is also used in fire extinguishers and refrigerant systems and in the chemical industry as a methylating agent and an extraction solvent.

Toxicology and carcinogenesis studies are conducted by exposing groups of 70 B6C3F1 mice of each sex to methyl bromide by inhalating at 0, 10, 33, or 100 ppm for 6 hours per day, 5 days per week up to 103 weeks.

Under conditions of these 2 year inhalation studies, methyl bromide caused degenerative changes in the cerebellum and cerebrum, myocardial degeneration and cardiomyopathy, and olfactory epithelial necrosis and metaplasia. Toxic effects persisted although exposure to methyl bromide in the 100 ppm group terminated was after 20 weeks. There was no evidence of carcinogenic activity [1] of methyl bromide in male or female B6C3F1 mice exposed to 10, 33, or 100 ppm.

The Study Scientist for this bioassay is Dr. Scot L. Eustis. Questions or comments about the contents of this Technical Report should be directed to Dr. Eustis at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-3231.

Copies of Toxicology and Carcinogenesis Studies of Methyl Bromide (CAS No. 74-83-9) in B6C3F1 Mice (Inhalation Studies) (TR 385) are available from NTP Central Data Management, NIEHS, P.O. Box 12233, MD A0-01, Research Triangle Park, NC 27709; telephone (919) 541-1371 or (919) 541-3419.

[1] The NTP uses five categories of evidence of carcinogenic activity to summarize the evidence observed in each animal study: Two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

Dated: May 26, 1992.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 92-12871 Filed 6-2-92; 8:45 am]

BILLING CODE 4140-01-M

Office of the Assistant Secretary for Health

Secretary's Council on Health Promotion and Disease Prevention; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following meeting of the Secretary's Council on Health Promotion and Disease Prevention, scheduled to meet Friday, June 26, 1992.

Name: Secretary's Council on Health Promotion and Disease Prevention

Date and Time: June 26, 1992, 9 a.m. to 5 p.m., Stonehenge, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Open, except for working lunch.

Purpose: The Secretary's Council on Health Promotion and Disease Prevention is charged to provide advice to the Secretary and to the Assistant Secretary for Health on national goals and strategies to achieve those goals for improving the health of the Nation through disease prevention and health promotion and to provide a link to the private sector regarding health promotion activities.

Agenda: This will be the tenth meeting of the Secretary's Council. The focus of this meeting is Access to Clinical Preventive Services.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should contact Linda M. Harris, Ph.D., Staff Director for the Council, Office of Disease Prevention and Health Promotion, Public Health Service, U.S. Department of Health and Human Services, Washington, DC 20201, Telephone (202) 472-5370.

Agenda items are subject to change as priorities dictate.

Dated: May 27, 1992.

J. Michael McGinnis,

Deputy Assistant Secretary for Health, Director, Office of Disease Prevention and Health Promotion.

[FR Doc. 92-12934 Filed 6-2-92; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-090-02-5310-10; GP2-258]

Emergency Closure of Public Lands; Lane County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency closure of public lands and access road in Lane County, Oregon.

SUMMARY: Notice is hereby given that certain public lands and access road in Lane County, Oregon are closed indefinitely to shooting, which includes the discharge of firearms within or across the lands and roadway described below. The closure is made under the authority of 43 CFR 8364.1.

The public lands affected by this emergency closure are specifically identified as the Mohawk Research Natural Area and Area of Critical Environmental Concern, the McGowan Creek Environmental Education Area, and the McGowan Creek Community Pit and adjoining lands and are located as follows:

Willamette Meridian, Oregon

T. 16 S., R. 2 W.

Sec. 19: S½N½ of Lot 2, S½ of Lot 2, Lots 3 and 4, W½E½W½NE¼, W½W½NE¼, E½E½SW¼NE¼ and SE¼NE¼ lying north of McGowan Creek Access Road, E½NE¼NW¼, E½N½N½SE¼NW¼, S½N½SE¼NW¼, S½SE¼NW¼, E½SW¼, W½E½W½SE¼, W½W½SE¼

T. 16 S., R. 3 W.

Sec. 13: W½NE¼, NW¼

Containing approximately 657 acres.

The road closed as specified above is the McGowan Creek Access Road (BLM Roads Nos. 16-2-27 and 16-3-13.1) from its beginning in Section 27, T. 16 S., R. 2 W., W.M. to the north line of Section 13, T. 16 S., R. 3 W., W.M. The closure applies to all lands within 50 feet on either side of the centerline of the road. The road is located partially on public land and partially on exclusive easements across private land.

The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: State, local and federal law enforcement personnel.

Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0-7, which include a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

The public lands and road closed to shooting under this order will be posted with signs at points of public access.

The purpose of this emergency closure is to protect persons from potential harm from shooting. Uncontrolled shooting on the subject lands and road has reached a level that poses a serious threat to public safety.

DATES: This closure is effective beginning June 7, 1992 and will continue in effect indefinitely.

ADDRESSES: Copies of the closure order and maps showing the location of the closed lands and road are available from the Eugene District Office, P.O. Box 10226 (2890 Chad Drive), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Lee Lauritzen, McKenzie Area Manager, Eugene District Office, at (503) 683-6988.

Dated: May 21, 1992.

Lee Lauritzen,

Area Manager.

[FR Doc. 92-12867 Filed 6-2-92; 8:45 am]

BILLING CODE 4310-33-M

[AK-980-02-5101-09-XLKE; AA-58353]

Environmental Statements; Availability, etc.: Alaska-Juneau Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Alaska-Juneau Project Final Environmental Impact Statement.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the proposed Alaska-Juneau Project Final Environmental Impact Statement. The EIS analyzed the impacts resulting from reopening and upgrading the Alaska-Juneau mine which involves the extraction of low-grade gold from an old lode mine by underground milling and surface flotation and cyanide vat leaching process, the construction and operation of a hydroelectric dam across Sheep Creek and disposal of tailings in a dam impoundment.

The proposed A-J mine project is located in southeast Alaska on the east side of the Gastineau Channel about four miles south of downtown Juneau, adjacent to the mouth of Sheep Creek at Thane.

DATES: Comments on the A-J Mine Project FEIS must be postmarked by July 6, 1992.

ADDRESSES: Comments on the A-J Mine Project should be sent to State Director (AK-963), BLM Alaska State Office, 222 W. 7th Avenue, #13, Anchorage, Anchorage, Alaska 99513-7599

FOR FURTHER INFORMATION CONTACT: David Dorris (AK 963), BLM Alaska State Office, 222 W. 7th Avenue, #30, Anchorage, AK 99513-7599, (907) 272-2636.

SUPPLEMENTARY INFORMATION: Echo Bay-Alaska (EBA) filed application with BLM and other federal, state and local agencies to reopen the A-J mine in Juneau, Alaska in March 1989. EBA has

requested to withdraw their application for a right-of-way from BLM for a road, dam and tailings pond on about 700 acres of public land managed by the BLM. The land in question is in the process of being conveyed to the State of Alaska.

Comments from the public, review by BLM staff and new information developed since the distribution of the draft have resulted in changes but the preferred alternative is substantially the same. Copies of the A-J Mine Project FEIS are available from David Dorris at the above address.

Ed Spang,

Alaska State Director.

[FR Doc. 92-12907 Filed 6-2-92; 8:45 am]

BILLING CODE 4310-JA-M

Fish and Wildlife Service

Availability of a Draft Revised Recovery Plan for the Small Whorled Pogonia for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft Revised Recovery Plan for the Small Whorled Pogonia. This orchid species occurs in 15 States in the eastern United States and in one Canadian Province. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft Recovery Plan must be received on or before August 3, 1992, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft Recovery Plan can obtain a copy from the New England Field Office, U.S. Fish and Wildlife Service, 22 Bridge Street, Ralph Pill Marketplace, Fourth Floor, Concord, New Hampshire 03301-4901, (603) 225-1411. The Plan will also be available for public inspection, by appointment, during normal business hours at the above address.

Comments on the Plan should be addressed to Susanna von Oettingen (see Addresses).

FOR FURTHER INFORMATION CONTACT: Susanna von Oettingen (see Addresses).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery Plans describe actions considered necessary for conservation of the species, establish criteria for recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act) as amended (16 U.S.C. 1531 *et seq.*) requires the development of Recovery Plans for listed species unless such a Plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during the Recovery Plan development. The Service will consider all information present during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing Recovery Plans.

The document submitted for review is the draft Small Whorled Pogonia (*Isotria medeoloides*) Revised Recovery Plan. The small whorled pogonia, a member of the orchid family, is a rare but widespread species. It is currently known from 87 sites in 15 states in the eastern United States and in one Canadian Province. Despite the discovery of many populations since the species' listing as an endangered species in 1982, over 50 sites are documented as extirpated, and it is likely that the overall number of populations is still declining. The species, found on upland sites in mixed deciduous and mixed deciduous/coniferous forests that are in second or third sucessional states, continues to be threatened by habitat loss due to development and other human activities, as well as by succession of its forest habitat.

The Revised Recovery Plan updates the recovery objectives and activities outlined in the 1985 plan. The primary objective of this draft Plan is to protect an adequate number of sites to ensure long-term viability of the species in the wild. Conditions that must be met to reclassify the small whorled pogonia from endangered to threatened status include protection of a minimum of 25% of known viable sites, to be distributed proportionately throughout the species' range. Delisting will be considered when 75% of known viable sites, distributed proportionately throughout the species' range, are permanently protected, and when long-term management programs are established for those populations requiring some intervention.

Site protection will be accomplished through negotiating cooperative agreements and conservation easements with land owners and managers, acquiring lands from willing sellers, and using existing legislation to protect small whorled pogonia populations and their habitat. Other recovery activities will include searching for additional populations, monitoring population levels and habitat conditions, managing habitat as needed, conducting necessary studies, and conducting a general information program for the public.

This Revised Recovery Plan is being submitted for agency review. After consideration for comments received during the review period, the Plan will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the Recovery Plan described. All comments received by the date specified above will be considered prior to approval of the Plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: May 21, 1992.

Nancy M. Kaufman,

Acting Regional Director.

[FR Doc. 92-12882 Filed 6-2-92; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Comprehensive Management and Use Plan; Juan Bautista de Anza National Historic Trail; Intent To Prepare an Environmental Impact Statement

SUMMARY: The National Park Service will prepare a Comprehensive Management Plan/Environmental Impact Statement (CMP/EIS) for Juan Bautista de Anza National Historic Trail in Arizona and California, and initiate the scoping process for this document. This notice is in accordance with 40 CFR 1501.7 and 40 CFR 1508.22, of the regulations of the President's Council on Environmental Quality for the National Environmental Policy Act of 1969, Public Law 91-150.

BACKGROUND: The Anza Trail is based on Juan Bautista de Anza's 1775-76 expedition from what is now Sonora, Mexico, to San Francisco, resulting in the founding of a military fort and mission at San Francisco. A feasibility study of the Anza Trail route was completed in 1985 in response to authorizing legislation. The Trail route was legislatively designated as an

historic trail component of the National Trails System in August, 1990. The comprehensive plan is intended to provide long-term guidance for trail implementation and to allow management and initial implementation activity to commence.

Issues to be addressed in the CMP/EIS include, but are not limited to: specific objectives and practices to be observed in managing the trail; identification of significant natural, historic, and cultural resources that are to be preserved; a protection plan for any high potential historic sites or route segments; details of anticipated cooperative agreements with federal, state, and local organizations and private interests; procedures for marking the trail with signs, and proposals to foster public knowledge of the trail and help visitors understand the importance of sites along the trail; identification of sites that will provide public information about the trail; provisions for appropriate public use, including opportunities to retrace the trail route; impacts of adjacent land use; and visitor use managment. A proposal and alternatives to address these issues, including a no-action alternative, will be developed in cooperation with the public. Additionally, the EIS Process will provide for a comprehensive analysis of impacts, especially taking into account cumulative effects.

Public involvement to formulate the CMP/EIS issues and alternatives is expected to commence in Arizona in mid-June, 1992 and to be completed in that state by late July. Meetings will be held in Santa Cruz, Pinal, Pima, Maricopa, and Yuma counties in Arizona. In California, public involvement is expected to begin in late July, 1992 and to be completed by early September, 1992. Meetings will be held in Imperial, San Diego, Riverside, Los Angeles, Ventura, Santa Barbara, San Luis Obispo, Monterey, San Benito, Santa Clara, San Mateo, San Francisco, Alameda, and Contra Costa Counties in California. This public involvement will consist of a series of meetings for which advance notice will be provided. For request to participate in, or for any questions on the public involvement phase, please contact the National Park Service, Western Regional Office, Division of Planning, Grants, and Environmental Quality, 600 Harrison Street, Suite 600, San Francisco, California 94107-1372, Attention: Meredith Kaplan, Team Coordinator, telephone number (415) 744-3968.

The responsible official is Stanley T. Albright, Regional Director, Western Region, National Park Service. The draft CMP and environmental statement are expected to be available for public review in mid-1993, and the final plan, environmental statement and Record of Decision completed approximately one year later.

Dated: May 19, 1992.

W.H. Patton,

Acting Regional Director, Western Region.

[FR Doc. 92-12979 Filed 6-2-92; 8:45 am]

BILLING CODE 4310-70-M

Gettysburg National Military Park Advisory Commission

AGENCY: Historical Committee, Advisory Commission, Gettysburg National Military Park.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of a meeting of the Historical Committee of the Gettysburg National Military Park Advisory Commission.

DATES: Thursday, June 25, 1992.

TIME: 7 p.m–9 p.m.

INCLEMENT WEATHER RESCHEDULE DATE: None.

ADDRESSES: Cyclorama Center, Auditorium, Gettysburg, Pennsylvania 17325.

FOR FURTHER INFORMATION CONTACT: Gerald R. Bennett, Chairman, Historical Committee, Gettysburg National Military Park Advisory Commission, P. O. Box 1080, Gettysburg, Pennsylvania 17325.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. This notice sets forth the date of a meeting of the Historical Committee of the Gettysbury National Military Park Advisory Commission. The Historical Committee will seek public input to their task of assessing the impact to the Gettysburg National Military Park of non-tranditional uses, such as walk-a-thons, bike-a-thons, marathons, and other special uses. The public's comments will be used in developing a recommendation to the Advisory Commission for their consideration and subsequent discussion with Park staff. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Historical Committee, Advisory Commission, Gettysburg National Military Park, P. O. Box 1080, Gettysburg, Pennsylvania 17325. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Gettysburg National Military Park located at 95 Taneytown Road, Gettysburg, Pennsylvania 17325.

Dated: May 21, 1992.

Frank J. Deckert,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 92-12980 Filed 6-2-92; 8:45 am]

BILLING CODE 4310-70-M

Draft Policy and Guidelines for Recreational Technical Assistance in Hydropower Licensing

ACTION: Publication of draft policy and guidelines for public comment.

SUMMARY: The National Park Service is publishing for public review and comment draft policy and guidelines for its hydropower licensing program aimed at providing technical assistance in recreational planning. The development of these guidelines will assist the public in determining the approach the National Park Service uses in its hydropower recreational planning, thereby providing the public an understanding of the program and how they may utilize it.

DATES: Comments must be received on or before July 6, 1992.

ADDRESSES: Comments may be mailed to Tracy Miller, National Park Service, Recreation Resources Assistance Division, P.O. Box 37127, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Tracy Miller, (202) 343-3663.

SUPPLEMENTARY INFORMATION: These guidelines are the result of a public meeting held in Washington, DC, on January 22 of this year for the express purpose of developing guidelines. This policy and guidelines affect only the technical assistance conducted by the National Park Service prior to license filing; they are not part of, and do not affect, formal National Park Service environmental review procedures. Further information is included in the preface to the draft guidelines, printed below.

Policy and Guidelines

Preface

Under the National Park Service Organic Act (39 Stat. 535), the Outdoor Recreation Act (Pub. Law 88-29), the Wild and Scenic Rivers Act (Pub. Law 90-542), Council on Environmental Quality Memorandum (45 FR 59190-59191), and Federal Energy Regulatory Commission (FERC) guidelines, the National Park Service is authorized to provide technical assistance for recreational planning in the licensing of hydropower facilities. This is but one element of the National Park Service's

overall technical assistance role in the licensing process, and planning assistance is just one aspect of the National Park Service environmental review of FERC applications.

The following policy and guidelines provide a direction for recreational technical assistance activities concerning hydropower licensing. They are flexible enough to allow for creativity in meeting the individual recreation, conservation and hydropower objectives of each individual project. They are also designed so as not to conflict with other National Park Service mandates.

The recreational community is considered to be any and all possible users of hydropower-impacted resources and includes people interested in such activities as birdwatching, whitewater rafting, canoeing, hiking and fishing. The National Park Service does not recognize one form of recreation over another, but instead weighs the merits of all activities in providing assistance. It is the responsibility of the National Park Service to represent the national interest regarding hydropower-related recreation and to assure an appropriate recognition of recreation interests.

Policy

It is the policy of the National Park Service to recognize the full potential that hydroelectric projects subject to licensing under the Federal Power Act may offer for: (1) Meeting present and future public outdoor recreation demands, and (2) the maintenance and enhancement of the quality of the environmental setting of these projects.

This policy is to be implemented by providing appropriate recreation planning assistance to applicants and licensees; the concerned agencies of Federal, State and local governments; and the private sector. The objectives stated in clauses 1 and 2 are also to be accomplished by providing to the Secretary of the Interior factual information, analyses and findings relating to recreation for incorporation in the Department's comments and recommendations to the Federal Energy Regulatory Commission.

Guidelines

I. Program Scope

Extent: Consider the full range of land and water recreational opportunities and factors associated with hydropower projects. These opportunities and factors may include, but are not limited to, land use, access, shorelands conservation, flow, facilities, aesthetics, reservoir levels and safety.

Environmental Quality: Ensure that recreation programs are consistent with the preservation of environmental integrity.

Long-term Benefit: Assist in planning for recreational needs that will arise throughout the term of the license.

Comprehensive Perspective: Evaluate recreational needs and opportunities from a basin-wide or regionwide perspective as appropriate to the resources considered.

Coordination of Planning: Encourage joint comprehensive planning with other public and private river conservation, recreation and energy interests. Avoid duplication of the efforts of other planning agencies.

Communication: Provide a channel for recreational and conservation interests to participate in the licensing process with the applicants. Provide a channel for the applicants to identify and involve those interests.

Conflict Resolution: Provide a facilitation and conflict resolution role among the involved parties and provide a forum to actively seek input from and facilitate dialog between all interested parties.

Balance: Ensure that the importance and significance of the resources and opportunities will be fully considered in balancing competing recreational needs, power production, and economic factors.

Timeliness: Become involved as early as possible in the licensing process to promote advanced planning in an equitable manner.

II. Project Selection

Resource Significance: Give priority to those projects located in areas with high natural, cultural and/or recreational resource values.

Potential for Positive Impact: Give priority to projects where there is a high potential for National Park Service participation to result in significant improvement/mitigation for recreational opportunities.

Variety of Recreational Opportunities: Provide assistance on a diverse mix of recreational experiences, settings and geographical locations in the program portfolio.

Concentration of Projects: provide special consideration to rivers, or river basins, with multiple projects, especially where a holistic approach will serve to advance public recreation opportunities more than a site-by-site approach.

Assistance Requests: Respond and provide technical assistance as resources allow to requests from public and private energy, conservation and recreation interests, with priority given to those interests that have little or no access to professional sources of planning assistance and analysis.

III. Information

Equitable Information: Use and request the generation of information appropriate to the size of the project, the project impacts, and its relationship to other projects.

Relevant Information: Encourage and participate in the generation of objective data necessary to evaluate recreational needs and opportunities, such as flow studies, recreational needs assessments, and carrying capacity studies.

Scope of Information: Where possible, the information used and generated should consider cumulative and basin-wide impacts and should follow with the intention of broad-scale planning.

Information Dissemination: Maintain a source of case studies and similar data generated by the technical assistance program and make this information widely available to appropriate public and private entities.

IV. Results

Mitigation: Seek opportunities to increase the cumulative benefit to recreation and conservation through alternative ideas such as clustering of mitigation from several projects in one area, coordination of recreational releases along a river or throughout a region, providing access and portage from a river-wide perspective, or encouraging cooperative efforts by multiple applicants with projects on the same river.

Cooperative Comprehensive Planning: Encourage an applicant with several projects to develop a comprehensive recreation plan for all projects or for multiple applicants in the same basin to prepare a joint comprehensive plan.

Dated: March 12, 1992.

James Ridenour,

Director, National Park Service.

[FR Doc. 92-12982 Filed 6-2-92; 8:45 am]

BILLING CODE 4310-70-M

Cape Krusenstern National Monument and Kobuk Valley National Park Subsistence Resource Commissions

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Cape Krusenstern National Monument and Kobuk Valley National Park and the Chairpersons of the Subsistence Resource Commissions for Cape Krusenstern National Monument and Kobuk Valley National Park announce a

forthcoming joint meeting of the Cape Krusenstern National Monument and Kobuk Valley National Park Subsistence Resource Commissions.

The following agenda items will be discussed:

(1) Introduction of commission members and guests.
(2) Superintendent's welcome:
a. Review of SRC function and purpose.
b. Federal Advisory Committee Act Guidelines.
(3) Old business:
a. Review and approve minutes from last meeting.
b. Election of chairpersons.
c. Review past commissions' activities.
(4) New business:
a. Superintendent's Report.
—Subsistence management and directions for SRC program.
b. Federal Subsistence Management Program.
—EIS Record of Decision Summary.
—Federal Regional Council System.
c. 1992–93 federal and state regulations review for taking brown bear, sheep and other species within GMU 23.
d. Harvest reporting system for 1992–93 season.
(5) Public and other agency comments.
(6) Hunting Plan work session:
a. Prepare and approve recommendations for submission to Secretary and Governor.

DATES: The meeting will begin at 9 a.m. on Thursday, June 11, 1992, and conclude around 5 p.m.

LOCATION: The meeting will be held at the National Guard Armory, Kotzebue, Alaska.

FOR FURTHER INFORMATION CONTACT: Ralph Tingey, Superintendent, P.O. Box 1029, Kotzebue, Alaska 99752. Phone (907) 442–3890.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

John M. Morehead,
Regional Director.

[FR Doc. 92–12981 Filed 6–2–92; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget (OMB) for review.

PURPOSE OF INFORMATION COLLECTION: The proposed information collection is for use by the Commission in connection with investigation No. 332–315, Uranium and Uranium Enrichment Services: The Impact on the Domestic Industry of Imports into the United States from Nonmarket Economy Countries, instituted under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) at the request of the Senate Committee on Finance.

SUMMARY OF PROPOSAL: (1) *Number of forms submitted:* Two.

(2) *Title of form:* Natural Uranium, Uranium Enrichment Services, and Enriched Uranium Product from Nonmarket Economy Countries—Questionnaires for U.S. (1) Purchasers and (2) Public Utility Commissions or Rate Regulatory Agencies.

(3) *Type of request:* New.

(4) *Frequency of use:* Nonrecurring.

(5) *Description of respondents:* Firms which purchase natural or enriched uranium or uranium enrichment services, and public utility commissions or rate regulatory agencies.

(6) *Estimated number of respondents:* Purchasers: 45, based on an estimated response rate of 75 percent. Public Utility Commissions or Rate Regulatory Agencies: 26, based on an estimated response rate of 80 percent.

(7) *Estimated total number of hours to complete the forms:* The Commission estimates a response time of 30 hours per questionnaire for purchasers and 5 hours per questionnaire for public utility commissions or rate regulatory agencies.

(8) Information obtained from the forms that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a respondent.

ADDITIONAL INFORMATION OR COMMENT: Copies of the proposed form and supporting documents may be obtained from James A. Emanuel, telephone (202) 205–3367. Comments about the proposals should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: Ms. Lin Liu, Desk Officer for the U.S. International Trade Commission. Any comments should be specific, indicating which part of the questionnaire is objectionable, describing the problem in detail, and including specific suggested revisions or language changes. If you anticipate commenting on a form but find that time to prepare comments will prevent you from submitting them promptly, you should advise OMB of your intent within 2 weeks of the date this notice appears in the **Federal Register**. Copies of any comments should be provided to the Director, Office of Operations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

By order of the Commission.

Issued: May 29, 1992.

Kenneth R. Mason,
Secretary.

[FR Doc. 92–12955 Filed 6–2–92; 8:45 pm]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-516 (Final)]

Fresh Kiwifruit From New Zealand; Imports

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act), that an industry in the United States is materially injured by reason of imports from New Zealand of fresh kiwifruit, provided for in subheading 0810.90.20 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective November 26, 1992, following a preliminary determination by the Department of Commerce that imports of fresh kiwifruit from New Zealand were being sold at LTFC within the meaning of section 733(b) of the act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 27, 1991 (56 FR 67098). The hearing was held in Washington, DC, on

[1] The record is defined in section 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Watson not participating.

April 14, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 26, 1992. The views of the Commission are contained in USITC Publication 2510 (May, 1992), entitled "Fresh Kiwifruit from New Zealand: Determination of the Commission in Investigation No. 731-TA-516 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the Commission.

Issued: May 27, 1992.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-12956 Filed 6-2-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-314 through 317 (Preliminary), and Investigations Nos. 731-TA-552 through 555 (Preliminary)]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From Brazil, France, Germany, and the United Kingdom; Imports

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission unanimously determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil, France, Germany, and the United Kindgom of certain hot-rolled lead and bismuth carbon steel product,[2] provided for in subheadings 7213.20.00 and 7214.30.00 [3] of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Governments of these countries.

The Commission also unanimously determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil, France, Germany, and the United Kindgom of certain hot-rolled lead and bismuth carbon steel products, provided for in subheadings 7213.20.00 and 7214.30.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value.

Background

On April 13, 1992, a petition was filed with the Commission and the Department of Commerce by Inland Steel Industries, Inc., including Inland Steel Bar Co. (Chicago, IL), and the Bar, Rod and Wire Division, Bethlehem Steel Corp. (Johnstown, PA), alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized and LTFV imports of certain hot-rolled lead and bismuth carbon steel products from Brazil, France, Germany, and the United Kingdom. Accordingly, effective April 13, 1992, the Commission instituted preliminary countervailing duty investigations Nos. 701-TA-314 through 317, and preliminary antidumping investigations Nos. 731-TA-552 through 555. Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 20, 1992 (57 FR 14431). The conference was held in Washington, DC, on May 4, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 28, 1992. The views of the Commission are contained in USITC Publication 2512 (June 1992), entitled "Certain Hot-rolled Lead and Bismuth Carbon Steel Products from Brazil, France, Germany, and the United Kingdom: Determinations of the Commission in Investigations Nos. 701-TA-314 thru 317 (Preliminary) and Investigations Nos. 731-TA-552 thru 555 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By order of the Commission.

Issued: May 29, 1992.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-12957 Filed 6-2-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation Nos. 731-TA-546 and 547 (Preliminary)]

Steel Wire Rope From the Republic of Korea and Mexico; Imports

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission unamaniously determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)], that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the Republic of Korea and Mexico of steel wire rope,[2] Provided for in subheading 7312.10.90 of the Harmonized Tariff Schedule of the United States, that is alleged to be sold in the United States at less than fair value (LTFV).

Background

On April 9, 1992, a petition was filed with the Commission and the Department of Commerce by the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of steel wire rope from the Republic of Korea and Mexico. Accordingly, effective April 9, 1992, the Commission instituted antidumping investigations Nos. 731-TA-546 and 547 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 16, 1992 (57 FR 13379). The Conference was held in Washington, DC, on April 30, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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[1] The record is defined in section 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] For purposes of these investigations, the subject hot-rolled lead and bismuth carbon steel products are hot-rolled products of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of these investigations are other alloy steels, except steels classified as such by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, selenium, or tellurium. Also excluded are semifinished steels and flat-rolled carbon steel products.

[3] Small quantities of the subject products may also enter under the following HTS subheadings: 7213.31.30, 7213.31.60, 7213.39.00, 7214.40.00, 7214.50.00, 7214.60.00, and 7228.30.80.

[1] The record is defined in section 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] The imported steel wire rope covered by these investigations consists of ropes, cables, and cordage of iron or carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made of stainless steel or brass plated wire.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 26, 1992. The views of the Commission are contained in USITC Publication 2513 (May 1992), entitled "Steel Wire Rope from the Republic of Korea and Mexico: Determinations of the Commission in Investigations Nos. 731-TA-546 and 547 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By order of the Commission.

Issued: May 29, 1992.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-12958 Filed 6-2-92; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL-2-92]

Canadian Standards Association

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTIONS: Notice of Application for Recognition as a Nationally Recognized Testing Laboratory, and Preliminary Finding

SUMMARY: This notice announces the application of the Canadian Standards Association for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding.

DATES: The last date for interested parties to submit comments is August 3, 1992.

ADDRESSES: Send comments to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James J. Concannon, Director, Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., room N3653, Washington, DC 20210.

Notice of Application

SUPPLEMENTARY INFORMATION:

Notice is hereby given that the Canadian Standards Association (CSA) has made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1-90 (55 FR 9033), and 29 CFR 1910.7 for recognition as a Nationally Recognized Testing Laboratory.

The address of the laboratory covered by this application is: Canadian Standards Association, Toronto Facility, 178 Rexdale Boulevard, Rexdale (Toronto), Ontario M9W1R3, Canada.

By letter dated December 20, 1991 (Ex. 2.M.), CSA amended its application for recognition as follows:

1. The initial phase of the recognition is to be limited to the Toronto facility, and

2. The scope of the application relating to certification services is to be limited to in-house testing only.

Regarding the merits of the application, the applicant contends that it meets the requirements of 29 CFR 1910.7 for recognition in the areas of testing which it has specified.

The applicant states that for each item of equipment or material to be certified, it has the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform testing and examination of equipment and materials for workplace safety purposes to determine conformance with appropriate test standards.

CSA's application contains sections dealing with background and history; the Certification and Testing (C&T) Division structure; affiliation including a statement of independence; personnel, including experience and expertise, training, and list of key personnel, position descriptions and résumés; the certification process, including testing and evaluation, certification, reports and records and the service agreement; the field services program, including follow-up inspections, re-examination testing and field monitoring; certification services, including prototype (model) certification; testing experience, including recognition by other bodies; control programs, including the quality assurance program, control of technical and quality records, handling and storage/packaging and shipping, and test procedures; laboratory test equipment and calibration of this equipment; facilities; and, finally, CSA's appeal process, the comprehensive system for handling complaints and utilmately providing an unbiased review of any controversial matter.

The Rexdale (Toronto) facility includes the corporate headquarters, a standards division, finance and administration division, and certification and testing division. The laboratory is owned by CSA and consists of a two story building covering 250,000 square feet, situated on ten acres. Approximately 100,000 square feet of floor space are allocated to product testing. The laboratory, established in 1919, has been at this location since 1954.

Natural gas, electric, oil, and water utilities are available in the laboratory for product testing. Environmental conditions in the laboratory are controlled. The temperature and humidity variations throughout the laboratory are recorded as required by specific test requirements. There are rooms and chambers used to control and monitor environmental conditions for specific product testing. The calibration room also has relative humidity control.

The laboratory has a shipping and receiving department for receipt retention, and disposal of samples for testing. Incoming samples are identified with numbered tags and then delivered to the testing areas with a duplicate numbered tag attached. A secondary numbered tag is prepared in triplicate for sample disposition purposes after testing is complete. A copy of each tag is retained by the shipping and receiving department. One copy of the secondary tag is routed to the customs department and a second copy is sent to the jobholder. The jobholder completes this copy when all product evaluation is finished and returns it to the shipping and receiving department for sample disposition. The sample information is maintained on a computer data base. All storage locations are secure and pose no adverse environmental conditions on the samples.

Visitors must enter the front lobby area and are issued name tag labels by a receptionist. All visitors are escorted. A card access system is utilized for staff to enter/leave the facility. Separate test and conference areas are available for clients requiring confidentiality. There are 24 hour, 7 day per week security guards. Staff entering the facility outside normal working hours are required to sign an in/out log book. Indoor and outdoor monitoring cameras are provided. Staff must wear name/photo identification badges.

The applicant states that CSA is an independent, not-for-profit membership association, without share capital, incorporated under the laws of Canada in 1919, engaged in developing national standards and providing a certification service for manufacturers wishing to have their products certified as complying with national standards or standards of foreign countries. The applicant states further that the

organization has no affiliation with manufacturers or suppliers of the products submitted for testing and certification. Several documents are submitted as a part of the CSA application to address the issue of independence.

The Canadian Standards Association claims that it maintains effective procedures for producing creditable findings or reports that are objective and without bias. The C&T Division maintains a quality assurance (QA) system for CSA's world-wide network. The QA Program of the Testing Laboratory is registered by Quality Management Institute (QMI) to ISO 9003 and Z299.3. The Corporate Engineering and Quality Assurance (EQA) Group has the responsibility and authority for overseeing all activities related to the Quality Program. The object of the QA system is to ensure technical excellence, consistency of interpretation and application of standards, consistency of implementation of certificaton programs and procedures, the integrity of the CSA Mark, and continuous improvement. In addition, the QA System is designed to meet National and International Accreditation Criteria. The QA System is documented as follows:

—"Quality Assurance Policy Manual" (QAPM). It contains the quality policies for the Certification and Testing Division and establishes the responsibilities for implementation of these policies.

—"Quality Assurance Manual" (QAM). These manuals describe in detail the system and procedures outlined in the QAPM. They are issued by each Operation Unit after approval by EQA.

—"Divisional Quality Documents" (DQDs). They are issued and controlled by Engineering and Quality Assurance (EQA) and consist of additional operating procedures and guidelines to be used by operations staff.

Permanent records are compiled to document all technical and quality related activities of the Certification and Testing Division. The system for contolling all technical and quality records is described in the Quality Assurance Manuals for each CSA Office.

CSA claims that it has a comprehensive system for handling complaints and ultimately providing an unbiased review of any controversial matter. All complaints asnd disputes shall be resolved, whenever possible, by those directly involved with the work contested and/or at the level of authority appropriate for the nature of the complaint/dispute. If the issue cannot be resolved, there are specific steps, including appeals, which may be followed.

The applicant states that it provides for the implementation of control procedures for identifying the listed and labeled equipment or materials, inspection of the production run of such items at factories for product evaluation purposes to assure conformance with applicable test standards, and the conducting of field inspections to monitor and to assure the proper use of its identifying mark or labels on products. A submitter must enter into a written legal contract (service agreement) with CSA to permit the use of the CSA Mark on the product. This agreement clearly specifies the submitter's responsibilities and the terms and conditions for maintaining certification, such as the right of access by CSA inspection staff to listed factories, or notifying CSA when changes are made to certified products. These terms and conditions are designed to protect the integrity of the CSA Marks. CSA establishes a comprehensive field services program to ensure that manufactured products bearing any of the CSA Marks continue to meet the applicable requirements. The program consists of three elements:

Follow-up Inspection;
Re-examination Testing; and
Field Monitoring.

Follow-up inspections are conducted at the point of manufacturing and labeling to ensure, among other things, that:

—The CSA Mark is applied only to certified products;

—That the terms of the Agreement are met when the CSA Mark is used;

—Defects noted during previous inspections have been corrected;

—The manufacturer is aware of any new services, requirements, and effective dates;

The inspections are unannounced and are based on performing a minimum of four inspections per factory per year. The frequency varies with production volumes, the types of products and the manufacturer's track record.

When products fail to meet the requirements, Field Service Representatives take action to have the manufacturer correct the defect immediately, quarantine the stock until the product can be reworked or re-evaluated by certification staff, and remove the CSA Mark from the product.

In cases where it is difficult to determine if a product or component complies with the requirements strictly by visual examination, such products are reexaminaed and tested on a yearly basis.

CSA has an independent, special investigation unit, the Audits and Investigations Group, to monitor products in the field, investigate field complaints, and provide feedback to the standards writing and certification process.

Background

According to the applicant, the Canadian Standards Association is an independent, not-for profit organization governed by a Board of Directors selected by the membership, providing integrated services in the fields of standards development and conformity assessment. The Standards Division of CSA is responsible for the administration of the development of voluntary consensus standards. The Certification and Testing Division provides conformity assessment programs including laboratory testing, certification, inspection and quality management services. The organization started out in 1919 as the Canadian Engineering Standards Association (CESA), which was changed in 1944 to the present name.

The applicant states that during the last 70 years, CSA has developed more that 1400 standards and codes which cover industrial and consumer products and services in a wide range of product areas. In 1940, CSA began to test and certify products and today is an international organization with more than 9000 volunteer members from 20 countries representing consumers, regulators, manufacturers and retailers. They are supported by a staff of approximately 1000 employees, with management staff located in the Far East and Europe.

Again according to the applicant, over 14,000 manufacturers worldwide use CSA's testing and certification services, and the CSA Certification Mark appears on over one billion products a year. CSA processes some 36,000 engineering projects, and the inspection staff makes follow-up visits to some 19,000 factories in almost 60 different countries, each year.

The applicant states that the Certification and Testing (C&T) Division, Toronto facility, of the Canadian Standards Association employs approximately 370 staff as follows:

12—Management
84—Professional Engineers
139—Technologists (Testing & Certification)
24—Technologists (Inspection)
71—Support Staff

40—Other Support Staff (Corporate C&T)

Of this staff, some 45 are considered to be key personnel, as follows by position:

4—General Managers/Directors
8—Managers
13—Senior Engineers
14—Team Coordinators
6—Engineering & Quality Assurance

The applicant desires recognition for testing and certification of products when tested for compliance with the following test standards, which are appropriate within the meaning of 29 CFR 1910.7(c):

ANSI Z21.1—Household Cooking Gas Appliances
ANSI Z21.5—Gas Clothes Dryers
ANSI Z21.10—Gas Water Heaters
ANSI Z21.11—Gas-Fired Room Heaters
ANSI Z21.12—Draft Hoods
ANSI Z21.13—Gas-Fired Low-Pressure Steam and Hot Water Heating Boilers
ANSI Z21.15—Manually Operated Gas Valves
ANSI Z21.17—Domestic Gas Conversion Burners
ANSI Z21.18—Gas Appliance Pressure Regulators
ANSI Z21.20—Automatic Gas Ignition Systems and Components
ANSI Z21.21—Automatic Valves for Gas Appliances
ANSI Z21.23—Gas Appliance Thermostats
ANSI Z21.35—Gas Filters on Appliances
ANSI Z21.40.1—Gas-Fired Absorption Summer Air Conditioning Appliances
ANSI Z21.44—Gas-Fired Gravity and Fan Type Direct Vent Wall Furnaces
ANSI Z21.47—Gas-Fired Central Furnaces
ANSI Z21.48—Gas-Fired Gravity and Fan Type Floor Furnaces
ANSI Z21.49—Gas-Fired Gravity and Fan Type Vented Wall Furnaces
ANSI Z21.56—Gas-Fired Pool Heaters
ANSI Z21.64—Direct Vent Central Furnaces
ANSI Z83.4—Direct Gas-Fired Make-Up Air Heaters
ANSI Z83.8—Gas Unit Heaters
ANSI Z83.9—Gas-Fired Duct Furnaces
ANSI Z83.10—Separated Combustion System Central Furnaces (?????)
ANSI Z83.11—Gas Food Service Equipment—Ranges and Unit Broilers
ANSI Z83.12—Gas Food Service Equipment—Baking and Roasting Ovens
ANSI Z83.13—Gas Food Service Equipment—Deep Fat Fryers
ANSI Z83.14—Gas Food Service Equipment—Counter Appliances
ANSI Z83.15—Gas Food Service Equipment-Kettles, Steam Cookers, and Steam Generators
ANSI Z83.16—Gas-Fired Unvented Commercial and Industrial Heaters
ANSI/UL 1—Flexible Metal Conduit
ANSI/UL 3—Flexible Nonmetallic Tubing for Electric Wiring
ANSI/UL 4—Armored Cable
ANSI/UL 5—Surface Metal Raceways and Fittings
UL 6—Rigid Metal Conduit
ANSI/UL 20—General-Use Snap Switches
ANSI/UL—Electric Amusement Machines
ANSI/UL 44—Rubber-Insulated Wires and Cables
ANSI/UL 45—Portable Electric Tools
ANSI/UL 48—Electric Signs
ANSI/UL 50—Electric Cabinets and Boxes
ANSI/UL 51—Power-Operated Pumps for Anhydrous Ammonia and LP-Gas
ANSI/UL 62—Flexible Cord and Fixture Wire
ANSI/UL 65—Electric Wired Cabinets
ANSI/UL 67—Electric Panelboards
ANSI/UL 69—Electric Fence Controllers
ANSI/UL 73—Electric-Motor-Operated Applicances
ANSI/UL 79—Power-Operated Pumps for Petroleum Product Dispensing Systems
ANSI/UL 82—Electric Gardening Appliances
ANSI/UL 83—Thermoplastic-Insulated Wires and Cables
ANSI/UL 87—Power-Operated Dispensing Devices for Petroleum Products
ANSI/UL 94—Tests for Flammability of Plastic Materials for Parts in Devices and Applicances
ANSI/UL 98—Enclosed and Dead-Front Switches
UL 104—Elevator Door Locking Devices
ANSI/UL 114—Electric Office Applicances and Business Equipment
ANSI/UL 122—Electric Photographic Equipment
ANSI/UL 130—Electric Heating Pads
ANSI/UL 133—Wires and Cables With Varnished Cloth Insulation
UL 141—Garment Finishing Appliances
ANSI/UL 150—Antenna Rotators
ANSI/UL 153—Portable Electric Lamps
ANSI/UL 174—Household Electric Storage-Tank Water Heaters
ANSI/UL 183—Manufactures Wiring Systems
ANSI/UL 187—X-Ray Equipment
ANSI/UL 197—Commercial Electric Cooking Appliances
ANSI/UL 198B—Class H Fuses
ANSI/UL 198C—High-Interrupting-Capacity Fuses, Current Limiting Type
ANSI/UL 198D—High-Interrupting-Capacity Class K Fuses
ANSI/UL 198E—Class R Fuses
ANSI/UL 198F—Plug Fuses
ANSI/UL 198G—Fuse for Supplementary Overcurrent Protection
ANSI/UL 198H—Class T Fuses
ANSI/UL 198L—DC Fuses for Industrial Use
ANSI/UL 198M—Mine-Duty Fuses
ANSI/UL 207—Nonelectrical Refrigerant Containing Components and Accessories
ANSI/UL 209—Cellur Metal Floor Electrical Raceways and Fittings
ANSI/UL 224—Extruded Insulating Tubing
UL 228—Door Closers-Holders, and Integral Smoke Detectors
ANSI/UL 231—Electrical Power Outlets
ANSI/UL 244A—Solid-State Controls for Appliances
ANSI/UL 250—Household Refrigerators and Freezers
ANSI/UL 291—Automated Teller Systems
ANSI/UL 294—Access Control System Units
ANSI/UL 296—Oil Burners
ANSI/UL 298—Portable Electric Hand Lamps
ANSI/UL 303—Refrigeration and Air-Conditioning Condensing and Compressor Units
ANSI/UL 310—Electrical Quick-Connect Terminals
ANSI/UL 325—Door, Drapery, Gate, Louver, and Window Operators and Systems
ANSI/UL 343—Pumps of Oil-Burning Appliances
ANSI/UL 347—High-Voltage Industrial Control Equipment
ANSI/UL 351—Electrical Rosettes
ANSI/UL 353—Limit Controls
ANSI/UL 355—Electric Cord Reels
ANSI/UL 360—Liquid Tight Flexible Steel Conduit
ANSI/UL 372—Primary Safety Controls for Gas- and Oil-Fired Appliances
ANSI/UL—Solid-Fuel and Combination-Fuel Control and Supplementary Furances
ANSI/UL 399—Drinking-Water Coolers
ANSI/UL 412—Refrigeration Unit Coolers
ANSI/UL 414—Electric Meter Sockets
UL 416—Refrigerated Medical Equipment
ANSI/UL 427—Refrigerating Units
ANSI/UL 429—Electrically Operated Valves
ANSI/UL 430—Electric Waste Disposers
UL 444—Communications Cables
ANSI/UL 448—Pumps for Fire Protection Service
ANSI/UL 452—Antenna Discharge Units
ANSI/UL 464—Audible Signal Appliances
ANSI/UL 465—Central Cooling Air Conditioners
ANSI/UL 466—Electric Scales
ANSI/UL 467—Electric Grounding and Bonding Equipment
ANSI/UL 469—Musical Instruments and Accessories
ANSI/UL 471—Commercial Refrigerators and Freezers
ANSI/UL 474—Dehumidifiers
ANSI/UL 478—Information-Processing and Business Equipment
ANSI/UL 482—Portable Sun/Heat Lamps
ANSI/UL 484—Room Air Conditioners
ANSI/UL 486A—Wire Connectors and Soldering Lugs for Use With Cooper Conductors
ANSI/UL 486B—Wire Connectors for Use With Aluminum Conductors
ANSI/UL 486C—Splicing Wire Connectors
ANSI/UL 486D—Insulated Wire Connectors for Use With Underground Conductors
ANSI/UL 486E—Equipment Wiring Terminals for Use With Aluminum and/or Cooper Conductors
ANSI/UL 489—Molded-Case Circuit Breakers and Circuit-Breaker Enclosures
ANSI/UL 493—Thermoplastic-Insulated Underground Feeder and Branch-Circuit Cables
ANSI/UL 495—Power-Operated Dispensing Devices for LP-Gas
ANSI/UL 496—Edison-Base Lampholders
ANSI/UL 497—Protectors for Communication Circuits
UL 497A—Secondary Protectors for Communication Circuits
ANSI/UL 497B—Protectors for Data Communication and Fire Alarm Circuits
ANSI/UL 498—Attachment Plugs and Receptacles
ANSI/UL 499—Electric Heating Applicances
ANSI/UL 506—Specialty Transformers
ANSI/UL 507—Electric Fans
ANSI/UL 508—Electric Industrial Control Equipment
ANSI/UL 510—Insulating Tape

ANSI/UL 511—Porcelain Electrical Cleats, Knobs, and Tubes
ANSI/UL 512—Fuseholders
ANSI/UL 514A—Metallic Outlet Boxes, Electrical
ANSI/UL 514B—Fittings for Conduit and Outlet Boxes
ANSI/UL 514C—Nonmetallic Outlet Boxes, Flush-Device Boxes and Covers
ANSI/UL 519—Impedance-Protected Motors
ANSI/UL 541—Refrigerated Vending Machines
ANSI/UL 542—Lampholders, Starters, and Starter Holders for Fluorescent Lamps
ANSI/UL 543—Impregnated-Fiber Electrical Conduit
UL 544—Electric Medical and Dental Equipment
ANSI/UL 547—Thermal Protectors for Electric Motors
ANSI/UL 551—Transformer-Type Arc-Welding Machines
ANSI/UL 559—Heat Pumps
ANSI/UL 560—Electric Home-Laundry Equipment
ANSI/UL 561—Floor Finishing Machines
ANSI/UL 563—Ice Makers
ANSI/UL 574—Electric Oil Heater
ANSI/UL 603—Power Supplies for Use With Burglar-Alarm Systems
ANSI/UL 609—Local Burglar-Alarm Units and Systems
ANSI/UL 621—Ice Cream Makers
ANSI/UL 632—Electrically Actuated Transmitters
ANSI/UL 639—Intrusion-Detection Units
ANSI/UL 651—Schedule 40 and 80 Rigid PVC Conduit
ANSI/UL 651A—Type EB and A Rigid PVC Conduit and HDPE Conduit
UL 664—Commercial (Class IV) Electric Dry-Cleaning Machines
ANSI/UL 674—Electric Motors and Generators for Use in Hazardous (Classified) Locations
ANSI/UL 676—Underwater Lighting Fixtures
ANSI/UL 680—Emergency Vault Ventilators and Vault Ventilating Parts
ANSI/UL 696—Electric Toys
ANSI/UL 697—Toy Transformers
ANSI/UL 698—Industrial Control Equipment for Use in Hazardous (Classified) Locations
ANSI/UL 705—Power Ventilators
UL 710—Grease Extractors for Exhaust Ducts
ANSI/UL 719—Nonmetallic Sheathed Cables
ANSI/UL 726—Oil-Fired Boiler Assemblies
ANSI/UL 727—Oil-Fired Central Furnaces
ANSI/UL 729—Oil-Fired Floor Furnaces
ANSI/UL 730—Oil-Fired Wall Furnaces
ANSI/UL 731—Oil-Fired Unit Heaters
ANSI/UL 732—Oil-Fired Water Heaters
UL 733—Oil-Fired Air Heaters and Direct-Fired Heaters
ANSI/UL 746A—Polymeric Materials—Short Term Property Evaluations
ANSI/UL 746B—Polymeric Materials—Long Term Property Evaluations
ANSI/UL 746C—Polymeric Materials—Use in Electrical Equipment Evaluations
ANSI/UL 746E—Polymeric Materials—Industrial Laminates, Filament Wound Tubing, Vulcanized Fibre, and Materials Used in Printed Wiring Boards
ANSI/UL 749—Household Dishwashers
ANSI/UL 751—Vending Machines
ANSI/UL 756—Coin and Currency Changers and Actuators
UL 763—Alarm Accessories for Automatic Water-Supply Control Valves for Fire-Protection Service
ANSI/UL 773—Plug-In Locking-Type Photocontrols for Use With Area Lighting
ANSI/UL 773A—Nonindustrial Photoelectric Switches for Lighting Control
UL 775—Graphic Arts Equipment
ANSI/UL 778—Motor-Operated Water Pumps
ANSI/UL 781—Portable Electric Lighting Units for Use in Hazardous (Classified) Locations
ANSI/UL 783—Electric Flashlights and Lanterns for Use in Hazardous Locations, Class I, Groups C and D
UL 795—Commercial-Industrial Gas-Heating Equipment
ANSI/UL 796—Printed-Wiring Boards
ANSI/UL 797—Electrical Metallic Tubing
UL 810—Capacitors
ANSI/UL 813—Commercial Audio Equipment
ANSI/UL 814—Gas-Tube-Sign and Ignition Cable
ANSI/UL 817—Cord Sets and Power-Supply Cords
ANSI/UL 823—Electric Heaters for Use in Hazardous (Classified) Locations
ANSI/UL 826—Household Electric Clocks
ANSI/UL 834—Heating, Water Supply, and Power Boilers—Electric
UL 842—Valves for Flammable Fluids
ANSI/UL 844—Electric Lighting Fixtures for Use in Hazardous (Classified) Locations
ANSI/UL 845—Electric Motor Control Centers
ANSI/UL 854—Service Entrance Cable
ANSI/UL 857—Electric Busways and Associated Fittings
ANSI/UL 858—Household Electric Ranges
UL 858A—Safety-Related Solid-State Controls for Electric Ranges
ANSI/UL 859—Personal Grooming Appliance
ANSI/UL 863—Electric Time-Indicating and Recording Appliances
ANSI/UL 867—Electrostatic Air Cleaners
ANSI/UL 869—Electrical Service Equipment
ANSI/UL 869A—Reference Standard for Service Equipment
ANSI/UL 870—Wireways, Auxiliary Gutters, and Associated Fittings
ANSI/UL 873—Electrical Temperature-Indicating and -Regulating Equipment
ANSI/UL 875—Electric Dry Bath Heaters
ANSI/UL 877—Circuit Breakers and Circuit-Breaker Enclosure for Use in Hazardous (Classified) Locations
ANSI/UL 879—Electrode Receptacles for Gas-Tube Signs
ANSI/UL 883—Fan-Coil Units and Room-Fan Heater Units
ANSI/UL 884—Underfloor Electrical Raceways and Fittings
ANSI/UL 886—Electrical Outlet Boxes and Fittings for Use in Hazardous (Classified) Locations
ANSI/UL 891—Dead-Front Electrical Switchboards
ANSI/UL 894—Switches for Use in Hazardous (Classified) Locations
UL 896—Oil-Burning Stoves
ANSI/UL 910—Test Method for Fire and Smoke Characteristics of Electrical and Optical Fiber-Cables
ANSI/UL 913—Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division I, Hazardous (Classified) Locations
ANSI/UL 916—Energy Management Equipment
ANSI/UL 917—Clock-Operated Switches
ANSI/UL 921—Commercial Electric Dishwashers
ANSI/UL 923—Microwave Cooking Appliances
ANSI/UL 924—Emergency Lighting and Power Equipment
ANSI/UL 935—Flourescent-Lamp Ballasts
ANSI/UL 943—Ground-Fault Circuit Interrupters
ANSI/UL 961—Hobby and Sports Equipment
ANSI/UL 964—Electrically Heating Bedding
ANSI/UL 969—Marking and Labeling Systems
ANSI/UL 977—Fused Power-Circuit Devices
ANSI/UL 982—Motor-operated Food Preparing Machines
ANSI/UL 983—Surveillance Cameras
ANSI/UL 984—Hermetic Refrigerant Motor-Compressors
ANSI/UL 987—Stationary and Fixed Electric Tools
UL 991—Tests for Safety-Related Controls Employing Solid-State Devices
ANSI/UL 998—Humidifiers
ANSI/UL 1002—Electrically Operated Valve for Use in Hazardous (Classified) Locations
ANSI/UL 1004—Electric Motors
ANSI/UL 1005—Electric Flatirons
ANSI/UL 1008—Automatic Transfer Switches
ANSI/UL 1010—Receptacle-Plug Combinations for Use in Hazardous (Classified) Locations
ANSI/UL 1012—Power Supplies
ANSI/UL 1017—Electric Vacuum Cleaning Machines and Blower Cleaners
ANSI/UL 1018—Electric Aquarium Equipment
ANSI/UL 1020—Thermal Cutoffs for Use in Electrical Appliances and Components
UL 1022—Line Isolated Monitors
ANSI/UL 1025—Electric Air Heaters
ANSI/UL 1026—Electric Household Cooking and Food-Serving Appliances
ANSI/UL 1028—Electric Hair-Clipping and -Shaving Appliances
ANSI/UL 1029—High-Intensity Discharge Lamp Ballasts
ANSI/UL 1030—Sheathed Heater Elements
ANSI/UL 1037—Antitheft Alarms and Devices
ANSI/UL 1042—Electric Baseboard Heating Equipment
UL 1047—Isolated Power Systems Equipment
ANSI/UL 1053—Ground-Fault Sensing and Relaying Equipment
ANSI/UL 1054—Special-Use Switches
UL 1059—Terminal Blocks
ANSI/UL 1063—Machine-Tool Wires and Cables
UL 1066—Low-Voltage AC and DC power Circuit Breakers Used in Enclosures
ANSI/UL 1069—Hospital Signaling and Nurse Call Equipment
ANSI/UL 1072—Medium Voltage Power Cables
ANSI/UL 1076—Proprietary Burglar-Alarm Units and Systems
ANSI/UL 1077—Supplementary Protectors for Use in Electrical Equipment
ANSI/UL 1081—Electric Swimming Pool Pumps, Filters and Chlorinators

ANSI/UL 1082—Household Electric Coffee Makers and Brewing-Type Appliances
ANSI/UL 1083—Household Electric Skillets and Frying-Type Appliances
ANSI/UL 1086—Household Trash Compactors
ANSI/UL 1087—Molded-Case Switches
ANSI/UL 1088—Temporary Lighting Strings
ANSI/UL 1090—Electric Snow Movers
UL 1092—Process Control Equipment
ANSI/UL 1096—Electric Central Air-Heating Equipment
ANSI/UL 1097—Double Insulation Systems for Use in Electrical Equipment
ANSI/UL 1203—Explosion-Proof and Dust-Ignitition-Proof Electrical Equipment for Use in Hazardous (Classified) Locations
UL 1206—Electric Commercial Clothes-Washing Equipment
ANSI/UL 1207—Sewage Pumps for Use in Hazardous (Classified) Locations
ANSI/UL 1230—Amateur Movie Lights
ANSI/UL 1238—Control Equipment for Use With Flammable Liquid Dispensing Devices
UL 1240—Electric Commercial Clothes/Drying Equipment
ANSI/UL 1241—Junction Boxes for Swimming Pool Lighting Fixtures
ANSI/UL 1242—Intermediate Metal Conduit
UL 1244—Electrical and Electronic Measuring and Testing Equipment
ANSI/UL 1261—Electric Water Heaters for Pools and Tubs
ANSI/UL 1262—Laboratory Equipment
UL 1270—Radio Receivers, Audio System, and Accessories
ANSI/UL 1277—Electrical Power and Control Tray Cables With Optional Optical-Fiber Members
ANSI/UL 1283—Electromagnetic-Interference Filter
ANSI/UL 1286—Office Furnishings
ANSI/UL 1310—Direct Plug-In Transformer Units
ANSI/UL 1313—Nonmetallic Safety Cans for Petroleum Products
UL 1323—Scaffold Hoists
ANSI/UL 1409—Low-Voltage Video Products Without Cathode-Ray-Tube Displays
ANSI/UL 1410—Television Receivers and High-Voltage Video Products
ANSI/UL 1411—Transformers and Motor Transformers for Use in Audio-, Radio-, and Television-Type Appliances
ANSI/UL 1412—Fusing Resistors and Temperature-Limited Resistors for Radio-, and Television-Type Appliances
ANSI/UL 1413—High-Voltage Components for Television-type Appliances
ANSI/UL 1414—Across-the-Line, Antenna-Coupling, and Line-by-Pass Capacitors for Radio- and Television-Type Appliances
ANSI/UL 1416—Overcurrent and Overtemperature Protectors for Radio- and Television-Type Appliances
ANSI/UL 1417—Special Fuses for Radio- and Television-Type Appliances
ANSI/UL 1418—Implosion-Protected Cathode-Ray Tubes for Television-Type Appliances
ANSI/UL 1429—Pullout Switches
ANSI/UL 1433—Control Centers for Changing Message Type Electric Signs
ANSI/UL 1436—Outlet Circut Testers and Similar Indicating Devices
UL 1437—Electrical Analog Instruments, Panelboard Types
ANSI/UL 1438—Household Electric Drip-Type Coffee Makers
ANSI/UL 1441—Coated Electrical Sleeving
ANSI/UL 1445—Electric Water Bed Heaters
ANSI/UL 1447—Electric Lawn Mowers
ANSI/UL 1448—Electric Hedge Trimmers
UL 1449—Transient Voltage Surge Suppressors
ANSI/UL 1450—Motor-Operated Air Compressors, Vacuum Pumps and Painting Equipment
ANSI/UL 1453—Electric Booster and Commercial Storage Tank Water Heater
UL 1459—Telephone Equipment
ANSI/UL 1555—Electric Coin-Operated Clothes-Washing Equipment
ANSI/UL 1556—Electric Coin-Operated Clothes Drying-Equipment
ANSI/UL 1557—Electrically Isolated Semiconductor Devices
UL 1558—Metal-Enclosed Low-Voltage Power Circuit Breaker Switchgear
ANSI/UL 1559—Insesct-Control Equipment, Electrocution Type
ANSI/UL 1561—Large General Purpose Transformers
UL 1562—Transformers, Distribution, Dry Type—Over 600 Volts
ANSI/UL 1563—Electric Hot Tubs, Spas, and Associated Equipment
ANSI/UL 1564—Industrial Battery Chargers
ANSI/UL 1565—Wire Positioning Devices
UL 1567—Receptacles and Switches Intended for Use With Aluminum Wire
ANSI/UL 1569—Metal-Clad Cables
ANSI/UL 1570—Fluorescent Lighting Fixtures
ANSI/UL 1571—Incandescent Lighting Fixtures
ANSI/UL 1572—High Intensity Discharge Lighting Fixtures
ANSI/UL 1573—Stage and Studio Lighting Units
ANSI/UL 1574—Track Lighting Systems
ANSI/UL 1577—Optical Isolators
ANSI/UL 1581—Reference Standard for Electrical Wires, Cables, and Flexible Cords
ANSI/UL 1585—Class 2 and Class 3 Transformers
UL 1594—Sewing and Cutting Machines
UL 1604—Electrical Equipment for Use in Class I and II, Division 2 and Class III Hazardous (Classified) Locations
ANSI/UL 1610—Central-Station Burglar-Alarm Units
ANSI/UL 1624—Light Industrial and Fixed Electric Tools
ANSI/UL 1635—Digital Burglar Alarm Communicator Systems Units
ANSI/UL 1638—Visual Signaling Appliances
ANSI/UL 1647—Motor-Operated Massage and Exercise Machines
UL 1660—Liquid-Tight Flexible Nonmentallic Conduit
ANSI/UL 1662—Electric Chain Saws
ANSI/UL 1666—Standard Test for flame Progagation Height of Electrical and Optical-Fiber Cables Installed Vertically in Shafts
UL 1676—Discharge Path Resistors
UL 1681—Wiring Device Configurations
ANSI/UL 1727—Commercial Electric Personal Grooming Appliances
ANSI/UL 1773—Termination Boxes
UL 1778—Uniterruptible Power Supply Equipment
ANSI/UL 1786—Nighlights
UL 1795—Hydromassage Bathtubs
UL 1812—Ducted Heat Recovery Ventilators
UL 1815—Nonducted Heat Recovery Ventilators
UL 1863—Communication Circuit Accessories
ANSI/UL 1876—Isolating Signal and Feedback Transformers for use in Electronic Equipment
UL 1917—Solid-State Fan Speed Controls
UL 1950—Information Technology Equipment Including Electrical Business Equipment
UL 1995—Heating and Cooling Equipment
UL 2097—Reference Standard for Double Insulation Systems for Use in Electronic Equipment

Preliminary Finding

The Canadian Standards Association addressed all of the criteria which had to be met for recongition as a NRTL in its initial application and in its further correspondence. For example, the applicant submitted a list of its test equipment and instrumentation; a roster of its personnel including resumes of those in key positions and copies of position descriptions; copies of a typical test report, a factory inspection form and an inspection summary; a summary of its listing, labeling, and follow-up services; a statement of its independence as a testing laboratory; and a copy of its Quality Assurance Manual including a description of its documentation, calibration system, appeals procedure, recordkeeping and operational procedures.

Nine major areas were examined in depth in carrying out the laboratory survey: facility; test equipment; calibration program; test and evaluation procedures; test reports; records; qualtiy assurance program; follow-up listing program; and personnel.

The discrepancies noted by the survey team in the on-site evaluation [Ex. 3.A.(a)] were adequately responded to by the applicant prior to the preparation of the survey report and are included as a integral part of the report.

With the preparstion of the final survey report of the Canadian Standards Association, the survey team was satisfied that the testing facility appeared to meet the necessary criteria required by the standard, and so noted in the On-Site Review Report (Survey). (See Ex. 3.A.).

Following a review of the application file and the on-site survey report of the CSA Toronto facility, the NRTL Recognition Program staff concluded that the applicant appeared to have met the requirements for recognition as a Nationally Recognized Testing Laboratory and, therefore, recommended to the Assistant Secretary

that the application be preliminary approved.

Based upon a review of the completed application file and the recommendation of the staff, the Assistant Secretary has made a preliminary finding that the Canadian Standards Association (Toronto) can meet the requirements for recognition as required by 29 CFR 1910.7

All interested members of the public are invited to apply detailed reasons and evidence supporting or challenging the sufficiency of the applicant's having met the requirements for a Nationally Recognized Testing Laboratory, as well as appendix A, of 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than August 3, 1992, and must be addressed to the NRTL Recognition Program, Office of Variance Determination, room N 3653, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Washington, DC 20210. Copies of the CSA application, the laboratory survey report, and all submitted comments, as received, (Docket No. NRTL-2-92), are available for inspection and duplication at the Docket Office, room N 2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

The Assistant Secretary's final dicision on whether the applicant satisfies the requirements for recognition as an NRTL will be made on the basis of the entire record including the public submissions and any further proceedings that the Assistant Secretary may consider appropriate in accordance with appendix A of § 1910.7.

Signed at Washington, DC, this 29th day of May 1992.

Dorothy L. Strunk,

Acting Assistant Secretary.

[FR Doc. 92-12983 Filed 6-2-92; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

National Commission on Acquired Immune Deficiency Syndrome; Meeting

AGENCY: National Commission on Acquired Immune Deficiency Syndrome.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463 as amended, the National Commission on Acquired Immune Deficiency Syndrome announces a forthcoming meeting of the Commission.

Date and Time: Monday, June 15, 1992,—10 a.m.-5:30 p.m.; Tuesday, June 16, 1992,—10 a.m.-1 p.m.

Place: Monday, June 15, 1992—Room 214, H. Roe Bartle Hall, Convention Center, 13th & Central Streets, Kansas City, Missouri. Tuesday, June 16, 1992—Battenfeld Auditorium, Student Center, University of Kansas Medical Center, 3901 Rainbow Boulevard (at Olatho Boulevard), Kansas City, Kansas.

Type of Meeting: Open.

For Further Information Contact: Roy Widdus, Ph.D., Executive Director, National Commission on Acquired Immune Deficiency Syndrome, 1730 K Street, NW., suite 815, Washington, DC 20006 (202) 254-5125. Records shall be kept of all Commission proceedings and shall be available for public inspection at this address.

Agenda: The Commission will examine what influences shape public perceptions on the HIV epidemic, and the role of communication in primary prevention and care.

Dated: May 28, 1992.

Roy Widdus,

Executive Director.

[FR Doc. 92-12959 Filed 6-2-92; 8:45 am]

BILLING CODE 6820-CN-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Artists' Projects Regional Initiative Section) to the National Council on the Arts will be held on June 19, 1992 from 9 a.m.-6 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 4:30 p.m.-6 p.m. The topics will be policy discussion and guidelines review.

The remaining portion of this meeting from 9 a.m.-4:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: May 28, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92-12879 Filed 6-2-92; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Special Projects Section) to the National Council on the Arts will be held on June 24, 1992 from 9 a.m.-6:30 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 4:30 p.m.-6:30 p.m. The topics will be policy discussion and guidelines review.

The remaining portion of this meeting from 9 a.m.-4:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels

which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: May 28, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92-12881 Filed 6-2-92; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-47]

Environmental Assessment and Finding of No Significant Impact Regarding Proposed Order Authorizing Dismantling of Facility and Disposition of Component Parts, U.S. Army Materials Technology Laboratory

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an Order authorizing the U.S. Army Materials Technology Laboratory (AMTL) to dismantle their U.S. Army Materials Technology Laboratory Research Reactor (AMTLRR) located at the Army Materials Technology Laboratory in Watertown, Massachusetts, and to dispose of the components in accordance with the application dated October 8, 1991, as supplemented on March 16, 1992, and March 31, 1992.

Environmental Assessment

Identification of Proposed Action

By application dated October 8, 1991, as supplemented, AMTL requested authorization to decontaminate and dismantle the AMTLRR, to dispose of its component parts in accordance with the proposed Decommissioning Plan, and to terminate Amended Facility License No. R-65. The AMTLRR was shut down in March 1970, and has not operated since then. Following the reactor shutdown, the fuel was removed from the core and transferred offsite to the U.S. Atomic Energy Commission (now the Department of Energy).

Opportunity for hearing was afforded by a "Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License" published in the **Federal Register** on February 24, 1992 (57 FR 6339). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

Need for Proposed Action

In order to terminate the facility license and transfer the area to the AMTL for unrestricted use, the dismantling and decontamination activities proposed by the AMTL must be accomplished.

Environmental Impact of the Proposed Action

All decontamination will be performed by trained personnel in accordance with previously reviewed procedures and will be overseen by experienced health physics staff. Solid and liquid waste will be removed from the facility and managed in accordance with NRC requirements. The AMTL staff has calculated that the collective dose equivalent to the AMTL staff, AMTL contractors and public for the project will be less than 10 person-rem.

The above conclusions were based on all proposed operations being carefully planned and controlled, all contaminated components being removed, packaged, and shipped offsite, and that radiological control procedures will be in place that help to ensure that releases of radioactive wastes from the facility are within the limits of 10 CFR part 20 and are as low as reasonably achievable (ALARA).

Based on the review of the specific proposed activities associated with the dismantling and decontamination of the AMTL Research Reactor, the staff has determined that there will be no significant increase in the amounts of effluents that may be released offsite, and no significant increase in individual or cumulative occupational or population radiation exposure.

The staff has also determined that the proposed activities will not result in any significant impacts on air, water, land, or biota in the area.

Alternative Use of Resources

The only alternative to the proposed dismantling and decontamination activities is to maintain possession of the reactor. This approach would include monitoring and reporting for the duration of the safe storage period. However, the AMTL intends to use the area for other purposes.

Agencies and Persons Consulted

The NRC staff consulted no other agencies or persons in reviewing the licensee's request.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed action based upon the foregoing environmental assessment. We conclude that the proposed action will not have a significant effect on the quality of the human environment.

For detailed information with respect to this proposed action, see the application for dismantling, decontamination and license termination dated October 8, 1991, as supplemented, and the Safety Evaluation prepared by the staff. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 28th day of May, 1992.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors, Decommissioning and Environmental Project Directorate, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-12953 Filed 6-2-92; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Improved Light Water Reactors; Meeting

The ACRS Subcommittee on Improved Light Water Reactors will hold a meeting on June 18, 1992, in room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Thursday, June 18, 1992—8:30 a.m. until the conclusion of business.*

The Subcommittee will review the Final Safety Evaluation Report (FSER) of the Electric Power Research Institute's (EPRI's) Requirements Document for evolutionary plant designs.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the

meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold disucssions with representatives of EPRI, NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Dr. Medhat El-Zeftawy (telephone 301/492-9901) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: May 27, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92-12918 Filed 6-2-92; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Improved Light Water Reactors; Meeting

The ACRS Subcommittee on Improved Light Water Reactors will hold a meeting on June 17, 1992, in room P-422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Wednesday, June 17, 1992—8:30 a.m. until the conclusion of business.*

The Subcommittee will review chapter 1 of the Electric Power Research Institute's (EPRI's) Requirements Document (Vol. II and III) for evolutionary and passive plant designs.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of EPRI, NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Dr. Medhat El-Zeftawy (telephone 301/492-9901) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: May 27, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92-12919 Filed 6-2-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-320]

Meeting of the Advisory Panel for the Decontamination of Three Mile Island, Unit 2, GPU Nuclear Corporation

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel for the Decontamination of Three Mile Island, Unit 2 (TMI-2) will be meeting on June 9, 1992, from 7 p.m. to 10 p.m. at the Harrisburg Hotel, Center City, 23 S. Second Street, Harrisburg, Pennsylvania. The meeting will be open to the public. The date and location for this meeting were announced to the public at the last meeting of the Panel on April 14, 1992. This notice has been delayed in order to allow time to finalize the agenda.

At this meeting, the Panel will receive a presentation from GPU Nuclear Corporation on their plan for funding the remaining cleanup activities and funding the decommissioning of TMI-2. The NRC staff will explain the regulations applicable to decommissioning funding plans. The Advisory Panel will also discuss future activities.

Further information on the meeting may be obtained from Dr. Michael T. Masnik, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504-1191.

Dated: May 28, 1992.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Advisory Committee, Management Officer.

[FR Doc. 92-12920 Filed 6-2-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-4492]

American Nuclear Corp.; Gas Hills Mill; Notice

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of intent to amend source material license SUA-667 for the Gas Hills Mill to incorporate reclamation schedules.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend Source Material License SUA-667, American Nuclear Corporation's Gas Hills Mill, to incorporate a revised reclamation schedule and to add a new license condition.

DATES: The comment period expires July 20, 1992.

ADDRESSES: Copies of the response from American Nuclear Corporation and the staff evaluation of the licensee's request are available for inspection at the Uranium Recovery Field Office, 730 Simms Street, suite 100, Golden, Colorado, and the NRC Public Document room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments should be mailed to David L. Meyer, Chief, Rules and Directives Review Branch, Office of Administration, P-223, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the Director, Uranium Recovery Field Office, P.O. Box 25325, Denver, CO 80225.

Comments may be hand-delivered to room P-223, 7920 Norfolk Avenue, Bethesda, MD, between 7:30 a.m. and 4:15 p.m., Federal workdays.

FOR FURTHER INFORMATION CONTACT: Ramon E. Hall, Director, Uranium Recovery Field Office, Region IV, U.S. Nuclear Regulatory Commission, Box

25325, Denver, CO 80225. Telephone: 303-231-5800.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency (EPA) entered into a Memorandum of Understanding (MOU) which was published in the Federal Register on October 25, 1991 (56 FR 55434). The MOU requires that the NRC incorporate enforceable reclamation schedules for specific uranium mill sites into the corresponding licenses. The MOU also specified dates for completion of placement of a final earthen cover for each site.

The NRC requested by letter dated October 22, 1991, that the licensee submit a proposed schedule for reclamation milestones for NRC review and incorporation into the license. The licensee provided a response on November 15, 1991.

The NRC staff review of the proposed schedule indicates that it calls for placement of the final cover for Tailings Pond No. 1 by June 30, 1996. The final radon cover for Tailings Pond No. 2 will be by December 31, 1994. The date for Tailings Pond No. 1 is six months later than the date specified in the MOU. This occurred because at the time of the writing of the MOU the licensee had not determined the projected final radon cover date. The date supplied for the MOU was the best estimate at the time. A review of this date finds it to be acceptable. In addition, the reclamation milestone schedule appears to be reasonable, and adherence to the schedule should assure satisfactory progress toward placement of the final cover by the specified date.

The NRC intends to amend Source Material License SUA-667 to incorporate the schedules proposed by the licensee by adding License Condition No. 31 to read as follows:

31. The licensee shall complete site reclamation in accordance with the approved reclamation plan and ground-water corrective action plan, as authorized by License Condition Nos. 14 and 29, respectively, in accordance with the following schedules.

A. To ensure timely compliance with target completion dates established in the Memorandum of Understanding with the Environmental Protection Agency (56 FR 55432, October 25, 1991), the licensee shall complete reclamation to control radon emissions as expeditiously as practicable, considering technological feasibility, in accordance with the following schedule:

(1) Windblown tailings retrieval and placement on the pile:

For Tailings Pond No. 1—June 30, 1995
For Tailings Pond No. 2—Complete.

(2) Placement of the interim cover to decrease the potential for tailings dispersal and erosion:

For Tailings Pond No. 1—Complete
For Tailings Pond No. 2—Complete.

(3) Placement of final radon barrier designed and constructed to limit radon emissions to an average flux of no more than 20 pCi/m²/s above background:

For Tailings Pond No. 1—June 30, 1996
For Tailings Pond No. 2—December 31, 1994.

B. Reclamation, to ensure required longevity of the covered tailings and ground-water protection, shall be completed as expeditiously as is reasonably achievable, in accordance with the following target dates for completion:

(1) Placement of erosion protection as part of reclamation to comply with criterion 6 of appendix A of 10 CFR part 40:

For Tailings Pond No. 1—December 31, 1996
For Tailings Pond No. 2—December 31, 1994.

(2) Projected completion of ground-water corrective actions to meet performance objectives specified in the ground-water corrective action plan—December 31, 1994.

C. Any license amendment request to revise the completion dates specified in Section A must demonstrate that compliance was not technologically feasible (including inclement weather, litigation which compels delay to reclamation, or other factors beyond the control of the licensee).

D. Any license amendment request to change the target dates in section B above, must address added risk to the public health and safety and the environment, with due consideration to the economic costs involved and other factors justifying the request such as delays caused by inclement weather, regulatory delays, litigation, and other factors beyond the control of the licensee.

Dated at Denver, Colorado, this 22nd day of May, 1992.

For the Nuclear Regulatory Commission.

Ramon E. Hall,

Director, Uranium Recovery Field Office.

[FR Doc. 92-12954 Filed 6-2-92; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C. 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning July 1, 1992, shall be at the rate of 31 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning July 1, 1992, 31.7 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 68.3 percent of the taxes collected under such sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: May 27, 1992.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 92-12904 Filed 6-2-92; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for hearing; Cincinnati Stock Exchange, Inc.

May 28, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

DVI Health Services Corp.
Common Stock, $.005 Par Value (File No. 7-8525)

Dyersburg Corp.
Common Stock, $.01 Par Value (File No. 7-8526)

ECC Group, PLC

American Depository Shares (Rep. 3 ord. shares, 25p) (File No. 7-8527)
Florida Power & Light Co.
$2.00 No Par Value, Pfd. Stock, Series A (File No. 7-8528)
H&Q Life Sciences Investors
Shares of Beneficial Interest, $.01 Par Value (File No. 7-8529)
International Family Entertainment, Inc.
Class B Common Stock, $.01 Par Value (File No. 7-8530)
Mediplex Group, Inc.
Common Stock, $.10 Par Value (File No. 7-8531)
Quanex Corp.
Dep. Conv. Exch. Pfd. Shares (Rep. 1/10 Sh. of 6.88% Cum. Conv. Exch. Pfd Stk.) (File No. 7-8532)
Van Kampen Merritt for Investment Grade Florida Municipals
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7-8533))
Van Kampen Merritt for Investment Grade New Jersey Municipals
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7-8534)
Van Kampen Merritt for Investment Grade New York Municipals
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7-8535)
Van Kampen Merritt for Investment Grade Pennsylvania Municipals
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7-8536)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submmit on or before June 18, 1992, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-12876 Filed 6-2-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

May 28, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities;

Arcadian Partners, L.P.
Common Units (Representing Limited Partnership Interests) (File No. 7-8498)
Boston Scientific Corporation
Common Stock, $.01 Par Value (File No. 7-8499)
Kohl's Corporation
Common Stock, $.01 Par Value (File No. 7-8500)
MuniYield New Jersey Fund, Inc.
Common Stock, $.10 Par Value (File No. 7-8501)
Quanex Corporation
Depositary Convertible Exchangeable Preferred Shares (each representing 1/10 share Cumulative Convertible Exchangable Preferred Stock, Liquidity Preference $250 per share) (File No. 7-8502)
Danielson Holding Corporation
Common Stock, $.10 Par Value (File No. 7-8503)
Alcatel Alsthom Compagnie Generale d'Electricite
American Depositary Shares (each representing 1/5 of a share) (File No. 7-8504)
John Nuveen Co.
Common Stock, $.01 Par Value (File No. 7-8505)
Sulcus Computer Corporation
Common Stock, No Par Value (File No. 7-8506)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 18, 1992, a written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 205249. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary,

[FR Doc. 92-12873 Filed 6-2-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

May 28, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Alcatel Alsthom Compagnie Generale d'Electricite
American Depository Receipts (File No. 7-8517)
Boston Scientific Corporation
Common Stock, $0.01 Par Value (File No. 7-8518)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 18, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securites and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonothan G. Katz,

Secretary.

[FR Doc. 92-12875 Filed 6-2-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

May 28, 1992

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities.

Voyageur Minnesota Municipal Income Fund
Common Stock, $.01 Par Value (File No. 7-8507)
Wells-Gardner Electronics Corporation
Common Stock, $1.00 Par Value (File No. 7-8508)
MuniYield New Jersey Fund, Inc.
Common Stock, $.10 Par Value (File No. 7-8509)
Boston Scientific Corporation
Common Stock, $0.01 Par Value (File No. 7-8510)
Kohls Corporation
Common Stock, $.01 Par Value (File No. 7-8511)
Davstar Industries Ltd.
Common Stock, No Par Value (File No. 7-8512)
Davstar Industries Ltd.
Warrants, No Par Value (File No. 7-8513)
Sulcus Computer Corporation
Common Stock, No Par Value (File No. 7-8514)
Alcatel Alstorm Compagnie Generaled d'Electricite
American Depositary Shares (File No. 7-8515)
John Nuveen Company
Class A Common Stock, $.01 Par Value (File No. 7-8516)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 18, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-12874 Filed 6-2-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Incorporated

May 28, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Airgas, Inc.
Common Stock, $.01 Par Value (File No. 7-8519)
Boston Scientific Corp.
Common Stock, $.01 Par Value (File No. 7-8520)
Maxum Health Corp.
Common Stock, $.01 Par Value (File No. 7-8521)
Plains Resources, Inc.
Common Stock, $.02 Par Value (File No. 7-8522)
Reliance Electric Co.
Class A Common Stock, $.01 Par Value (File No. 7-8523)
WestAir Holdings, Inc.
Common Stock, No Par Value (File No. 7-8524)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 18, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-12872 Filed 6-2-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18734; 812-7915]

The Alliance Fund, Inc., et al.; Application

May 27, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The Alliance Fund, Inc., Alliance Balanced Shares, Inc., Alliance Bond Fund, Inc., Alliance Global Small Cap Fund, Inc., Alliance Growth and Income Fund, Inc., Alliance International Fund, Alliance Mortgage Securities Income Fund, Inc., Alliance Muti-Market Strategy Trust, Inc., Alliance New Europe Fund, Inc., Alliance North American Government Income Trust, Inc., Alliance Quasar Fund, Inc., Alliance Short-Term Multi-Market Trust, Inc., and each future series of such funds, or any other registered open-end investment companies that are part of the same group of investments companies and (i) whose investment adviser is the Advisor (as defined below) or an investment adviser that is under common control with the Adviser, (ii) whose principal underwriter is the Distributor (as defined below) or a principal underwriter that is under common control with the Distributor, (iii) which hold themselves out to investors as being related for purposes of investment and investor services, and (iv) whose shares are divided into two classes of securities whose sales load, contingent deferred sales charge ("CDSC"), rate of distribution fees, conversion feature and difference in voting rights are identical to those applicable to the Funds' Class A and Class B shares as described in the application (the "Funds"); Alliance Capital Management L.P. (the "Adviser"); and Alliance Fund Distributors, Inc. (the "Distributor").

RELEVANT ACT SECTIONS: Order requested pursuant to section 6(c) of the Act to amend a previous order which granted applicants exemptive relief from the provisions of sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order pursuant to section 6(c) to amend a prior order (the "Prior Order") by (i) modifying certain requirements regarding shareholder approval of dual distribution systems, (ii) deleting the requiremernt that the Directors/Trustees of a Fund divide their purchases of shares evenly between the two classes of shares offered by a Fund, and (iii) permitting waiver of the CDSC on redemptions of Class B shares of a Fund that had been purchased by, or for the benefit of, present or former Directors/Trustees of the Fund or relatives of present or former Directors/Trustees of the Fund.

FILING DATE: The application was filed on May 6, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 pm., on June 22, 1992, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of the date of a hearing may request notification by writing, to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 1345 Avenue of the Americas, New York, NY 10105.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Law Clerk, at (202) 272-7027, or C. David Messman, Branch chief, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each existing Fund is an open-end management investment company registered under the Act. The Adviser serves as each Fund's investment adviser and manager, and will serve as any future Fund's investment adviser and manager, and the Distributor acts as principal underwriter of each Fund's shares, and will act as principal underwriter for any future Fund.

2. In the application for the Prior Order (the "Prior Application"), applicants requested exemptions from sections 18(f), 18(g), and 18(i) to permit the Funds to implement a dual distribution system (the "Dual Distribution System") that would enable the Funds to offer investors the option of purchasing either "Class A" shares subject to a conventional front-end sales load and a rule 12b-1 fee, or "Class B" shares subject to a CDSC and a higher rule 12b-1 fee. Applicants also requested exemptions from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act, and rule 22c-1 thereunder, to permit the Funds to assess a CDSC on certain redemptions of their shares and to waive the CDSC with respect to certain of such redemptions. A notice of the filing of the Prior Application was issued on January 8, 1990 (Investment Company Act Release No. 17295), and the Prior Order was issued on February 2, 1990 (Investment Company Act Release No. 17330).

3. Applicants propose to amend the Prior Order (i) to modify the shareholder approval requirements contained in condition 2 of the Prior Application, (ii) to delete condition 11 of the Prior Application which requires Directors/Trustees of a Fund to divide their purchases of shares evenly between the two classes of shares offered by a Fund, and (iii) to permit the waiver of the CDSC on redemptions of Class B shares of a Fund that had been purchased by, or for the benefit of, present or former Directors/Trustees of the Fund or relatives (as defined below) of present of former Directors/Trustees of the Fund.

4. Applications propose to modify condition 2 to eliminate the requirement that at least a majority of the existing shareholders of a Fund approve the implementation of the Dual Distribution System by an affirmative vote prior to the implementation of the Dual Distribution System by a Fund. As so modified, condition 2 would read as follows: "The Directors/Trustees of each of the Funds, including a majority of the independent Directors/Trustees, shall have approved the modified Dual Distribution System prior to the implementation of the modified Dual Distribution System by a particular Fund. The minutes of the meetings of the Directors/Trustees of each of the Funds regarding the deliberations of the Directors/Trustees with respect to the approvals necessary to implement the modified Dual Distribution System will reflect in detail the reasons for determining that the proposed modified Dual Distribution System is in the best interests of both the Funds and their respective shareholders and such minutes will be available for inspection by the Commission staff."

5. Applicants believe that the approval of shareholders of the Dual Distribution System is not necessary because condition 2 also requires the approval of a majority of the Directors/Trustees of a Fund including a majority of its independent Directors/Trustees, prior to the implementation of the Dual Distribution System. The shareholder approval requirement causes the Funds to seek shareholder approval in instances when such approval is not required by applicable state law or the Act. Consequently, the effect of the requirements that the Funds obtain such approvals before they may implement the Dual Distribution System is that the Funds are required to hold meetings of shareholders, incurring the costs of preparing proxy materials and soliciting proxies, when they would not otherwise do so. Any benefit derived from the required shareholder approvals does not justify the added costs to the Funds brought about as a result of compliance with the requirements. Applicants submit that the proposed modifications to the requirements regarding shareholder approval are consistent with the requirements regarding shareholder approval contained in applications of other investment companies pursuant to which orders were granted by the Commission in closely analogous situations subsequent to the Prior Order. Although such a shareholder approval condition was routinely required in dual class applications at the time of the Prior Order, more recent dual class applicants are not subject to the same shareholder approval requirements.

6. Condition 11 reads as follows: "All purchases of shares of the Fund by the directors made after the issuance of a second class of shares has been authorized will be equally divided between the two classes. Over time and prior to conversion, the actual holdings of the two classes of these newly purchased shares will differ to a minor degree if a director elects to have dividends reinvested. Pursuant to the conversion feature of the Class B shares, Class B shares purchased by the directors of a Fund will eventually convert to Class A shares."

7. Applicants believe that it is no longer necessary for the Directors/Trustees of the Funds to divide their purchases between the two classes. Applicants believe that other conditions of the Prior Order provide adequate safeguards against Directors/Trustees conflicts of interest. Condition 3 requires

that the Directors/Trustees monitor the Funds for any conflicts between the two classes, and that the Adviser and Distributor must report any conflicts to the Directors/Trustees. Condition 7 requires that an expert monitor the manner in which net asset value and dividends and distributions of the two classes and the allocation of expenses between the two classes is made, and that the expert render reports at least annually to the Funds that the calculations and allocations are being made properly. Applicants submit that the proposed elimination of the condition regarding equal share purchases by the Directors/Trustees is appropriate because it is consistent with orders issued by the SEC to other investment companies in closely analogous situations subsequent to the issuance of the Prior Order. Although this type of condition was routinely required at the time of the Prior Order, new dual class applicants are not subject to the same equal share purchase requirement.

8. Pursuant to the Prior Order, applicants waive the CDSC with respect to certain types of redemptions. Applicants request an amendment to the Prior Order to also allow the Funds to waive the CDSC on redemptions of Class B shares of a Fund that had been purchased by, or for the benefit of, present or former Directors/Trustees of the Fund or relatives (as defined below) of present or former Directors/Trustees of the Fund.

9. The proposed additional CDSC waiver category would apply on redemptions of Class B shares of the Fund that had been purchased by present or former Directors/Trustees of the Fund; by the spouse, sibling, direct ancestor or direct descendent (collectively "relatives") of any such person; by any trust, individual retirement account or retirement plan account for the benefit of any such person or relative; or by the estate of any such person or relative, if the shares had been purchased for investment purposes. Shares to which this waiver would apply may not be resold except to the Fund.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-12951 Filed 6-2-92; 8:45 pm]

BILLING CODE 8010-01-M

[Rel. No. IC-18730; No. 811-5334]

Separate Account LL of Lamar Life Insurance Co.

May 26, 1992.

AGENCY: Securities and Exchange Commission (the "Commission") or "SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Separate Account LL of Lamar Life Insurance Company.

RELEVANT 1940 ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company as defined by the 1940 Act.

FILING DATE: The application was filed on April 21, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on June 22, 1992, and should be accompanied by proof of service on Applicant in the form of an affivadit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 317 East Capitol Street; Jackson, MS 39201-3404.

FOR FURTHER INFORMATION CONTACT: Wendy Finck Friedlander, Attorney (202) 272-3045, or Wendell M. Faria, Deputy Chief (202) 272-2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. On September 18, 1987, Applicant filed a notification of registration as an investment company on Form N-8A, a registration statement as a unit investment trust under the 1940 Act on Form N-8B-2, and a registration statement under the Securities Act of 1933 on Form S-6 that became effective on January 12, 1988. The registration statements pertain to units of interest in certain flexible premium variable life insurance contracts (the "Policies") offered by Lamar Life Insurance Company ("Lamar Life").

2. Applicant is a separate account of Lamar Life established under the provisions of Mississippi insurance law to fund the Policies. Applicant has four classes of units, each of which corresponds to one of Applicant's investment divisions: the Common Stock Division, the Money Market Division the Balanced Division, and the Aggressive Stock Division.

3. Prior to March 31, 1992, each division invested in a corresponding portfolio of the Hudson River Trust, a management investment company registered under the 1940 Act.

4. As of March 31, 1992, Applicant had assets of $219,232, invested in shares of The Hudson River Trust ("HRT"). Applicant retains these assets for purposes of funding outstanding Policies.

5. As of March 31, 1992, Applicant was contractually liable for the unit value of its outstanding Policies in the amount of $198,579 and for amounts owed to Lamar Life of $20,653.

6. As of March 31, 1991, Applicant had 62 security holders.

7. Applicant is not a party to any litigation or adminsitrative proceeding.

8. Applicant ceased to sell new Policies in April 1991 and ceased accepting premimum payments under the Policies on March 31, 1992. All premimum payments made after March 31, 1992 under the Policies have been depositied in Lamar Life's general account.

Applicant's Legal Analysis and Conditions

1. Section 3(c)(1) of the 1940 Act excludes from the definition of an investment company any issuer whose outstanding securities are beneficially owned by not more than 100 persons and that is not making and does not presently propose to make a public offering of its securities. Applicant meets the conditions of section 3(c)(1) because the Policies are owned by less than 100 persons and because Applicant is not making and does not propose to make a public offering of its securities.

2. Lamar Life sent a letter on February 24, 1992, in the form attached to the Application as Exhibit C, to all of Applicant's contract holders informing them of its intent to file this application.

3. If this application is granted, Applicant will transfer all assets

invested in Applicant to Lamar Life' general account.

4. Each Policy owner's account value under the Policy immediately after the transfer will be the same as immediately before the transfer.

5. No purchase price and no brokerage commissions will be paid in connection with the transfer. All expenses incurred in connection with the liquidation and deregistration of Applicant have been or will be paid by Lamar Life.

6. Lamar Life will fulfill all continuing obligations under the Policies in accordance with the terms of such contracts.

Conclusion

Applicant is not an investment company within the meaning of section 3(c)(1) of the 1940 Act and therefore has ceased to be an investment company within the meaning of section 8(f) of the 1940 Act.

For the Commission, by the Division of Investment Managment, uncer delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-12926 Filed 6-2-92; 8:45 am]

BILLING CODE 8010-01-M

[File No. 500-1]

Order of Suspension of Trading; Treats International, Enterprises, Inc.

May 29, 1992.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Treats International Enterprises, Inc. concerning, among other things, (1) questions regarding the identity of persons having undisclosed control of the company, and (2) questions concerning the identities of persons having beneficial ownership of the company's securities, and the resulting impact on the market for Treats International Enterprises, Inc.'s securities.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above listed company is suspended for the period from 9:30 a.m. e.d.t., May 29, 1992 through 11:59 p.m. e.d.t., on June 11, 1992.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-12943 Filed 6-2-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18728; 812-7858]

Xerox Financial Services Life Insurance Company, et al.

May 26, 1992

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Xerox Financial Services Life Insurance Company ("Company"), Xerox Variable Annuity Account Four (the "Separate Account"), and Xerox Life Sales Company.

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of the Separate Account under certain individual deferred variable annuity contracts (the "Contracts").

FILING DATE: The application was filed on January 28, 1992 and amended on March 27, 1992, April 24, 1992 and May 18, 1992. An amendment will be filed during the notice period to add certain representations the substance of which has been included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be resceived by the Commission by 5:30 p.m. on June 22, 1992 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Dean H. Goossen, Esq., Xerox Financial Services Life Insurance Company, One Parkview Plaza, Oakbrook Terrace, IL 60181.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Attorney, at (202) 272-3046 or Wendell M. Faria, Deputy Chief, at (202) 272-2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. The Company is a stock life insurance company which was originally incorporated in 1981 as Assurance Life Company, a Missouri corporation. Currently, North River Insurance Company, an indrect subsidiary of Xerox Corporation, owns 64.80% of the Company's stock and Van Kampen Merritt, Inc. holds the remaining 35.20%.

2. The Separate Account is registered with the Commission as a unit investment trust under the 1940 Act. The Separate Account currently is divided into sub-accounts which will invest in shares of the portfolios of Van Kampen Merritt Series Trust or Neuberger & Berman Advisers Management Trust.

3. The Contracts will be distributed through Xerox Life Sales Company, an affiliate of the Company.

4. The Contracts are individual flexible purchase payment deferred variable annuity contracts which are available in connection with fringe benefit plans ("Plan" or "Plans") which may or may not qualify for Federal tax advantages. The minimum size for a Plan is $50,000 of aggregate purchase payments anticipated over the first five contract years. If a Plan participant chooses to make purchase payments through payroll deduction, payments must be at least $1,200 per year. Additional purchase payments must be at least $2,000.

5. Contract owners may transfer all or part of their interest in a sub-account to another sub-account of the Separate Account. The Company will deduct a transfer fee from the amount which is transferred which will be equal to the lesser of $25 or 2% of the amount transferred if there have been more than 12 transfers in the contract year. After annuity payments begin, the Contract owner may make one transfer per contract year.

6. The Company will deduct, at a maximum, an annual contract maintenance charge of $30 from the contract value on each contract anniversary, at the time a Contract is surrendered and, after the annuity date, on a monthly basis. The amount of this

charge will be reduced if projected Contract payments over the first five contract years exceed certain dollar limits.[1] Applicants represent that the charge has not been set at a level greater than its cost and contains no element of profit.

7. In addition, the Company deducts on each valuation date an administrative expense charge which will vary depending upon the total projected purchase payments to be made over the first five years of Plan participation in the Contracts. The amount of the charge is determined at the time the employer establishes the program making the Contracts available to its employees in connection with the Plan. The charge is equal, on an annual basis, to .15% of the daily net asset value of the Separate Account where purchase payments are projected to be from $50,000 to $2,499,999, .10% where projected payments are $2,500,000 to $4,999,999 and .05% for projected payments of $5,000,000 and over. The amount of the charge may be established at a rate below .05% in certain circumstances where total purchase payments above $5,000,000 are projected. This charge is designed to cover the shortfall in revenues from the contract maintenance charge. The Company does not intend to profit from this administrative expense charge. Applicants are relying upon Rule 26a-1 with respect to the deduction of this charge.

8. The Contracts do not provide for a front-end sales charge. Instead, a withdrawal charge (sales load) is imposed on withdrawals of contract values attributable to purchase payments that have not been held for longer than five contract years. The withdrawal charge is equal to 5% of the purchase payment withdrawn. Subject to certain conditions noted in the application, up to 10% of purchase payments may be withdrawn free of the withdrawal charge on a noncumulative basis once each contract year.

9. The Company assumes mortality and expense risks under the Contracts. The mortality risks arise from the contractual obligation to make annuity payments after the annuity date for the life of the annuitant and to waive the withdrawal charge in the event of the death of the annuitant or contract owner (as applicable). The expense risk assumed by the Company is that all actual expenses involved in administering the Contracts, including contract maintenance costs, administrative fees, mailing costs, data processing costs, legal fees, accounting fees, filing fees and the costs of other services may exceed the amount recovered from the contract maintenance charge and the administrative expense charge. To compensate it for assuming these risks, the Company deducts on each valuation date a mortality and expense risk charge, the amount of which, on an annual basis, will vary as set forth below depending upon the total projected purchase payments to be made over the first five years of Plan participation in the Contracts. The amount of the charge is determined at the time the employer establishes the program making the Contracts available to its employees in connection with the Plan.

Purchase payment	Mortality component (percent)	Expense component (percent)	Total charge (percent)
$50,000-$999,999	0.80	0.45	1.25
1,000,000-2,499,999	0.75	0.30	1.05
2,500,000-4,499,999	0.70	0.25	.95
5,000,000-and over	0.65	0.15	.80

The amount of the mortality and expense risk charge may be established at a rate below .80% in certain circumstances where total purchase payments above $5,000,000 are projected.

The mortality and expense risk charge will remain at the same level at which it was initially established and will not be increased if actual purchase payments do not meet the projected amount. When projected amounts are from $50,000-$999,999, the mortality and expense risk charge may be reduced under certain circumstances where purchase payments exceed or are projected to exceed $1,000,000.

Applicants' Legal Analysis and Conditions

1. Applicants request an exemption from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent relief is necessary to permit the deduction from the Separate Account of the mortality and expense risk charge under the contracts. Sections 26(a)(2)(C) and 27(c)(2), as herein pertinent, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

2. Applicants represent that they have considered the fact that the mortality and expense risk charge will vary in amount depending upon the size of the Plan involved and have concluded that the charge is reasonable at all levels. Also, Applicants submit that the Company is entitled to reasonable compensation for its assumption of mortality and expense risks and represent that all levels of the mortality and expense risk charge are within the range of industry practice for comparable variable annuity contracts. Applicants state that these representations are based upon an analysis of the mortality risks, taking into consideration such factors as any contractual right to increase charges above current levels, the guaranteed annuity purchase rates, the expense risks taking into account the existence of charges against Separate Account assets for other than mortality and expense risks, the estimated costs, now and in the future, for certain product features, and industry practice with respect to comparable variable annuity contracts. The Company will maintain at its principal office, available to the Commission, a memorandum setting forth in detail the products analyzed and the methodology and results of this analysis.

3. Applicants state that if the mortality and expense risk charge is insufficient to cover the actual costs, the loss will be borne by the Company. Conversely, if the amount deducted proves more than sufficient, the excess will be a profit to the Company. The mortality and expense risk charge is guaranteed by the Company and cannot be increased.

4. Applicants acknowledge that the withdrawal charge may be insufficient to cover all costs relating to the distribution of the Contracts and that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the withdrawal charge. In such circumstances a portion of the mortality and expense risk charge might be viewed as providing for a portion of the costs relating to distribution of the Contracts. Notwithstanding the foregoing, the Company has concluded that there is a reasonable likelihood that

[1] See File No. 33-45223, Form N-4 registration statement for the Separate Account, which Applicants have incorporated herein by reference.

the proposed distribution financing arrangements made with respect to the Contracts will benefit the Separate Account and the Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by the Company at its principal office and will be available to the Commission.

5. Applicants represent that the Separate Account will invest only in underlying mutual funds that undertake, in the event they should adopt any plan under Rule 12b-1 under the 1940 Act to finance distribution expenses, to have such plan formulated and approved by a board of directors or a board of trustees, a majority of the members of which are not "interested persons" of such funds within the meaning of Section 2(a)(19) of the 1940 Act.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge under the Contracts meet the standards in Section 6(c) of the 1940 Act. In this regard, Applicants assert that the exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and purposes of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-12927 Filed 6-2-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1634]

Advisory Committee on International Investment; Cancellation of Closed Meeting

The Department of State announces that the closed meeting of the Advisory Committee on International Investment scheduled for Thursday, June 4, from 9 a.m. to 12:30 p.m. in room 1107, Department of State, 2201 C Street, NW., Washington, DC has been cancelled. Public notice of this planned closed meeting of the Advisory Committee on International Investment was published in the **Federal Register** on May 14, 1992 (volume 57, number 94, at page 20728).

Planned speakers for the meeting became unavailable at a late date, necessitating this meeting cancellation.

Dated: May 29, 1992.

Daniel T. Fantozzi,

Executive Secretary, Advisory Committee on International Investment.

[FR Doc. 92-12996 Filed 6-2-92; 8:45 am]

BILLING CODE 4710-07-M

Bureau of Intelligence and Research

[Public Notice 1632]

Discretionary Grant Programs: Application Notice Establishing Closing Date for Transmittal of Certain Fiscal Year 1993 Applications

AGENCY: The Department of State invites applications from national organizations with interest and expertise in conducting research and training to serve as intermediaries administering national competitive programs concerning the nations of the Commonwealth of Independent States, Eastern Europe, the Baltics, and Georgia under the Soviet-Eastern European Research and Training Act. The grants will be based on an open, national competition among applying organizations.

Authority for this program, called the Russian, Eurasian and East European Research and Training Program, is contained in the Soviet-Eastern European Research and Training Act of 1983. The program was formerly called the Soviet-Eastern European Research and Training Program.

SUMMARY: The purpose of this application notice is to inform potential applicant organizations of fiscal and programmatic information and closing dates for transmittal of applications for awards in Fiscal Year 1993 under a program administered by the Department of State.

ORGANIZATION OF NOTICE: This notice contains three parts. Part I lists the closing date covered by this notice. Part II consists of a statement of purpose and priorities of the program. Part III provides the fiscal data for the program.

Part I

Closing Date for Transmittal of Applications

An application for an award must be mailed or hand-delivered by September 25, 1992.

Applications Delivered by Mail

An application sent by mail must be addressed to Kenneth E. Roberts, Executive Director, Russian, Eurasian and East European Studies Advisory Committee, suite 404, 1250 23rd Street, NW, Washington, D.C. 20037-1164.

An applicant must show proof of mailing consisting of *one* of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping lable, invoice, or receipt from a commercial center.

(4) Any other proof of mailing acceptable to the Department of State.

If an application is sent through the U.S. Postal Service, the Department of State does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with the local office.

An applicant is encouraged to use registered or at least first class mail. Late applications will not be considered and will be returned to the applicant.

Applications Delivered by Hand

An application that is hand-delivered must be taken to Kenneth E. Roberts, Executive Director, Russian, Eurasian and East European Studies Advisory Committee, suite 404, 1250 23rd Street, NW., Washington, DC.

The Russian, Eurasian and East European Studies Advisory Committee will accept hand-delivered applications between 9 a.m. and 4 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4 p.m. on the closing date.

Part II

Program Information

In the Soviet-Eastern European Research and Training Act of 1983 the Congress declared that independently verified factual knowlege about the countries of that area is " of utmost importance for the national security of the United States, for the furtherance of our national interests in the conduct of foreign relations, and for the prudent management of our domestic affairs." Congress also declared that the development and maintenance of such knowledge and expertise "depends upon the national capability for advanced research by highly trained and experienced specialists, available for service in and out of Government." The Act authorizes the Secretary of State to provide financial support for advanced

research, training and other related functions.

The full purpose of the Act and the eligibility requirements are set forth in Public Law 98-164, title VIII, 97 Stat. 1047-50. The countries include Russia, Byelarus, Ukraine, Estonia, Latvia, Lithuania, Moldova, Georgia, Armenia, Azerbaijan, Kazakhstan, Kyrgyzstan, Tajikistan, Uzbekistan, Turkmenistan, Albania, Bulgaria, Czechoslovakia, the former German Democratic Republic, Hungry, Poland, Romania, and Yugoslavia.

The Act establishes an Advisory Committee to recommend grant policies and recipients. The Secretary of State, after consultation with the Advisory Committee, approves policies and makes final determination on awards.

Applications for funding under the Act are invited from organizations prepared to conduct competitive programs in the fields of Russian, Eurasian and East European and related studies. Applying organizations or institutions should have the capability to conduct competitive award programs that are national in scope. Programs of this nature are those that make awards which are based upon an open, nationwide competition, incorporating peer group review mechanisms. Individual end-users of thse funds—those to whom the applicant organizations or institutions propose to make awards—must be at the graduate or post-doctoral levels, and must have demonstrated a likely career commitment to the Russian, Eurasian and East European fields.

Applications sought in this competition among organizations or institutions are those that would contribute to the development of a stable, long-term, national program of unclassified, advanced research and training on the nations of the Commonwealth of Independent States, Eastern Europe, the Baltics, and Georgia by proposing:

(1) National programs which award contracts or grants to American institutions of higher education or not-for-profit corporations in support of post-doctoral or equivalent level research projects, such contracts or grants to contain shared-cost provisions;

(2) National programs which offer graduate, post-doctoral and teaching fellowships for advanced training in Russian, Eurasian and East European and related studies, including training in the languages of the region, with such training to be conducted, on a shared-cost basis, at American institutions of higher education;

(3) National programs which provide fellowships and other support for American specialists enabling them to conduct advanced research in the field of Russian, Eurasian and East European and related studies; and those which facilitate research collaboration between Government and private specialists in these fields;

(4) National programs which provide advanced training and research on a reciprocal basis in the nations of the Commonwealth of Independent States, Eastern Europe, the Baltics, and Georgia by facilitating access for American specialists to research facilities and resources in those countries;

(5) National programs which facilitate public dissemination of research methods, data and findings; and those which propose to strengthen the national capability for advanced research or training on the nations of the Commonwealth of Independent States, Eastern Europe, the Baltcs, and Georgia in ways not specified above.

Note: The Advisory Committee will not consider applications from individuals to further their own training or research, or from institutions or organizations whose proposals are not for competitive award programs that are national in scope as defined above.

Support for specific activities will be guided by the following policies:

— *Publications.* Title VIII funds should not be used to subsidize journals, newsletters and other periodical publications except in special circumstances, in which cases the funds should be supplied through peer-review organizations with national competititve programs.

— *Conferences.* Proposals for conferences, like those for research projects and training programs, should be assessed according to their relative contribution to the advancement of knowledge and to the professional development of cadres in the fields. Therefore, requests for conference funding should be directed to one or more of the national peer-review organizations receiving Title VIII funds, with proposed conferences being evaluated competitively against research, fellowship or other proposals for achieving the purposes of the grant.

— *Library Activities.* Title VIII funds may be used for certain library activites which clearly strengthen research and training in Russian, Eurasian and East European studies and benefit the fields as a whole. Such programs must make awards based upon open, nationwide competition, incorporating peer group review mechanisms. Title VIII funds may not be used for activites such as modernization or preservation. Modest, cost-effective proposals to facilitate research, by eliminating serious cataloging backlogs or otherwise improving access to research materials, will be considered for funding.

— *Language Support.* The Advisory Committee encourages attention to the non-Russian languages of the Soviet successor states and the less commonly taught languages of the East European countries. Support provided for Russian language instruction normally will be only at an advanced level.

— *German Democratic Republic.* Funding for research on the former German Democratic Republic is limited to projects selected by national organizations through a competitive process, which address either exclusively the communist experience of the GDR or which extend into the period of reunification, as long as the research relates to the transition experiences of other countries in the region covered by the Russian, Eurasian and East European Research and Training Program.

— *Former Soviet Republics.* The Advisory Committee encourages applications for national programs which advance knowledge and understanding of all the former Soviet republics, as well as those which focus on the broader aspects of Russian, Eurasian and East European research and training.

— *Support for Non-Americans.* The purpose of the Russian, Eurasian and East European Research and Training Program is to build and sustain U.S. expertise on the region. Therefore, highest priority for support should always go to American specialists (i.e., U.S. citizens or permanent residents). Support for such activities as long-term research fellowships, i.e., nine months or longer, should be restricted solely to American scholars. Support for short-term activities also should be restricted to Americans, except in special instances where the participation of a non-American scholar has clear and demonstrable benefits to the American scholarly community. In such special instances, the applicant must be prepared to justify the expenditure.

In making its recommendations, the Committee will seek to encourage a coherent, long-term, and stable effort directed toward developing and maintaining a national capability in Russian, Eurasian and East European studies. Program proposals can be for the conduct of any of the functions enumerated, but in making its recommendations, the Committee will be concerned to develop a balanced national effort which, over the life of the Act, will ensure attention to all the countries of the area. Title VIII legislation requires that in certain cases

grantee organizations include shared-cost provisions in their arrangements with end-users, cost-sharing is encouraged whenever feasible in all programs.

Part III

Available Funds

The President has requested for Fiscal Year 1993 $4.784 million for the Title VIII program. However, the amount available for awards (if any) will not be known until legislative action is complete on the Department of State Appropriations Bill. In Fiscal Year 1992, the Congress increased funding for the Title VIII program from the requested level, $4.784 million, to $10.184 million.

The Department legally cannot commit funds that may be appropriated in subsequent fiscal years. Thus multi-year projects cannot receive assured funding unless such funding is supplied out of a single year's appropriation. Generally, grant agreements will permit the expenditure from a particular year's grant to be made up to three years from the grant's effective date.

Applications

Applications must be prepared and submitted in 20 copies in the form of a statement, the narrative part of which should not exceed 20 double-spaced pages. This must be accompanied by a one page executive summary, a budget, and vitae of professional staff. Proposers may append other information they consider essential, although bulky submissions are discouraged.

All applicants should provide detailed information about their plans for peer evaluation and review procedures and estimates of the types and amounts of anticipated awards.

Applicants who have received a title VIII grant in the previous competition should provide detailed information on the peer evaluation and review procedures followed, and awards made, including, where applicable, names/affiliations of recipients, and amounts and types of awards. If an applicant also received title VIII support prior to last year, a summary of those awards would be helpful.

Descriptions of all competitive award programs should specify both past and anticipated applicant-to-award ratios.

Procedures for elvaluating and selecting applicants to receive awards should be described in detail. For proposals including language instruction programs, criteria for evaluation should address levels of instruction, degrees of intensiveness, facilities, methods for measuring language proficiency (including pre- and post-testing), instructors' qualifications, and budget information showing estimated costs per student.

A description of affirmative action policies and practices should be included in the application.

Applicants should include certifications of compliance with the provisions of: 1) the Drug-Free Workplace Act (Pub. L. 100–690), in accordance with Appendix C of 22 CFR 137, Subpart F; and 2) Section 319 of the Department of the Interior and Related Agencies Appropriations Act (Pub. L. 101–121), in accordance with Appendix A of 22 CFR 138, New Restrictions on Lobbying Activities.

Budget

Applicants should familiarize themselves with OMB Circular A–110, "Grants and Agreements with Institutions of Higher Education. . . Uniform Administrative Requirements," and OMB Circular A–133, "Audits of Institutions of Higher Learning and Other Non-Profit Institutions" and indicate or provide the following information:

(1) Whether the organization falls under OMB Circular No. A–21, "Cost Principles for Educational Institutions," or OMB Circular No. A–122, "Cost Principles for Nonprofit Organizations;"

(2) A budget request containing total amount, a detailed program budget indicating direct expenses by program element, and indirect costs. NB: Indirect costs are limited to 10 percent of total direct program costs. Applicants who are requesting Title VIII funds to supplement a program having other sources of support should submit a current budget for the total program and an estimated future budget for it showing how specific lines in the budget would be affected by the allocation of requested title VIII grant funds. Other funding sources and amounts, when known, should be identified;

(3) The applicant's cost-sharing proposal, if applicable, containing appropriate details and cross references to the requested budget;

(4) The organization's most recent audit report (the most recent U.S. Government audit report if available) and the name, address and point of contact of the audit agency.

All payments will be made to grant recipients through the Department of State by wire transfers.

Technical Review

The Russian, Eurasian and East European Studies Advisory Commttee will evaluate applications on the basis of the following criteria:

(1) responsiveness to the substantive provisions set forth above in Part II, Program Information (40 points);

(2) the professional qualifications of the applicant's key personnel and their experience conducting national competitive award programs of the type the applicant proposes in the Russian, Eurasian and East European fields (30 points); and

(3) budget presentation and cost effectiveness (30 points).

Further Information

For further information, contact Kenneth E. Roberts, Executive Director, Russian, Eurasian and East European Studies Advisory Committee, suite 404, Box 19, 1250 23rd Street, NW., Washington, DC 20037–1164. Telephone: (202) 736–9060 or 736–9059.

Dated: May 20, 1992.

Kenneth E. Roberts,

Executive Director, Russian, Eurasian and East European Studies Advisory Committee.

[FR Doc. 92–12908 Filed 6–2–92; 8:45 am]

BILLING CODE 4710–32–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given of the exemptions granted in January thru March 1992. The modes of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

MODIFICATION AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
2582-P	DOT-E 2582	Gas Tech, Inc., Hillside, IL	49 CFR 175.3, Part 173, Subparts D, E, F, G.	To become a party to exemption 2582 (modes 1, 2, 3, 4, 5).
3004-P	DOT-E 3004	Gas Tech, Inc., Hillside, IL	49 CFR 173.302, 175.3	To become a party to exemption 3004 (modes 1, 2, 4, 5).
3095-P	DOT-E 3095	Good Chemical & Testing Co., Inc., Hennessey, OK.	49 CFR 173.119(a), (b), 173.245(a), 173.249(a), 173.263(a), 173.264, 173.283, 173.289, 178.342-5, 178.343-5.	To become a party to exemption 3095 (modes 1, 3).
4575-P	DOT-E 4575	Gas Tech, Inc., Hillside, IL	49 CFR 173.314(c), 173.315(a)	To become a party to exemption 4575 (modes 1, 2, 3).
4884-P	DOT-E 4884	Gas Tech, Inc., Hillside, IL	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.302(a)(1), 173.304, 173.3a, 175.3, 178.61.	To become a party to exemption 4884 (modes 1, 2, 3, 4).
5923-P	DOT-E 5923	Akron Welding and Spring Co., d.b.a. Parry Corp., North Royalton, OH.	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	To become a party to exemption 5923 (modes 1, 2, 3).
5923-P	DOT-E 5923	Gas Tech, Inc., Hillside, IL	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	To become a party to exemption 5923 (modes 1, 2, 3).
6309-P	DOT-E 6309	BASF Corporation, Parsippany, NJ	49 CFR 173.315(a)(1), 174.63(b)	To become a party to exemption 6309 (modes 1, 2).
6530-P	DOT-E 6530	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	49 CFR 173.302(c)	To become a party to exemption 6530 (modes 1, 2).
6530-P	DOT-E 6530	Gas Tech, Inc., Hillside, IL	49 CFR 173.302(c)	To become a party to exemption 6530 (modes 1, 2).
6543-P	DOT-E 6543	Gas Tech, Inc., Hillside, IL	49 CFR 173.119, 173.135(a)(6), 173.136(a)(5), 173.245, 173.247, 173.271, 175.3.	To become a party to exemption 6543 (modes 1, 2, 3, 4).
6614-P	DOT-E 6614	Auto-Chlor System, Memphis, TN	49 CFR 173.263(a)(28), 173.277(a)(6)	To become a party to exemption 6614 (mode 1).
6614-P	DOT-E 6614	Hasa of Arizona, Inc., Eloy, AZ	49 CFR 173.263(a)(28), 173.277(a)(6)	To become a party to exemption 6614 (mode 1).
6614-P	DOT-E 6614	Cinderella, Inc., Saginaw, MI	49 CFR 173.263(a)(28), 173.277(a)(6)	To become a party to exemption 6614 (mode 1).
6626-P	DOT-E 6626	Midwest Airgas, Inc., Fairfield, IA	49 CFR 173.34(e)(15)(i), 173.34(e)(15)(v), 175.3.	To become a party to exemption 6626 (modes 1, 2, 3, 4, 5).
6691-P	DOT-E 6691	McGinnis Welding Supply, Wichita Falls, TX.	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691 (modes 1, 2, 3, 4, 5).
6691-P	DOT-E 6691	Capital Welding Supply Company, Little Rock, AR.	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691 (modes 1, 2, 3, 4, 5).
6691-P	DOT-E 6691	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691 (modes 1, 2, 3, 4, 5).
6691-P	DOT-E 6691	General Welding Products, Inc., Louisville, KY.	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691 (modes 1, 2, 3, 4, 5).
6691-P	DOT-E 6691	Valley Welding Supply Company, Wheeling, WV.	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691 (modes 1, 2, 3, 4, 5).
6691-P	DOT-E 6691	Gas Tech, Inc., Hillside, IL	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691 (modes 1, 2, 3, 4, 5).
6691-P	DOT-E 6691	Arkansas Specialty Company, Inc., El Dorado, AR.	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691 (modes 1, 2, 3, 4, 5).
6691-P	DOT-E 6691	Wakeman Industries, Inc., Claremont, NH.	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691 (modes 1, 2, 3, 4, 5).
6691-P	DOT-E 6691	Industrial Gas Products, Inc., Shreveport, LA.	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691 (modes 1, 2, 3, 4, 5).
6762-P	DOT-E 6762	Aqua Laboratories, Inc., Amesbury, MA	49 CFR 173.286(b)(2), 175.3	To become a party to exemption 6762 (modes 1, 2, 3, 4).
6805-X	DOT-E 6805	Liquid Air Corporation, Walnut Creek, CA	49 CFR 173.301(d), 173.302(a)(3)	To authorize ethane, classed as a flammable gas and an additional commodity for shipment in DOT Specification 3AAX steel cylinders. (mode 1).
6805-X	DOT-E 6805	Liquid Air Corporation, Walnut Creek, CA	49 CFR 173.301(d), 173.302(a)(3)	To add 0-2% propane as party of the gas mixtures consisting of nitrogen, hydrogen, carbon monoxide, carbon dioxide or methan and an increase in the percentage of carbon monoxide presently authorized. (mode 1).
6805-P	DOT-E 6805	Gas Tech, Inc., Hillside, IL	49 CFR 173.301(d), 173.302(a)(3)	To become a party to exemption 6805 (mode 1).
7052-P	DOT-E 7052	Catalyst Research, Owings Mills, MD	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052 (modes 1, 2, 3, 4).
7052-P	DOT-E 7052	Graseby Dynamics Ltd., Watford, Herts, England.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052 (modes 1, 2, 3, 4).
7076-P	DOT-E 7076	Aqua Laboratories, Inc., Amesbury, MA	49 CFR 173.286(b)	To become a party to exemption 7076 (modes 1, 2, 3).
7268-P	DOT-E 7268	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	49 CFR 173.304(a)(1)	To become a party to exemption 7268 (modes 1, 2, 3, 4, 5).
7268-P	DOT-E 7268	Gas Tech, Inc., Hillside, IL	49 CFR 173.304(a)(1)	To become a party to exemption 7268 (modes 1, 2, 3, 4, 5).
7274-P	DOT-E 7274	Gas Tech, Inc., Hillside, IL	49 CFR 172.101, 173.318, 173.320, 176.30, 176.76(h).	To become a party to exemption 7274 (mode 3).
7451-P	DOT-E 7451	Gas Tech, Inc., Hillside, IL	49 CFR 173.304, 173.315	To become a party to exemption 7451 (modes 1, 3).

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7835-P	DOT-E 7835	The Jimmie Jones Company, Tulsa, OK	49 CFR 177.848, Part 107, Appendix (B)(1).	To become a party to exemption 7835 (mode 1).
7835-P	DOT-E 7835	Gas Tech, Inc., Hillside, IL	49 CFR 177.848, Part 107, Appendix (B)(1).	To become a party to exemption 7835 (mode 1).
7835-P	DOT-E 7835	Oxygen Service Co., Inc., Orange, CA	49 CFR 177.848, Part 107, Appendix (B)(1).	To become a party to exemption 7835 (mode 1).
7835-P	DOT-E 7835	Post Welding Supply Company, Birmingham, AL.	49 CFR 177.848, Part 107, Appendix (B)(1).	To become a party to exemption 7835 (mode 1).
7846-P	DOT-E 7846	Gas Tech, Inc., Hillside, IL	49 CFR 173.314(c)	To become a party to exemption 7846 (modes 1, 3).
7929-P	DOT-E 7929	ECONEX, Inc., Pittsfield, IL	49 CFR 173.65	To become a party to exemption 7929 (modes 1, 2).
7943-P	DOT-E 7943	Patterson Laboratories, Inc. (Patterson West), Phoenix, AZ.	49 CFR 173.263(a)(15), 173.272(c), 173.272(i)(12), 173.277(a)(1).	To become a party to exemption 7943 (mode 1).
7969-P	DOT-E 7969	Burlington Environmental, Portland, OR	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To become a party to exemption 7969 (mode 1).
8009-P	DOT-E 8009	Southern California Gas Company, Los Angeles, CA.	49 CFR 173.301(d)(2), 173.302(a)(3)	To become a party to exemption 8009 (mode 1).
8013-P	DOT-E 8013	Gas Tech, Inc., Hillside, IL	49 CFR 173.302, 173.304, 175.3	To become a party to exemption 8013 (modes 1, 4, 5).
8074-P	DOT-E 8074	Gas Tech, Inc., Hillside, IL	49 CFR 173.34(d), 175.3	To become a party to exemption 8074 (modes 1, 2, 3, 4, 5).
8125-X	DOT-E 8125	Arbel-Fauvet-Rail, Paris, France	49 CFR 173.123, 173.315	To renew and modify the exemption by replacing the external excess flow valve with an internal valve on non-DOT specification IMO Type 5 portable tanks. (modes 1, 2, 3).
8125-P	DOT-E 8125	Ermetainer S.A., Geneva, France	49 CFR 173.123, 173.315	To become a party to exemption 8125 (modes 1, 2, 3).
8156-P	DOT-E 8156	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To become a party to exemption 8156 (modes 1, 2).
8156-P	DOT-E 8156	Gas Tech, Inc., Hillside, IL	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To become a party to exemption 8156 (modes 1, 2).
8228-X	DOT-E 8228	Department of the Treasury (BATF), Washington, DC.	49 CFR 173.100(bb), 173.113(a)(1), 173.86.	To modify the exemption to include cargo aircraft and rail freight as an additional mode of transportation. (modes 1, 2, 4).
8236-P	DOT-E 8236	TAC Manufacturing, Inc., Jackson, MI	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To become a party to exemption 8236 (modes 1, 2, 3, 4).
8426-P	DOT-E 8426	Burlington Environmental, Portland, OR	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To become a party to exemption 8426 (mode 1).
8445-P	DOT-E 8445	K & B Trucking, Inc., Hatfield, PA	49 CFR Part 173, Subparts D, E, F, H	To become a party to exemption 8445 (mode 1).
8445-P	DOT-E 8445	DowElanco, Indianapolis, IN	49 CFR Part 173, Subparts D, E, F, H	To become a party to exemption 8445 (mode 1).
8451-P	DOT-E 8451	Econex, Inc., Pittsfield, IL	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451 (modes 1, 2, 4).
8451-P	DOT-E 8451	Tracor Aerospace, Inc., East Camden, AR.	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451 (modes 1, 2, 4).
8526-P	DOT-E 8526	Certified Distribution Services, Inc., Cleveland, OH.	49 CFR 177.834(L)(2)(i)	To become a party to exemption 8526 (mode 1).
8526-P	DOT-E 8526	Transport Corporation of America, Inc., Minneapolis, MN.	49 CFR 177.834(L)(2)(i)	To become a party to exemption 8526 (mode 1).
8526-P	DOT-E 8526	Contract Transportation Systems Company, Cleveland, OH.	49 CFR 177.834(L)(2)(i)	To become a party to exemption 8526 (mode 1).
8554-P	DOT-E 8554	Jack B. Kelley, Inc., Woods Cross, UT	49 CFR 173.114a, 173.154, 173.93	To become a party to exemption 8554 (modes 1, 3).
8554-P	DOT-E 8554	Explosives Supply Incorporated, Ringwood, NJ.	49 CFR 173.114a, 173.154, 173.93	To become a party to exemption 8554 (modes 1, 3).
8554-P	DOT-E 8554	John Joseph, Inc., Ringwood, NJ	49 CFR 173.114a, 173.154, 173.93	To become a party to exemption 8554 (modes 1, 3).
8556-P	DOT-E 8556	Teisan Kabushiki Kaisha, Tokyo, Japan	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To become a party to exemption 8556 (modes 1, 3).
8627-P	DOT-E 8627	Good Chemical & Testing Co., Inc., Hennessey, OK.	49 CFR 173.119, 173.245, 178.253	To become a party to exemption 8627 (mode 1).
8723-P	DOT-E 8723	Buckley Powder Company, East Englewood, CO.	49 CFR 172.101, 173.114a(h)(3), 173.154, 176.415, 176.83.	To become a party to exemption 8723 (modes 1, 3).
8723-P	DOT-E 8723	Ireco of Florida, Inc., Miramar, FL	49 CFR 172.101, 173.114a(h)(3), 173.154, 176.415, 176.83.	To become a party to exemption 8723 (modes 1, 3).
8723-P	DOT-E 8723	OEI, Inc., Whitesburg, GA	49 CFR 172.101, 173.114a(h)(3), 173.154, 176.415, 176.83.	To become a party to exemption 8723 (modes 1, 3).
8723-P	DOT-E 8723	Sandex, Inc., Las Vegas, NV	49 CFR 172.101, 173.114a(h)(3), 173.154, 176.415, 176.83.	To become a party to exemption 8723 (modes 1, 3).
8862-P	DOT-E 8862	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	49 CFR 173.119, 173.124(a)(4), 173.305	To become a party to exemption 8862 (mode 1).
8862-P	DOT-E 8862	Gas Tech, Inc., Hillside, IL	49 CFR 173.119, 173.124(a)(4), 173.305	To become a party to exemption 8862 (mode 1).

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8877-P	DOT-E 8877	Union Carbide Chemicals and Plastics Co., Inc., Charleston, WV.	49 CFR 173.119, 173.245	To become a party to exemption 8877 (modes 1, 2, 3).
8915-P	DOT-E 8915	Gas Tech, Inc., Hillside, IL	49 CFR 173.301(d), 173.302(a)(3)	To become a party to exemption 8915 (modes 1, 3).
8944-P	DOT-E 8944	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	49 CFR 173.302(c)(2), 173.302(c)(3), 173.302(c)(4), 173.34(e), Part 107, Appendix B.	To become a party to exemption 8944 (modes 1, 3).
8966-P	DOT-E 8966	Hasa of Arizona, Inc., Eloy, AZ	49 CFR 173.263(a)(15), 173.277(a)(1), 178.205.	To become a party to exemption 8966 (mode 1).
8988-P	DOT-E 8988	Davis Great Guns Logging, Inc., Wichita, KS.	49 CFR 172.101, 173.110, 173.80, 175.30.	To become a party to exemption 8988 (modes 1, 3, 4).
8988-P	DOT-E 8988	Brown & Root Industrial Services, Houston, TX.	49 CFR 172.101, 173.110, 173.80, 175.30.	To become a party to exemption 8988 (modes 1, 3, 4).
8995-P	DOT-E 8995	BASF Corporation, Parsippany, NJ	49 CFR 173.315(a)(1), 173.346, 174.63(b).	To become a party to exemption 8995 (modes 1, 2, 3).
9034-P	DOT-E 9034	Gas Tech, Inc., Hillside, IL	49 CFR 173.302, 173.304, 173.328, 173.334, 175.3.	To become a party to exemption 9034 (modes 1, 2, 3, 4, 5).
9047-P	DOT-E 9047	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To become a party to exemption 9047 (modes 1, 2, 3, 4).
9047-P	DOT-E 9047	Gas Tech, Inc., Hillside, IL	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To become a party to exemption 9047 (modes 1, 2, 3, 4).
9184-P	DOT-E 9184	The Carbon/Graphite Group, Inc., Pittsburgh, PA.	49 CFR 173.178	To become a party to exemption 9184 (modes 1, 2).
9222-P	DOT-E 9222	Laidlaw Environmental Services, Inc., Columbia, SC.	49 CFR 173.154	To become a party to exemption 9222 (mode 1).
9414-P	DOT-E 9414	Gas Tech, Inc., Hillside, IL	49 CFR 173.302(a)(5)	To become a party to exemption 9414 (modes 1, 3).
9418-X	DOT-E 9418	West Texas Fabrication, Odessa, TX	49 CFR 173.119, 173.245, 178.253	To deleting statement "the use of a steel braided neoprene hose as a filling overflow line or manifold is prohibited" on compartmented portable tanks containing flammable or corrosive liquids. (mode 1).
9507-P	DOT-E 9507	Gas Tech, Inc., Milwaukee, WI	49 CFR 173.119, 173.302, 173.304, 173.328, 173.34, 173.346.	To become a party to exemption 9507 (mode 1).
9525-P	DOT-E 9525	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 178.42, Part 173, Subparts D, E, H.	To become a party to exemption 9525 (modes 1, 3, 4).
9571-P	DOT-E 9571	Teledyne McCormick Selph, Hollister, CA	49 CFR Parts 100-177	To become a party to exemption 9571 (modes 1, 2, 3, 4, 5).
9607-P	DOT-E 9607	International Lubrication Laboratories, Inc., Wichita, KS.	49 CFR Parts 100-199	To become a party to exemption 9607 (modes 1, 4, 5).
9610-P	DOT-E 9610	Alliant Techsystems, Inc., New Brighton, MN.	49 CFR 172.203(a),(e), 172.204, 173.29(a), (d), Parts 107, Appendix B(2), (3), Parts 171-189.	To become a party to exemption 9610 (modes 1, 2).
9610-P	DOT-E 9610	GenCorp—Aerojet Ordnance, Chino Hills, CA.	49 CFR 172.203(a), (e), 172.204, 173.29(a), (d), Parts 107, Appendix B(2), (3), Parts 171-189.	To become a party to exemption 9610 (modes 1, 2).
9648-X	DOT-E 9648	Thiokol Corporation, Elkton, MD	49 CFR 173.92	To reinstate exemption to authorize shipment of rocket motor, class B explosive, with igniter installed in a specially designed packaging configuration. (modes 1, 3, 4).
9723-P	DOT-E 9723	Waste Conversion Inc., Hatfield, PA	49 CFR 177.848(b)	To become a party to exemption 9723 (mode 1).
9723-P	DOT-E 9723	Enviro-Chem Environmental Services, Inc., Apex, NC.	49 CFR 177.848(b)	To become a party to exemption 9723 (mode 1).
9751-P	DOT-E 9751	Implo Technologies Inc., Unionville, Ontario, CN.	49 CFR 173.81(c), 175.3	To become a party to exemption 9751 (modes 1, 2, 3, 4, 5).
9761-P	DOT-E 9761	Systron Donner Corporation, Concord, CA.	49 CFR 173.304(a)(1), 175.3, 178.47	To authorize cargo aircraft as an additional mode of transportation for shipment of certain compressed gases, n.o.s. in non-DOT specification cylinders. (modes 1, 4).
9781-P	DOT-E 9781	DPC Industries, Inc., Houston, TX	49 CFR 173.304(a)(2), 173.34(d), (e)	To become a party to exemption 9781 (mode 1).
9781-P	DOT-E 9781	DXI Industries, Inc., Houston, TX	49 CFR 173.304(a)(2), 173.34(d), (e)	To become a party to exemption 9781 (mode 1).
9781-P	DOT-E 9781	DX Systems Company, Houston, TX	49 CFR 173.304(a)(2), 173.34(d), (e)	To become a party to exemption 9781 (mode 1).
9819-P	DOT-E 9819	Brown & Root Industrial Services, Houston, TX.	49 CFR 173.119, 178.253, Part 173, Subpart F.	To become a party to exemption 9819 (mode 1).
9847-P	DOT-E 9847	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	49 CFR 173.302(c), (2), (3), (4), 173.34(e), Part 107, Appendix B.	To become a party to exemption 9847 (modes 1, 3).
9851-P	DOT-E 9851	Trans State Airlines d/b/a Trans World Express, St. Louis, MO.	49 CFR Parts 100-199	To become a party to exemption 9851 (mode 5).
9946-P	DOT-E 9946	Gas Tech, Inc., Hillside, IL	49 CFR 173.327(a)	To become a party to exemption 9946 (modes 1, 2, 3).
9953-P	DOT-E 9953	Burlington Motor Carriers Inc., Daleville, IN.	49 CFR 177.834(i)(2)(i)	To become a party to exemption 9953 (mode 1).

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9953-P	DOT-E 9953	Westinghouse Electric Corporation, Pittsburgh, PA.	49 CFR 177.834(i)(2)(i)	To become a party to exemption 9953 (mode 1).
9990-P	DOT-E 9990	Alliant Techsystems, Inc., New Brighton, MN.	49 CFR 173.113	To become a party to exemption 9990 (mode 1).
9997-P	DOT-E 9997	Hornady Manufacturing Company, Grand Island, NE.	49 CFR 173.107, 173.87	To become a party to exemption 9997 (modes 1, 3).
10001-P	DOT-E 10001	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	49 CFR 173.316, 173.320	To become a party to exemption 10001 (mode 1).
10001-P	DOT-E 10001	Gas Tech, Inc., Hillside, IL	49 CFR 173.316, 173.320	To become a party to exemption 10001 (mode 1).
10022-P	DOT-E 10022	Gas Tech, Inc., Milwaukee, WI	49 CFR 173.119, 173.245, 173.246, 173.247, 173.251, 173.264, 173.273, 173.3(c), 173.302, 173.304, 173.328, 173.34, 173.346.	To become a party to exemption 10022 (mode 1).
10101-P	DOT-E 10101	Airco, The BOC Group, Inc., Murray Hill, NJ.	49 CFR 173.301(c), 173.34(e)(15)	To become a party to exemption 10101 (mode 1).
10184-P	DOT-E 10184	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	49 CFR 173.34(e)(10), 173.34(e)(9)	To become a party to exemption 10184 (modes 1, 2, 3).
10184-P	DOT-E 10184	Gas Tech, Inc., Hillside, IL	49 CFR 173.34(e)(10), 173.34(e)(9)	To become a party to exemption 10184 (modes 1, 2, 3).
10298-P	DOT-E 10298	Heli-Lift, Inc., Dallas, TX	49 CFR 172.101, column (6)(b), 173.119, 175.320.	To become a party to exemption 10298 (mode 4).
10318-X	DOT-E 10318	Sonoco Fibre Drum, Inc., Lombard, IL	49 CFR 173.119, 173.125, 173.266, 173.276, 173.346, Part 173, Subpart F.	To modify the exemption to provide for additional commodities classed as Class B poison and corrosive material with secondary hazards. (modes 1, 2, 3).
10318-X	DOT-E 10318	Sonoco Fibre Drum, Inc., Lombard, IL	49 CFR 173.119, 173.125, 173.266, 173.276, 173.346, Part 173, Subpart F.	To modify the exemption to include cargo vessel as an additional mode of transportation. (modes 1, 2, 3).
10325-P	DOT-E 10325	Compagnie Des Containers Reservoirs, 92080 Paris, France.	49 CFR 173.315, 178.245-(1)(b)	To become a party to exemption 10325 (modes 1, 2, 3).
10429-P	DOT-E 10429	Baker Performance Chemicals, Inc., Houston, TX.	49 CFR 177.834(h), Part 107 appendix B(1), Part 173 Subpart D and F.	To become a party to exemption 10429 (mode 1).
10457-P	DOT-E 10457	PPG Industries, Inc., New Martinsville, WV.	49 CFR 173.315(i)(13), 173.33(f)(9), 173.33(h)(4)(ii), 173.33(h)(5)(i).	To become a party to exemption 10457 (mode 1).
10460-X	DOT-E 10460	W. H. Stewart Company, Oklahoma City, OK.	49 CFR 173.420(a)(2)(i)	To authorize those UF-6 cylinders which satisfy the prescribed inspection and test requirements to be stamped and recertified for filling and transport without an exemption. (mode 1).
10504-X	DOT-E 10504	Solkatronic Chemicals, Inc., Fairfield, NJ	49 CFR 173.119, 173.302, 173.304, 173.328, 173.34, 173.346.	To modify the exemption to include cargo vessel and rail freight as additional modes of transportation. (mode 1).
10504-P	DOT-E 10504	Silicon Systems, Inc., Santa Cruz, CA	49 CFR 173.119, 173.302, 173.304, 173.328, 173.34, 173.346.	To become a party to exemption 10504 (mode 1).
10706-X	DOT-E 10706	Energy & Environmental Technology Company, Southfield, MI.	49 CFR 173.119	To reissue exemption originally issued on an emergency basis to authorize shipment of a flammable liquid contained in aluminum canisters overpacked in steel cylindrical packaging (missile containers). (mode 1).
10709-X	DOT-E 10709	Exxon Chemical Company, Houston, TX	49 CFR 173.119(m)	To reissue exemption originally issued on basis to authorize shipment of certain mixtures of flammable and corrosive liquids in stainless steel DOT Specification 57 portable tanks. (modes 1, 3).

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10340-N	DOT-E 10340	Schutz Werk, Selters, West Germany	49 CFR 173.118a, 173.119, 173.125, 173.245, 176.340, Part 173, Subpart F.	To authorize the manufacture, marking and sale of nonreusable, non-DOT specification polyethylene portable tank enclosed in a steel jacket, for the shipment of corrosive liquids, combustible liquids, flammable liquids, or poison B liquids. (modes 1, 2, 3).
10407-N	DOT-E 10407	TN Technologies, Inc., Round Rock, TX	49 CFR 173.302, 175.3	To authorize the use of non-DOT specification, stainless steel, radiation detection devices, filled with a nonflammable, nontoxic gas. (modes 1, 2, 3, 4, 5).

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10432-N	DOT-E 10432	Florida Drum Company, Inc., Pine Bluff, AR.	49 CFR Part 173, Subparts D, E, F and H; 178.116-7(a).	To authorize manufacture, marking and sale of non-DOT specification steel drums, for shipment of various hazardous materials. (modes 1, 2).
10567-N	DOT-E 10567	BSL Transport, 59920 Quievrechain, France.	49 CFR 173.274 and 178.245	To authorize the manufacture, marking and sale of non-DOT specification ASME Code "U" stamped portable tank or transportation of certain corrosive liquids. (modes 1, 2, 3).
10570-N	DOT-E 10570	Custom Packaging Systems, Inc., Manistee, MI.	49 CFR 173.245(b)	To authorize the manufacture, marking and sale or large nonreusable, collapsible polyethylene-lined woven polypropylene bulk bags having a capacity of not over 2205 pounds each, and top and bottom outlets, for shipment of poison B solids, corrosive solids, flammable solids, oxidizers solids. (modes 1, 2, 3).
10587-N	DOT-E 10587	Gardner Technology Corporation, Alburtis, PA.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 178.338.	To authorize the manufacture, marking and sell of non-DOT specification, insulated portable tanks for shipment of liquefield helium. (modes 1, 2, 3).
10590-N	DOT-E 10590	Sexton Can Company, Inc., Cambridge, MA.	49 CFR 173.304(d)(3)(ii) 178.33	To authorize shipment of certain flammable gases in a nonrefillable non-DOT specification, inside container similar to the DOT specification 2P with the exception of diameter and capacity. (modes 1, 2, 3).
10598-N	DOT-E 10598	Bulk Lift International, Inc., Carpentersville, IL.	49 CFR 172.331, 173.154, 173.164, 173.178, 173.182, 173.204, 173.217, 173.224a, 173.234, 173.245(b), 173.366, 173.367.	To authorize the manufacture, mark and sale of large, collapsible, nonreusable polyethylene-lined, woven polypropylene bulk bags having a capacity of approximately 2,200 pounds each, and top and bottom outlets, for the shipment of flammable, oxidizing, Poison B, blasting agent and corrosive solids. (modes 1, 2, 3).
10633-N	DOT-E 10633	Poly Processing Company, Monroe, LA	49 CFR 178.19, 178.253, Part 173, Subparts D and F.	To authorize the manufacture, mark and sale of non-DOT specification rotationally molded, cross-linked polyethylene portable tanks enclosed within a protective steel frame for the shipment of certain flammable liquid or corrosive liquids. (mode 1).
10637-N	DOT-E 10637	Norris Cylinder Company, Longview, TX	49 CFR 173.302(a), 175.3	To authorize the manufacture, marking and sale of non-DOT specification fiber reinforced plastic hoop wrapped cylinders, for shipment of certain flammable and nonflammable gases. (modes 1, 2, 3, 4).
10645-N	DOT-E 10645	Essex Cryogenics of Missouri, Inc., St. Louis, MO.	49 CFR 173.316; 178.57-8(c)	To authorize the manufacture, marking and sale of one-liter non-DOT specification cylinders for shipments of liquid oxygen. (mode 1).
10652-N	DOT-E 10652	Flura Corporation, Newport, TN	49 CFR 173.328	To authorize a one-time shipment of perfluoroisobutylene classes, as a Poison A in a DOT Specification 4B240 cylinder overpacked in a sealed, capped, schedule 40 pipe which is further overpacked in a DOT-17H drum. (mode 1).
10658-N	DOT-E 10658	Air Care, Inc., South St. Paul, MN	49 CFR 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), 49 CFR 172.101, 49 CFR part 107, appendix B.	To authorize the carriage of certain Class A, B and C explosives that are not permitted for shipment by air, or are in quantities greater than those prescribed for shipment by air. (mode 4).
10667-N	DOT-E 10667	Justrite Manufacturing Company, Mattoon, IL.	49 CFR 173.119, 178.89	To authorize the manufacture, marking and sale of non-DOT specification metal drums of five-gallon capacity and comparable to DOT Specification 5L, for shipment of certain flammable liquids. (mode 1).
10669-N	DOT-E 10669	Transmark Sales, Riverside, CA	49 CFR 173.421 and 173.421-1(a)	To authorize the transportation of galvanized steel bars and rods in various lengths contaminated with low concentrations of radioactive material. (modes 1, 2).

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10669-N	DOT-E 10669	Promet, Inc., Houston, TX	49 CFR 173.421 and 173.421-1(a)	To authorize the transportation of galvanized steel bars and rods in various lengths contaminated with low concentrations of radioactive material. (modes 1, 2).
10672-N	DOT-E 10672	Burlington Packaging, Inc., Brooklyn, NY	49 CFR 173.3a, 175.3, 177.848(b), 174.25(a), 175.3, Part 172, Subpart E and F, Part 173, Subpart D, E, F, and H.	To authorize the manufacture, mark and sale of specially-designed composite type packaging for shipment of poison B, flammable liquid, flammable solid or corrosive material. (modes 1, 2, 4).
10678-N	DOT-E 10678	National Aeronautics & Space Administration, (NASA) Washington, DC.	49 CFR 173.304(a)(1), 173.304(a)(d)	To authorize the use of two non-DOT specification composite cylinder with an aluminum liner (SAMPEX TANK) for one shipment of 100% isobutane liquid (flammable gas) to NASA Goddard Space Flight Center, Greenbelt, Maryland. (mode 1).
10687-N	DOT-E 10687	Duro-Flex Products, Inc., Foristell, MO	49 CFR 173.245b, 173.365	To authorize the manufacture, marking and sell of non-reusable, fiberboard bulk boxes made of triple-wall corrugated fiberboard having an inside lining of 0.0065-inch minimum thickness polyethylene film, for shipment of corrosive solids and poison B solids. (mode 1).
10698-N	DOT-E 10698	Chilton Metal Products Div. of Western Ind., Inc., Chilton, WI.	49 CFR 173.304(a)(2), 178.50	To authorize the manufacture, marking and sale of non-DOT specification cylinders which complies in part with DOT Specification 4B for the shipment of dichlorodifluoromethane. (modes 1, 2).
10717-N	DOT-E 10717	Union Tank Car Company, East Chicago, IN.	49 CFR 173.31	To authorize a modified periodic test schedule for certain DOT specification tank cars. (mode 2).

EMERGENCY EXEMPTIONS

Application Number	Exemption Number	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 4453-X	DOT-E 4453	Gibson Explosives Products, Inc., Duffield, VA.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	Authorizes the use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s. or ammonium nitrate-fuel oil mixtures. (modes 1, 3).
EE 4844-X	DOT-E 4844	Walter Kidde Company, Limited, Berkshire, United Kingdom.	49 CFR 173.301(i), 173.302	Authorizes use of non-DOT specification foreign made steel cylinders, for shipment of certain nonflammable gases (mode 1).
EE 5704-P	DOT-E 5704	TOPTH, Inc., Long Beach, CA	49 CFR 173.62, 173.93(e)	To become a party to exemption 5704 (modes 1, 2, 3).
EE 6614-X	DOT-E 6614	Mid-State Chemical & Supply Corp., Indianapolis, IN.	49 CFR 173.263(a)(28), 173.277(a)(6)	Authorizes the use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (mode 1).
EE 6614-X	DOT-E 6614	Chem-Bright Industries, Brighton, MI	49 CFR 173.263(a)(28), 173.277(a)(6)	Authorizes the use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (mode 1).
EE 7948-X	DOT-E 7948	Union Pacific Resources Company, Wilmington, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	Authorizes the manufacture, marking and sale of non-DOT specification cargo tanks for shipment of flammable and corrosive waste materials. (mode 1).
EE 8214-P	DOT-E 8214	Mazda (North America), Inc., Irvine, CA	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To become a party to exemption 8214 (modes 1, 2, 3, 4).
EE 8554-X	DOT-E 8554	Geenen Explosives, Inc., Kaukauna, WI	49 CFR 173.144a, 173.154, 173.93	Authorizes the transport of propellant explosives and blasting agents, in DOT Specification MC-306, MC-307, and MC-312 cargo tanks. (modes 1, 3),
EE 8554-X	DOT-E 8554	Pepin-Ireco, Inc., Ishpeming, MI	49 CFR 173.114a, 173.154, 173.93	Authorizes the transport of propellant explosives and blasting agents in DOT Specification MC-306, MC-307, and MC-312 cargo tanks. (modes 1, 3).

EMERGENCY EXEMPTIONS—Continued

Application Number	Exemption Number	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 9052-X	DOT-E 9052	Chemical Handling Equipment Company, Inc., Toledo, OH.	49 CFR 173.118a, 173.119, 173.125, 176.340, 178.19, 178.253, Part 173, Subpart F.	Authorizes the manufacture, marking, and sale of non-DOT specification 225 gallons rotationally molded polyethylene portable tanks for shipment of those corrosive liquids and hydrogen peroxide presently authorized in DOT Specification 34 and certain flammable liquids. (modes 1, 2, 3).
EE 9332-X	DOT-E 9332	Johnson Matthey Company, West Chester, PA.	49 CFR 172.101, 173.150, 175.3	Authorizes the transport of a solid explosive dissolved in an ammonia solution as a flammable solid in DOT Specification 34 polyethylene containers or DOT Specification 3E polyethylene bottles, packed in DOT Specification 15A wooden boxes. (modes 1, 2, 4).
EE 9381-X	DOT-E 9381	Western Zinc Corporation, Rancho Dominguez, CA.	49 CFR 173l.154	Authorizes the transportation of a water reactive solid, which evolves hydrogen slowly when wet, in open packaging such as drums, hopper trucks and gondola cars. (modes 1, 2).
EE 10239-X	DOT-E 10239	Vista Chemical Company, Baltimore, MD	49 CFR 173.263, 179.200-18(b)(1)	Authorizes the transportation of hydrochloric acid in DOT 111A100W5 tank car tanks equipped with a surge baffle in the safety vent assembly. (mode 2).
EE 10723-N	DOT-E 10723	TRW Electronic Systems Group, Redondo Beach, CA.	49 CFR 173.416(c), Part 107, Appendix B to Subpart B, Paragraph (1).	To authorize a one-time domestic transportation of two packages of radioactive material which are certified for import and export only. (mode 1).
EE 10728-N	DOT-E 10728	The Department of Defense, Washington, DC.	49 CFR 173.328(a), 172.502(a) (1) and (2), Part 107, Appendix B.	To authorize a one-time shipment of an empty MC-338 cargo tank which is placarded and marked as containing nitrogen tetroxide for the purpose of filming an emergency response training exercise. (mode 1).
EE 10729-N	DOT-E 10729	Korean Air Lines Company, Ltd., Los Angeles, CA.	49 CFR 172.101(6)(b); 175.30	To authorize the shipment of explosives which are forbidden for transportation by cargo-aircraft only. (mode 4).
EE 10730-N	DOT-E 10730	Burlington Northern Railroad, Forth Worth, TX.	49 CFR 173.31(a)(31), 174.8(b), 179.14, 179-100-14.	To authorize the transportation of a DOT Specification 105A500W tank car tank which is not equipped with a coupler vertical restraint system on the "A" end. (mode 2).
EE 10734-N	DOT-E 10734	Hoechst Celanese Corporation, Charlotte, NC.	49 CFR 1732.212(c), 178.603, 178.606 per HM-181.	To authorize approximately 4,450 open head steel drums, marked UN1A2, with defective bottom chimes containing sodium hydrosulfite to be shipped. (mode 1).
EE 10742-N	DOT-E 10742	Aeropres Corporation, Sibley, LA	49 CFR 179.100-16 and 173.31(a)(7)	To authorize the transportation of certain DOT Class 112J340W and 112T340W tank cars, containing a residue of a flammable gas, equipped with air brake equipment support attachments welded directly to the tank shell. (mode 2).
EE 10743-N	DOT-E 10743	Occidental Chemical Corporation, Pasadena, TX.	49 CFR 173.29(c)(2)	To authorize the transportation of a DOT Specification 105A500W tank car, containing chlorine residue, with a defective safety relief valve, equipped with a safety "C" kit. (mode 2).
EE 10744-N	DOT-E 10744	Alaska Eskimo Whaling Commission, Barrow, AK.	49 CFR 172.101, 6(b), 175.30	To authorize the shipment of approximately 150 pounds of black powder by cargo aircraft. (mode 4).
EE 10746-N	DOT-E 10746	Sun Refining and Marketing Company, Philadelphia, PA.	49 CFR 173.29(c)(1) and 174.67(a)	To authorize the transportation of a DOT Specification 111A100W1 tank car with defective interior heating coils. (mode 2).
EE 10748-N	DOT-E 10748	McGil Specialized Carriers, Inc., Manetta, GA.	49 CFR 177.825(b) and Part 107, Appendix B(1).	To authorize the transport of radioactive material; using an alternative route which is not a state designed route, or an interstate. (mode 1).
EE 10749-N	DOT-E 10749	Allied Signal Incorporated, Morristown, NJ.	49 CFR 173.29(c)(2)	To authorize the transportation of hydrogen fluoride in a DOT Specification 112S340W tank car with a defective safety relief valve equipped with a safety "C" kit. (mode 2).

EMERGENCY EXEMPTIONS—Continued

Application Number	Exemption Number	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 10750-N	DOT-E 10750	Rhone-Poulenc Basic Chemicals Company, Shelton, CT.	49 CFR 173.29(c)(2) 173.29(c)(2)	To authorize the transportation of sulfur dioxide in a DOT Specification 105A500W tank car with a defective liquid angle valve but equipped with a safety "C" kit. (mode 2).
EE 10759-N	DOT-E 10759	Haviland Products Company, Grand Rapids, MI.	49 CFR 173.29(c)(2)	To authorize the transportation of a damaged tank car containing a residue of hydrochloric (mode 2).

WITHDRAWAL EXEMPTIONS

Application number	Applicant	Regulation(s) affected	Nature of exemption thereof
6691-P	CS Gases Inc., Buffalo, NY	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691 (modes 1, 2, 3, 4, 5).
6971-X	Ultra Scientific, Inc., North Kingstown, RI	49 CFR Parts 100-199	Authorizes the transport of small quantities of reagent chemicals in inside glass bottles packed in metal boxes, overpacked in a strong wooden or fiberboard box. (modes 1, 2, 3, 4).
8059-X	EFI Corporation, San Jose, CA	49 CFR 173.302(a)(1), 173.304(a), 173.304(d), 175.3.	To authorize manufacture, marking and sale of non-DOT specification fiber reinforced plastic full composite cylinders, for transportation of certain flammable and nonflammable compressed gases. (modes 1, 2, 3, 4, 5).
8554-X	Explo-Tech Inc., Blue Bell, PA	49 CFR 173.114a, 173.154, 173.93	Authorizes the transport of propellant explosives and blasting agents in DOT Specification MC-306, MC-307, and MC-312 cargo tanks. (modes 1, 3).
8956-X	Clif Mock Company, Conroe, TX	49 CFR 173.119, 173.302(a)(1), 173.304(a)(1), 173.304(b)(1), 175.3, 178.42.	Authorizes the manufacture, marking and sale of non-DOT specification stainless stell cylinders for transportation of nonflammable gases, flammable gases or flammable liquids. (modes 1, 3, 4).
9326-X	Carbonaire, Inc., Palmerton, PA	49 CFR 173.315	To authorize transport of carbon dioxide refrigerated liquid, in non-DOT specification cargo tank that has been retested in accordance with MC-331 cargo tank retest requirements. (mode 1).
9617-X	Explo-Tech Inc., Blue Bell, PA	49 CFR 176.83(a), 177.835(g), 177.848(f), Part 107, Appendix B(1).	Authorizes the transport of a specially defined detonating cord on the same motor vehicle with Class A and Class C detonators. (modes 1, 3).
9727-X	Sherex Chemical Company, Inc., Dublin, OH	49 CFR 173.249	Authorizes shipment of of an alkaline corrosive liquid, n.o.s. in new or reconditioned DOT Specification 17H steel drums. (modes 1, 2, 3).
10106-X	Dynamit Nobel Special Chemistry, Troisforf, West Germany.	49 CFR 171.12, 172.101, 172.102, 175.3	To authorize transport of tetrazole-1-acetic acid in fiber drums. (modes 1, 4).
10284-N	Hoyer GMBH Internationale, Fachspedition West Germany.	49 CFR 173.318	To authorize shipment of argon, nitrogen, and oxygen (cryogenic liquids), classed as nonflammable gas in IMO Type 7 tank Container. (modes 1, 2, 3).
10288-X	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.31(c), 179.101-1(a)	To authorize the transport of a DOT Specification 105A300W or 112A340W tank car tank with a safety relief device start-to-discharge pressure at 82.5 percent of the tank test pressure. (mode 2).
10323-P	Union Carbide Industrial Gases Inc., Danbury, CT.	49 CFR 173.119, 173.245, 173.302, 173.304, 173.328, 173.34, 173.346.	To become a party to exemption 10323 (mode 1).
10354-P	Vulcan Chemicals, Birmingham, AL	49 CFR 179.200-18(b)	To become a party to exemption 10354 (mode 2).
10385-N	OEA, Inc., Denver, CO	49 CFR Parts 100-177	To authorize shipment of lead azide-based air bag module classed as an explosive power device Class C, packaged in a foam molded polyethylene bag overpacked in a fiberboard box with styrofoam insert and taped closed. (modes 1, 2, 3).
10508-N	Jet Propulsion Laboratory, Pasadena, CA	49 CFR 173.145, 173.276	To authorize the transportation of flammable liquids in 3AAX stainless steel cylinders (not to exceed 20 pounds per shipment) overpacked in non-DOT specification wooden boxes transported in private-owned vehicles. (mode 1).

WITHDRAWAL EXEMPTIONS—Continued

Application number	Applicant	Regulation(s) affected	Nature of exemption thereof
10676-N	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE	49 CFR 173.315	To authorize the transportation of compressed gas, n.o.s. in 250 psig design MC330/331 cargo tank. (mode 1).

DENIALS

7277-X	Request by Structural Composites Industries, Inc. Pomona, CA to authorize manufacture, marking and sale of non-DOT specification fiber reinforced plastic (FRP) full composite (FC) cylinders, for transportation of certain flammable and nonflammable compressed gas denied March 19, 1992.
10411-N	Request by Janair, Inc. Dallas, TX to authorize the transportation of Class A, B and C explosives by cargo-only aircraft not to exceed 2,000 pounds total net weight per aircraft denied March 3, 1992.
10634-N	Request by Marathon Pipe Line Co. Martinsville, IL to authorize the transportation of a trailer mounted mechanical displacement meter prover for transportation of petroleum crude oil denied March 19, 1992.

Issued in Washington, DC, on May 21, 1992.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 92-12755 Filed 6-2-92; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 19-92]

Treasury Notes, Series M-1997

Washington, May 22, 1992.

The Secretary announced on May 21, 1992, that the interest rate on the notes designated Series M-1997, described in Department Circular—Public Debt Series—No. 19-92 dated May 13, 1992, will be 6¾ percent. Interest on the notes will be payable at the rate of 6¾ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary

[FR Doc. 92-12863 Filed 6-2-92; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 18-92]

Treasury Notes, Series Z-1994

Washington, May 21, 1992.

The Secretary announced on May 20, 1992, that the interest rate on the notes designated Series Z-1994, described in Department Circular—Public Debt Series—No. 18-92 dated May 13, 1992, will be 5⅛ percent. Interest on the notes will be payable at the rate of 5⅛ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 92-12864 Filed 6-2-92; 8:45 am]

BILLING CODE 4810-40-M

Customs Service

[T.D. 92-51]

Country of Origin Marking for the Former Yugoslav Republics

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of acceptable names of the independent states formerly parts of Yugoslavia for purposes of country of origin marking under 19 U.S.C. 1304.

SUMMARY: On April 7, 1992, the United States recognized Bosnia-Hercegovina, Croatia, and Slovenia as sovereign and independent states, announcing that consultations towards establishing full diplomatic relations would begin immediately. This notice advises the public of the names and English spellings for the new states and specifies the geographic areas which shall continue to be considered to comprise Yugoslavia for purposes of country of origin marking. The notice also establishes a transition period during which Customs will permit the importation of merchandise from the newly-independent states with the marking, "Yugoslavia".

EFFECTIVE DATE: June 3, 1992.

FOR FURTHER INFORMATION CONTACT: Edward M. Leigh, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-2938).

SUPPLEMENTARY INFORMATION:

Background

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Pursuant to section 304 Customs may determine the character of the words and phrases or abbreviations thereof which shall be acceptable as indicating the country of origin, and may require the addition of any other words or symbols which may be appropriate to prevent deception or mistake as to the origin of an article.

In view of the political independence of Bosnia-Hercegovina, Croatia, and Slovenia, and recognition of their independent status by the U.S. as of April 7, 1992, merchandise originating in those countries and imported into the U.S. has become subject to marking with the English names of those countries pursuant to 19 U.S.C. 1304. Customs has been advised by the Department of State that the short form English names of the three newly independent countries are as indicated above: "Bosnia-Hercegovina", "Croatia", and "Slovenia". At this time the Department of State has not identified any approved long form names in English for the three countries. It is acceptable to Customs for merchandise to be marked using long form names such as "Republic of _____", provided that the short form name is part of the phrase. With respect to abbreviations, Customs is aware of only one which would satisfy the marking requirements. It would be acceptable to shorten the name "Bosnia-

Hercegovina" to "Bosnia" for these purposes.

Recognizing that manufacturers and importers may need time to adjust to these changes, and that an abrupt change could cause undue hardship, Customs will permit goods from Bosnia-Hercegovina, Croatia, and Slovenia to be marked "Yugoslavia" until April 7, 1993. After that date all merchandise originating in Bosnia-Hercegovina, Croatia, and Slovenia will be required to be marked with the new names as set forth above.

There is no change in the names to be used for marking goods from the non-independent parts of Yugoslavia. However, in accordance with the foregoing, after April 7, 1993, only merchandise produced in the remaining regions of Yugoslavia, *i.e.*, Macedonia, Montenegro, and Serbia, will be permitted to be marked as originating in Yugoslavia for purposes of 19 U.S.C. 1304. It is noted that the U.S. has announced its intention, subject to further negotiations, to recognize the independence of Macedonia. In that event, Customs will adopt corresponding country of origin marking requirements for products of Macedonia.

Dated: May 28, 1992.

Samuel H. Banks,

Assistant Commissioner, Office of Commercial Operations.

[FR Doc. 92-12915 Filed 6-2-92; 8:45 am]

BILLING CODE 4820-02-M

Public Information Collection Requirements Submitted to OMB for Review

Date: May 27, 1992.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 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 Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0720.

Form Number: IRS Forms 8038, 8038-G, 8038-GC and 8038-T.

Type of Review: Resubmission.

Title: Information Return for Small Tax-Exempt Governmental Bond Issues, Leases and Installment Sales (8038-GC).

Description: Forms 8038, 8038-GC collect the information that IRS is required to collect by Code Section 149(e). IRS uses the information to complete the required study of tax-exempt bonds (requested by Congress). IRS also uses the information to assure that tax-exempt bonds are issued consistent with the rules of IRC sections 141-149. Form 8038-T is used to implement the arbitrage rebate requirement.

Respondents: State or local government, Businesses or other for-profit, Non-profit institutions.

Estimated Number of Respondents/Recordkeepers: 77,000.

Estimated Burden Hours Per Respondent/Recordkeeper

Recordkeeping.—3 hours, 50 minutes
Learning about the law or the form.—1 hour, 51 minutes
Preparing the form.—2 hours, 56 minutes
Copying, assembling, and sending the form to the IRS.—16 minutes

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 1,454,925.

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. 92-12914 Filed 6-2-92; 8:45 am]

BILLING CODE 4830-01-M

Internal Revenue Service

Electronic Filing: Electronic Filing of Employee Pension Plan Returns (Form 5500)

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice that IRS will be accepting Employee Pension Plan Returns (Form 5500) filed electronically.

SUMMARY: The Electronic Filing Systems Office of the Internal Revenue Service (IRS) announced that in July of 1993, IRS will begin accepting Employee Pension Plan Returns (Form 5500) filed on electronic or magnetic media. The Form 5500 is filed by Plans with 100 or more participants and is the most complicated of the Employee Pension Plan Returns. The IRS currently accepts the Form 5500-C/R Return (filed by Plans with less than 100 participants) in electronic or magnetic media format. The Form 5500EZ (for single participant plans) will be accepted in electronic or magnetic media format beginning in July 1992.

The Form 5500 system for July 1993 will be a pilot system and will have certain restrictions on the types of data that will be accepted.

FOR FURTHER INFORMATION CONTACT: Anyone interested in more information about this program may contact Susan W. Carroll, Chief, Electronic Filing Branch, (901) 365-5590, Memphis Service Center, P.O. Box 30309, A.M.F. Stop 37, Memphis, TN 38130.

Carolyn Davis,

Chief, Business/Employee Plans Master File Section.

[FR Doc. 92-12894 Filed 6-2-92; 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, "Al-Andalus: The Art of Islamic Spain" (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 a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York, New York, from on or about July 1, to on or about September 27, 1992 is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Alberto J. Mora,

General Counsel.

[FR Doc. 92-12962 Filed 6-2-92; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Ms. Luisa Alvarez of the Office of the General Counsel of USIA. The telephone number is 202/619-6827, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 57, No. 107
Wednesday, June 3, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, June 8, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed acquisition of furniture and furnishings within the Federal Reserve System.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 1, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-13058 Filed 6-1-92; 11:02 am]

BILLING CODE 6210-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-92-13]

TIME AND DATE: June 10, 1992 at 2:30 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings
2. Minutes
3. Ratification List
4. Petitions and complaints
5. Inv. 731-TA-557-559 (Preliminary) (New steel rails from Japan, Luxembourg, and United Kingdom)—briefing and vote
6. Inv. 731-TA-530 (Final) (High tenacity rayon filament yarn from Germany)—briefing and vote
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 205-2000.

Dated: May 29, 1992.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-13017 Filed 6-1-92; 9:42 am]

BILLING CODE 7020-02-M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors Meeting

ACTION: The Pennsylvania Avenue Development Corporation announces the date of their forthcoming meeting of the Board of Directors.

DATE: The meeting will be held Wednesday, June 17, 1992, at 10:00 a.m.

ADDRESS: The meeting will be held at Pennsylvania Avenue Development Corporation, Suite 1220 N, 1331 Pennsylvania Ave., NW., Washington, DC.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with 36 Code of Federal Regulations Part 901, and is open to the public.

Dated: May 27, 1992.

M.J. Brodie,

Executive Director.

[FR Doc. 92-13100 Filed 6-1-92; 2:12 pm]

BILLING CODE 7630-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [57 FR 22863, May 29, 1992].

STATUS: Open meeting.

PLACE: 450 Fifth Street NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Wednesday, May 27, 1992.

CHANGE IN THE MEETINGS: Rescheduling.

An open meeting scheduled for Thursday, May 28, 1992, at 11 a.m. has been rescheduled for Friday, May 29, 1992, at 11:30 a.m.

Commissioner Schapiro, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Walter Stahr at (202) 272-2000.

Dated: May 29, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-13149 Filed 6-1-92; 3:32 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 57, No. 107
Wednesday, June 3, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 910647-2043]

Endangered and Threatened Species; Threatened Status for Snake River Spring/Summer Chinook Salmon, Threatened Status for Snake River Fall Chinook Salmon

Correction

In rule document 92-9370 beginning on page 14653 in the issue of Wednesday, April 22, 1992, make the following correction:

On page 14661, in the first and second columns, the paragraphs under Determination should read as follows:

Determination

Based on its assessment of available scientific and commercial information, NMFS is issuing final determinations that Snake River spring/summer chinook salmon and Snake River fall chinook salmon are ESUs or "species" under the ESA and should be listed as threatened. The ESU for Snake River spring/summer chinook salmon is defined as all natural population(s) of spring/summer chinook salmon in the mainstem Snake River and any of the following subbasins: Tucannon River, Grande Ronde River, Imnaha River, amd Salmon River. The ESU for Snake River fall chinook salmon is defined as all natural population(s) of fall chinook salmon in the mainstem Snake River and any of the following subbasins: Tucannon River, Grande Ronde River, Imnaha River, Salmon River, and Clearwater River. The natural population consists of all fish that are the progeny of naturally spawning fish. The offspring of all fish taken from the natural population after the date of listing (for example, for research or enhancement purposes) are also part of the ESU (natural population).

NMFS is now listing only the natural populations; however, it is also important to address whether any existing hatchery population is similar enough to the natural population that it can be considered part of the ESU and, therefore, potentially used in recovery efforts. In general, hatchery populations that have been substantially changed as a result of artificial propagation should not be considered part of the ESU. To address this and related issues, NMFS is developing a policy on the role of artificial propagation under the ESA for Pacific salmon, and will publish its proposed policy in the Federal Register for public comment. After issuing a final policy, NMFS will propose any revisions to the listed ESUs to include various existing hatchery populations, if appropriate. Pending completion of this process, NMFS is excluding from the Snake River spring/summer and fall chinook ESUs all fish in or originating from a hatchery at the time of listing.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100, 110, and 165

[CGD 1 91-165]

Temporary Regulations, Boston Harbor, July 2-17, 1992

Correction

In proposed rule document 92-8031 beginning on page 12266 in the issue of Thursday, April 9, 1992, make the following corrections:

1. On page 12272, in the second column of the table, in the fifth line, "Part" should read "Park".
2. On the same page, in the third column of the table, in the sixth line, "800," should read "0800," and in the fourth line from the bottom, "2800," should read "1800,".
3. On page 12275, in the third column, in the first full paragraph, insert "a" after "starts".

BILLING CODE 1505-01-D

federal register

Wednesday
June 3, 1992

Part II

Department of Transportation

Federal Highway Administration
Federal Transit Administration

23 CFR Ch. I
49 CFR Ch. VI
Management Systems; Proposed rule

DEPARTMENT OF TRANSPORTATION

23 CFR Chapter I

[FHWA Docket No. 92-14]

Federal Highway Administration

Federal Transit Administration

49 CFR Chapter VI

[FTA Docket No. 92-B]

RIN 2125-AC97

Management Systems

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The FHWA and the FTA are requesting comments from interested parties concerning the issuance of regulations to implement the provisions of section 1034 of Public Law 102-240, 105 Stat. 1914, the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991. Section 1034 of the ISTEA amended Title 23, United States Code, Highways (23 U.S.C.) by adding new section 303 (23 U.S.C. 303) Management Systems, which requires the Secretary of Transportation (the Secretary) to issue regulations, within one year after the date of enactment (by December 18, 1992), for State development, establishment, and implementation of systems for managing: (1) Highway pavement of Federal-aid highways; (2) bridges on and off Federal-aid highways; (3) highway safety; (4) traffic congestion; (5) public transportation facilities and equipment; and (6) intermodal transportation facilities and systems. In addition, not later than one year after the date of enactment, the Secretary must issue guidelines and requirements for the State development, establishment, and implementation of a traffic monitoring system for highways and public transportation facilities and equipment. The purpose of this ANPRM is to solicit early input for development of these regulations.

DATES: Comments must be received on or before August 3, 1992.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 92-14, Federal Highway Administration, HCC-10, room 4232, 400 Seventh Street, SW., Washington, DC 20590, or to FTA Docket No. 92-B, Federal Transit Administration, TCC-10, Room 9328, 400 Seventh Street, SW., Washington, DC 20590. All comments will be available for examination at the above addresses between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Wilbert Baccus, FHWA Office of the Chief Counsel, (202) 366-0780, or Mr. Daniel Duff, FTA Office of the Chief Counsel, (202) 366-4063. For information on a specific system: Highway Pavement—Mr. Frank Botelho, (202) 366-1336; Bridges—Mr. Dan O'Connor, (202) 366-1567; Highway Safety—Mr. Fred Small, (202) 366-2171; Traffic Congestion—Mr. Tony Solury, (202) 366-5003; Public transportation facilities and equipment—Mr. Ron Jensen-Fisher, (202) 366-0257; Intermodal transportation facilities and systems—Mr. Dane Ismart, (202), 366-4071; Traffic Monitoring—Mr. Ed Kashuba, (202) 366-0175. Office hours are 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Section 303 of title 23, U.S.C., requires the Secretary of Transportation to issue regulations, within one year after the date of enactment of the ISTEA of 1991 (December 18, 1991), for State development, establishment, and implementation of a system for managing each of the following:

(1) Highway pavement of Federal-aid highways.

(2) Bridges on and off Federal-aid highways.

(3) Highway safety.

(4) Traffic congestion.

(5) Public transportation facilities and equipment.

(6) Intermodal transportation facilities and systems.

In metropolitan areas, the systems must be developed and implemented in cooperation with metropolitan planning organizations (MPO's). In accordance with the legislation, the regulations may include a compliance schedule and minimum standards for each such system.

States must be implementing each management system beginning in Federal fiscal year 1995, and must annually certify, before January 1 of each fiscal year (the first certification is due by January 1, 1995), that the systems are being implemented, or the Secretary may withhold up to 10% of funds apportioned under Title 23, U.S.C., or under the Federal Transit Act (formerly the Urban Mass Transportation Act of 1964, amended) for any fiscal year beginning after September 30, 1995. In addition to the six management systems, no later than one year after the date of enactment the Secretary must issue guidelines and requirements for the State development, establishment, and implementation of a traffic monitoring system for highways and public transportation facilities and equipment.

National Highway System (NHS), Surface Transportation Program (STP), FHWA State Planning and Research, Federal Transit Act section 9 (Capital, Planning, and Operating), Federal Transit Act section 8 (Transit Planning), Federal Transit Act section 26(a)(2) (State Planning and Research), and Federal Transit Act section 26(b)(1) (National Planning and Research) funds may be used for development, establishment, and implementation of all of the management and monitoring systems. Congestion Mitigation and Air Quality (CMAQ) Improvement Program funds may be used for certain management system purposes, if such use will likely contribute to the attainment of a national ambient air quality standard (a copy of guidance issued on February 20, 1992, by the FHWA to its field offices on the CMAQ Improvement Program has been placed in the FHWA docket). Apportioned bridge funds also may be used for development and establishment of the bridge management system.

Both the metropolitan (23 U.S.C. 134) and statewide (23 U.S.C. 135) planning processes required under the legislation must include consideration of the needs identified under all of the management systems. Beginning January 1, 1993, the Secretary must submit annual reports to Congress on the progress being made by both the Secretary and the States in carrying out the provisions of 23 U.S.C. 303.

The primary purpose of these management systems is to improve the efficiency of, and protect the investment in, the Nation's existing and future transportation infrastructure. The management systems, or their elements, are not the end products; they will provide additional information needed to make informed decisions for optimum utilization of limited resources. Each State will need to tailor the systems to meet its particular goals, policies, and resources.

Since all of the systems may have common elements and data needs, the Department of Transportation (DOT) decided to issue this unified ANPRM. However, since some of the systems have reached a more advanced stage of development than others, the level of input being sought at this time for each system varies. Background information on each system and specific issues and questions for comment are discussed below. Because of the short timeframe available for issuance of the regulations, the agencies will work on development of notices of proposed rulemaking

during the comment period of this ANPRM, but will not issue notices until all comments received in response to this ANPRM have been considered. Any suggestions on how the requirements for these systems can be met with a minimum paperwork burden would be appreciated. While the comment period for this ANPRM is 60 days, submission of comments as early as possible also would be appreciated.

Status, Issues, and Questions

General

Comments are requested on several issues common to all of the management systems.

As noted above, the legislation requires State development, establishment, and implementation of each management system and that in metropolitan areas (urbanized areas of 50,000 or more population) the systems must be developed and implemented in cooperation with MPO's. States also must cooperate with affected agencies receiving assistance under the Federal Transit Act. These requirements lead to such questions as what should be the nature of this cooperation for development, establishment, and implementation, and should a minimum level of cooperation be specified in the regulations, or should complete flexibility be allowed?

Title 23, U.S.C. 134(f) and section 8 of the Federal Transit Act specify that MPO's, in developing plans and programs, must consider the transportation needs identified through use of the management systems, and the Statewide planning process required under 23 U.S.C. 135(c) also must consider these needs. In addition, the results of the management systems must be considered in making project selection decisions under title 23, U.S.C., and under the Federal Transit Act. What should be the nature of this cooperation and consideration of the results of the management systems in making project selection decisions? Should it be specified in the regulations? What criteria should be used to ensure that the needs identified through the management systems have been appropriately considered?

Each of the management systems will require data to define and monitor the magnitude of the problems, identify needs, analyze alternative solutions, and measure the effectiveness of the implemented actions. Some data needs, such as traffic volumes or travel demand, may be common to all systems while other data will be unique to the particular system, e.g., specific structural data for bridges, and vehicle or person hours of delay for congestion. It is anticipated that the traffic monitoring system required by the legislation, the FHWA's Highway Performance Monitoring System (HPMS), and the Federal Transit Administration's section 15 data, will provide some data to meet National needs and (to some extent) State and metropolitan area needs. The management systems are envisioned as part of an integrated transportation information system that would: Facilitate coordination of the management systems with related programs (e.g., HPMS, speed monitoring, air quality, etc.), facilitate the sharing of resources and data, improve communications among data users, and facilitate the coordination of the metropolitan and statewide plans and programs. What other sources of data are available, or need to be established? What enhancements in the current HPMS, FTA section 15 data, and the traffic monitoring program will be needed for these data bases to be more useful for management systems? How can management system data needs be coordinated with existing information system and be integrated into an overall transportation information system?

Before January 1, 1995, and annually thereafter, States must certify that they are implementing the six management systems. Although a certification is not required until 1995, the systems should be phased in as portions are developed. This will also facilitate certification by that date. The legislation allows the regulations to include a compliance schedule for development, establishment, and implementation of each such system. As part of the rulemaking, a compliance schedule may be proposed for implementation of specific aspects of the systems. At what stage of implementation should each system be in by January 1, 1995, to satisfy this requirement, and what other compliance dates, if any, would be appropriate for specific aspects of each system? What type of supporting documentation, if any, should be submitted with the certifications? What approach should the agencies use to review and assure the adequacy of the systems and the certifications? Should one certification cover all six management systems? At what level of State government (e.g., Governor, State secretary of transportation, etc.) should the certification be made?

The legislation does not specify the extent of coverage of the systems except for highway pavement and bridges. The highway pavement management system is to cover "Federal-aid highways" (those highways eligible for assistance under title 23, U.S.C., except those functionally classified as local or rural minor collectors). The bridge management system is to cover bridges on and off "Federal-aid highways." What should be the extent of coverage of the other systems? Should any of the other systems be limited to the National Highway System (NHS), which, as defined in 23 U.S.C. 102(b)(2), includes the Interstate system and certain other urban and rural principal arterial highways, to Federal-aid highways, or to all public roads?

Of the systems required, the traffic congestion, intermodal, and public transportation management systems may be more closely interrelated than the others. In nonattainment areas for carbon monoxide and ozone, these three systems will also need to be closely coordinated with the process for development of transportation control measures of the State implementation plan (SIP) required by the Clean Air Act (42 U.S.C. 7401 et seq.). How can these systems be interrelated and how should they be coordinated with the SIP development process? Can, or should there be a common extent of coverage and/or data base for these three systems? What institutional structure should be established at the State or MPO level to implement these three systems? Is the highway safety management system sufficiently related to these three systems to be included in a common institutional structure? Should, or could all six of the systems be included?

The legislation specifies that the regulations include minimum standards for each management system. Some of the systems may have similar/common elements and features. What critical elements, features, and processes should be included in each system? In addition to data bases, what other elements should be common to all systems? What degree of detail and guidance are necessary in the regulations for the States to develop, establish, and implement each of the systems?

In lieu of development of a new congestion management system in States where one already exists, the legislation specifies that State laws, rules or regulations pertaining to congestion management systems or programs may constitute the congestion management system required under the ISTEA if the Secretary finds that the State laws, rules or regulations are consistent with, and fulfill the intent of 23 U.S.C. 135, 23 U.S.C. 134, or section 8 of the Federal Transit Act, as appropriate. The legislation does not address acceptance of existing State

laws or procedures for the other systems. Should existing State laws or procedures be accepted for all of the systems? What criteria and review procedures should be used to determine if State laws, rules, or regulations are consistent with and fulfill the intent of the legislation?

Highway Pavement of Federal-Aid Highways

Background

The current FHWA pavement management system (PMS) policy (23 CFR part 626) requires each State highway agency (SHA) to have a PMS that is acceptable to the FHWA and is based on concepts described in American Association of State Highway and Transportation Officials (AASHTO) publications (23 CFR 626.5(a)). The FHWA policy requires that the PMS's cover all Rural Arterials (Interstate, Other Principal Arterials, and Minor Arterials) and Urban Principal Arterials (Interstate, Other Freeways and Expressways, and Other Principal Arterials) under State jurisdiction (approximately 313,000 center-line miles nationwide). The policy also states that the expansion of a SHA's PMS to include all rural and urban arterials, regardless of jurisdiction, and the development of a local PMS for pavements under local jurisdiction are desirable. The completion date to implement this policy is January 13, 1993. Most States have progressed well in developing and implementing their PMS's in accordance with the current regulations. Since the results and progress to date indicate that it is beneficial to do so, the FHWA intends to keep the current PMS policy in effect for the systems specified in 23 CFR 626.5(a).

The extent of network coverage for the pavement management systems has been expanded by the ISTEA to include "Federal-aid highways" which, as defined in 23 U.S.C. 101(a), are highways eligible for assistance under chapter 1 of title 23 U.S.C., other than highways classified as local roads or rural minor collectors. Nationwide this totals over 922,000 center-line miles of which approximately 372,000 are not under State jurisdiction. (The mileage data presented in this ANPRM are 1990 data. These data change over time because States revise and update functional classifications on a continuing basis. In addition, the legislation requires a complete functional reclassification by September 30, 1993.) Although some local highway agencies have begun to recognize and use PMS's and several States have coordinated PMS programs with their local constituents, significantly more effort will be needed because of the expanded network coverage.

It is envisioned that the implementation of the expanded coverage will be accomplished in stages, allowing components of the systems to be put into operation as each is developed. In addition, some items such as actual pavement performance information require several years of data collection before a historical performance data base can be established.

Issues

The design of the total State and local pavement management program is expected to be subdivided into multiple network levels which would typically include the NHS and the various strata for the remainder of Federal-aid highways since the difference in classifications and usage will dictate the design of the PMS to fit the various network levels. For example, a PMS that is designed for a local highway agency typically is less complex and smaller in scope than a PMS for the NHS. Local PMS's which generally cover lower volume highways, should use less inventory data, a limited condition survey, a lower frequency of data collection, and only a basic analysis with a limited number of maintenance and rehabilitation techniques. Is this network subdivision a logical approach? Are there only factors that should be addressed relative to the expanded network coverage for pavement management?

Bridges On and Off Federal-Aid Highways

Background

Tn response to provisions of section 162 of the Surface Transportation and Uniform Relocation Assistance Act (STURAA) of 1987 (Pub. L. 100–17, 101 Stat. 132), the FHWA conducted a special study in 1988 on the progress of State highway agencies in developing comprehensive bridge management systems (BMS's). Based on the results of the study, it was concluded that BMS development was in an early stage in most States, and that significant progress was being made. For example, it was found that more than half the States had appointed a task force or committee to be responsible for developing or overseeing a BMS. One-third had produced a document that broadly described the existing or proposed BMS; three-fourths had some aspect of BMS development either completed, underway or planned; several had made organizational changes which incorporated BMS responsibilities; and a few had made significant progress in developing formal BMS methods and tools. In addition, the AASHTO completed a National Cooperative Highway Research Program (NCHRP) study that resulted in the conceptual development of the modular elements necessary for a model BMS (Transportation Research Board, NCHRP Report No. 300, "Bridge Management Systems").

Since completion of the STURAA study, the AASHTO, the NCHRP, the FHWA, and a few States have proceeded with BMS developments. The AASHTO, through the NCHRP, has produced a guideline on BMS's which is now in final draft, and has continued work on a BMS software development project that is targeted to transportation agencies with small to medium total bridge populations. Under FHWA Demonstration Project 71, the FHWA, six States and the NCHRP have cooperated in the development of a state-of-the-art BMS named Pontis, which is designed to handle inventories of any size and be transportable from one agency to another.

The collective BMS products of the AASHTO, the NCHRP, the FHWA, the individual States, and others constitute a substantial body of information and assortment of tools that should enable all States to implement a comprehensive BMS.

Issues

(1) In most States, bridges that are off Federal-aid highways are owned primarily by cities and counties. Also, in most States, the maintenance of these bridges is the responsibility of the owner rather than the State. In view of varying ownership and maintenance responsibilities, what should be the roles of State and local bridge owners in the operation of a BMS? For example, is it necessary for local bridge owners to operate management systems that are separate from the State's management system? Alternatively, is it sufficient for local bridge owners to simply collect the required data and for the State to analyze the data for purposes of establishing needs estimates and funding allocations under the bridge program?

(2) A network level BMS requires a high degree of standardization in data collection in order to allow flexibility for grouping bridges in various ways for analysis (e.g., needs estimates, funding distributions, deterioration rate predictions, etc.). To what extent should

the data collection requirements within a State be standardized?

(3) Several States that are implementing a BMS have raised a concern regarding possible conflicts between the current system of reporting bridge conditions under the National Bridge Inventory (NBI), and the more detailed descriptions of bridge condition that are used in a BMS. NBI data include overall condition ratings for the deck, superstructure and substructure, while BMS data would generally include a more detailed breakdown of bridge elements (e.g., beams, joints, bearings, etc.) as well as an indication of the extent of deterioration. The concerns raised by the States are twofold: bridge inspectors should not be required to report bridge conditions in more than one format, and while a computer conversion of more detailed BMS condition information to NBI codes is possible, the results may not be consistent with past reporting practices and could adversely impact a State's apportionment of Federal-aid bridge funds. Should the FHWA provide standard procedures or guidelines for converting BMS element level condition data to NBI data?

Highway Safety

Background

Each year over 40,000 people are killed and more than 3.5 million are injured as a result of crashes on the Nation's highways. These facts, combined with the dynamic change that has occurred in the types of highway system users and the overwhelming demand for the system's limited resources, have created a need for better total system management.

The 1966 Highway Safety Act (Pub. L. 89–564, 80 Stat. 731) provided the basic foundation for establishing active highway safety programs in the States. Legislation in subsequent highway and surface transportation bills strengthened and broadened the requirements and scope of the States' involvement in enhancing highway safety. Specific safety program requirements are directed through 23 CFR part 924.

The Transportation Research Board (TRB) conducted a conference in 1981 on the subject of "Enhancing Highway Safety in an Age of Limited Resources." Utilizing many of the recommendations from this conference, the AASHTO's Standing Committee on Highway Traffic Safety developed a document in 1983 titled "A Guide For Enhancement Of Highway Safety Directed To Agencies, Programs and Standards" (AASHTO Safety Guide). Each of these activities were directed toward the effective management of highway activities to ensure timely and appropriate consideration of safety in the ongoing programs and operations of State transportation agencies. In 1988, the FHWA, utilizing the results of the work by the TRB and the AASHTO, initiated a review in several States of practices and programs that provide effective means of enhancing highway safety. The findings of the review were compiled by a task force of FHWA safety professionals into the document titled "Management Approach to Highway Safety — A Compilation of Good Practices." The practices presented in the document were pilot-tested by nine States with a follow-up workshop conducted in September 1991 with representatives from the nine pilot and twelve non-pilot States, the AASHTO and its Standing Committee on Highway Traffic Safety, the TRB, the National Association of Governors' Highway Safety Representatives, the National Highway Traffic Safety Administration, and the FHWA. The purpose of the workshop was to determine the practicality and usefulness of the document to States in developing and implementing a highway safety management system (SMS). State representatives in attendance supported the need for the document to serve as a foundation from which they could develop their systems. The "Management Approach to Highway Safety," the workshop proceedings, and the AASHTO Safety Guide have been placed in the FHWA docket and are available for review. Copies of the "Management Approach to Highway Safety" and the workshop proceedings also are available from the contact shown above for the highway safety management system. Comments in response to this ANPRM, results from the pilot project, and the Safety Management System Workshop will be considered in development of the regulations for the SMS.

Issues

Highway safety involves many disciplines and factors that cross State and local jurisdictional and political boundaries. Engineering, enforcement, education, emergency medical, vehicle design, operators, commercial motor vehicles, and many other inter-related components play a critical role in motor vehicle crashes and survivability. Recognizing these factors, the FHWA's efforts to date have been concentrated on guidance for States to develop SMS's directed toward the roadway. This roadway approach focuses on the basic component affecting the users of the highway transportation system. In order to assess the impacts of the issues identified below, related information from the States, professional and private organizations, industry or the general public is requested. Detailed information and supporting data concerning the issues, and especially information that provides a rationale for a particular position and data that estimate the costs and benefits of the action under consideration, are requested.

(1) Should the highway SMS include all safety elements—driver, vehicle, and roadway—or should it be limited to the roadway only?

(2) Will there be institutional, coordination, or integration impacts if the system covers more than the NHS or includes the driver and vehicle as well as the roadway?

(3) Would State legislation be required to implement a SMS that includes all safety elements or covers more than the NHS?

(4) What are the fiscal, personnel or other resource advantages or constraints associated with developing and implementing a SMS under each of the concepts presented in issues (1) and (2) above?

(5) Section 1016, Program efficiencies, of the ISTEA states that safety considerations for projects subject to subsection (b) of 23 U.S.C. 106 (projects to resurface, restore, and rehabilitate highways on the NHS, non-NHS projects, and low cost NHS projects) may be met by phase construction consistent with an operative safety management system established in accordance with section 303 of Title 23, U.S.C. How should safety considerations be met using phase construction?

Traffic Congestion

Background

In addition to the requirement for a traffic congestion management system in section 1034, the ISTEA places emphasis on congestion management in several other sections. The sixth paragraph of section 2, "Declaration of policy: Intermodal Surface Transportation Efficiency Act," states:

> The National Intermodal Transportation System shall give special emphasis to the contributions of the transportation sectors to increased productivity growth. Social benefits must be considered with particular emphasis to the external benefits of reduced air pollution, reduced traffic congestion and other aspects of the quality of life in the United States.

Title 23, U.S.C., section 134 and section 8 of the Federal Transit Act require that long range plans in

metropolitan areas, among other items, assess capital investment and other measures necessary to "make the most efficient use of existing transportation facilities to relieve vehicular congestion and maximize the mobility of people and goods."

In addition to the general requirements that all systems be developed by the States in cooperation with metropolitan area MPO's, the legislation requires that in Transportation Management Areas (TMA's) (i.e., all urbanized areas over 200,000 population and other areas designated by the Secretary at the request of the Governor and MPO) the transportation planning process required under 23 U.S.C. 134 and section 8 of the Federal Transit Act "include a congestion management system that provides for effective management of new and existing transportation facilities eligible for funding under this title and the Federal Transit Act through the use of travel demand reduction and operational management strategies," and it specifies that "the Secretary shall establish an appropriate phase-in schedule for compliance with the requirements of this section." Further, in TMA's classified as nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.), "Federal funds may not be programmed in such area for any highway project that will result in a significant increase in carrying capacity for single occupant vehicles unless the project is part of an approved congestion management system."

Similarly, 23 U.S.C. 135, Statewide planning, requires that the State transportation planning process include "Methods to reduce traffic congestion and to prevent traffic congestion from developing in areas where it does not yet occur, including methods which reduce motor vehicle travel, particularly single-occupant motor vehicle travel."

Having long recognized the need for congestion management systems, the FHWA sponsored a workshop on such systems in August 1991 in Arlington, VA. A report of the proceedings of the workshop, including a resource paper prepared by the FHWA for the workshop, has been placed in both the FHWA and FTA dockets, and copies are available from the contact shown above for the traffic congestion management system.

The workshop was attended by invited representatives of MPO's, State departments of transportation, transit agencies, universities, professional organizations, the FTA, and the FHWA. A primary objective of the workshop was to obtain early input into the formative phases of definitions and requirements for such systems. The comments and questions that follow are based upon discussions at the workshop, the resource paper, and current thoughts of the FHWA and the FTA staff.

As a starting point an attempt has been made to define a congestion management system (CMS). One possible definition is "a system to monitor and analyze the magnitude of congestion on the multimodal transportation system and to plan and implement actions, appropriate to the scope of the problem, that reduce congestion and enhance the performance of the transportation system to the level desired."

Regardless of the definition of a CMS, preliminary thinking is that the development of regulations should be guided by appropriate principles, that certain elements need to be present in a successful system, and that the system must lead to implementation of specific actions to manage congestion and improve mobility of people and goods. Suggested principles for, and elements of, a CMS are identified below.

CMS Principles

Planning Process Context—Particularly in urbanized areas, the transportation planning process is the mechanism for making decisions about how transportation needs will be met. It, therefore, is the logical place for consideration, debate, and decisions about how congestion will be dealt with on a metropolitan basis.

Value Added—Developed as part of a transportation planning process, the CMS should not require "reinvention" of the planning process, but should build upon and increase the "value" of such process.

Flexibility—Maximum flexibility should be given to State and local officials to develop and implement a CMS and to establish levels of system performance tailored to an area's problems.

Multimodal—Any system developed should consider all appropriate modes and modal interconnectivity. The movement of people and goods, not just vehicles, needs to be addressed.

Areawide—A CMS needs to cover a geographic area and not just isolated facilities. Congestion on a facility may be caused by problems on other facilities in a corridor or subarea, or development decisions. Land use controls, parking management policies, telecommuting, etc. may be the solutions to a congestion problem rather than facility specific actions.

Recurring and Nonrecurring—Typically the planning process has dealt mainly with recurring congestion. However, an effective congestion management system will need to address both congestion that occurs regularly at the same locations and congestion due to isolated incidents.

Implementation Emphasis—While the CMS may be an element of the planning process, the bottom line is the implementation of appropriate congestion management and mobility enhancement strategies, both short term and long term, traditional (traffic operations improvements, transit operational changes, transportation demand management, new capacity) and nontraditional (congestion pricing, land use controls), facility or site oriented (incident management, HOV lane, parking management) and areawide (regional ridesharing programs, growth management). Planners and implementers will need to work together to ensure successful implementation and to improve the effectiveness of a CMS.

Feedback Loop—Implemented strategies need to be monitored and evaluated to determine if they are accomplishing their intended objectives.

CMS Elements

System/Area Designation—While a CMS should be designed to address congestion on a metropolitan area or statewide basis, the nature of the problem may dictate that resources be focused on managing congestion in a subarea, a corridor, or on a specific transportation network (such as the National Highway System).

Performance Measures—At the national level, performance measures or indicators are needed to show how system performance is changing as a result of the strategies that have been implemented. Therefore, for national purposes, a system that reports on how congestion is changing over time may be adequate. However, at the State and local level, there may be a need to know how well the transportation system, or a particular measure, is working at a specific point in time. This may require a different performance measure; one established by State/local officials for their own purposes. The possibility of establishing an acceptable level of performance for the National Highway System has been raised.

Data Collection—Two types of data would probably be neeed: (1) Data necessary to identify and track the location, duration, and severity of congestion on the transportation system, and (2) data needed to evaluate the

effectiveness of the implemented strategies to provide feedback for future decisions.

Strategy Identification/Evaluation—A CMS must identify and evaluate the potential effectiveness of congestion management and mobility enhancement strategies. A better analytical basis is needed for determining the potential effectiveness/impacts of all strategies—both traditional and nontraditional.

Implementation—The ultimate result of a CMS must be implementation. Thus, a key element would be a plan for implementation of appropriate congestion management and mobility enhancement strategies. Such a plan for implementation should include, proposed actions, identification of implementation responsibilities, timeframe for implementation, and probable funding sources.

Issues

Comments on the above-mentioned principles and elements and the following specific issues are invited. Copies of documentation on existing metropolitan and statewide congestion management systems would especially be appreciated.

(1) Should national standards for an "acceptable" level of congestion to be attained be established for all areas, for the NHS, or should each State or metropolitan area be allowed to establish its own standards?

(2) What data should be reported and how? Should new reporting mechanisms be established or can existing mechanisms, for instance the HPMS and FTA section 15 data, be refined to meet national needs?

(3) How can implementing agencies be successfully integrated into a CMS process developed through the planning process? What should be the roles of State and local highway agencies, traffic engineers, transit operators, local government land use decision makers in development, establishment, and implementation of the CMS?

(4) Can existing transportation planning models/procedures: be successfully used to identify congestion problems at the micro level, identify appropriate corrective strategies, measure performance of implemented strategies and the overall transportation system? What new tools will be needed?

(5) What measures currently exist to measure changes in congestion and mobility on a multimodal basis until CMS's can be fully implemented, and what measures might be suitable in a fully implemented system?

(6) How long will it take for development and implementation of a statewide or metropolitan CMS for States and metropolitan areas of different sizes?

Public Transportation Facilities and Equipment

Background

The purpose of the public transportation facilities and equipment management system (PTMS) is to provide a basis for identification of actions to maintain existing transit assets in a good state of repair and to identify strategies necessary to improve transit performance. Management of a public transit system involves examination of the efficiency of the system (vehicle hours or miles per employee, roadcalls per vehicle mile, maintenance cost per vehicle mile, etc.) as well as the performance of the system as it relates to its users (passengers per vehicle mile or hour, transit travel time as a percentage of auto time, on-time performance, crowding levels during peak periods, etc.).

PTMS Elements

Identification of Public Transportation Systems—Urban and rural area public transportation systems operated by the State, local jurisdictions, public transportation agencies and authorities, and private transit operators receiving public funds for capital and/or operating assistance would be identified in terms of location, extent, etc.

Identification of Performance Measures—Performance measures and standards that allow for the evaluation of the transit system would be developed. The measures and standards would reflect State and local goals and objectives. These measures would address, at a minimum, the condition of transit facilites and equipment, the efficiency of the system as defined by cost or labor used per unit of service, and the effectiveness of the system as defined by the passengers carried per unit or cost of service.

Data Collection and System Monitoring—The data collection effort would focus on the physical, operational and passenger utlitization information which is needed to support the performance measures. It would draw upon FTA section 15 data to the extent possible, recognizing the deficiencies of that data to satisfy all needs which could be identified in a system performance evaluation. Data would be collected annually in conjunction with transit operators.

Strategy and Action Identification and Evaluation—Based on the results of the monitoring effort and projected performance, strategies and projects would be identified and alternatives evaluated, where appropriate, to address current and future deficiencies. The costs of these actions, along with priorities and potential funding sources, would be identified. Strategies and projects would be considered for incorporation into State and local plans and programs.

Issues

(1) What should be the specific goals and objectives of a PTMS?

(2) What are the appropriate roles for the States, MPO's, public transit operators, and private transit operators in the development, establishment, and implementation of a PTMS?

(3) Should the DOT receive the information produced from this management system and report national summaries thereof, or is the information only for the benefit of the States, local governments, and transit operators?

(4) Should a PTMS be required only for urbanized areas, or should rural areas be included?

(5) Should a PTMS be required for transit systems receiving little Federal funding?

(6) What other elements, if any, should be included in a PTMS and to what extent should the elements of a PTMS be standardized?

(7) Should the emphasis of a PTMS be on condition of facilities and equipment, on system performance or both?

(8) How should this management system be coordinated with other management systems and the State and urbanized area transportation planning processes?

Intermodal Transportation Facilities and Systems

Background

Intermodalism is a major theme of the ISTEA. In addition to the requirement for an intermodal management system, the 2nd paragraph of Section 2, "Declaration of Policy: Intermodal Surface Transportation Efficiency Act," states:

> The National Intermodal Transportation System shall consist of all forms of transportation in a unified, interconnected manner, including the transportation systems of the future, to reduce energy consumption and air pollution while promoting economic development and supporting the Nation's preeminent position in international commerce.

Further, paragraph 5 of section 2 states:

> The National Intermodal Transportation System shall provide improved access to ports and airports, the Nation's link to world commerce.

Amended 23 U.S.C. 134 and section 8 of the Federal Transit Act and 23 U.S.C. 135 require that transportation plans and programs shall provide for the development of transportation facilities (including pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the State, the metropolitan areas, and the Nation.

Many of the major programs of the ISTEA include the flexibility to fund intermodal transportation projects. For example, the National Highway System must include urban and rural principal arterials that provide access to major ports, airports, public transportation facilities, and other intermodal transportation facilities. Under the Surface Transportation Program (STP), funds may be used for the construction or reconstruction of highways and bridges necessary to accommodate other transportation modes. Also, STP funds may be used for the historic preservation, rehabilitation and operation of historic transportation buildings, structures or facilities (including historic railroad facilities and canals).

Further, the Statement of National Transportation Policy issued by President Bush on February 26, 1990, recognized the need for "a greater intermodal or multimodal perspective on the part of both transportation companies and government agencies." The Policy also acknowledged the need for "transportation providers and government agencies to provide better connections among different forms of transportation."

With this as a background, the purpose of an intermodal management system (IMS) is to provide a basis for better integration of all transportation facilities and systems. A management approach to intermodal transportation would improve the coordination in the planning and implementation among air, water, and the various land-based transportation systems at both the metropolitan and statewide levels.

In the context of an IMS, an intermodal facility is a transportation hub that interconnects different modes of transportation. An intermodal system provides a means for moving people and goods using various combinations of transportation modes.

An IMS should: Reflect the movement of both goods and people; be designed to provide timely and appropriate information for intermodal transportation decisions; not only look at ground access to intermodal facilities, but at the overall systems necessary to achieve the most efficient movement of goods and people; and be incorporated into the metropolitan and statewide planning processes.

Several critical elements of an IMS that should be incorporated in the statewide and metropolitan planning processes are discussed below. Each of these elements is necessary for an IMS to successfully improve the efficiency of the transportation system. State and metropolitan planning process that incorporates these elements will satisfy the requirements for an IMS.

IMS Elements

Identification of Intermodal Facilities—Intermodal facilities that need to be identified include, but are not limited to, coastal, inland and Great Lakes ports, airports, rail terminals, truck terminals, intercity bus terminals. The intermodal transportation facilities that are identified should serve intrastate, interstate, and international movement of goods and passengers.

Identification of Efficiency Measures and Performance Standards—In order to evaluate the efficiency of intermodal facilities and systems, parameters must be identified that will allow measurement and evaluation of the movement of people and goods from origin to destination. Parameters could include the total travel time and cost for moving passengers and the average time to transfer people or freight from one mode to another. Since the expectations of the quality of service in transportation vary between communities and industries, performance standards or goals should be established at the State or local level with private sector coordination.

Data Collection and System Monitoring—A base year inventory consisting of physical condition and operational characteristics of intermodal facilities and systems is essential. Operational characteristics may include time, cost, capacity, and usage information for the intermodal facilities and systems. Data collection would be coordinated with the traffic congestion and public transportation facilities and equipment management systems. This information should be obtained, to the extent possible, from the ongoing metropolitan and statewide planning processes.

System and Facility Performance Evaluation—The data collection and system monitoring program will be used by the States and local agencies to evaluate the performance of intermodal facilities and systems. The major purpose of the performance evaluation program would be to determine the specific cause(s) for the efficient, or inefficient, movement of goods and people as part of an intermodal transportation system.

Strategy and Action Identification and Evaluation—Strategies and actions would be developed and evaluated for improving intermodal efficiency. Statewide as well as local strategies and actions would be identified for the movement of people and goods. Methods for increasing productivity, increasing the use of advanced technologies, and the use of innovative marketing techniques would be evaluated, including high speed rail, maglev, and just-in-time delivery. The evaluation program would determine what project or combination of projects and actions would most effectively increase intermodal productivity.

Implementation—An IMS would produce strategies to improve the intermodal productivity of transportation systems for both the short and long range. As part of the requirements for Statewide and metropolitan planning, an implementation plan would be developed. The implementation plan would identify the proposed methods and obstacles (institutional, financial, or legal) to implement the strategies and actions. The plan would be developed by the State and, for metropolitan areas, in cooperation with the MPO's responsible for the joint 23 U.S.C. 134 and Federal Transit Act section 8 planning process.

Products—A fully implemented IMS would result in: (1) An inventory of intermodal facilities and systems, (2) incorporation of IMS strategies and actions into State and metropolitan area transportation plans and TIP's, and (3) an implementation plan as part of the statewide and metropolitan area transportation plans.

Issues

(1) What parameters should be used to measure the efficiency of intermodal transportation facilities and systems?

(2) What mechanism or institutional arrangements should be established to address intercity, interstate, and international IMS issues?

(3) How should an IMS be coordinated with the statewide and metropolitan area transportation planning processes?

(4) How should IMS requirements vary based on the complexity of the transportation issues of individual States and urbanized areas?

(5) How should the private sector be involved in the IMS?

(6) Should the IMS be applied in a narrow context (connections and

transfers at terminals) or in a broader context (system-wide, multi-modal)?

(7) Are there existing data sources that could be used to provide information on intermodal facilities and systems?

(8) Should the IMS requirement for an implementation plan include a financial analysis?

Traffic Monitoring System

Background

Within one year of enactment, the FHWA, in cooperation with the FTA, will issue requirements and guidelines for traffic monitoring systems for arterial and collector highways and public transportation facilities and equipment. This will include the monitoring of traffic volumes, vehicle classification, and vehicle weights. Development of the guidelines and requirements is expected to reflect: (1) The content of section 303(b) of title 23, U.S.C., (2) the traffic data needs of the management systems called for in section 303(a) of title 23, U.S.C., (3) redesign of the HPMS, (4) EPA guidance relative to the Clean Air Act Amendments of 1990 (Pub. L. 101-549, 104 Stat. 2399), (5) potential AASHTO adoption of "AASHTO Guidelines for Traffic Data Programs" (not yet adopted by the AASHTO), (6) recently issued ASTM Standard E1442-91 "Standard Practice for Highway-Traffic Monitoring," and (7) procedures and techniques documented in the FHWA's "Traffic Monitoring Guide" (report No. HPM-30/R7-90(108)QE, June 1985). Copies of the publications cited in (6) and (7) have been placed in the FHWA docket and are available for review.

Issues

(1) Efforts have been made to identify relevant activities by national organizations in the development of traffic data guidance. Are there national initiatives, in addition to those identified in the background, relevant to the collection of highway traffic data that could be reflected in national guidelines or requirements?

(2) Systems and programs that are likely to require traffic data are identified in the background. Are there topics addressed in the items under points (1) through (7) of the background that should be more thoroughly addressed in national guidelines or requirements?

(3) The intensity of the traffic monitoring effort will be directly related to the uses of the data. What is the needed precision of traffic volume, vehicle classification, and/or vehicle weight data to support pavement and bridge management, safety and geometric analysis, air quality activities, and policy and plan development?

(4) The intensity of the traffic monitoring effort may also be related to whether the information is being applied to large or small scale questions. How does the needed precision of traffic data, as identified in issue (3), vary for system versus site or project specific issues?

(5) Should the traffic monitoring system include only vehicle data or should it also include transit and automobile passenger trips?

(6) Should transit passenger data be included as part of the traffic monitoring system or as part of the public transportation facilities and equipment monitoring system?

Rulemaking Analyses and Notices

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

The actions being considered in this document are required by statute. The FHWA and the FTA have not yet determined if this action would constitute a major rule under Executive Order 12291. However, the FHWA and the FTA consider this to be a significant regulation under the regulatory policies and procedures of the DOT because of the public interest in infrastructure management.

The potential economic impact of this rulemaking is not known at this stage. Therefore, a full regulatory evaluation has not been prepared yet. However, comments should be provided on any cost/benefit data believed to be relevant.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354), the agencies will evalute the effects of this proposal on small entities. Following this evaluation, the agencies will certify whether the proposed action will have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action will be analyzed in accordance with the principles and criteria contained in Executive Order 12612 to determine whether it has sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Numbers 20.205, Highway Planning and Construction, and 20.505 FTA Technical Studies Grants and 20.507, Capital and Operating Assistance Formula Grants. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to these programs.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. Subsequent rules may require collection of information not currently approved for collection.

National Environmental Policy Act

The agencies will analyze regulatory proposals developed as a result of this action under the National Environmental Policy Act of 1969 to determine whether such proposals will have any effect on the quality of the environment.

Regulatory Identification Number

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

List of Subjects in 23 CFR Chapter I and 49 CFR Chapter VI

Bridges, Grant Programs—transportation, Highway safety, Highways and roads, Traffic regulations, Mass transportation.

Authority: 23 U.S.C. 303 and 315; 49 CFR 1.48 and 1.51; 49 U.S.C app. 1607.

Issued on: May 28, 1992.

T.D. Larson,

Administrator.

Brian W. Clymer,

Administrator.

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Part III

Department of Transportation

Maritime Administration

46 CFR Part 221

Regulated Transactions Involving Documented Vessels and Other Maritime Interests; Final rule

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 221

[Docket No. R-125]

RIN 2133-AA79

Regulated Transactions Involving Documented Vessels and Other Maritime Interests

AGENCY: Maritime Administration, DOT.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD) is issuing this final rule to amend and further clarify its regulations implementing statutory changes that became effective on January 1, 1989. Those changes imposed new requirements or standards, and clarified existing ones, for the approval of vessel transfers to noncitizens and noncitizen financing of U.S.-documented vessels. To provide preliminary guidance to the public, MARAD published on February 2, 1989, effective on that date, an interim final rule amending part 221 and soliciting comment from interested persons. A significant number of submissions were received and considered and, to the extent warranted, were reflected in a notice of proposed rulemaking (NPRM) published on April 13, 1990. Once again, substantial comment was received. As a combined result of review of those comments and reconsideration of certain policy objectives, MARAD published a second interim final rule on July 3, 1991, which, in significant respect, further eased the regulatory burden on the affected public. The regulation was published in interim final form in order to permit the public the benefit of those changes and, at the same time, allow for comment on those areas in which the rule substantially differed from the NPRM.

EFFECTIVE DATE: This final rule is effective June 3, 1992.

FOR FURTHER INFORMATION CONTACT: Robert J. Patton, Jr., Deputy Chief Counsel, Maritime Administration, Washington, DC 20590, tel. (202) 366-5712.

SUPPLEMENTARY INFORMATION:

Background

The amendment and codification of the former Ship Mortgage Act, 1920, at new 46 U.S.C. 313, Subch. II contained in section 102 of Public Law 100-710 (enacted November 23, 1988), introduced significant changes to, and clarification of, prior law. For example, the codification expands the categories of persons that can be approved mortgagees of preferred mortgages on documented vessels, whether or not a "citizen of the United States" as defined in section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802). The codification also allows any noncitizen to hold a preferred mortgage on a documented vessel operated only as a fishing vessel, a fish processing vessel, a fish tender vessel or a vessel operated only for pleasure. The Secretary of Transportation ("the Secretary") is likewise given authority to prescribe criteria for approval of corporate citizen and noncitizen trustees, without regard to citizenship, for a mortgage held by such trustee for the benefit of a noncitizen that cannot qualify as a preferred mortgagee.

Public Law 100-710 also amended section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808), to reflect established administrative and judicial interpretation of the prior law that requires, among other things, and with new exceptions, the Secretary's approval of transfers to noncitizens of "control" of citizen-owned documented vessels.

The provisions of Public Law 100-710 that required changes in MARAD's regulations became effective on January 1, 1989. While there was no statutory mandate that implementing regulations be in place when the law became effective, MARAD concluded that it was imperative in the interest of all concerned to publish revised regulations as an interim final rule to facilitate implementation of the new law and to minimize transitional uncertainty. The interim final rule published on February 2, 1989 (54 FR 5382, amended at 54 FR 8195), also allowed fine-tuning of the regulations based on the opportunity for considered evaluation of comments from interested persons before adoption of a final rule.

Apart from the substantive provisions implementing Public Law 100-710, MARAD also made revisions in part 221 in the interest of a more coherent and orderly statement of its regulatory responsibilities with respect to transactions involving citizen-owned documented vessels. These included not only established policy principles but certain tentative new policy guidelines.

In view of the significant changes made by Public Law 100-710 in the statutory provisions to which the regulations in part 221 are addressed, the interim final rule adopted a conservative approach to interpretation and application of the new law, pending the opportunity to obtain comments from all interested parties.

After evaluation of those comments, a number of amendments and clarifications of the interim final rule appeared to be warranted. Mindful of Congress' admonition that MARAD should "temper the consideration of a transfer in interest or control to a (noncitizen) with a concern that the vessel may be needed in time of war or national emergency," and in an attempt to balance this national security role with the desire of many that MARAD completely relinquish its regulatory role in these transactions, MARAD proposed in an April 13, 1990, NPRM (55 FR 14040) a regulation that would significantly relax regulation of the financing and transfer of documented vessels.

MARAD's attempt to codify in these regulations a definition of U.S.-citizen "controlling interest" in vessel-owning business entities was amended to simply restate the section 2 requirements. Given the sweeping general approvals being granted, "controlling interest" for purposes of section 9(c)(1) is of much less importance. However, because of those sweeping approvals MARAD believed it is particularly important that the maritime community be afforded some guidance for those operating in the coastwise trade and others who may be concerned with citizenship status. Substantial discussion was afforded this subject in the preamble to the second interim final rule. (56 FR 30656, July 3, 1991.) That guidance remains current.

The views of interested parties were specifically invited with regard to further liberalization of the section which proposed general approvals. One possibility on which MARAD asked for comment was general approval for transactions involving transfers of an interest in or control of citizen-owned documented vessels to persons who are noncitizens for purposes of section 2, but who, nevertheless, are eligible to document a vessel pursuant to 46 U.S.C. 12102 (documentation citizens). Another possibility was general approval for transactions under section 9(c)(1) so as to place U.S. citizens on an exact par with documentation citizens, which need not apply for such approvals. In all events, MARAD noted, bareboat/demise charters to non-section 2 citizens of vessels operating in coastwise trade would not be included in any such general approvals.

Commenters were generally agreed that MARAD should provide general approval so as to place U.S. citizens on a par with documentation citizens for section 9 transactions in which the vessel remains under U.S. flag.

MARAD determined that such general approval was not inconsistent with the legislative history or with MARAD's

national security responsibilities under section 9. Accordingly, general approval was provided in the second interim final rule for all section 9 transactions other than transfer of registry (except certain transfers to so-called "Bowaters Corporations"), sales for scrapping in a foreign country and bareboat charters of vessels operating in the coastwise trade. It was noted that separate approvals are required by 46 U.S.C. 31322 for preferred mortgagees and that, in addition, approvals may be required by statutes other than section 9 and by contract for certain vessels, such as those constructed with the aid of Title XI financing and/or construction-differential subsidy and those under operating-differential subsidy agreements. Consistent with MARAD's national security role, however, this general section 9 approval would not apply during any period when section 37 of the Shipping Act, 1916, was in effect nor would it apply to transactions proposed to be made with countries with whom trade was prohibited at the time.

Subject to the same national emergency and prohibited country exception, general approval was granted for any federally insured depository institution to be a preferred mortgagee (a number of major banks, because they are foreign-owned, could not heretofore hold a preferred mortgage on a documented vessel).

Another major change was that general approval was granted for time charters to Bowaters Corporations for powered vessels of over 500 gross tons with no special restriction on the sub-time charter of those vessels to other noncitizens. The time charter to Bowaters of barges and smaller powered vessels (the type they are permitted by statute to own) was also given general approval, subject only to the condition that use by the Bowaters Corporations and sub-time charters of those vessels was restricted to the types of use to which they might put owned vessels.

Discussion of Rulemaking Text

The discussion that follows summarizes the comments received on the second interim final rule, notes where changes have been made to the rule, explains the basis for those changes, and, where relevant, why particular recommendations in response to the invitation for comment on that interim final rule have or have not been adopted. A number of commenters commended MARAD for the important step taken in the second interim final rule of significantly easing the regulatory burden on the affected public, without mentioning specific sections. Their comments are acknowledged with appreciation. Reference in this discussion is to the section numbers as published in the second interim final rule, and if a section has been redesignated it is so noted.

Subpart A—Introduction

Subsection 221.1 Purpose

This section is self explanatory. No change.

Section 221.3 Definitions

(a) *"Bowaters Corporation."* A number of comments were received on the subject of Bowaters Corporations. Those comments primarily dealt with the application of section 9 to Bowaters Corporations and will be summarized below in the discussion of § 221.13.

No change.

(b) *"Charter."* No change.

(c) *"Citizen of the United States."* Two commenters directly addressed the § 221.3(c) requirement (based on 46 CFR part 355, MARAD's citizenship regulation) that the "citizenship" test be applied to holders of a controlling interest in a vessel owner at each tier of ownership. One suggested that because the legislative history in this area "is skimpy at best," the requirement may result in certain situations which are "clearly contrary to what must have been Congressional intent." Since the commenter was unaware of substantial support for the requirement, it urged MARAD to remain silent on this question of statutory interpretation. The other suggested that, as applied to coastwise-operated vessels, the requirement "misapplies the governing statute" and that the 75 percent requirement is applicable only to the corporation which owns the vessel.

As noted in the preamble to the second interim final rule, the U.S. Coast Guard addressed and resolved explicitly the issue of application to ownership tiers of the 75 percent requirement for vessels with coastwise endorsements in regulations, 46 CFR part 67—Documentation of Vessels; Controlling Interest (55 FR 51244, December 12, 1990). The Coast Guard determined that the law requires application of the 75 percent requirement at each tier of ownership for entities owning vessels with coastwise endorsements. MARAD agreed with that determination. MARAD's language, while not identical, is entirely consistent with that adopted by the Coast Guard and reflects MARAD's administrative policy in this area. This issue is currently the subject of litigation in which MARAD and the Coast Guard are defendants and plaintiffs are the corporations who submitted the second comment above.

MARAD does not agree that § 221.3(c) of this regulation "misapplies the governing statute." Nowhere does section 2 of the 1916 Act state that a parent of a vessel-owning corporation need only meet the 51 percent requirement for coastwise trading purposes. Section 2(c) states clearly the criteria that each ownership tier must meet when the 75 percent requirement is applied.

> Seventy-five per centum of the interest in a corporation shall not be deemed to be owned by citizens of the United States * * * (c) if, through any contract or understanding, it is so arranged that more than 25 per centum of the voting power in such corporation may be exercised, directly or *indirectly*, in behalf of any person who is not a citizen of the United States; or (d) *if by any other means whatsoever control of any interest in the corporation* in excess of 25 per centum is conferred upon or permitted to be exercised by any person who is not a citizen of the United States (emphasis added)

Therefore, if, for example, a parent corporation has greater than 25 percent noncitizen ownership, "more than 25 per centum of the voting power in such (vessel-owning subsidiary) corporation may be exercised * * * indirectly" in behalf of noncitizen owners of the parent corporation.

Subparagraph (d) of section 2(c) is also applicable to the parent/subsidiary relationship. Under (d), if the parent is more than 25 percent owned by noncitizens, then noncitizens "control * * * [an] interest in the [subsidiary] corporation in excess of 25 per centum * * *."

This interpretation of section 2 is consistent with the legislative history. Congress clearly intended to preclude the use of ingenious lawyering to circumvent the 75 percent U.S.-citizen ownership requirement for coastwise vessels. (56 Cong. Rec. 8029 (1918).) Congress has been advised of Coast Guard's and MARAD's interpretation, and has given no indication that the two agencies' interpretation is not in accord with its intent.

No change is made in this final rule to the application of requisite U.S. citizenship to each tier of ownership.

One commenter suggested that, as worded, this paragraph refers principally to corporations, and omits reference to partnerships or associations and to partnership interests or interests in other entities. The commenter is correct, and the paragraph has been amended accordingly.

One commenter stated that the proposed requirement that all officers

authorized to act in the absence or disability of the President or CEO and Chairman also be citizens is without statutory support. This has been a standard MARAD requirement and is consistent with the citizenship regulations at 46 CFR part 355. Clearly, a statutory requirement that certain corporate officers be citizens cannot be considered fulfilled if persons granted equal corporate authority are not. The commenter suggested that if this requirement is to be retained, "Persons," a defined term when capitalized which includes other than individuals, should be lower case. That has been done.

One commenter questioned the proposed citizenship requirements for partnerships, stating that since the definition in this paragraph is based on section 2, which requires only that a controlling interest of the partnership be citizens of the United States for the partnership to be considered a citizen of the United States, the requirement that all general partners of the partnership must be citizens of the United States goes beyond the statutory definition.

MARAD's position remains that section 2 imposes comparable economic and "controlling interest" requirements for citizenship of partnerships (and other business entities) as it does on corporations, with variations due to the nature of the entity. In the case of partnerships MARAD requires that all general partners be section 2 citizens because under most, if not all, State laws a general partner can bind the partnership no matter how small a participation the general partner has. This is confirmed by sections of the Uniform Partnership Act and the Uniform Limited Partnership Act cited by the commenter which state that all general partners have broad authority to bind their partnerships. The citizenship test in this rule for partnerships is also consistent with the statutory requirement for documentation purposes, and with the Coast Guard's implementing regulations at 46 CFR part 67.

A commenter suggested that where a joint venture is not in effect either a partnership or an association, then only a controlling interest by citizens of the United States in the joint venture should be required. MARAD's requirement that all coventurers be citizens of the United States is consistent with the statutory requirement for documentation purposes, and with the Coast Guard's implementing regulations at 46 CFR part 67 and is being retained. The Maritime Administrator will in all instances determine whether a joint venture is in effect an association, a partnership, or otherwise.

One further point may require clarification. This paragraph, as published in the second interim final rule and for this purpose herein unchanged, provided a definition of "Citizen of the United States" which, with respect to a corporation, requires that the "Controlling Interest" be held by U.S. citizens. 56 FR 30665 (amending 46 CFR 221.3(c)) (July 3, 1991) "Controlling Interest" was defined in section 221.3(d) in terms of control by a U.S. citizen majority and is herein unchanged. It further provided:

> But, in the case of a corporation, partnership, association or joint venture owning a vessel which is operated in the coastwise trade, the amount of interest and voting power required to be owned by or vested in citizens of the United States shall be not less than 75 percent as required by 46 App. U.S.C. 802. 56 FR 30666 (amending 46 CFR 221.3(d)(5)) (July 3, 1991).

This was a change from the corresponding provision in the April 1990 NPRM. The NPRM as proposed would have applied the 75 percent requirement to a corporation "owning *or operating* a vessel in the coastwise trade", rather than to a corporation "owning a vessel which is operated in the coastwise trade." (55 FR 14051, proposed new 46 CFR 221.3(d)(5)) (April 13, 1990) (emphasis added). As MARAD stated in the Discussion of Rulemaking Text of the second interim final rule, the change was made because

> exception was taken to the proposed citizenship requirement in paragraph (d)(5) regarding a corporation, partnership, association or joint venture operating a vessel in coastwise trade. Commenters suggested that would be in excess of statutory authority, since 46 App. U.S.C. 883, the relevant authority, speaks only to ownership of vessels used in the coastwise trade. That is correct, and paragraph (d)(5) has been amended to clarify that the citizen requirement applies to the ownership of vessels operated in the coastwise trade, not to the operator of those vessels. 56 FR 30657 (July 3, 1991).

MARAD believed that the language in § 221.(3)(d) "or operating" could be misinterpreted to appear to establish a requirement not supported by statute.

It should be understood that this change in the July 3 interim final rule does not mean that MARAD has somehow waived the requirement of section 9 that persons not qualifying as section 2 citizens require approval before chartering citizen-owned vessels. The statutory requirement imposed by section 9 that citizen owners of documented vessels must get MARAD's approval before chartering them to persons who are not section 2 citizens could not be more clear. The section 2 definition of "Citizen of the United States" is equally clear. As that definition applies to section 9, a person operating a vessel in the coastwise trade is not a citizen unless at least 75 percent of the ownership resides in citizens.

> Section 802(a) (section 2) delineates which business entities are considered United States citizens "within the meaning of this chapter." Among other requirements, a "controlling interest" in the entity must be owned by United States citizens. For those vessels "in the coastwise trade," however, a greater degree of United States ownership is required; the entity which operates them must be 75 percent United States owned in order to "be deemed a citizen of the United States" "within the meaning of this chapter."

Alaska Excursion Cruises, Inc. v. *United States*, 595 F. Supp. 14, 16 (D.D.C. 1984) MARAD cannot by regulation "waive" the statutory requirement imposed by section 9. What MARAD can do, and what was done in the second interim final rule, is give general approval for certain types of transactions. While noncitizens are granted general approval in the rule for many transactions, in § 221.13(a) "bareboat or demise [c]harters of vessels operating in the coastwise trade" is one of the specifically enumerated exceptions to those general approvals. MARAD's intent could not be more evident.

(d) "*Controlling Interest.*" A commenter suggested that the words "or vested in" are superfluous, are not contained in section 2 and should be stricken. In fact, sections 2 (b) and (c) require that the requisite percentage of stock be "vested in such citizens free from any trust or fiduciary obligation * * *." To avoid any uncertainty, this paragraph has been amended to make clear that the stock must be both owned by and vested in citizens.

(e) "*Documented Vessel.*" No change.

(f) "*Federally Insured Depository Institution.*" One commenter stated that section 31322 of title 46, United States Code, has no definition of a federally insured depository institution nor any requirements as to its nature, its assets or other matters and that since the statute is not so limited, the definition should include any institution that has been approved to have its deposits insured under federal law, which, as to banks and savings associations means those under chapter 16 (sec. 1811 *et seq.*) of title 12 U.S.C. (Banks and Banking) and as to credit unions, federal and state, means those under chapter 14 (sec. 1751 *et seq.*) of Title 12 U.S.C. The commenter noted that the second interim final rule includes the

requirement about combined capital and surplus, which is not contained in the statute, and suggested that MARAD is confusing the requirements of 46 U.S.C. 31328, which pertain to persons who may be a trustee of a mortgage securing an instrument or evidence of indebtedness on a documented vessel, with the requirements of 46 U.S.C. 31322(a)(1)(D)(iii) which pertain to the requirements for a mortgagee of a preferred mortgage.

The definitional requirements to be an approved Federally Insured Depository Institution remain fundamentally unchanged from those published in the first interim final rule in 1989. No other commenter has taken significant issue with them. MARAD has not confused these requirements with those of section 31328, but rather, in exercising its discretion under section 31322, has determined that they are reasonable requirements to use in establishing a category of financial institutions to be granted general approval as preferred mortgagees. As provided in section 221.23(d) others, both citizen and noncitizen, may apply for such approval.

No change.

(g) "*Fishing Vessel.*" No change.

(h) "*Fish Processing Vessel.*" No change.

(i) "*Fish Tender Vessel.*" No change.

(j) "*Hearing Officer.*" No change.

(k) "*Mortgagee.*" One commenter suggested that "and" should be substituted for "or" in the phrase "Documented Vessel or other property," stating that a mortgage on a vessel may include other property but it is not relevant if the mortgage covers only other property and not a vessel. "Or" is used in this paragraph to correspond with 46 U.S.C. 31322(c) which provides for the possibility of separate discharge of individual vessels or property which may be the subject of a single preferred mortgage.

(l) "*Noncitizen.*" No change.

(m) "*Operation Under the Authority of a Foreign Country.*" No change.

(n) "*Party.*" No change.

(o) "*Person.*" No change.

(p) "*Pleasure Vessel.*" No change.

(q) "*Settlement.*" No change.

(r) "*State.*" No change.

(s) "*Transfer.*" A commenter suggested that the word "possession" should be stricken so as to read "passing of control of or an interest in a vessel." The commenter suggested that "possession" may be too broad and is not included in the transfers referred to in sec. 9(c)(1) and is not referred to in the remaining portion of paragraph (s) where it speaks only of an involuntary conveyance of any interest in or control of a documented vessel. The commenter also suggested that "vessel" should be "Documented Vessel." MARAD agrees and the changes have been made. Noting that section 9(c) covers two different transfers (section 9(c)(1) covers the transfers referred to in sec. 221.11(a) and sec. 9(c)(2) covers a documented vessel placed under foreign registry or operation under the authority of a foreign country), a commenter suggested that it might be well to separate the two and have each defined. MARAD does not agree.

(t) "*Trust.*" No change.

(u) "*United States.*" No change.

(v) "*United States Government.*" No change.

(w) "*Vessel Transfer Officer.*" No change.

Section 221.5 Citizenship Declarations

This section implements 46 U.S.C. 31306, vice section 40 of the Shipping Act, 1916 (46 App. U.S.C. 838), which was repealed. The filing of Form MA-899, or evidence of MARAD's written approval with the Coast Guard incident to presentation for filing or recording of instruments transferring an interest in a documented vessel is for the purpose of demonstrating that the transaction is not in violation of section 9. This section has been amended to indicate that a filing is not required for transactions involving fishing and pleasure vessels. It has been further amended to waive the filing requirement, as permitted by 46 U.S.C. 31306, for transactions which are given general approval in this part.

Section 221.7 Applications and Fees

This section is self explanatory.

(a) *Applications.* One commenter noted that this rule only requires that the application (form MA-29) shall be filed "with the Vessel Transfer Officer." It does not specify by whom the form must be filed. In the case of a sale, mortgage or charter of a vessel, this would be the owner of that vessel. However, the commenter suggested that if there is to be a transfer of an interest in or control of a vessel where the vessel is owned by a corporation, a partnership or other entity in which the transfer is not of the vessel but of an interest in the corporation, the partnership or other entity owning the vessel, the owner of the vessel may not know of the transfer of such interest or control. The commenter suggested that the regulations should spell out specifically that the obligation to file rests with the person desiring to make such transfer of an interest in or control of a documented vessel and that form MA-29 should be revised to cover such situations. MARAD does not agree. A vessel's owner should be the one to determine whether it wishes to effect (or is willing to permit) a transfer of an interest in or control of the vessel. MARAD will continue to require that the owner sign the MA-29.

(b) *Fees.* At the suggestion of a commenter, paragraph (b)(1)(A)(iv), which pertains to the "Sale or Transfer of stock of a corporation that is a Citizen of the United States and owns, or is the direct or indirect parent of a corporation that owns, any Documented Vessel, if by such sale or Transfer the Controlling Interest in the corporation is vested in, or held for the benefit of any Noncitizen," has been amended to provide also for the sale or transfer of an interest in a partnership or other entity or of a transfer of an interest in a trust that owns a documented vessel.

(c) *Modification of applications or approvals.* No change.

(d) *Reduction or waiver of fees.* No change.

Subpart B—Transfers to Noncitizens or to Registry or Operation Under Authority of a Foreign Country

Section 221.11 Required Approvals

This section recites the statutory list of transactions that require prior approval of the Maritime Administrator. The statutory exclusion for certain fishing vessels, fish processing vessels, fish tender vessels and pleasure vessels is set forth.

(a) A commenter suggested that since the required approvals under section 9(c)(1) apply only to transfers, including mortgages to noncitizens, and since 46 U.S.C. 31322(a)(1)(D), except for subsection (vi), does not apply to mortgagees who are noncitizens, but under subsection (vi) a noncitizen can be a mortgagee if approved by the Secretary, there is no reason to except 46 U.S.C. 31322(a)(1)(D). The commenter further stated that 46 U.S.C. 31328 is completely independent of section 9(c)(1), and suggested that these two exceptions should be deleted from paragraph (a) or placed in separate subparagraphs as the approval required by section 9(c)(2) is in paragraph (b). To avoid any confusion, these exceptions to the section 9(c)(1) approval requirements have been incorporated at the beginning of paragraph (a) as they are in the statute.

(b) Former paragraph (b) has been redesignated as subparagraph (a)(ii) without change.

(c) Two commenters suggested that this section should clearly state that fishing vessels do not lose their statutory exemption from most approval requirements if they also have a registry

endorsement, so long as any trading under that authority has been only incidental to the vessel's principal employment in the fisheries and directly related thereto. That has been done, and this paragraph has been redesignated as paragraph (b).

Section 221.13 General Approval

In this section MARAD grants administrative approval for most § 221.11(a) transfers within U.S.-flag so as to place U.S. citizens on an exact par with documentation citizens, which need not apply for such approvals. General approval is granted for time charters to Bowaters corporations for powered vessels of over 500 gross tons with no special restriction on the sub-time charter of those vessels to other noncitizens. The time charter to Bowaters corporations of barges and smaller powered vessels (the type they are permitted by statute to own) is also given general approval, subject only to the condition that use by the Bowaters corporations and sub-time charter of those vessels is restricted to the types of use to which they may put owned vessels.

(a) *Transactions other than transfer of registry or operation under authority of a foreign country.* One commenter noted that this section excepts, indirectly, preferred Mortgagees under 46 U.S.C. 31322(a)(1)(D), and directly, trustees under 46 U.S.C. 31328. The commenter suggests reference be included in this section to each of the regulations in this part implementing these statutes. MARAD agrees that this change would provide more consistent guidance to the public, and it has been made.

A number of commenters suggested that this paragraph be clarified to indicate that noncitizen transferees, including noncitizen mortgagees, are excluded from the standing approvals granted only at such time as those specific noncitizens are subject, directly or indirectly, to control of a country at any time when such country is the subject of a U.S. Government prohibition on trade. They further suggested that the exclusion for periods of war or national emergency be similarly limited so that it would apply only to noncitizens subject to the control of countries with which the U.S. is at war or during periods of national emergency. That was MARAD's intent and that paragraph has been so modified.

One commenter noted that subparagraph (a)(4) adds to the prohibition against charters for the carriage of cargoes of any kind to or from certain named countries "Charters * * *, or for operation within the waters of, any of these countries." The commenter assumed that this phrase was added to cover charters of mobile offshore drilling units or other vessels used for the exploration and production of mineral resources in waters off the coasts of the USSR, Libya, Iraq, Vietnam or Cuba, which might also be prohibited by other statutes and that it does not include "innocent" passage through such waters when passing between other countries. That is correct, and this paragraph has been amended for clarity.

(b) *Bowaters corporations.* Two commenters objected generally to MARAD's position that Bowaters corporations are not to be treated as U.S. citizens for all purposes of the Jones Act and section 9. They also objected to MARAD's prohibiting (both in the 1975 policy statement and in these regulations) U.S. citizen owners from bareboat or demise chartering vessels which are to be used in the coastwise trade to Bowaters Corporations. Another commenter, pleased that MARAD has "significantly lessened the administrative and regulatory burden on Bowaters Corporations," also urged that Bowaters Corporations be accorded full citizenship status for purposes of section 9 and be permitted to bareboat charter coastwise vessels.

MARAD continues to disagree with the commenters' position. The legislative history of the Bowaters statute clearly shows that it was intended to be only a "minor exception" to the mandate of the Jones Act that only vessels owned by section 2 citizens of the United States are eligible to engage in the coastwise trade. That history indicates that the original version of the legislation as proposed would have authorized a Bowaters Corporation to operate owned or chartered vessels in the coastwise trade. However, as ultimately enacted, the authorization was confined in scope to vessels owned by the corporation, thus evidencing deliberate Congressional consideration and rejection of statutory permission for a Bowaters Corporation to operate chartered vessels in the coastwise trade without section 9 approval. In MARAD's view, the first sentence of the Bowaters statute (46 App. U.S.C. section 883–1) reads as it does because, in order to accomplish that section's purpose, it was necessary to "deem" qualifying corporations to be citizens for purposes of section 883 (the "Jones Act"). Having done that, it was necessary to "deem" such corporations to be citizens for purposes of section 9, (a) to ensure that any transfer of a vessel by such a corporation to "a person not a citizen of the United States" would be subject to approval of the Secretary and (b) to allow such corporations to purchase additional vessels for proprietary use without the redundancy of requiring administrative approval of a use already authorized by statute.

The result has been that time charters and other arrangements for the hire of citizen-owned documented vessels by Bowaters Corporations require (and routinely receive) MARAD approval. Most time charters in to Bowaters Corporations are now given general approval in this rule. Because of MARAD's longstanding policy against approval of bareboat or demise charters to non section 2 citizens of vessels operating in the coastwise trades, Bowaters companies have not received approval for such charters.

Bowaters representatives also argue that use of the word "owned" in section 883–1 should be read literally as regards the statutory restrictions on use and out-charters of vessels by Bowaters operators and that the restrictions should therefore not apply to vessels chartered in by such operators. They argue that the statutory restrictions on "owned" vessels should not, in light of the "deemed a citizen" language, be applied by MARAD's regulations to chartered vessels. It is their view that Bowaters Corporations should be able to charter in, on any basis, vessels of any type and size, particularly larger vessels, and operate those vessels in for-hire trade or charter them out without restriction.

MARAD again disagrees that Bowaters transactions are exempt from section 9. Section 883–1 and its legislative history clearly reflect Congressional intent that it be a minor exception to the Jones Act. To construe it as authorizing unregulated for-hire transportation by Bowaters companies, or unregulated subchartering out on a time-charter basis, would patently contradict that intent.

This issue is included in the current litigation mentioned in the discussion in § 221.3(d), above, in which MARAD and the Coast Guard are defendants and plaintiffs are corporations who submitted a comment on this paragraph. Except as noted below, no change is made in this final rule in the treatment of Bowaters Corporations.

One commenter noted that subparagraph (b)(2) provides that approval is granted for the "time charter or lease" of a documented vessel of any tonnage by a citizen of the United States to a Bowaters Corporation for operation in the coastwise trade. Since the term "lease" is not defined in the regulations, the commenter asks what the difference

is between a lease of a documented vessel and a charter of such a vessel and whether there is a difference between a "lease" and a "demise or bareboat charter." If the word "lease" was merely substituted for the words "demise charter," the commenter asked whether the former would fall within the general approval under paragraph (b)(2). By use of the term "lease," MARAD intended to encompass arrangements other than time charters that parties might enter into, such as contracts of affreightment. It was not intended to encompass bareboat or demise charters. To avoid confusion, the term "lease" has been removed. Regardless of the description given these charters or other agreements, MARAD will in all cases be guided by their content.

Section 221.15 Approval for Transfer of Registry or Operation Under Authority of a Foreign Country or for Scrapping in a Foreign Country

This section carries forward the present statement of procedures and conditions for approval of transfers of documented vessels to foreign ownership or registry, which will also be applicable to operation of documented vessels under the authority of a foreign country as mandated by Public Law 100-710.

(a) *Vessels of under 1,000 gross tons.* This paragraph has been amended to require, as is done by Transfer Order for vessels of 1,000 gross tons or more, that at the time of transfer there be no liens or encumbrances recorded against the vessel in the U.S. Coast Guard Documentation Office at its last U.S. port of record. It has also been amended to include the exclusion found in other general approval sections for periods of war or national emergency so that it would not apply to noncitizen purchasers subject to the control of countries with which the U.S. is at war or during periods of national emergency.

(b) *Vessels of 1,000 gross tons or more.* This paragraph has been amended, without substantive change, to conform with paragraph (a), clarifying those transfers that are contemplated by its terms.

(c) *Foreign transfer other than for scrapping.* This paragraph has been amended to provide that for a transfer to the government of an acceptable foreign country and in unusual circumstances as determined by the Maritime Administrator (for example a transfer to an entity controlled by the government of an acceptable foreign country), some or all of the conditions in subparagraphs (c)(1)-(4) may be waived.

Subparagraph (c)(1)(ii) has been amended to make clear that it is only a transfer of ownership as a result of death that requires notice to the Vessel Transfer Officer.

Subparagraph (c)(3) has been amended, as was 221.13(a)(4), to clarify what is intended by reference to commercial operation in the waters of certain named countries.

(d) *Foreign transfer for scrapping.* One commenter noted that there could be a sale to a noncitizen of a documented vessel under the general approvals provided in § 221.13, which vessel could be scrapped foreign by such noncitizen without transfer of registry (but after deleting its U.S. documentation) to a foreign country or without operation under authority of a foreign country. The commenter suggested this paragraph be amended so that it is clear that whether or not there is a transfer of registry the conditions required by this paragraph will apply. It has been so amended.

(e) *Resident agent for service.* No change.

(f) *Administrative provisions.* No change.

Section 221.17 Sale of a Documented Vessel by Order of a District Court

This section implements 46 U.S.C. 31329(a), which permits foreclosure sale of a documented vessel by order of a district court to a person eligible to own a documented vessel or to a mortgagee of the vessel.

No change.

Section 221.19 Possession or Sale of Vessels by Mortgagees or Trustees Other Than Pursuant to Court Order

This section permits a mortgagee that is not eligible to own a documented vessel or a citizen-trustee of the mortgage to take possession of a documented vessel in the event of default in lieu of a foreclosure proceeding ordered by a U.S. District Court, but prohibits operation of the vessel in commerce. This section reflects the fact that when a noncitizen mortgagee brings a civil action *in rem* to enforce a preferred mortgage lien on the vessel pursuant to 46 U.S.C. 31325(b)(1), the mortgagee may also petition the court pursuant to 46 U.S.C. 31325(e)(1) for appointment of a receiver and the court may authorize the receiver to operate the vessel on such terms and conditions as the court deems appropriate.

One commenter questioned why MARAD requires in this section that the receiver appointed by the court in an *in rem* proceeding must be a section 2 citizen in order to operate the vessel, suggesting this be broadened to include any person eligible to own a documented vessel. MARAD agrees and this section has been so amended. If the receiver is not a section 2 citizen, the vessel may not be operated in coastwise trade without written approval of the Maritime Administrator.

Subpart C—Preferred Mortgages on Documented Vessels: Mortgagees and Trustees

Section 221.21 Purpose

This section is self explanatory.

No change.

Section 221.23 Notice/Approval of Noncitizen Mortgagees

This section reflects exercise by the Maritime Administrator of the discretion contained in 46 U.S.C. 31322(a)(1)(D)(vi) to approve persons other than those specifically identified in the statute to be mortgagees of preferred mortgages on documented vessels. Blanket approval is granted to certain federally insured depository institutions to hold preferred mortgages on documented vessels, pursuant to authority of 46 U.S.C. 31322(a)(1)(D)(iii), notwithstanding that they may not be citizens of the United States. The statute authorizes such institutions to be mortgagees, unless disapproved. This section provides notice that, pursuant to statute, noncitizens may be mortgagees of vessels that are exempt from foreign transfer restrictions under these regulations.

(a) As with § 221.11(c), commenters suggested that this paragraph should clearly state that fishing vessels do not lose their statutory exemption from mortgagee approval requirements if they also have a registry endorsement, so long as any trading under that authority has been only incidental to the vessel's principal employment in the fisheries and directly related thereto. That has been done.

(b) No change.

(c) As with § 221.13(a)(2), a number of commenters suggested that this paragraph be clarified to indicate that noncitizen mortgagees are excluded from the standing approvals granted only at such time as those specific noncitizens are subject, directly or indirectly, to control of a country at any time when such country is the subject of a U.S. Government prohibition on trade and that the exclusion for periods of war or national emergency be similarly limited so that it would apply only to mortgagees subject to the control of countries with which the U.S. is at war or during periods of national emergency. This has been done.

(d) One commenter suggested that if the policy for the administration of section 9(c)(1) is to threat transfers to noncitizens of documented vessels owned by citizens of the United States the same as such transfers of such vessels owned by noncitizens, then mortgages should be included and, since noncitizens may be mortgagees of preferred mortgages of documented vessels if approved by the Secretary (under section 31328(a)(1)(D)(vi)), all noncitizens should be granted approval to be mortgagees. If blanket approval is granted to sell a documented vessel owned by a citizen of the United States to a noncitizen, and if such a vessel owned by a noncitizen can be both sold and mortgaged to a noncitizen, the commenter stated, then there is no reason such a vessel should not be mortgaged to a noncitizen and the latter be approved as a mortgagee of a preferred mortgage. The commenter requested that, if this suggestion is not adopted, blanket approval be given to any person eligible to own a documented vessel to be a mortgagee of a preferred mortgage of a documented vessel.

No other comment to this effect has been received. MARAD has had little experience with noncitizens acting as mortgagees for preferred mortgages. More experience is needed with the transactional approvals newly provided for before MARAD can responsibly extend broad general approvals to such mortgagees.

No change was made to this paragraph.

Section 221.25 Application for Approval as Mortgagee

This section is self-explanatory.

(a) (New; former paragraph (a) is redesignated as paragraph (b).) This new paragraph was added at the suggestion of a commenter to make clear that noncitizen mortgagees qualifying under § 221.23 (a), (b) or (c) need not file an application.

(b) This is former paragraph (a) redesignated without substantive change.

(c) This is former paragraph (b) redesignated without change.

(d) This is former paragraph (c) redesignated without change.

Section 221.27 Permitted Mortgage Trusts

This section provides that where the United States Government or a State is the mortgagee of a documented vessel or trustee for the benefit of a person not qualifying as a citizen of the United States, issuance of the note or other evidence of indebtedness secured by the mortgage does not require MARAD approval. It makes clear that, unless a person is a mortgagee or trustee approved by MARAD, a note or other evidence of indebtedness secured by a mortgage on a documented vessel may not be issued, assigned, transferred to, or held in trust for the benefit of a noncitizen, by that person to a person who does not qualify as a citizen of the United States under section 2 without the specific approval of MARAD.

One commenter suggested that the role of MARAD in approving mortgage trusts under this section should be expanded to include approval of the trust itself in addition to the trustee. The commenter is concerned about noncitizen beneficiaries of a trust being able to control the administration of the trust and the operation of the vessel subject thereto. Inasmuch as general approval has been given (with only minor exceptions) to all section 9(c)(1) transactions, it would be anomalous for MARAD to review and approve individual mortgage trusts. MARAD will, of course, investigate any alleged violation of laws or regulations it administers, and will hold trustees which it has approved responsible for statutory compliance.

(a) No change.

(b) No change.

(c) One commenter suggested that, in the event a trustee is disapproved, the Maritime Administrator should provide a copy of the disapproval notice and order to the mortgagor in addition to the trustee and the Coast Guard. MARAD may not know the identity of mortgagors for whom a trustee has been acting and therefore cannot undertake to assure individual notice. Public notice will be published in the Federal Register of any disapproval.

(d) (New) One commenter stated that since section 9(c)(1) does not apply to fishing vessels, fish processing vessels, fish tender vessels, or vessels operated only for pleasure and since the requirements of section 31322(a)(1), by reason of paragraph (a)(2) of that section, do not apply to a documented vessel that has a fisheries endorsement or a recreational endorsement or both, then there is no necessity to have a trustee act where a note is issued or transferred to a noncitizen and is secured by a mortgage on such a vessel. However, the commenter suggested, if the mortgagee of those types of vessels desires to have a trustee act as mortgagee there should be no citizenship or other requirements for such trustee. MARAD agrees and this new paragraph recognizes the statutory exception for a mortgage trust just as § 221.23 does for mortgagees.

Section 221.29 Approval of Corporate Citizen Trustee

This section reflects the statutory criteria of 46 U.S.C. 31328(b) (1)–(4) for approval of a corporate trustee that is a citizen of the United States.

(a) No change.

(b) No change.

(c) No change.

(d) No change.

(e) No change.

This section was amended to provide that any approvals granted therein shall terminate if the approved entity fails at any time to meet the applicable requirements.

Section 221.31 Approval of Corporate Noncitizen Trustee

This section implements the authority granted the Secretary by 46 U.S.C. 31328(a)(4) and (b)(5) to permit a federally insured depository institution that is not a citizen of the United States to serve as an approved trustee if it otherwise meets the criteria of 46 U.S.C. 31328(b)(1)–(4) and files an application to that effect with MARAD.

One commenter noted that in the second interim final rule, what had been proposed sections dealing with approval of noncorporate citizen trustees and approval of noncitizen trustees were removed. The reason for the removal was stated in the Discussion section of the second interim final rule—that "[w]hile 46 U.S.C. 31328(a)(3) might seem to indicate that any section 2 citizen could be approved as a trustee, 31328(c) limits approval to those satisfying the qualifications of 31328(b), which include being organized as a corporation." To the commenter this appears to be an unduly restrictive interpretation of that section. The commenter believes the history of this section and of the law which it replaced shows that this interpretation placed on the new statute by MARAD is not required.

MARAD cannot agree. The construction of section 31328 is clear and unambiguous. As here relevant, 31328(a) requires that in order to serve as trustee, an entity must meet certain criteria, and that unless the trustee is a State or the United States Government it must have been approved by the Secretary. Section 31328(b) requires the Secretary's approval of trustee if they are corporations meeting certain criteria. Section 31328(c) requires that if at any time the trustee fails to meet the criteria of 31328(b) (unless it is a State or the United States Government) it shall be disapproved. As a matter of construction, (c) clearly requires all

trustees approved under 31328 (other than a State or the United States Government) to meet the criteria of (b). Were it otherwise, (c) would be qualified to indicate that it only applied to trustees other than those approved under (a). MARAD is unable to reach any other conclusion.

(a) No change.

(b) No change.

Section 221.33 Application for Approval as Trustee

This section is self explanatory.

(a) No change.

(b) No change.

(c) No change.

(d) No change.

(e) (New) This new paragraph was added to make clear that once approved, entities may act as trustee without specific transactional approval.

Section 221.35 Renewal of Approval of Trustee

This section is self explanatory. Trustees will be approved for five years rather than the previous one year approval.

(a) No change.

(b) No change.

Section 221.37 Conditions Attaching to Approvals

This section provides that whenever an approval of a mortgagee or trustee is granted by the Maritime Administrator pursuant to 46 U.S.C. 31322(a)(2)(D)(iii) or (iv) or 31328(a)(3) or (4), that approval shall be conditional on prompt response by the mortgagee or trustee to written requests by the Maritime Administrator for information or reports concerning its continuing compliance with the terms or conditions upon which such approval was granted. The terms or conditions may be those imposed generally by provisions in this part, or specifically in the approval itself. Because there is no renewal required of approvals to serve as mortgagees, and renewal of approvals to serve as trustees is only required every five years, it is necessary that the Maritime Administrator be able to verify from time to time that the person is continuing to abide by such terms and conditions. This section imposes an obligation on an approved mortgagee or trustee to notify the Maritime Administrator promptly of the commencement of a foreclosure action in a foreign jurisdiction involving a documented vessel to which section 9 and this part are applicable and to ensure that the court or other tribunal has proper notice of those provisions. This requirement is intended to give the foreign court or other tribunal notice that sale of the vessel to a noncitizen without prior approval of the Maritime Administrator would be void under U.S. law, and also that a noncitizen purchaser of the vessel could not lawfully transfer the vessel to foreign registry without prior approval of the Maritime Administrator. The notice to the Maritime Administrator of commencement of a foreign foreclosure action is intended to permit consideration of whether such approvals should be given and, if not, an opportunity for the Maritime Administration to intervene in the proceeding. This section also prohibits an approved trustee from assuming any fiduciary obligation in favor of noncitizen beneficiaries that would be in conflict with these regulations. Since these regulations have the force and effect of law, trust obligations that violate them would be unenforceable.

(a) No change.

(b) No substantive change.

(c) No change.

Subpart D—Transactions Involving Maritime Interests in Time of War or National Emergency under 46 App. U.S.C. 835 [Reserved]

This subpart reserves for later implementation regulations concerning foreign transfer of interests in or control of vessels or maritime facilities under the captioned circumstances.

No change.

Subpart E—Civil Penalties

Section 221.61 Purpose

Subpart E proposes procedures MARAD would utilize to assess civil penalties for violations of 46 U.S.C. chapter 313 and of section 9 of the Shipping Act, 1916, as amended. The proposed regulations adopt the informal assessment procedure used by many administrative agencies, and, in particular, those used by the Coast Guard, which has shared responsibilities under chapter 313.

One commenter suggested adding a similar note or explanation as to criminal penalties. MARAD does not have criminal penalty authority and this Subpart applies only to civil penalties. A sentence has been added to the note stating that criminal penalties may also be imposed for violation of these statutes.

Section 221.63 Investigation

No change.

Section 221.65 Criteria for Determining Penalty

No change.

Section 221.67 Stipulation Procedure

No change.

Section 221.69 Hearing Officer

No change.

Section 221.71 Hearing Officer Referral

No change.

Section 221.73 Initial Hearing Officer Consideration

No change.

Section 221.75 Response by Party

No change.

Section 221.77 Disclosure of Evidence

No change.

Section 221.79 Request For Confidential Treatment

No change.

Section 221.81 Counsel

No change.

Section 221.83 Witnesses

No change.

Section 221.85 Hearing Procedures

No change.

Section 221.87 Records

No change.

Section 221.89 Hearing Officer's Decision

No change.

Section 221.91 Appeals

One commenter suggested that there should be a requirement that the written decision on the appeal should be sent to the party by certified or registered mail and, if the decision is adverse and is final agency action, the party should be advised of the right of appeal to the courts from that decision, similar to the provisions in paragraph (c) of § 221.89 with regard to appeal from the decision by the Hearing Officer. This section has been so amended.

Section 221.93 Collection of Civil Penalties

No change.

Subpart F—Other Transfers Involving Documented Vessels [Reserved]

Subpart G—Savings Provisions

Section 221.111 Status of Prior Transactions—Controlling Dates

This section was amended to recognize the effective period of the second interim final rule.

Rulemaking Analyses and Notices

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

This rulemaking has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions. Furthermore, it will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

While this rulemaking does not involve any change in important Departmental policies, it is considered significant under the DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). It implements statutory changes that will substantially effect the regulation of transactions involving U.S.-documented vessels, and has generated significant public interest. However, because the economic impact should be minimal, further regulatory evaluation is not necessary.

Because this final rule recognizes statutory exceptions to the requirements for Maritime Administration approval for certain regulated transactions and significantly relieves restrictions on the affected public in other regards, the Maritime Administration has determined that good cause exists pursuant to 5 U.S.C. 553(d)(1) for it to be effective upon publication.

Federalism

The Maritime Administration has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that these regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Maritime Administration certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

The Maritime Administration has considered the environmental impact of this rulemaking and has concluded that an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This rulemaking contains information collection requirements that were approved by the Office of Management and Budget (Approval No. 2133-0006). OMB approved the latest changes to the information collection requirements in revised part 221 as contained in the second interim final rule (56 FR 30656), published July 3, 1991, on August 30, 1991. No substantial or material modifications to the information collection requirements contained in the second interim final rule have been made in this final rule. However, the revision of forms contained in this rule will be submitted to OMB for review and approval. Therefore, use of present Maritime Administration forms will be continued, pending review and approval of the proposed revisions.

List of Subjects in 46 CFR Part 221

Maritime carriers, Mortgages, Reporting and recordkeeping requirements, Trusts and trustees.

Accordingly, 46 CFR part 221 is revised to read as follows:

Part 221—Regulated Transactions Involving Documented Vessels and Other Maritime Interests

Subpart A—Introduction

221.1 Purpose.
221.3 Definitions.
221.5 Citizenship declarations.
221.7 Applications and fees.

Subpart B—Transfers to Noncitizens or to Registry or Operation Under Authority of a Foreign Country

221.11 Required approvals.
221.13 General approval.
221.15 Approval for transfer of registry or operation under authority of a foreign country or for scrapping in a foreign country.
221.17 Sale of a documented vessel by order of a district court.
221.19 Possession or sale of vessels by mortgagees or trustees other than pursuant to court order.

Subpart C—Preferred Mortgages on Documented Vessels: Mortgagees and Trustees

221.21 Purpose.
221.23 Notice/approval of noncitizen mortgagees.
221.25 Applications for approval as mortgagee.
221.27 Permitted mortgage trusts.
221.29 Approval of corporate citizen trustee.
221.31 Approval of corporate noncitizen trustee.
221.33 Application for approval as trustee.
221.35 Renewal of approval of trustee.
221.37 Conditions attaching to approvals.

Subpart D—Transactions Involving Maritime Interests in Time of War or National Emergency under 46 App. U.S.C. 835 [Reserved]

Subpart E—Civil Penalties

221.61 Purpose.
221.63 Investigation.
221.65 Criteria for determining penalty.
221.67 Stipulation procedure.
221.69 Hearing Officer.
221.71 Hearing Officer referral.
221.73 Initial Hearing Officer consideration.
221.75 Response by party.
221.77 Disclosure of evidence.
221.79 Request for confidential treatment.
221.81 Counsel.
221.83 Witnesses.
221.85 Hearing procedures.
221.87 Records.
221.89 Hearing Officer's decision.
221.91 Appeals.
221.93 Collection of civil penalties.

Subpart F—Other Transfers Involving Documented Vessels [Reserved]

Subpart G—Savings Provisions

221.111 Status of prior transactions—controlling dates.

Authority: 46 App. U.S.C. 802, 803, 808, 835, 839, 841a, 1114(b), 1195; 46 U.S.C. chs. 301 and 313; 49 U.S.C. 336; 49 CFR 1.66.

Subpart A—Introduction

§ 221.1 Purpose.

(a) This part implements statutory responsibilities of the Secretary of Transportation (the Secretary) with respect to:

(1) Approval pursuant to 46 U.S.C. ch. 313, subch. II of Mortgagees and trustees of preferred mortgages on vessels documented under the laws of the United States;

(2) The regulation pursuant to 46 App. U.S.C. 808 of transactions involving transfers of:

(i) An interest in or control of Documented Vessels owned by Citizens of the United States (including the Transfer of a Controlling Interest in such owners) to Noncitizens or;

(ii) A Documented Vessel to registry or Operation under Authority of a Foreign Country or for scrapping in a foreign country; and

(3) Transactions involving maritime interests in time of war or national emergency under 46 App. U.S.C. 835.

(b) The responsibilities in paragraph (a) (1) through (3) of this section have been delegated by the Secretary of the Maritime Administrator.

§ 221.3 Definitions.

For the purpose of this part, when used in capitalized form:

(a) *Bowaters Corporation* means a Noncitizen corporation organized under the laws of the United States or of a

State that has satisfied the requirements of 46 App. U.S.C. 883–1(a)–(e) and holds a valid Certificate of Compliance issued by the Coast Guard.

(b) *Charter* means any agreement or commitment by which the possession or services of a vessel are secured for a period of time, or for one or more voyages, whether or not a demise of the vessel.

(c) *Citizen of the United States* means a Person (including receivers, trustees and successors or assignees of such Persons as provided in 46 App. U.S.C. 803), including any Person (stockholder, partner or other entity) who has a Controlling Interest in such Person, any Person whose stock or equity is being relied upon to establish the requisite U.S. citizen ownership, and any parent corporation, partnership or other entity of such Person at all tiers of ownership, who, in both form and substance at each tier of ownership, satisfies the following requirements—

(1) An individual who is a Citizen of the United States, by birth, naturalization or as otherwise authorized by law;

(2) A corporation organized under the laws of the United States or of a State, the Controlling Interest of which is owned by and vested in Citizens of the United States and whose president or chief executive officer, chairman of the board of directors and all officers authorized to act in the absence or disability of such persons are Citizens of the United States, and no more of its directors than a minority of the number necessary to constitute a quorum are Noncitizens;

(3) A partnership organized under the laws of the United States or of a State, if all general partners are Citizens of the United States and a Controlling Interest in the partnership is owned by Citizens of the United States;

(4) An association organized under the laws of the United States or of a State, whose president or other chief executive officer, chairman of the board of directors (or equivalent committee or body) and all officers authorized to act in their absence or disability are Citizens of the United States, no more than a minority of the number of its directors, or equivalent, necessary to constitute a quorum are Noncitizens, and a Controlling Interest in which is vested in Citizens of the United States;

(5) A joint venture, if it is not determined by the Maritime Administrator to be in effect an association or a partnership, which is organized under the laws of the United States or of a State, if each coventurer is a Citizen of the United States. If a joint venture is in effect an association, it will be treated as is an association under paragraph(c)(4) of this section, or, if it is in effect a partnership, will be treated as is a partnership under paragraph (c)(3) of this section; or

(6) A Trust described in paragraph (t)(1) of this section.

(d) *Controlling interest* owned by and vested in Citizens of the United States means that—

(1) In the case of a corporation:

(i) Title to a majority of the stock thereof is owned by and vested in Citizens of the United States, free from any trust or fiduciary obligation in favor of any Noncitizen;

(ii) The majority of the voting power in such corporation is vested in Citizens of the United States;

(iii) Through no contract or understanding is it so arranged that the majority of the voting power may be exercised, directly or indirectly, in behalf of any Noncitizen; and

(iv) By no other means whatsoever control of the corporation is conferred upon or permitted to be exercised by any Noncitizen;

(2) In the case of a partnership, all general partners are Citizens of the United States and ownership and control of a majority of the partnership interest, free and clear of any trust or fiduciary obligation in favor of any Noncitizen, is vested in a partner or partners each of whom is a Citizen of the United States;

(3) In the case of an association, a majority of the voting power is vested in Citizens of the United States, free and clear of any trust or fiduciary obligation in favor of any Noncitizen; and

(4) In the case of a joint venture, a majority of the equity is owned by and vested in Citizens of the United States free and clear of any trust or fiduciary obligation in favor of any Noncitizen; but

(5) In the case of a corporation, partnership, association or joint venture owning a vessel which is operated in the coastwise trade, the amount of interest and voting power required to be owned by and vested in Citizens of the United States shall be not less than 75 percent as required by 46 App. U.S.C. 802.

(e) *Documented vessel* means a vessel documented under chapter 121, title 46, United States Code or a vessel for which an application for such documentation is pending.

(f) *Federally insured depository institution* means a corporation or association organized and doing business under the laws of the United States or of a State, authorized by such laws to accept deposits from the public, which has a combined capital and surplus (as stated in its most recent published report of condition) of at least $3,000,000, and whose deposit accounts are insured by any of the following agencies—

(1) Federal Deposit Insurance Corporation (FDIC);

(2) Savings Association Insurance Fund (SAIF); or

(3) National Credit Union Administration (NCUA).

(g) *Fishing vessel* means a vessel that commercially engages in the planting, cultivating, catching, taking, or harvesting of fish, shellfish, marine animals, pearls, shells, or marine vegetation or an activity that can reasonably be expected to result in the planting, cultivating, catching, taking, or harvesting of fish, shellfish, marine animals, pearls, shells, or marine vegetation.

(h) *Fish processing vessel* means a vessel that commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling.

(i) *Fish tender vessel* means a vessel that commercially supplies, stores, refrigerates, or transports (except in foreign commerce) fish, fish products, or materials directly related to fishing or the preparation of fish to or from a Fishing Vessel, Fish Processing Vessel, or another Fish Tender Vessel or a fish processing facility.

(j) *Hearing Officer* means an individual designated by the Maritime Administrator to conduct hearings under Subpart E of this part and assess civil penalties.

(k) *Mortgagee* means—

(1) A Person to whom a Documented Vessel or other property is mortgaged; or

(2) When a mortgage on a vessel involves a trust, the trustee that is designated in the trust agreement, unless the context indicates otherwise.

(l) *Noncitizen* means a Person who is not a Citizen of the United States.

(m) *Operation under the authority of a foreign country* means any agreement, undertaking or device by which a Documented Vessel is voluntarily subjected to any restriction or requirement, actual or contingent, under the laws or regulations of a foreign country or instrumentality thereof concerning use or operation of the vessel that is or may be in derogation of the rights and obligations of the owner, operator or master of the vessel under the laws of the United States, unless such restriction or requirement is of general applicability and uniformly imposed by such country or instrumentality in exercise of its sovereign prerogatives with respect to

public health, safety or welfare, or in implementation of accepted principles of international law regarding cabotage or safety of navigation.

(n) *Party* means the Person alleged to have violated the statute or regulations for which a civil penalty may be assessed.

(o) *Person* includes individuals and corporations, partnerships, joint ventures, associations and Trusts existing under or authorized by the laws of the United States or of a State or, unless the context indicates otherwise, or any foreign country.

(p) *Pleasure vessel* means a vessel that has been issued a Certificate of Documentation with a recreational endorsement and is operated only for pleasure pursuant to 46 U.S.C. 12109.

(q) *Settlement* means the process whereby a civil penalty or other disposition of the alleged violation is agreed to by the Hearing Officer and the Party in accordance with § 221.73 of this part.

(r) *State* means a State of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.

(s) *Transfer* means the passing of control of or an interest in a Documented Vessel and includes the involuntary conveyance by a foreign judicial or administrative tribunal of any interest in or control of a Documented Vessel owned by a Citizen of the United States to a Noncitizen that is not eligible to own a Documented Vessel.

(t) *Trust* means:

(1) In the case of ownership of a Documented Vessel, a Trust that is domiciled in and existing under the laws of the United States, or of a State, of which the trustee is a Citizen of the United States and a Controlling Interest in the Trust is held for the benefit of Citizens of the United States; or

(2) In the case of a mortgage trust, a trust that is domiciled in and existing under the laws of the United States, or of a State, for which the trustee is authorized to act on behalf of Noncitizen beneficiaries pursuant to 46 U.S.C. 31328(a) and subpart C of this part.

(u) *United States,* when used in the geographic sense, means the States of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States; when used in other than the geographic sense, it means the United States Government.

(v) *United States Government* means the Federal Government acting by or through any of its departments or agencies.

(w) *Vessel Transfer Officer* means the Maritime Administration's Vessel Transfer and Disposal Officer, whose address is MAR-745.1, Maritime Administration, United States Department of Transportation, Washington, D.C. 20590, or that person's delegate.

§ 221.5 Citizenship declarations.

(a) Pursuant to 46 U.S.C. 31306(a), when an instrument transferring an interest in a Documented Vessel owned by a Citizen of the United States is presented to the United States Government for filing or recording, the Person filing shall submit therewith Maritime Administration Form No. MA-899 so it may be determined if sections 9 or 37 of the Shipping Act of 1916 (46 App. U.S.C. 808 and 837) apply to the transaction. Form No. MA-899 is available from the Coast Guard Documentation Office at the port of record of the vessel or from the Vessel Transfer Officer.

(b) The filing required by paragraph (a) of this section is not required for transactions involving vessel types described in § 221.11(b)(1)(i) through (iv) of this part.

(c) The filing required by paragraph (a) of this section is waived for transactions which are given general approval in this part.

(d) If the transfer of interest is one which requires written approval of the Maritime Administrator, the Person filing shall submit therewith evidence of that approval.

(e) A declaration filed by any Person other than an individual shall be signed by an official authorized by that Person to execute the declaration.

§ 221.7 Applications and fees.

(a) *Applications.* Whenever written approval of the Maritime Administrator is required for transfers to Noncitizens or to foreign registry or Operation Under Authority of a Foreign Country, or pursuant to a Maritime Administration contract or Order, an application on Maritime Administration Form MA-29 or MA-29B giving full particulars of the proposed transaction shall be filed with the Vessel Transfer Officer.

(b) *Fees.* Applications for written approval of any of the following transactions shall be accompanied by the specified fee:

(1) Transactions requiring approval for:

(i) Sale and delivery by a Citizen of the United States to a Noncitizen, or Transfer to foreign registry or Operation Under Authority of a Foreign Country, of a Documented Vessel, per vessel—

(A) Of 1,000 gross tons and over	$325
(B) Of less than 1,000 gross tons	170
(ii) Mortgage of, or Transfer of any interest in, or control of, a Documented Vessel owned by a Citizen of the United States to a Noncitizen, per vessel	250
(iii) Charter of a Documented Vessel owned by a Citizen of the United States to a Noncitizen, per vessel	250
(iv). Sale or Transfer of an interest in or the control of an interest in an entity that is a Citizen of the United States and owns, or is the direct or indirect parent of an entity that owns, any Documented Vessel, if by such sale or Transfer the Controlling Interest in such entity is vested in, or held for the benefit of, any Noncitizen	325
(v) Application for approval to act as Mortgagee or trustee for an indebtedness secured by a preferred mortgage on a Documented Vessel, and all required renewal applications	215
(2) Transactions requiring written approval pursuant to a Maritime Administration contract or Order:	
(i) Transfer of ownership or registry, or, both, of the vessel, per vessel	260
(ii) Sale or Transfer of any interest in the owner of the vessel, if by such sale or Transfer the Controlling Interest in the owner is vested in, or held for the benefit of, a Noncitizen, per vessel	235
(iii) Charter of the vessel to a Noncitizen, per vessel	240
(iv) Transfer of title to a vessel subject to a mortgage in favor of the United States and to have the mortgage assumed by a new mortgagor, per vessel	400

(c) *Modification of applications or approvals.* An application for modification of any pending application or prior approval, or of an outstanding Maritime Administration contract or Order, shall be accompanied by the fee established for the original application.

(d) *Reduction or waiver of fees.* The Maritime Administrator, in appropriate circumstances, and upon a written finding, may reduce any fee imposed by paragraph (b) or (c) of this section, or may waive the fee entirely in extenuating circumstances where the interest of the United States Government would be served.

Subpart B—Transfers to Noncitizens or to Registry or Operation Under Authority of a Foreign Country

§ 221.11 Required approvals.

(a) Except as provided in sections 31322(a)(1)(D) and 31328 of title 46, United States Code, a Person may not, without the approval of the Maritime Administrator:

(1) Sell, mortgage, lease, charter, deliver, or in any manner Transfer to a Noncitizen, or agree (unless such agreement by its terms requires approval of the Maritime Administrator

in order to effect such transfer), to sell, mortgage, lease, charter, deliver, or in any manner Transfer to a Noncitizen, any interest in or control of a Documented Vessel owned by a Citizen of the United States or a vessel the last documentation of which was under the laws of the United States except as provided in this part; or

(2) Place any Documented Vessel, or any vessel the last documentation of which was under the laws of the United States, under foreign registry or operate that vessel under the authority of a foreign country, except as provided in this part.

(b)(1) The approvals required by paragraph (a)(1) of this section are not required for the following Documented Vessel types if the vessel has been operated exclusively and with *bona fides* for one or more of the following uses, under a Certificate of Documentation with an appropriate endorsement and no other, since initial documentation or renewal of its documentation following construction, conversion, or transfer from foreign registry, or, if it has not yet so operated, if the vessel has been designed and built and will be operated for one or more of the following uses:

(i) A Fishing vessel;

(ii) A Fish processing vessel;

(iii) A Fish tender vessel; and

(iv) A Pleasure vessel.

(2) A vessel of a type specified in paragraphs (b)(1)(i) through (iii) of this section will not be ineligible for the approval granted by this paragraph by reason of also holding or having held a Certificate of Documentation with a coastwise or registry endorsement, so long as any trading under that authority has been only incidental to the vessel's principal employment in the fisheries and directly related thereto.

§ 221.13 General approval.

(a) *Transactions other than transfer of registry or operation under authority of a foreign country.* (1) The Maritime Administrator hereby grants the approval required by 46 App. U.S.C. 808(c)(1) for the sale, mortgage, lease, Charter, delivery, or any other manner of Transfer to a Noncitizen of an interest in or control of a Documented Vessel owned by a Citizen of the United States or a vessel the last documentation of which was under the laws of the United States except:

(i) As limited by paragraph (b) of this section for transfers to Bowaters Corporations;

(ii) As limited by § 221.15(d) of this part for sales for scrapping;

(iii) As limited by § § 221.23 and 221.25 of this part for approval of preferred Mortgagees and by § § 221.27, 221.29, 221.31 and 221.33 for permitted mortgage trusts and approval of their trustees; and

(iv) Bareboat or demise Charters of vessels operating in the coastwise trade.

A Documented Vessel shall remain documented following any transaction approved by this paragraph (a)(1). Other approvals may be required by statutes other than 46 App. U.S.C. 808(c)(1) and/or by contract for certain vessels.

(2) The approvals granted by paragraph (a)(1) of this section shall not apply to any such Transfer proposed to be made during any period when the United States is at war or during any national emergency, the existence of which has invoked the provisions of section 37 of the Shipping Act, 1916, as amended (46 App. U.S.C. 835), or to any such Transfer proposed to be made to a citizen of any country when such transfer would be contrary to the foreign policy of the United States as declared by an executive department of the United States.

(3) An information copy of any sales-agreement, bareboat or demise Charter, or mortgage entered into pursuant to this approval shall be submitted to the Vessel Transfer Officer not later than thirty days following a request by that official.

(4) Except for Charters to Noncitizens of documented bulk cargo vessels engaged in carrying bulk raw and processed agricultural commodities from the United States to ports in the geographic area formerly known as the Union of Soviet Socialist Republics, or to other permissible ports of discharge for transshipment to the geographic area formerly known as the Union of Soviet Socialist Republics, pursuant to an operating- differential subsidy agreement that is consistent with the requirements of 46 CFR parts 252 and 294, this approval excludes and does not apply to Transfers to a Person who is subject, directly or indirectly, to control of an entity within the geographic area formerly known as the Union of Soviet Socialist Republics, Latvia, Lithuania, Estonia, Libya, Iraq, Bulgaria, Albania, North Korea, Laos, Cambodia, Mongolian Peoples Republic, Vietnam, or Cuba, unless such transferee is an individual who has been lawfully admitted into, and resides in, the United States, or to Charters for the carriage of cargoes of any kind to or from, or for commercial operation while within the waters of (as distinct from passage through), any of these countries. This list of countries is subject to change from time to time. Information concerning current restrictions may be obtained from the Vessel Transfer Officer.

(b) *Bowaters corporations.* (1) For documented Vessels other than those operating in the coastwise trade, the approvals granted in paragraph (a) of this section shall apply to Bowaters Corporations.

(2) The Maritime Administrator hereby grants approval for the time charter of a Documented Vessel of any tonnage by a Citizen of the United States to a Bowaters Corporation for operation in the coastwise trade, subject to the following conditions:

(i) If non-self-propelled or, if self-propelled and less than 500 gross tons, no such vessel shall engage in the fisheries or in the transportation of merchandise or passengers for hire between points in the United States embraced within the coastwise laws except as a service for a parent or subsidiary corporation; and

(ii) If non-self-propelled or, if self-propelled and less than 500 gross tons, no such vessel may be subchartered or subleased from any such Bowaters Corporation except:

(A) At prevailing rates;

(B) For use otherwise than in the domestic noncontiguous trades;

(C) To a common or contract carrier subject to part 3 of the Interstate Commerce Act, as amended, which otherwise qualifies as a Citizen of the United States and which is not connected, directly or indirectly, by way of ownership or control with such corporation.

§ 221.15 Approval for transfer of registry or operation under authority of a foreign country or for scrapping in a foreign country.

(a) *Vessels of under 1,000 gross tons.* (1) The Maritime Administrator hereby grants approval for the Transfer to foreign registry and flag or Operation Under the Authority of a Foreign Country or for scrapping in a foreign country of Documented Vessels or vessels the last documentation of which was under the laws of the United States and which are of under 1,000 gross tons if at the time of such Transfer there are no liens or encumbrances recorded against the vessel in the U.S. Coast Guard Documentation Office at its last U.S. port of record.

(2) This approval shall not apply if the vessel is to be placed under the registry, or operated under the authority of, or scrapped in any country listed in § 221.13(a)(4) of this part.

(3) This approval shall not apply to any such Transfer proposed to be made during any period when the United States is at war or during any national emergency, the existence of which has

invoked the provisions of section 37 of the Shipping Act, 1916, as amended (46 App. U.S.C. 835), or to any such Transfer proposed to be made to a citizen of any country when such transfer would be contrary to the foreign policy of the United States as declared by an executive department of the United States.

(b) *Vessels of 1,000 gross tons or more.* (1) Applications for approval of Transfer to foreign registry and flag or Operation Under the Authority of a Foreign Country or for scrapping in a foreign country of Documented Vessels or vessels the last documentation of which was under the laws of the United States and which are of 1,000 gross tons or more will be evaluated in light of—

(i) The type, size speed, general condition, and age of the vessel;

(ii) The acceptability of the owner, proposed transferee and the country of registry or the country under the authority of which the vessel is to be operated; and

(iii) The need to retain the vessel under U.S. documentation, ownership or control for purposes of national defense, maintenance of an adequate merchant marine, foreign policy considerations or the national interest.

(2) If the application is found to be acceptable under the criteria of this paragraph, approval will be granted. For vessels of under 3,000 gross tons, in the absence of unusual circumstances, no conditions will be imposed on the transfer. For vessels of 3,000 gross tons and above, approval will be granted upon acceptance by the owner of the terms and conditions referred to in paragraph (c) or (d) of this section, as applicable. Additional terms deemed appropriate by the Maritime Administrator may be imposed. The terms and conditions shall be contained in an Approval Notice and Agreement ("Contract") executed prior to issuance of the Transfer Order. Unless otherwise specified, the terms and conditions shall remain in effect for the period of the remaining economic life of the vessel or for the duration of a national emergency proclaimed by the President prior or subsequent to such Transfer, whichever period is longer. The economic life of a vessel for purposes of this regulation is deemed to be twenty (20) years for tankers and other liquid bulk carriers and twenty-five (25) years for other vessel types. This period is to be calculated from the date the vessel was originally accepted for delivery from the shipbuilder, but may be extended for such additional period of time as may be determined by the Maritime Administrator if the vessel has been substantially rebuilt or modified in a manner that warrants such extension.

(c) *Foreign transfer other than for scrapping.* If the foreign Transfer of a vessel referred to in paragraph (b) of this section is other than for the purpose of scrapping the vessel and other than a Transfer to the government of an acceptable foreign country, and in the absence of unusual circumstances as determined by the Maritime Administrator (for example a Transfer to an entity controlled by the government of an acceptable foreign country), the following conditions will be imposed on the transferee:

(1) *Ownership.* (i) Without the prior written approval of the Maritime Administrator, there shall be no further Transfer of ownership, change in the registry or Operation of such vessel Under the Authority of a Foreign Country; provided, however, that, if the Transfer of ownership is to a Citizen of the United States or other entity qualified under 46 U.S.C. 12102(a) to document a vessel and the vessel is thereafter documented under U.S. law, no prior written approval shall be required but the transferee shall notify the Vessel Transfer Officer in writing of such change in the ownership and the U.S. documentation within thirty (30) days after such change in ownership and documentation.

(ii) The restrictions contained in paragraph (c)(1)(i) of this section shall not be applicable to a change in ownership resulting from the death of the vessel owner, so long as notification of any such Transfer of ownership occurring by reason of death shall be filed with the Vessel Transfer Officer within 60 days from the date of such Transfer identifying with particularity the name, legal capacity, citizenship, current domicile or address of, or other method of direct communication with, the transferee(s).

(2) *Requisition.* The vessel shall, if requested by the United States, be sold or Chartered to the United States on the same terms and conditions upon which a vessel owned by a Citizen of the United States or documented under U.S. law could be requisitioned for purchase or Charter pursuant to section 902 of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1242). If the vessel is under the flag of a country that is a member of the North Atlantic Treaty Organization (NATO), the Maritime Administrator will consider this condition satisfied if the owner furnishes satisfactory evidence that the vessel is already in noncommercial service under the direction of the government of a NATO country.

(3) *Trade.* Without the prior written approval of the Maritime Administrator, the vessel shall not carry cargoes of any kind to or from, or be operated commercially while within the waters of (as distinct from passage through), a country referred to in § 221.13(a)(4) of this part, nor shall there be any Charter or other Transfer of an interest in the vessel, other than to a Citizen of the United States, for carriage of cargoes of any kind to or from, or for commercial operation while within the waters of (as distinct from passage through), any such country.

(4) *Default.* In the event of default under any or all of the conditions set forth in paragraphs (c) (1), (2) or (3) of this section, the owner shall pay to the Maritime Administration, without prejudice to any other rights that the United States may have, as liquidated damages and not as a penalty, the sum of not less than $25,000 or more than $1,000,000, as specified in the contract, and the vessel shall be subject to the penalties imposed by 46 App. U.S.C. 808 and 839. Pursuant to 46 App. U.S.C. 836, the Maritime Administrator may remit forfeiture of the vessel upon such conditions as may be required under the circumstances of the particular case, including the payment of a sum in lieu of forfeiture, and execution of a new agreement containing substantially the same conditions set forth above and such others as the Maritime Administrator may deem appropriate and which will be applicable to the vessel for the remaining period of the original agreement. In order to secure the payment of any such sums of money as may be required as a result of default, the transferee shall contractually agree, in form and substance approved by the Chief Counsel of the Maritime Administration, to comply with the above conditions and to provide a United States commercial surety bond or other surety acceptable to the Maritime Administrator for an amount not less than $25,000 and not more than $1,000,000, depending upon the type, size and condition of the vessel. "Other surety" may be any one of the following:

(i) An irrevocable letter of credit, which is acceptable to the Maritime Administrator, issued or guaranteed by a Citizen of the United States or by a Federally Insured Depository Institution;

(ii) A pledge of United States Government securities;

(iii) The written guarantee of a friendly government of which the transferee is a national;

(iv) A written guarantee or bond by a United States corporation found by the Maritime Administrator to be financially

qualified to service the undertaking to pay the stipulated amount;

(v) If the transferee is controlled in any manner by one or more Citizens of the United States, a contractual agreement in form and substance acceptable to the Chief Counsel of the Maritime Administration by the transferee and the Citizens of the United States with authority to exercise such control, if found by the Maritime Administrator to be financially qualified, jointly and severally to pay the stipulated amount, such agreement to be secured by the written guarantee of the transferee and each of the Citizens of the United States or other form of guarantee as may be required by the Maritime Administrator; or

(vi) Any other surety acceptable to the Maritime Administrator and approved as to form and substance by the Chief Counsel of the Maritime Administration.

(d) *Foreign transfer for scrapping.* If the transfer of control, whether or not there is a transfer of registry, of a vessel referred to in paragraph (b) of this section is for the purpose of scrapping the vessel abroad, the following conditions will be imposed on the transferee:

(1) The vessel or any interest therein shall not be subsequently sold to any Person without the prior written approval of the Maritime Administrator, nor shall it be used for the carriage of cargo or passengers of any kind whatsoever.

(2) Within a period of 18 months from the date of approval of the sale, the hull of the vessel shall be completely scrapped, dismantled, dismembered, or destroyed in such manner and to such extent as to prevent the further use thereof, or any part thereof, as a ship, barge, or any other means of transportation.

(3) The scrap resulting from the demolition of the hull of the vessel, the engines, machinery, and major items of equipment shall not be sold to, or utilized by, any citizen or instrumentality of a country referred to in § 221.13(a)(4) of the part, nor may such scrap be exported to these countries. The engines, machinery and major items of equipment shall not be exported to destinations within the United States.

(4) In the event of default under any or all of the conditions set forth in paragraphs (d) (1), (2) or (3) of this section, the transferee shall pay to the Maritime Administration, without prejudice to any other rights that the United States may have, as liquidated damages and not as a penalty, the sum of not less than $25,000 or more than $1,000,000, as specified in the contract, depending upon the size, type and condition of the vessel. This payment shall be secured by a surety company bond or other surety satisfactory to the Maritime Administrator. "Other surety" may be one of those set out in paragraph (c)(4) (i) through (vi) of this section.

(5) There shall be filed with the Vessel Transfer Officer a certificate or other evidence satisfactory to the Chief Counsel of the Maritime Administration, duly attested and authenticated by a United States Consul, that the scrapping of the vessel (hull only) and disposal or utilization of the resultant scrap and the engines, machinery and major items of equipment have been accomplished in accord with paragraphs (d) (2) and (3) of this section.

(e) *Resident agent for service.* (1) Any proposed foreign transferee shall, prior to the issuance and delivery of the Transfer Order covering the vessel or vessels to be transferred, designate and appoint a resident agent in the United States to receive and accept service of process or other notice in any action or proceeding instituted by the United States relating to any claim arising out of the approved transaction.

(2) The resident agent designated and appointed by the foreign transferee shall be subject to approval by the Maritime Administrator. To be acceptable, the resident agent must maintain a permanent place of business in the United States and shall be a banking or lending institution, a ship-owner or ship-operating corporation or other business entity that is satisfactory to the Maritime Administrator.

(3) Appointment and designation of the resident agent shall not be terminated, revoked, amended or altered without the prior written approval of the Maritime Administrator.

(4) The foreign transferee shall file with the Vessel Transfer Officer a written copy of the appointment of the resident agent, which copy shall be fully endorsed by the resident agent stating that it accepts the appointment, that it will act thereunder and that it will notify the Vessel Transfer Officer in writing in the event it becomes disqualified from so acting by reason of any legal restrictions. Service of process or notice upon any officer, agent or employee of the resident agent at its permanent place of business shall constitute effective service on, or notice to, the foreign transferee.

(f) *Administrative provisions.* (1) The subsequent Transfer of ownership or registry of vessels that have been Transferred to foreign ownership or registry or both, or to Operation Under the Authority of a Foreign Country, that remain subject to Maritime Administration contractual control as set forth above, will be subject to substantially the same Maritime Administration policy considerations that governed the original Transfer, including such changes or modifications that have subsequently been made and continued in effect. Approval of these subsequent Transfers will be subject to the same terms and conditions governing the foreign Transfer at the time of the previous Transfer, as modified (if applicable).

(2) The authorization for all approved transactions, either by virtue of 46 App. U.S.C. 808, 835 and 839 or the Maritime Administration's Contract with the vessel owner, will be by notification in the form of a Transfer Order upon receipt of the executed Contract, the required bond or other surety, and other supporting documentation required by the Contract.

(3) In order that the Maritime Administration's records may be maintained on a current basis, the transferor and transferee of the vessel are required to notify the Vessel Transfer Officer of the date and place where the approved transaction was completed, and the name of the vessel, if changed. This information relating to the completion of the transaction and any change in name shall be furnished as soon as possible, but not later than 10 days after the same has occurred.

§ 221.17 Sale of a documented vessel by order of a district court.

(a) A Documented Vessel may be sold by order of a district court only to a Person eligible to own a Documented Vessel or to a Mortgagee of the vessel. Unless waived by the Maritime Administrator, a Person purchasing the vessel pursuant to court order or from a Mortgagee not eligible to document a vessel who purchased the vessel pursuant to a court order must document the vessel under chapter 121 of title 46, United States Code.

(b) A Person purchasing the vessel, pursuant to court order or from a Mortgagee not eligible to document a vessel who purchased the vessel pursuant to a court order, and wishing to obtain waiver of the documentation requirement must submit a request including the reason therefor to the Vessel Transfer Officer.

(c)(1) A Mortgagee not eligible to own a Documented Vessel shall not operate, or cause operation of, the vessel in commerce. Except as provided in paragraph (c)(2) of this section, the vessel may not be operated for any purpose without the prior written approval of the Maritime Administrator.

(2) The Maritime Administrator hereby grants approval for a Mortgagee not eligible to own a Documented Vessel to operate the vessel to the extent necessary for the immediate safety of the vessel or for repairs, drydocking or berthing changes, but only under the command of a Citizen of the United States.

§ 221.19 Possession or sale of vessels by mortgagees or trustees other than pursuant to court order.

(a) A Mortgagee or a trustee of a preferred mortgage on a Documented Vessel that is not eligible to own a Documented Vessel does not require the express approval of the Maritime Administrator to take possession of the vessel in the event of default by the mortgagor other than by foreclosure pursuant to 46 U.S.C. 31329, if provided for in the mortgage or a related financing document, but in such event the vessel may not be operated, or caused to be operated, in commerce. The vessel may not, except as provided in paragraph (b) of this section, be operated for any other purpose unless approved in writing by the Maritime Administrator, nor may the vessel be sold to a Noncitizen without the approval of the Maritime Administrator.

(b) The Maritime Administrator hereby grants approval for such Mortgagee or trustee to operate the vessel to the extent necessary for the immediate safety of the vessel, for its direct return to the United States or for its movement within the United States, or for repairs, drydocking or berthing changes, but only under the command of a Citizen of the United States.

(c) A Noncitizen Mortgagee that has brought a civil action *in rem* for enforcement of a preferred mortgage lien on a citizen-owned Documented Vessel pursuant to 46 U.S.C. 31325(b)(1) may petition the court pursuant to 46 U.S.C. 31325(e)(1) for appointment of a receiver and, if the receiver is Person eligible to own a Documented Vessel, to authorize the receiver to operate the mortgaged vessel on such terms and conditions as the court deems appropriate. If the receiver is not a Citizen of the United States, the vessel may not be operated in coastwise trade without prior written approval of the Maritime Administrator.

Subpart C—Preferred Mortgages on Documented Vessels: Mortgagees and Trustees

§ 221.21 Purpose.

The purpose of this subpart is to implement responsibilities of the Maritime Administrator with respect to approving Mortgagees and trustees of preferred mortgages on Documented Vessels pursuant to 46 U.S.C. 31322(a)(1)(D) (iii) and (vi) and 31328(a) (3) and (4).

§ 221.23 Notice/approval of noncitizen mortgagees.

(a)(1) Notice is hereby given that pursuant to statute any Noncitizen may be a preferred Mortgagee of the following Documented Vessel types if the vessel has been operated exclusively and with *bona fides* for one or more of the following uses, under a Certificate of Documentation with an appropriate endorsement and no other, since initial documentation or renewal of its documentation following construction, conversion, or transfer from foreign registry, or, if it has not yet so operated, if the vessel has been designed and built and will be operated for one or more of the following uses:

(i) A Fishing vessel;

(ii) A Fish processing vessel;

(iii) A Fish tender vessel; and

(iv) A Pleasure vessel.

(2) A vessel of a type specified in paragraphs (a)(1) (i) through (iii) of this section will not be ineligible for the approval granted by this paragraph by reason of also holding or having held a Certificate of Documentation with a registry or coastwise endorsement, so long as any trading under that authority has been only incidental to the vessel's principal employment in the fisheries and directly related thereto.

(b) The Maritime Administrator hereby grants approval for any Noncitizen to be a preferred Mortgagee of the following Documented Vessel types, provided that Noncitizen is not subject, directly or indirectly, to control of any country identified in § 221.13(a)(4) of this part:

(1) A vessel under 1,000 gross tons;

(2) An oil spill response vessel documented pursuant to 46 U.S.C. 12106; and

(3) A vessel operating on inland lakes or waters from which there is no navigable exit to an ocean for that vessel.

(c) The Maritime Administrator hereby grants approval to the granting or transfer of a preferred mortgage of a Documented Vessel to a Federally Insured Depository Institution, so long as it shall continue to remain a Federally Insured Depository Institution. This approval shall not apply to any such preferred mortgage proposed to be made or transferred during any period when the United States is at war or during any national emergency, the existence of which has invoked the provisions of section 37 of the Shipping Act, 1916, as amended (46 App. U.S.C. 835), or to a preferred mortgage proposed to be made or transferred to a citizen of any country when such transfer would be contrary to the foreign policy of the United States as declared by an executive department of the United States, nor shall it apply if that Federally Insured Depository Institution is subject, directly or indirectly, to control of any country identified in § 221.13(a)(4) of this part.

(d) Other Noncitizens may be granted approval by the Maritime Administrator as preferred Mortgagees, on a case-by-case basis, subject to such conditions as the Administrator may prescribe. No such Noncitizen may serve as a preferred Mortgagee of Documented Vessels, however, unless it shall first have filed with the Vessel Transfer Officer an application pursuant to § 221.25(a) of this part and received approval therefor pursuant to § 221.25(b).

§ 221.25 Application for approval as mortgagee.

(a) Noncitizen mortgagees qualifying under § 221.23 (a), (b) or (c) need not file an application.

(b) Each applicant for approval as a Mortgagee of a preferred mortgage pursuant to § 221.23(d) shall submit a completed Maritime Administration Form MA-29 to the Vessel Transfer Officer.

(c) Each approval of an application to be an approved Mortgagee shall be in writing and an original of such approval shall be provided by the Maritime Administrator to the approved Mortgagee.

(d) A list of Mortgagees who have received transactional approval will be published from time to time in the Federal Register, but current information as to the status of a particular Person may be obtained from the Vessel Transfer Officer.

§ 221.27 Permitted mortgage trusts.

(a) An instrument or evidence of indebtedness secured by a preferred mortgage on a Documented Vessel to a trustee may be issued, assigned, transferred to or held in trust for the benefit of, a Noncitizen if the trustee is a State or the United States Government. No application to, approval by or notice to the Maritime Administrator is required on the part of the United States Government or such State, or on the part of the mortgagor.

(b) As to all other Persons, an instrument or evidence of indebtedness secured by a mortgage on a Documented Vessel to a trustee may be issued, assigned, transferred to or held in trust

by a trustee for the benefit of a Noncitizen only if the trustee has been approved by the Maritime Administrator under this subpart, in which event no further application to, approval by or notice to the Maritime Administrator is required.

(c) If an approved trustee at any time shall no longer qualify to serve in such capacity under this subpart:

(1) The trustee shall notify the Vessel Transfer Officer of such failure to qualify not later than twenty (20) days after the event causing such failure;

(2) The Maritime Administrator shall publish a disapproval notice and order and provide the trustee and the Coast Guard with a copy thereof; and

(3) Within thirty (30) days of the date of notification provided for in paragraph (c)(1) of this section, the trustee shall have transferred its fiduciary responsibilities to a successor trustee that has been approved by the Maritime Administrator pursuant to this subpart.

(d) Any Noncitizen may be a trustee of a preferred mortgage of the Documented Vessel types specified in § 221.23(a) of this part, subject to the same conditions specified therein.

§ 221.29 Approval of corporate citizen trustee.

No corporation shall serve as a trustee pursuant to this part unless it shall first have filed with the Vessel Transfer Officer an application for approval pursuant to § 221.33(a) of this part and received approval therefor pursuant to § 221.33(b). Any approval granted pursuant to this section shall terminate if the approved institution shall fail at any time to meet the requirements of paragraphs (a) through (e) of this section. A corporate trustee will be approved under 46 U.S.C. 31328(a)(3) and (b) if it—

(a) Is a Citizen of the United States (the Maritime Administrator reserves the right to require proof of citizenship);

(b) Is organized as a corporation, and is doing business, under the laws of the United States or of a State;

(c) Is authorized under those laws to exercise corporate trust powers;

(d) Is subject to supervision or examination by an official of the United States Government or of a State; and

(e) Has a combined capital and surplus (as stated in its most recent published report of condition) of at least $3,000,000.

§ 221.31 Approval of corporate noncitizen trustee.

(a) No corporate Noncitizen may serve as a trustee unless it shall first have filed with the Vessel Transfer Officer an application pursuant to § 221.33(a) of this part and received approval therefor pursuant to section 221.33(b). A corporate noncitizen trustee will be approved under 46 U.S.C. 31328(a)(4) and (b) if it—

(1) Is organized as a corporation, and is doing business, under the laws of the United States or of a State;

(2) Is authorized under those laws to exercise corporate trust powers;

(3) Is subject to supervision or examination by an official of the United States Government or of a State;

(4) Has a combined capital and surplus (as stated in its most recent published report of condition) of at least $3,000,000; and

(5) Is not a Person who is subject, directly or indirectly, to control of any country identified in § 221.13(a)(4) of this part.

(b) Any approval granted pursuant to paragraph (a) of this section shall terminate if the approved institution shall fail at any time to meet the requirements of that paragraph.

§ 221.33 Application for approval as trustee.

(a) Each applicant for approval as a trustee shall submit a completed Maritime Administration Form MA–579 to the Vessel Transfer Officer.

(b) Each approval of an application to be an approved trustee shall be in writing and an original of such approval shall be provided by the Maritime Administrator to the approved trustee.

(c) Each approval of a trustee shall be effective for a period of five (5) years from the date of issuance, subject to renewal for additional five (5) year periods upon satisfaction of the provisions of § 221.35.

(d) A list of approved trustees will be published from time to time in the **Federal Register**, but current information as to the status of a particular Person may be obtained from the Vessel Transfer Officer.

(e) Entities approved as trustees under the provisions of §§ 221.29 and 221.31 of this part may act as a trustee without specific transactional approval of the Maritime Administrator.

§ 221.35 Renewal of approval of trustee.

(a) Upon the filing of an acceptable Maritime Administration Form MA–580, approval of a trustee continuing to meet the requirements of this subpart will be extended for an additional period of five (5) years.

(b) The form shall be submitted to the Vessel Transfer Officer not later than the last business day of, and not earlier than the thirtieth (30th) calendar day before expiration of, the five (5) year period then in effect.

§ 221.37 Conditions attaching to approvals.

Every approval granted by the Maritime Administrator pursuant to 46 U.S.C. 31322(a)(1)(D) (iii) or (vi) or 31328(a) (3) or (4) and this part shall be subject to the following conditions whether or not incorporated into a document evidencing such approval:

(a) An approved Mortgagee or trustee shall promptly respond to such written requests as the Maritime Administrator may make from time to time for information or reports concerning its continuing compliance with the terms or conditions upon which such approval was granted;

(b) An approved Mortgagee or trustee shall promptly notify the Maritime Administrator after a responsible official of such Mortgagee or trustee obtains knowledge of a foreclosure proceeding in a foreign jurisdiction involving a Documented Vessel on which such approved Mortgagee or trustee holds a mortgage under or pursuant to its approval under sections 221.23, 221.25, 221.29, or 221.31 of this part and to which 46 App. U.S.C. 808(c) and section 221.11 of this part are applicable. Such Mortgagee or trustee shall ensure that the court or other tribunal has proper notice of those provisions, including the requirement that the vessel remain documented under the laws of the United States following any such sale; and

(c) An approved trustee shall not assume any fiduciary obligation in favor of Noncitizen beneficiaries that is in conflict with any of the restrictions or requirements of this part 221.

Subpart D—Transactions Involving Maritime Interests in Time of War or National Emergency Under 46 App. U.S.C. 835 [Reserved]

Subpart E—Civil Penalties

§ 221.61 Purpose.

This subpart describes procedures for the administration of civil penalties that the Maritime Administration may assess under 46 U.S.C. 31309 and 31330, and section 9(d) of the Shipping Act, 1916, as amended (46 App. U.S.C. 808(d)), pursuant to 49 U.S.C. 336.

Note: Pursuant to 46 U.S.C. 31309, a civil penalty of not more than $10,000 may be assessed for each violation of Chapter 313 of 46 U.S.C. Subtitle III administered by the Maritime Administration, and the regulations in this part that are promulgated thereunder, except that a person violating 46 U.S.C. 31328 or 31329 and the regulations promulgated thereunder is liable for a civil penalty of not more than $25,000 for each violation. A person that charters, sells, transfers or

mortgages a vessel, or an interest therein, in violation of 46 App. U.S.C. 808 is liable for a civil penalty of not more than $10,000 for each violation. Criminal penalties may also apply to violations of these statutes.

§ 221.63 Investigation

(a) When the Vessel Transfer Office obtains information that a Person may have violated a statute or regulation for which a civil penalty may be assessed under this subpart, that Officer may investigate the matter and decide whether there is sufficient evidence to establish a *prima facie* case that a violation occurred.

(b) If that Officer decides there is a *prima facie* case, then that Officer may enter into a stipulation with the Party in accordance with § 221.67 of this subpart, or may refer the matter directly to a Hearing Officer for procedures in accordance with § 221.73 to 221.89 of this subpart.

§ 221.65 Criteria for determining penalty.

In determining any penalties assessed, the Vessel Transfer Officer under § 221.67 and the Hearing Officer under §§ 221.73 to 221.89 of this part shall take into account the nature, circumstances, extent and gravity of the violation committed and, with respect to the Party, the degree of culpability, any history of prior offenses, ability to pay and other matters that justice requires.

§ 221.57 Stipulation procedure.

(a) When the Vessel Transfer Office decides to proceed under this section, that Office shall notify the Party in writing by registered or certified mail—

(1) Of the alleged violation and the applicable statute and regulations;

(2) Of the maximum penalty that may be assessed for each violation;

(3) Of a summary of the evidence supporting the violation;

(4) Of the penalty that the Vessel Transfer Officer will accept in settlement of the violation;

(5) Of the right to examine all the material in the case file and have a copy of all written documents provided upon request;

(6) That by accepting the penalty, the Party waives the right to have the matter considered by a Hearing Officer in accordance with §§ 221.73 to 221.89 of this subpart, and that if the Party elects to have the matter considered by a Hearing Officer, the Hearing Officer may assess a penalty less than, equal to, or greater than that stipulated in settlement if the Hearing Officer finds that a violation occurred; and

(7) That a violation will be kept on record and may be used by the Maritime Administration in aggravation of an assessment of a penalty for a subsequent violation by that Party.

(b) Upon receipt of the notification specified in paragraph (a) of this section, a Party may within 30 days—

(1) Agree to the stipulated penalty in the manner specified in the notification; or

(2) Notify in writing the Vessel Transfer Officer that the Party elects to have the matter considered by a Hearing Officer in accordance with the procedure specified in §§ 221.73 through 221.89 of this subpart.

(c) If, within 30 days of receipt of the notification specified in paragraph (a) of this section, the Party neither agrees to the penalty nor elects the informal hearing procedure, the Party will be deemed to have waived its right to the informal hearing procedure and the penalty will be considered accepted. If a monetary penalty is assessed, it is due and payable to the United States, and the Maritime Administration may initiate appropriate action to collect the penalty.

§ 221.69 Hearing Officer.

(a) The Hearing Officer shall have no responsibility, direct or supervisory, for the investigation of cases referred for the assessment of civil penalties.

(b) The Hearing Officer shall decide each case on the basis of the evidence before him or her, and must have no prior connection with the case. The Hearing Officer is solely responsible for the decision in each case referred to him or her.

(c) The Hearing Officer is authorized to administer oaths and issue subpoenas necessary to the conduct of a hearing, to the extent provided by law.

§ 221.71 Hearing Officer referral.

If, pursuant to § 221.67(b)(2) of this subpart, a Party elects to have the matter referred to a Hearing Officer, the Vessel Transfer Officer may—

(a) Decide not to proceed with penalty action, close the case, and notify the Party in writing that the case has been closed; or

(b) Refer the matter to a Hearing Officer with the case file and a record of any prior violations by the Party.

§ 221.73 Initial Hearing Officer consideration.

(a) When a case is received for action, the Hearing Officer shall examine the material submitted. If the Hearing Officer determines that there is insufficient evidence to proceed, or that there is any other reason which would make penalty action inappropriate, the Hearing Officer shall return the case to the Vessel Transfer Officer with a written statement of the reason. The Vessel Transfer Officer may close the case or investigate the matter further. If additional evidence supporting a violation is discovered, the Vessel Transfer Officer may resubmit the matter to the Hearing Officer.

(b) if the Hearing Officer determines that there is reason to believe that a violation has been committed, the Hearing Officer notifies the Party in writing by registered or certified mail of—

(1) The alleged violation and the applicable statute and regulations;

(2) The maximum penalty that may be assessed for each violation;

(3) The general nature of the procedure for assessing and collecting the penalty;

(4) The amount of the penalty that appears to be appropriate, based on the material then available to the Hearing Officer;

(5) The right to examine all the material in the case file and have a copy of all written documents provided upon requests; and

(6) The right to request a hearing.

(c) If at any time it appears that the addition of another Party to the proceedings is necessary or desirable, the Hearing Officer will provide the additional Party and the Party alleged to be in violation with notice as described above.

(d) At any time during a proceeding, before the Hearing Officer issues a decision under § 221.89, the Hearing Officer and the Party may agree to a Settlement of the case.

§ 221.75 Response by party.

(a) Within 30 days after receipt of notice from the Hearing Officer, the Party, or counsel for the Party, may—

(1) Pay the amount specified in the notice as being appropriate;

(2) In writing request a hearing, specifying the issues in dispute; or

(3) Submit written evidence or arguments in lieu of a hearing.

(b) The right to a hearing is waived if the Party does not submit a request to the Hearing Officer within 30 days after receipt of notice from the Hearing Officer, unless additional time has been granted by the Hearing Officer.

(c) The Hearing Officer has discretion as to the venue and scheduling of a hearing. The hearing will normally be held at the office of the Hearing Officer. A request for a change of location of a hearing or transfer to another Hearing Officer must be in writing and state the reasons why the requested action is necessary or desirable. Action on the

request is at the discretion of the Hearing Officer.

(d) A Party who has requested a hearing may amend the specification of the issues in dispute at any time up to 10 days before the scheduled date of the hearing. Issues raised later than 10 days before the schedule hearing may be presented only at the discretion of the Hearing Officer.

§ 221.77 Disclosure of evidence.

The Party shall, upon request, be provided a free copy of all the evidence in the case file, except material that would disclose or lead to the disclosure of the identity of a confidential informant and any other information properly exempt from disclosure.

§ 221.79 Request for confidential treatment.

(a) In addition to information treated as confidential under § 221.77 of this subpart, a request for confidential treatment of a document or portion thereof may be made by the Person supplying the information on the basis that the information is—

(1) Confidential financial information, trade secrets, or other material exempt from disclosure by the Freedom of Information Act (5 U.S.C. 552);

(2) Required to be held in confidence by 18 U.S.C. 1905; or

(3) Otherwise exempt by law from disclosure.

(b) The Person desiring confidential treatment must submit the request to the Hearing Officer in writing and the reasons justifying nondisclosure. The Hearing Officer shall forward any request for confidential treatment to the appropriate official of the Maritime Administration for a determination hereon. Failure to make a timely request may result in a document being considered as nonconfidential and subject to release.

(c) Confidential material shall not be considered by the Hearing Officer in reaching a decision unless—

(1) It has been furnished by a Party; or

(2) It has been furnished pursuant to a subpoena.

§ 221.81 Counsel.

A Party has the right to be represented at all stages of the proceeding by counsel. After receiving notification that a Party is represented by counsel, the Hearing Officer will direct all further communications to that counsel.

§ 221.83 Witnesses.

A Party may present the testimony of any witness either through a personal appearance or through a written statement. The Party may request the assistance of the Hearing Officer in obtaining the personal appearance of a witness. The request must be in writing and state the reasons why a written statement would be inadequate, the issue or issues to which the testimony would be relevant, and the substance of the expected testimony. If the Hearing Officer determines that the personal appearance of the witness may materially aid in the decision on the case, the Hearing Officer will seek to obtain the witness' appearance. The Hearing Officer may move the hearing to the witness' location, accept a written statement, or accept a stipulation in lieu of testimony.

§ 221.85 Hearing procedures.

(a) The Hearing Officer shall conduct a fair and impartial proceeding in which the Party is given a full opportunity to be heard. At the opening of a hearing, the Hearing Officer shall advise the Party of the nature of the proceedings and of the alleged violation.

(b) The material in the case file pertinent to the issues to be determined by the Hearing Officer shall first be presented. The Party may examine, respond to and rebut this material. The Party may offer any facts, statements, explanations, documents, sworn or unsworn testimony, or other exculpatory items that bear on the issues, or which may be relevant to the size of an appropriate penalty. The Hearing Officer may require the authentication of any written exhibit or statement.

(c) At the close of the Party's presentation of evidence, the Hearing Officer may allow the introduction of rebuttal evidence. The Hearing Officer may allow the Party to respond to rebuttal evidence submitted.

(d) In receiving evidence, the Hearing Officer shall not be bound by the strict rules of evidence. In evaluating the evidence presented, the Hearing Officer shall give due consideration to the reliability and relevance of each item of evidence.

(e) After the evidence in the case has been presented, the Party may present argument on the issues in the case. The party may also request an opportunity to submit a written statement for consideration by the Hearing Officer. The Hearing Officer shall allow a reasonable time for submission of the statement and shall specify the date by which it must be received. If the statement is not received within the specified time, the Hearing Officer may render a decision in the case without consideration of the statement.

§ 221.87 Records.

(a) A verbatim transcript of a hearing will not normally be prepared. The Hearing Officer will prepare notes on material and points raised by the Party in sufficient detail to permit a full and fair review of the case.

(b) A Party may, at its own expense, cause a verbatim transcript to be made, in which event the Party shall submit, without charge, two copies to the Hearing Officer within 30 days of the close of the hearing.

§ 221.89 Hearing Officer's decision.

(a) The Hearing Officer shall issue a written decision. Any decision to assess a penalty shall be based on substantial evidence in the record, and shall state the basis for the decision.

(b) If the Hearing Officer finds that there is not substantial evidence in the record establishing the alleged violation, the Hearing Officer shall dismiss the case. A dismissal is without prejudice to the Vessel Transfer Officer's right to refile the case if additional evidence is obtained. A dismissal following a rehearing is final and with prejudice.

(c) The Hearing Officer shall notify the Party in writing, by certified or registered mail, of the decision and, if adverse, shall advise the Party of the right to an administrative appeal to the Maritime Administrator or an individual designated by the Administrator from that decision.

(d) If an appeal is not filed within the prescribed time, the decision of the Hearing Officer constitutes final agency action in the case.

§ 221.91 Appeals.

(a) Any appeal from the decision of the Hearing Officer must be submitted in writing by the Party to the Hearing Officer within 30 days from the date of receipt of the Hearing Officer's decision.

(b) The only issues that will be considered on appeal are those issues specified in the appeal which were raised before the Hearing Officer and jurisdictional questions.

(c) There is no right to oral argument on an appeal.

(d) The Maritime Administrator or an individual designated by the Administrator will issue a written decision on the appeal, and may affirm, reverse, or modify the decision, or remand the case for new or additional proceedings. In the absence of a remand, the decision on appeal is final agency action.

(e) The Maritime Administrator or an individual designated by the Administrator shall notify the Party in writing, by certified or registered mail.

of the decision on appeal and, if adverse, shall advise the Party of the right of appeal to the courts.

§ 221.93 Collection of civil penalties.

Within 30 days after receipt of the Hearing Officer's decision, or a decision on appeal, the Party must submit payment of any assessed penalty in the manner specified in the decision letter. Failure to make timely payment will result in the institution of appropriate action to collect the penalty.

Subpart F—Other Transfers Involving Documented Vessels [Reserved]

Subpart G—Savings Provisions

§ 221.111 Status of prior transactions—controlling dates.

(a) The Maritime Administrator hereby grants approval for any transaction occurring on or after January 1, 1989 and prior to July 3, 1991 that was lawful under 46 CFR part 221, revised as of October 1, 1989.

(b) The Maritime Administrator hereby grants approval for any transaction occurring on or after July 3, 1991 and prior to June 3, 1992 that was lawful under 46 CFR part 221, revised as of October 1, 1991.

(c) Any transaction approved by the Maritime Administrator prior to January 1, 1989, or any transaction that did not require such approval prior to that date, shall continue to be lawful.

Dated: May 27, 1992.

By Order of the Maritime Administrator.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 92-12774 Filed 6-2-92; 8:45 am]

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federal register

Wednesday
June 3, 1992

Part IV

Farm Credit System Assistance Board

Administrative Dispute Resolution Policy and Program; Notice

FARM CREDIT SYSTEM ASSISTANCE BOARD

Administrative Dispute Resolution Policy and Program

AGENCY: Farm Credit System Assistance Board.

ACTION: Notice of policy statement.

SUMMARY: The Farm Credit System Assistance Board (Assistance Board) has adopted an Administrative Dispute Resolution Policy and Program (ADR Policy and Program) that encourages and supports the use of administrative dispute resolution procedures to resolve disputes, as authorized under the Administrative Dispute Resolution Act.

DATES: Adopted April 21, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Mullarkey (General Counsel) or Isabella Sammons (Senior Attorney) at (202) 737-9255.

SUPPLEMENTARY INFORMATION: As required by the Administrative Dispute Resolution Act, Public Law 101-552, the Assistance Board adopted on April 21, 1992, the ADR Policy and Program that encourages and supports use of administrative dispute resolution (ADR) procedures to resolve disputes in which the Assistance Board is a party. The ADR Policy and Program: (1) Encourages the use of ADR proceedings when appropriate; (2) names the General Counsel as the Dispute Resolution Specialist (DRS); (3) provides that the DRS review disputes and provides guidelines for the DRS to follow in making recommendations to the President and Chief Executive Officer of the Assistance Board whether to use ADR proceedings to resolve the disputes; and (4) permits consultation with, and the use of services of Federal agencies and private entities with ADR expertise.

Pursuant to 12 U.S.C. 2278a-10, the Assistance Board is not required to follow the requirements of the Administrative Procedure Act (APA) with respect to notice and comment on rulemaking. However, the Assistance Board is publishing the ADR Policy and Program in the interest of informing the public of such policy and program. The Assistance Board's determination in this instance is not and should not be construed as a determination that it is subject to the notice and comment requirements of the APA.

Farm Credit System Assistance Board Policy and Program

I. Policy and Purpose.

It is the policy of the Farm Credit System Assistance Board (Assistance Board) to encourage the use of administrative dispute resolution (ADR) proceedings to resolve disputes, whenever appropriate, in place of in-court litigation or formal agency action. To further this policy, an ADR Program is hereby established.

II. Designation of Dispute Resolution Specialist (DRS)

The General Counsel of the Assistance Board is the DRS and is responsible for the direction and administration of the ADR Program.

III. Training

The DRS and, as appropriate, other Assistance Board employees will attend a sufficient number of ADR seminars or conferences sponsored by organizations such as the Administrative Conference of the United States, the Federal Mediation and Conciliation Service, and appropriate private entities to enable them to carry out their responsibilities. The DRS also may provide in-house training to Assistance Board employees as necessary.

IV. Review of Existing Documents

The DRS will conduct an initial review of existing Assistance Board contracts, agreements, Administrative Memoranda, and other documents to assess whether ARD proceedings should be used to resolve potential disputes. The DRS will submit to the President and Chief Executive Officer of the Assistance Board (President) for his or her written approval any recommendations to add provisions for ADR proceedings to the documents.

V. Prior Review of New and Renewed Documents

The DRS will review Assistance Board contracts, agreements, Administrative Memoranda, and other documents before they are made final or renewed to assess whether ADR provisions should be included in the document. The DRS will submit to the President for his or her written approval any recommendations to include ADR provisions in the documents.

VI. Review of Actual Disputes

A. Before the Assistance Board proceeds with, or responds to a lawsuit, the DRS will review the dispute and submit a written recommendation to the President on whether the Assistance Board should consider using an ADR proceeding and what process to use to resolve the dispute. The DRS will continue to monitor any ongoing litigation to which the Assistance Board is a party for opportunities to use an ADR proceeding. If such opportunities occur, the DRS will recommend in writing to the President whether an ADR proceeding should be considered.

B. The DRS will take the following guidelines into consideration when making his or her recommendations:

1. The decision to use an ADR process. ADR consists of various processes, usually involving a third-party neutral, that can assist parties in resolving disputes by means other than litigation and administrative hearings. The decision to use an ADR process may occur either before or after a dispute arises. Voluntary or mandatory dispute resolution provisions may be included in a contract or agreement negotiated by the parties before the dispute arises.

2. An ADR proceeding may be an appropriate means of resolving disputes when:

a. Creative solutions may provide the most satisfactory outcome;

b. Variation in outcome among different disputes is not a major concern;

c. Maintaining confidentiality is either not a concern or would be advantageous;

d. The resolution of the dispute does not require the setting of precedent;

e. The parties are likely to agree to use an ADR proceeding;

f. Litigation would be either lengthy or expensive; or

g. Negotiations are at an impasse or the potential for impasse is high, because of poor communication, conflicts within parties, or technical complexity or uncertainty.

3. An ADR proceeding may not be the appropriate process for resolving a dispute when:

a. There is a serious power or economic imbalance between the parties;

b. The Assistance Board requires an authoritative or precedential resolution of the matter, and an ADR proceeding is not likely to be accepted as an authoritative precedent;

c. Persons or organizations who would not be parties to the ADR proceeding are significantly affected by the dispute;

d. A full public record of the proceeding is important, and an ADR proceeding cannot provide such a record;

e. The matter involves significant questions of Government policy, and an ADR proceeding would not likely serve to develop a recommended policy for the Assistance Board;

f. Consistent results among individual decisions are of special importance, and ADR proceedings would not likely reach such consistent results; or

g. The Assistance Board must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in light of any changed circumstances, and an ADR proceeding would interfere with the Assistance Board fulfilling that requirement.

C. Appropriateness of binding or nonbinding ADR processes.

1. Nonbinding ADR processes.

Nonbinding ADR processes include, but are not limited to, facilitation, conciliation, mediation, minitrial, and nonbinding arbitration. In nonbinding processes, a third-party neutral assists the parties in reaching a resolution. A nonbinding process is likely to be appropriate in breaking an impasse where:

a. Personality conflicts among negotiators exist;

b. Communication and coordination between parties are poor;

c. Procedural difficulties due to multiple plaintiffs or difficulties due to multiple plaintiffs or defendants with conflicting agendas are present;

d. Changing the terms and conditions under which parties are negotiating would be beneficial; or

e. Obtaining the assistance of a neutral to help the parties find an acceptable settlement would be useful.

2. Binding ADR processes.

A binding ADR process is one in which the parties submit a dispute to an impartial person for a final and binding decision. Section 4(b) of the ADRA, 5 U.S.C. 585–591, sets forth the statutory requirements regarding agency use of arbitration and agency review of the arbitrator's decision. The primary binding ADR process is binding arbitration under the ADRA. A binding ADR process may be appropriate where:

a. Parties or issues have a history of intransigence;

b. Courts are unable or unwilling to rule on matters which would advance the case toward resolution;

c. There is need for a private decision-making process; or

d. there is a need for a decision-maker with expertise in the subject matter of the dispute.

VII. Support Services

To carry out his or her responsibilities, and with the written approval of the President, the DRS may consult with and use the services of government or private organizations which specialize in dispute resolution. In implementing the decision to use an ADR proceeding, the Assistance Board may also consult with and use the services of such government agencies or private organizations.

Kenneth L. Peoples,

President and Chief Executive Officer.

[FR Doc. 92–12883 Filed 6–2–92; 8:45 am]

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federal register

Wednesday
June 3, 1992

Part V

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for March 1992

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS-53153; FRL 4070-7]

Premanufacture Notices; Monthly Status Report for MARCH 1992

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption request pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for March 1992.

Nonconfidential portions of the PMNs and exemption request may be seen in the TSCA Public Docket Office NE-G004 at the address below between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

ADDRESSES: Written comments, identified with the document control number "(OPPTS-53153)" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. 201ET, Washington, DC 20460, (202) 260-1532.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460 (202) 260-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during March; (b) PMNs received previously and still under review at the end of March; (c) PMNs for which the notice review period has ended during March; (d) chemical substances for which EPA has received a notice of commencement to manufacture during March; and (e) PMNs for which the review period has been suspended. Therefore, the March 1992 PMN Status Report is being published.

Dated: May 28, 1992.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

Premanufacture Notice Monthly Status Report for MARCH 1992.

I. 126 Premanufacture notices and exemption requests received during the month:

PMN No.

P 92-0603	P 92-0607	P 92-0608	P 92-0609
P 92-0610	P 92-0611	P 92-0612	P 92-0613
P 92-0614	P 92-0615	P 92-0616	P 92-0617
P 92-0618	P 92-0619	P 92-0620	P 92-0621
P 92-0622	P 92-0623	P 92-0624	P 92-0625
P 92-0626	P 92-0627	P 92-0628	P 92-0629
P 92-0630	P 92-0631	P 92-0632	P 92-0633
P 92-0634	P 92-0635	P 92-0636	P 92-0637
P 92-0638	P 92-0639	P 92-0640	P 92-0641
P 92-0642	P 92-0643	P 92-0644	P 92-0645
P 92-0646	P 92-0648	P 92-0649	P 92-0650
P 92-0651	P 92-0652	P 92-0653	P 92-0654
P 92-0655	P 92-0656	P 92-0657	P 92-0658
P 92-0659	P 92-0660	P 92-0661	P 92-0662
P 92-0663	P 92-0664	P 92-0665	P 92-0666
P 92-0667	P 92-0668	P 92-0669	P 92-0670
P 92-0671	P 92-0672	P 92-0673	P 92-0674
P 92-0675	P 92-0676	P 92-0677	P 92-0678
P 92-0679	P 92-0680	P 92-0681	P 92-0682
P 92-0683	P 92-0684	P 92-0685	P 92-0686
P 92-0687	P 92-0688	P 92-0689	P 92-0690
P 92-0691	P 92-0692	P 92-0693	P 92-0694
P 92-0695	P 92-0696	P 92-0697	P 92-0698
P 92-0699	P 92-0700	P 92-0701	P 92-0702
P 92-0703	P 92-0704	P 92-0705	P 92-0706
P 92-0707	P 92-0708	P 92-0709	P 92-0710
P 92-0711	P 92-0712	Y 92-0104	Y 92-0105
Y 92-0106	Y 92-0107	Y 92-0108	Y 92-0109
Y 92-0110	Y 92-0111	Y 92-0112	Y 92-0113
Y 92-0114	Y 92-0115	Y 92-0116	Y 92-0117
Y 92-0118	Y 92-0119	Y 92-0120	Y 92-0121
Y 92-0122	Y 92-0123		

II. 282 Premanufacture notices received previously and still under review at the end of the month:

PMN No.

P 83-0237	P 84-0660	P 84-0704	P 85-0433
P 85-0612	P 85-0619	P 85-1184	P 86-0066
P 86-0334	P 86-0335	P 86-1315	P 86-1489
P 86-1607	P 87-0323	P 87-1872	P 88-0998
P 88-1271	P 88-1272	P 88-1273	P 88-1274
P 88-1460	P 88-1682	P 88-1753	P 88-1937
P 88-1938	P 88-1980	P 88-1982	P 88-1984
P 88-1985	P 88-1999	P 88-2000	P 88-2001
P 88-2100	P 88-2169	P 88-2212	P 88-2213
P 88-2228	P 88-2229	P 88-2230	P 88-2236
P 88-2484	P 88-2518	P 88-2529	P 89-0254
P 89-0321	P 89-0396	P 89-0538	P 89-0632
P 89-0676	P 89-0721	P 89-0769	P 89-0770
P 89-0775	P 89-0836	P 89-0837	P 89-0867
P 89-0957	P 89-0958	P 89-0959	P 89-0963
P 89-1038	P 89-1058	P 89-1062	P 90-0002
P 90-0009	P 90-0158	P 90-0159	P 90-0211
P 90-0237	P 90-0248	P 90-0249	P 90-0260
P 90-0261	P 90-0262	P 90-0263	P 90-0372
P 90-0441	P 90-0550	P 90-0558	P 90-0564
P 90-0581	P 90-0608	P 90-1280	P 90-1318
P 90-1319	P 90-1320	P 90-1321	P 90-1322
P 90-1358	P 90-1422	P 90-1527	P 90-1528
P 90-1529	P 90-1530	P 90-1531	P 90-1564
P 90-1592	P 90-1635	P 90-1687	P 90-1745
P 90-1840	P 90-1893	P 90-1937	P 90-1984
P 90-1985	P 91-0004	P 91-0043	P 91-0051
P 91-0101	P 91-0102	P 91-0107	P 91-0108
P 91-0109	P 91-0110	P 91-0111	P 91-0112
P 91-0113	P 91-0118	P 91-0228	P 91-0242
P 91-0243	P 91-0244	P 91-0245	P 91-0246
P 91-0247	P 91-0248	P 91-0288	P 91-0328
P 91-0358	P 91-0442	P 91-0464	P 91-0465
P 91-0466	P 91-0467	P 91-0468	P 91-0469
P 91-0470	P 91-0471	P 91-0472	P 91-0487
P 91-0490	P 91-0501	P 91-0503	P 91-0514
P 91-0521	P 91-0532	P 91-0548	P 91-0572
P 91-0584	P 91-0619	P 91-0659	P 91-0665
P 91-0666	P 91-0688	P 91-0689	P 91-0701
P 91-0732	P 91-0818	P 91-0826	P 91-0853
P 91-0914	P 91-0915	P 91-0934	P 91-0939
P 91-0940	P 91-0941	P 91-0968	P 91-1000
P 91-1009	P 91-1010	P 91-1011	P 91-1012
P 91-1013	P 91-1014	P 91-1015	P 91-1077
P 91-1116	P 91-1117	P 91-1118	P 91-1131
P 91-1163	P 91-1190	P 91-1191	P 91-1206
P 91-1210	P 91-1243	P 91-1279	P 91-1280
P 91-1281	P 91-1282	P 91-1283	P 91-1289
P 91-1297	P 91-1298	P 91-1299	P 91-1321
P 91-1322	P 91-1323	P 91-1324	P 91-1328
P 91-1346	P 91-1367	P 91-1368	P 91-1369
P 91-1371	P 91-1372	P 91-1379	P 91-1384
P 91-1386	P 91-1394	P 91-1409	P 91-1456
P 91-1464	P 92-0002	P 92-0003	P 92-0031
P 92-0032	P 92-0033	P 92-0034	P 92-0035
P 92-0036	P 92-0044	P 92-0048	P 92-0066
P 92-0067	P 92-0068	P 92-0129	P 92-0156
P 92-0157	P 92-0159	P 92-0168	P 92-0177
P 92-0217	P 92-0244	P 92-0245	P 92-0246
P 92-0247	P 92-0248	P 92-0249	P 92-0250
P 92-0251	P 92-0266	P 92-0283	P 92-0294
P 92-0298	P 92-0314	P 92-0315	P 92-0329
P 92-0341	P 92-0343	P 92-0344	P 92-0396
P 92-0412	P 92-0445	P 92-0446	P 92-0471
P 92-0474	P 92-0475	P 92-0476	P 92-0477
P 92-0478	P 92-0492	P 92-0496	P 92-0505
P 92-0509	P 92-0531	P 92-0532	P 92-0533
P 92-0545	P 92-0546	P 92-0547	P 92-0548
P 92-0549	P 92-0550	P 92-0551	P 92-0552
P 92-0554	P 92-0562	P 92-0564	P 92-0595
P 92-0599	P 92-0606		

III. 113 Premanufacture notices and exemption request for which the notice review period has ended during the month. (Expiration of the notice review period does not signify that the chemical has been added to the Inventory).

PMN No.

P 87-0105	P 88-1807	P 88-1809	P 88-1811
P 90-1311	P 90-1464	P 91-0222	P 91-0391
P 91-0665	P 91-0666	P 91-0827	P 91-0831
P 91-0902	P 91-0905	P 91-0912	P 91-1162
P 91-1392	P 91-1418	P 92-0063	P 92-0210
P 92-0233	P 92-0277	P 92-0278	P 92-0279
P 92-0280	P 92-0281	P 92-0282	P 92-0283
P 92-0284	P 92-0285	P 92-0286	P 92-0287
P 92-0288	P 92-0289	P 92-0290	P 92-0291
P 92-0293	P 92-0294	P 92-0295	P 92-0296
P 92-0297	P 92-0298	P 92-0299	P 92-0300
P 92-0301	P 92-0302	P 92-0303	P 92-0304
P 92-0305	P 92-0306	P 92-0307	P 92-0308
P 92-0309	P 92-0310	P 92-0311	P 92-0312
P 92-0313	P 92-0314	P 92-0316	P 92-0317
P 92-0318	P 92-0319	P 92-0320	P 92-0321
P 92-0322	P 92-0323	P 92-0324	P 92-0325
P 92-0326	P 92-0327	P 92-0328	P 92-0330
P 92-0331	P 92-0332	P 92-0333	P 92-0334
P 92-0335	P 92-0336	P 92-0337	P 92-0338

P 92-0339	P 92-0340	P 92-0342	P 92-0345	P 92-0354	P 92-0355	P 92-0356	P 92-0357	P 92-0366	P 92-0367	P 92-0368	P 92-0369
P 92-0346	P 92-0347	P 92-0348	P 92-0349	P 92-0358	P 92-0359	P 92-0360	P 92-0361	P 92-0370	P 92-0371	Y 92-0102	Y 92-0103
P 92-0350	P 92-0351	P 92-0352	P 92-0353	P 92-0362	P 92-0363	P 92-0364	P 92-0365	Y 92-0104			

IV. 92 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture

PMN No.	Identity/Generic Name	Date of Commencement
P 87-0502	G Dialkenylamide	January 26, 1988.
P 88-0337	G Disubstituted cyclopentanone	July 19, 1988.
P 88-1460	G 2,5-Dimercapto-1,3,4-thiadiazole reaction product	January 4, 1990.
P 89-2031	G Substituted-substituted-substituted benzene polymer, reacted with a substituted amine, partially quarternized, partial chloride salt.	February 14, 1992.
P 89-1083	G Halogenated alkane	November 20, 1990.
P 90-0113	G Toluene sulfonamide /I epoxy adduct	June 19, 1990.
P 90-0162	G Hydsidopolysilazane	February 10, 1992.
P 90-0385	G Aromatic dicarboxylic acid triaromatic polyester	January 11, 1992.
P 90-0486	G Polyester resin solution	February 14, 1992.
P 90-1016	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 15, 1990.
P 90-1046	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 11, 1990.
P 90-1469	G Silicone acrylate	June 20, 1991.
P 90-1696	G Substituted azo naphthalene sulfonic acid	February 5, 1992.
P 90-1822	Acetic acid, hydroxyphosphono-, disodium salt	January 15, 1992.
P 91-0032	G A polymer of acrylic acid esters, methacrylic acidesters, acrylic acid and another vinyl monomer, sodium salt	January 13, 1992.
P 91-0064	G Dimer modified polyester resin with aliphathic polyol and dicarboxylic acids	January 30, 1992.
P 91-0337	G Substituted diazo naphthalene sulfonic acid	January 28, 1992.
P 91-0547	1,1'-Oxybisbenzene, reaction product with 2,4,-trimethylpentene	February 17, 1992.
P 91-0561	G Polyacrylate	February 14, 1992.
P 91-0585	G Rubber modified epoxy resin	January 29, 1992.
P 91-0586	G Substituted azo naphthalenesulfonamide	February 3, 1992.
P 91-0603	G PPDI polyester prepolymer	February 13, 1992.
P 91-0669	G Recovered metal hydride	February 18, 1992.
P 91-0836	G Salt of cyclediamine and mineral acid	February 12, 1992.
P 91-0852	G Polymer of methyl methacrylate with mixed alkyl methacrylates	January 21, 1992.
P 91-0868	G Polyurethane copolymer polyol	January 29, 1992.
P 91-0927	G Substituted polyoxyalkyl aromatic amine tint	January 23, 1992.
P 91-0932	G Styrenated acrylate methacrylate polymer	February 20, 1992.
P 91-0935	G Glycol borate	January 29, 1992.
P 91-0997	G Polyurethane resin	February 18, 1992.
P 91-0988	G Polyurethane resin	January 29, 1992.
P 91-0989	G Polyurethane resin	February 3, 1992.
P 91-1078	G Aqueous aliphatic polyurethane resin dispersion	November 26, 1990.
P 91-1086	G Polymer of disodium maleate, alkyl ether, and ethylene oxide	February 28, 1992.
P 91-1108	Oligomeric thiodiethylen-bis-(5-dimethoxyl-1,4-dihydroyridien-3-carboxylate), including oligomers containing some pyridine moieties from the partial oxidation of dihydropyridine moieties.	February 4, 1992.
P 91-1142	G Polyester urethane amine salt	January 31, 1992.
P 91-1170	G Siloxanes and silicones, di me aryl stopped	January 31, 1992.
P 91-1197	G Epoxidized polyaromatic resin	January 29, 1992.
P 91-1219	G Modified maleated rosin	February 8, 1992.
P 91-1223	G Modifide maleated rosin, calcium magnesium and zinc salts	February 9, 1992.
P 91-1250	G Polyol ester	January 27, 1992.
P 91-1290	G Methyl methacrylate butadiene styrene (MBS) copolymer	January 6, 1992.
P 91-1316	G Substituted isothiazole	February 1, 1992.
P 91-1317	G Substituted azothiopene	February 1, 1992.
P 91-1331	G Phosphosate-alkanolamine ester polymer	November 16, 1991.
P 91-1393	G Silicones-imid block copolymer	January 30, 1992.
P 91-1419	G Fluorochemical polyurethane	February 7, 1992.
P 91-1437	G Aliphatic-aromatic carboxylate complex	January 29, 1992.
P 91-1440	G Substituted polyoxalkylene aniline	January 29, 1992.
P 91-1441	G Mixture of aromatic urethane with methacrylate endgroups and hydroxy terminated polyisocyanate	February 20, 1992.
P 91-1443	G Benzoxazole-carbocyanine dye	December 26, 1991.
P 91-1459	G Hydrogenerated acrylonitrile-butadiene polymer	February 7, 1992.
P 91-1463	G Styrene-maleic anhydride copolymer, amine salt	February 6, 1992.
P 92-0059	G Modified polyurethane powder	January 21, 1992.
P 92-0069	G Gum and tall oil rosin, fumeric acid, modified with substituted phenols and formaldehyde, esters of glycerine and sorbitol polymer..	January 29, 1992.
P 92-0072	G Gum and tall rosin, fumaric acid, modified with substituted phenols and formaldehyde, esters of glycerine and sorbitol polymer, ammonuim salt..	January 29, 1992.
P 92-0073	G Gum and tall oil rosin, fumaric acid , modified with substituted phenols and formaldehyde, esters of glycerine and sorbitol polymer, monoethanolamine salt..	January 29, 1992.
P 92-0074	G Gum and tall oil rosin, fumaric acid, modified with substituted phenols and formaldehyde, esters of glycerine and sorbitol polymer, diethanolamine salt..	January 29, 1992.
P 92-0075	G Gum and tall oil resin, fumaric acid, modified with substituted phenols and formaldehyde, esters of glycerine and sorbitol polymer, triethanolamine salt..	January 29, 1992.
P 92-0076	G Gum and tall oil rosin, fumaric acid, modified with substituted phenols and formaldehyde, esters of glycerine and sorbitol polymer, morpholine salt..	January 29, 1992.
P 92-0077	G Gum and tall oil rosin, fumaric acid, modified with substituted phenols and formaldehyde, esters of glycerine and sorbitol polymer, dimethylaminoethanol salt..	January 29, 1992.

IV. 92 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE—Continued

PMN No.	Identity/Generic Name	Date of Commencement
P 92-0078	G Gum and tall oil rosin, fumaric acid, modified with substituted phenols and formaldehyde, ester of glycerine and sorbitol polymer, 2-amino-2-methyl- propanol salt..	January 29, 1992.
P 92-0079	G Gum and tall oil rosin, fumaric acid, modified with substituted phenols formaldhyde, esters of glycewrine and sorbitol polymer, 2-methylamino-2-methyl-propanol salt..	January 29, 1992.
P 92-0080	G Gum and tall oil rosin, fumaric acid, modified with substituted phenols and formaldehyde, esters of glycerine and sorbitol polymer, dimethylamino-2-propanol salt..	January 29, 1992.
P 92-0083	G Gum tall oil rosin, fumaric acid, modified with substituted phenols and formaldehyde, esters of glycerine and sorbitol polymer, triethylamine salt..	January 29, 1992.
P 92-0084	G Gum and tall oil rosin, fumaric acid, modified with substituted phenols and formaldehyde, esters of glycerine and sorbitol polymer, *N*-propylamine salt..	January 29, 1992.
P 92-0085	G Gum tall oil rosin, fumaric acid, modified with substituted phenols and formaldehyde, esters of glycerine and sorbitol polymer, di-isopropanolamine salt..	January 29, 1992.
P 92-0086	G Gum tall oil rosin, fumaric acid, modified with substituted phenols and formaldehyde, esters of glycerine and sorbitol polymer, tri-isopropanolamine salt..	January 29, 1992.
P 92-0087	G Gum and tall oil rosin, fumaric acid, modified with substituted phenols and formaldehyde, esters of glycerine and sorbitol polymer, trimethylamine salt..	January 29, 1992.
P 92-0088	G Gum and tall oil rosin, fumaric acid, modified with substituted phenols and formaldehyde, esters of glycerine and sorbitol polymer, ethylene diamine salt..	January 29, 1992.
P 92-0089	G Gum and tall oil rosin, fumaric acid, modified with substituted phenols and formaldehyde, esters of glycerine and sorbitol polymer, sodium salt..	January 29, 1992.
P 92-0090	G Gum and tall oil rosin, fumaric acid, modified with substituted phenols and formaldehyde, esters of glycerine and sorbitol polymer, potassium salt..	January 29, 1992.
P 92-0145	G Styrenated acrylic copolymer	February 3, 1992.
P 92-0149	G Organopolysiloxane metal salt	February 10, 1992.
P 92-0205	G Substituted phosphoric acid	February 11, 1992.
P 92-0236	Dicyclopentadiene, cyclic codimer, aromatic naphtha, soya oil, fatty acid reaction product	February 25, 1992.
P 92-0240	G Aluminum(ethyl 3-oxobutanoato-O1,O3)bis(2-propanola)-,(*T*-4)-reaction products with alcohols, C_{11-C14}-rich, and phenolic resin.	February 27, 1992.
Y 87-0146	G Polyester of carbomonocyclic diacid and alkylene glycols.	June 5, 1989.
Y 89-0024	G Aromatic polyester based thermoplastic polyurethane polymer	January 28, 1992.
Y 91-0144	G High solids long oil alkyd resin.	January 17, 1992.
Y 91-0153	Polymer of: phathalic acid, fatty acid, polystyrene alkyl alcohol.	January 24, 1992.
Y 91-0169	G Aqueous acrylic polymer.	January 23, 1992.
Y 91-0236	G Polyester polymer	February 10, 1992.
Y 92-0031	G Dibasic acid glycol polyester	January 10, 1992.
Y 92-0032	G Modified polyalkylene terephathalate.	December 2, 1991.
Y 92-0039	G Saturated polyester, modified with glycidyl compound	January 25, 1992.
Y 92-0045	G Saturated polyester	January 25, 1992.
Y 92-0054	G Aqueous acrylic polymer.	February 3, 1992.
Y 92-0058	G Aqueous acrylic polymer.	February 10, 1992.
Y 92-0070	G Polyester urethane.	January 30, 1992.
Y 92-0071	G Polyester urethane.	February 7, 1992.
Y 92-0074	Polymer of di-ethylene glycol, trimethylol propane, trimethylol ethane, pentaerythritol, neopentyl glycol, polyethylene terephthlate, phthalic anhydride, and tofa..	February 7, 1992.

V. 8 Premanufacture notices for which the period has been suspended.

PMN No.

P 91-0503 P 92-0003 P 92-0278 P 92-0315
P 92-0329 P 92-0341 P 92-0343 P 92-0344

[FR Doc. 92-12932 Filed 6-2-92; 8:45 am]
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federal register

Wednesday
June 3, 1992

Part VI

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for April 1992

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS-53154; FRL 4070-8]

Premanufacture Notices; Monthly Status Report for APRIL 1992

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption request pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for April 1992.

Nonconfidential portions of the PMNs and exemption request may be seen in the TSCA Public Docket Office NE-G004 at the address below between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

ADDRESSES: Written comments, identified with the document control number "(OPPTS-53154)" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. 201ET, Washington, DC 20460, (202) 260-1532.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460 (202) 260-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during April; (b) PMNs received previously and still under review at the end of April; (c) PMNs for which the notice review period has ended during April; (d) chemical substances for which EPA has received a notice of commencement to manufacture during April; and (e) PMNs for which the review period has been suspended. Therefore, the April 1992 PMN Status Report is being published.

Dated: May 28, 1992.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

Premanufacture Notice Monthly Status Report for APRIL 1992.

I. 121 Premanufacture notices and exemption requests received during the month:

PMN No.

P 92-0713	P 92-0714	P 92-0715	P 92-0716
P 92-0717	P 92-0719	P 92-0720	P 92-0721
P 92-0722	P 92-0723	P 92-0724	P 92-0725
P 92-0726	P 92-0727	P 92-0728	P 92-0729
P 92-0730	P 92-0731	P 92-0732	P 92-0733
P 92-0734	P 92-0735	P 92-0736	P 92-0737
P 92-0738	P 92-0739	P 92-0740	P 92-0741
P 92-0742	P 92-0743	P 92-0744	P 92-0745
P 92-0746	P 92-0747	P 92-0748	P 92-0749
P 92-0750	P 92-0751	P 92-0752	P 92-0753
P 92-0754	P 92-0755	P 92-0756	P 92-0757
P 92-0758	P 92-0759	P 92-0760	P 92-0761
P 92-0762	P 92-0763	P 92-0764	P 92-0765
P 92-0766	P 92-0767	P 92-0769	P 92-0770
P 92-0771	P 92-0772	P 92-0773	P 92-0774
P 92-0775	P 92-0776	P 92-0777	P 92-0778
P 92-0779	P 92-0780	P 92-0781	P 92-0782
P 92-0783	P 92-0784	P 92-0785	P 92-0786
P 92-0787	P 92-0788	P 92-0789	P 92-0790
P 92-0791	P 92-0792	P 92-0793	P 92-0794
P 92-0795	P 92-0796	P 92-0797	P 92-0798
P 92-0799	P 92-0800	P 92-0801	P 92-0802
P 92-0803	P 92-0804	P 92-0805	P 92-0806
P 92-0807	P 92-0808	P 92-0809	P 92-0811
P 92-0812	P 92-0813	P 92-0814	P 92-0815
P 92-0816	P 92-0817	P 92-0818	P 92-0819
P 92-0820	P 92-0821	P 92-0830	P 92-0831
P 92-0842	Y 92-0124	Y 92-0125	Y 92-0126
Y 92-0127	Y 92-0128	Y 92-0129	Y 92-0130
Y 92-0131	Y 92-0132	Y 92-0133	Y 92-0134
Y 92-0135			

II. 309 Premanufacture notices received previously and still under review at the end of the month:

PMN No.

P 83-0237	P 84-0660	P 84-0704	P 85-0433
P 85-0612	P 85-0619	P 85-1184	P 86-0006
P 86-0334	P 86-0335	P 86-1315	P 86-1489
P 86-1607	P 87-0323	P 87-1872	P 88-0096
P 88-1271	P 88-1272	P 88-1273	P 88-1274
P 88-1460	P 88-1682	P 88-1753	P 88-1937
P 88-1938	P 88-1980	P 88-1982	P 88-1994
P 88-1985	P 88-1999	P 88-2000	P 88-2001
P 88-2100	P 88-2169	P 88-2212	P 88-2213
P 88-2228	P 88-2229	P 88-2230	P 88-2236
P 88-2484	P 88-2518	P 88-2529	P 89-0254
P 89-0321	P 89-0396	P 89-0538	P 89-0632
P 89-0676	P 89-0721	P 89-0769	P 89-0770
P 89-0775	P 89-0836	P 89-0837	P 89-0867
P 89-0957	P 89-0958	P 89-0959	P 89-0963
P 89-1038	P 89-1058	P 89-1062	P 90-0002
P 90-0009	P 90-0158	P 90-0159	P 90-0211
P 90-0237	P 90-0248	P 90-0249	P 90-0260
P 90-0261	P 90-0262	P 90-0263	P 90-0272
P 90-0441	P 90-0550	P 90-0558	P 90-0584
P 90-0581	P 90-0608	P 90-1280	P 90-1316
P 90-1319	P 90-1320	P 90-1321	P 90-1322
P 90-1358	P 90-1422	P 90-1527	P 90-1528
P 90-1529	P 90-1530	P 90-1531	P 90-1584
P 90-1592	P 90-1635	P 90-1687	P 90-1745
P 90-1840	P 90-1893	P 90-1937	P 90-1984
P 90-1985	P 91-0004	P 91-0043	P 91-0051
P 91-0101	P 91-0102	P 91-0107	P 91-0108
P 91-0109	P 91-0110	P 91-0111	P 91-0112
P 91-0113	P 91-0118	P 91-0228	P 91-0242
P 91-0243	P 91-0244	P 91-0245	P 91-0246
P 91-0247	P 91-0248	P 91-0288	P 91-0328
P 91-0358	P 91-0442	P 91-0464	P 91-0465
P 91-0466	P 91-0467	P 91-0468	P 91-0469
P 91-0470	P 91-0471	P 91-0472	P 91-0487
P 91-0490	P 91-0501	P 91-0503	P 91-0514
P 91-0521	P 91-0532	P 91-0548	P 91-0572
P 91-0584	P 91-0619	P 91-0659	P 91-0665
P 91-0666	P 91-0688	P 91-0689	P 91-0701
P 91-0732	P 91-0818	P 91-0826	P 91-0853
P 91-0914	P 91-0915	P 91-0934	P 91-0939
P 91-0940	P 91-0941	P 91-0968	P 91-1000
P 91-1009	P 91-1010	P 91-1011	P 91-1012
P 91-1013	P 91-1014	P 91-1015	P 91-1077
P 91-1116	P 91-1117	P 91-1118	P 91-1131
P 91-1163	P 91-1190	P 91-1191	P 91-1206
P 91-1210	P 91-1243	P 91-1279	P 91-1280
P 91-1281	P 91-1282	P 91-1283	P 91-1289
P 91-1297	P 91-1298	P 91-1299	P 91-1321
P 91-1322	P 91-1323	P 91-1324	P 91-1328
P 91-1346	P 91-1367	P 91-1368	P 91-1369
P 91-1371	P 91-1372	P 91-1379	P 91-1384
P 91-1386	P 91-1394	P 91-1409	P 91-1456
P 91-1464	P 92-0002	P 92-0003	P 92-0031
P 92-0032	P 92-0033	P 92-0034	P 92-0035
P 92-0036	P 92-0044	P 92-0048	P 92-0066
P 92-0067	P 92-0068	P 92-0129	P 92-0156
P 92-0157	P 92-0159	P 92-0168	P 92-0177
P 92-0217	P 92-0244	P 92-0245	P 92-0246
P 92-0247	P 92-0248	P 92-0249	P 92-0250
P 92-0251	P 92-0266	P 92-0283	P 92-0294
P 92-0298	P 92-0314	P 92-0315	P 92-0329
P 92-0341	P 92-0343	P 92-0344	P 92-0396
P 92-0412	P 92-0445	P 92-0446	P 92-0471
P 92-0474	P 92-0475	P 92-0476	P 92-0477
P 92-0478	P 92-0492	P 92-0496	P 92-0505
P 92-0509	P 92-0531	P 92-0532	P 92-0533
P 92-0545	P 92-0546	P 92-0547	P 92-0548
P 92-0549	P 92-0550	P 92-0551	P 92-0552
P 92-0554	P 92-0562	P 92-0564	P 92-0595
P 92-0599	P 92-0606	P 92-0624	P 92-0625
P 92-0628	P 92-0635	P 92-0648	P 92-0649
P 92-0652	P 92-0655	P 92-0656	P 92-0657
P 92-0658	P 92-0659	P 92-0660	P 92-0667
P 92-0681	P 92-0683	P 92-0686	P 92-0688
P 92-0690	P 92-0691	P 92-0692	P 92-0696
P 92-0697	P 92-0698	P 92-0699	P 92-0710
P 92-0711			

III. 125 Premanufacture notices and exemption request for which the notice review period has ended during the month. (Expiration of the notice review period does not signify that the chemical has been added to the inventory).

PMN No.

P 90-0602	P 91-0358	P 91-0763	P 91-0903
P 91-1361	P 91-1364	P 92-0169	P 92-0372
P 92-0373	P 92-0374	P 92-0375	P 92-0376
P 92-0377	P 92-0378	P 92-0379	P 92-0380
P 92-0381	P 92-0382	P 92-0383	P 92-0384
P 92-0385	P 92-0386	P 92-0387	P 92-0388
P 92-0389	P 92-0390	P 92-0391	P 92-0392
P 92-0393	P 92-0394	P 92-0395	P 92-0397
P 92-0398	P 92-0399	P 92-0400	P 92-0401
P 92-0402	P 92-0403	P 92-0404	P 92-0405
P 92-0406	P 92-0407	P 92-0408	P 92-0409
P 92-0410	P 92-0411	P 92-0413	P 92-0414
P 92-0415	P 92-0416	P 92-0417	P 92-0418
P 92-0419	P 92-0420	P 92-0421	P 92-0422

P 92-0423	P 92-0424	P 92-0425	P 92-0426	P 92-0447	P 92-0448	P 92-0449	P 92-0450	Y 92-0105	Y 92-0106	Y 92-0107	Y 92-0108
P 92-0427	P 92-0428	P 92-0429	P 92-0430	P 92-0451	P 92-0452	P 92-0453	P 92-0454	Y 92-0109	Y 92-0110	Y 92-0111	Y 92-0112
P 92-0431	P 92-0432	P 92-0433	P 92-0434	P 92-0455	P 92-0456	P 92-0457	P 92-0458	Y 92-0113	Y 92-0114	Y 92-0115	Y 92-0116
P 92-0435	P 92-0436	P 92-0437	P 92-0438	P 92-0459	P 92-0460	P 92-0461	P 92-0462	Y 92-0117	Y 92-0118	Y 92-0119	Y 92-0120
P 92-0439	P 92-0440	P 92-0441	P 92-0442	P 92-0463	P 92-0464	P 92-0465	P 92-0466	Y 92-0121	Y 92-0122	Y 92-0123	Y 92-0124
P 92-0443	P 92-0444	P 92-0445	P 92-0446	P 92-0467	P 92-0468	P 92-0469	P 92-0470	Y 92-0125			

IV. 98 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture

PMN No.	Identity/Generic Name	Date of Commencement
P 84-0653	G Perfluoroalkyl phosphate ammonium salt	October 2, 1985.
P 84-0655	G Cerium salt of fatty acid	March 24, 1985.
P 86-0334	G Aromatic amino compound	May 4, 1987.
P 86-0468	G Microgel nonaqueous dispersion	January 23, 1992.
P 86-0601	G Dialkyl ether	June 21, 1986.
P 86-1315	G Alkyloamide	February 26, 1992.
P 86-1762	G Polyvinyl acetate copolymer	March 12, 1992.
P 87-0728	G Polyamide	February 26, 1992.
P 88-0045	G Substituted imidazole	March 6, 1992.
P 88-0716	Isononanol; phosphoric acid	March 17, 1992.
P 88-0998	G Fluorene-containing diaromatic amine	March 3, 1992.
P 88-1616	G Carboxylated novolak acrylate	January 5, 1989.
P 88-1778	G Polysilazane	February 18, 1992.
P 88-1831	*D*-aminebis(cyanato-*N*)zinc	February 21, 1992.
P 88-2030	G Substituted-substituted-substituted-benzene polymer, reacted with a substituted amine, quarternized chloride salt	February 19, 1995.
P 88-2056	G Vinyl acrylic copolymer	March 17, 1992.
P 89-0457	G Unsaturated polyester resin	July 14, 1989.
P 89-0663	G Polyurethane resin	March 6, 1992.
P 89-0769	G Resorcinol-formaldehyde resin	June 26, 1990.
P 89-0942	G Substituted triazinylaminophenyl azo substituted heterocycle, salt	February 26, 1992.
P 89-1071	Bacillus licheniformis	January 24, 1991.
P 89-1118	G Modified hydroxy functional acrylic resin	February 28, 1992.
P 89-1137	Hexanedioic acid, trimethyl-, decyl octylester	March 16, 1991.
P 90-1290	G Calcium or strontium salt of the azo dye	February 28, 1992.
P 90-1455	G Cyclic amide	March 4, 1992.
P 90-1636	G Hexanedioic acid, polymer with 1,2-ethanediol reaction products with 1,6-diisocyanato- 2,2,4(or 2,2,4(or 2,4,4)-trimethylhexane and 2-hydroxyethyl acrylate.	March 9, 1992.
P 90-1818	G polyether polyol(aliphatic polyhydric alchol and alkylene oxide) with methyl end cap	March 6, 1992.
P 91-0138	G Isocyanate prepolymer solution	March 19, 1992.
P 91-0190	G Substituted propionic acid	February 20, 1992.
P 91-0227	G Polyamide alloy	March 12, 1992.
P 91-0513	G Aliphatic bis-alkylamide resin	February 17, 1992.
P 91-0524	G Polyester resin	March 10, 1992.
P 91-0552	G Polyepichlorohydrin	March 13, 1992.
P 91-0554	G Azo substituted naphthalene disulfonic acid	March 19, 1992.
P 91-0555	G Azo substituted disulfonic acid	March 19, 1992.
P 91-0564	Pentaerythritol tetraisostearate	July 11, 1991.
P 91-0601	G Methylstyrene olimers	February 27, 1992.
P 91-0602	G Acrylic/polyester grafted polymer	March 2, 1992.
P 91-0612	G Polydimethylsilane	February 19, 1992.
P 91-0613	G Polydimethylsiloxane	February 17, 1992.
P 91-0687	G Sulfonic acid, alkylaryl, calcium salts, overbased	February 26, 1992.
P 91-0789	G Silane silicate resin	April 2, 1992.
P 91-0802	G High solids modified alkyd	February 10, 1992.
P 91-1016	G Mixed tall oil fatty acids/ polyamine condensate	November 14, 1991.
P 91-1046	G Mixed tall oil fatty acids/polyamine condensate, acetate salt	November 18, 1991.
P 91-1080	G Isophorone diisocyanate type polyurethane	January 27, 1992.
P 91-1103	Ethanamine, 2-((2-chlorothyl)sulfonyl)ethoxy)-,hydrochloride	February 28, 1992.
P 91-1113	G Alkenoic	February 22, 1992.
P 91-1119	G Acrylic resin solution	February 24, 1992.
P 91-1144	G Phenolic resin	March 11, 1992.
P 91-1149	G Cresol novolak resin	March 9, 1992.
P 91-1153	G Organopolysiloxane	February 21, 1992.
P 91-1171	G Polysiloxane bisphenol-*A*-copolycarbonate	March 10, 1992.
P 91-1275	G Polyamide	March 18, 1992.
P 91-1301	G Benzoic acid, 2-substituted-3-methyl-, methyl ester	February 18, 1992.
P 91-1302	G Benzoic acid, 2-substituted-3-methyl-, methyl ester	February 15, 1992.
P 91-1355	G Polyurethane	February 10, 1992.
P 91-1382	Poly(oxy(methyl-1,2-ethanediyl))alpha-phenyl,omega-hydroxy	March 7, 1992.
P 91-1401	G Substituted alpha-aminoanthraquinone	February 26, 1992.
P 91-1402	G Halogenated anthrapyridoner	March 3, 1992.
P 91-1427	G 2-Propenoic acid 2-hydroxyethyl ester, polymer with fluoroalkyl ester and other monomers	March 6, 1992.
P 91-1428	G Ethane, 1,1-dicloro-,polymer with 2-propenoic acidfluoroalkyl ester and other monomers	March 6, 1992.
P 91-1465	Ehanamine, 2,2'-(1,2-ethanediylbis(oxy)bis(*N,N*,-dimethyl-	March 19, 1992.
P 92-0043	G Amino resin	February 20, 1992.
P 92-0081	G Gum and tall oil rosin, fumaric acid, modified with substituted phenols and formaldehyde, esters of glycerine and sorbitol polymer, urea salt..	January 29, 1992.
P 92-0082	G Gum and tall oil rosin, fumaric acid, modified with substituted phenols and formaldehyde, esters of glycerine and sorbitol polymer, diethylamine salt..	January 29, 1992.

IV. 98 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE—Continued

PMN No.	Identity/Generic Name	Date of Commencement
P 92-0136	G Ethylene -manuf-product unsaturated C_5 fraction polymer with substituted toluene	February 27, 1992.
P 92-0137	G Fluorinated substituted urethane	February 25, 1992.
P 92-0139	G Saturated polyester polyol	March 5, 1992.
P 92-0140	G 2-Propenoic acid, 2-methyl-, octadecyl ester, polymer with 2-propenoic acid, fluoroalkyl ester	March 6, 1992.
P 92-0142	G Blocked diisocyanate	March 12, 1992.
P 92-0146	G Fatty amine salt of a sulfonated aromatic compounds	March 3, 1992.
P 92-0147	G Fatty amine salt of a C_{18} fatty ester of amineral acid	March 3, 1992.
P 92-0148	G Fatty amine salt of a C_{12}-C_{15} fatty ester of a mineral acid	March 3, 1992.
P 92-0175	G Rosin modified phenolic resin	April 26, 1992.
P 92-0223	G Modified polyamine terepetalate	April 6, 1992.
P 92-0226	G Condensation polymer of an aromatic sulfonic acid, urea, aliphatic aldehyde and a cyclic acid, amide salt	February 25, 1992.
P 92-0227	G Trialkoxy substituted alkane	February 20, 1992.
P 92-0258	G Polyoxyalkaline acetate ester	February 29, 1992.
P 92-0263	G Phenol, 1-phenylethyl; phenol, bis(1-phenylethyl)-; phenol,2,4,6-tris(1-phenylethyl)-,; oxirane	March 12, 1992.
P 92-0264	G Adipic acid polymer	March 12, 1992.
P 92-0289	G Alkoxysilyl group-terminated polydialkylsiloxane	March 6, 1992.
P 92-0292	G Polyester Polyurethane Acrylic Graft Copolymer	February 21, 1992.
P 92-0297	G Hydrolystic enzyme produced in a recombinant strain of bacillus	March 12, 1992.
P 92-0309	G Alkyldiene alcohol	March 25, 1992.
Y 89-0009	G Polyester resin carboxylated	February 24, 1992.
Y 89-0010	G Polyester resin carboxylated	February 24, 1992.
Y 89-0102	G Aliphatic polyester urethane	April 26, 1992.
Y 90-0082	G Aqueous acrylic copolymer and salts thereof	October 10, 1990.
Y 90-0186	2-Propenoic acid, 2-methyl-, potassium salt; 2-propenioc acid, 2-methyl-	February 14, 1992.
Y 90-0188	2-Propenoic acid, 2-methyl-, potassium salt; 2-propenoic acid, 2-methyl-. 2-propenoic acid, 2-methyl-, 2-sulfoethyl ester, sodium salt.	January 29, 1992.
Y 91-0185	G Adipic acid, polyethylene glycol, terephthalic acid copolymer	March 6, 1992.
Y 92-0073	G Polyester resin.	February 24, 1992.
Y 92-0080	G Long oil alkyd	February 19, 1992.
Y 92-0082	G Modified polyethylene glycol	February 19, 1992.
Y 92-0087	G Vinyl acrylic emulsion	February 13, 1992.
Y 92-0096	4,4'-Sulfonyldiphenol; resorcinol diglycidyl ether; resorcinol	February 21, 1992.
Y 92-0099	Azelaic acid, adipic acid, and phthalic anhydride, polymer with propylene glycol-hydrogenated coco fatty acid ester	April 2, 1992.

V. 34 Premanufacture notices for which the period has been suspended.

PMN No.

P 92-0156 P 92-0157 P 92-0159 P 92-0244
P 92-0245 P 92-0246 P 92-0247 P 92-0248
P 92-0249 P 92-0250 P 92-0251 P 92-0396
P 92-0399 P 92-0400 P 92-0401 P 92-0402
P 92-0403 P 92-0412 P 92-0471 P 92-0474
P 92-0475 P 92-0476 P 92-0531 P 92-0532
P 92-0533 P 92-0545 P 92-0546 P 92-0547
P 92-0548 P 92-0549 P 92-0550 P 92-0551
P 92-0552 Y 92-0106

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federal register

Wednesday
June 3, 1992

Part VII

Department of Education

Business and Education Standards Program; Inviting Applications for New Awards for Fiscal Year 1992; Notices

DEPARTMENT OF EDUCATION

Business and Education Standards Program; Final Selection Criteria for Awards To Be Made in Fiscal Year 1992

AGENCY: Department of Education.

ACTION: Notice of final selection criteria for awards to be made in fiscal year 1992.

SUMMARY: The Secretary establishes selection criteria for awards to be made in fiscal year (FY) 1992 using funds appropriated in FY 1991 under the Business and Education Standards Program, which is authorized by the Carl D. Perkins Vocational and Applied Technology Education Act, as amended (the Act). This program implements a key component of AMERICA 2000, the President's education strategy on which the Departments of Education and Labor are jointly working to assist business and labor to adopt voluntary industry-based skill standards. The Secretary takes this action to establish selection criteria for FY 1992 grant awards under this new program with the understanding that the Departments of Education and Labor will meet regularly to discuss the issues surrounding voluntary industry-based standards and the development and promulgation of program regulations.

EFFECTIVE DATE: These selection criteria take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Debra J. Nolan, U.S. Department of Education, 400 Maryland Avenue SW., room 4518, MES, Washington, DC 20202-7327. Telephone: (202) 732-2417. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The Business and Education Standards Program provides financial assistance for organizing and operating business-labor-education technical committees that will propose national standards for competencies in industries and trades. This program is authorized under section 416 of the Act, 20 U.S.C. 2416, as amended by Public Law 101-392, 104 Stat. 753 (1990).

The following entities are eligible for an award under this program:

- Industrial trade associations.
- Labor organizations.
- National joint apprenticeship committees.
- Comparable national organizations, such as educational associations, industry councils, business and industry organizations, and associations of private or national research organizations.

Under this program, standards are to be developed through a collaborative voluntary effort by business, labor, and education. Thus, the Secretary expects that entities seeking awards under this program will provide evidence that they represent the entire industry, in some way; that a substantial segment of the industry representatives—employers, labor organizations, associations, vocational and other educators, or experts familiar with the industry that is to use the standards—are in agreement; and that they will participate together in the development of the standards.

The Business and Education Standards Program is an important part of AMERICA 2000, the President's education strategy to help the Nation move itself toward achieving the National Education Goals. Specifically, the program addresses Tract III of the AMERICA 2000 strategy—transforming America into "A Nation of Student"—by establishing standards for job skills and knowledge through a cooperative effort by business, labor, and education groups, so that workers can see what skills are needed to perform a job and can evaluate their grasp of those skills. The Business and Education Standards program also supports National Education Goal 5 of ensuring that every adult American possesses the knowledge and skills necessary to compete in a global economy and to exercise the rights and responsibilities of citizenship.

The Department of Education has consulted with the Department of Labor concerning the establishment of the Business and Education Standards Program. Both Departments will be involved in reviewing applications and will continue meeting throughout the operation of the program.

As part of the Administration's effort to encourage the development of skill standards, the Departments of Labor and Education, in conjunction with the National Advisory Commission on Work-based Learning, held a series of public hearings on "voluntary, industry-based skill standards and certification" during March and April 1992. Public comment on the issues of developing national skill standards was presented by representatives of organized labor and other workers, vocational education and training, apprenticeship programs, and both individual employers and associations of business and industry. These comments will be summarized by the Departments and will become available to the public after they are presented to the National Advisory Commission on Work-based Learning on July 23, 1992.

On January 30, 1992, the Secretary published a notice of proposed criteria for this program in the **Federal Register** (57 FR 3619).

Note: This notice of final criteria does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed criteria, 10 parties submitted on the proposed notice. All of the commenters expressed general support for the proposed selection criteria for the Business and Education Standards Program. An analysis of the comments and the Secretary's responses to them follows.

Comments: Two commenters stated that, because the Business and Education Standards Program is authorized by the Perkins Act, it should reflect and further the goals and explicit requirements of the Act. One commenter stated that the goal of programs under the Act is to provide students with the occupational and academic skills they need for a lifetime of work. The commenter recommended changing the selection criteria to clarify that the standards produced encompass context-based general occupational skills and competencies in all aspects of the industry studied and in the full range of academic subjects. This commenter also expressed concern that Federal funds might be spent to develop standards that federally-assisted vocational education programs could not use because they would be too narrow to be consistent with the planning and accountability measures of the Act. Another commenter recommended that standards be "benchmarked to world class standards" of performance.

Discussion: The Secretary agrees that the standards to be developed should provide students with the broad range of transferable skills needed to succeed in employment and be benchmarked to "world class standards." The Secretary notes that section 416(b)(2)(A) of the Act requires that, at a minimum, standards must relate to major divisions or specialties within the occupations the applicant proposes to study. Each applicant must decide how to identify

the skills from all aspects of the industry that are necessary for specific divisions or specialties within the occupation. Similarly, while the Secretary concurs that education programs should provide a broad range of transferable skills and the standards should be "world class," each applicant must decide how to define these concepts and to meet these goals while identifying the specific skill standards needed for specific divisions or specialties within occupations. In order to allow maximum flexibility in addressing these issues, the Secretary chooses not to regulate on these points. Furthermore, the Secretary expects that any standards generated by these grants will be useful to vocational education programs.

Changes: None.

Comments: Five commenters requested that the selection criteria be changed to ensure that the technical committee established by a grantee is representative of the industry and the educational programs affected by the standards. One commenter suggested that criterion (c)(3) be amended to encourage representation of students, parents, and community representatives, and that the business-labor-education committees have appropriate representation from each of the three sectors of business, labor, and education. Another commenter was concerned with geographic representation of the committee members. Two commenters wanted inclusion of employees involved in high-productivity work environments. Another commenter wanted academic educators to be included to ensure that the standards are not too narrowly defined. One commenter felt that the criteria were biased towards unions. In contrast, another commenter wanted the criteria changed to include more union representation.

Discussion: The Secretary agrees that there must be representation on each project's technical committee of business, labor, and education. To respond to the criteria in paragraph (c), an applicant should describe how the procedures for selecting the project's technical committee will ensure representation of business, labor, and education and membership by persons who are knowledgeable about the occupations to be addressed. These procedures should ensure that there is no bias toward one sector or another. The specific membership provisions suggested by the commenters are not required by the Act. The Secretary does not believe that establishing specific membership requirements is appropriate because each industry will have a different constellation of representations, but the Secretary encourages applicants to involve community representatives where appropriate.

Changes: None.

Comment: One commenter wanted professional societies to be included as eligible recipients and included on the technical committee because they are a form of an industry association and represent their affected members.

Discussion: Section 416(b)(1) of the Act authorizes the Secretary to make grants to national organizations that are comparable to industry trade associations. To the extent that "professional societies" meet the requirements of the Act, they are eligible recipients. Representatives of professional societies may serve as members of a project's technical committee if they are otherwise qualified.

Changes: None.

Comments: Four commenters requested that the method to be used by a grantee to validate its proposed standards should be considered in the selection criteria. One commenter suggested that the standards developed must be "measurable" and "teachable" and include both content components (i.e., what is the skill to be demonstrated) and performance components (i.e., how well must the skill be performed). Two commenters proposed that criteria related to "validity" be added to criterion (a). One commenter stated that the type of evidence needed to show validity depends upon how the standards are going to be disseminated and used and that they must be valid for their particular use. Therefore, the commenter recommended that criteria should either clarify the expected use for the standards or require applicants to state their planned use. Another commenter also wanted the criteria (c), (d), and (g) changed to include "validity" in relation to the populations to which they will apply. Another commenter wanted the criteria to reflect a process for public disclosure and comments on standards being recommended.

Discussion: The Secretary agrees that the standards should be valid for their intended use but does not believe that a change in the selection criteria is needed. Criterion (d) addresses the need for a formative evaluation to help assess and improve the accuracy of standards for competencies and a summative evaluation conducted by an independent evaluator. For example, a formative evaluation might include ongoing communication with employers, assessing how well an employee who met the standards being developed would perform. In contrast, a summative evaluation might include, for example, a survey of employers' acceptance of and intention to adopt the skill standards developed. Also, under criterion (a), the application is assessed for the quality and effectiveness of an applicant's approach to developing national standards for competencies in industries and trades. Although not required by the Act, the Secretary encourages applicants to involve the public in this process to the extent appropriate.

Changes: None.

Comments: Four commenters suggested that the selection criteria be revised to provide a priority for those programs developing competencies in demand and priority occupations. One commenter suggested that the maximum number of points for criterion (b) should be increased to 20 points or more so that more emphasis would be placed on the need for the project to benefit business, labor, and education and provide more flexibility for innovative programs. Another commenter suggested that criterion (b) reflect how the standards to be developed will increase the potential for career growth and upgrading opportunities through expanded career ladders and lattices for both entry-level and experienced workers.

Discussion: The Secretary believes that criterion (b) adequately addresses the commenters' concerns regarding the needs and benefits to business, labor, and education. Under this criterion, the Secretary will assess the extent to which a proposed project would meet specific needs. The extent to which an applicant addresses these needs will be reflected in its score under this criterion. The Secretary notes that an application that demonstrates a strong need for competencies in demand occupations and proposes a project to meet that need would receive a high score under criterion (b). However, the Secretary believes it is not necessary at this time to revise the proposed criteria to give preference to developing competencies for particular occupations. Moreover, under 34 CFR 75.217(d)(3), the Secretary will consider, in determining the extent of the need under criterion (b), whether the applicant or another representative of the applicant's industry has received Department of Labor resources for similar purposes. These grants will not duplicate similar efforts underway with existing resources.

Changes: None.

Comments: One commenter wanted the selection criteria to establish a

timeframe for completing the development of standards.

Discussion: The Secretary agrees that the applicants should discuss expected outcomes and timelines for all tasks and believes this factor has been adequately addressed in criterion (c).

Changes: None.

Comments: Three commenters suggested the selection criteria require that an applicant demonstrate how the project will keep the standards it developed current after Federal assistance ends.

Discussion: The Secretary agrees with the commenters that applicants should develop a methodology for maintaining the currency of the standards. The Secretary believes criterion (a)(1)(i) adequately addresses this concern. An applicant's score under criterion (a) will reflect the extent to which the applicant proposes to develop standards for the increased competency requirements created by the changing workplace.

Changes: None.

Comments: One commenter asked if the 50 percent match may be satisfied by cash, in-kind contributions, or both.

Discussion: The 50 percent match may be satisfied by allowable costs incurred by a grantee, third-party in-kind contributions, or both in accordance with the regulations at 34 CFR 74.52(a) and 80.24(a).

Changes: None.

Comments: One commenter asked whether the reference in criterion (c)(5) to "project participants" is to members of the committee.

Discussion: The project participants referenced in criterion (c)(5) are the technical committee members.

Changes: None.

Comments: Four commenters suggested eliminating the "time" factor in criterion (a)(1)(iii) to encourage a competency-based outcomes approach.

Discussion: The Secretary agrees that the standards should be focused on identifying the competencies required in the division or specialty area studied—not on time spent in training. However, section 416(b)(2)(B) of the Act requires that "minimum hours of study to be competent" in the divisions or specialty areas identified within occupations studied be included in the standards to be developed. The Secretary believes this requires a focus on competency standards; that is, mastery of a task or proficiency in the task, not minimum time in class.

Changes: None.

Comments: Two commenters questioned the "industry-based" aspects of the standards as referenced in the summary paragraph and wanted clarification on how occupational standards that cross industry boundaries will be addressed.

Discussion: The Secretary will award grants to projects that develop standards in either industries or trades, or both. The Secretary agrees with the commenters that some occupational areas that cross industry boundaries are key to developing a world class workforce. In this regard, criterion (a)(i)(ii) reflects the requirement of section 416(b)(2)(A) of the Act that the standards to be developed be for "major divisions or specialty areas identified within occupations studied."

Changes: None.

Comments: One commenter suggested that it would be useful for the Department to use one common set of core proficiencies, such as those outlined in the U.S. Secretary of Labor's Commission on Achieving Necessary Skills (SCANs) report, to serve as a common framework among the various standards-setting projects.

Discussion: The Department of Education and the Department of Labor, in concert with the President's AMERICA 2000 and Job Training 2000 strategies, are working with industry to determine the extent to which the SCANS findings can be incorporated into the development of skill standards for particular industries. An applicant under this program may propose, if it wishes, a framework for expressing skill standards that builds upon the SCANS findings.

Changes: None.

Matching Requirement

Each grant recipient shall provide 50 percent of the cost of the business-labor-education technical committee established under the grant.

Selection Criteria

For the FY 1992 grant competition under the Business and Education Standards Program only, the Secretary uses the following criteria to evaluate an application:

(a) *Program factors* (20 points). The Secretary reviews each application to assess the quality and effectiveness of the applicant's approach to developing national standards for competencies in industries and trades, including the extent to which the application proposes—

(1) To develop standards for—

(i) The competencies required for actual jobs, including the increased competency requirements created by the changing workplace, which can be used to establish job-related and industry-specific skill standards, built around core proficiencies;

(ii) Major divisions or specialty areas identified within the occupations the applicant proposes to study;

(iii) The minimum hours of study needed to be competent in these divisions or specialty areas;

(iv) Minimum tools and equipment required in these divisions or specialty areas;

(v) Minimum tasks to be included in any course of study purporting to prepare individuals for work in these divisions or specialty areas;

(vi) Minimum qualifications for instructional staff in these divisions or specialty areas; and

(2) An adequate needs assessment of the program factors described in paragraph (a)(1) of this selection criterion as part of the project.

(b) *Extent of need for the project* (15 points). The Secretary reviews each application to determine the extent to which the project meets specific needs, including—

(1) The extent of the need for national job-related and industry-specific skill standards, built around core proficiencies, for competencies in the major division or specialty areas identified within the occupations that the applicant proposes to study;

(2) How the applicant identified and documented those needs;

(3) How the standards to be developed will meet those needs, including the need of business for competent entry-level workers in the occupations to be studied; and

(4) The benefits to business, labor, and education that will result from meeting those needs.

(c) *Plan of operation* (20 points). The Secretary reviews each application to determine the quality of the plan of operation for the project, including the extent to which—

(1) The plan of management will be effective, will ensure proper and efficient administration of the program, and includes timelines that show starting and termination dates for all tasks;

(2) The specific procedures proposed will accomplish the project's objectives, including how the procedures for selecting the committee will ensure that the members are knowledgeable about the occupations to be studied and include representatives of business, labor, and education;

(3) The applicant plans to organize and operate a business-labor-education technical committee effectively in developing national standards for competencies in industries and trades;

(4) The development of proposed competencies for major divisions or

specialty areas within occupations will be coordinated with businesses, industrial trade associations, labor organizations, vocational and other educators or experts familiar with that industry; and

(5) The methods the applicant proposes to use to select project participants, if applicable, will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan* (15 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the plan includes specific procedures for—

(1) A formative evaluation to help assess and improve the accuracy of standards for competencies; and

(2) A summative evaluation conducted by an independent evaluator.

(e) *Key personnel* (10 points).

(1) The Secretary reviews each application to determine the extent of the applicant's experience in fields related to the objectives of the project.

(2) The Secretary reviews each application to determine the quality of key personnel an applicant plans to use, including—

(i) The qualifications, in relation to project requirements, of the project director, if one is to be used;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (e)(2)(i) and (ii) will commit to the project; and

(iv) Experience and training of the project director and key personnel in project management.

(f) *Budget and cost effectiveness* (10 points). The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(g) *Dissemination plan* (10 points). The Secretary reviews each application to determine the quality of the dissemination plan for the project, including—

(1) A clear description of the dissemination procedures;

(2) A description of the types of materials the applicant plans to make available; and

(3) Provisions for publicizing the proposed national standards for competencies in industries and trades.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Program Authority: 20 U.S.C. 2416.

(Catalog of Federal Domestic Assistance Number 84.244, Business and Education Standards)

Dated: May 29, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92-13010 Filed 6-2-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.244-A]

Business and Education Standards Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1992

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: The Business and Education Standards Program provides financial assistance for organizing and operating business-education-labor technical committees that will develop national skill standards for competencies in industries and trades. This program is authorized under section 416 of the Carl D. Perkins Vocational and Applied Technology Education Act, 20 U.S.C. 2416, as amended by Public Law 101-392, 104 Stat. 753 (1990).

The Secretary wishes to highlight for potential applicants, that the Business and Education Standards Program is an element of AMERICA 2000, the President's education strategy to help America move itself toward the National Education Goals. The Business and Education Standards Program also supports National Education Goal 5 of ensuring that every adult American possesses the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. Specifically, the program addresses Track III of the AMERICA 2000 strategy—transforming America into "A Nation of Students"—by establishing standards for job skills and knowledge through a cooperative effort by business, labor, and education groups, so that workers can see what skills are needed to perform a job and can evaluate their own grasp of those skills.

Eligible Applicants: The following entities are eligible for an award under this program:

- Industrial trade associations.
- Labor organizations.
- National joint apprenticeship committees.
- Comparable national organizations, such as educational associations, industry councils, business and industry organizations, and associations of private or national research organizations.

Deadline for Transmittal of Applications: July 6, 1992.

Deadline for Intergovernmental Review: September 4, 1992.

Available Funds: $3,500,000 for the first 18 months (funding for the second 18 months is subject to the availability of funds).

Estimated Range of Awards: $450,000 to $550,000 (funding for the first 18 months).

Estimated Average Size of Awards: $500,000 (funding for the first 18 months).

Estimated Number of Awards: 7.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months (two 18-month grant cycles).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) as follows:

(a) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(b) 34 CFR part 75 (Direct Grant Programs).

(c) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(d) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(e) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(f) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(g) 34 CFR part 82 (New Restrictions on Lobbying).

(h) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(i) 34 CFR part 86 (Drug-Free Schools and Campuses).

Invitational Priority: Under 34 CFR 75.105(c)(1) and 20 U.S.C. 2416, the Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not received competitive or absolute preference over other applications. Under the Business and Education Standards Program, the Secretary invites applications for projects that—

(1) Develop a coalition of employers, labor organizations, associations, and vocational and other educators—representing a majority within business and industry—who will participate in the development of the skill standards and a certification process;

(2) Develop standards that include job-specific, academic and reasoning skills, along with a certification process that will be maintained and updated after termination of the project;

(3) Develop methods for using skill standards as the basis for the development of vocational-technical education curriculum and certification;

(4) Propose procedures for testing the validity of the skill standards to insure non-discrimination of the basis of race, color, national origin, gender, age or disability;

(5) Develop a method for determining whether certified personnel are better performers than noncertified personnel; and

(6) Propose procedures for identifying and accommodating probable future skill standards at the national and world class levels for an occupation or industry in the next five to ten years.

With respect to this invitational priority, the Secretary encourages applicants to replicate standards or adapt methods used in this country and abroad. In the United States (for example), the automotive industry is notable in the development of skill standards and the certification process for both individuals and vocational-technical education programs. The work of the Vocational-Technical Education Consortium of States (V-TECS) is notable as the largest system in the United States for converting job analysis information into curriculum objectives and methods for assessing student achievement. Also, other organizations that have attempted to define and measure employability and workplace competencies, include the National Occupational Competency Testing Institute (NOCTI), the Educational Testing Service (ETS), the American College Testing service (ACT), the American Society for Training and Development (ASTD), the Secretary of Labor's Commission on Achieving Necessary Skills (SCANS), and the National Occupational Information Coordinating Committee (NOICC).

Other countries such as Canada, The Netherlands, and Scotland, have done considerable work in developing national industry-based skill standards. These countries have been successful in establishing industry-occupational platform committees with strong representation from management, labor, education, and government.

The Netherlands, in addition, has developed a computerized interactive curriculum information system for entering job analysis data and using artificial intelligence methods to convert those data into skill standards and vocational curricular objectives. The Netherlands has invited the United States to make use of this system, and the Secretary encourages applicants that are interested to do this. Applicants may obtain an abstract that describes this system from the National Occupational Information Coordinating Committee (NOICC) in Washington, DC (Telephone: 202-653-5665).

Selection Criteria: For the FY 1992 grant competition under the Business and Education Standards Program, the Secretary uses the selection criteria in the notice of final selection criteria for this competition published elsewhere in this issue of the Federal Register.

Intergovernmental Review of Federal Programs: This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the Federal Register on April 2, 1992, (57 FR 11354).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.244, U.S. Department of Education, room 4161, 400 Maryland Avenue, SW., Washington, DC 20202-0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Instructions for transmittal of applications:

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and six copies of the application on or before the deadline date to:

U.S. Department of Education, Application Control Center, Attention: CFDA #84.244-A), Washington, DC 20202-4725.

or

(2) Hand deliver the original and six copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.244-A), room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC 20202-4725.

(b) An Applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708-9494.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms: To apply for an award under this program competition, your application must be organized in the following order and include the following five parts:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4-88)).

Part II: Budget Information.

Part III: Budget Narrative.

Part IV: Program Narrative.

Part V: Additional Assurances and Certifications.

a. Assurances—Non-Construction Programs (Standard Form 424B).

b. Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80-0013) and instructions.

c. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80-0014, 9/90) and instructions.

Note: ED 80-0014 is intended for the use of grantees and should not be transmitted to the Department.

d. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL-A).

All forms and instructions are included as appendix A of this notice. Questions and answers pertaining to this program are included, as appendix B, to assist potential applicants.

All applicants must submit ONE original signed application, including ink signatures on all forms and assurances and SIX copies of the application. Please mark each application as original or copy. Local or State agencies may choose to submit two copies with the original.

No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Debra J. Nolan, U.S. Department of Education, 400 Maryland Avenue SW. (Room 4518—MES), Washington, DC 20202-7242. Telephone: (202) 732-2350. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 2416.

Dated: May 28, 1992.

Betsy Brand,

Assistant Secretary, Vocational and Adult Education.

Appendix A

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application	Preapplication
☐ Construction	☐ Construction
☒ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address (give city, county, state, and zip code):

Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education/OVAE

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 84.244A

TITLE: Business and Education Standards Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant

b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	A	B	C
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total Direct Cost (lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Costs/Stipends			
11. TOTAL, Federal Funds Requested (lines 8 through 10)			

SECTION B - Cost Sharing Summary (if appropriate)

	A	B	C
1. Cash Contribution			
2. In-Kind Contribution (only costs specifically for this project)			
3. TOTAL, Cost Sharing (Rate %)			

NOTE: For FULLY-FUNDED PROJECTS use Column A to record the first 12-month budget period; Column B to record the remaining months of the project; and Column C to record the total.

For MULTI-YEAR PROJECTS use Column A to record the first 12-month budget period; Column B to record the second 12-month budget period; and Column C to record the third 12-month budget period.

SECTION C - Budget Estimates (Federal Funds Only) for Balance of Project

Budget Periods

Second	Third	Fourth	Fifth

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. Personnel: Show salaries to be paid to project personnel.

2. Fringe Benefits: Indicate the rate and amount of fringe benefits.

3. Travel: Indicate the amount requested for both inter- and intra-State travel of project staff. Include funds for at least one trip for two people to attend a project director's meeting in Washington, D.C.

4. Equipment: Indicate the cost of non-expendable personal property that has a useful life of more than one year and a cost of $300 or more per unit ($5,000 or more if State, Local, or Tribal Government).

5. Supplies: Include the cost of consumable supplies and materials to be used during the project.

6. Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment; and (2) sub-contracts.

7. Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. Total, Direct Cost: Show the total for lines 1 through 7.

9. Indirect Costs: Indicate the rate and amount of indirect costs. NOTE: For training grants, the indirect cost rate cannot exceed 8%.

10. Training/Stipend Cost: (if allowable)

11. TOTAL, Federal Funds Requested: Show total for lines 8 through 10.

SECTION B - Cost Sharing Summary

Indicate the actual rate and amount of cost sharing when there is a cost sharing requirement. If cost sharing is required by program regulations, the local share required refers to a percentage of TOTAL PROJECT COST not of Federal funds.

SECTION C - Budget Estimates (Federal Funds Only) for Balance of Project

If the project period exceeds 12 months, include cost estimates for the continuation budget periods, as appropriate. This SECTION does not apply to projects that are full-funded.

NOTE: Grant recipients under the Business and Education Standards Program (CFDA 84.244) are required to provide not less than 50 percent of the total cost of the demonstration project conducted under this program. In other words, the amount shown on Line 3, Section B, must be at least 50 percent of the TOTAL PROJECT COST.

BILLING CODE 4000-01-C

Instructions for Part III—Budget Narrative

The Budget Narrative should explain, justify, and, if needed, clarify your budget summary. For each line item (personnel, fringe benefits, travel, etc.) in your budget, explain why it is there and how you computed the costs.

Please limit this section to no more than five pages. Be sure that each page of your application is numbered consecutively.

Instructions for Part IV—Program Narrative

Before preparing the Application Narrative, an applicant should read carefully the description of the program, the information regarding priorities, and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this Notice; and

3. Include any other pertinent information that might assist the Secretary in reviewing the application.

The Secretary strongly requests the applicant to limit the Program Narrative to no more than 30 double-spaced, typed pages (on one side only), although the Secretary will consider applications of greater length.

Applicants may include as an appendix to the Program Narrative supporting documentation, also on 8½"×11" paper, (e.g., letters of support, footnotes, resumes, etc.) or any other pertinent information that might assist the Secretary in reviewing the application.

Applicants are advised that—

(1) Under 34 CFR 75.217 of the Education Department General Administrative Regulations (EDGAR), the Department considers only information contained in the application in ranking applications for funding consideration. Letters of support sent separately from the formal application package are not considered in the review by the technical review panels.

(2) In reviewing applications, the technical review panel evaluates applications solely on the basis of the established technical review criteria. Letters of support contained in the application will strengthen the application only insofar as they contain commitments that pertain to the established technical review criteria, such as commitment and resources.

Additional Materials: Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 90 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. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project OMB 1830–0517, Washington, DC 20503.

(Information collection approved under OMB control number 1830–0517. Expiration date: 7/92.)

BILLING CODE 4000-01-M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0346-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known:*

Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable:* _____

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

Federal Use Only:

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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Appendix B

Potential applicants frequently direct questions to officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants the Department has assembled the following most commonly asked questions.

Q. Can we get an extension of the deadline?

A. No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the **Federal Register** and apply to all applications. Waivers for individual applications cannot be granted regardless of the circumstances.

Q. How many copies of the application should I submit and must they be bound?

A. Our new policy calls for an original and six copies to be submitted. The binding of the application is optional.

Q. We just missed the deadline for the XXX competition. May we submit under another competition?

A. Yes, however, the likelihood of success is not good. A properly prepared application must meet the specifications of the competition to which it is submitted.

Q. I'm not sure which competition is most appropriate for my project. What should I do?

A. We are happy to discuss any questions with you and provide clarification on the unique elements of the various competitions.

Q. Will you help us prepare our application?

A. We are happy to provide general program information. Clearly, it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about application requirements, evaluation criteria, and the priorities. Applicants should understand that this previous contact is not required, nor will it in any way influence the success of an application.

Q. When will I find out if I'm going to be funded?

A. You can expect to receive notification within 3 to 4 months of the application closing date, depending on the number of applications received and the number of competitions with closing dates at about the same time.

Q. Once my application has been reviewed by the review panel, can you tell me the outcome?

A. No. Every year we are called by a number of applicants who have legitimate reasons for needing to know the outcome of the review prior to official notification. Some applicants need to make job decisions, some need to notify a local school district, etc. Regardless of the reason, because final funding decisions have not been made at that point, we cannot share information about the review with anyone.

Q. How long should an application be?

A. The Department of Education is making a concerted effort to reduce the volume of paperwork in discretionary program applications. The scope and complexity of projects is too variable to establish firm limits on length. Your application should provide enough information to allow the review panel to evaluate the significance of the project against the criteria of the competition. We recommend that you address all of the selection criteria in a "Program Narrative" of no more than thirty pages in length. Supporting documentation may be included in appendices to the Application Narrative. Some examples:

(1) Staff qualification. These should be brief. They should include the person's title and role in the proposed project and contain only information about his or her qualifications that are relevant to the proposed project. Qualifications of consultants and advisory council members should be provided and be similarly brief.

(2) Assurance of participation of an agency other than the applicant if such participation is critical to the project.

(3) Copies of evaluation instruments proposed to be used in the project in instances where such instruments are not in general use.

Q. Will my application be returned if I am not funded?

A. We no longer return unsuccessful applications. Thus, applicants should retain at least one copy of the application.

Q. Can I obtain copies of reviewers' comments?

A. Upon written request, reviewers' comments will be mailed to unsuccessful applicants.

Q. How should my application be organized?

A. The Application Narrative should be organized to follow the exact sequence of the components in the selection criteria pertaining to the specific program competition for which the application is prepared. In each instance, a table of contents and a one-page abstract summarizing the objectives, activities, project participants, and expected outcomes of the proposed project generally enhance the review of the application.

Q. Is travel allowed under these projects?

A. Travel associated with carrying out the project is allowed (i.e., travel for data collection, etc.). Because we may request the principal investigator or director of funded projects to attend an annual staff development meeting, you may also wish to include a trip or two to Washington, DC in the travel budget. Travel to conferences is sometimes allowed when it is for purposes of dissemination.

Q. If any application receives high scores from the reviewers, does that mean that I will receive funding?

A. Not necessarily. It is often the case that the number of applications scored highly by the reviewers exceeds the dollars available for funding projects under a particular competition. The order of selection, which is based on the scores of all the applications and other relevant factors, determines the applications that can be funded.

Q. What happens during negotiations?

A. During negotiations technical and budget issues may be raised. These are issues that have been identified during the panel and staff reviews that require clarification. Sometimes issues are stated as "conditions." These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions may also be raised about the proposed budget. Generally, these issues are raised because there is inadequate justification or explanation of a particular budget item, or because the budget item seems unimportant to the successful completion of the project. If you are asked to make changes that you feel could seriously affect the project's success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all negotiation issues have been resolved.

Q. How do I provide an assurance?

A. Except for SF-424B, "Assurances—Non-Construction Programs," simply state in writing that you are meeting a proscribed requirement.

Q. Where can copies of the **Federal Register**, program regulations, and Federal statutes be obtained?

A. Copies of these materials can usually be found at your local library. If not, they can be obtained from the Government Printing Office by writing to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 783-3238. When requesting copies of regulations or statutes, it is helpful to use the specific name, public law number, or part number. The material referenced in this notice should be referred to as follows:

(1) Carl D. Perkins Vocational Education Act, as amended by the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 (Pub. L. 101-392, 104 Stat. 753 (1990)).

(2) The Education Department General Administrative Regulations (EDGAR).

For a free copy (EDGAR) contact the U.S. Department of Education, Grants and Contracts Services, 400 Maryland Avenue SW. (room 3653—ROB-3), Washington, DC 20202-4835. Telephone: (202) 708-5580.

[FR Doc. 92-13009 Filed 6-2-92; 8:45 am]

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Federal Register

Vol. 57, No. 107

Wednesday, June 3, 1992

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