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Federal Register

Wednesday
September 18, 1985

Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

Selected Subjects

CONTINUED INSIDE

Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

WASHINGTON, DC

WHEN: November 15; at 9 am.

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: Call JoAnn Harte, Workshop Coordinator, 202-523-5239.

FUTURE WORKSHOPS: Additional workshops are scheduled bimonthly in Washington and on an annual basis in Federal regional cities. The January 1986 Washington, D.C. workshop will include facilities for the hearing impaired. Dates and locations will be announced later.

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Separate Parts in This Issue

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 5367 of September 16, 1985

Citizenship Day and Constitution Week, 1985

By the President of the United States of America

A Proclamation

In this, the commencement year of the 100th anniversary renovation of the Statue of Liberty, Americans are called on to renew and deepen their appreciation of the unique and precious heritage passed on to us by our Founding Fathers. This heritage finds its most sustained and formal expression in the United States Constitution. It is truly a marvel that a group of people assembled from a small population could develop a document capable of guiding the course of this Nation through nearly 200 years of growth to become the greatest on earth. The wisdom and foresight of the architects of the Constitution is manifest in the fact that this dynamic document has required so few amendments over the 198 years of its existence, and has remained a powerful governing tool throughout.

The kind of society our Constitution has created—free and fair and reformable—helps to explain the desire of many foreign nationals to become United States citizens. Last year, over a quarter of a million people, more than ever before in a single year, took the oath of United States citizenship. Clearly the fire of liberty enshrined in the Constitution is not only a hearth to warm, it remains a beacon that draws people from every continent.

How grateful to God all Americans should be that our Constitution remains as Judge David Davis observed more than a century ago: "A law for rulers and people, equally in war and peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances."

In recognition of the importance of our Constitution and the role of our citizenry in shaping our government, the Congress, by Joint Resolution of February 29, 1952 (36 U.S.C. 153), designated September 17 of each year as Citizenship Day and authorized the President to issue annually a proclamation calling upon officials of the government to display the flag on all government buildings on that day. The Congress, by Joint Resolution of August 2, 1956 (36 U.S.C. 159), also requested the President to proclaim the period beginning September 17 and ending September 23 of each year as Constitution Week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, call upon appropriate government officials to display the flag of the United States on all government buildings on Citizenship Day, September 17, 1985. I urge Federal, State and local officials, as well as leaders of civic, educational, and religious organizations, to conduct appropriate ceremonies and programs that day to commemorate the occasion.

I also proclaim the period beginning September 17 and ending September 23, 1985, as Constitution Week, and I urge all Americans to observe that week with fitting ceremonies and activities in their schools, churches, and other suitable places.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of September, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 85-22516
Filed 9-17-85; 11:59 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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Wednesday, September 18, 1985

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Reg. 361, Amdt. 2]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Amendment 2 of Regulation 361 increases the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period September 13–19, 1985. The amendment is needed to provide for orderly marketing of fresh Valencia oranges for the period specified due to the marketing situation confronting the orange industry.

DATES: Regulation 361, Amendment 2 (§ 908.661) is effective for the period September 13–19, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone: 202–447–5975.

SUPPLEMENTARY INFORMATION:

Findings

This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and have been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The amendment and the regulation are issued under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The actions are based upon the recommendation and information submitted by the Valencia Orange Administrative Committee (VOAC) and upon other available information. It is hereby found that these actions will tend to effectuate the declared policy of the act.

The amendment is consistent with the marketing policy for 1984–85. The committee members were contacted by telephone on September 12, 1985, to consider the current and prospective conditions of supply and demand and recommended an increase in the quantity of Valencia oranges that may be handled during the specified week. The committee reports that demand for Valencia oranges continues to increase.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because there is insufficient time between the date when information upon which these regulations are based became available and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the amendment and the regulation at an open meeting. To effectate the declared policy of the act, it is necessary to make the regulatory provisions effective as specified, and handlers have been notified of the amendment and regulation and its effective date.

List of Subjects in 7 CFR Part 908

Marketing agreements and orders, California, Arizona, Oranges (Valencia).

PART 908—[AMENDED]

1. The authority citation for 7 CFR Part 908 continues to read as follows:

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

2. Section 908.661 is added to read as follows:

§ 908.661 Valencia Orange Regulation 361.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period September 13, 1985, through September 19, 1985, are established as follows:

(a) District 1: 370,000 cartons;
(b) District 2: 630,000 cartons;
(c) District 3: Unlimited cartons.

Dated: September 13, 1985.

Thomas R. Clark,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–22341 Filed 9–17–85; 8:45 am]
BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 100

Statement of Organization

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMARY: This rule amends the Service organization statement to reflect the recent redelegation of the Hartford, Connecticut office from a district office to a suboffice. This change is made for more efficient management.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633–3291.

SUPPLEMENTARY INFORMATION: Service management has reviewed the jurisdictional responsibilities, workloads and types of work under the jurisdiction of the Hartford office. It has been determined that the responsibilities and variety of work do not justify the continued classification of Hartford as an independent district office. Hartford has become a suboffice under the jurisdiction of the Boston, Massachusetts district. This change will not affect the location of the office or the full range of I&NS services provided to the public.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary as this rule deals solely with agency management and organization.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant impact on a

substantial number of small entities. This order is not a rule as defined in section 1(a) of E.O. 12291 as it relates to agency organization and management.

List of Subjects in 8 CFR Part 100

Administrative practice and procedure, Authority delegations (government agencies), Organization and functions (government agencies).

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 100—STATEMENT OF ORGANIZATION

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

Authority: Sec. 103 of the Immigration and Nationality Act (8 U.S.C. 1103)

2. In § 100.4, paragraph (a) is revised to read as follows:

§ 100.4 Field Service.

* * * * *

(a) *Regional offices.* The Eastern Regional Office, located in Burlington, Vermont, has jurisdiction over districts 2, 3, 4, 5, 7, 21, 22, 25, and 27 and Border Patrol sectors 1, 2, 3, and 4. The Southern Regional Office, located in Dallas, Texas, has jurisdiction over districts 6, 14, 15, 20, 26, 28, 38, and 40, and Border Patrol sectors 15, 16, 17, 18, 19, 20, and 21. The Northern Regional Office, located in Fort Snelling, Twin Cities, Minnesota has jurisdiction over districts 8, 9, 10, 11, 12, 19, 24, 29, 30, 31, and 32 and Border Patrol sectors 5, 6, 7, 8, and 9. The Western Regional Office, located in San Pedro, California, has jurisdiction of over districts 13, 16, 17, 18, and 39 and Border Patrol sectors 10, 11, 12, 13, and 14.

* * * * *

3. In § 100.4, paragraph (b)(2) is revised and paragraph (b)(23) is removed as follows:

§ 100.4 Field Service.

* * * * *

(b) * * *

(2) *Boston, Massachusetts.* The district office in Boston, Massachusetts has jurisdiction over the States of Connecticut, New Hampshire (except the port of entry at Pittsburg, New Hampshire), Massachusetts and Rhode Island.

* * * * *

(23) [Reserved]

* * * * *

4. In § 100.4, paragraph (c)(2), district 2, is revised and district 23 is removed as follows:

§ 100.4 Field Service.

* * * * *

(c) * * *

(2) * * *

District No. 2—Boston, Massachusetts

Class A

Boston, Mass. (the port of Boston includes, among others, the port facilities at Beverly, Braintree, Chelsa, Everett, Hingham, Lynn, Manchester, Marblehead, Milton, Quincy, Revere, Salem, Saugus, and Weymouth Mass.)
Gloucester, Mass.
Hartford, Connecticut. (the port of Hartford includes, among others, the port facilities at Bridgeport, Groton, New Haven, and New London, Connecticut.)
Providence, R.I., (the port of Providence includes, among others, the port facilities at Davisville, Melville, Newport, Portsmouth, Quonset Point, Saunderstown, Tiverton, and Warick, R.I.; and at Fall River, New Bedford, and Somerset, Mass.)

Class C

Newburyport, Mass.
Plymouth, Mass.
Provincetown, Mass.
Sandwich, Mass.
Woods Hole, Mass.
Portsmouth, N.H.

* * * * *

District No. 23—[Reserved]

* * * * *

Dated: September 13, 1985.

Thomas C. Ferguson,

Deputy Commissioner, Immigration and Naturalization Service.

[FR Doc. 85-22344 Filed 9-17-85; 8:45 am]

BILLING CODE 4410-10-M

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8 CFR Part 287

Field Officers; Powers and Duties

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule revises the regulations relating to the admissibility of official records of foreign public documents. In order to conform to existing requirements, the rule distinguishes between nonsignatories and signatories of the Convention Abolishing the Requirement of Legalization for Foreign Public Documents.

DATE: September 18, 1985.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Washington, D.C. 20536, Telephone: (202) 633-3048
For Specific Information: William P. Joyce, Associate General Counsel, Immigration and Naturalization Service, 425 I Street NW., Washington, D.C. 20536, Telephone: (202) 633-3211

SUPPLEMENTARY INFORMATION: This final rule revises the provisions for authentication of official records in order to conform existing requirements to the exceptions noted for signatories of the Convention Abolishing the Requirement of Legalization for Foreign Public Documents. The rule is divided into two parts. Section (a) implements the existing rule as to nonsignatories of the Convention. Section (b) enacts relevant operating provisions for signatories of the Convention. The Convention provisions simplify requirements for legalization of foreign documents.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because this amendment relates to foreign affairs functions of the United States.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant impact on a substantial number of small entities. This order is not a rule within the definition of section 1(a) of E.O. 12291 because it relates to the foreign affairs functions of the U.S.

List of Subjects in 8 CFR Part 287

Administrative practice and procedure, Archives and records.

Accordingly, Chapter 1 of Title 8 of the Code of Federal Regulations is amended as follows:

PART 287—FIELD OFFICERS; POWERS AND DUTIES

1. The authority citation for Part 287 continues to read as follows:

Authority: Sections 103 and 287 of the Immigration and Nationality Act, as amended. (8 U.S.C. 1103 and 1357).

2. Section 287.6 is revised to read as follows:

§ 287.6 Proof of official records.

(a) *Domestic.* In any proceeding under this chapter, an official record or entry therein, when admissible for any purpose, shall be evidenced by an official publication thereof, or by a copy attested by the official having legal custody of the record or by an authorized deputy.

(b) *Foreign: Countries not Signatories to Convention.* (1) In any proceeding under this chapter, an official record or entry therein, when admissible for any purpose, shall be evidenced by an official publication thereof, or by a copy

attested by an officer so authorized. This attested copy in turn may but need not be certified by any authorized foreign officer both as to the genuineness of the signature of the attesting officer and as to his/her official position. The signature and official position of this certifying foreign officer may then likewise be certified by any other foreign officer so authorized, thereby creating a chain of certificates.

(2) The attested copy, with the additional foreign certificates if any, must be certified by an officer in the Foreign Service of the United States, stationed in the foreign country where the record is kept. This officer must certify the genuineness of the signature and the official position either of (i) the attesting officer; or (ii) any foreign officer whose certification of genuineness of signature and official position relates directly to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation.

(c) *Foreign: Countries Signatory to Convention Abolishing the Requirement of Legalization for Foreign Public Documents.* (1) In any proceeding under this chapter, a public document or entry therein, when admissible for any purpose, may be evidenced by an official publication, or by a copy properly certified under the Convention. To be properly certified, the copy must be accompanied by a certificate in the form dictated by the Convention. This certificate must be signed by a foreign officer so authorized by the signatory country, and it must certify (i) the authenticity of the signature of the person signing the document; (ii) the capacity in which that person acted, and (iii) where appropriate, the identity of the seal or stamp which the document bears.

(2) No certification is needed from an officer in the Foreign Service of public documents.

(3) In accordance with the Convention, the following are deemed to be public documents:

(i) Documents emanating from an authority or an official connected with the courts of tribunals of the state, including those emanating from a public prosecutor, a clerk of a court or a process server;

(ii) Administrative documents;

(iii) Notarial acts; and

(iv) Official certificates which are placed on documents signed by persons in their private capacity, such as official certificates recording the registration of a document or the fact that it was in existence on a certain date, and official and notarial authentication of signatures.

(4) In accordance with the Convention, the following are deemed not to be public documents, and thus are subject to the more stringent requirements of § 287.6(b) above:

(i) Documents executed by diplomatic or consular agents; and

(ii) Administrative documents dealing directly with commercial or customs operations.

Dated: September 13, 1985.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 85-22345 Filed 9-17-85; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF ENERGY

10 CFR Part 903

Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions

AGENCY: Department of Energy.

ACTION: Amendment to final regulations.

SUMMARY: Notice is given that the Deputy Secretary has adopted regulations establishing common public participation procedures for power and transmission rate adjustments and extensions for four Power Marketing Administrations (PMAs) of the Department of Energy: Alaska Power Administration, Southeastern Power Administration, Southwestern Power Administration, and Western Area Power Administration. The Bonneville Power Administration is not included because the Pacific-Northwest Electric Power Planning and Conservation Act, Pub. L. 96-501 (December 5, 1980) (16 U.S.C. 839), establishes unique procedural requirements for Bonneville rate adjustments. The regulations govern the development of rate proposals by the administrators of the four PMAs and the confirmation and approval of rates on an interim basis, subject to refund, by the Deputy Secretary pursuant to the authority delegated by the Secretary of Energy in Delegation Order No. 0204-108 (48 FR 55664, December 14, 1983).

Proposed procedures were published in the **Federal Register** on January 2, 1985 appearing at 50 FR 206. Opportunity for written comments was provided and comments were received from 7 individuals and entities.

EFFECTIVE DATE: The regulations are effective September 18, 1985.

FOR FURTHER INFORMATION CONTACT:

Leon Jourolmon, Jr., Director of Fiscal Operations, Southeastern Power Administration, Samuel Elbert Building, Elberton, Georgia 30635 (404) 283-3261

Richard K. Pelz, Office of the General Counsel, Forrestal Building, U.S. Department of Energy, Washington, DC 20585 (202) 252-2918

SUPPLEMENTARY INFORMATION:

I. Introduction

The existing regulations in 10 CFR Part 903, Subpart A, set forth the procedures for public participation in the development of power and transmission rates for the Alaska, Southeastern, Southwestern, and Western Area Power Administrations. The Bonneville Power Administration is not included because section 7 of the Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96-501 (December 5, 1980) (16 U.S.C. 839), establishes unique procedural requirements for Bonneville rate adjustments.

The existing regulations were published in the **Federal Register** on December 31, 1980 (44 FR 86983). They supplement Delegation Order No. 0204-33, which became effective January 1, 1979. That delegation order, among other things, authorized Assistant Secretary for Conservation and Renewable Energy (originally the Assistant Secretary for Resource Applications) to develop power and transmission rates, acting by and through the Administrators of the PMAs, and to confirm, approve and place such rates into effect on an interim basis. The Federal Energy Regulatory Commission (FERC) was given the authority to confirm and approve such rates on a final basis or to disapprove them.

Delegation Order No. 0204-108, which became effective on December 14, 1983 (48 FR 55664), replaced Delegation Order No. 0204-33. Among other changes the new delegation order gave the authority to confirm and approve rates on an interim basis to the Deputy Secretary rather than the Assistant Secretary; provided that rates would be developed by the Administrators; authorized the Administrators to submit rates to the FERC for confirmation and approval on a final basis without prior confirmation and approval on an interim basis; gave the Administrators the authority to put rates for short-term sales into effect on a final basis; and required a certification by the Administrator that the rate is consistent with applicable law and is the lowest possible rate to customers consistent with sound business principles. The revisions to Part 903 incorporate these changes.

The regulations also make several changes, based on four years of

experience with the existing procedures, primarily for the purpose of simplifying the regulations and providing more flexibility in their application. The following are the principal changes: Paragraph (c) has been added to both §§ 903.15 and 903.16 authorizing the Administrator to dispense with public information forums and public comment forums if he or she determines that there is no interest in holding them. A provision for informal public meetings for minor rate adjustments has been added. Rates for short term sales are exempted from the regulations at the discretion of the Administrator. The defined terms "Minor new service," "New service," "Revised Proposed Rates" and "Proposed Substitute Rates" have been deleted. The definition of "Rate" has been revised to delete the reference to surcharges and discounts. A sentence has been added explaining that FERC confirmation of a higher Substitute Rate on a final basis constitutes final confirmation of the lower Provisional Rate during the interim period that it was in effect. The provisions relating to refunds have been simplified. The authority of the Deputy Secretary to extend rates on a temporary basis pending further proceedings has been recognized.

A draft of the proposed regulations was published in the **Federal Register** of January 2, 1985 (50 FR 206). Written comments were invited to be submitted by March 4, 1985. In response to this opportunity, written comments were received from 7 individuals or groups, a list of which is included in the notice.

These procedures shall become effective September 18, 1985.

II. Major Issues

1. Reduction in comment period from 90 days to 45 days on major rate adjustments (§ 903.14(a))

Four commenters objected to the reduction in the comment period on major rate adjustments from 90 days to 45 days. They stated that due process requires that sufficient time be allowed to make meaningful comment.

After further consideration the 90-day provision of the previous procedures has been retained.

2. Elimination of requirement to have a comment period on minor rate adjustments (§ 903.14(a))

Three commenters objected to the elimination of the 30-day comment period for a minor rate adjustment. It is thought that even though a minor rate adjustment may have little economic impact for the PMA, it might have significant impact in the view of a customer.

After further consideration the 30-day provision of the previous procedures has been retained.

3. Elimination of public informtion and comment forums at the discretion of the Administrator (§ 903.15(c) and 903.16(c))

Two commenters objected to the elmination of the requirement to have a public information and public comment forum if the Administrator determines that there is no significant interest in holding one. One commenter states that the potential loss of these forums could significantly hurt the interests of the customers. One other commenter did not object to the elimination of the forums, but suggested that the public forum needed to be scheduled and noticed, and may be cancelled if no person indicates in writing by a prescribed date an intention to appear at such public forum.

After due consideration, the suggestion to schedule public forums suject to cancellation if no person indicates in writing by a prescribed date, an intent to appear, has been adopted.

4. Elimination of "discounts and surcharges" in the definition of a rate (§903.2(1))

One commenter objects to the elimination of "discounts and surcharges" in the definition of a rate. The commenter states that it creates a wide-open loophole in PMA determination of power and transmission rates.

Although "discounts and surcharges" have been deleted from the definition of rates, the definition of rates does not specifically exclude "discounts and surcharges" as it does leasing fees, service facility charges, or other types of facility use charges. The reason is that it sometimes is appropriate to consider "discounts and surcharges" as rates or elements of rates which should be subject to public review and comment, and other times it is not necessary, or appropriate, that they be subjected to public review and comment. There are other terms which are commonly used in rates, or rate schedules, which are similarly neither automatically included or excluded from public review and comment. The elimination of "discounts and surcharges" in the definition of a rate does not create a wide open loophole as suggested because where discounts, surcharges, credits, addons, etc., are appropriately a part of the rate they will be included in the rate review process. Therefore, "discounts and surcharges" have been eliminated from the definition of a rate.

5. Allowing Administrator to make "other procedural changes" (§ 903.14)

One commenter objected to allowing the Administrator to make other procedural changes. The commenter stated that the Administrator could change the proposed rulemaking itself. The commenter recommended that the statement be appended by saying that the Administrator could make a procedural change "not inconsistent with these rules."

After reviewing the proposed change and evaluating the comment received, the language of the existing procedures, which had been shortened for simplification and not for the purpose of eliminating a showing of good cause, was reinstated.

6. Deputy Secretary setting the effective date of a provisional rate (§ 903.21(b))

One commenter objected to allowing the Deputy Secretary to set an effective date that was retroactive. The commenter recommended that the effective date be prospective only.

After evaluating the comment received, the language of the existing procedures was reinstated, amended as follows: replace "Assistant Secretary" with "Deputy Secretary." The intention was simplification, not confusion, of the process.

7. Applicability of procedures to rates for short-term sales (§ 903.1(c))

One commenter noted that the statement that these procedures are not applicable to short term sales of capacity, energy, or transmission is misleading because there are procedural requirements of the DOE Organization Act and the Administrative Procedure Act which do apply.

It is agreed that the provision of the Acts are applicable and the Administrator will comply with them. The misleading statement in § 903.1(c) has been amended for clarification.

8. Applicability of procedures to substitute rates (§ 903.22(c))

One commenter stated that not providing an opportunity to make comments regarding substitute rates, which could be major rate adjustments, if not fair to the consumer.

Substitute rates are prepared in response to the Federal Energy Regulatory Commission (FERC) action. If a customer or interested party is not in agreement with FERC, then any comments or any action should be directed to FERC, which customarily

provides the opportunity for comment. This is the same recourse available to the PMA. The provision of an opportunity to comment by the Administrator remains discretionary, as in the language of the existing procedures.

Entities who commented—Listed below are the parties that submitted comments in response to the proposed procedures published in the Federal Register on January 2, 1985 (50 FR 206).

1. American Public Power Association (APPA).
2. Northeast Texas Electric Cooperative, Inc. and Tex-La Electric Cooperative of Texas, Inc.
3. Western Area Power Administration.
4. Arizona Public Service Company.
5. Southeastern Power Resources Committee.
6. Sacramento Municipal Utility District.
7. DOE, Albuquerque Operations Office.

Executive Order 12291

Under the provisions of section 3 of Executive Order 12291, dated February 17, 1981, a Regulatory Impact Analysis must be made prior to the publication of a major rule. The proposed revision of the regulations are of technical nature and simplify procedural requirements applicable to the development of rates. They are considered to be non-major rules within the meaning of the Executive Order. Regulations relating to the sale of electrical power by the various power marketing administrations have been exempted by the Office of Management and Budget (OMB) from prepromulgation review by that agency. Accordingly, no clearance of these proposed regulations by OMB is required.

Regulatory Flexibility Act

Pursuant to sections 601 and 603 of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) each agency when required to publish a general notice of proposed rulemaking for any proposed rule shall prepare for public comment an initial Regulatory Flexibility Analysis to describe the impact of the proposed rule on small entities. Under section 601(2) of this Act, "rates," "prices" or "practices," "relating to rates and prices," as used in this Act, are not considered rules for purposes of the Act. The proposed regulations established revised procedures and practices for the development of rates at which power is sold by the power marketing administrations. It follows that the regulations are exempt from the Act. Accordingly, no regulatory flexibility analysis is required.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501–3520 (1982)) requires that certain information collection requirements be approved by the Office of Management and Budget before information is demanded of the public. OMB has issued a final rule controlling Paperwork Burdens on the Public (48 FR 13666, March 31, 1983). Ample opportunity is provided in the proposed rules for the interested public to participate with the power marketing administrations in the development of rates. Nevertheless, this is at their sole election. There is no requirement that members of the public participating in the development of rates supply information about themselves to the Government. It follows that the proposed regulations are exempt from the Paperwork Reduction Act.

List of Subjects in 10 CFR Part 903

Electric power rates.

In view of the foregoing, the Department of Energy hereby revises Part 903 to Title 10, Code of Federal Regulations entitled "Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions" as set forth below:

Issued in Washington, DC, September 4, 1984.

Danny J. Boggs,

Deputy Secretary.

10 CFR Part 903 is revised to read as follows:

PART 903—POWER AND TRANSMISSION RATES

Subpart A—Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions for the Alaska, Southeastern, Southwestern, and Western Area Power Administrations

Sec.

Authority: Secs. 301(b), 302(a), and 644 of Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7101 *et seq.*); sec. 5 of the Flood Control Act of 1944 (16 U.S.C. 825s); the Reclamation Act of 1902 (43 U.S.C. 372 *et seq.*), as amended and supplemented by subsequent enactments, particularly sec. 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and the Acts specifically applicable to individual projects or power systems.

Subpart A—Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions for the Alaska, Southeastern, Southwestern, and Western Area Power Administrations

§ 903.1 Propose and scope; application.

(a) Except as otherwise provided herein, these regulations establish procedures for the development of power and transmission rates by the Administrators of the Alaska, Southeastern, Southwestern, and Western Area Power Administrations; for the providing of opportunities for interested members of the public to participate in the development of such rates; for the confirmation, approval, and placement in effect on an interim basis by the Deputy Secretary of the Department of Energy of such rates; and for the submission of such rates to the Federal Energy Regulatory Commission with or without prior interim approval. These regulations supplement Delegation Order No. 0204–108 of the Secretary of Energy, which was published in the Federal Register and became effective on December 14, 1983 (48 FR 55664), with respect to the activities of the Deputy Secretary and the Administrators.

(b) These procedures shall apply to all power and transmission rate adjustment proceedings for the Power Marketing Administrations (PMAs) which are commenced after these regulations become effective or were in process on the effective date of these regulations, but for which the FERC had not issued any substantive orders on or before December 14, 1983. These procedures supersede "Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions for the Alaska, Southeastern, Southwestern, and Western Area Power Administrations" published in 45 FR 86983 (December 31, 1980) and amended at 46 FR 6864 (January 22, 1981) and 46 FR 25427 (May 7, 1981).

(c) Except to the extent deemed appropriate by the Administrator in accordance with applicable law, these procedures do not apply to rates for short term sales of capacity, energy, or transmission service.

§ 903.2 Definitions.

As used herein—

(a) "Administrator" means the Administrator of the PMA whose rate is involved in the rate adjustment, or anyone acting in such capacity.

(b) "Department" means the Department of Energy, including the PMAs but excluding the Federal Energy Regulatory Commission.

(c) "Deputy Secretary" means the Deputy Secretary of the Department of Energy, or anyone acting in such capacity.

(d) "FERC" means the Federal Energy Regulatory Commission.

(e) "Major rate adjustment" means a rate adjustment other than a minor rate adjustment.

(f) "Minor rate adjustment" means a rate adjustment which (1) will produce less than 1 percent change in the annual revenues of the power system or (2) is for a power system which has either annual sales normally less than 100 million kilowatt hours or an installed capacity of less than 20,000 kilowatts.

(g) "Notice" means the statement which informs customers and the general public of Proposed Rates or proposed rate extensions, opportunities for consultation and comment, and public forums. The Notice shall be by and effective on the date of publication in the **Federal Register**. Whenever a time period is provided, the date of publication in the **Federal Register** shall determine the commencement of the time period, unless otherwise provided in the Notice. The Notice shall include the name, address, and telephone number of the person to contact if participation or further information is sought.

(h) "Power Marketing Administration" or "PMA" means the Alaska Power Administration, Southeastern Power Administration, Southwestern Power Administration, or Western Area Power Administration.

(i) "Power system" means a powerplant or a group of powerplants and related facilities, including transmission facilities, or a transmission system, that the PMA treats as one unit for the purposes of establishing rates and demonstrating repayment.

(j) "Proposed Rate" means a rate revision or a rate for a new service which is under consideration by the Department on which public comment is invited.

(k) "Provisional Rate" means a rate which has been confirmed, approved, and placed in effect on an interim basis by the Deputy Secretary.

(l) "Rate" means the monetary charge or the formula for computing such a charge for any electric service provided by the PMA, including but not limited to charges for capacity (or demand), energy, or transmission service; however, it does not include leasing fees, service facility charges, or other types of facility use charges. A rate may be set forth in a rate schedule or in a contract.

(m) "Rate adjustment" means a change in an existing rate or rates, or the establishment of a rate or rates for a new service. It does not include a change in rate schedule provisions or in contract terms, other than charges in the price per unit of service, nor does it include changes in the monetary change pursuant to a formula stated in a rate schedule or a contract.

(n) "Rate schedule" means a document identified as a "rate schedule," "schedule of rates," or "schedule rate" which designates the rate or rates applicable to a class of service specified therein and may contain other terms and conditions relating to the service.

(o) "Short term sales" means sales that last for no longer than one year.

(p) "Substitute Rate" means a rate which has been developed in place of the rate that was disapproved by the FERC.

§ 903.11 Advance announcement of rate adjustment.

The Administrator may announce that the development of rates for a new service or revised rates for an existing service is under consideration. The announcement shall contain pertinent information relevant to the rate adjustment. The announcement may be through direct contact with customers, at public meetings, by press release, by newspaper advertisement, and/or by **Federal Register** publication. Written comments relevant to rate policy and design and to the rate adjustment process may be submitted by interested parties in response to the announcement. Any comments received shall be considered in the development of Proposed Rates.

§ 903.13 Notice of proposed rates.

(a) The Administrator shall give Notice tht Proposed Rates have been prepared and are under consideration. The Notice shall include:

(1) The Proposed Rates;

(2) An explanation of the need for and derivation of the Proposed Rates;

(3) The locations at which data, studies, reports, or other documents used in developing the Proposed Rates are available for inspection and/or copying;

(4) The dates, times, and locations of any initially scheduled public forums; and

(5) Address to which written comments relative to the Proposed Rates and requests to be informed of FERC actions concerning the rates may be submitted.

(b) Upon request, customers of the power system and other interested persons will be provided with copies of the principal documents used in developing the Proposed Rates.

§ 903.14 Consultation and comment period.

All interested persons will have the opportunity to consult with and obtain information from the PMA, to examine backup data, and to make suggestions for modification of the Proposed Rates for a period ending (a) 90 days in the case of major rate adjustments, or 30 days in the case of minor rate adjustments, after the Notice of Proposed Rates is published in the **Federal Register**, except that such periods may be shortened for good cause shown; (b) 15 days after any answer which may be provided pursuant to § 903.15(b) hereof; (c) 15 days after the close of the last public forum; or (d) such other time as the Administrator may designate; whichever is later. At anytime during this period, interested persons may submit written comments to the PMA regarding the Proposed Rates. The Administrator may also provide additional time for the submission of written rebuttal comments. All written comments shall be available at a designated location for inspection, and copies also will be furnished on request for which the Administrator may assess a fee. Prior to the action described in § 903.21, the Administrator may, by appropriate announcement postpone any procedural date or make other procedural changes for good cause shown at the request of any party or on the Administrator's own motion. The Administrator shall maintain, and distribute on request, a list of interested persons.

§ 903.15 Public information forums.

(a) One or more public information forums shall be held for major rate adjustments, except as otherwise provided in paragraph (c) of this section, and may be held for minor adjustments, to explain, and to answer questions concerning, the Proposed Rates and the basis of and justification for proposing such rates. The number, dates, and locations of such forums will be determined by the Administrator in accordance with the anticipated or demonstrated interest in the Proposed Rates. Notice shall be given in advance of such forums. A public information

forum may be combined with a public comment forum held in accordance with § 903.16.

(b) The Administrator shall appoint a forum chairperson. Questions raised at the forum concerning the Proposed Rates and the studies shall be answered by PMA representatives at the forum, at a subsequent forum, or in writing at least 15 days before the end of the consultation and comment period. However, questions that involve voluminous data contained in the PMA records may be answered by providing an opprotunity for consultation and for a review of the records at the PMA offices. As a minimum, the proceedings of the forum held at the principal location shall be transcribed. Copies of all documents introduced, and of questions and written answers shall be available at a designated location for inspection and copies will be furnished by the Administrator on request, for which a fee may be assessed. Copies of the transcript may be obtained from the transcribing service.

(c) No public information forum need be held for major rate adjustments if, after the Administrator has given Notice of a scheduled forum, no person indicates in writing by a prescribed date an intent to appear at such public forum.

§ 903.16 Public comment forums.

(a) One or more public comment forums shall be held for major rate adjustments, except as otherwise provided in paragraph (c) of this section, and may be held for minor rate adjustments, to provide interested persons an opportunity for oral presentation of views, data, and arguments regarding the Proposed Rates. The number, dates, and locations of such forums will be determined by the Administrator in accordance with the anticipated or demonstrated interest in the Proposed Rates. Notice shall be given at least 30 days in advance of the first public comment forum at each location and shall include the purpose, date, time, place, and other information relative to the forum, as well as the locations where pertinent documents are available for examination and/or copying.

(b) The Administrator shall designate a forum chairperson. At the forum, PMA representatives may question those persons making oral statements and comments. The chairperson shall have discretion to establish the sequence of, and the time limits for, oral presentations and to determine if the comments are relevant and noncumulative. Forum proceedings shall be transcribed. Copies of all documents introduced shall be available at a designated location for inspection, and copies shall be furnished on request for which the Administrator may assess a fee. Copies of the transcript may be obtained from the transcribing service.

(c) No public comment forum need be held for major rate adjustments if, after the Administrator has given notice of a scheduled forum, no person indicates in writing by a prescribed date an intent to appear at such public forum.

§ 903.17 Informal public meetings for minor rate adjustments.

In lieu of public information or comment forums in conjunction with a minor rate adjustment, informal public meetings may be held if deemed appropriate by the Administrator. Such informal meetings will not require a Notice or a transcription.

§ 903.18 Revision of proposed rates.

During or after the consultation and comment period and review of the oral and written comments on the Proposed Rates, the Administrator may revise the Proposed Rates. If the Administrator determines that further public comment should be invited, the Administrator shall afford interested persons an appropriate period to submit further written comments to the PMA regarding the revised Proposed Rates. The Administrator may convene one or more additional public information and/or public comment forums. The Administrator shall give Notice of any such additional forums.

§ 903.21 Completion of rate development; provisional rates.

(a) Following completion of the consultation and comment period and review of any oral and written comments on the Proposed Rates, the Administrator may: (1) Withdraw the proposal; (2) develop rates which in the Administrator's and the Deputy Secretary's judgment should be confirmed, approved, and placed into effect on an interim basis (Provisional Rates); or (3) develop rates which in the Administrator's judgment should be confirmed, approved, and placed into effect by the FERC on a final basis without being placed into effect on an interim basis. A statement shall be prepared and made available to the public setting forth the principal factors on which the Deputy Secretary's or the Administrator's decision was based. The statement shall include an explanation responding to the major comments, criticisms, and alternatives offered during the comment period. The Administrator shall certify that the rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles. The rates shall be submitted promptly to the FERC for confirmation and approval on a final basis.

(b) The Deputy Secretary shall set the effective date for Provisional Rates. The effective date shall be at least 30 days after the Deputy Secretary's decision except that the effective date may be sooner when appropriate to meet a contract deadline, to avoid financial difficulties, to provide a rate for a new service, or to make a minor rate adjustment.

(c) The effective date may be adjusted by the Administrator to coincide with the beginning of the next billing period following the effective date set by the Deputy Secretary for the Provisional Rates.

(d) Provisional Rates shall remain in effect on an interim basis until: (1) They are confirmed and approved on a final basis by the FERC, (2) they are disapproved and the rates last previously confirmed and approved on a final basis become effective, (3) they are disapproved and higher Substitute Rates are confirmed and approved on a final basis and placed in effect by the FERC, (4) they are disapproved and lower Substitute Rates are confirmed and approved on a final basis by the FERC, or (5) they are superseded by other Provisional Rates placed in effect by the Deputy Secretary, whichever occurs first.

§ 903.22 Final rate approval.

(a) Any rate submitted to the FERC for confirmation and approval on a final basis shall be accompanied with such supporting data, studies, and documents as the FERC may require, and also with the transcripts of forums, written answers to questions, written comments, the Administrator's certification, and the statement of principal factors leading to the decision. The FERC shall also be furnished a listing of those customers and other participants in the rate proceeding who have requested they be informed of FERC action concerning the rates.

(b) If the FERC confirms and approves Provisional Rates on a final basis, such confirmation and approval shall be effective as of the date such rates were placed in effect by the Deputy Secretary, as such date may have been adjusted by the Administrator. If the FERC confirms and approves on a final basis rates submitted by the Administrator without

interim approval, such confirmation and approval shall be effective on a date set by the FERC.

(c) If the FERC disapproves Provisional Rates or other submitted rates, the Administrator shall develop Substitute Rates which take into consideration the reasons given by the FERC for its disapproval. If, in the Administrator's judgment, public comment should be invited upon proposed Substitute Rates, the Administrator may provide for a public consultation and comment period before submitting the Substitute Rates. Whether or not such public consultation and comment periods are provided, the Administrator will, upon request, provide customers of the power system and other interested persons with copies of the principal documents used in the development of the Substitute Rates. Within 120 days of the date of FERC disapproval of submitted rates, including Substitute Rates, or such additional time periods as the FERC may provide, the Administrator will submit the Substitute Rates to the FERC. A statement explaining the Administrator's decision shall accompany the submission.

(d) A Provisional Rate that is disapproved by the FERC shall remain in effect until higher or lower rates are confirmed and approved by the FERC on a final basis or are superseded by other rates placed into effect by the Deputy Secretary on an interim basis: Provided, That if the Administrator does not file a Substitute Rate within 120 days of the disapproval or such greater time as the FERC may provide, and if the rate has been disapproved because the FERC determined that it would result in total revenues in excess of those required by law, the rate last previously confirmed and approved on a final basis will become effective on a date and for a period determined by the FERC and revenues collected in excess of such rate during such period will be refunded in accordance with paragraph (g) of this section.

(e) If a Substitute Rate confirmed and approved on a final basis by the FERC is higher than the provisional rate which was disapproved, the Substitute Rate shall become effective on a subsequent date set by the FERC, unless a subsequent Provisional Rate even higher than the Substitute Rate has been put into effect. FERC confirmation and approval of the higher Substitute Rate shall constitute final confirmation and approval of the lower disapproved Provisional Rate during the interim period that it was in effect.

(f) If a Substitute Rate confirmed and approved by the FERC on a final basis is lower than the disapproved provisional rate, such lower rate shall be effective as of the date the higher disapproved rate was placed in effect.

(g) Any overpayment shall be refunded with interest unless the FERC determines that the administrative cost of a refund would exceed the amount to be refunded, in which case no refund will be required. The interest rate applicable to any refund will be determined by the FERC.

(h) A rate confirmed and approved by the FERC on a final basis shall remain in effect for such period or periods as the FERC may provide or until a different rate is confirmed, approved and placed in effect on an interim or final basis: *Provided,* That the Deputy Secretary may extend a rate on an interim basis beyond the period specified by the FERC.

§ 903.23 Rate extensions.

(a) The following regulations shall apply to the extension of rates which were previously confirmed and approved by the FERC or the Federal Power Commission, or established by the Secretary of the Interior, and for which no adjustment is comtemplated:

(1) The Administrator shall give Notice of the proposed extension at least 30 days before the expiration of the prior confirmation and approval, except that such period may be shortened for good cause shown.

(2) The Administrator may allow for consultation and comment, as provided in these procedures, for such period as the Administrator may provide. One or more public information and comment forums may be held, as provided in these procedures, at such times and locations and with such advance Notice as the Administrator may provide.

(3) Following notice of the proposed extension and the conclusion of any consultation and comment period, the Deputy Secretary may extend the rates on an interim basis.

(b) Provisional Rates and other existing rates may be extended on a temporary basis by the Deputy Secretary without advance notice or comment pending further action pursuant to these regulations or by the FERC. The Deputy Secretary shall publish notice in the **Federal Register** of such extension and shall promptly advise the FERC of the extension.

[FR Doc. 85-22365 Filed 9-17-85; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-AWP-6]

Revocation and Establishment of Compulsory Reporting Points, Hawaii; Correction

AGENCY: Federal Aviation (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action revokes the SEIZE, SQUAT and VILET Compulsory Reporting Points west and southwest of the state of Hawaii. Revocation of these reporting points was inadvertently overlooked in Airspace Docket 85-AWP-6 which revoked and established several compulsory reporting points due to relocation of the Honolulu, HI, air navigation facility.

EFFECTIVE DATE: 0901 GMT, September 26, 1985.

FOR FURTHER INFORMATION CONTACT: Gene Falsetti, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 85-18286 was published on August 1, 1985. In that document, the FAA published an amendment to FAR Part 71 that revoked seven and established seven other compulsory reporting points in the state of Hawaii (50 FR 31157). The locations of three of the new reporting points are such that they are approximate to the former SEIZE, SQUAT and VILET Reporting Points. Inadvertently, no action was taken to revoke the replaced reporting points. This action corrects that oversight.

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

significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Compulsory reporting points.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 85-18286, as published in the **Federal Register** on August 1, 1985, (50 FR 31157) is corrected by amending § 71.215 as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 2348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.215 [Amended]

2. Section 71.215 is amended as follows:

SEIZE [Revoked]
SQUAT [Revoked]
VILET [Revoked]

Issued in Washington, D.C., on September 11, 1985.

Daniel Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85-22284 Filed 9-17-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 75

[Airspace Docket No. 85-AWA-22]

Realignment of VOR Federal Airways and Jet Routes—Oklahoma

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action realigns both the low altitude Federal Airway and Jet Route structures associated with the Oklahoma City, OK, (OKC) very high frequency omni-directional radio range and tactical air navigation aid (VORTAC). The Oklahoma City VORTAC is being relocated to an on-airport site at the Will Rogers World Airport and renamed the Will Rogers (IRW) VORTAC.

EFFECTIVE DATE: 0901 G.m.t., November 21, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Brent A. Fernald, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

History

On June 5, 1985, the FAA proposed to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to realign both the low altitude VOR Federal Airways and Jet Routes associated with the Oklahoma City, OK, (OKC) VORTAC. The Oklahoma City VORTAC is being relocated to an on-airport site at the Will Rogers World Airport (50 FR 13450). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. The Oklahoma City (OKC) VORTAC is also being renamed to the Will Rogers (IRW) VORTAC. Except for the VORTAC renaming action and editorial changes, these amendments are the same as those proposed in the notice. Sections 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

The Rule

These amendments to Parts 71 and 75 of the Federal Aviation Regulations realign both the low altitude VOR Federal Airways and Jet Routes associated with the relocation of the Oklahoma City, OK, (OKC) VORTAC to an on-airport site (lat. 35°21'31" N., long. 97°36'32" W.) at the Will Rogers World Airport and renames OKC to Will Rogers (IRW) VORTAC. Segments of V-14, V-17, V-77, V-163, V-210, V-272, V-354, V-358, V-436, V-440, V-507, J-20 and J-21 are amended due to the OKC to IRW VORTAC relocation. Additionally, although the legal descriptions of the following Jet Routes are not changed because they remain direct routes, the charted depictions of J-6, J-14, J-23, J-74, J-78 and J-98 are altered in conjunction with the OKC to IRW VORTAC relocation.

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

List of Subjects in 14 CFR Parts 71 and 75

Aviation safety, VOR Federal airways and jet routes.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) as amended (50 FR 14089, 14091 and 15540) are further amended as follows:

PART 71—[AMENDED]

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

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

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-14 [Amended]

By removing the words "Tulsa, OK;" and substituting the words "INT Oklahoma City 052° and Tulsa, OK, 246° radials; Tulsa;"

V-17 [Amended]

By removing the words "INT Duncan 011° and Oklahoma City, OK, 180° radials; Oklahoma City;" and substituting the words "Oklahoma City, OK;"

V-77 [Amended]

By removing the words "Oklahoma City, OK, 202°" and substituting the words "Oklahoma City, OK, 216°"

V-163 [Amended]

By removing the words "INT Ardmore 342° and Oklahoma City, OK, 154° radials; to Oklahoma City." and substituting the words "to Oklahoma City, OK."

V-210 [Amended]

By removing the words "INT Liberal 137° and Oklahoma City, OK, 282° radials; Oklahoma City; INT Oklahoma City 109° and Okmulgee, OK, 241° radials;" and substituting the words "INT Liberal 137° and Oklahoma City, OK, 284° radials; Oklahoma City; INT Oklahoma City 113° and Okmulgee, OK, 238° radials;"

V-272 [Amended]

By removing the words "to McAlester, OK; Fort Smith, AR." and substituting the words

"INT Oklahoma City 113° and McAlester, OK, 286° radials; McAlester; to Fort Smith, AR."

V-354 [Amended]

By removing the words "via INT Oklahoma City 045° and Pioneer, OK, 186° radials;" and substituting the words "via INT Oklahoma City 030° and Pioneer, OK, 179° radials;"

V-358 [Amended]

By removing the words "INT Ardmore 327° and Oklahoma City, OK, 180° radials;" and substituting the words "INT Ardmore 327° and Oklahoma City, OK, 195° radials;"

V-436 [Revised]

From Hobart, OK, via INT Hobart 085° and Oklahoma City, OK, 216° radials; Oklahoma City; INT Oklahoma City 068° and Tulsa, OK, 230° radials; to Tulsa.

V-440 [Amended]

By removing the words "INT Sayre 101° and Oklahoma City, OK, 242° radials;" and substituting the words "INT Sayre 104° and Oklahoma City, OK, 248° radials;"

V-507 [Amended]

By removing the words "INT Oklahoma City 282° and Gage, OK, 152° radials;" and substituting the words "INT Oklahoma City 284° and Gage, OK, 152° radials;"

PART 75—[AMENDED]

3. The authority citation for Part 75 continues to read as follows:

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

§ 75.100 [Amended]

4. Section 75.100 is amended as follows:

J-20 [Amended]

By removing the words "INT Liberal 137° and Oklahoma City, OK, 282° radials;" and substituting the words "INT Liberal 137° and Oklahoma City, OK, 284° radials;"

J-21 [Amended]

By removing the words "INT Dallas-Fort Worth 355° and Oklahoma City, OK, 158° radials; Oklahoma City; Wichita, KS;" and substituting the words "INT Dallas-Fort Worth 355° and Oklahoma City, OK, 162° radials; Oklahoma City; Pioneer, OK; Wichita, KS;"

Issued in Washington, D.C., on September 11, 1985.

Daniel Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-22282 Filed 9-17-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 134

[T.D. 85-158]

Country of Origin Marking of Pistachio Nuts

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Recission of rulings.

SUMMARY: Customs previously ruled that imported pistachio nuts which are processed by roasting, need not subsequently be marked as products of the foreign country where grown, but become a product of the country where the roasting is performed.

Customs has received a request to rescind these rulings because the roasting process does not substantially transform pistachio nuts which have otherwise attained the character in which they will be sold to consumers prior to importation. Specifically, it has been called to Customs attention that pistachio nuts which are grown in Iran are then roasted elsewhere than in Iran. These roasted pistachio nuts are then sold without any indication that the nuts are products of Iran, and under brand names which imply that they are products of California. Customs has decided that the roasting; roasting and salting; or roasting, salting, and coloring; of pistachio nuts, without more, does not result in a substantial transformation. Accordingly, the previous rulings are being rescinded and the containers of such products must be marked to indicate the country of origin of the raw products.

EFFECTIVE DATE: October 18, 1985.

FOR FURTHER INFORMATION CONTACT: Lorrie R. Rodbart, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229, (202-566-5765).

SUPPLEMENTARY INFORMATION:

Background

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that all articles of foreign origin, or their containers, imported into the U.S. shall be marked in a conspicuous place with the English name of their country of origin to indicate to an ultimate purchaser in the U.S., the country of origin of the article. This statute was enacted to make consumers aware of the country of origin of articles so that they can choose between buying domestic or foreign articles. Part 134, Customs Regulations (19 CFR Part 134), sets forth the country of origin marking requirements of 19 U.S.C. 1304. Section 134.1(b), Customs Regulations (19 CFR 134.1(b)), defines "country of origin" as "the country of manufacture, production, or growth of any article of foreign origin entering the United States." An article which is grown or manufactured in a particular country and processed prior to its sale to a retail purchaser is considered to be the product of the country in which it was grown or manufactured unless the processing substantially transforms the article. A substantial transformation has traditionally been defined as a change which results in a new and different article of commerce with a new name, character, or use. Although trade usage and opinion are important in making this determination, it is Customs' position that a substantial transformation will not occur, with a resultant change in country of origin, if the process is merely a minor one which leaves the identity of the article intact. To hold otherwise would thwart the purposes for which country of origin determinations must be made, and would be inconsistent with recent court decisions and the purposes for which Congress enacted the marking statute.

Customs' previous rulings on the significance of the roasting process have been questioned by domestic producers. In ruling #724350, dated June 4, 1984, and ruling #726412, dated September 25, 1984, the issue before Customs was whether the process of roasting imported raw pistachio nuts substantially transformed these goods into a new and different article of commerce. Customs held that the roasting was a substantial transformation.

Customs has been requested to rescind these rulings on the basis that the roasting of these products does not result in a substantial transformation, both because it does not result in a new and different article of commerce with a new name, character, or use; and because roasting is not a substantial manufacturing or processing operation. Customs determined that a review of the above rulings was warranted and published a notice in the **Federal Register** on February 11, 1985 (50 FR 5629), soliciting public comments before any change was made.

Discussion of Comments

Sixty-six comments were received in response to the notice. The issues raised by the commenters are analyzed under the following six topics:

The Statute

Section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), requires that, "every article of foreign origin (or its container, as provided in subsection (b) hereof) imported into the United States shall be marked . . . in such manner as to indicate to *an ultimate purchaser in the United States the English name of the country of origin of the article*" (emphasis added).

According to *United States v. Friedlaender & Co., Inc.*, 27 CCPA 297, 302, C.A.D. 104 (1940), the purpose of the statute is to "mark the goods so that at the time of purchase the ultimate purchaser may, knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will", cited in *Globemaster, Inc. v. United States*, 68 Cust. Ct. 77, 80, C.D. 4340, 340 F. Supp. 974, 976 (1972) and *United States v. Ury*, 106 F. 2d 28, 29, (2d Cir. 1939). In addition, as to imported products from competing foreign sources, it was recognized that particular foreign origin is relevant. This is based upon the general reputation for quality; the political and social conditions in the country, and the national origin of the particular consumer. See, generally, *United States v. Friedlaender & Co., Inc., supra.*

As stated in the notice of February 11, 1985 (50 FR 5629), the impetus for this solicitation of comments came from a group of domestic pistachio nut growers who are competing with foreign pistachios, primarily from Iran. The notice provided by a country of origin marking on a retail package is necessary to give a retail purchaser the information needed to make a choice between products of different countries.

The Need for Marking

The language of 19 U.S.C. 1304 makes it plain that imported merchandise must be marked, as much as the nature of the article permits, in a way which will reach the ultimate purchaser. If an imported product is substantially transformed, the person who transforms the article is the ultimate purchaser of the article. If the imported article is repacked after this substantial transformation, the container in which it is repacked and in which it is purchased by a retail purchaser does not have to bear a country of origin marking. The substantial transformation of an imported article ends its status as a product of that foreign country of origin for Customs purposes. This is permissible pursuant to 19 U.S.C. 1304 and judicial precedent such as *United States v. Gibson-Thomsen Co., Inc.*, 27 CCPA 267, C.A.D. 98 (1940) and *Midwood Industries, Inc. v. United States*, 64 Cust. Ct. 499, C.D. 4026, 315 F. Supp. 951 (1970), appeal dismissed, 57 CCPA 141 (1970).

A number of commenters have argued that Customs need not be concerned with country of origin marking on retail containers of imports for the following reasons:

1. Labeling is more appropriately dealt with by other governmental bodies such as the Food and Drug Administration (FDA) and the Federal Trade Commission (FTC) and by the use of other legal remedies such as private redress in section 43(a) of the Lanham Act (15 U.S.C. 1125(a)) and public remedies such as antidumping and countervailing duty provisions.

2. The cost and difficulty of keeping track of different imports from different countries which are combined before a retail product is made from these imports is substantial.

We do not agree that the legislative intent behind 19 U.S.C. 1304 is similar to that behind most of the other statutes cited. FTC requirements are directed toward providing information which the consumer should be aware of such as content and care labels. The antidumping provisions are directed toward preventing unfair economic competition in the international marketplace. None of these statutes is intended to give a purchaser notice of the country were a particular article was produced.

Thus, rather than reading these statutes as directed toward the same legislative concerns, Customs views each to be addressed to a separate and distinct legislative concern. However, FDA requirements are directed toward country of origin marking pursuant to 21 U.S.C. 16, 343. These requirements are in addition to those Customs enforces pursuant to 19 U.S.C. 1304.

Moreover, we do not agree with the suggestion that Customs is free to ignore the clear requirements of a statute. The efficacy of a statute and the wisdom of its enactment are proper concerns of the legislature. Once a statute is enacted, agencies of the Executive Branch are not free to repeal it administratively by refusing to enforce it, or by enforcing it only in those circumstances in which the outcome is believed to be desirable. Although Customs retains some limited discretion to interpret the language of the statute, we cannot go beyond the language to a question of whether to enforce or not enforce it.

The cost of compliance is noted by commenters as the third reason for non-enforcement. The statutory language allows limited exemptions from the marking requirement where the expense of marking is economically prohibitive. This subject is discussed below in more detail, in the section entitled "Problems of Compliance."

Scope of Proposal

The notice solicited comments concerning the processing of pistachio nuts.

One commenter contends that any marking of retail packages should await the receipt of enough information on the processing done to each product. We agree. The wording of the notice was designed to afford importers of a wide variety of agricultural goods an opportunity to provide information to enable us to decide whether various agricultural products are substantially transformed by the processes they undergo. The concept of substantial transformation is particularly fact oriented, and the facts in the record determine the ultimate decision.

Substantial Transformation

Judicial precedent, such as *United States v. Gibson-Thomsen Co., Inc., supra; Midwood Industries, Inc. v. United States, supra;* are most recently, *Uniroyal Inc. v. United States*, 3 CIT 220, 452 F. Supp. 1026 (1982), concern the importation of articles which are then "processed" in the U.S. The question involved in each case was, even though the imported article was processed after importation, did the imported article need to be marked under the statute.

To arrive at this conclusion, the courts in each case had to determine if an article produced as a result of this processing was a new and different article of commerce with a new name, character, or use. In making this determination, it is necessary to examine the changes wrought by the U.S. processing to determine whether U.S. processing is substantial, and creates a new and different article of commerce, or alternatively, is insignificant, and leaves the identity of the imported articles intact.

This distinction between a minor change and a change in the basic character of an article, has been incorporated in Part 134, Customs Regulations. Section 134.1(d)(1) provides, "If an imported article will be used in manufacture, the manufacturer may be the 'ultimate purchaser' if he subjects the imported article to a process which results in a substantial transformation of the article, ..." Section 134.1(d)(2) provides, "If the manufacturing process is merely a minor one which leaves the identity of the

imported articles intact, the consumer or user of the article, who obtains the article after the processing, will be regarded as the 'ultimate purchaser.' "

In determining whether an imported article has been subjected to substantial manufacturing or processing operations in the U.S. which transforms it into a new and different article of commerce, or only to insignificant processing which leaves the identity of the article intact, Customs will consider the following factors:

(1) The physical change in the article as a result of the manufacturing or processing operations in each foreign country or U.S. insular possession, and in the U.S.

(2) The time involved in the manufacturing or processing operations in each foreign country or U.S. insular possession, and in the U.S.

(3) The complexity of the manufacturing or processing operations in each foreign country or U.S. insular possession, and in the U.S.

(4) The level or degree of skill and/or technology required in the manufacturing or processing operations in each foreign country or U.S. insular possession, and in the U.S.

(5) The value added to the article in each foreign country or U.S. insular possession, compared to value added in the U.S.

These criteria are not exhaustive, and one or more criteria may be determinative.

Substantial Transformation Applied

We received several comments on pistachio nuts: some on behalf of domestic growers, others on behalf of importers. The comments on behalf of the domestic growers stress that the moisture in pistachio nuts is reduced from a range of 40 to 60 percent to a range of 4 to 6 percent before roasting. The "roasting" process dries the pistachio nuts further to a moisture content between 2 and 4 percent. This decrease in the moisture is accomplished by drying the pistachio nuts for 25 to 50 minutes in a belt dryer or rotary drum by a person who is unskilled or semiskilled, and this reduction in the moisture costs 2.5 to 3 cents per pound. The final, dried nuts are crisper and may be a different shade of green, but according to these comments, there is no substantial change in the taste or appearance of the nut. According to some producers, pistachio nuts are eaten by consumers both before and after the roasting. However, it should be noted that expert sources consulted by Customs indicated that there is no significant market for unroasted pistachio nuts, particularly for "snack" consumption. See, Woodruff, J.G., *Tree Nuts*, Second Edition, AVI Publishing Co. (1979) at page 598.

The comments for the importers stress that inshell (unshelled) raw pistachio nuts are shelled, screened and sorted, roasted, salted, and in most cases colored red with food color. The roasting of these nuts for 20 to 30 minutes brings the internal temperature of the nut to 280 degrees Fahrenheit, and substantially changes the chemical composition of the nut. It also destroys mold, spores, and bacteria. After roasting, the nuts are cooled and packaged. Once roasted, the nuts must be protected or else they will become rancid. The value added by roasting is over 100 percent.

The submissions on behalf of the domestic growers and importers do not present a substantially different description of the processing to which pistachio nuts are subjected. Rather, they conflict on the very basic issue of the significance of the changes to the physical and commercial character of the nuts which result from this processing. The domestic producers conclude that the pistachios are merely further dried, and the importers conclude that the heat applied to these nuts changes their fundamental character. Since the conclusions are contradictory, we believe it is appropriate to look to the sufficiency of the evidence presented.

The description of the roasting process by the importers concludes with the statement that this processing substantially changes the chemical composition of the nuts. This change is claimed to necessitate the protection of these nuts from the air. Two appendices were submitted, one for "dried" nuts, the other for "dry roasted" nuts, each of which contains lists of quantities for various components of the nuts. Some of the differences are striking; others do not appear to be of much consequence. For example, the changes in the amount of fiber, phosphorus, and sodium are minimal. The changes in the amount of water, protein, carbohydrates, iron, magnesium, ascorbic acid, and amino acids are substantial.

The submissions on behalf of the domestic growers characterize the application of heat to the pistachios as a drying rather than a substantial transformation. This characterization of the processing is based upon expert opinion by Professor Martin W. Miller of the University of California at Davis which includes a very complete description of the processing of the nuts and the results of such processing. This expert opinion provides the link between the recorded data and the conclusions as to changes in the physical and commercial character of the nuts. According to this expert, the pistachio nut, after roasting, is merely crisper. The nuts' taste remains the same, and if the color of the nut is changed at all, the change is not noticeable.

After reading all the submissions on this point, it is Customs view that the physical and commercial changes which occur in the pistachio nuts as a result of roasting are not significant, and that the identity and use of the pistachio nut remains intact. Authoritative sources consulted by Customs indicated no commercial uses for green pistachio nuts, and if such uses exist, they are apparently negligible. Roasting appears to be, like picking, sorting, and bagging, simply one of several processing steps to which all pistachio nuts are subjected, no one of which alters or limits the intended or potential commercial use. In view of this, we conclude that there has been no change in the commercial designation or identity, in the fundamental character, or commercial use of the article. So characterized, we believe that the pistachio nuts are not changed into a new and different article by virtue of roasting or other similar incidental processing. Thus, they are not substantially transformed.

Problems of Compliance

Many of the comments focus on the problems created by a conclusion that no substantial transformation of these imported goods has taken place. This conclusion requires that each container of pistachio nuts which, for example, contains pistachio nuts from a number of different countries, be marked with the name of each country from which the pistachio nuts originate. The concern expressed is that such a container would have to contain the names of a large number of countries.

The commenters suggest some options: (1) Standardize labels to include the English name of every country of origin from which the pistachio nuts originate and (2) print a number of different labels and keep track of the countries from which pistachio nuts in a particular container are packaged. The first option is criticized by these commenters because the labels might not accurately reflect the country of origin of the pistachio nuts except coincidentally. They point out that any container which does not include pistachio nuts from each country specified on the container will be incorrectly labelled. According to the commenters, the adoption of the second

option will necessitate an elaborate system of tracking the pistachio nuts from each country to determine in which particular container they have been placed. This, according to the comments, is an extremely difficult and costly process. Because the pistachio nuts are fungible, it is difficult to determine if the countries from which the contents of a specific container originate match the marking of the containers in which the pistachio nuts are packaged.

Customs is not convinced by the argument that country of origin marking on a container of pistachio nuts precludes the pistachio nut purchaser from purchasing from other countries. The economic and marketing factors that impel purchasers to buy from particular countries far outweigh any influence on these decisions that the cost of compliance with the marking law might have. Customs believes that in every instance the buyer must compare the economic advantages resulting from purchasing from a new source country, with the cost of compliance with the country of origin marking law.

Customs has not required that an importer track the origins of each pistachio nut in a particular container. A listing on the container of the countries which provides the constituents of the blend at the time of packing is sufficient. We believe that such a rule of reason eliminates the necessity for tracking each individual pistachio nut while permitting compliance with the marking requirement with a minimum of interference.

Given the flexibility which Customs has allowed by permitting "shotgun" marking, we do not believe that any of the commenters has shown that compliance with the marking law would be excessively costly.

Action

Accordingly, this document rescinds ruling #724350, dated June 4, 1984 and ruling #726412, dated September 25, 1984. We do not view this to be a change in an "established and uniform practice" which entails the protections of section 315(d), Tariff Act of 1930 (19 U.S.C. 1315(d)). The roasting, or roasting and salting of pistachio nuts, without more, is not a substantial transformation of the raw pistachios into new and different articles of commerce. Therefore, the containers of pistachio nuts, which have been roasted; salted; or blended; or any combination of the three processes; must be marked to indicate the country of origin of the raw products in accordance with Part 134, Customs Regulations.

Certification Requirements

In many instances, an importer of these articles does not sell them directly to the ultimate purchaser i.e. the articles are repacked after their release from Customs custody and sent forward for further distribution. In view of this, Customs believes that to further ensure that an ultimate pruchaser in the U.S. is aware of the country of origin of these articles, importers must comply with the certification requirements of § 134.25, Customs Regulations (19 CFR 134.25), set forth in T.D. 83–155, published in the **Federal Register** on July 26, 1983 (48 FR 33860). Section 134.25 requires importers to certify to the district director having custody of the articles that: (a) If the importer does the repacking, the new container must be marked in accordance with applicable law and regulations; or (b) if the article is sold or transferred, the importer must notify the subsequent purchaser or repacker, in writing, at the time of sale or transfer, that any repacking of the article must conform to the marking requirements.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

William von Raab,

Commissioner of Customs.

Approved September 4, 1985.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 85-22406 Filed 9-17-85; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 84C-0098]

Poly(Hydroxyethyl Methacrylate)-Dye Copolymers; Listing of Color Additives for Coloring Contact Lenses

Correction

In FR Doc. 85–19672, beginning on page 33336, in the issue of Monday, August 19, 1985, make the following corrections:

1. On page 33337, second column, in the section headed **"IV. Conclusion"**, thirteenth line, "this" should read "the".

§ 73.3121 [Corrected]

2. On page 33338, first column, § 73.3121(a)(6), third line "((4,6,-dichloro" should read "((4,6-dichloro".

BILLING CODE 1505-01-M

21 CFR Part 178

[Docket No. 83F-0097]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers; Surface Lubricants Used in the Manufacture of Metallic Articles

Correction

In FR Doc. 85–21113, beginning on page 36872, in the issue of Tuesday, September 10, 1985, make the following corrections:

1. On page 36872:

a. In the second column, in the SUMMARY paragraph, twelfth line, "hydroxpoly" should read "hydroxypoly".

b. In the third column, first line, "C_9–C_{15}" should read "C_{12}–C_{15}".

2. On page 36874, first column, second complete paragraph, insert the following between the twelfth and thirteenth lines: "public disclosure before making the documents available for".

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 193

[FAP 5H5457/R794; FRL-2897-1]

Pesticide Tolerance for [(1R,3S)3[(1'RS, (1',2',2',2'-Tetrabromoethyl)]-2,2-Dimethylcyclopropane Carboxylic Acid (S)Alpha-Cyano-3-Phenoxybenzyl Ester]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a food additive regulation to permit the combined residues of the insecticide [(1*R*,3*S*)3[(1'*RS*) (1',2',2',2'-tetrabromoethyl)]-2,2-dimethylcyclopropane-carboxylic acid [*S*]-alpha-cyano-3-phenoxybenzyl ester] and its metabolites calculated as parent in cottonseed oil. This regulation to establish the maximum permissible level for residues of the insecticide in cottonseed oil was requested by American Hoechst Corp. acting as the registered U.S. Agent for Roussel-Uclaf of Paris, France.

EFFECTIVE DATE: Effective on September 18, 1985.

ADDRESS: Written objections, identified by the document control number [FAP 5H5457/R794], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Timothy A. Gardner, Product Manager (PM) 17, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557–2690.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of April 1, 1985 (50 FR 12868) which announced that American Hoechst Corporation, Rte. 202–206 North, Somerville, NJ 08876 had submitted food additive petition (FAP) 5H5457 proposing that 21 CFR Part 193 be amended by establishing a regulation permitting the combined residues of the insecticide [(1*R*,3*S*)3[(1'*RS*) (1',2',2',2'-tetrabromoethyl)]-2,2-dimethylcyclopropane-carboxylic acid (*S*)-alpha-cyano-3-phenoxybenzyl ester] and its metabolites (*S*)-alpha-cyano-3-phenoxybenzyl(1*R*,3*R*)-cis,trans-2,2-dimethyl-3-(2,2-dibromovinylcyclopropanecarboxylate calculated as parent in the food commodity cottonseed oil at 0.16 part per million (ppm). The tolerance level was subsequently increased to 0.20 ppm.

There were no comments received in response to this petition.

The data submitted in the petition and other relevant material have been evaluated. The toxicity and other relevant data pertaining to this insecticide are discussed and included in a related final rule document, [PP 4F2993/R793], establishing a tolerance in or on the raw agricultural commodity cottonseed appearing elsewhere in this issue of the **Federal Register.**

The insecticide is considered useful for the purpose for which the food additive regulation is sought and it is concluded that the insecticide may be safely used in accordance with the prescribed manner when such use is in accordance with the label and labeling registered pursuant to FIFRA as amended, (86 Stat. 973, 89 Stat. 973, 89 Stat. 751, U.S.C. 135(a) *et seq.*) Therefore, the food additive regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days afer publication of this rule in the **Federal Register,** file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this rule from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–602), the Administrator has determined that regulations establishing new food or feed additive levels, or conditions for safe use of additives, or raising such food or feed additive levels 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 24945).

List of Subjects in 21 CFR Part 193

Food additives, Pesticides and pests.

Dated: September 6, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

Therefore, 21 CFR Part 193 is amended as follows:

PART 193—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 21 U.S.C. 348.

2. Section 193.418 is added to read as follows:

§ 193.418 [(1R,3S)3[(1'RS)(1',2',2',2'-Tetrabromoethyl)]-2,2-dimethylcyclopropanecarboxylic acid (S)-alpha-cyano-3-phenoxybenzyl ester].

A regulation is established to permit the combined residues of the insecticide [(1*R*,3*S*)3[(1'*RS*)(1',2',2',2'-tetrabromoethyl)]-2,2-dimethylcyclopropanecarboxylic acid (*S*)-alpha-cyano-3-phenoxybenzyl ester] and its metabolites (*S*)-alpha-cyano-3-phenoxybenzyl(1*R*,3*R*)-cis,trans-2,2-dimethyl-3-(2,2-dibromovinyl-cyclopropanecarboxylate calculated as parent in or on the following food commodities:

Commodities	Parts per million
Cottonseed oil	0.20

[FR Doc. 85–22092 Filed 9–17–85; 8:45 am]

BILLING CODE 6560–50–M

21 CFR Part 561

[FAP 5H5466/R760; FRL–2898–3]

Pesticide Tolerance for Carbaryl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide carbaryl in or on the animal feed commodity pineapple bran. This regulation to establish a maximum permissible level for residues of carbaryl in or on pineapple bran was requested in a petition by the Union Carbide Agricultural Products Co., Inc.

EFFECTIVE DATE: Effective on September 18, 1985.

ADDRESS: Written objections, identified by the document control number [FAP 5H5466/R780], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2386).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of August 7, 1985 (50 FR 31916), which announced that Union Carbide Agricultural Products Co., Inc., PO Box 12014, Research Triangle Park, NC 27709, had submitted feed additive petition 5H5466 to EPA proposing the establishment of a tolerance for residues of the insecticide carbaryl (1-napthyl *N*-methyl carbamate) in or on the feed commodity pineapple bran at 20.0 parts per million (ppm).

There were no comments received in response to the notice of filing.

A tolerance of 2.0 was recently established for carbaryl in or on fresh pineapples in the **Federal Register** issue of May 8, 1985 (50 FR 19359). Since only residue data submitted to support this tolerance was from Mexico, the Agency stated that the tolerance would not support carbaryl's use on domestically

grown pineapples (Hawaii and Puerto Rico). To support such a use, the Agency stated that additional residue data would be needed from Hawaiian grown pineapples along with a proposed pineapple forage tolerance. The Food and Drug Administration (FDA) submitted a pineapple processing study in support of the carbaryl pineapple tolerance. That study demonstrated that carbaryl does not concentrate in the edible pulp or juice, but instead concentrates in the inedible portion (bran) which can be used as livestock feed. The Agency stated that a feed additive tolerance of 20.0 ppm would be established at a later date for wet and dry pineapple bran.

The data submitted in the petition and all other relevant material have been evaluated. The toxicological data considered in support of the tolerance included a three-generation rat reproduction study with a no-observed-effect level (NOEL) of 200 milligrams per kilogram (mg/kg); a rat feeding study which was negative for oncogenic effects at 400 ppm, the highest level tested (HLT), and had a NOEL of 200 ppm (10 mg/kg). Also, ten other studies were used to evaluate the oncogenic potential for carbaryl. No significant increase in the incidence of tumors was observed in these studies at levels as high as 400 ppm (HLT). Although each study was found to contain some flaws in scientific design or reporting of data, the Agency believes that when the ten studies are examined collectively they provide sufficient evidence that carbaryl is not oncogenic in experimental animals and, therefore, does not pose a risk to humans.

Twenty-four studies were used to evaluate the teratogenic potential of carbaryl. After evaluating these studies, the Agency has concluded that the available data do not indicate that carbaryl constitutes a potential human teratogen or reproductive hazard under proper use. However, because certain teratology studies with dogs indicated the sensitivity of that species to carbaryl, concern has been expressed for dogs treated with carbaryl to control fleas and ticks. The Registration Standard for carbaryl issued in March 1984 required that carbaryl registrants conduct an additional dog teratology study to settle this matter. In response to that requirement, Union Carbide requested that the Agency reconsider the necessity of another teratology study in the dog. EPA has reevaluated the need for this study and has determined that this study is not needed. The Agency has concluded that carbaryl would not constitute a potential teratogenic hazard to humans based on the overall weight of the 24 teratology studies that have been conducted. The Agency also believes that the dog is not an appropriate model to use to perform a teratology study and relate it to humans. While the two previous dog studies were of questionable quality, they do indicate the sensitivity of the dog to carbaryl. The Agency believes that the exposure of dogs to carbaryl can be minimized through labeling.

The metabolism of carbaryl is adequately understood and an adequate analytical method using high-pressure liquid chromotography (HPLC) and a fluorescence detector is available for enforcement purposes.

The pesticide is considered useful for the purpose for which the regulation is sought. There are no regulatory actions pending against the continued registration of the pesticide. Based on the data submitted and evaluated, the Agency has concluded that the pesticide may be safely used in the prescribed manner when use is in accordance with the label and labeling registered pursuant to FIFRA, as amended. (86 Stat. 973, 89 Stat. 751, 7 U.S.C. 136(c) *et seq.*) Therefore, 21 CFR Part 561 is amended as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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 food or feed additive levels, or conditions for safe use of additives, or raising such food or feed additive levels 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 24945).

List of Subjects in 21 CFR Part 561

Feed additives, Pesticides and pests.

Dated: September 5, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

Therefore, 21 CFR Part 561 is amended as follows:

PART 561—[AMENDED]

1. The authority citation for Part 561 continues to read as follows:

Authority: 21 U.S.C. 348.

2. Section 561.66 is added to read as follows:

§ 561.66 Carbaryl.

A tolerance is established for residues of the insecticide carbaryl (1-napthyl *N*-methyl carbamate) in or on the feed commodity pineapple bran (wet and dry) at 20 parts per million.

[FR Doc. 85-22095 Filed 9-17-85; 8:45 am]

BILLING CODE 6560-50-M

21 CFR Part 561

[FAP 2H5325/R779; FRL-2897-6]

Thiodicarb; Extension of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends interim feed additive tolerances for the insecticide thiodicarb and its metabolite in soybean hulls at 0.4 part per million (ppm) and cottonseed hulls at 0.8 ppm. Union Carbide Agricultural Products Co., Inc., requested this extension.

EFFECTIVE DATE: Effective on July 8, 1985.

ADDRESS: Written objections, identified by the document control number [FAP 2H5325/R779], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Jay Ellenberger, (PM) 12, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2386).

SUPPLEMENTARY INFORMATION: EPA issued a rule, published in the **Federal Register** of September 7, 1983 (48 FR 40369), which established an interim regulation permitting the combined residues of the insecticide thiodicarb (dimethyl *N*, *N*'-[thiobis [(methylamino) carbonyloxy]] bis [ethanimidothioate], and its metabolite methomyl (*N*-[methylcarbamoyl)oxy] thioacetimidate

resulting from application of the pesticide to growing crops under an experimental program.

In accordance with a request from Union Carbide Agricultural Products Co., Inc., P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709, EPA is extending the interim regulation until July 8, 1986, to permit the marketing of the commodities treated in accordance with experimental use permit 264-EUP-61, which is being extended (see related document [PP 2G2581/T496], which is published in the Notices section of this issue of the **Federal Register**). Scientific data show that the tolerances are adequate to cover residues resulting from the experimental use and that such tolerances will protect the public health.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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 food or feed additive levels, or conditions for safe use of additives, or raising such food or feed additive levels 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 24945).

List of Subjects in 21 CFR Part 561

Feed additives, Pesticides and pests.

Dated: September 4, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

Therefore, 21 CFR Part 561 is amended as follows:

PART 561—[AMENDED]

1. The authority citation for Part 561 continues to read as follows:

Authority: 21 U.S.C. 348.

2. Section 561.386 is amended by revising the table therein to read as follows:

§ 561.386 Thiodicarb.

* * * * *

Feeds	Parts per million	Company	Expiration date
Cottonseed, hulls.	0.8	Union Carbide Corp.	July 8, 1986
Soybean, hulls.	0.4	do	Do.

[FR Doc. 85-22087 Filed 9-17-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Approval of Permanent Program Amendments for the State of Ohio Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of certain amendments to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

On May 23, 1985, OSM approved several amendments submitted by Ohio on February 27, 1985, revising Ohio rules 1513-13-01 through 1513-13-22 which establish the Reclamation Board of Review's (RBR) rules of procedures (50 FR 21256). On July 3, 1985, Ohio requested that OSM consider an informal submittal of amendments dated May 20, 1985, as a formal request for a program amendment. The amendments are to the RBR's rules of procedure and revise some of its procedures. OSM published a notice in the **Federal Register** on July 30, 1985, inviting public comment on the adequacy of the proposed amendment (50 FR 30863).

After providing opportunity for public comment and conducting a thorough review of the program amendments, the Director of OSM has determined that the amendments meet the requirements of SMCRA and the Federal regulations. Accordingly, the Director is approving the program amendments. The Federal rules at 30 Part CFR 935 which codify decisions on the Ohio program are being amended to implement these rules.

This final rule is being made effective immediately to expedite the State program amendment process and encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EFFECTIVE DATE: September 18, 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43232; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background

The Ohio program was approved effective August 16, 1982, by notice published in the August 10, 1982 **Federal Register**. The approval was conditioned on the correction of 28 minor deficiencies contained in 11 conditions. Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 **Federal Register** (47 FR 34688).

II. Discussion of the Amendments

On May 23, 1985, OSM approved several amendments submitted by Ohio on February 27, 1985, revising rules OAC 1513-3-01 through 1513-3-22 which established the Reclamation Board of Review (RBR) rules of procedures (50 FR 21256). On July 3, 1985, Ohio requested that OSM consider an informal submittal of amendments to the RBR rules dated May 20, 1985, as a formal request for a program amendment.

OSM responded to that request by publishing an announcement of the receipt of the amendments and inviting public comment on the adequacy of the proposal in the July 30, 1985 **Federal Register**. The notice stated that a public hearing would be held only if requested. Since there were no requests for a hearing, a hearing was not held. The comment period closed on August 29, 1985, and no comments were received.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendments submitted by Ohio on July 3, 1985 dated May 20, 1985, meet the requirements of SMCRA and 30 CFR Chapter VII, as discussed in

the findings below. However, the Ohio rules have not been promulgated as final rules. The Chief of the Ohio Division of Reclamation has indicated that Ohio intends to adopt the new rules by emergency rulemaking as soon as they are approved by OSM. The Director, OSM, is approving the rules provided that they are fully promulgated in identical form to the rules submitted to and reviewed by OSM.

Ohio Administrative Code Rules (OAC) 1513–3–01 through 1513–3–22. Reclamation Board of Review Rules of Procedure.

The amendments to these rules include a definition of the term "burden of persuasion", RBR procedures for resolution of tie votes, procedures applicable when there is not a quorum present, and procedures for maintaining and making records available for inspection. The amendments also include procedures for issuance of subpoenas; the filing of appeals and clarifying sections concerning actions governed by amended rules, appearance and practice before the RBR; and grounds for which a review may be sought. OAC 1513–3–11 has been amended to include granting motions and reconsidering motions and OAC 1513–3–12 has been amended to clarify pre-hearing procedures. Amendments have also been made to sections concerning the granting or denying of continuances; allowing a site view; conducting evidentiary hearings; voluntary dismissal and settlement, and the reports and recommendations of hearing officers.

The majority of the revisions clarify the previously approved procedures and operation of the RBR. Other changes are editorial in nature.

The Director finds that the amendments are in accordance with SMCRA and are no less effective than the Federal regulations.

IV. Public Comments

Acknowledgements were received from the following Federal agencies: Soil Conservation Service, Mine Safety and Health Administration, Farmers Home Administration and the Department of the Army, Office of the Chief Engineer. The disclosure of Federal agency comments is made pursuant to section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(10)(i).

V. Director's Decision

The Director, based on the above findings, is approving the July 3, 1985 amendments dated May 20, 1985. The Director is amending Part 935 of 30 CFR Chapter VII to reflect approval of the State program amendments. However, as noted above, because the Ohio rules have not been fully promulgated, the rules will not take effect for purposes of the Ohio program until the revised rules have been promulgated as final rules in Ohio.

VI. Procedural Matters

1. *Compliance with the National Environmental Policy Act*

The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act*

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act*

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 12, 1985.

Jed. D. Christensen,
Director, Office of Surface Mining.

PART 935—OHIO

30 CFR Part 935 is amended as follows:

1. The authority citation for Part 935 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. In Part 935, § 935.15 is amended by adding a new paragraph (r) as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(r) The following amendments submitted to OSM on July 3, 1985, are approved effective upon promulgation of the revised rules by the State, provided the rules are adopted in identical form as submitted to OSM: Ohio Administrative Code Sections 1513–3–01 through 1513–3–22.

[FR Doc. 85–22323 Filed 9–17–85; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 207

Ohio River, Mississippi River Above Cairo, IL, and Their Tributaries

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers is amending the regulations which govern the use, administration, and navigation of the Ohio River, Mississippi River above Cairo, Illinois, and their tributaries. This revision notifies all users of the Cumberland River in Tennessee that the Cordell Hull Lock will be staffed with contract personnel. There are no changes in locking procedures.

EFFECTIVE DATE: September 18, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. James Marlow, Office of the Chief of Engineers, DAEN–CWO–M, Washington, DC 20314–1000 or call (202) 272–0241.

SUPPLEMENTARY INFORMATION: The rules and regulations governing locking procedures at the Cordell Hull Lock on the Cumberland River have not changed. The major impact of the revision will be that, when passing through the lock, waterway users will no longer be in direct contact with a Federal government employee, referred to as the lockmaster, who is responsible for enforcing all rules and regulations for use of the locks. The Corps of Engineers Nashville District Engineer will notify waterway users and the general public through appropriate notices and media concerning the location and identity of the government employee designated as having those responsibilities. All other duties and responsibilities of the lockmaster referred to in the previous regulations will be performed by the contract lock operator.

The regulations in §207.300 are amended only with respect to paragraph (a) *Authority of Lockmasters.*

Note: The Department of the Army has determined that this document does not contain a major rule requiring a regulatory impact analysis under Executive Order 12291 because it will not result in an annual effect on the economy of $100 million or more and it will not result in a major increase in costs or prices. I also certify that this rule will not have a significant economic impact on a substantial number of entities and thus does not require the preparation of a regulatory flexibility analysis.

List of Subjects in 33 CFR Part 207

Navigation, Navigable waters, Transportation.

PART 207—[AMENDED]

Accordingly, 33 CFR Part 207 is amended as follows:

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

Authority: 40 Stat. 266; 33 U.S.C. 1.

2. By revising paragraph (a) of § 207.300 to read as follows:

§ 207.300 Ohio River, Mississippi River above Cairo, Illinois, and their tributaries; use, administration, and navigation.

(a) *Authority of Lockmasters.*—(1) *Locks Staffed with Government Personnel.* The provisions of this paragraph apply to all waterways in this section except for Cordell Hull Lock located at Mile 313.5 on the Cumberland River in Tennessee. The lockmaster shall be charged with the immediate control and management of the lock, and of the area set aside as the lock area, including the lock approach channels. He/she shall see that all laws, rules, and regulations for the use of the lock and lock area are duly complied with, to which end he/she is authorized to give all necessary orders and directions in accordance therewith, both to employees of the government and to any and every person within the limits of the lock and lock area, whether navigating the lock or not. No one shall cause any movement of any vessel, boat, or other floating thing in the lock or approaches except by or under the direction of the lockmaster or his/her assistants. In the event of an emergency, the lockmaster may depart from these regulations as he deems necessary. The lockmasters shall also be charged with the control and management of federally constructed mooring facilities.

(2) *Locks Staffed with Contract Personnel.* The provisions of this paragraph apply to Cordell Hull Lock located at Mile 313.5 on the Cumberland River in Tennessee. Contract personnel shall give all necessary orders and directions for operation of the lock. No one shall cause any movement of any vessel, boat or other floating thing in the locks or approaches except by or under the direction of the contract lock operator. All duties and responsibilities of the lockmaster set forth in this section shall be performed by the contract lock operator except that responsibility for enforcing all laws, rules, and regulations shall be vested in a government employee designated by the Nashville District Engineer. The district engineer will notifdy waterway users and the general public through appropriate notices and media concerning the location and identity of the designated government employee.

* * * * *

Dated: August 8, 1985.

John O. Roach II,

Army Liaison Officer with the Federal Register.

[FR Doc. 85-22332 Filed 9-17-85; 8:45 am]

BILLING CODE 3710-92-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[00000/R745; FRL-2896-8]

Revocation of 2,4-Dichlorophenyl P-Nitrophenyl Ether Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule revokes the tolerances for the combined residues of the herbicide 2,4-dichlorophenyl *p*-nitrophenyl ether (commonly called nitrofen; trade name, TOK™) and its metabolities containing the diphenyl ether linkage (hereafter, this chemical) in or on certain raw agricultural commodities. EPA is taking this action because of its concern about the teratogenic risk and potential oncogenic and mutagenic risks associated with this chemical.

EFFECTIVE DATE: Effective on September 18, 1985.

ADDRESS: Written objections, identified by the document control number [00000/R745], may be submitted to the: Hearing Clerk, Environmental Protection Agency, Rm 3708 (A-110), 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Patricia Critchlow, Registration Division (TS-767), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7700).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of May 16, 1984 (49 FR 20733), which proposed the revocation of tolerances for the combined residues of the herbicide 2,4-dichlorophenyl *p*-nitrophenyl ether (commonly called nitrofen; trade name, TOK™) and its metabolities containing the diphenyl ether linkage (hereafter, this chemical) in or on the raw agricultural commodities listed at 40 CFR 180.223.

No requests for referral to an advisory committee were received in response to this notice of proposed rulemaking.

The Agency received one comment from the National Food Processors Association (NFPA). NFPA commented that most canned food products remain in the marketplace for about 2 years, and that some canned food products remain in the marketplace for as long as 6 years. NFPA recommends that tolerances for this chemical be maintained as action levels through 1986 in order to avoid the recall of legally treated food products. NFPA feels that this time period would permit the legal distribution and sale of remaining inventories of stock prepared from properly treated raw products.

The Agency has considered the concerns expressed by the NFPA regarding the potential probelm of residues of this cancelled pesticide remaining in existing food stocks after the Agency revokes the tolerances. The producer ceased marketing of this chemical in 1980 and subsequently requested voluntary cancellation which become effective on February 17, 1984. According to the NFPA, the chemical has not been used since 1982. Surveillance data from the Food and Drug Administration (FDA) show only five food samples with detectable residues of this chemical during 1981 through 1982 and none in 1983. Since this chemical is not persistent and the processing (washing, cooking, etc.) prior to packing is expected to eliminate any trace residues still present on the treated commodities, the Agency does not expect any residues resulting from legal use to be present in any canned products at this time. Therefore, there is no need to recommend action levels to the Food and Drug Administration.

Based on the information considered by the Agency and discussed in detail in the May 16, 1984 proposal, the Agency is hereby revoking the tolerances in 40 CFR 180.223 as follows:

PESTICIDE TOLERANCES BEING REVOKED

Commodities	Existing tolerances (in ppm)
Broccoli	0.75
Brussels sprouts	.75
Cabbage	.75
Carrots	.75
Cauliflower	.75
Celery	.75
Horseradish	.05
Kohlrabi	.75
Onions (green or in dry bulb form)	.75
Parsley	.75
Rice	.1
Rice straw	.1
Sugar beets (roots and tops)	.05
Taro (corm)	.02
Eggs	.05
Fat, meat and meat byproducts of cattle, goats, hogs, horses, and sheep	.05
Fat of poultry	.2
Meat and meat byproducts of poultry	.05
Milk fat	[1]0.5

[1] Reflecting 0.02 ppm in whole milk.

Any person adversely affected by this regulation revoking the tolerances may, within 30 days after the date of publication of this regulation in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

This document has been sent to the Office of Management and Budget for review as required by section 3 of Executive Order 12291.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of the revocation of tolerances for this chemical. This analysis is available for public inspection in Rm. 236, at the address given above.

Executive Order 12291

As explained in the proposal published on May 16, 1984, the Agency has determined, pursuant to the requirements of Executive Order 12291, that the revocation of these tolerances will not cause adverse economic impacts on significant portions of U.S. enterprises. Furthermore, revocation of tolerances for this chemical should aid U.S. enterprises by eliminating any unfair advantage that foreign enterprises have gained through the continuance of these tolerances.

Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 *et seq.*) and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the May 16, 1984, proposal.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: September 6, 1985.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

§ 180.223. [Removed]

2. By removing § 180.223.

[FR Doc. 85-22093 Filed 9-17-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 4F2993/R793; FRL-2896-9]

Pesticide Tolerance for [(1R,3S)3[(1'RS, (1',2',2',2'-Tetrabromoethyl)]-2,2-Dimethylcyclopropanecarboxylic Acid (S) Alpha-Cyano-3-Phenoxybenzyl Ester]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the insecticide [(1*R*,3*S*)3[(1'*RS)* (1',2',2',2'-(tetrabromoethyl)]-2,2-dimethylcyclopropanecarboxylic acid(*S*)-alpha-cyano-3-phenoxybenzyl ester] and its metabolites calculated as parent in or on the raw agricultural commodity cottonseed. This regulation to establish the maximum permissible level for residues of the insecticide on cottonseed was requested by American Hoechst Corp. acting as the registered U.S. Agent for Roussel-Uclaf of Paris, France.

EFFECTIVE DATE: Effective on September 18, 1985.

ADDRESS: Written objections, identified by the document control number [PP 4F2993/R793], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Timothy A. Gardner, Product Manager (PM) 17, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2690).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of February 8, 1984 (49 FR 4839), which announced that American Hoescht Corp., Rte. 202-206, North Somerville, NJ 08876, acting as the registered U.S. agent for Roussel-Uclaf, 163 Ave. Ganbetta, 750 Paris, France, had submitted pesticide petition (PP) 4F2993, proposing to amend 40 CFR Part 180 by establishing a tolerance for residues of the insecticide [(1*R*,3*S*)3[(1'*RS*) (1',2',2',2'-tetrabromoethyl)]-2,2-dimethylcyclopropanecarboxylic acid (*S*)-alpha-cyano-3-phenoxybenzyl ester] and its metabolites (*S*)-alpha-cyano-3-phenoxybenzyl(1*R*,3*R*)-cis, trans-2,2-dimethyl-3-(2, 2-dibromo-vinyl)cyclopropanecarboxylate calculated as parent, in or on the raw agricultural commodity cottonseed at 0.02 part per million (ppm).

There were no comments received in response to this petition.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance include an acute oral rat toxicity study with a median lethal dose (LD_{50}) of 84.9 milligrams (mg)/kilogram (kg) for male rats and 95.4 mg/kg for female rats; an acute dermal toxicity study on rabbits with an LD_{50} greater than 2.0 grams/kg; an acute inhalation LC_{50} study on rats with an LC_{50} greater than 0.286 milligram/litre; a delayed hypersensitization study in guinea pigs (not a sensitizer); 13-week oral toxicity studies in rats and dogs with a no-observed-effect level (NOEL) of 1.0 mg/kg/day for both rats and dogs; a 1-year oral toxicity study in dogs with a NOEL of 1.0 mg/kg/day; 24-month rat and mouse chronic feeding oncogenicity studies with a NOEL of 0.75 mg/kg/day for both rats and mice and no oncogenic effects; teratology studies in rats and rabbits with no teratogenic effects in rats at 18 mg/kg (highest dose tested; (HDT)) or rabbits at 32 mg/kg (HDT); a 2-generation reproduction study in rats with a NOEL of 0.75 mg/kg/day; and the following mutagenicity studies: reverse mutation assay, Slater diffusion assay, micronucleus test, dominant lethal study, chromosome aberration assay, forward gene mutation assay (all negative except for the forward gene

mutation assay which was positive with metabolic activation but negative without metabolic activation).

The acceptable daily intake (ADI) is calculated to be 0.0075 mg/kg/day based on the 2-year rat chronic feeding study and its NOEL of 0.75 mg/kg/day using a 100-fold safety factor. The maximum permissible intake (MPI) is calculated to be 0.45 mg/day for a 60-kg person. Approval of the tolerance for cottonseed and the related tolerance for cottonseed oil would result in a theoretical maximum residue contribution (TMRC) of 0.0004 mg/day (1.5 kg) and will utilize 0.10 percent of the ADI.

The metabolism of the chemical is adequately understood and an analytical method is available for the insecticide and the metabolites calculated as parent. This analytical method consists of gel permeation chromatography and gas liquid chromatography with an electron capture detector and is adequate for enforcement purposes.

Because of the long lead time from establishing this tolerance to publication of the enforcement methodology in the Pesticide Analytical Manual II, an interim analytical methods package is being made available to the state pesticides enforcement chemists when requested from:

By mail: William Grosse, Chief, Information Service Branch (TS-757C), Program Management Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. Office location and telephone number: Rm. 222, CM# 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2613).

There are currently no regulatory actions pending against the registration of this pesticide.

A related document [FAP 5H5457/R794], establishing a regulation permitting residues of the insecticide in cottonseed oil appears elsewhere in this issue of the Federal Register.

The pesticide is considered useful for the purpose for which the tolerance is sought, and it is concluded that the tolerance for residues of the insecticide in or on cottonseed will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this rule in the Federal Register, file written objections with the Hearing Clerk at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objection. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this rule from the OMB Review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 501-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemption from tolerance requirements do not have 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 Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: September 6, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.422 is added to read as follows:

§ 180.422 [(1'RS)(1',2',2',2'-Tetrabromoethyl)]-2,2-dimethylcyclopropanecarboxylic acid (S)-alpha-cyano-3-phenoxybenzyl ester]; tolerances for residues.

Tolerances are established for the combined residues of the insecticide (1*R*,3*S*)3[(1'*RS*)(1',2',2',2'-tetrabromoethyl)]-2,2-dimethylcyclopropanecarboxylic acid (*S*)-alpha-cyano-3-phenoxybenzyl ester and its metabolites (*S*)-alpha-cyano-3-phenoxybenzyl (1*R*,3*R*)-cis,trans-2,2-dimethyl-3-(2,2-dibromovinyl)cyclopropanecarboxylate calculated as parent, in or on the following raw agricultural commodites.

Commodities	Parts per million
Cottonseed	0.02

[FR Doc. 85-22094 Filed 9-17-85; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6677]

Suspension of Community Eligibility; Alabama et al.

AGENCY: National Flood Insurance Administration, Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

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

EFFECTIVE DATES: The third date ("Susp.") listed in the fifth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator Office of Loss Reduction Federal Insurance Administration (202) 646-2717 500 C Street, Southwest FEMA—Room 416 Washington, D.C. 20475.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with

program regulations (44 CFR Part 59 et. seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so that as of that date flood insurance is no longer available in the community. However, those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable flood plain management measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be published in the **Federal Register.**

In addition, the Director of Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 94–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

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

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

The authority citation for Part 64 continues to read as follows:

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

PART 64—[AMENDED]

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

§ 64.6 List of eligible communities.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date[1]
Region IV					
Alabama:					
Fayette	Unincorporated areas	010219B	Jan. 17, 1976, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Jan. 10, 1975 and May 21, 1976	Sept. 18, 1985.
Lamar	Millport, town of	010137B	Aug. 6, 1974, Emerg.; Sept. 18, 1985, Reg., Sept. 18, 1985, Susp.	June 28, 1974 and Jan. 2, 1976	Do.
Florida: St. Johns	Unincorporated areas	125147D	Sept. 25, 1970, Emerg.; July 6, 1973, Reg.; Sept. 18, 1985, Susp.	July 6, 1973, June 1, 1974, May 28, 1976 and Oct. 1, 1983.	Do.
Region V					
Wisconsin: Sauk	Rock Springs, village of	550403C	April 30, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Dec. 17, 1973, May 21, 1976 and Dec. 28, 1979.	Do.
Region X					
Oregon: Lane	Creswell, city of	410121A	Dec. 13, 1974, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.		Sept. 18, 1985.
Region I—Minimal Conversions					
Maine:					
Washington	Danforth, town of	230136B	April 14, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Aug. 9, 1974 and Sept. 17, 1976	Do.
Penobscot	Garland, town of	230367B	Mar. 19, 1976, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Feb. 7, 1975 and Sept. 3, 1976	Do.
Washington	Marshfield, town of	230316B	Aug. 8, 1975 Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Oct. 20, 1974 and Sept. 24, 1976	Do.
Waldo	Morrill, town of	230262A	July 18, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Feb. 7, 1975	Do.
do	Patten, town of	230115C	Mar. 5, 1976, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Nov. 1, 1974, Aug. 21, 1981 and Oct. 8, 1976.	Do.
Penobscot	Stetson, town of	230402A	Aug. 18, 1975 Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Jan. 31, 1975	Do.
Waldo	Waldo, town of	230270A	June 2, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Feb. 14, 1975	Do.
Vermont:					
Windsor	Barnard, town of	500292B	June 16, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Sept. 6, 1974 and Nov. 19, 1976	Do.
Rutland	Ira, town of	500260B	Dec. 24, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Dec. 6, 1974 and Sept. 17, 1976	Do.
Do	Mendon, town of	500095B	June 19, 1975 Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Sept. 16, 1974 and Nov. 19, 1976	Do.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date[1]
Do	Middletown Springs, town of	500261A	June 30, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Dec. 6, 1974	Do.
Addison	Ripton, town of	500010B	Feb. 6, 1976, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Jan. 17, 1975 and Mar. 4, 1977	Do.
Orange	Tunbridge, town of	500076B	July 25, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	May 31, 1974 and June 25, 1976	Do.
Windsor	Weathersfield, town of	500156B	Sept. 22, 1975 Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	June 14, 1974 and Oct. 29, 1976	Do.
		Region IV			
Alabama:					
Choctaw	Pennington, town of	010035B	July 16, 1979, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Mar. 3, 1978	Do.
St. Clair	Steele, town of	010291A	Aug. 25, 1977, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Feb. 7, 1975	Do.
Kentucky:					
Wayne	Monticello, city of	210221B	July 2, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	May 24, 1974, and June 4, 1976	Do.
Estill	Ravenna, city of	210319B	May 19, 1976, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	May 17, 1974 and July 16, 1976	Do.
Mississippi: Itawamba	Mantachie, town of	280062C	May 27, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	June 21, 1974, Aug. 13, 1976 and Feb. 8, 1980.	Do.
		Region V			
Illinois:					
Williamson	Bush, village of	170784B	July 23, 1976, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Mar. 29, 1974 and June 11, 1976	Do.
Do.	Hurst, city of	170792B	Aug. 22, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Mar. 15, 1974 and May 7, 1976	Do.
Illinois:					
Moultrie	Lovington, village of	170523C	Dec. 23, 1974, Emerg., Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	June 7, 1974, May 21, 1976 and Mar. 11, 1977.	Do.
Gallatin	Omaha, village of	170248B	Aug. 1, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	May 10, 1974 and June 6, 1976	Do.
Vermilion	Potomac, village of	170799B	Sept. 23, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Mar. 22, 1974 and Aug. 27, 1976	Do.
Do	Rankin, village of	170668B	Aug. 1, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	May 17, 1974 and Oct. 31, 1975	Do.
Moultrie	Sullivan, city of	170524B	June 20, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Sept. 20, 1974 and Oct. 17, 1975	Do.
Indiana: Newton	Kentland, town of	180182A	Nov. 13, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	May 24, 1974 and Aug. 13, 1976	Do.
Michigan: Monroe	Summerfield, township of	260156B	June 23, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Feb. 15, 1974 and July 9, 1976	Do.
Minnesota:					
Benton	Foley, city of	270020B	May 2, 1974, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Mar. 29, 1974, June 4, 1976 and Apr. 2, 1982.	Do.
Mille Lacs	Onamie, city of	207290C	Nov. 21, 1974, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	May 10, 1974 and Mar. 26, 1976	Do.
Ramsey	White Bear, township of	270688B	Apr. 28, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Mar. 17, 1978	Do.
Wisconsin:					
Bayfield	Bayfield, city of	550017A	June 6, 1974, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Aug. 16, 1976	Do.
Shawano	Bonduel, village of	550414A	June 9, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Aug. 16, 1976	Do.
Columbia	Cambria, village of	550057C	June 11, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Apr. 12, 1974, June 11, 1976 and Apr. 6, 1979.	Do.
Marathon and Clarke	Colby, city of	550049C	Nov. 29, 1974 Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	May 31, 1974, Mar. 19, 1976 and Mar 23, 1979.	Do.
Columbia	Doylestown, village of	550059B	Apr. 30, 1976, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	May 17, 1974 and June 11, 1976	Do.
Shawano	Gresham, village of	550418B	May 8, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Jan. 9, 1974 and May 14, 1976	Do.
Oconto	Lena, village of	550296B	July 17, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	June 28, 1974 and Feb. 21, 1976	Do.
Columbia	Poynette, village of	550064	July 29, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	May 3, 1974, May 23, 1976 and Mar. 30, 1979.	Do.
Taylor	Rib Lake, village of	550436B	Aug. 15, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	May 24, 1974 and May 28, 1976	Do.
Jefferson	Sullivan, village of	550197B	July 10, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Apr. 12, 1974 and July 2, 1976	Do.
Chippewa	Stanley, city of	550047B	Apr. 1, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	May 3, 1974 and May 28, 1976	Do.
Jefferson	Waterloo, city of	550196B	July 25, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Dec. 28, 1973 and July 30, 1976	Do.
		Region VII			
Iowa:					
Lyon	Alvord, city of	190197B	Nov. 7, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Sept. 13, 1974 and Jan. 16, 1976	Do.
Woodbury	Cushing, city of	190289B	Apr. 28, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Aug. 9, 1974 and Jan. 2, 1976	Do.
Do	Danbury, city of	190290B	Aug. 5, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Jan. 9, 1974 and Apr. 16, 1976	Do.
Audubon	Exira, city of	190013B	July 25, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	May 10, 1974 and Mar. 26, 1976	Do.
Lyon	Little Rock, city of	190448A	Sept. 23, 1976, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Sept. 19, 1975	Do.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date[1]
Harrison	Logan, city of	190146B	Jan. 16, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Apr. 12, 1974 and Mar. 12, 1976	Do.
Osceola	Ocheyedon, city of	190472A	June 30, 1976, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Mar. 19, 1976	Do.
Woodbury	Pierson, city of	190295B	June 25, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Sept. 13, 1974 and May 14, 1976	Do.
Plymouth	Unincorporated areas	190899B	May 6, 1980, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Oct. 25, 1977	Do.
Dallas	Redfield, city of	190361A	Oct. 26, 1976, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Mar. 26, 1976	Do.
O'Brien	Sheldon, city of	190216B	July 25, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Dec. 24, 1976	Do.
Missouri: Scott	Oran, city of	290413B	Mar. 5, 1975, Emerg.; Sept. 18, 1985, Reg., Sept. 18, 1985, Susp.	Mar. 1, 1974 and Jan. 9, 1976	Do.
Nebraska: Gage	Clatonia, village of	310093A	Dec. 10, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Nov. 29, 1974	Do.

[1] Certain Federal assistance no longer available in special flood hazard areas.
Code for reading 4th column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Issued: September 13, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85-22276 Filed 9-17-85; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 85-321]

Amendment of the Rules To Strengthen the Office of Science and Technology and the Commission's International Programs

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action implements a reorganization of the Office of Science and Technology (OST) and the Commission's International Programs. The functions and staffing of two branches in OST are being revised: OST's International Staff is being disbanded; responsibility for conference preparation is being transferred to the bureaus; and additional staff support is being provided to the Chairman, the Chairman's International Assistant and the Managing Director.

This action will allow OST to focus its resources on the most important technical and spectrum management issues facing the Commission, and will streamline conference preparation and improve oversight of international programs.

This action will improve resource utilization in OST and strengthen the Commission's management and execution of its international programs.

EFFECTIVE DATE: May 20, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Ron Stone: Office of Managing Director (202) 632-3906.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 0

Organization and functions.

Order

In the Matter of Amendment of Part 0 of the Commission's Rules to Strengthen the Office of Science and Technology and the Commission's International Programs.

Adopted: April 11, 1985.
Release: September 11, 1985.

By the Commission.

1. This reorganization will have a twofold effect: (1) It will allow the Office of Science and Technology (OST) to focus its resources on the most important technical and spectrum management issues facing the Commission; and (2) It will streamline conference preparation and improve the Commission's oversight of international activities. The above will be accomplished by revising the functions of the Mathematical Modeling Branch and the Propagation and Terrestrial Systems Branch of OST (renamed the Telecommunications Analysis Branch and Propogation and Analysis Branch respectively); disbanding OST's International Staff and Transferring responsibility for conference preparation to the bureau most affected by a conference; and providing additional staff support for the Chairman, the Chairman's International Assistant and the Managing Director. These changes will require revision of § 0.32 of the Commission's Rules and Regulations.

2. OST has three principal functions. First, the Office provides direct service to the public through its spectrum management activities, which includes the equipment authorization program and administration of Parts 2, 5, 15 and 18 of the FCC's Rules. Second, OST provides technical aid to the operating bureaus in support of licensing and technology-related activities. Third, OST facilitates implementation of new technologies by assessing their feasibility and removing unnecessary entry or use barriers.

3. In addition, to the functions described above, OST has been coordinating the FCC's preparation for a variety of international conferences. OST has led this effort since the FCC began preparing for the 1979 General WARC which affected almost all communication services. Since that time, however, the conferences have been limited in scope to particular services or frequency bands that usually fall within the primary operational responsibility of a single bureau. Therefore, it has become more efficient to give lead responsibility for conference preparation to the operating bureaus since they are most familiar with the needs of the affected licensees. As a result, OST can now turn its attention and resources to new projects that focus most directly on the basic functions mentioned above. OST also will continue its major role in international consultative committees (CCIR and CCITT) and other organizations that contribute to telecommunications technology policy.

4. Commission oversight of international activities will be improved by the establishment of a Foreign Affairs Advisor. This action will further the Commission's objective "(to) promote the coordination and planning of international communications which assures the vital interests of the American public . . ." The Foreign Affairs Advisor will assist the Chairman, the Chairman's International Assistant and Managing Director in coordinating international telecommunications matters, with a primary focus on international conference preparation. This will involve coordinating FCC staff and

interagency planning, and interfacing with other agencies and international organizations.

5. The amendments adopted herein pertain to agency organization. The prior notice procedure and effective date provisions of Section 4 of the Administrative Procedures Act are therefore, inapplicable. Authority for the amendments adopted herein are contained in sections 4(i) and 5(b) of the Communications Act of 1934, as amended.

6. In view of the foregoing, it is ordered, effective May 20, 1985, that Part 0 of the Rules and Regulations is amended as set forth in the Appendix hereto.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 0—[AMENDED]

Part 0 of Chapter 1 of Title 47 of the Code of Federal Regulations is hereby amended as indicated below:

1. Section 0.32 of the Commissions Rules and Regulations is revised to read as follows:

§ 0.32 Units in the Office.

The Office of Science and Technology is comprised of the following units:

(a) Immediate Office of the Chief Scientist;

(b) Policy and Management Staff;

(c) Authorization and Standards Division;

(d) Spectrum Management Division;

(e) Technical Analysis Division.

[FR Doc. 85-22264 Filed 9-17-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 1

[FCC 85-487]

Revision of the Rules To Require the Inclusion of a Table of Contents and Summary of Filing In Filings Longer Than Ten Pages

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document revises the rule regarding filing summaries and tables of contents in Commission proceedings. This action is being taken to exempt from the summary and table of contents requirements certain discovery pleadings. All documents and pleadings filed with the Commission in any proceeding that exceeds ten pages must include a table of contents and a summary unless one of the stated exceptions apply.

EFFECTIVE DATE: October 21, 1985.

FOR FURTHER INFORMATION CONTACT: Randy W. Thomas, Office of General Counsel, Federal Communications Commission, Washington, D.C. 20554, (202) 632-6990.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Second Order

In the Matter of Revision of the FCC's Rules to Require the Inclusion of a Table of Contents and Summary of Filing in Filings Longer than Ten Pages.

Adopted: September 5, 1985.

Released: September 12, 1985.

By the Commission: Commissioner Rivera not participating.

1. In September, 1984 the Commission adopted a *Memorandum Opinion and Order* in this proceeding that amended § 1.49 of the Rules to provide that all pleadings and documents filed in any proceeding must contain both a summary and table of contents if the pleading or document exceeds ten pages in length. FCC 84-438, Mimeo No. 34997, released, Sept. 19, 1984.

2. The Federal Communications Bar Association ("FCBA"), by its Executive Committee and its Practice and Procedure Subcommittee, has filed a "Petition for Modification of Rule" requesting that the recently adopted § 1.49 (b) and (c) of the Commission's Rules, 47 CFR 1.49 (b) and (c), be amended to clarify the new requirements and to limit the scope of their applicability.

3. After careful consideration and review of Petitioner's proposal, we are of the view that certain filings do not readily lend themselves to the requirements of § 1.49. Thus, this Order adds § 1.49(d) to the Rules to exempt from the scope of the summary and table of contents requirements certain discovery pleadings, *viz.*, interrogatories, answers to interrogatories, depositions, transcripts of testimony and hearing exhibits.

4. It should be emphasized that it is the Commission's intention that *all* documents and pleadings filed in any proceeding, regardless of the nature of the proceeding, comply with the requirements of § 1.49 of the Rules, unless one of the exceptions in § 1.49(d) applies.

5. We find that prior notice and public comment procedures are unnecessary to implement this amendment involving general rules of agency practice and procedure. 5 U.S.C. 553(b)(3)(A).

6. In view of the foregoing and pursuant to sections 1, 4(i) and (j) and 309(i) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j) and 309(i), it is hereby ordered that Part 1 of the Commission's Rules is amended as set forth in the attached Appendix, effective October 21, 1985, it is further ordered that the FCBA's petition is granted to the extent indicated herein and is otherwise denied.

7. For further information contact Randy W. Thomas, Office of General Counsel (202) 632-6990.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 1—[AMENDED]

§ 1.49 [Amended]

1. In § 1.49, paragraph (d) is added to read as follows:

* * * * *

(d). The requirements of paragraphs (b) and (c) of this section shall not apply to certain discovery pleadings, *viz.*, interrogatories, answers to interrogatories, depositions, transcripts of testimony and hearing exhibits.

[FR Doc. 85-22265 Filed 9-17-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 95

[FCC 85-485]

Amendment To Clarify That the Prohibition Against Digital Modulation Techniques In the Personal Radio Services Does Not Apply to the Non-Voice R/C Radio Service

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: This document amends §§ 95.207, 95.211 and 95.627 of the rules to clarify that the prohibition against digital modulation techniques in the Personal Radio Service does not apply to the non-voice R/C Radio Service. In Part 95 Subpart E, Technical Regulations for the Personal Radio Service, § 95.626(d) prohibits the use of digital modulation techniques in all three Personal Radio Services. Digital modulation techniques are useful in the Radio Control R/C Radio Service.

DATES: These rules become effective September 18, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: John T. Small, Private Radio Bureau, Washington, D.C. 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 95

Communications equipment, Radio Control (R/C) Radio Service, Radio.

Order

In the matter of amendment of 47 CFR Part 95, Subparts C and E, Personal Radio Services.

Adopted: September 4, 1985.

Released: September 11, 1985.

By the Commission; Commissioner Rivera not participating.

1. In Part 95 Subpart E, Technical Regulations for the Personal Radio Services, § 95.627(d) prohibits the use of digital modulation techniques in all three Personal Radio Services. While this is appropriate for the two voice-only services (General Mobile Radio Service and Citizens Band Radio Service) digital modulation techniques are useful in the non-voice Radio Control (R/C) Radio Service. Type acceptance grants are routinely made for R/C Radio Service transmitters which employ certain digital modulation techniques.

2. This Order amends § 95.627 of the rules to clarify that the prohibition against digital modulation techniques in the Personal Radio Services does not apply to the non-voice R/C Radio Service. Sections 95.207 and 95.211 are also amended to make it clear that there are no restrictions to the emission types which may be employed for radio control purposes in the R/C Radio Service.

3. We have been routinely granting type acceptance for RC Radio Service transmitters employing digital modulation techniques without any complaint or problems. Therefore, we believe this change constitutes a minor amendment to our rules in which the public is not likely to be interested. Accordingly, we find for good cause that compliance with the notice and comment procedure of the Administrative Procedure Act (APA) is unnecessary. *See* 5 U.S.C. 553(b)(B). Furthermore, because this rule change relieves a restriction, the effective date provisions of the APA are inapplicable. *See* 5 U.S.C. 553(d)(1). These rule changes, therefore, will become effective immediately upon publication in the **Federal Register.**

4. Authority for this action is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and section 0.231(d) of the Commission's Rules.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 95 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 95—[AMENDED]

1. The authority citation for Part 95 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609.

2. Subparagraph (2) of paragraph (c) of § 95.211 is redesignated as paragraph (f) of § 95.207. Subparagraph (4) of paragraph (c) of § 95.211 is redesignated as paragraph (g) of § 95.207. Subparagraphs (1) and (3) of paragraph (c) of § 95.211 are removed. As revised, paragraph (c) reads as follows:

§ 95.211 (R/C Rule 11) What communications may be transmitted?

* * * * *

(c) Your R/C station may transmit any appropriate non-voice emission.

3. Subparagraphs (b) and (d) of § 95.627 are revised, and a new paragraph (e) is added, as follows:

§ 95.627 Emission types.

* * * * *

(b) An R/C transmitter may employ any appropriate non-voice emission which meets the emission limitations of § 95.631.

* * * * *

(d) Digital emissions are not permitted in the General Mobile Radio Service or the Citizens Band (CB) Radio Service.

(e) The transmission of data is prohibited in the Personal Radio Services.

[FR Doc. 85-22263 Filed 9-17-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81-11; Notice 14]

Lamps, Reflective Devices and Associated Equipment; Corrections

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; corrections.

SUMMARY: This notice corrects three errors in the amendment published on May 22, 1985, relating to lamps, reflective devices and associated equipment. The errors appear in the amendments to paragraph S4.1.1.36, paragraph S4.1.1.36(e)(4)(ii), and paragraph S6.7.1(a). It is therefore necessary to correct the errors.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-2720).

SUPPLEMENTARY INFORMATION: On May 22, 1985, Motor Vehicle Safety Standard No. 108 was amended to allow motor vehicles other than motorcycles to be equipped with replaceable bulb headlamp systems consisting of either four lamps with single standardized replaceable light sources, or two lamps each with two such light sources. (50 FR 21052) The Notice consisted of 20 amendments containing the errors, and corrects them.

In amendment 3, paragraph S4.1.1.36 was amended to delete the word "two". The word, however, appears in two places in the paragraph and it was NHTSA's intent to delete it only with reference to permissible headlighting systems on four-wheeled motor vehicles, and not be delete it for motorcycles. In reviewing this error, NHTSA has concluded that the paragraph should be rewritten to more clearly state NHTSA's intent, and thus is correcting the error by revising this paragraph in a manner which does so.

In amendment 9, as published, the last sentence of paragraph S4.1.1.36(e)(4)(ii) reads: "The lens of each such such headlamp shall be permanently marked with the letter 'U' ". A corrective amendment is made to delete a superfluous "such".

In amendment 13, the title of paragraph S6.7.1(a) appeared as "Test for a headlamp with on standardized replaceable light source". "On" should be "one".

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

The authority citation for Part 571 continues to read as follows:

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

§ 571.108 [Amended]

1. On page 21056, amendment 3. is corrected to read: "3. Paragraph S4.1.136 is revised to read:

S4.1.1.36 Instead of being equipped with a headlighting system specified in Table I or Table III, a motor vehicle manufactured on or after July 1, 1983, may be equipped with a system of one or two replaceable bulb headlamps, if the vehicle is a motorcycle, or two or four replaceable bulb headlamps, if the vehicle is a passenger car, multipurpose passenger vehicle, truck or bus. Each replaceable bulb headlamp shall be designed to conform to the following requirements."

2. On page 21056, the last sentence of subparagraph (e)(4)(ii) of paragraph S4.1.1.36 is corrected to read: "The lens of each such headlamp shall be permanently marked with the letter "U" ".

3. On page 21057, the title of subparagraph (a) of paragraph S6.7.1 is corrected to read "(a) *Test for a headlamp with one standardized replaceable light source.*"

The lawyer and program official principally responsible for this correction are Z. Taylor Vinson and Jere Medlin, respectively.

Issued on September 10, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-22252 Filed 9-17-85; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Acanthomintha obovata ssp. duttonii (San Mateo Thornmint)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines the San Mateo thornmint (*Acanthomintha obovata* ssp. *duttonii*) to be an endangered species. This action is being taken because populations and/or population segments (colonies) of this annual plant have been eliminated as a result of urban development, highway and road construction, and other land use activities that altered the natural plant communities upon which this subspecies depends. The San Mateo thornmint is known only from one small population (approximately 1,000–2,000 individuals) at Edgewood County Park in San Mateo County, California. The population occupies approximately 1,940 square feet (180 square meters) on a grassy knoll. This determination that the San Mateo thornmint is an endangered species will implement the full protection provided by the Endangered Species Act of 1973, as amended.

DATES: The effective date of this rule is October 18, 1985.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

The San Mateo thornmint is an annual herb of the mint family (Lamiaceae). The plants, often branched from near the base, grow 4–7 inches high and have opposite leaves and squarish stems. The fruit is a group of four small nutlets. The oblong to ovate leaves are ¼ to ¾ inch long with obscurely toothed margins. The upright flowers are creamy white with rose to purplish pigment in the lower notched lip. Each flower is surrounded by spiny leaf-like bracts.

The San Mateo thornmint was first collected in April 1900 by H.A. Dutton. The type specimen (H.A. Dutton no. 63392, Dudley Herbarium) was labeled as coming from "Woodside serpentine." Jepson (1943) considered the San Mateo County plants to be a hairy, serpentine-inhabiting form of *Acanthomintha ilicifolia* Gray. Abrams (1951) described the plants as a subspecies of *A. obovata* Jepson, based on the degree, distribution, and type of hairiness. Other distinctive features of the San Mateo plants that undoubtedly influenced the subspecific placement included their occurrence on serpentine soils, and the disjunct distribution, which effectively isolated them from all other congeners.

Historically, the San Mateo thornmint grew on grassy serpentine hillsides scattered infrequently along the east side of the San Andreas fault from Woodside (Niehaus 1977) to as far north as the Crystal Springs Reservoir (Thomas 1961, Dr. L.R. Heckard, University of California, Berkeley, pers. comm.). Only one small population is now known to exist at Edgewood County Park near Redwood City. This population grows on a grassy slope on soils derived from serpentine rock. The site, owned by San Mateo County, lies within Edgewood County Park. As recently as the spring of 1984, off-road vehicle (ORV) activities damaged the population. Damage from ORVs was most severe prior to the county obtaining ownership of the area. But even now, under County ownership and protection, unauthorized vehicle and foot traffic damage the population sporadically. Increased protective measures such as fencing and increased patrols may be necessary to prevent horses, hikers, and ORVs, from severely damaging the population. In addition, two incidents of unauthorized collection of the plant have occurred.

Although the removal of plants and soil from the thornmint population may have been an attempt at transplantation, this has not been confirmed. The net result has been the loss of potentially productive individuals from the wild population and disruption of life history studies by the California Department of Fish and Game.

Although San Mateo County has maintained Edgewood Park as essentially natural open space up to this time, several recreational uses are being considered for the park, including day camps, picnic areas, expanded hiking and equestrian trails, and an 18-hole golf course. All of these uses have the potential to directly or indirectly disrupt and/or extirpate the small thornmint population.

The Secretary of the Smithsonian Institution, as directed by section 12 of the Endangered Species Act of 1973, as amended, prepared a report to Congress on those native U.S. plants considered to be endangered, threatened, or extinct. This report (House Document No. 94–51), which included the San Mateo thornmint, was presented to Congress on January 9, 1975. On July 1, 1975, the Fish and Wildlife Service published a notice in the **Federal Register** (40 FR 27823) accepting the report as a petition within the context of section 4(c)(2) of the Act (acceptance of petitions is now governed by section 4(b)(3) of the Act). On June 16, 1975, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species, including the San Mateo thornmint, to be endangered species pursuant to the Act. In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not then been made final, along with four other proposals that had expired. On December 15, 1980, the

Service published a revised notice for plants (45 FR 82480). This notice included the San Mateo thornmint as a category 1 species. Category 1 is composed of taxa for which the Service has sufficient biological information to support their being listed as endangered or threatened species. On June 18, 1984, the Service reproposed the San Mateo thornmint as an endangered species (49 FR 24906).

Summary of Comments and Recommendations

In the June 18, 1984, proposed rule to list the San Mateo thornmint (49 FR 24906), and associated newspaper and written notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county and city governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the *San Francisco Chronicle/Examiner* on July 15, 1984, the *San Jose Mercury News* on July 24, 1984, and *Northwest Publications* on July 15, 1984. On July 25, 1984, Mr. Paul Koening, Department of Environmental Services, County of San Mateo, requested a public hearing on the proposal to list the San Mateo thornmint. As a result of discussions with the county and other interested agencies and individuals, the Service decided to hold a combined public hearing for the thornmint and bay checkerspot butterfly (*Euphydryas editha bayensis*), which has also been proposed to be listed as endangered (49 FR 35665). Notification of the public hearing was published in the Federal Register on Friday, October 26, 1984 (49 FR 43076) and in the following local newspapers: *San Jose Mercury News* (October 26, 1984), *San Francisco Chronicle/Examiner* (October 18, 1984), *Palo Alto Times* (October 30, 1984), and the *San Mateo Times and News Leader* one publication (October 30, 1984). Written notification also was sent to interested State, local, and Federal agencies, and interested individuals and organizations.

On November 13, 1984, the Service held a public hearing at the Hillsdale Inn in San Mateo County, California, on the proposals to list the San Mateo thornmint and bay checkerspot butterfly as endangered species and to designate critical habitat for the butterfly. Approximately 120 people attended the hearing. Comments from the hearing as well as written comments have been carefully considered in preparing this final rule. Seventy-four written comments were received during the comment period from various individuals, organizations, and government agencies, and 39 more were received during the public hearing. Nineteen of those presenting oral comments at the public hearing also provided written comments. Multiple comments (whether written or oral) from the same individual were regarded as one comment. Sixty-four of the commenters expressed support for listing the San Mateo thornmint as endangered and 10 opposed the thornmint listing. Twelve commenters gave no clear indication of their positions on the thornmint listing. Most comments expressing concern or opposition to the listing presented no substantive data refuting the need for listing the thornmint, but merely stated their support for a golf course at Edgewood Park. Similarly, many of the comments in favor of the thornmint listing merely agreed with the data presented in the proposal and opposed a golf course at Edgewood Park.

Comments from the California Department of Fish and Game (CDFG) supported the thornmint proposal and provided specific information on the occurrence of, and threats to, the plant. The CDFG data agreed with, and corroborated much of the information presented in the proposal. CDFG agreed that designation of critical habitat for the San Mateo thornmint could be detrimental.

The National Park Service (NPS) Regional Office and Golden Gate National Recreation Area commented that Federal listing is required for the thornmint and that listing would effect needed protection for the plant. NPS indicated that weather patterns in 1982–1983 may have contributed to the reduction in the thornmint population during those years, but that in 1984 the population increased slightly. NPS also noted that water flows to the upper thornmint colony have been restricted because of blockage in a nearby culvert. The Service believes that blockage of, or alterations to, natural water flows to the thornmint population could constitute a significant threat to the species. NPS provided photographs showing damage to the thornmint population in 1981 from unauthorized removal of plants and the activities of ORVs.

The California Native Plant Society (Santa Clara Valley Chapter, San Francisco Bay Area Chapter, and the Rare Plant Program) and the Committee for Green Foothills voiced strong support for listing the San Mateo thornmint. Their comments included additional information on the occurrence of the thornmint, past survey efforts, and additional information on likely effects of golf course construction, including the following: increased human intrusion into the habitat of the thornmint; possible changes to the hydrological regime within the thornmint habitat; destruction, disturbance, or adverse changes to between 42 and 64 percent of the serpentine grassland as a result of golf course construction, use, and maintenance; significant increased erosion in graded areas that could adversely affect the thornmint and its habitat; and inadvertent damage to nearby "protected habitats" resulting from the use of fertilizers, herbicides, and insecticides.

Other organizations supporting the listing of the thornmint included the Environmental Defense Fund (EDF), the Garden Club of America, Sierra Club (San Mateo County Group), Defenders of Wildlife, Friends of the Earth, Bay Land Area Study Team, and the National Audubon Society, Inc. (Santa Clara Valley Chapter).

Five professional botanists (three from the University of California, Berkeley, one from Stanford University, one from the Missouri Botanical Garden) and one professional ecologist (no affiliation given) voiced support for listing the San Mateo thornmint and presented information on the very restricted distribution of the thornmint. The ecologist and botanists from Berkeley and Stanford indicated that the only extant population known is at Edgewood Park. The ecologist stated that he has been searching the serpentine areas within the thornmint's historic range since 1979 and knows of no other sites supporting the plant.

A geologist supportive of the thornmint listing discussed the possible transmission of waters through the serpentine body at Edgewood Park. He expressed concern that golf course irrigation could enter the serpentine fracture system and resurface within or near the thornmint population. The geologist also noted that this water could carry various chemicals such as insecticides, herbicides, and fertilizers if a golf course were placed nearby. He expressed concern that such transmissions could inadvertently damage or destroy the thornmint population.

One comment by a licensed pest control operator supported listing the thornmint and provided information on likely adverse effects of insecticide and herbicide applications for a golf course at Edgewood Park. He stated that control of broadleaf plants on the golf

course would threaten the thornmint colony.

Another individual commenting in support of listing the San Mateo thornmint provided a report on her studies of the population at Edgewood Park conducted since 1977 (Sommers, 1979). This report presents detailed information on the size of the population (number of plants and occupied acreage), potential habitats, and threats to the population, including past incidents of unauthorized taking, urbanization, ORV damage, and recreational activities (including the proposed golf course).

Ten individuals expressed concern that listing the San Mateo thornmint would affect the proposed golf course at Edgewood Park. Most of those commenting in this vein indicated that the Endangered Species Act is being used by local environmentalists to halt San Mateo County's recreation plans for Edgewood Park; specifically, a golf course development.

The Service responds that indentifying and listing endangered or threatened species pursuant to the Endangered Species Act, as amended, is a requirement mandated by Congress. Moreover, section 4 of the Act requires the Service to concentrate on biological factors in determining whether to list a species and prevents the Service from giving any weight to economic and other non-biological considerations. The Service recognizes that listings may affect various State and local entities and planned and approved development proposals through the local planning process. Listing of the thornmint, however, will primarily constrain Federal activities and federally-authorized activities that may affect the thornmint or its habitat. In addition, even in instances where local or Federal developments or proposed activities may adversely affect federally listed species, the Service has found that modifications or alternative designs usually allow projects to proceed while providing adequate protection for the species. Specific procedures for conflict resolution are provided in sections 7 and 10(a)(2) of the Act. With respect to previously authorized projects, such projects are not automatically exempt from the provisions of the Act; however, section 7(g) does provide for exemptions.

The proposed golf course at Edgewood Park is but one of many activities and factors that may adversely affect the San Mateo thornmint. San Mateo County's Stage II Final Supplement to its Environmental Impact Report (1984) identified the environmental effects of the proposed Master Plan for Edgewood Park, which includes the proposed golf course development and other recreation facilities. This document indicates that 42 percent to 64 percent of the serpentine grassland habitat at Edgewood Park will be destroyed as a result of Master Plan implementation. The document also indicates that the San Mateo thornmint and other Federal candidate plants may be adversely affected by project design, construction, operation, and maintenance activities. Because local or even absolute extinction of the San Mateo thornmint is a real possibility even without disturbance, the Service views the County's existing Master Plan (1984) and proposed recreation developments at Edgewood Park as a significant threat to the San Mateo thornmint. This does not mean, however, that future modifications or alternative designs could not eliminate or significantly reduce those threats.

San Mateo County provided several comments on the listing of the thornmint, indicating that it was premature to say the thornmint exists only at Edgewood Park considering the extensive amount of potential serpentine habitat on San Francisco's watershed lands. The county stated that the Service should undertake a complete survey before listing, and further stated that the thornmint receives more protection today under county ownership and surveillance than at any time in the past.

The Service responds that the only site now known for the San Mateo thornmint is at Edgewood County Park. Extensive efforts by many local botanists (professional and non-professional) over the last 10–15 years, as well as recent efforts by the California Department of Fish and Game and the Service, have been unable to locate any additional populations on any of the remaining serpentine areas within the historic range of the thornmint, including serpentine areas on the San Francisco watershed lands. This situation was emphasized at the public hearing, when all attending local botanists stated that no other locations have been found despite many hundreds or possibly thousands of hours of effort. The Service finds that the best scientific and commercial data available on the thornmint strongly suggest that it now exists at only one location, Edgewood County Park. The known occurrence at only one site and the very small number of plants in the population make the thornmint critically vulnerable to extinction.

County efforts to protect the thornmint are well recognized. However, the Service believes additional efforts are necessary to adequately protect and recover the plant. Federal listing not only would provide additional conservation measures, but is required by Congressional mandate when a species fits one or more of the five criteria identified in section 4(a) of the Act. The thornmint clearly fits the criteria (se following section of this rule).

Two comments opposing the listing of the thornmint stated that Interstate 280 destroyed hundreds of acres of serpentine rock-outcroppings, implying that many likely habitats for the thornmint were also destroyed. The comments also noted that construction of Interstate 280 was vigorously supported by many of those now hoping to block the golf course development.

The Service replies that the destruction of serpentine habitat as a result of the construction of Interstate 280 is well known. This is one of the activities contributing to the decline of the thornmint identified in the original proposal. Whether a particular group or groups of people supported the highway construction, however, has no bearing on the determination of endangered status for the thornmint.

Several comments stated that designation of the San Mateo thornmint as an endangered species was inappropriate since it is not a full species. They stated that the Act was designed to protect full species.

The Service replies that pursuant to section 3(16) of the Act, the term "species" includes any species or subspecies of fish, wildlife, or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature. Consequently, the San Mateo thornmint (*Acanthomintha obovata* ssp. *duttonii*) qualifies as a "species" as defined in Section 3(16) of the Act. The subspecific designation for the San Mateo thornmint is recognized in the most recent available scientific literature and the Service knows of no recent alternative taxonomic treatments that controvert this status.

San Mateo County commented on the thornmint listing that threats from disease are highly speculative and unfounded. They state that disease and natural predation are normal biological phonomena. The County notes that since the plant was first discovered at Edgewood Park in 1977, there has been no indication of loss from disease and that such loss would not necessarily be controllable by man. The County further indicated that Federal listing offers no additional assistance over and above

that which is now available from the County without listing. The County indicated that certain recovery actions such as raising plants and seeds in a botanic garden and implementing efforts to reestablish populations in appropriate habitats elsewhere within the range can be achieved without Federal controls or listing.

The Service responds that the San Mateo thornmint is known only from one small area at Edgewood County Park, occupying a nearly contiguous area of about 1,940 square feet (180 square meters). It is well known that the risk of extinction is most acute in small isolated populations (Frankel and Soulé 1981, Pickett and Thompson 1978, Soulé 1983, Beardmore 1983). In such circumstances otherwise minor events, such as a relatively short, dry spell, locally increased predation, or a local disease outbreak or infection can easily result in the extinction of a small population at a single site. The highly clustered distribution of the plants makes this possibility even greater (Soule 1983). Without additional populations, random events such as these represent significant potential threats that could easily cause the extinction of the thornmint. As stated previously, Federal listing is required by law for those species facing high risk of extinction regardless of whether or not the threats are controllable by man. The Service believes that Federal listing will provide additional opportunities for the conservation of the thornmint as discussed in the section titled "Available Conservation Measures" later in this rule.

One comment indicated that the file information on the listing was not reasonably available to people in the local area.

The Service responds that notifications of the proposal and the public hearing were made public through several notices published in the **Federal Register** and in local newspapers (refer to the previous background section for specific newspapers and publication dates). With respect to the reasonable availability of the file information, this information was available at the Regional Office in Portland, Oregon. A phone number and address were provided in the notifications for those wishing to ask questions or inquire about the file information. This information was also available through the Freedom of Information Act, and was so requested by one agency, San Mateo County. The Service finds that all requirements of Section 4(b)(5) of the Act have been met.

One comment from a private citizen complained about the conditions under which the public hearing was conducted. The public address system at first did not work, and then later periodically played music, making it difficult to hear the speakers. He also felt the Service took too much time explaining the reasons for listing the species; this information had been previously discussed in the **Federal Register**. The commenter felt equal time was not allotted for each side to present relevant facts. A videotaped presentation prepared by Mr. Robert Trent Jones was delayed until after 10 p.m. and by that time most of the audience had left.

The Service apologizes for any inconvenience to the audience caused by the public address system, but this did not appear to be a significant problem at the hearing. Several other individuals commented that they felt the conduct and conditions at the public hearing were very good. The court recorder experienced no difficulties, and the transcript of the hearing is complete. The Service believes presentations on the provisions of the Act and background information in support of the listings were necessary to clarify the proposal and background information, and ensure that everyone was familiar with the purpose of the public hearing. The hearing officer ensured that all those wishing to comment were given adequate time to present relevant facts. No one was denied an opportunity to speak, and the hearing was extended to accommodate all speakers. Mr. Jones' video recording was held until last so that all individuals actually present would be given an opportunity to speak first.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Acanthomintha obovata* ssp. *duttonii* (San Mateo thornmint) should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Acanthomintha obovata* Jepson ssp. *duttonii* Abrams (San Mateo thornmint) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The San Mateo thornmint historically was found at scattered locations in San Mateo County, California, from Crystal Springs Reservoir in the north to Woodside in the south. Most of these sites have been destroyed, presumably by urban development, highway and road construction, and similar land use alterations. The only known remaining colony is at Edgewood Park, San Mateo County, California. The proposed recreation plan and golf course development of San Mateo County could adversely affect the thornmint colony and, considering the small number of plants at the one site, could easily destroy the entire population.

The possibility that additional colonies may exist on the Crystal Springs Reserve property has been mentioned by Dr. J.H. Thomas of Stanford University (pers. comm.), but none have been located recently. This situation has been substantiated by many knowledgeable local botanists, professional and non-professional.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* During the Spring in 1981 and 1983, patches of soil containing individuals of the thornmint were removed from Edgewood Park. It is not known who removed the soil and plants, or for what purpose they were removed. Because soil was taken along with plants, this action may have been an attempt at transplantation or cultivation, but this has not been confirmed. Such unauthorized and uncoordinated removal from this small and localized population may exacerbate the already vulnerable condition of the thornmint.

C. *Disease or predation.* Although mortalities from disease or predation have not been reported for the San Mateo thornmint in the literature, the small size of the population (1,000–2,000 individuals), its occurrence at only one known site (total occupied area of about 1,940 square feet or 180 square meters), and its clustered distribution make this plant exceedingly vulnerable to any disease outbreak or increase in predation.

D. *The inadequacy of existing regulatory mechanisms.* The thornmint is listed as an endangered species by the California Fish and Game Commission and is thus protected under State law, which principally provides for salvage of plants (when there is a change in land use) and restrictions on trade. In addition, County regulations provide some restrictions on the taking of the thornmint. Lawful taking is provided by the County under a permit system from the County Parks and Recreation

Department. Federal listing would provide additional options for protecting the species in its natural habitat.

E. *Other natural or manmade factors affecting its continued existence.* Unauthorized activities such as ORV use and trash dumping, which adversely affected the plant in the past, have been largely eliminated by County management of the site. However, incursions still occur, but at a much reduced frequency. Complete protection of the thornmint colony from ORV damage is very difficult without costly increased patrols and/or fencing. Also, a previously unstable slope above the thornmint colony was recently graded and hydroseeded to stabilize it. Landslides onto the road above the thornmint colony threatened to block the drainages that provide water to the thornmint habitat. It is too early to know if this slope has been adequately stabilized to prevent future slides from adversely affecting the colony. Low thornmint population numbers raise concerns that genetic depletion and reduced reproductive potential may further threaten the plant.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in preparing this final rule. Based on this evaluation, the preferred action is to list *Acanthomintha obovata* ssp. *duttonii* (San Mateo thornmint) as an endangered species. Historically, the San Mateo thornmint occurred on grassy serpentine hillsides from Crystal Springs Reservoir on the north to Woodside in the south, a range of approximately 5 miles. Today, this plant is known only from Edgewood County Park, about 2 miles north of Woodside. Searches of previous collection locations and presumably suitable habitat have failed to locate any additional populations. Most of the historic sites have been destroyed or severely disturbed as a result of urbanization and/or road or highway construction. The known population consists of between 1,000 and 2,000 individuals occupying a total area of about 1,940 square feet (180 square meters). A proposed recreation plan by San Mateo County involving construction of a golf course and other recreation facilities at Edgewood Park could adversely affect the plant. As a consequence of this critical situation, the Service finds that endangered classification is most appropriate for the San Mateo thornmint. For reasons set forth in the "Critical Habitat" section, the Service further finds that it is not prudent to designate critical habitat for the thornmint at this time.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. Considering the highly vulnerable status of the one known population at Edgewood Park, the lack of Federal protection from taking on non-Federal land, and past unauthorized collections, this finding is appropriate. Publication of precise maps and descriptions of the critical habitat would make this plant even more vulnerable, could increase law enforcement problems, and could contribute to the taxon's continued decline.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by other Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Federal activities that could affect the San Mateo thornmint in the future include, but are not limited to, the following: the issuance of permits or approvals for roads or transmisison lines, or funding or approval to build or construct any structures or facilities in or near any of the areas now supporting the San Mateo thornmint.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to the San Mateo thornmint, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, is part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity,or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. No trade is known for this plant and it is anticipated that few trade permits will be sought or issued for the San Mateo thornmint.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. This prohibition now applies to the San Mateo thornmint, though, as noted below, the species currently is known to occur only on non-Federal lands. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (43 FR 31417). Because the San Mateo thornmint is only known to occur on non-Federal lands, it is anticipated that few collecting permits for the species will ever be requested. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section

(4)(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Thomas, J.H. 1961. Flora of the Santa Cruz Mountains of California. Stanford University Press, Palo Alto.

Author

The primary author of this final rule is Monty D. Knudsen, Sacramento Endangered Species Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–1823, Sacramento, California 95825 (916/484–4935 or FTS 468–4935).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order, under the family Lamiaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
LAMIACEASE—MINT FAMILY						
* * *	* * *	* * *	* *	* *	* *	* *
Acanthomintha obovata ssp. *duttoni*	San Mateo thornmint	U.S.A. (CA)	E		NA	NA
* * *	* * *	* * *	* *	* *	* *	* *

Dated: September 3, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–22270 Filed 9–17–85; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 50, No. 181
Wednesday, September 18, 1985

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 18605/80-AEA-8]

Proposed Alteration of Group I Terminal Control Area (TCA)—NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This action withdraws Airspace Docket No. 18605/80-AEA-8 published on January 8, 1981, in which the FAA proposed to modify the airspace description of the New York Terminal Control Area (TCA) (46. FR 2088). The FAA is taking this action as the proposed airspace description has been overcome by the planned airspace realignments associated with the development and implementation of an east coast traffic management plan.

EFFECTIVE DATE: September 18, 1985.

FOR FURTHER INFORMATION CONTACT: William C. Davis, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8783.

Withdrawal of the Proposal

On January 8, 1981, a notice of proposed rulemaking was published in the **Federal Register** to amend the airspace description of the New York TCA (46 FR 2088). The FAA has reviewed the proposal in light of the comments received, in conjunction with the Flushing, NY, special air traffic rules in Part 93, and with respect to current activities associated with the development and implementation of an east coast traffic management plan. Based on the review it is determined that Airspace Docket No. 18605/80-AEA-8 should be withdrawn. This action does not, however, preclude the FAA from issuing future notices should safety or air traffic management efficiency require such actions.

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control area.

The Withdrawal

Accordingly, pursuant to the authority delegated to me, the Notice of Proposed Rulemaking concerning Airspace Docket No. 18605/80-AEA-8, as published in the **Federal Register** on January 8, 1981, (46 FR 2088) is hereby withdrawn.

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

Issued in Washington, D.C., on September 11, 1985.

Daniel Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85-22287 Filed 9-17-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR part 71

[Airspace Docket No. 85-ASO-17]

Proposed Alteration of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter a portion of Federal Airway V-290 by changing the name to read V-266. This action would enhance safety and correct a current airway structure deficiency that permits a pilot to transition from Federal Airway V-139 to Federal Airway V-290 at two different intersecting locations.

DATES: Comments must be received on or before November 4, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southern Region, Attention: Manager, Air Traffic Division, Docket No. 85-ASO-17, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Robert G. Burns, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-ASO-17." The postcard will be date/time-stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to rename a portion of VOR Federal Airway V-290 between Franklin, VA, and Wright Brothers, NC. Aircraft navigating along intersecting airways can now intercept V-290 in two places 45 miles apart. To preclude incorrect transition between airways, V-290 will be changed to V-266 between Franklin, VA, and Wright Brothers, NC. Section 71.123 of Part 71 of the Federal Aviation Reguations was published in Handbook 7400.6A dated January 2, 1985.

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

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V-290 [Amended]

By removing the words "From Franklin, VA; Elizabeth City, NC; to Wright Brothers, NC."

V-266 [Amended]

By removing the words "Franklin, VA." and substituting the words "Franklin, VA; Elizabeth City, NC; to Wright Brothers, NC."

Issued in Washington, D.C., on September 11, 1985.

Daniel Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85-22281 Filed 9-17-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AWA-2]

Proposed Establishment of Airport Radar Service Areas; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This action corrects the date for the informal airspace meeting for the Lubbock International Airport, TX, Airport Radar Service Area (ARSA) as published in the **Federal Register** on August 2, 1985 (50 FR 31472).

FOR FURTHER INFORMATION CONTACT: Robert G. Burns, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8783.

The date given for the meeting on page 31480 was "October 10, 1986." The correct date is "October 10, 1985."

Issued in Washington, DC on September 11, 1985.

Daniel Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85-22283 Filed 9-17-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 18605/79-AWE-18]

Proposed Group II Terminal Control Area (TCA), Phoenix, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of Notice of Proposed Rulemaking.

SUMMARY: This action withdraws the notice of proposed rulemaking associated with the establishment of a Terminal Control Area (TCA) at Phoenix, AZ. This action is being taken because the FAA is currently evaluating Phoenix as an airport radar service area (ARSA) candidate in conjunction with the recently adopted ARSA program.

DATE: This withdrawal is effective September 18, 1985.

FOR FURTHER INFORMATION CONTACT: William C. Davis, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

Withdrawal of the Proposal

On April 7, 1980, the FAA published a notice of proposed rulemaking to establish a TCA at Phoenix, AZ, (45 FR 23457). After reviewing the proposal in the light of the comments received and in conjunction with Phoenix being identified as an airport radar service area candidate, the FAA has determined that further rulemaking in this regard is not appropriate at the present time and that Airspace Docket No. 18605/79-AWE-18 should be withdrawn. The withdrawal of the notice, however, does not preclude the FAA from considering Phoenix as a candidate for a TCA and issuing a similar notice in the future.

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas.

The Withdrawal

Accordingly, pursuant to the authority delegated to me, the Notice of Proposed Rulemaking concerning Airspace Docket No. 18605/79-AWE-18, as published in the **Federal Register** on April 7, 1984, (45 FR 23457) is hereby withdrawn.

Authority: 49 U.S.C. 1384(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

Issued in Washington, D.C., on September 11, 1985.

Daniel Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85-22285 Filed 9-17-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AWA-23]

Proposed Revocation of VOR Federal Airways Restrictions; AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revoke the restrictions to Federal Airways V-95, V-327 and V-567 located in the vicinity of Phoenix, AZ. The airway restrictions were added when the Williams 4 Military Operations Area (MOA) was established. These restrictions for use of V-95, V-327 and V-567 are no longer required. This action would restore controlled airspace for more effective airway usage by the public.

DATE: Comments must be received on or before October 30, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 85-AWA-23, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-AWA-23." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke airway restrictions on segments of VOR Federal Airways V-95, V-327 and V-567. Willams Air Force Base no longer utilizes the Williams 4 MOA. Therefore, there is no further need for the airway restrictions imposed when the MOA was in use. This action would return airspace for public use. Section 71.123 of Part 71 of the Federal Aviation Regulations was published in Handbook 7400.6A dated January 2, 1985.

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

List of Subjects in 14 CFR Part 71

VOR Federal airways, Aviation safety.

The Proposed Amendment

PART 71—[AMENDED]

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

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

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

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-95 [Amended]

By removing the words "The airspace 14,000 feet MSL and above is excluded from 23 NM northeast of Phoenix to 22 NM southwest of Winslow, from 1300 GMT to 0200 GMT, Monday through Friday, and other times as advised by a Notice to Airmen."

V-327 [Revised]

From Phoenix, AZ; to Flagstaff, AZ.

V-567 [Revised]

From Phoenix, AZ; via INT Phoenix 006°T(352°M) and Winslow, AZ, 224°T(210°M) radials; 52 miles, 95 MSL; to Winslow.

Issued in Washington, D.C., on September 10, 1985.

Daniel Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85-22286 Filed 9-17-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 50836-5136 8/13]

Surveys of International Trade in Services Between U.S. and Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice sets forth proposed rules for mandatory surveys of trade in services between U.S. and foreign persons, to be conducted by the Bureau of Economic Analysis (BEA). The proposed rules would implement the President's responsibilities for collecting data on U.S. services trade under the International Investment and Trade in Services Survey Act. These responsibilities have been delegated to the Secretary of Commerce, who has redelegated them to BEA. If the proposed rules are adopted, they would replace the present regulations regarding surveys of U.S. services transactions contained in 15 CFR Parts 802 and 803, which would be deleted. They would also institute a new BE-20, Benchmark Survey of U.S. Services Transaction with Unaffiliated Foreign Persons.

DATE: Comments on the proposed rules will receive consideration if submitted in writing on or before November 18, 1985.

ADDRESSES: Comments may be mailed to Office of the Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230, or hand delivered to Room 608, Tower Building, 1401 K Street, NW., Washington, DC 20005. Comments received will also be available for inspection in Room 608, Tower Building, between 8:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: George R. Kruer, Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230, phone (202) 523-0657.

SUPPLEMENTARY INFORMATION:

Background

In response to urgent concerns expressed by representatives of U.S services industries to the U.S. Congress and to the Administration about the need to reduce international barriers to services trade, Congress included an amendment in the Trade and Tariff Act of 1984 authorizing mandatory surveys of trade in services. Under the General Agreements on Tariffs and Trade and in other interntional fora, the U.S. has taken the initiative to make reduction in barriers to services trade a topic for negotiations. Such negotiations can only be conducted effectively if U.S. Government officials have sufficient data to assess the size of U.S. services trade, both in aggregate and by individual country and industry; to evaluate the extent to which U.S. trade has been disadvantaged by trade barriers; and to determine the benefits that would result from a reduction in those barriers. The data from the surveys will also result in improvement in U.S. balance of payments statistics and in the ability of U.S. services businesses to identify and evaluate market opportunities.

The surveys on services transactions presently conducted under the Bretton Woods Agreements Act (59 Stat. 515, 22 U.S.C. 286(f)) are inadequate to achieve these purposes. They do not, in practice, cover all services industries or all types of services transactions, so that major gaps in coverage exist. Also, many of the surveys are voluntary, and the response rates and reliability of the data have deteriorated over time.

Statutory Authority

The Trade and Tariff Act of 1984 amended the International Investment Survey Act of 1976 to extend the latter's coverage to international services trade, and to rename it the International Investment and Trade in Services Survey Act (Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108, as amended by section 306 of Pub. L. 98-573), hereafter "the Act." Section 4 of the Act authorizes the conduct of mandatory surveys of trade in services between U.S. and foreign persons. It provides that "The President shall, to the extent he deems necessary and feasible—(1) conduct a regular data collection program to secure current information on international capital flows and other information related to international investment and trade in services . . .; (4) Conduct (not more frequently than once every five years and in addition to any other surveys conducted pursuant to paragraphs (1) and (2)) benchmark surveys with respect to trade in services between unaffiliated United States persons and foreign persons; and (5) publish for the use of the general public and the United States Government agencies periodic, regular, and comprehensive statistical information collected pursuant to this subsection . . ." In section 3 of Executive Order 11961, as amended by Executive Order 12518 of June 3, 1985, the President delegated the authority under the Act as concerns trade in services to the Secretary of Commerce. The Secretary of Commerce has, in turn redelegated this authority to BEA.

Content of Proposed Rule

The proposed rule sets forth the reporting requirements for mandatory surveys of trade in services between U.S. and foreign persons. In particular:

(1) It sets forth the reporting requirements for a new BE-20, Benchmark Survey of U.S. Services Transactions with Unaffiliated Foreign Persons. The year of coverage will be 1985. The survey will collect data on services transactions of U.S. persons, other than the U.S. Government, with unaffiliated foreign persons (that is, with foreign persons that are neither the foreign affiliate nor the foreign parent or other member of the affiliated foreign group of the U.S. person), by type of service and by country.

(2) It sets forth BEA's intention to conduct an annual sample survey in subsequent nonbenchmark years, to update the information obtained in the benchmark survey.

(3) It transfers authority for existing surveys of U.S. services transactions from the Bretton Woods Agreement Act to the International Investment and Trade in Services Survey Act.

(4) It replaces the current rules for three existing, mandatory surveys of U.S. services transactions, as contained in 15 CFR Parts 802 and 803, with new rules. 15 CFR Part 802 sets forth the rules and regulations for two surveys—the BE-29, Foreign Carriers' Ocean Freight Revenues and Expenses in the United States, and the BE-36, Foreign Airline Operators Revenues and Expenses in the United States. These surveys will continue to be conducted in essentially the same form as before but pursuant to the new rules and authority. 15 CFR Part 803 sets forth the rules and regulations for the BE-93 survey, International Transactions in Royalties, Licensing Fees, Film Rentals, Management Fees, etc., with Unaffiliated Foreign Residents. For 1985, that survey will be merged with, and replaced by, the new BE-20 benchmark survey. For subsequent nonbenchmark years, it will be replaced by the annual sample follow-on survey to the BE-20 benchmark survey.

(5) It makes response to four existing voluntary surveys of U.S. services transactions mandatory. Two of these surveys—the BE-47, Foreign Contract Operations of U.S. Construction, Engineering, Consulting, and Other

Technical Services Firms, and the BE-48, Reinsurance Transactions with Insurance Companies Resident Abroad, will be merged with, and replaced by, the BE-20 benchmark survey and annual sample follow-on survey, both of which will be mandatory. Two other existing, voluntary surveys—the BE-30, Ocean Freight Revenues and Expenses—United States Carriers, and the BE-37, U.S. Airline Operators Foreign Revenues and Expenses—will continue to be conducted in essentially the same form as before, but on a mandatory basis.

Public Input

Within the Government, BEA has consulted with the Interagency Task Force on Services Trade Data Needs in developing the 1985 BE-20 benchmark survey. Beginning in November 1984, it also sought technical input on the design and content of the benchmark survey from a number of services companies and business groups, including the Business Advisory Council on Federal Reports. These proposed rules, and the draft of the BE-20 benchmark survey that has been submitted to OMB for approval, reflect the comments received thus far.

In response to additional public comments received as a result of this notice, BEA will prepare final rules for submission to OMB for approval.

Executive Order 12291

BEA has determined that this proposed rule is not "major" as defined in E.O. 12291 because it is not likely to result in:

(1) An 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 agencies, 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.

Paperwork Reduction Act

This proposed rule contains collections of information requirements subject to the Paperwork Reduction Act. The collections of information are necessary to secure information on U.S. services transactions with unaffiliated foreign persons which will be used to develop U.S. trade policy, and to support U.S. trade policy initiatives in international fora and bilateral negotiations with foreign countries. Requests to collect this information have been submitted to the Office of Management and Budget for review under section 3504(h) of that Act. Comments from the public on the collections of information requirements contained in the proposed rule are specifically invited and should be addressed to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20530, Attention: Desk Officer for the Department of Commerce.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to preparation of an initial regulatory flexibility analysis are not applicable to this proposed rulemaking because it will not have significant economic impact on a substantial number of small entities. Small businesses, whether services or goods oriented, are unlikely to engage in international transactions. Furthermore, the exemption levels established for the surveys will exclude most of the small businesses that do have such transactions. Even if a small business is required to file, it is unlikely to be very diversified and will probably have to report only on the one form or schedule relevant to its particular activity, thus further minimizing burden.

Accordingly, the General Counsel, Department of Commerce, has certified under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the proposed rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 801

Economic statistics, Foreign trade, Reporting and recordkeeping requirements, Services.

Allan Young,

Director, Bureau of Economic Analysis.

For the reasons set out in the preamble, 15 CFR, Chapter VIII is amended by adding a new Part 801 and removing Parts 802 and 803.

1. It is proposed to add Part 801 as follows:

PART 801—SURVEYS OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

Sec.

Authority: 5 U.S.C. 301; Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108, as amended by Section 306 of Pub. L. 98-573; and Executive Order 11961, as amended by Executive Order 12518.

§ 801.1 Purpose.

The purpose of this part is to set forth the rules and regulations necessary to carry out the data collection program concerning international trade in services that is required by, or provided for in, the International Investment and Trade in Services Survey Act (Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101 to 3108, as amended by section 306 of Pub. L. 98-573), hereafter "the Act." The overall purpose of the Act with respect to services trade is to provide comprehensive and reliable information pertaining to international trade in services, and to do so with the minimum burden on respondents and with no unnecessary duplication of effort. The data are needed for policymaking purposes, for conducting international negotiations on trade in services, and for improving the recording of services transactions in the U.S. balance of payments accounts.

§ 801.2 Recordkeeping requirements.

In accordance with section 5(b)(1) of the Act (22 U.S.C. 3104) persons subject to the jurisdiction of the United States shall maintain any information (including journals or other books of original entry, minute books, stock transfer records, lists of shareholders, or financial statements) which is essential for carrying out the surveys and studies provided for by the Act.

§ 801.3 General reporting requirements.

(a) In accordance with section 5(b)(2) of the Act (22 U.S.C. 3104) persons subject to the jurisdiction of the United States shall furnish, under oath, any report containing information which is determined to be necessary to carry out the surveys and studies provided for by the Act.

(b) Such reports may be required from any U.S. person, other than the U.S. Government, engaged in international trade in services. Specific reporting requirements for a given report form are given below and, in more detail, on the form itself.

§ 801.4 Response required.

Reports, as specified below, are required from all U.S. persons coming within the reporting requirements.

whether or not they are contacted by BEA. In addition, any person BEA contacts, either by sending them report forms or by written inquiry concerning the person's being subject to the reporting requirements of a survey conducted pursuant to this part must respond in writing. The response must be made by filing the properly completed report form, or by certifying in writing, within 30 days of being contacted, to the fact that the person has no international services transactions within the purview of the Act or the regulations contained herein. A person receiving report forms from BEA may accomplish the latter by completing and returning to BEA a valid exemption claim form. This requirement is necessary to ensure compliance with reporting requirements and efficient administration of the Act.

§ 801.5 Confidentiality.

Information collected pursuant to § 801.3 is confidential (see section 5(c) of the Act, 22 U.S.C. 3104).

(a) Access to this information shall be available only to officials and employees (including consultants and contractors and their employees) of agencies designated by the President to perform functions under the Act.

(b) Subject to paragraph (d) of this section, the President may authorize the exchange of information between agencies or officials designated to perform functions under the Act.

(c) Nothing in this part shall be construed to require any Federal agency to disclose information otherwise protected by law.

(d) This information shall be used solely for analytical or statistical purposes or for a proceeding under § 801.6.

(e) No official or employee (including consultants and contractors and their employees) shall publish or make available to any other person any information collected under the Act in such a manner that the person to whom the information relates can be specifically identified.

(f) Reports and copies of reports prepared pursuant to the Act are confidential and their submission or disclosure shall not be compelled by any person without the prior written permission of the person filing the report and the customer of such person where the information supplied is identifiable as being derived from the records of such customer.

§ 801.6 Penalties.

(a) Whoever fails to furnish any information required by the Act or by § 801.3, or to comply with any other rule, regulation, order or instruction promulgated under the Act, may be subject to a civil penalty not exceeding $10,000 in a proceeding brought in an appropriate United States court and to injunctive relief commanding such person to comply, or both (see section 6 (a) and (b) of the Act, 22 U.S.C. 3105).

(b) Whoever willfully fails to submit any information required by the Act or by § 801.3, or willfully violates any other rule, regulation, order or instruction promulgated under the Act, upon conviction, shall be fined not more than $10,000 and, if an individual, may be imprisioned for not more than one year, or both. Any officer, director, employee, or agent of any corporation who knowingly participates in such violation, upon conviction, may be punished by a like fine, imprisonment, or both (see section 6(c) of the Act, 22 U.S.C. 3105).

(c) Any person who willfully violates § 801.5 relating to confidentiality, shall, upon conviction, be fined not more than $10,000, in addition to any other penalty imposed by law (see section 5(d) of the Act, 22 U.S.C. 3104).

§801.7 General definitions.

(a) "Services" means economic activities whose outputs are other than tangible goods. Such term includes, but is not limited to, banking, insurance, transportation, communications and data processing, retail and wholesale trade, advertising, accounting, construction, design, engineering, management consulting, real estate, professional services, entertainment, education, and health care;

(b) "United States," when used in a geographic sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States;

(c) "Foreign," when used in a geographic sense, means that which is situated outside the United States or which belongs to or is characteristic of a country other than the United States;

(d) "Person" means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government sponsored agency);

(e) "United States person" means any person resident in the United States or subject to the jurisdiction of the United States;

(f) "Foreign person" means any person resident outside the United States or subject to the jurisdiction of a country other than the United States;

(g) "Business enterprise" means any organization, association, branch, or venture which exists for profitmaking purposes or to otherwise secure economic advantage, and any ownership of any real estate;

(h) "Unaffiliated foreign person" means, with respect to a given U.S. person, any foreign person that is not an "affiliated foreign person" as defned in paragraph (i) of this section;

(i) "Affiliated foreign person" means, with respect to a given U.S. person, (1) a foreign affiliate of which the U.S. person is a U.S. parent, or (2) the foreign parent or other member of the affiliated foreign group of which the U.S. person is a U.S. affiliate;

(j) "Parent" means a person of one country who, directly or indirectly, owns or controls 10 per centum or more of the voting stock of an incorporated business enterprise, or an equivalent ownership interest in an unincorporated business enterprise, which is located outside that country;

(k) "Affiliate" means a business enterprise located in one country which is directly or indirectly owned or controlled by a person or another country to the extent of 10 per centum or more of its voting stock for an incorporated business or an equivalent interest for an unincorporated business, including a branch;

(l) "U.S. parent" means the U.S. person that has direct investment in a foreign business enterprise;

(m) "Foreign affiliate" means an affiliate located outside the United States in which a U.S. person has direct investment;

(n) "Foreign parent" means the foreign person, or the first person outside the United States in a foreign chain of ownership, which has direct investment in a U.S. business enterprise, including a branch;

(o) "U.S. affiliate" means an affiliate located in the United States in which a foreign person has a direct investment;

(p) "Affiliated foreign group" means (i) the foreign parent, (ii) any foreign person, proceeding up the foreign parent's ownership chain, which owns more than 50 per centum of the person below it up to and including that person which is not owned more than 50 per centum by another foreign person, and (iii) any foreign person, proceeding down the ownership chain(s) of each of these members, which is owned more than 50 per centum by the person above it;

(q) "U.S. Reporter" is the U.S. person required to file a report.

§ 801.8 Miscellaneous.

(a) *Required information not available.* All reasonable efforts should be made to obtain information required for reporting. Every applicable question on each form or schedule should be answered. When only partial information is available, an appropriate indication should be given.

(b) *Estimates.* If actual figures are not available, estimates should be supplied and labeled as such. When a data item cannot be fully subdivided as required, a total and an estimated breakdown of the total should be supplied.

(c) *Specify.* When "specify" is included in certain data items, the type and dollar amount of the major items included must be given for at least items mentioned in the line or column instruction.

(d) *Space on form insufficient.* When space on a form is insufficient to permit a full answer to any item, the required information should be submitted in the "comments" section of the form or schedule or on supplementary sheets, appropriately labeled and referenced to the item or column number and the form or schedule.

(e) *Extensions.* Requests for an extension of a reporting deadline will not normally be granted. However, in a hardship case, a written request for an extension will be considered provided it is received at least 15 days prior to the due date of the report and enumerates substantive reasons necessitating the extension.

(f) *Number of copies.* A single original copy of each form or schedule shall be filed with the Bureau of Economic Analysis. This should be the copy with the address label if such a labeled copy has been provided. In addition, each respondent must retain a copy of its report to facilitate resolution of problems. Both copies are protected by law; see § 801.5.

(g) *Other.* Instructions concerning filing dates, where to send reports, and whom to contact concerning a given report are contained on each form.

§ 801.9 Reports required.

(a) *Benchmark surveys.* BE-20, Benchmark Survey of U.S. Services Transactions with Unaffiliated Foreign Persons: Section 4(a)(4) of the Act (22 U.S.C. 3103) provides that benchmark surveys of trade in services between U.S. and unaffiliated foreign persons be conducted, but not more frequently than once every 5 years. The survey is referred to as the "BE-20." Specific reporting requirements, exemption levels, and the year of coverage of a given BE-20 survey may be found in § 801.10.

(b) *Annual surveys.* (1) BE-29, U.S. Expenses of Foreign Ocean Carriers: A BE-29 report is required from U.S. agents on behalf of foreign ocean carriers transporting freight or passengers to or from the United States. U.S. agents are steamship agents and other persons representing foreign carriers in arranging ocean transportation of freight and cargo between U.S. and foreign ports and in arranging port services in the United States. Foreign carriers are foreign persons that own or operate ocean going vessels calling at U.S. ports, including VLCC tankers discharging petroleum offshore to pipelines and lighter vessels destined for U.S. ports. They include carriers who own or who operate their own or chartered (United States of foreign-flag) vessels. They also include foreign subsidiaries of U.S. companies operating their own or chartered vessels as carriers for their own accounts. Where the vessels under foreign registry are operated directly be a U.S. carrier for its own account, the operations of such vessels should be reported on Form BE-30, Ocean Freight Revenues and Foreign Expenses of U.S. Carriers.

(2) BE-36, Foreign Airline Operators' Revenues and Expenses in the United States: A BE-36 report is required from U.S. offices, agents, or other representatives of foreign airlines that are engaged in transporting passengers or freight and express to or from the United States. If the U.S. office does not have all the information required, it must obtain the additional information from the foreign airline operator.

(3) Other annual surveys: An annual sample survey to update the information obtained in the BE-20, Benchmark Survey of U.S. Services Transactions with Unaffiliated Foreign Persons, will be conducted for nonbenchmark years beginning with 1986. The precise content, reporting requirements, and exemption levels for the survey to be conducted will be determined after the 1985 BE-20 benchmark survey to be conducted will be determined after the 1985 BE-20 benchmark survey has been taken (see § 801.10 below). In addition to information needed to identify the U.S. Reporter, such an annual survey will collect the data now obtained on Forms, BE-47, BE-48, and BE-93, which are to be replaced by Schedules A, B, C, and E of the 1985 BE-20, and data for other services activities shown to be significant by the 1985 BE-20.

(c) *Quarterly surveys.* (1) BE-30, Ocean Freight Revenues and Foreign Expenses of U.S. Carriers: A BE-30 report is required from U.S. carriers, i.e., from U.S. persons that own or operator dry cargo, passenger (including combination), and tanker vessels regardless of whether the vessels are registered in the United States or in foreign countries. Operators are persons who enter into any form of transportation contract with shippers of merchandise (or their agents) for the transportation of freight and cargo between U.S. and foreign ports or between foreign ports, whether on the operators' own vessels or chartered vessels.

(2) BE-37, U.S. Airline Operators' Foreign Revenues and Expenses: A BE-37 report is required from all U.S. airline operators engaged in transportation of passengers and freight to and from the United States or between foreign points.

§ 801.10 Rules and regulations for the BE-20, Benchmark Survey of U.S. Services Transactions with Unaffiliated Foreign Persons—1985.

A BE-20, Benchmark Survey of U.S. Services Transactions with Unaffiliated Foreign Persons, will be conducted covering fiscal year 1985. All legal authorities, provisions definitions, and requirements contained in §801.1 through 801.9(a) are applicable to this survey. Additional rules and regulations for the BE-20 survey are given below. More detailed instructions are given on the report form itself.

(a) *Who must report.* (1) A BE-20 report is required from every U.S. person, other than the U.S. Government, that sold or purchased services to or from an unaffiliated foreign person at any time during the U.S. person's 1985 fiscal year. As defined in § 801.7(h), an unaffiliated foreign person is a foreign person that is neither the foreign affiliate nor the foreign parent or other member of the affiliated foreign group of the U.S. person filing the report. A U.S. person's 1985 fiscal year is its financial reporting year that has an ending date in calendar year 1985.

(2) In addition, a U.S. person that had reinsurance transactions with a foreign person, *whether affiliated or unaffiliated,* in its 1985 fiscal year must report such transactions in the survey.

(3) Finally, a U.S. activity or operation carried out by a foreign person for its own account in fiscal year 1985 must be reported by the U.S. activity or operation.

(b) *Exemption.* A U.S. person otherwise required to report is exempt from reporting in the survey if the sum of all covered services transactions in the persons' 1985 fiscal year is less than $500,000.

(c) *Excepted transactions.* The following types of transactions by or with a comapny or entity are not to be reported in the BE–20 survey:

(1) Certain transactions by or with banks and bank holding companies; security and commodity brokers, dealers, and exchanges; and other credit agencies. U.S. banks and bank holding companies; security and commodity brokers, dealers, and exchanges; and other credit agencies that, either directly or indirectly through domestic (U.S.) subsidiaries, engage in activities, or have transactions of the types, covered by the BE–20 survey are subject to reporting those activities or transactions. Such firms are not, however, required to report data relating to lending and borrowing activities; securities transactions; or related fee, dividend, and interest income receipts and payments. Other U.S. persons' lending and borrowing activities, securities transactions, and related fee, dividend and interest income receipts and payments with unaffiliated foreign banks and bank holding companies; security and commodity brokers, dealers, and exchanges; or other credit agencies are also not to be reported.

(2) Transactions with the U.S. and foreign facilities or airlines and ship operators. Sales to, or purchases from, foreign airlines and ship operators' U.S. stations, ticket offices, and terminal and port facilities, or repair work done in U.S. ports on foreign ships, and are not to be reported. (They are to be reported instead on Forms BE–29 and 36.) Also, sales or purchases by U.S. airlines and ship operators' foreign stations, ticket offices, and terminal and port facilities are not to be reported. (They are to be reported instead on Forms (BE–30 and 37.) The U.S. operators should, however, report their own sales and purchases of covered services to or from unaffiliated foreign persons.

(3) Certain transactions with international organizations, and foreign embassies and consulates located in the United States. Sales to international organizations' U.S. facilities, or to foreign embassies and consulates located in the United States, that were for the operation of such entities are not to be reported. However, data on construction services performed for such entities, and sales by the U.S. Reporter that were arranged through, or facilitated by, an embassy or consulate, but that were actually for their foreign government, should be reported as sales to that country.

(4) Financial leasing.

(5) Wholesale and retail trade activities.

(6) Expenditures related to business and pleasure travel from and to the United States, including those for transportation, lodging and food.

(7) Transportation charges on U.S. merchandise exports and imports.

(8) Sales or purchases of real estate.

(d) *Forms and schedules required.* The BE–20 survey consists of Form BE–20 proper, which is to be completed by all U.S. Reporters, and twelve schedules (A–L), each of which covers a particular group of services and is to be completed only by Reporters that have transactions of the type covered by the individual schedule. The schedules are:

(1) Schedule A—Royalties, License, Fees, and Rentals.

(2) Schedule B—Franchise Fees (Business Format Franchises).

(3) Schedule C—U.S. Reporters' Reinsurance Transactions with Insurance Companies Resident Abroad.

(4) Schedule D—Direct Insurance Transactions.

(5) Schedule E—Foreign Contract Operations of U.S Construction, Engineering, Architectural, and Mining Services Firms.

(6) Schedule F—Advertising Services.

(7) Schedule G—Computer and Data Processing Services.

(8) Schedule H—Data Base and Other Information Services.

(9) Schedule I—Telecommunications Services.

(10) Schedule J—Performing Arts, Sports, and Other Live Performances, Presentations, and Events.

(11) Schedule K—Selected Services (Agricultural services; research and development, and commercial testing, laboratory services; management services; management of health care facilities; consulting services; public relations services; accounting, auditing, and bookkeeping services; legal services; educational and training services; mailing, reproduction, and commercial art; employment agencies and temporary help supply services; industrial engineering services; industrial-type maintenance and repair services; installation, startup, and training services provided by a manufacturer in connection with the sale of a good; and construction, engineering, architectural, and mining services.

(12) Schedule L—Miscellaneous Disbursements by U.S. Persons Abroad, or by Foreign Persons in the United States.

(e) *Due date.* BE–20 reports, comprising Form BE–20 proper and Schedules A–L, as applicable, are due on or before May 31, 1986.

PARTS 802 AND 803—[REMOVED]

2. It is proposed to remove Parts 802 and 803.

[FR Doc. 85–22309 Filed 9–17–85; 8:45 am]

BILLING CODE 3510–06–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 160

[Docket No. 85P–0028/CP]

Lysozyme and Avidin Reduced Dried Egg Whites; Proposed Amendment of the Standard of Identity

Correction

In FR Doc. 85–20374 beginning on page 34721 in the issue of Tuesday, August 27, 1985, make the following corrections:

§ 160.145 [Corrected]

1. On page 34722, in the first column, in § 160.145(c)(1), in the fourth line, § 101.3(3)(4)(i)" should read § 101.3(e)(4)(i)".

2. Also on page 34722, in the second column, in § 160.145(c)(2), in the second line, § 43.253.257" should read "secs. 43.253–43.257".

BILLING CODE 1505–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[LR–289–82]

Returns Required on Magnetic Media

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to returns required to be filed on magnetic media. Changes to the applicable tax law were made by the Tax Equity and Fiscal Responsibility Act of 1982 and the Interest and Dividend Tax Compliance Act of 1983. The proposed regulations apply to persons required to file certain returns (other than individuals, estate, and trust income tax returns), and provide guidance concerning the magnetic media filing requirements.

DATES: Written comments and requests for a public hearing must be delivered by November 18, 1985. The regulations are proposed to be effective as of the date of publication in the Federal

Register as final regulations and would apply to returns filed after December 31, 1986.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-289-82), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: C. Scott McLeod of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T), (202) 566-3288, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Procedure and Administration Regulations (26 CFR Part 301) under section 6011 of the Internal Revenue Code of 1954 relating to returns required to be filed on magnetic media. These amendments are proposed to reflect the addition to the Code of section 6011 (e) by section 319 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248, 96 Stat. 610) and its amendment by section 109 of the Interest and Dividend Tax Compliance Act of 1983 (Pub. L. 98-67, 97 Stat. 383). The proposed regulations provide magnetic media filing requirements for certain returns (other than individual, estate, and trust income tax returns).

This document also contains proposed amendments to the table of OMB control numbers under the Paperwork Reduction Act (26 CFR Part 602).

Explanation of Provisions

The proposed regulations generally would require that where the use of Form 1042S (Income Subject to Withholding Under Chapter 3, Internal Revenue Code), 1098 (Mortgage Interest Statement), 1099 series (Information Return), 5498 (Individual Retirement Arrangement Information), 6248 (Annual Information Return of Windfall Profit Tax), 8027 (Employer's Annual Information Return of Tip Income and Allocated Tips), W-2 (Wage and Tax Statement), W-2G (Statement for Recipients of Certain Gambling Winnings), W-2P (Statement for Recipients of Annuities, Pensions, Retired Pay, or IRA Payments), or W-4 (Employee's Withholding Allowance Certificate) is required by the applicable regulations for the purpose of making a return, the information required by such forms shall be submitted on magnetic media. Failure to file a return on magnetic media when required to do so by the regulations would be treated as a failure to file such return and would subject the filer to the corresponding penalty. A person required to file a return on magnetic media may receive a waiver from such requirement in appropriate circumstances upon a showing of hardship.

Under the proposed regulations, filers would be required to obtain prior consent to the use of the magnetic medium on which the information is submitted. For additional information and requirements with respect to filing on magnetic media, including descriptions of types and formats of media that are acceptable, please see Rev. Proc. 85-40 (1985-34 I.R.B. 39) and SSA Pub. No. 42-032 (April 1984). Although the proposed regulations would apply only to returns filed after December 31, 1986, filers are encouraged to begin use of magnetic media as soon as possible and voluntarily to begin filing on magnetic media for returns due after December 31, 1985.

The proposed regulations would provide that applications for consent to the use of a magnetic medium and requests for waiver generally must be filed at least 90 days before the filing of the first return for which consent or waiver is requested. In the case of certain returns (Forms W-2 and W-2P) filed in 1987 and 1988, however, the application for consent or request for waiver would be due no later than June 30 of the preceding year. Although the proposed regulations do not explicitly address the issue, applicable procedures would permit filing of an application for consent to the use of a particular magnetic medium together with a related request for waiver in appropriate cases.

The term "person," as used in these regulations with respect to filers of any return, includes any person required to make such return. Thus, in the case of Form W-2 or W-2P, an employer corporation in a person required to make the return even if returns are acutally filed by reporting units within the corporation.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

It is hereby certified that the regulations proposed in this document will not have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6). The certification is based on a determination that the economic impact of the proposed reporting requirements will be minimal in most cases and, in any event, is primarily attributable to requirements directly imposted by the statute. Section 6011 (e)(2) provides that any taxpayer who is required to file returns under sections 6042(a), 6044(a), or 6049(a) (relating to dividends, patronage dividends, and interest) with respect to more than 50 payees for any calendar year shall file such returns on magnetic media. Section 6011 (e)(1) directs the Secretary to prescribe regulations requiring magnetic media filing taking into account the ability of taxpayers to comply with the requirement at a reasonable cost.

In the case of returns to which section 6011(e)(2) applies, the magnetic media filing requirements in the proposed regulations are imposed by the statute. In the case of other returns, the proposed regulations impose no more reporting or recordkeeping requirements than are necessary to carry out the statutory directives. Moreover, under existing voluntary magnetic media reporting procedures, a significant number of those persons who would be affected by these regulations already file on magentic media.

Under the proposed regulations, magnetic media filing is required only where the volume of filings enables magnetic media filing to be done at a reasonable cost. This is generally the case if the taxpayer's operations are computerized because filing in accordance with the proposed regulations should be less costly than paper filing. Even if the taxpayer's operations are not computerized, the incremental cost of magnetic media filing should be nominal in most cases because of the availability of computer service bureaus. The Service recognizes that filing a small number of returns on magnetic media may not be cost effective. For calendar years (or annual filing periods) beginning before January 1, 1987, the proposed regulations generally permit filing on a paper form if fewer than 500 returns of information were required to be filed on that form for the preceding year (or annual period). For calendar years (or annual filing periods) beginning on or after January 1, 1987, the proposed regulations generally permit filing on a paper form if fewer than 250 returns of information were required to be filed on that form for the preceding year (or annual period). The paper form, however, must be machine-readable if applicable revenue procedures provide a machine-readable form. The proposed regulations

also provide that the Commissioner may waive the magnetic media requirement upon a showing of hardship. It is anticipated that the waiver authority will be exercised so as not to unduly burden taxpayers lacking both the necessary data processing facilities and access at a reasonable cost to computer service bureaus.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatary Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Drafting Information

The principal author of these proposed regulations is Linda M. Kroening of the Legislation and Regulations Division of the Office of Chief Council, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

Lst of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

The proposed amendments to 26 CFR Part 301 are as follows:

Procedure and Administration Regulations

PART 301—[AMENDED]

Paragraph 1. The authority for Part 301 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 301.6011–2 also issued under 26 U.S.C. 6011(e).

Par. 2. New § 301.6011–2 is added immediately after § 301.6011–1 to read as follows:

§ 301.6011–2 Required use of magnetic media.

(a) *Meaning of terms.* The following definitions apply for purposes of this section:

(1) *Magnetic media.* The term "magnetic media" means any magnetic media permitted under applicable regulations, revenue procedures, or Social Security Administration publications. These generally include magnetic tape, disk, diskette, and cassette as well as other media specifically permitted under the applicable regulations or procedures. Use of diskette and cassette may be subject to certain limitations or special rules in the case of returns of the information required by Form W–2 or W–2P.

(2) *Machine-readable paper form.* The term "machine-readable paper form" means—

(i) Optical-scan paper form; or

(ii) Any other machine-readable paper form permitted under applicable regulations, revenue procedures, or Social Security Administration publications.

(3) *Person.* The term "person" includes the United States, a State, the District of Columbia, a foreign government, a political subdivision of a State or a foreign government, or an international organization.

(b) *Returns required on magnetic media.* (1) If the use of Form 1042S, 1098, 1099 series, 5498, 6248, 8027, W–2G, W.4, or other form treated as a form specified in this paragraph (b)(1) is rquired by the applicable regulations or revenue procedures for the purpose of making a return, the information required by such form shall, except as otherwise provided in paragraph (c) of this section, be submitted on magnetic media. Returns on magnetic media shall be made in accordance with applicable revenue procedures. Pursuant to these procedures, the consent of the Commissioner of Internal Revenue (or other authorized officer or employee of the Internal Revenue Service) to a magnetic medium shall be obtained prior to submitting a return on such magnetic medium. An applications for such consent shall be in writing and must be filed at least 90 days before the filing of the first return for which consent is requested.

(2) If the use of Form W–2, W–2P, or other form treated as a form specified in this paragraph (b)(2) is required by the regulations or revenue procedures for the purpose of making a return (not including the attachment of Form W–2 or W–2P to an Individual Income Tax Return), the information required by such form shall, except as otherwise provided in paragraph (c) of this section, be submitted on magnetic media. Returns on magnetic media shall be made in accordance with applicable Social Security Administration procedures. Thus, the consent of the Secretary of Health and Human Services (or other authorized officer or employee of the Department of Health and Human Services) to a magnetic medium shall be obtained prior to submitting a return on such magnetic medium. An application for such consent shall be in writing and must be filed—

(i) On or before June 30, 1986, in the case of returns filed in 1987;

(ii) On or before June 30, 1987, in the case of returns filed in 1988; and

(iii) At least 90 days before the filing of the first return for which consent is requested in all other cases.

(3) The Commissioner may prescribe by revenue procedure that additional forms are treated, for purposes of this section, as forms specified in paragraph (b)(1) or (b)(2) of this section.

(c) *Exceptions*—(1) *Low-volume filers*—(i) *In general.* A person required to make returns of information on a particular type of form specified in paragraph (b) of this section (other than Form 1099–DIV, 1099–PATR, 1099–INT, or 1099–OID) may make such returns on a prescribed paper form for a calendar year or other applicable annual period (whether such returns are filed during the calendar year or annual period or during the subsequent calendar year or annual period) if—

(A) In the case of a calendar year or annual period beginning before January 1, 1987—

(*1*) On the first day of such calendar year or annual period the person reasonably expects to file fewer than 500 returns of inforamtion on such form for the calendar year or annual period; and

(*2*) The person was not required to file 500 or more returns of information on such form for the preceding calendar year or annual period; or

(B) In the case of a calendar year or annual period beginning on or after January 1, 1987—

(*1*) On the first day of such calendar year or annual period the person reasonably expects to file fewer than 250 returns of information on such form for the calendar year or annual period; and

(*2*) The person was not required to file 250 or more returns of information on such form for the preceding calendar year or annual period.

Alternatively, such persons may make returns on magnetic media in accordance with paragraph (b) of this section.

(ii) *Machine-readable forms.* Returns made on a paper form under this paragraph (c)(1) shall be machine-readable if applicable revenue procedures provide for a machine-readable paper form.

(iii) *Form 1099 series.* Each form within the Form 1099 series is considered a separate type of form for purposes of this paragraph (c)(1).

(2) *Special rule for Form 1099–DIV, 1099–PATR, 1099–INT, 1099–OID*—(i) *50 or fewer returns.* A person required to make returns on Form 1099–DIV, 1099–PATR, 1099–INT, or 1099–OID may make such returns on a machine-readable paper form for a calendar year if—

(A) On the first day of such calendar year the person reasonably expects to file 50 or fewer returns of information on such forms for the calendar year; and

(B) The person was not required to file more than 50 returns of information on such forms for the preceding calendar year.

Alternatively, such persons may make returns on magnetic media in accordance with paragraph (b) of this section.

(ii) *Aggregation of returns.* For purposes of determining the number of returns that a person was required to file or reasonably expects to file on Form 1099–DIV, 1099–PATR, 1099–INT, or 1099–OID, all such returns shall be aggregated. For example, if a person filed 30 Form 1099–INT's and 30 Form 1099–DIV's for a calendar year, or reasonably expects to do so for the succeeding calendar year, all returns made by such person on Form 1099–DIV, 1099–PATR, 1099–INT and 1099–OID for the succeeding calendar year shall be on magnetic media.

(3) *Provided by regulations*—(i) *In general.* This section does not apply to a return if the regulations relating to such return require reporting on magnetic media.

(ii) *Example.* The following example illustrates the application of the rule in paragraph (c)(3)(i) of this section:

Example. Section 1.6045–1(l), relating to returns of information of brokers and barter exchanges, requires the use of magnetic media as the method of reporting. Thus, this section does not apply to returns of information under section 6045.

(4) *Waiver.* The Commissioner may waive the requirements of this section if hardship is shown in an application filed in accordance with this paragraph (c)(4). Such waiver shall secify the type of form and period to which it applies and shall be subject to such terms and conditions regarding the method of reporting as may be prescribed by the Commissioner. In determining whether hardship has been shown, the principal factor to be taken into account will be the amount, if any, by which the cost of filing returns in accordance with this section exceeds the cost of filing the returns on other media. A request for waiver shall be in writing and must be filed—

(i) On or before June 30, 1986, in the case of returns on Form W–2 or W–2P filed in 1987;

(ii) On or before June 30, 1987, in the case of returns on Form W–2 or W–2P filed in 1988; and

(iii) At least 90 days before the filing of the first return for which a waiver is requested in all other cases.

(d) *Paper form returns.* Returns submitted on paper forms (whether or not machine-readable) permitted under paragraph (c) of this section shall be made in accordance with applicable revenue or Social Security Administration procedures.

(e) *Applicability of current procedures.* Until procedures are prescribed which further implement the mandatory filing on magnetic media provided by this section, a return to which this section applies shall be made in the manner and shall be subject to the requirements and conditions (including the requirement of applying for consent to the magnetic medium) prescribed in the regulations, revenue procedures and Social Security Administration publications relating to the filing of such return on magnetic media. In addition, consent to the use of a magnetic medium obtained in accordance with such regulations, revenue procedures and Social Security Administration publications (regardless of when obtained will be considered consent to the use of such medium for purposes of paragraph (b) of this section.

(f) *Failure to file.* If a person fails to file a return on magnetic media when required to do so by section 6011(e) and this section, such person is deemed to have failed to file the return and is subject to the corresponding penalties for failure to file such return.

(g) *Effective date.* This section applies to returns filed after December 31, 1986.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 85–22271 Filed 9–13–85; 10:53 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 65

[Docket No. DCO–IV–8506; A–4–FRL–2899–7]

State and Federal Administrative Orders Permitting a Delay in Compliance With State Implementation Plan Requirements; Proposed Approval of an Administrative Order Issued by the Memphis and Shelby County Health Deparment of Jehl Cooperage Co., Inc.

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an Administrative Order issued by the Memphis and Shelby County Health Department (MSCHD) to Jehl Cooperage Company, Inc. The Order requires Jehl Cooperage to bring air emissions from its two (2) spray booths and two (2) drying ovens in Memphis, Tennessee, into compliance with air pollution control regulations contained in the federally approved Tennessee State Implementation Plan (SIP) by December 31, 1985. Because the Order has been issued to a major source of air pollution and permits a delay in compliance with provisions of the SIP, the Administrative Order must be approved by EPA before it becomes effective as a Delayed Compliance Order under the Clean Air Act (the Act). If approved by EPA, the Order will constitute an addition to the SIP. In addition, a source in compliance with an approved Order may not be sued under the federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment on EPA's proposed approved of the Order as a Delayed Compliance Order.

DATE: Written comments must be received on or before October 18, 1985.

ADDRESS: Comments should be submitted to Director, Air, Pesticides, and Toxics Management Division, EPA, Region IV, 345 Courtland Street, NE.,

Atlanta, Georgia, 30365. The State Order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Mr. Floyd Ledbetter, Chief, Northern Compliance Section, Air Compliance Branch, Air, Pesticides, and Toxics Management Division, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365, Telephone Number (404) 881-4298.

SUPPLEMENTARY INFORMATION: Jehl Cooperage Company, Incorporated operates two spray booths, one of which coats the interior of the steel drums and one of which coats the exterior of said drums, and two drying ovens (the combination of which is hereinafter referred to as drum coating operations) at its plant located at 4 East Virginia, Memphis, Tennessee 38101, for the purpose of producing new and reconditioned steel drums. Calculations that were made by MSCHD from Respondent's September 3, 1980, permit applications indicated that VOC emissions were in excess of the allowable. The spray booth used for interior coating of the drums was calculated to emit an average of 5.2 pounds of VOC per gallon of coating applied, excluding water. The spray booth used for exterior coating of the drums was calculated to emit an average of 4.83 pounds of VOC per gallon of coating applied, excluding water. The Respondent was requested to submit a compliance plan on December 4, 1982, and on July 14, 1983, which detailed how the Respondent intended to bring the drum coating operations into compliance with the regulations. Jehl did not comply with the original compliance date of December 31, 1982. On February 27, 1984, EPA cited the Respondent in violation of Rule 1200-3-18-.21 of the Tennessee Air Quality Act. On March 30, 1984, the Respondent submitted a response to the EPA Notice of Violation and included a strategy of compliance. On November 14, 1984, the department cited the Respondent in violation for failure to obtain operating permits and failure to comply with the MSCHD Miscellaneous Metal Parts rule. This Notice allowed the Respondent the opportunity to submit additional compliance plan to the Department within ten (10) days of receipt of the Notice of the Department would proceed to issue a Delayed Compliance Order. Since no additional plans were received from the Respondent, the Department proceeded to issue a draft Delayed Compliance Order on January 2, 1985, based upon the plans and application on file with the Department. On February 13, 1985, the Department met with Respondent's representatives to discuss revisions to the draft Delayed Compliance Order. EPA submitted its comments on the draft Delayed Compliance Order to the Department on February 22, 1985. On April 10, 1985, the revised Delayed Compliance Order was signed by the Respondent and submitted to EPA for publication on September 3, 1985. The Order under consideration addresses VOC emissions from the two (2) spray booths and two (2) drying ovens. These emission points are subject to Section 3-22 Memphis City Code (MCC), Reference 1200-3-18.21 of the Tennessee Air Quality Act (TAQA). These regulations limit the emissions of VOCs and are part of the federally approved Tennessee State Implementation Plan. The Order requires final compliance with the above regulation by December 31, 1985, through the implementation of the following schedule for the construction or installation of control equipment, reformulation or equipment modifications.

On or after December 31, 1985, the respondent shall (1) reduce the VOC emissions from interior and exterior extreme performance coating operations to a maximum of 3.5 pounds per gallon as applied, excluding water; and (2) reduce the VOC emissions from the interior clear coating operations to a maximum of 4.3 pounds per gallon as applied, excluding water.

The source has consented to the terms of the Order and has agreed to meet the Order's increments during the period of this informal rulemaking. The source is required to submit bi-monthly reports commencing in May 1985, and continuing through December 1985, indicating progress toward each milestone in the schedule of compliance. If any delay is anticipated in meeting said milestones, Jehl Cooperage shall immediately notify the MSCH in writing of the anticipated delay and reasons therefor. Notification of the delay shall not excuse the delay. In addition, Jehl Cooperage shall submit, no later than five (5) days after the deadline for completing each milestone required by the above schedule, certification to the MSCHD whether or not such milestone has been met.

As an interim control measure, VOC emissions from the interior and exterior extreme performance coating operation and from the interior clean coating operation shall not exceed 5.23 and 4.75 pounds per gallon applied, excluding H_2O, respectively from the effective date of this Order until December 31, 1985.

Because this Order has been issued to a major source of VOC emissions and permits a delay in compliance with the applicable state air pollution control regulation(s), it must be approved by EPA before it becomes effective as a Delayed Compliance Order under section 113(d) of the Clean Air Act (the Act). EPA may approve the Order only if it satisfies the appropriate requirements of this subsection. EPA has tentatively determined that the above-referenced Order satisfies these legal requirements.

If the submitted Administrative Order is approved by EPA, source compliance with its terms would preclude federal enforcement action under section 113 of the Act against the source for violations of the regulation(s) covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provision of the Act (section 304) would be similarly precluded. If approved, the Order would also constitute an addition to the Tennessee SIP. Compliance with the proposed Order will not exempt the company from the requirements contained in any subsequent revision to the SIP which are approved by EPA.

All interested persons are invited to submit written comments on the proposed Order. Written comments received by the date specified above will be considered in determining whether EPA may approve the Order. After the public comment period, the Administrator of EPA will publish in the **Federal Register** the Agency's final action on the Order in 40 CFR Part 65.

List of Subjects in 40 CFR Part 65

Air Pollution Control.

Authority: 42 U.S.C. 7413, 7601.

Dated: September 6, 1985.

Sanford W. Harvey, Jr.,

Acting Regional Administrator, Region IV.

[FR Doc. 85-22292 Filed 9-17-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No 85-273; RM-4902]

Amendments To Relax Restrictions on Certain Frequencies in the Business Radio Service

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: The Commission has adopted a Notice of Proposed Rule Making proposing to amend § 90.75 of the rules to relax restrictions on ten pairs of Business Radio Service frequencies in the UHF band. The proposal would allow additional users to occupy these frequencies, resulting in more efficient use of the spectrum.

DATES: Comments are due October 14, 1985. Reply Comments are due October 29, 1985.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Stuart Overby, Private Radio Bureau, Land Mobile and Microwave Division, Rules Branch, (202) 634–2443.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 90

Private land mobile radio services, Radio.

Proposed Rule Making

In the Matter of Amendment of Part 90 of the Commission's Rules to Relax Restrictions on Certain Frequencies in the Business Radio Service. PR Docket No. 85–273, RM–4902.

Adopted: August 27, 1985.

Released: September 5, 1985.

By the Commission.

Introduction

1. This *Notice of Proposed Rule Making* (*Notice*) proposes to relax certain restrictions on ten specific frequency pairs in the Business Radio Service. The *Notice* proposes to amend § 90.75(c)(25) of the rules to effect these changes.

Discussion

2. Under the provisions of § 90.75(c)(25) of the Commission's rules, ten pairs of frequencies in the Business Radio Service are reserved in certain areas for entities engaged in furnishing commercial air transportation services.[1] Specifically, in urban areas of 200,000 or more population [2] the frequency pairs 460.650/465.650, 460.675/465.675, 460.700/465.700, 460.725/465.725, 460.750/465.750, 460.775/465.775, 460.800/465.800, 460.825/465.825, 460.850/465.850, and 460.875/465.875 MHz may be assigned only to an entity which provides commercial air transportation services, or to a non-profit corporation or association which furnishes communication services for such a business. Stations operating on these frequencies must be located on or near airports which serve the designated urban areas and are to be used only in connection with the servicing of aircraft. These stations are used for ground support operations, not air traffic control.

3. The above-referenced frequencies may also be assigned to any Business Radio Service eligible at locations removed by 75 or more miles (120 km) from the borders of airports serving urban centers of 200,000 or more population. Futhermore, these frequencies may be assigned to low power (2 watts or less) stations in the Business Radio Service for use in areas removed by at least 5 miles (8 km) from the airport boundaries. These low power operations are restricted to the confines of an industrial complex or manufacturing yard area. There are 87 urban areas on the country where these provisions apply.[3]

4. On February 12, 1985, the National Association of Business and Educational Radio (NABER) filed a Petition for Rule Making requesting that the Commission relax its rules to allow operation on the above-referenced frequencies by any Business Radio Service eligible within 50 miles, rather than 75 miles, of the designated airport facilities.[4] NABER suggested that such operations be limited to an effective radiated power of 300 watts.[5] NABER also suggested that the Commission specificaliy condition authorizations for these operations to require that no interference be caused to those licensees operating in and around the designated airport areas. Aeronautical Radio, Inc. (ARINC), which coordinates use of these frequencies in the airport areas, has expressed support for NABER's petition.

5. The subject frequency pairs were reserved for airport operations during a rulemaking proceeding in 1968.[6] Since that time, the number of licensees in the Business Radio Service has increased substantially. In 1968, there were approximately 110,000 authorized stations in the Business Radio Service.[7] By 1983, the number of authorized stations had grown to almost 505,000.[8] Much of this growth has occurred in and around major urban centers. In its petition, NABER cites the dramatic growth in the number of Business Radio Service users since 1968, especially in the major urban centers, as well as the projected future growth in all land mobile services. NABER states that adoption of its proposal would allow more users to occupy the ten designated frequencies, resulting in more efficient use of the spectrum.

The Proposal

6. We propose to relax our rules as noted in Appendix B to permit use of these ten frequency pairs for general Business Radio Service activities in locations which are removed by 50 miles or more from airports serving the designated urban areas. We also propose to limit such operations to 300 watts effective radiated power as suggested in the petition. NABER's point that interference can be controlled more easily by specifying effective radiated power rather than transmitter output power appears to be valid. However, there are already a substantial number of stations outside the 75 mile areas authorized under the current rules to operate with 110 watts transmitter output power. While a maximum effective radiated power is not specified for these stations, in many cases it may exceed the 300 watts recommended by NABER. Accordingly, we propose to allow these existing stations to continue operation with a maximum transmitter output power of 110 watts and no specified effective radiated power. We request comments on whether the 300 watt limitation as suggested by NABER and proposed herein is appropriate for new operations that would be allowed to locate 50 or more miles from the protected airport areas. Also, as NABER suggested, we propose to condition authorizations for such new operations to require that no interference be caused to those licensees operating in and around the designated airports in connection with the servicing of aircraft.

7. We also wish to address one matter which was not raised in the petition. Some applications for Business Radio Service stations received by the Commission specify transmitter sites that do not meet the required spacings from airport facilities. Such an

[1] 47 CFR 90.75(c)(25).

[2] As listed in U.S. Census of Population, 1960, vol. 1, table 23, page 1–50.

[3] A list of these areas is provided in Appendix A.

[4] *Petition for Rule Making* filed by the National Association of Business and Educational Radio, Inc. (NABER), RM–4902. See Commission Public Notice, Report No. 1500 (March 4, 1985).

[5] Currently Business Radio Service stations operating outside the 75 mile radius are limited to a maximum permissible *transmitter output power* of 110 watts. The *effective radiated power* of such an operation varies depending on the antenna gain and transmission system losses, but is routinely several times greater than the transmitter output power. NABER suggests specifying effective radiated power rather than transmitter output power as a more effective means of controlling the interference potential of Business Radio Service stations that are unrelated to airport operations.

[6] *Second Report and Order* in Docket No. 13847, 11 FCC 2d 648 (1968).

[7] *34th Annual Report/Fiscal Year 1968*, Federal Communications Commission, p. 145.

[8] *49th Annual Report/Fiscal Year 1983*, Federal Communications Commission, p. 96.

application is now dismissed as unacceptable for processing. Oftentimes, the application is refiled, accompanied by a statement from ARINC that the particular airport facility to which the proposed station is shortspaced does not require protection. Upon such a showing, the subject application is normally granted. It appears that the licensing process could be made more efficient and less time consuming by identifying the airport facilities that require protection. Further, since definitive informtion on the location of an airport's boundary is not always readily available, it would be more convenient to measure the afforded mileage protection from its reference coordinates.

8. We propose to establish a list of airport facilities serving urban areas of 200,000 or more population (as listed in the 1960 census) which require protection. Comments are requested on which airports should be included in this list. Also, we propose to specify protection to an identified airport in terms of required distance from its reference coordinates rather than from its boundary. We plan to use the reference coordinates listed in the Airport Facility Directory.[9] These changes in our procedures should streamline the licensing process for the applicant, the coordinators, and the Commission. We request comments on what modification, if any, must be made in the required mileage spacings should we reference such spacing to an airport's coordinates as listed in the Airport Facility Directory, rather than to the airport's boundary.

Initial Regulatory Flexibility Analysis

9. Pursuant to the Regulatory Flexibility Act of 1980, the Commission finds as follows:

I. Reason for Action

This proposal would modify the Commission's rules to relax the restrictions currently applied to certain frequencies in the Business Radio Service. This will increase the number of radio channels available to users in certain geographical areas to meet their growing need for additional communications capacity.

II. Objective

The Commission is advancing this proposal to make more effective use of the spectrum allocated to the private land mobile community.

III. Legal Basis

The proposed action is authorized under sections 4(i), 303(c), 303(f), 303(r), and 331(a) of the Communications Act of 1934, as amended, which authorize the Commission to make such rules and regulations as may be necessary to improve the efficiency of spectrum use.

IV. Description, Potential Impact and Number of Small Entities Affected

The relaxation of restrictions on certain frequencies will provide some relief from congestion on existing Business Radio Service channels. This will allow present systems to expand and new systems to be implemented. We expect that this ultimately will result in increased business efficiency. This proposal will also expand market opportunities for radio manufacturers, some of which are small businesses. Beyond this, we are unable to quantify the potential effects on small entities. We therefore invite specific comments on this point by interested parties. Additionally, it is ordered that the Secretary shall serve a copy of this Notice on the Small Business Administration.

V. Reporting, Recordkeeping and Other Compliance Requirements

No new requirements will be imposed upon Private Land Mobile Radio Service Licensees.

VI. Federal Rules which Overlap, Duplicate or Conflict with this Rule

None.

VII. Significant Alternatives

There are no significant alternatives other than those enumerated in this *Notice* which would accomplish our stated objective of making the most effective use of the spectrum allocated to the private land mobile community. Additionally, retaining the *status quo* represents a continuing burden on those licensees.

10. For purposes of this non-restricted notice and comment rule making, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of the presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy of the Commission official receiving the oral presentation. Each *ex parte* presentation described above must also state by docket number the proceeding to which it relates. See generally, §1.1231 of the Commission's rules, 47 CFR 1.1231.

11. This action is taken pursuant to sections 4(i), 303(c), 303(f), 303(r), and 331 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(f), 303(r), and 332. Interested persons may file comments on this proposal on or before October 15, 1985, and reply comments on or before October 30, 1985. All relevant and timely comments filed in accordance with sections 1.415 and 1.419 of our rules and regulations (47 CFR 1.415 and 1.419) will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public file, and provided that the Commission's reliance on such information is noted in its final decision.

12. In accordance with the provisions of § 1.419 of the Rules and Regulations, 47 CFR 1.419, formal participants shall file an original and five copies of their comments and other material. Participants wishing each Commissioner to have a personal copy of their comments should file an original and eleven copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy of their comments without regard to form (as long as the docket number is clearly stated in the heading). All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

Paperwork Reduction Act Statement

13. The action proposed herein has been analyzed, with respect to the Paperwork Reduction Act of 1980 and

[9] *United States Government Flight Information Publication, Airport Facility Directory*, U.S. Department of Commerce, published periodically.

found to contain no new or modified form, information collection, and/or recordkeeping, labeling, disclosure or record retention requirements, and will not increase or decrease burden hours imposed on the public.

14. For further information concerning this rule making contact Stuart Overby at (202) 634–2443, Private Radio Bureau, Federal Communications Commission, Washington, D.C.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A. List of Urbanized Areas of 200,000 or More Population*

Akron, OH
Albany-Troy-Schenectady, NY
Albuquerque, NM
Allentown-Bethlehem, PA
Atlanta, GA
Baltimore, MD
Birmingham, AL
Boston, MA
Bridgeport, CT
Buffalo, NY
Canton, OH
Charlotte, NC
Chattanooga, TN
Chicago, IL-Northwest, IN
Cincinnati, OH
Cleveland, OH
Columbus, OH
Dallas, TX
Davenport, IA-Rock Island, Moline, IL
Dayton, OH
Denver, CO
Des Moines, IA
Detroit, MI
El Paso, TX
Flint, MI
Fort Lauderdale-Hollywood, FL
Forth Worth, TX
Fresno, CA
Grand Rapids, MI
Harrisburg, PA
Hartford, CT
Honolulu, HI
Houston, TX
Indianapolis, IN
Jacksonville, FL
Kansas City, MO–KS
Los Angeles, CA
Louisville, KY
Memphis, TN
Miami, FL
Milwaukee, WI
Minneapolis-ST Paul, MN
Mobile, Al
Nashville, TN

New Haven, CT
New Orlean, LA
Newport News-Hampton, VA
New York-Northeast, NJ
Norfolk-Portsmouth, VA
Oklahoma City, OK
Omaha, NE
Orlando, FL
Philadelphia, PA-NJ
Phoenix, AZ
Pittsburgh, PA
Portland, OR
Providence-Pawtucket, RI–MA
Richmond, VA
Rochester, NY
Sacramento, CA
Saint Louis, MO–IL
Saint Petersburg, FL
Salt Lake City, UT
San Antonio, TX
San Bernardino, CA
San Diego, CA
San Francisco-Oakland, CA
San Jose, CA
Scranton, PA
Seattle, WA
Shreveport, LA
South Bend, IN
Spokane, WA
Springfield, MA
Syracuse, NY
Tacoma, WA
Tampa, FL
Toledo, OH
Trenton, NJ–PA
Tucson, AZ
Tulsa, OK
Washington, D.C.
Wichita, KS
Wilkes-Barre, PA
Wilmington, DE
Worcester, MA
Younstown-Warren, OH–PA

Appendix B

We propose to amend Part 90 of Chapter I of Title 47 of the Code of Federal Regulations as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES—[AMENDED]

1. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. In § 90.75, paragraph (c)(25)(vi) would be revised to read as follows:

§ 90.75 Business radio service.

* * * * *

(c) * * *

(25) This frequency is available for assignment to stations located on or near airports listed below and may be assigned only to persons engaged in furnishing commercial air transportation service, or to a nonprofit corporation or association for the purpose of furnishing radio communications service to persons so engaged on a nonprofit cost-sharing basis. Stations on this frequency may be used only in connection with the servicing and supplying of aircraft at the airport. Common frequency signal boosters may be employed in accordance with the following criteria:

* * * * *

(vi) If signal boosters are to be used in conjunction with other facilities, the number of such boosters must be stated on the license application.

This frequency may also be assigned to low power (2 watts or less transmitter output power) stations in the Business Radio Service for use in areas removed by 8 or more km (5 or more ml.) from the reference coordinates of airports listed below. All such use is restricted to the confines of an industrial complex or manufacturing yard area. In addition, this frequency is available for assignment to stations in the Business Radio Service for use at locations removed by 80 or more km (50 or more ml.) from the reference coordinates of the airports listed below at a maximum effective radiated power (ERP) of 300 watts. Stations at these locations first licensed on or after (effective date of these rules) may operate only on a non-interference basis to the co-channel facilities of air carriers located on or near the airports specified below. Business Radio Service stations first licensed prior to (effective date of these rules) may continue to operate with the facilities authorized as of that date.

The airports referenced in this section are:

* * * * *

[FR Doc. 85–22261 Filed 9–17–85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 94

[PR Docket No. 83–426; FCC 85–454]

Amendment To Authorize Private Carrier Systems in the Private Operational-Fixed Microwave Radio Service

AGENCY: Federal Communications Commission.

ACTION: Further Notice of Proposed Rule Making.

SUMMARY: In this *Further Notice of Proposed Rule Making* the Commission proposes to permit licensees in the Private Operational-Fixed Microwave Radio Service (Part 94 of the Commission's Rules and Regulations) to lease capacity on their private microwave systems to common carriers in order to allow the transmission of

* As listed in U.S. Census of Population, 1980, vol. 1, table 23, page 1–50.

common carrier communications on private radio service frequencies. This *Further Notice* also considers whether the Commission should preempt state regulation of private fiber optic systems. This action is necessary to permit Commission consideration of whether additional amendments to Part 94 regarding private microwave carrier operations would be in the public interest.

DATES: Comments are due October 21, 1985 Reply Comments are due November 5, 1985.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mary Beth Hess, Private Radio Bureau, Land Mobile and Microwave Division, (202) 634–2443.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 94

Private operational-fixed microwave radio service, Radio.

Further Notice of Proposed Rule Making

In the Matter of Amendment of Part 94 of the Commission's Rules and Regulations to Authorize Private Carrier Systems in the Private Operational-Fixed Microwave Radio Service, PR Docket No. 83–426.

Adopted: August 7, 1985.

Released: September 12, 1985.

By the Commission.

I. Summary

1. In this *Further Notice of Proposed Rule Making* we propose to permit licensees in the Private Operational-Fixed Microwave Radio Service (Part 94 of the Commission's Rules and Regulations, 47 CFR 94.1 *et. seq.*) to lease capacity on their private microwave systems for the transmission of common carrier communications by non-dominant common carriers.

II. Background

2. On January 31, 1985, we adopted a *First Report and Order* in the above-captioned proceeding to permit the offering of a communications service on a commercial basis by eligibles in the Private Operational-Fixed Microwave Radio Service (OFS).[1] The *First Report and Order* provided: (1) That licensees in the Operational-Fixed Service who operate private microwave systems to meet internal telecommunications requirements could make excess capacity on their systems available to other private service eligibles on a for-profit basis; and (2) that the Operational-Fixed Service frequencies would be available for licensing to entrepreneurs who wished to establish microwave systems to provide a communications service for other on a private carrier basis.[2] With respect to both the sale of excess capacity and the licensing of entrepreneurs to provide a private carrier communications service, the new rules provided that the service could be offered only to entities eligible under Part 94 of the Rules.[3]

3. In the *First Report and Order*, we concluded, relying on *National Association of Regulatory Utility Commissioners v. FCC* (NARUC I),[4] that we had the clear legal authority to permit private carrier operation. It was noted that private carrier microwave licensees would be likely to establish medium-to-long-term contractual relations with relatively stable clientele and that the private operators would likely tailor their offerings based on the operational compatibility of potential users vis-a-vis the users already on the system. We determined that for-profit private carriage in the Operational-Fixed Service would serve the public interest by facilitating access to microwave communications systems, thereby making it easier for Part 94 eligibles to benefit from the economies and efficiencies which such systems permit.[5] In the *First Report and Order* we adopted in substance all of the proposals put forth in the initial *Notice of Proposed Rule Making* in this proceeding.[6] However, we declined to make changes relating to two issues raised by participants in the docket. First, we determined not to allow Part 94 licensees to lease capacity on their systems to common carriers for the transmission of common carrier communications. Second, we did not address the issue of federal preemption of state regulation of private communication systems which consisted solely of fiber optic links. However, we did indicate that we would issue this *Further Notice of Proposed Rule Making* to consider both of these issues.[7]

III. Discussion

4. The rules adopted in the *First Report and Order* provide that only Part 94 eligibles may lease capacity on a private microwave carrier system. Included in the term "Part 94 eligibles" are all entities who qualify for licensing in the Private Land Mobile Radio Services (Part 90 of the Rules). Part 90 of the Rules delineates different categories of entities who qualify for licensing in the Private Land Mobile Services. One of these categories, the Business Radio Service, includes all entities engaged in the operation of a commercial activity.[8] Common carriers are, of course, engaged in commercial activities, and therefore qualify for eligibility in the Business Radio Service. Thus, there is nothing in the Commission's Rules which bars common carriers from gaining access to the Operational-Fixed Service frequencies. As with Part 94 users generally, however, the current rules limit common carriers' use of the OFS frequencies to communications which are internal in nature, such as inter-office traffic related to administrative, management, or maintenance functions.[9] The transmission of common carrier traffic over OFS frequencies is specifically prohibited by Section 94.9(b) of the Rules. Therefore, it is the Part 94 regulations governing the permissibility of communications, rather than the eligibility rules, that preclude the use of OFS frequencies for common carrier traffic.

5. In comments submitted in response to the earlier *Notice of Proposed Rule Making* in this docket, Kansas City Southern Industries, Inc. (KCSI), which operates a number of subsidiaries holding licenses in the Operational-Fixed Service, argued that we should permit OFS licensees to lease their microwave capacity to common carriers. Specifically, KCSI suggested changes to Part 94 which would permit the leasing of excess capacity to entities affiliated with a Part 94 licensee, even if the affiliated entity did not operate in a fashion which satisfies the Part 94 rule requirements.[10] KCSI also suggested that

[1] *First Report and Order* in Docket No. 83–426 (FCC 85–53), released April 1, 1985, 50 FR 13,338 (April 4, 1985).

[2] Entrepreneurs were permitted access to all OFS frequency bands except the three bands which are not available generally to Business Radio Service eligibles. *See* §§ 94.61(b) and 94.65(a)(1) of the Rules (47 CFR 94.61(b) and 94.64(a)(1)).

[3] Eligibility in Part 94 is limited to entities qualified for licensing in a radio service under either Part 81 (Stations on Land in the Maritime Service and Alaska-Public Fixed Stations), Part 87 (Aviation Services), or Part 90 (Private Land Mobile Radio Services). *See* § 94.5 of the Commission's Rules (47 CFR 94.5).

[4] 525 F.2d 630 (D.C. Cir. 1976), *cert. denied*, 425 U.S. 992 (1976).

[5] For a discussion of the benefits which enhanced use of private microwave systems provides, *see* generally, *First Report and Order*, Docket No. 83–426, *supra*.

[6] *Notice of Proposed Rule Making* in Docket No. 83–426 (FCC 83–172), released May 17, 1983, 48 FR 24,950 (June 3, 1983).

[7] Because there is not a case in controversy before us at this time, we are not now taking any action on the issue of federal preemption of state regulation of systems consisting solely of fiber optic links.

[8] Section 90.75(a)(1) of the Rules, 47 CFR 90.75(a)(1).

[9] Section 94.9, 47 CFR 94.9.

[10] KCSI's comments related that it also owned 25% of the voting stock of LDX, Inc., a reseller of

Continued

we could, if deemed necessary, require that the leasing of OFS capacity to entities not eligible to conduct their business under Part 94 of the Commission's rules be on a secondary basis, subject to future withdrawal or other limitations necessary to ensure that the legitimate telecommunications needs of other OFS eligibles were satisfied. KCSI asserted that if its subsidiaries were permitted to lease excess capacity to common carriers, it would improve substantially the spectral efficiency of its existing OFS systems by putting idle channel capacity to economic and productive use.

6. KCSI's proposal was opposed by the Utilities Telecommunications Council (UTC) and the Central Committee on Telecommunications of the American Petroleum Institute (API). UTI argued that the Operational-Fixed Service spectrum should be preserved for use by Part 94 eligibles and that the changes recommended by KCSI would violate the fundamental purpose of discrete allocations of spectrum for private radio and common carrier use. Both UTC and API expressed concern that expanding the permissible uses of OFS systems to include the transmission of common carrier traffic would further deplete the already congested private microwave spectrum and would blur the legal distinctions between private and common carriage.

7. In the *First Report and Order*, we concluded that the record did not support authorization of the leasing of private microwave capacity for common carrier traffic. Therefore, private carriers were restricted to providing service to other Part 94 eligibles for satisfying internal communications requirements. Nonetheless, we see at least two possible policy advantages to widening the range of uses permitted on OFS frequencies. First, more permissible uses would encourage more efficient spectrum use. We would expect many licensees to invest in equipment having greater transmission capacity if they were able to recover those costs through resale of unused capacity. A second policy advantage of allowing more types of communications in the OFS is that it would provide a safety valve that could help relieve congestion in other microwave services.

8. In spite of the potential for fuller use of the OFS bands and the consumer benefits of enhanced interexchange common carrier competition, we are concerned that relaxing the permissible communications restrictions could have a serious negative effect on traditional private microwave users. Allowing common carrier traffic on OFS frequencies could result in a de facto reallocation of the private radio spectrum for common carrier purposes. Furthermore, allowing all common carriers to lease capacity could cause confusion due to the different regulatory schemes governing private and common carriers. In light of these concerns, we propose in this *Further Notice* to extend permissible communications to common carrier traffic with the following restrictions.

9. Common carriers are designated as being either "dominant" or "non-dominant" and the regulations governing each vary significantly.[11] Because dominant common carriers are required to offer services on a tariffed basis, we are concerned that allowing them to use the OFS for traffic other than their own internal communications could lead to monitoring problems with regard to, among other things, accounting and filing requirements. Consequently, under the proposed rule changes, dominant common carriers would be prohibited from using the OFS for their own common carrier traffic and from leasing capacity to other common carriers for common carrier traffic. A dominant common carrier could, however, lease capacity from any OFS licensee for its own internal communications. Similarly, a dominant common carrier could lease excess capacity to other Part 94 eligibles for non-common carrier traffic. Additionally, non-dominant common carriers who are licensed to use OFS channels would be prohibited from using the channels for transmission of their own common carrier traffic.

10. We recognize that the regulatory framework which would result if this proposal were adopted would be complex. If the proposed rules were ultimately implemented, a non-dominant common carrier entity could be licensed to operate an OFS system on a private carrier basis and could make capacity available to other non-dominant common carriers for the transmission of common carrier traffic but would be prohibited from using its OFS system for transmitting its own common carrier communications. We recognize that, in such a situation, there would be some incentive for a common carrier entity licensed in the Operational-Fixed Service to enter into a deal with another common carrier entity whereby each would sell capacity to the other for transmitting its own common carrier communications, or for a common carrier to attempt to "resell" its OFS capacity to itself, perhaps through the creation of a subsidiary whose sole function would be to serve as the holder of the private radio license. In the interest of developing a more complete record, we seek public comment on the following specific issues:

(1) Is it in the public interest to broaden the permissible communications provisions of Part 94 to permit private microwave licensees, excluding dominant common carriers, to lease their capacity to non-dominant common carriers for the transmission of common carrier traffic?

(2) If we determine that it is not in the public interest to permit such leasing, are there more limited approaches we should consider?

(3) If we permit the leasing of OFS capacity to non-dominant common carrier entities for the transmission of common carrier traffic, should there be any regulatory restraints imposed to preclude the use of artificial organizational structures developed to permit a non-dominant common carrier to "resell" capacity to itself?

(4) Should we permit the leasing of capacity on a private carrier basis for other non-private purposes, such as the point-to-point distribution of broadcast or cable television programming?

(5) What effect would permitting private licensees, excluding dominant common carriers, to resell capacity for the transmission of common carrier and other communications have on the availability of spectrum to accommodate traditional private radio communications?[12]

(6) What structural guidelines are necessary in order to assure that the use of OFS spectrum for the transmission of common carrier and other non-private radio communications is consistent with the concept of private carriage established in NARUC I?

IV. Privacy and National Security Concerns

11. We are concerned that common carrier use of private microwave

MTS/WATS telephone traffic operating between Shreveport, LA, Dallas, TX, Kansas City, MO, St Louis, MO, Denver, CO and other cities in the region.

[11] A dominant common carrier is defined by the rules as a carrier found by the Commission to have market power (i.e. power to control prices). A non-dominant common carrier is a carrier not found to be dominant. 47 CFR 61.15a.

[12] Of relevance to this inquiry is the record which has already been developed in Gen. Docket No. 82-334 regarding development of a spectrum utilization policy for the fixed and mobile services in the bands between 947 MHz and 40 GHz. *See Notice of Proposed Rule Making* (FCC 83-2), released January 13, 1983, 48 FR 6,730 (February 15, 1983), and *First Report and Order* (FCC 83-393), released September 30, 1983, 48 FR 50,722 (November 3, 1983).

facilities may have privacy and national security impacts. We have addressed this concern previously with respect to radio bypass systems in general[13] and in the *First Report and Order* in this docket. We urge the Executive Branch to submit its recommendations as comments in this proceeding so that they can be considered before final action is taken.

V. Regulatory Flexibility Act Initial Analysis

12. *Reason for action:* We believe that spectral efficiencies could result from permitting certain licensees in the Private Operational-Fixed Microwave Service to lease capacity on their private microwave systems for the transmission of common carrier communications.

13. *Objectives:* Our objective is to permit more effective use of the operational-fixed service spectrum and to allow increased use of microwave communications for satisfying communications needs.

14. *Legal Basis:* The actions proposed herein are taken pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended.

15. *Description, potential impact and number of small entities affected:* We do not believe that this *Further Notice of Proposed Rule Making* will have a significant economic impact upon a substantial number of small entities. There are no regulatory burdens or administrative responsibilities which will result for small entities if the proposal in this *Notice* is ultimately adopted. Any economic impact which may result will likely benefit all licensees, both large and small, since the proposal may generate additional sources of revenue for operators of OFS systems.

16. *Recording, record keeping and other compliance requirements:* No additional recording, record keeping, or other compliance requirements are anticipated.

17. *Federal rules which overlap, duplicate, or conflict with this rule:* None.

18. *Any significant alternatives minimizing impact on small entities:* None.

VI. Paperwork Reduction Act Statement

19. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements. The proposal will not increase or decrease burden hours imposed on the public.

VII. Ordering Clauses

20. Accordingly, NOTICE IS HEREBY GIVEN of rule making to amend the Commission's Rules and Regulations, in accordance with the proposal set forth in the attached appendix.

21. We encourage all interested parties to respond to this *Further Notice of Proposed Rule Making* since such information as they may provide often forms the basis for further Commission action. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised the *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating a substantive disposition of the matter is to be considered at a forthcoming meeting, or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings or formal oral arguments) between a person outside the Commission and a Commissioner of a member or the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously filed written comments for the proceeding must prepare a written summary of that presentation. On the day of that oral presentation, a written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. *See* generally, § 1.1231 of the Commission's Rules, 47 CFR 1.1231.

22. Pursuant to applicable procedures set out in § 1.415 of the Rules and Regulations, 47 CFR 1.415, interested parties may file comments on or before October 21, 1985 and reply comments on or before November 5, 1985. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

23. In accordance with the provisions of § 1.419 of the Rules and Regulations, 47 CFR 1.419, formal participants shall file an original and five copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting on copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

24. IT IS ORDERED THAT the Secretary shall cause a copy of this *Further Notice of Proposed Rule Making* to be served upon the Chief Counsel for Advocacy of the Small Business Administration. The Secretary shall also cause a copy to be published in the **Federal Register.**

25. For further information on this proceeding, contact Mary Beth Hess, Land Mobile and Microwave Division, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554, (202) 634-2443.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 194 of the Commission's Rules and Regulations is proposed to be amended as follows:

PART 94—PRIVATE OPERATIONAL-FIXED MICROWAVE SERVICE

1. The authority citation for Part 94 continues to read as follows:

Authority: Sections 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 94.9 is amended by revising paragraph (b)(1) to read as follows:

§ 94.9 Permissibility of communications.

* * * * *

(b) * * *

(1) Rendition of a common carrier communication service, except that:

(i) The stations carrying public correspondence associated with public coast stations licensed under Part 81

[13] See Order in CC Docket No. 78-72, Phase 1 released January 18, 1985, FCC 84-635 at para. 3.

may continue in operation for the balance of the term of their licenses and for an additional five-year renewal term.

(ii) The facilities of licensees engaged in the leasing of microwave capacity on a private carrier basis may be used for the transmission of common carrier communications by common carrier entities who lease capacity from a private carrier. However, such facilities shall not be used by dominant common carriers (§ 61.15a of this Chapter) for the rendition of a common carrier communications service. Additionaliy, the radio facilities of dominant common carriers engaged in the leasing of microwave capacity on a private carrier basis shall not be used by any entity, including the carrier who owns the facility, for the rendition of a common carrier communications service.

* * * * *

[FR Doc. 85-22262 Filed 9-17-85; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81-11; Notice 15]

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

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: *Proposed Changes in Replaceable Light Source Specifications.* This notice proposes an amendment to Safety Standard No. 108 that would amend the specifications for the standardized replaceable light source. This will allow a manufacturer to determine the diameter of the glass capsule, while specifiying the location of the black cap for assuring the interchangeability of the standardized light source in different lamp designs to achieve the required photometric performance. The proposed amendment would relieve certain design restrictions currently in effect, and achieve greater interchangeability for the light source. It implements the grants of petitions for rulemaking submitted by General Electric Corporation, North American Philips Corporation, General Motors Corporation and Hella KG. By this action, the agency is denying a petition from the Valeo Group (CIBIE-Marchal) of France.

DATES: Comment closing date for the proposal is November 4, 1985. Any requests for an extension of time in which to comment must be received not later than 10 days before that date (49 CFR 533.19). Effective date of the amendment would be upon publication of the final rule in the **Federal Register.**

ADDRESS: Comments should refer to the docket number and notice number of the notice, and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. (Docket hours are from 8 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Richard V. Iderstine, Office of Rulemaking, National Highway Traffic Safety Administration, Washington, D.C. 20590 (202-426-2720).

SUPPLEMENTARY INFORMATION: On June 2, 1983, NHTSA amended Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment,* to allow use of a replaceable bulb headlamp system (48 FR 20490). The paramount component of this system is a standardized replaceable light source, more specifically an assembly of a headlamp bulb, base, and terminals as described in Figure 3 of the standard. For purposes of this rulemaking action, attention is directed to Figure 3-5 and Figure 3-6, captioned "Interchangeability Drawing Headlamp Bulk Assembly Halogen Capsule". These Figures specify dimensions for the capsule diameter, minimum area of undistorted glass tubing, and as a minimum that the black cap cover the glass tubing distortion line.

On July 11, 1983, Hella KG of the Federal Republic of Germany and on July 25, 1983, the Valeo Group of France (CIBIE-Marchal) submitted petitions for reconsideration of the black cap location requirements and other aspects of the standardized light source. The petitions were not timely and, in accordance with agency regulations, were treated as petitions for rulemaking. On June 15, 1984, General Electric ("GE") petitioned for rulemaking to change the capsule diameter, the subject also of a petition by North American Philips Lighting Company ("Philips") on January 16, 1985.

As presently specified, the black cap location and glass capsule diameter are based on information provided by the original petitioner, Ford Motor Company. In developing their own versions of standardized replaceable light sources, other manufacturers have found that certain requirements are design restrictive and have little effect on performance. One of these requirements is the diameter of the glass capsule. As presently specified, the capsule diameter and black cap locations are related and a change in the capsule diameter could cause adverse photometric effects unless there was an attendant change in the black cap location. In addition, Standard No. 108 does not require the black cap to be on a bulb during lumen testing. By fixing the cap in relation to the filament, not the glass, and by requiring it to be present for testing, a lumen test can be performed on an assembled light source, a more representative test of real world performance.

The three important points behind this rulemaking proposal are: for any given light source design, fixing the position of the black cap with respect to the filament is an important parameter for proper functioning; in order for any individual headlamp to meet the performance requirements, any light source used in it, whether original or replacement, must have the same filament/black cap relationship; finally, in order to validate the performance of the light source, it must be tested with the black cap and base installed.

How can the relationship between the black cap and the filament be fixed so that the diameter of the glass capsule has no effect? The solution is to use an angular dimensioning of the cap location. This solution was proposed by NHTSA to GE as less design restrictive than GE's original suggestion. GE responded positively, and the idea was subsequently supported by Philips. The Valeo petitioned for an angle different from that originally used in the light source by Ford and Sylvania; this is not acceptable to NHTSA because it is incompatible with the light sources in headlamps already in service. Assuming that the black cap may be specified in this fashion and the capsule diameter becomes unregulated, other aspects of the capsule are affected such as the covering of distorted glass by the black cap, the retention of control over a span of undistorted glass, and overall capsule length and width. Distorted glass is located at the tip and base of the capsule. At the tip it is covered by the black cap, thus providing a control over the direction of the light. At the base, light rays generally land on the base and no black cap is necessary, but the location of either distorted or undistorted glass needs to be controlled. This is presently done by Dimension F of Figure 3-5, referencing the dimension of the black cap. Since this proposal allows movement of the black cap, referencing any dimension to the black cap will cause adverse effects to the characteristic being controlled.

Therefore, a solution is to reference it in a manner similar to that proposed for the black cap: a dimension based on angles referenced to the design position of the filaments.

NHTSA is therefore proposing a new Figure 3–5 with the following characteristics:

• Point B is a design point on the centerline of the glass capsule and at the light center length (LCL) from the reference plane on the connector base. The value, 44.5 mm, is the distance from that reference plane to the design center of the lower beam filament. The value, 44.5 mm, is taken from Figures 3–1 and 3–2 of Standard No. 108, and is used to determine dimensions F and G.

• An angle of 38° along the line B, Q, P, and the reference plane on the connector base is the angle selected by GE and the SAE Replaceable Headlamp Bulb Task Force as appropriate for this source for use in locating the black cap and limit of distorted glass. This value is different than that presently in Standard No. 108 which is 34.2° minimum, and no maximum. The value proposed of 38° is a design value from which the actual black cap location, dimension F, may be calculated.

• An angle of 43° along the line B, R, S, and the reference plane on the connector base is an angle determined by NHTSA by using past dimensions in Standard No. 108, and based on Ford's original intent for the design. Again, 43° is a design value from which the actual limit of the distorted glass dimension G, may be calculated.

• Dimension F is the location of the black cap and the limit of distorted glass, as measured from the reference plane. It is determined by trigonometry and is given a tolerance of plus or minus one millimeter. With this tolerance, photometry effects are minimal. The tolerance value is recommended by GE and the SAE Replaceable Headlamp Bulb Task Force. The formula is: F=44.5+ (actual capsule radius × tangent 38°). In actual manufacturing, the black cap is typically defined and placed using this method.

• Dimension G is the limit of distorted glass at the capsule crimp and is also determined by trigonometry. The formula is: G=44.5− (actual capsule radius × tangent 43°). It is a maximum value from the reference plane.

• Dimension H and dimension J (24.5 mm max. and 70 mm max. respectively) set location limits for the parts comprising the light source to prevent interference with parts within the headlamp such as glare shields. The values proposed are those recommended by Philips in a November 7, 1984, letter to NHTSA and by GE in its March 5, 1985, letter. The shape of the volume described by "H" and "J" is the one suggested by Philips. Hella KG had also suggested a similar limiting envelope.

• Note 1 provides for optically clear capsule glass. Note 2 provides for an unobstructed view of the reflector by the filaments. Note 3 provides the formula for determining Dimensions "F" and "G".

The changes proposed allow more design and production freedom for both the light source and the lamp manufacturer. This occurs because of the deregulation of capsule diameter and the establishment of performance oriented interchangeability dimensions. These dimensions establish responsibilities between the light source manufacturer and the lamp manufacturer which have not existed previously. Such intechangeability dimensions also help maintain the level of photometric performance designed into the lamp, and, therefore, help maintain the level of roadway illumination deemed appropriate by the vehicle manfacturer for its vehicle. This would occur because all light sources intended for us in any given lamp would be manufactured to be more alike in terms of performance, and, therefore, be less likely to cause performance changes in the headlamp.

One aspect of design freedom that already exists is the freedom to place the glass capsule centerline in a location that is not coincident with the centerline of the light source base. From drawings and a sample submitted by General Electric, NHTSA notes that GE plans to produce a version of the light source which, in fact, has the centerline of the glass capsule offset from the centerline of the base by an amount equal to the offset of the lower beam filament from the centerline of the base. This design departs from that of other manufacturers known to NHTSA. This offset appears to provide for both a more simplified manufacturing process, and a more balanced angular relationship between the black cap and the lower beam filament. GE has supplied data which shows that no significant performance loss occurs. NHTSA would like comments on GE's design approach and the advisability of controlling the amount of offset between the glass capsule centerline and the light source base centerline, and recommendations for the dimensions to provide that control.

Testing the light source with the black cap in place requires a revised lumen test which woud necessitate amendments to paragraph S4.1.1.38. The test is currently performed without the black cap, meaning that aftermarket light sources must have the cap removed before compliance testing. This is not possible with all light sources. Additionally, should a lamp failure occur indicating noncompliance with the photometrics, and its light source be tested for luminous output, that source (now without a black cap) cannot be used to demonstrate that the lamp has failed photometrics. Performing the lumen test with the black cap in place would solve this problem. NHTSA is therefore proposing that the lumen test be performed in accordance with the Illuminating Society of North America Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filament Lamps, LM–45, April 1980, with the electrical connector and light souce base (except for that portion normally located within the interior of a lamp housing) shrouded with an opaque white colored cover. Since there would no longer be light emanating from the top of the bulb covered by the cap, a lower level of luminous output than currently specified is recommended. In accordance with recommendations of the Bulb Task Force of the SAE, the lower beam lumens, now 1067±10%, would become 700±15%, and the upper beam, now 1738±10%, would become 1200±15%.

On May 8, 1985, General Motors Corporation (GM) petitioned NHTSA for a reduction in the allowable tolerances of the standardized replaceable light source with a view towards a more accurate orientation of beam patterns. The lower beam filament may vary now in three directions. In GM's opinion, two of these directions, up-down and right-left, should be reduced from ±0.020" to ±0.010". There is also a fore-aft tolerance of ±0.015" which would be reduced by one-third, "which will reduce the convergence and divergence of the beam pattern by a corresponding amount". Similarly, tolerances for the upper beam would also be reduced.

A slightly different conclusion has been reached by NHTSA, which has done an analysis of the effect of variations in filament location on the location of the beam pattern. This analysis, a copy of which is in the docket, indicates that a tolerance of ±.008" (±0.20 mm) for two of the three filaments axes is needed on the location of the lower-beam filament in order to assure that the light pattern produced by a lamp will not vary more than 0.25° when the bulb is replaced. Therefore, the agency is also proposing, and asking for comment on, a tolerance of ±.008" (±.20 mm) for the location of the lower-beam filament, with the thought of

adopting only one of the two proposed sets of values.

These changes are illustrated in proposed Figure 3–2 which will allow a side-by-side comparison; the current values are crossed through with diagonals, and the proposed values are not crossed through. Hella KG had also petitioned for changes in filament tolerances and positions in its petition for reconsideration.

In evaluating this proposal for tolerance reduction, NHTSA seeks specific comments on the names of manufacturers and the number of replaceable light sources that have been designed and manufactured to tolerances outside those suggested by GM or those suggested by the NHTSA analysis, indicating whether these have been for use as original or replacement equipment, and the manufacturing practicability of the reduced tolerances specified in each proposal, as shown in Figure 3–2. NHTSA is also seeking data or other comment which would support or contradict its analysis.

The proposed amendment would be effective upon publication of the final rule in the **Federal Register.** Because the proposed rule would relieve a restriction and create no additional burden, it is hereby found for good cause shown that an effective date earlier than 180 days after issuance of the final rule would be in the public interest.

NHTSA has considered this proposal and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation" or significant under Department of Transportation regulatory policies and procedures, and that neither a regulatory impact analysis nor a full regulatory evaluation is required. The proposal would not impose additional requirements or costs but would permit manufacturers greater flexibility in design of headlighting systems.

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act. The proposal would have no effect on the human environment since the weight and quantity of materials used in the manufacture of headlamps would not be changed.

The agency has also considered the impacts of this proposal in relation to the Regulatory Flexibility Act. I certify that this proposal would not have a significant economic impact on a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and headlamps, those affected by the proposal, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Finally, small organizations and governmental jurisdictions would not be significantly affected since the price of new vehicles and headlamps will be minimally impacted.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

The engineer and lawyer primarily responsible for this proposal are Richard Van Iderstine and Taylor Vinson, respectively.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, it is proposed that 49 CFR 571.108, Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment,* be amended as follows:

1. The authority citation for Part 571 would continue to read as follows:

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

§ 571.108 [Amended]

2. The first sentence of paragraph (b) of paragraph S4.1.1.38 would be revised to read:

(b) The standardized replaceable light source shall meet the requirements in paragraphs (b)(1) through (b)(7) of this section.

3. In paragraph (b)(1) of paragraph S4.1.1.38 the tabular portion of the general specifications would be amended as follows:

[In percent]

	Lower beam	Upper beam
* * * * *		
Lumens at 12.8V design voltage	700 – 15	1200 – 15
* * * * *		

4. A new paragraph (b)(7) would be added to paragraph S4.1.1.38 to read:

(b)(7) Lumens shall be measured in accordance with the Illuminating Society of North America, LM–45: IES Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filaments Lamps (April 1980), and with that electrical connector and light source base (except for the portion normally located within the interior of a lamp housing) shrouded with an opaque white colored cover.

5. Figure 3–2 would be revised as follows:

FIGURE 3–2.—INTERCHANGEABILITY DRAWING HEADLAMP BULB ASSEMBLY

[Dimensional specifications—figure 3–1]

Dimension	Inches	Millimeters
A	.085 to .083 .002 either side CL	2.15 to 2.10 .05 either side CL
F	.906	23.00.
H	.079	2.00.
K: Lower beam	1.752 ± .010 or .008.	44.50 ± .25 or .20.
Upper beam	CL upper beam to be within ± .020 of CL of lower beam.	CL upper beam to be within .25 of CL of lower beam.
M	.974	24.75.

FIGURE 3-2.—INTERCHANGEABILITY DRAWING HEADLAMP BULB ASSEMBLY—Continued

[Dimensional specifications—figure 3-1]

Dimension	Inches	Millimeters
N	(1.335 to 1.331) .002 either side CL.	(33.90 to 33.80) .05 either side CL.
O	.517±0.020	13.13±.50.
P	1.673	42.50.
R	(1.126 to 1.122) .002 either side CL.	(28.60 to 28.50) .05 either side CL.
U	1.181	30.00
V	.413	10.50.

FIGURE 3-2.—INTERCHANGEABILITY DRAWING HEADLAMP BULB ASSEMBLY—Continued

[Dimensional specifications—figure 3-1]

Dimension	Inches	Millimeters
W	.128	3.25.
X	.189	4.80.
AC	.045±.010 or .008	1.15±.25 or .20.
AD	.091±.020	2.30±.50.
AE	.047±.010 or .008.	1.20±.25 or .20.
AF	.094±.020	2.40±.50.
AH	.356	9.05.
AM	.415	10.54.

FIGURE 3-2.—INTERCHANGEABILITY DRAWING HEADLAMP BULB ASSEMBLY—Continued

[Dimensional specifications—figure 3-1]

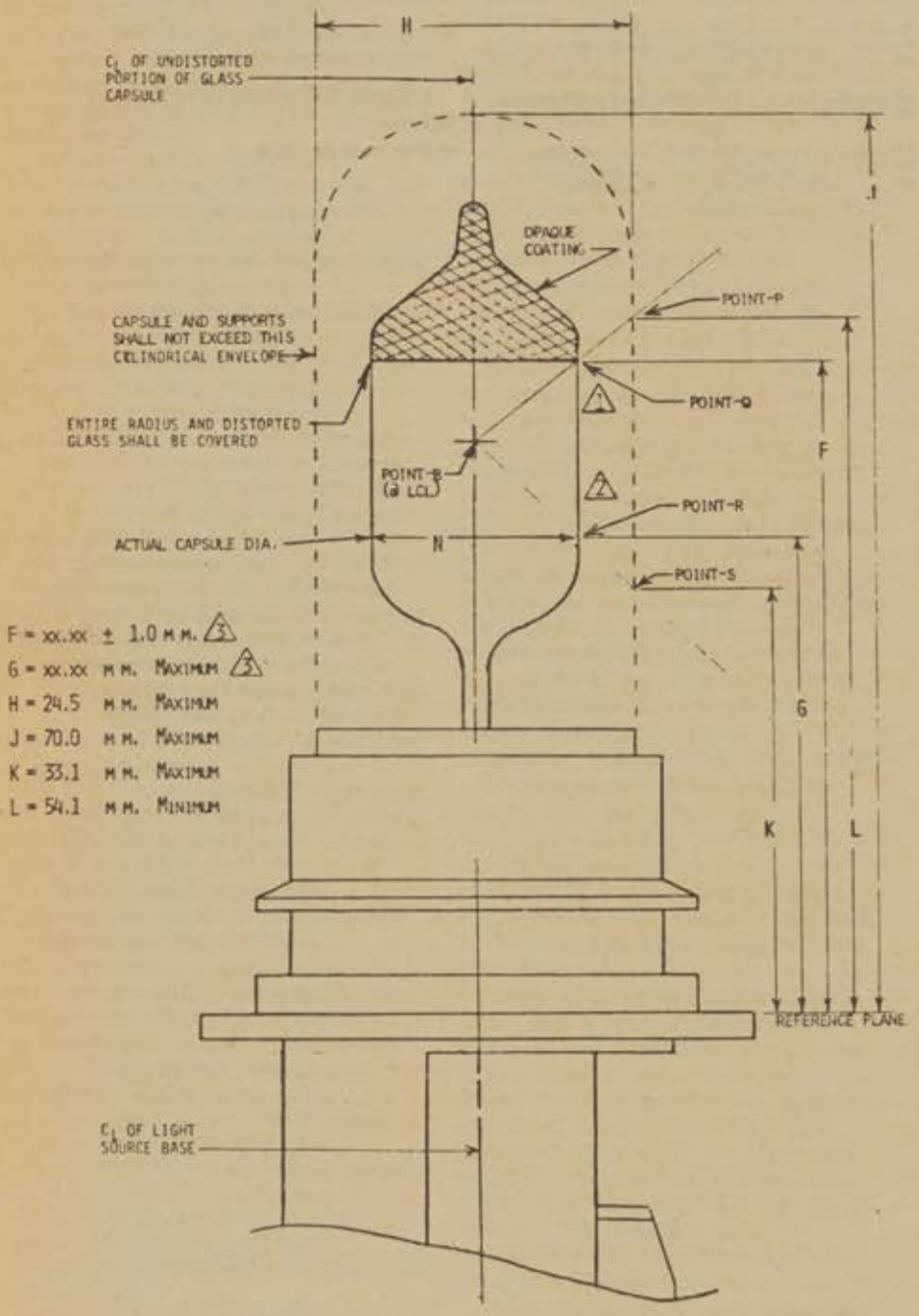
Dimension	Inches	Millimeters
AN	.673	17.10.

6. Figure 3-5 would be revised as follows:

BILLING CODE 4910-59-M

FIGURE 3-5

INTERCHANGEABILITY DRAWING
HEADLAMP BULB ASSEMBLY
HALOGEN CAPSULE



F = xx.xx ± 1.0 M M. (3)
G = xx.xx M M. MAXIMUM (3)
H = 24.5 M M. MAXIMUM
J = 70.0 M M. MAXIMUM
K = 33.1 M M. MAXIMUM
L = 54.1 M M. MINIMUM

(1) GLASS CAPSULE PERIPHERY SHALL BE OPTICALLY DISTORTION FREE BETWEEN THE PLANES PERPENDICULAR TO THE CENTERLINE AT POINTS Q AND R.

(2) THERE SHALL BE NO OBSTRUCTION TO LIGHT WITHIN THE VOLUME OF ROTATION OF THE PLANE BOUNDED BY POINTS P, Q, R, AND S ABOUT THE CENTERLINE.

(3) EXACT VALUES OF F AND G SHALL BE DETERMIND BY USING THE FOLLOWING:
F=44.5+ (N/2) Tan 38
G=44.5+ (N/2) Tan 43

7. Figure 3–6 would be deleted.

Issued on September 12, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85–22288 Filed 9–17–85; 8:45 am]

BILLING CODE 4910-59-C

Notices

Federal Register
Vol. 50, No. 181
Wednesday, September 18, 1985

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

Forms Under Review by Office of Management and Budget

September 13, 1985.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, D.C. 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

• Agricultural Marketing Service
Marketing Order No. 917—California Pears, Plums, and peaches
Recordkeeping: On occasion; Monthly; Semi-annually
Farms: Businesses or other for-profit; Small businesses or organizations; 23,921 responses; 3,020 hours; not applicable under 3504(h)
William J. Doyle (202) 447-5975

• Agricultural Marketing Service
Marketing Order No. 926—Tokay Grapes Grown in San Joaquin County, California
Recordkeeping: On occasion; Annually; One every three years
Farms: Businesses or other for-profit; Small businesses or organizations; 179 responses; 49 hours; not applicable under 3504(h)
William J. Doyle (202) 447-5975

• Agricultural Stabilization and Conservation Service
7 CFR Parts 724, 725, and 726
MQ-79
Weekly: As needed
Businesses or other for-profit; 5,000 responses; 1,250 hours; not applicable under 3504(h)
Raymond S. Fleming (202) 447-4318

• Food and Nutrition Service
Model Food Stamp Forms—Eligibility, Notices, Claims recovery, Disqualification
FNS 385, 386, 387, 394, 396, 437, 439, 441, and 442
Recordkeeping: On occasion; Monthly; Quarterly; Semi-annually; Annually
Individuals or households; State or local governments; 90,087,783 responses; 18,527,160 hours; not applicable under 3504(h)
Peggy Hickman (703) 756-3454

Reinstatement

• Food and Nutrition Service
Summer Food Service Program for Children (SFSPC) Food Service Management Company Application for Registration
FNS 189
Annually
State or local governments; Business or other for-profit; Federal agencies or employees; 236 responses; 579 hours; not applicable under 3504(h)
Albert V. Perna (703) 756-3600
Jane A. Benoit,
Departmental Clearance Officer.
[FR Doc. 85-22346 Filed 9-17-85; 8:45 am]
BILLING CODE 3410-01-M

Office of the Secretary

Determination of Import Quotas on Sugar for Quota Year 1986 and Modification of the Quota Period

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice establishes the annual quota year sugar import quota for the period December 1, 1985 through September 30, 1986 at 1,722,000 short tons, raw value, and provides that, for shipments of sugar shipped in time to arrive during one quota period but whose arrival was delayed until the next quota period due to forces beyond the importer's control, those shipments may be charged to the earlier quota period with the approval of the Secretary of Agriculture.

EFFECTIVE DATE: December 1, 1985.

ADDRESS: Mail comments to Chief, Sugar Group, Horticultural and Tropical Products Division, Foreign Agricultural Service, Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: John Nuttall, Foreign Agricultural Service, Department of Agriculture, Washington, DC 20250, Telephone: (202) 447-2916.

SUPPLEMENTARY INFORMATION: Presidential Proclamation No. 4941, dated May 5, 1982, amended Headnote 3 of subpart A, part 10, schedule 1 of the Tariff Schedules of the United States (TSUS) to establish a system of import quotas for foreign sugar coming into the United States. Under the terms of Headnote 3, the Secretary of Agriculture established an annual sugar import quota period of October 1-September 30 beginning October 1, 1982. (47 FR 34812.)

For the 1985 quota year the quota level was set at 2,552,000 short tons, raw value, and the quota period was initially established as October 1, 1984-September 30, 1985. (49 FR 36669.) The 1985 quota year was later changed to the period October 1, 1984 through November 30, 1985. (50 FR 2303.) For the 1986 quota year (December 1, 1985

through September 30, 1986), the 1986 sugar import quota is set at 1,722,000 short tons, raw value.

Presidential Proclamation No. 4941 also permits the Secretary of Agriculture, after consultations with the U.S. Trade Representative and the Department of State, to proclaim quota periods other than quarterly, if he determines that such periods give due consideration in the United States sugar market to the interests of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade. After the appropriate consultations, I have determined that it is appropriate for the 1986 quota period to begin on December 1, 1985 and terminate on September 30, 1986 and that it is appropriate to make special provisions for shipments of sugar intended for one quota period and shipped in time to arrive during that particular quota period, but whose arrival was delayed until the next quota period due to forces beyond the importer's control.

Notice

Notice is hereby given that, in accordance with the requirements of Headnote 3, subpart A, part 10, schedule 1 of the TSUS, I have determined that up to 1,772,000 short tons, raw value, of sugar described in items 155.20 and 155.30 of the TSUS may be entered or withdrawn from warehouse for consumption during the period December 1, 1985 through September 30, 1986. Of the 1,722,000 short tons, raw value, 2,000 short tons, raw value, are reserved for specialty sugars from countries listed in paragraph (c)(ii) of Headnote 3.

I have also determined that this quota amount gives due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade.

In conformity with the above, paragraph (a) of Headnote 3, subpart A, part 10, schedule 1 of the TSUS is modified to read as follows:

3. (a)(i) The total amount of sugars, sirups and molasses described in items 155.20 and 155.30, the products of all foreign countries entered, or withdrawn from warehouse for consumption, between December 1, 1985 and September 30, 1986, inclusive, shall not exceed in the aggregate 1,772,000 short tons, raw value. Of this amount, the total amount permitted to be imported for purposes of paragraph (c)(i) of this headnote (the total base quota amount) shall be 1,720,000 short tons, raw value, and the remaining 2,000 short tons, raw value, may only be used for the importation of "specialty sugars," as defined by the United States Trade Representative in accordance with paragraph (c)(ii) of this headnote.

(ii) Sugar entering the United States during a quota period may be charged to the previous quota period with the approval of the Secretary of Agriculture. The Secretary may only grant such approval if (A) the sugar was shipped in time to enter the United States during the previous quota period and (B) the sugar would have successfully entered the United States during the previous quota period but for forces beyond the control of the importer, including but not limited to engine failure of the transporting ocean carrier, unexpectedly severe weather conditions, and acts of God.

Signed at Washington, DC on September 13, 1985.

Frank W. Naylor, Jr.,

Acting Secretary of Agriculture.

[FR Doc. 85-22347 Filed 9-17-85; 8:45 am]

BILLING CODE 3410-10-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-455-501]

Termination of Antidumping Duty Investigation; Carbon Steel Wire Rod From Poland

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In a letter dated July 29, 1985, petitioners withdrew their antidumping duty petition, filed on April 8, 1985, on carbon steel wire rod (wire rod) from Poland. Based on the withdrawal, we are terminating the investigation.

EFFECTIVE DATE: September 18, 1985.

FOR FURTHER INFORMATION CONTACT: Karen L. Sackett, Office of Investigation, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C 20230; telephone: (202) 377-1756.

SUPPLEMENTARY INFORMATION:

Case History

On April 8, 1985, we received a petition from Atlantic Steel Company, Continental Steel Corp., Georgetown Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Company, on behalf of the U.S. industry producing wire rod. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the International Trade Commission (ITC) of our action and initiated the investigation on April 29, 1985 (50 FR 18905). On May 30, 1985 (50 FR 23084), the ITC found that there was a reasonable indication that imports of wire rod from Poland materially injure, or threaten material injury to, a United States industry.

Scope of Investigation

The product under investigation is carbon steel wire rod, currently classifiable under item 607.17 of the *Tariff Schedules of the United States* (TSUS).

Withdrawal of Petition

In a letter dated July 29, 1985, from Atlantic Steel Company, Continental Steel Corp., Georgetown Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Company, petitioners, notified us that they were withdrawing their April 8, 1985, antidumping duty petition, and requested that the investigation be terminated. A copy of petitioners' letter is appended to this notice. Under section 734(a) of the Tariff Act of 1930, as amended by section 604 of the Trade and Tariff Act of 1984 (the Act), upon withdrawal of a petition, the administering authority may terminate an investigation after giving notice to all parties to the investigation. This withdrawal is based on a bilateral arrangement with the Government of Poland to limit the volume of imports of this product. We have assessed the public interest factors set out in section 734(a) of the Act and consulted with potentially affected producers, workers, consuming industries, and with the ITC. On the basis of our assessment of the public interest factors and our consultations, we have determined that termination would be in the public interest.

We have notified all parties to the investigation and the ITC of petitioners' withdrawal and our intention to terminate.

For these reasons, we are terminating our investigation.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

September 3, 1985.

July 29, 1985.

Mr. Gilbert B. Kaplan

Acting Deputy Assistant Secretary for Import Administration,

U.S. Department of Commerce,

Washington, DC 20230.

Attention: Central Records Unit, Room B-099

Re: *Carbon Steel Wire Rod from Poland*

Dear Mr. Kaplan: We have been advised by the United States Trade Representative ("USTR") that the United States has entered into an Arrangement with Poland which establishes import ceilings for various steel products, including carbon steel wire rod. The Arrangement provides that certain pending petitions concerning Arrangement

products from Poland are to be withdrawn as a condition precedent to its entry in force. Included among these pending matters is the ongoing investigation involving carbon steel wire rod initiated by Petition filed on April 8, 1985.

Atlantic Steel Company, Continental Steel Corporation, Georgetown Steel Corporation, North Star Steel Texas, Inc., and Raritan River Steel Company are the Petitioners in the Polish proceeding, in which the Department is currently investigating whether wire rod imported from the respondent during the period of investigation was sold at less than fair value. Petitioners' expectation is that should this investigation proceed to an order, antidumping duties would be imposed to deal specifically with this "unfairly traded" steel wire rod. In these circumstances, the Petitioners are entitled to construe the Arrangement as the functional equivalent of a suspension of an investigation even though there has not been a preliminary determination. As you know, a suspension agreement pursuant to section 734(c)(1)(A) of the 1979 Trade Agreements Act requires a commitment from the exporters (and agents) that "the suppression or undercutting of price levels of domestic products by imports of that merchandise will be prevented."

Petitioners recognize that there are no procedures to ensure that there will be no "suppression or undercutting of price levels of domestic products by imports . . ." of the wire rod that will be licensed for importation. Accordingly, Petitioners advise the Department that should there be price undercutting or suppression, as defined in section 734(c), by Polish producers of wire rod, or by importers thereof, they will consider it their perogative at any time to initiate proceedings under the antidumping law without regard to whether or not the Arrangement is in effect. In any event, Petitioners do not waive or affect any rights to take or continue action pursuant to U.S. law or otherwise.

In sum, the Petitioners, in reliance upon the wire rod import ceiling set forth in the Arrangement with Poland and its other terms and conditions and upon the further provisions and understandings of this letter, withdraw the petition conditioned upon the following:

1. That the Department will provide assurance, by the notice published in the Federal Register, that the Arrangement with Poland is in full force and effect and subject to no contingency (whether expressed in the Arrangement or any modifications therefore by side letter or otherwise) that would revise, delay, or impair the implementation of the specific restraints concerning wire rod.

2. That the United States does not plan to agree to any modifications of the Arrangement that would affect the obligations of Poland concerning wire rod to the detriment of the domestic industry during the Arrangement term.

3. That Petitioners do not waive any statutory rights or otherwise restrict their rights concerning action under the trade laws.

4. That the Arrangement with the Poland is a "bilateral arrangement" within the meaning of section 804 of the Steel Import Stabilization Act of 1984 and the President is authorized to enforce the Arrangement pursuant to section 805(a) of said Act. As a consequence of those provisions and the requirements and terms of the Arrangement, the United States will prohibit entry into the Customs territory of the United States of wire rod from Poland that (i) is not accompanied by an export certificate, and (ii) is not issued consistent with the quantitative limitations specifically applicable to Poland as defined by the Arrangement.

5. That the Department will publish this letter in the **Federal Register**, together with the notice that the Petitioners have withdrawn the Petition conditioned upon satisfaction of the terms set forth herein.

Petitioners reiterate that the withdrawal of the Petition contemplated by this letter does not have any force or effect, and provides the Department with no authority to terminate the investigation, until the foregoing provisions are met.

Respectfully submitted,

Charles Owen Verrill, Jr.

Wiley & Rein, 1776 K Street, NW., Washington, D.C. 20006, (202) 429-7000.

Counsel for Petitioners: Continental Steel Corp., Georgetown Steel Corp., North Star Steel Texas, Inc. Raritan River Steel Co.

cc: Service List

David E. Birenbaum

Fried, Frank, Harris, Shriver & Jacobson (A Partnership Including Professional Corporations) 600 New Hampshire Ave., N.W. Washington, D.C. 20037 (202) 342-3500.

Counsel for Petitioners: Atlantic Steel Co.

[FR Doc. 85-22310 Filed 9-17-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-047]

Elemental Sulphur From Canada; Final Results of Administrative Review of Antidumping Finding and Revocation in Part

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of administrative review of antidumping finding and revocation in part.

SUMMARY: On August 15, 1984, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on elemental sulphur from Canada. The review covers 44 of the 48 known manufactures and/or exporters of this merchandise to the United States currently covered by the finding and generally the period December 1, 1981, through November 30, 1982.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and review of our preliminary results, we have changed the rate for Drummond Petroleum, Ltd. The final results for all other firms remain unchanged from those presented in our preliminary results.

EFFECTIVE DATE: September 18, 1985.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Edward Haley, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-5255/2923.

SUPPLEMENTARY INFORMATION:

Background

On August 15, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 32632-4) the preliminary results of its administrative review and intent to revoke in part the antidumping finding on elemental sulphur from Canada (38 FR 34655, December 17, 1973). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of elemental sulphur, currently classifiable under item 415.5000 of the Tariff Schedules of the United States Annotated. The review covers 44 and the 48 known manufacturers and/or exporters of Canadian elemental sulphur to the United States currently covered by the finding and generally the period December 1, 1981, through November 30, 1982.

Analysis of Comments Received

We invited interested parties to comment on our preliminary results and intent to revoke in part. We received written comments from one domestic interested party, Freeport Minerals Company.

Comment 1: Freeport notes that the Department intends to revoke the finding with respect to seven companies. Freeport does not oppose revocation of six of those companies but does oppose revocation for Dome Petroleum, Ltd.

Freeport contends that several brokerage firms purchased elemental sulphur from Dome in 1982 in Canada at prices significantly below those generally in effect on sales to Canadian customers. Those brokerage firms subsequently have either acquired, or have been acquired by, U.S. phosphoric acid manufacturers and are importing Canadian sulphur for use in phosphoric acid plants. Freeport believes that Dome made those 1982 and subsequent sales to the brokers at low prices knowing that the sulphur would be exported to the U.S. and intending to avoid the

consequences of the antidumping finding. Freeport contends that it would be improper for the Department to revoke the finding with regard to Dome without further examining those arrangements, and the Dome is continuing to sell at less than foreign market value.

Department's Position: The Department requires that for a company to qualify for revocation it must demonstrate, at a minimum, that it had: (1) Two years of sales at not less than foreign market value, (2) four years of no shipments, or (3) a three-year combination of at least one year of sales at not less than foreign market value and two years of no shipments. The company must also agree to reinstatement in the finding or order in the event of its resuming less than foreign market value sales of the merchandise.

Dome did not manufacture and export Canadian elemental sulphur to the U.S. from the date of the finding through November 30, 1980, and all sales by Dome during the period December 1, 1980, through November 30, 1981, were made at not less than foreign market value. Dome did not manufacture and export this merchandise to the U.S. during the current review period December 1, 1981, through November 27, 1982. The Department and the Customs Service also have no records of Dome selling elemental sulphur to any exporter to the United States.

In addition, Dome has agreed in writing to an immediate suspension of liquidation and reinstatement of the finding if circumstances develop which indicate that elemental sulphur manufactured and exported by Dome to the United States is being sold at less than foreign market value. Therefore, Dome has met the requirements under our regulations for revocation regarding its exports. We are only revoking the finding with regard to sulphur manufactured *and* exported to the U.S. by Dome.

Comment 2: Freeport questions the validity of the array of questionnaire response data showing a substantial variation among respondent's Candian market prices during the review period. Freeport complians that, because the Department did not verify the questionnaire responses of the Canadian producers for the period, the price variations for a homogeneous product like sulphur increase Freeport's concern about the validity of the provided Canadian market data.

Department's Position: Freeport stated that its comments on the variations in the sample prices disclosed were preliminary and that it might wish to comment further after additional review. Freeport subsequently did not provide additional comments. It is unclear from Freeport's comments whether it was concerned with price variations over time or with variations at the same point in time. The Department is not aware of (and Freeport has not pointed out) instances of the latter situation, and the former situation is not uncommon. Without additional specifics about the potential problem, we see no reason to undertake at this time verification of numerous companies' responses.

Comment 3: Freeport objects to the fact that the cash deposit requirement for new exporters will be reduced from 5.56 percent to 1.98 percent (based on the highest margin for a responding company with shipments during the review period). Freeport contends that this is not an appropriate basis for the cash deposit rate nor, in Freeport's view, the Department's ordinary practice. The cash deposit requirements from the last review include much higher rates for many Canadian companies that did not ship during this review period. Freeport's concern is based in part of the fact that many Canadian companies have used or created export brokers or intermediaries, which the Department may inadvertently treat as "new exporters," in an attempt to avoid the payment of higher cash deposits established in earlier reviews.

Department's Position: The Department requires cash deposits on shipments by new exporters equal to the highest margin found for a responding firm with shipments in the current review period. We have consistently applied this rule in reviews of antidumping cases since our creation of the new exporter cash deposit concept. Our rule states that, to receive the new exporter rate, a firm must be unrelated to any previously reviewed firm. We have no evidence that any new shippers are related to manufacturers or exporters already covered by any review of this finding.

Final Results of the Review and Revocation in Part

Based on our analysis of the comments received and review of our preliminary results, we have changed the margin for Drummond Petroleum, Ltd. from 5.54 percent to zero percent. The final results for all other firms remain unchanged from those presented in our preliminary results, and we determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Amerada Minerals	12/01/81-11/30/82	[1]28.90
Amoco Canada Petroleum Company, Ltd.	12/01/81-12/27/82	0
Brimstone	12/01/81-11/30/82	0
BP/Canamex	12/01/81-06/30/82	0
Canamex	07/01/62-11/30/82	0
Canterra/Brimstone	12/01/81-11/30/82	[1]26.95
Canterra/Canamex	12/01/81-11/30/82	[1]5.56
Canterra Energy, Ltd. (formerly Aquitaine Company of Canada, Ltd.)	12/01/81-12/27/82	0
Canadian Reserve	12/01/81-11/30/82	[1]19.05
Canadian Reserve/Canamex	12/01/81-11/30/82	[1]15.24
CDC Oil Gas, Ltd.	12/01/81-12/27/82	[1]0
Cities Service	10/01/79-11/30/82	0
Cornwall Chemicals	12/01/81-11/30/82	[1]3.84
Delta Marketing	12/01/81-11/30/82	0
Delta/Canamex	12/01/81-06/30/82	0
Dome Petroleum, Ltd.	12/01/81-12/27/82	[1]0
Drummond (formerly known as Union Texas, Ltd.)	12/01/81-11/30/82	0
Fanchem	12/01/81-11/30/82	[1]0
Home Oil/Canamex	12/01/81-06/30/82	0
Hudson's Bay/Canamex	12/01/81-06/30/82	0
Hudson's Bay/Sulbow	12/01/81-11/30/82	[1]0
Imperial Oil	12/01/81-11/30/82	0
Imperial Oil Ltd./Exxon Chemical Americas, Inc.	12/01/81-12/27/82	0
Interdec	08/01/81-12/31/82	0
Koch Oil	12/01/81-11/30/82	[1]0
Marathon Oil	12/01/81-11/30/82	[1]0
Marathon Oil/Canamex	12/01/81-11/30/82	[1]15.54
Mobil/Canamex	12/01/81-06/30/82	0
Pan Canadian Petroleum, Ltd.	12/01/81-12/27/82	0
Pan Canadian/Canamex	12/01/81-06/30/82	0
Petro-Canada	12/01/81-11/30/82	1.98
Petro-Canada/Canamex	12/01/81-06/30/82	0
Petrogas Processing	12/01781-11/30/82	[1]0
Petrosul	12/01/81-11/30/82	[1]0
Rampart Resources/Sulbow Minerals	12/01/81-11/30/82	[1]0
Real International	12/01/81-11/30/82	0
Sulbow Minerals	12/01/81-11/30/82	[1]0
Sulpetro	12/01/81-11/30/82	[1]28.90
Suncor, Inc.	12/01/81-11/30/82	[1]26.95
Suncor/Canamex	12/01/81-11/30/82	[1]20.28
Texaco Canada Resources	12/01/81-11/30/82	[1]28.90
Tiger Chemicals, Ltd.	12/01/81-12/27/82	0
Western Decalta	12/01/81-11/30/82	[1]28.90
Westcoast Transmission	12/01/81-11/30/82	[1]28.90

[1] No shipments during the period.

Also as a result of the review the Department revokes the antidumping finding on elemental sulphur from Canada with respect to Tiger Chemicals Ltd., Pan Canadian Petroleum Ltd., Amoco Canada Petroleum Company Ltd., Imperial Oil Ltd./Exxon Chemical Americas, Inc., Canterra Energy Ltd. (formerly Aquitaine Company of Canada, Ltd.), CDC Oil & Gas Ltd., and Dome Petroleum Ltd. For the reasons set forth in the preliminary results, we are satisfied that there is no likelihood of resumption of sales at less than foreign market value by these firms. This partial revocation applies to all unliquidated entries of this merchandise exported by Tiger Chemicals Ltd. and CDC Oil & Gas Ltd., or produced and exported by Pan Canadian Petroleum Ltd., Amoco Canada Petroleum Company Ltd., Imperial Oil Ltd./Exxon Chemicals Americas, Inc., Canterra Energy Ltd., and Dome Petroleum Ltd., and entered, or withdrawn from warehouse, for consumption on or after December 27,

1982, the date of publication of our tentative determination to revoke with regard to these firms.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, the Department shall require a cash deposit of estimated antidumping duties based on the above margins for these firms. For any future shipment from a new exporter not covered in this or prior administrative reviews, whose first shipments of Canadian elemental sulphur occurred after November 30, 1982, and who is unrelated to any reviewed firm, we shall require a cash deposit of 1.98 percent. These deposit requirements are effective for all shipments entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible.

This administrative review, partial revocation, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

September 11, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-22319 Filed 9-17-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-008]

Carbon Steel Plate From Brazil, Final Results of Changed Circumstances; Administrative Review and Termination of Suspended Countervailing Duty Investigation

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Changed Circumstances Administrative Review and Termination of Suspended Countervailing Duty Investigation.

SUMMARY: On July 23, 1985, the Department of Commerce published the preliminary results of its administrative review of the suspended countervailing duty investigation on carbon steel plate from Brazil and announced its tentative determination to terminate the suspended investigation. The review covers the period from September 7, 1982.

We gave interested parties an opportunity to comment. We received no comments. We therefore determine that domestic interested parties are no longer interested in continuation of the suspended investigation, and we are terminating the suspended investigation. In accordance with the petitioner's notification, the termination will apply to all carbon steel plate entered, or withdrawn from warehouse, for consumption on or after September 7, 1982.

EFFECTIVE DATE: September 7, 1982.

FOR FURTHER INFORMATION CONTACT: Peggy Clarke or AJ Jemmott, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Backgound

On July 23, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 29996) the preliminary results of its changed circumstances administrative review of the suspended countervailing duty investigation on carbon steel plate from Brazil (47 FR 39394; September 7, 1982). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Brazilian carbon steel plate. The term "carbon steel plate" covers hot-rolled carbon steel products, whether or not corrugated or crimped; not pickled; not cold-rolled; not in coils; not cut, not pressed, and not stamped to non-rectangular shape; 0.1875 inch or more in thickness and over 8 inches in width; as currently provided for in items 607.6615 or 607.9400 of the Tariff Schedules of the United States Annotated ("TSUSA"); and hot- or cold-rolled carbon steel plate which has been coated or plated with zinc including any material which has been painted or otherwise covered after having been coated or plated with zinc, as currently provided for in items 608.0711 or 608.1100 of the TSUSA. Semi-finished products of solid rectangular cross section with a width at least four times the thickness in the as cast condition and processed only through primary mill hot-rolling are not included. This review covers the period from September 7, 1982.

Final Results of the Review and Termination

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to terminate. We received no comments.

As a result of our review, we determine that the domestic interested parties are not longer interested in continuation of the suspended countervailing duty investigation on carbon steel plate from Brazil and that the suspension of investigation should be terminated on this basis. Therefore, we are terminating the suspended investigation on carbon steel plate from Brazil effective September 7, 1982.

This administrative review, termination, and notice are in accordance with sections 750 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b), (c)) and §§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: September 12, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 85-22336 Filed 9-17-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-489-502]

Postponement of Preliminary Countervailing Duty Determinations; Certain Welded Carbon Steel Pipe and Tube Products From Turkey

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of petitioners, the standard pipe subcommittee and the line pipe subcommittee of the Committee on Pipe and Tube Imports (CPTI) and each of their member companies which produce standard pipe and line pipe, the Department of Commerce is postponing its preliminary determinations in countervailing duty investigations of certain welded carbon steel pipe and tube products from Turkey. The preliminary determinations will be made on or before October 21, 1985.

EFFECTIVE DATE: September 18, 1985.

FOR FURTHER INFORMATION CONTACT: Peter Sultan or Mary Martin, Office of Investigations, Import Administration,

International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377–2815 or 377–3464.

SUPPLEMENTARY INFORMATION: On August 2, 1985, the Department initiated countervailing duty investigations on certain welded carbon steel pipe and tube products from Turkey. In our notice of initiation, we stated that we would issue our preliminary determinations on or before October 9, 1985 (50 FR 32248, August 9, 1985).

On September 5, 1985, the petitioners filed a request that the preliminary determinations in these investigations be postponed to October 21, 1985.

Section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), provides that the preliminary determination in a countervailing duty investigation may be postponed, where the petitioner has made a timely request for such a postponement. Pursuant to this provision and the request by petitioners in these investigations, the Department is postponing its preliminary determinations to not later than October 21, 1985.

This notice is published pursuant to section 703(c)(2) of the Act.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

September 12, 1985.

[FR Doc. 85–22337 Filed 9–17–85; 8:45 am]

BILLING CODE 3510–DS–M

President's Export Council; Open Meeting

A meeting of the President's Export Council will be held September 23, 1985, 1:45 p.m.–3:30 p.m. in Room 4830 of the Department of Commerce, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW, Washington, D.C. The Council's purpose is to advise the President on matters relating to United States export trade.

Agenda: Opening remarks; overview of the current U.S. trade position; discussion of organizational issues; and establishment of subcommittees.

The meeting will be open to the public with a limited number of seats available. Prior to the meeting, there will be ceremonial activities at the White House to swear-in the new members. The ceremony will be closed to the public for reasons of White House security. For further information reservations to attend the open session, or copies of the minutes contact Laureen Daly (202) 377–1125.

Dated: September 16, 1985.

Henry P. Misisco,

Acting Director, Office of Planning and Coordination.

[FR Doc. 85–22428 Filed 9–17–85; 8:45 am]

BILLING CODE 3510–DR–M

Patent and Trademark Office

Interim Protection for Mask Works of Nationals, Domiciliaries, and Sovereign Authorities of Certain Member States of the European Economic Community

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Issuance of interim orders.

SUMMARY: The Secretary of Commerce has delegated to the Assistant Secretary and Commissioner of Patents and Trademarks, by Amendment 1 to Department Organization Order 10–14, the authority under section 914 of title 17 of the United States Code (the copyright law) to make findings and issue orders for the interim protection of mask works.

On June 20, 1985, the Patent and Trademark Office received a petition for the issuance of an interim order from the Commission of the European Communities on behalf of the European Economic Community. Comments on the petition were requested on or before July 19, 1985. Comments were received from the Semiconductor Industry Association (SIA), the Union of Industries of the European Community (UNICE), and the European Electronic Component Manufacturers Association (EECA).

In their comments the SIA, UNICE, and the EECA supported the issuance of an interim order. SIA urged that any order issued should be limited to one year, and the Commission and UNICE have argued for an 18 month order. The Commissioner has determined that, in view of the demonstrated good faith efforts and reasonable progress in the European Communities toward providing protection for mask works of U.S. nationals and domiciliaries, orders for the Member States of the European Economic Community should issue for one year from the date of signature of the orders.

EFFECTIVE DATE: The effective date of these orders shall be June 20, 1985, the date of receipt of the petition.

Termination Date: These orders shall terminate on September 12, 1986, one year from their date of signature.

FOR FURTHER INFORMATION CONTACT: Michael K. Kirk, Assistant Commissioner for External Affairs, by telephone at (703) 557–3065, or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Box 4, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: Chapter 9 of title 17 of the United States Code establishes an entirely new form of intellectual property protection for mask works that are fixed in semiconductor chip products. Mask works are defined in 17 U.S.C. 901(a)(2) as:

> A series of related images, however, fixed or encoded
>
> (A) Having or representing the predetermined, three-dimensional pattern of metallic, insulating or semi-conductor material present or removed from the layers of a semiconductor chip product; and
>
> (B) In which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.

Chapter 9 provides for a 10-year term of protection for original mask works, measured from the earlier of their date of registration in the U.S. Copyright Office, or their first commercial exploitation anywhere in the world. Mask works must be registered within 2 years of their first commercial exploitation to maintain this protection. Section 913(d)(1) provides that mask works first commercially exploited on or after July 1, 1983, are eligible for protection provided that they are registered in the U.S. Copyright Office before July 1, 1985.

Foreign mask works are eligible for protection under basic criteria set out in 17 U.S.C. 902. First, the owner of the mask works must be a national, domiciliary, or sovereign authority of a foreign nation that is a party to a treaty providing for the protection of a mask work to which the United States is also a party, or a stateless person wherever domiciled; second, the mask work must be first commercially exploited in the United States; or that the mask work comes within the scope of a Presidential proclamation. Section 902(a)(2) provides that the President may issue such a proclamation upon a finding that:

> A foreign nation extends to mask works of owners who are nationals or domiciliaries of the United States protection (A) on substantially the same basis as that on which the foreign nation extends protection to mask works of its own nationals and domiciliaries and mask works first commercially exploited in that nation, or (B) on substantially the same basis as provided under this chapter, the President may by proclamation extend protection under this chapter to mask works (i) of owners who are, on the date on which the mask works are registered under section 908, or the date on which the mask works are first commercially exploited anywhere in the world, whichever occurs first, nationals,

domiciliaries, or sovereign authorities of that nation, or (ii) which are first commercially exploited in that nation.

In order to encourage steps toward a regime of international comity in mask works protection, section 914(a) provides that the Secretary of Commerce may extend the privilege of obtaining interim protection under chapter 9 to nationals, domiciliaries, and sovereign authorities of foreign nations if the Secretary finds:

(1) That the foreign nation is making good faith efforts and reasonable progress toward—

(A) Entering into a treaty described in section 902(a)(1)(A), or

(B) Enacting legislation that would be in compliance with subparagraph (A) or (B) of section 902(a)(2); and

(2) That the nationals, domiciliaries, and sovereign authorities of the foreign nation, and persons controlled by them, are not engaged in the misappropriation, or unauthorized distribution or commercial exploitation of mask works; and

(3) That issuing the order would promote the purposes of this chapter and international comity with respect to the protection of mask works.

Section 914 of the SCPA provides for the issuance of interim orders with respect to foreign nations, but it also recognizes that a petition requesting such an order may be submitted by any person. In this proceeding we have a petition submitted by an international organization on behalf of its Member States. By their June 19 Council Resolution the Member States of the European Community have acknowledged the importance of providing for the legal protection of semiconductor chips, and have unanimously resolved to "examine the proposal for a directive which the Commission will soon be submitting on the legal protection of the typographies of semiconductor products with a view of deciding on its adoption as rapidly as possible, subject to whatever amendments may be necessary, in particular, in light of the Opinion of the European Parliament and the Economic and Social Committee."

At the July 23 hearing Mr. Robert J. Coleman, Head of the Intellectual Property and Unfair Competition Division of the Commission of the European Communities, explained the Commission procedures and the activity that has taken place with respect to the protection of semiconductor chips. He explained that the Commission is planning to issue a "directive" that would create a legal framework for the protection of semiconductor chip designs in the Member States of the Community. The present proposed directive, which was published as part of the Notice of Initiation of Proceeding for Interim Protection for Mask Works of Nationals, Domiciliaries, and Sovereign Authorities of the European Economic Community, 50 FR 26821 (June 28, 1985), seeks to define the fundamental conditions for the availability and scope of protection to be provided for semiconductor chip designs in the laws of the various Member States. Mr. Coleman explained that after extensive consultations with industry and governmental experts, a draft, including any appropriate revisions, will be submitted to the Council of the European Community. He expects that this will take place in November, 1985. After that, the proposed directive will be considered by the European Parliament. When adopted, the directive will obligate member states to take legal action to comply with its terms. If States fail to act, proceedings to enforce the directive can be undertaken in the European Court of Justice. Mr. Coleman asserts "that the historical record show this process is effective in ensuring that directives are respected, even if it may take a little time to do so." In its comments, the SIA states that it "believes that the outline of the draft directive submitted by the Commission of the European Communities shows that the Commission is making good faith efforts to implement semiconductor chip protection legislation that will be substantially on the same basis as that enacted under the United States SCPA." Both the SIA and the Commission acknowledge that the minimum standards of protection set out in the draft directive do not contain the level of detail found in the U.S. law or in a national law.

Consequently, in this instance, it is reasonable to conclude that the actions being undertaken by the Commission of the European Communities are being undertaken on behalf of all of its Member States and that the requisite findings and conclusions called for in § 914 of the SCPA with respect to the Commission's activities are equally applicable to its Member States.

At the July 23 hearing the SIA discussed a number of the areas in which they believed more detail or specificity in the decree would be appropriate, including:

- Registration and deposit procedures;
- Notice of protection to be affixed to the work;
- The extent to which intermediate forms of chip products will be protected;
- The extent of permissible reverse engineering;
- The protection of innocent infringers;
- The extent of copying that will constitute an infringement; and
- Dispute resolution procedures and damages.

Because of their belief that the Community is making good faith efforts toward encouraging the development of national level chip protection laws in its respective Member States, SIA supports the issuance of an appropriate interim order but, because of the number of remaining open questions about the form and the detailed provisions of such legislation, SIA urges that a one-year order would be appropriate. The Commission, on the other hand, in view of the complexity of the political system and the technological issues involved has argued that such an order should issue for at least eighteen months.

During the course of this proceeding there has been no information submitted that alleges that nationals, domiciliaries, and sovereign authorities of the Member States of the European Community are engaged in misappropriation or unauthorized commercial exploitation of mask works. The comments of UNICE suppot this view.

In his testimony, Mr. Coleman argues forcefully that the Commission's actions will have a positive effect on the rapid development of a body of law that will afford appropriate protection to semiconductor chips. He further suggests that the issuance of an appropriate interim order will encourage continued progress toward international comity in mask work protection. The SIA, in its statement, welcomes the Commission's efforts and expresses hope that these efforts will promote "moving toward a global system of harmonized mask work protection."

Based upon our analysis of the record of this proceeding we have concluded that granting interim orders for the Memer States of the European Community will promote international comity in the protection of mask works. As shown in the preceeding discussion, the conditions for the issuance of those interim orders have been fulfilled.

The record supports the conclusion that the Commission of the European Communities, on behalf of its Member States, is engaged in good faith efforts to develop effective legislation to protect semiconductor chip products. However, we recognize that these activities are in a preliminary stage of development. We have determined that, a review of progress would be appropriate, but the order should be long enough to permit the Europen Community to make significant progress toward developing

its directive and legislative proposals. Accordingly, these orders will endure until one year from their date of signature. This will permit a timely review of progress without unduly burdening either the parties to this proceeding or the Government.

Accordingly, I am issuing interim orders for the Member States of the European Community, excluding Great Britain since a full-term order has already been issued for that country. The interim order for the Netherlands issued on June 22, 1985, 50 FR 26818, will be extended to expire on September 12, 1986, to provide for a uniform review of progress in the development of the Community's legislative proposals.

Order Extending Interim Protection Under Chapter 9, Title 17, United States Code, to Natonals, Domiciliaries, and Sovereign Authorities of Belgium

In accordance with the authority vested in me by Amendment 1 to Department Organization Order 10-14 regarding 17 U.S.C. 914, and based upon the records of this proceeding commenced on June 28, 1985, I find that: Belgium is and has, since June 20, 1985, been making good faith efforts toward providing effective protection for mask works in compliance with 17 U.S.C. 902(a)(2); Belgian nationals, domiciliaries, and sovereign authorities and persons controlled by them are not engaged in the misappropriation or unauthorized distribution or commercial exploitation of mask works; and, the issuance of this order will promote international comity with respect to the protection of mask works.

Accordingly, nationals, domiciliaries, and sovereign authorities of Belgium are entitled to protection under chapter 9 of title 17 of the United States Code subject to compliance with all formalities specified therein. The effective date of this order shall be June 20, 1985, and this order shall terminate on September 12, 1986, one year from its date of signature.

Order Extending Interim Protection Under Chapter 9, Title 17, United States Code, to Nationals, Domiciliaries, and Sovereign Authorities of Denmark

In accordance with the authority vested in me by Amendment 1 to Department Organization Order 10-14 regarding 17 U.S.C. 914, and based upon the records of this proceeding commenced on June 28, 1985, I find that: Denmark is and has, since June 20, 1985, been making good faith efforts toward providing effective protection for mask works in compliance with 17 U.S.C. 902(a)(2); Danish nationals, domiciliaries, and sovereign authorities and persons controlled by them are not engaged in the misappropriation or unauthorized distribution or commercial exploitation of mask works; and, the issuance of this order will promote international comity with respect to the protection of mask works.

Accordingly, nationals, domiciliaries, and sovereign authorities of Denmark are entitled to protection under chapter 9 of title 17 of the United States Code subject to compliance with all formalities specified therein. The effective date of this order shall be June 20, 1985, and this order shall terminate on September 12, 1986, one year from its date of signature.

Order Extending Interim Protection Under Chapter 9, Title 17, United States Code, to Nationals, Domiciliaries, and Sovereign Authorities of France

In accordance with the authority vested in me by Amendment 1 to Department Organization Order 10-14 regarding 17 U.S.C. 914, and based upon the records of this proceeding commenced on June 28, 1985, I find that: France is and has, since June 20, 1985, been making good faith efforts toward providing effective protection for mask works in compliance with 17 U.S.C. 902(a)(2); French nationals, domiciliaries, and sovereign authorities and persons controlled by them are not engaged in the misappropriation or unauthorized distribution or commercial exploitation of mask works; and, the issuance of this order will promote international comity with respect to the protection of mask works.

Accordingly, nationals, domiciliaries, and sovereign authorities of France are entitled to protection under chapter 9 of title 17 of the United States Code subject to compliance with all formalities specified therein. The effective date of this order shall be June 20, 1985, and this order shall terminate on September 12, 1986, one year from its date of signature.

Order Extending Interim Protection Under Chapter 9, Title 17, United States Code, to Nationals, Domiciliaries, and Sovereign Authorities of the Federal Republic of Germany

In accordance with the authority vested in me by Amendment 1 to Department Organization Order 10-14 regarding 17 U.S.C. 914, and based upon the records of this proceeding commenced on June 28, 1985, I find that: the Federal Republic of Germany is and has, since June 20, 1985, been making good faith efforts toward providing effective protection for mask works in compliance with 17 U.S.C. 902(a)(2); German nationals, domiciliaries, and sovereign authorities the Federal Republic of Germany and persons controlled by them are not engaged in the misappropriation or unauthorized distribution or commercial exploitation of mask works; and, the issuance of this order will promote international comity with respect to the protection of mask works.

Accordingly, nationals, domiciliaries, and sovereign authorities of the Federal Republic of Germany are entitled to protection under chapter 9 of title 17 of the United States Code subject to compliance with all formalities specified therein. The effective date of this order shall be June 20, 1985, and this order shall terminate on September 12, 1986, one year from its date of signature.

Order Extending Interim Protection Under Chapter 9, Title 17, United States Code, to Nationals, Domiciliaries, and Sovereign Authorities of Greece

In accordance with the authority vested in me by Amendment 1 to Department Organization Order 10-14 regarding 17 U.S.C. 914, and based upon the records of this proceeding commenced on June 28, 1985, I find that: Greece is and has, since June 20, 1985, been making good faith efforts toward providing effective protection for mask works in compliance with 17 U.S.C. 902(a)(2); Greek nationals, domiciliaries, and sovereign authorities and persons controlled by them are not engaged in the misappropriation or unauthorized distribution or commercial exploitation of mask works; and, the issuance of this order will promote international comity with respect to the protection of mask works.

Accordingly, nationals, domiciliaries, and sovereign authorities of Greece are entitled to protection under chapter 9 of title 17 of the United States Code subject to compliance with all formalities specified therein. The effective date of this order shall be June 20, 1985, and this order shall terminate on September 12, 1986, one year from its dated of signature.

Order Extending Interim Protection Under Chapter 9, Title 17, United States Code, to Nationals, Domiciliaries, and Sovereign Authorities of Ireland

In accordance with the authority vested in me by Amendment 1 to Department Organization Order 10-14 regarding 17 U.S.C. 914, and based upon the records of this proceeding commenced on June 28, 1985, I find that: Ireland is and has, since June 20, 1985, been making good faith efforts toward providing effective protection for mask works in compliance with 17 U.S.C. 902(a)(2); Irish nationals, domiciliaries, and sovereign authorities and persons

controlled by them are not engaged in the misappropriation or unauthorized distribution or commercial exploitation of mask works; and, the issuance of this order will promote international comity with respect to the protection of mask works.

Accordingly, nationals, domiciliaries, and sovereign authorities of Ireland are entitled to protection under chapter 9 of title 17 of the United States Code subject to compliance with all formalities specified therein. The effective date of this order shall be June 20, 1985, and this order shall terminate on September 12, 1986, one year from its date of signature.

Order Extending Interim Protection Under Chapter 9, Title 17, United States Code, to Nationals, Domiciliaries, and Sovereign Authorities of Italy

In accordance with the authority vested in me by Amendment 1 to Department Organization Order 10-14 regarding 17 U.S.C. 914, and based upon the records of this proceeding commenced on June 28, 1985, I find that: Italy is and has, since June 20, 1985, been making good faith efforts toward providing effective protection for mask works in compliance with 17 U.S.C. 902(a)(2); Italian nationals and domiciliaries, and sovereign authorities and persons controlled by them are not engaged in the misappropriation or unauthorized distribution or commercial exploitation of mask works; and, the issuance of this order will promote international comity with respect to the protection of mask works.

Accordingly, nationals, domiciliaries, and sovereign authorities of Italy are entitled to protection under chapter 9 of title 17 of the United States Code subject to compliance with all formalities specified therein. The effective date of this order shall be June 20, 1985, and this order shall terminate on September 12, 1986, one year from its date of signature.

Order Extending Interim Protection Under Chapter 9, Title 17, United States Code, to Nationals, Domiciliaries, and Sovereign Authorities of Luxembourg

In accordance with the authority vested in me by Amendment 1 to Department Organization Order 10-14 regarding 17 U.S.C. 914, and based upon the records of this proceeding commenced on June 28, 1985, I find that: Luxembourg is and has, since June 20, 1985, been making good faith efforts toward providing effective protection for mask works in compliance with 17 U.S.C. 902(a)(2); nationals, domiciliaries, and sovereign authorities of Luxembourg and persons controlled by them are not engaged in the misappropriation or unauthorized distribution of commercial exploitation of mask works; and, the issuance of this order will promote international comity with respect to the protection of mask works.

Accordingly, nationals, domiciliaries, and sovereign authorities of Luxembourg are entitled to protection under chapter 9 of title 17 of the United States Code subject to compliance with all formalities specified herein. The effective date of this order shall be June 20, 1985, and this order shall terminate on September 12, 1986, one year from its date of signature.

Dated: September 12, 1985.

Donald J. Quigg,

Commissioner of Patents and Trademarks—Designate.

[FR Doc. 85-22320 Filed 9-17-85; 8:45 am]

BILLING CODE 3510-16-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Requesting Public Comment on Bilateral Textile Consultations With Uruguay Concerning Category 335

September 13, 1985.

On August 29, 1985, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles, requested the Government of Uruguay to enter into consultations concerning exports to the United States of women's, girls' and infants' cotton coats in Category 335, produced or manufactured in Uruguay.

The purpose of this notice is advise the public that, if no solution is agreed upon with the Government of Uruguay in consultations during the sixty-day period which began on August 29, 1985 and extends through October 27, 1985, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton textile products in Category 335, produced or manufactured in Uruguay and exported to the United States during the twelve-month period which began on August 29, 1985 and extends through August 28, 1986 at a level of 32,201 dozen.

A summary market statement follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of this category is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in respose to this notice will be available for public inspection in the Office of Textile and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Uruguay—Market Statement

Category 335—Women's, Girls', and Infants' (WGI) Cotton Coats, etc.

August 1985.

Summary and Conclusions

United States imports of Category 335 from Uruguay were 38,000 dozens in the year-ending June 1985. This compares with 1,000 dozens imported in the previous twelve months. Seventy-one percent of these imports were shipped in the first six months of 1985. Annualized, the year to date imports would be close to 54,000 dozens. Imports from Uruguay were 11,000 dozens in calendar year 1984, and less than 5 dozen in the previous year.

Production

U.S. production of Category 335 coats averaged 1.5 million dozens during the first half of the seventies, 905,000 dozens during the second half and 665,000 dozens from 1980 through 1983. Production in 1983 amounted to 661,000 dozens, down 25 percent from the 782,000 dozens produced in 1982. Production in 1984 was down an additional 21 percent from the 1983 level.

Imports

U.S. imports of Category 335 from all sources were at a record level of 2,177,000 dozens in 1984, up 33 percent from the 1,632,000 dozens imported in 1983. Year-ending June 1985 imports were up 10 percent from the same period in 1984.

Import Penetration

During the first half of the seventies, the ratio of imports to domestic production of Category 335 averaged 30 percent. This almost tripled to 88 percent during the last half of the decade and rapidly escalated to

246 percent during the first four years of the eighties. The 1984 ratio reached an all time high of 414.7 percent, one of the highest ratios of all apparel items.

The domestic producers' share of the market for domestically produced and imported Category 335 declined precipitously during the seventies and continued downward in the early eighties. They accounted for only 19 percent of the market in 1984.

Import Values

Approximately 80 percent of the year ending June 1985 imports of Category 335 from Uruguay entered under one TSUSA classification. This was 383.3477—Women's other coats, not ornamented, over 4 U.S. dollars.[1] These items entered at duty paid values below the U.S. producers' prices for similar garments.

[FR Doc. 85-22321 Filed 9-17-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Navy

Board of Advisors to the Superintendent, Naval Postgraduate School; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Board of Advisors to the Superintendent, Naval Postgraduate School, Monterey, California, will meet on December 5–6 1985, in Herrmann Hall at the School. On both days the first session will commence at 8:15 a.m. and terminate at 12:00 noon and the second session will commence at 1:15 p.m. and terminate at 5:00 p.m. All sessions are open to the public.

The purpose of the meeting is to elicit the advise of the board on the Navy's Postgraduate Education Program. The board examines the effectiveness with which the Naval Postgraduate School is accomplishing its mission. To this end the board will inquire into the curricula; instruction; physical equipment; administration; state of morale of the student body, faculty and staff; fiscal affairs; and any other matters relating to the operation of the Naval Postgraduate School as the board considers pertinent.

For further information concerning this meeting contact: Commander M. R. Merickel, USN (Code 007), Naval Postgraduate School, Monterey, California 93943, Telephone: (408) 646-2514.

[1] 1984 TSUSA Classification 383.3464.

Dated: September 12, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 85-22280 Filed 9-17-85; 8:45 am]

BILLING CODE 3810-AE-M

Board of Visitors to the United States Naval Academy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Board of Visitors to the United States Naval Academy will meet October 25, 1985, at the United States Naval Academy, Annapolis, Maryland. The session, which is open to the public, will commence at 8:30 a.m. and terminate at 11:55 a.m., October 25, 1985, in Room 301, Rickover Hall.

The purpose of the meeting is to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic method of the Naval Academy.

For further information concerning this meeting contact: Captain John W. Renard, U.S. Navy, Retired, Secretary to the Board of Visitors, Dean of Admissions, United States Naval Academy, Annapolis, Maryland 21402-5017, (301) 267-4361.

Dated: September 12, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 85-22278 Filed 9-17-85; 8:45 am]

BILLING CODE 3810-AE-M

Naval Discharge Review; Hearing Locations

In November 1975, the Naval Discharge Review Board commenced to convene and conduct prescheduled discharge review hearings for a number of days each quarter in locations outside of the Washington, D.C. area. The cities in which these hearings are scheduled are determined in part by the concentration of applicants in a geographical area.

The following NDRB itinerary for February 1986 through November 1986 has been approved, but remains subject to modification if required:

3 through 14 February 1986—San Diego/San Francisco, California
24 through 28 March 1986—Chicago, Illinois
28 April through 2 May 1986— Dallas, Texas
4 through 15 August 1986—San Diego/San Francisco, California
22 through 26 September 1986—Chicago, Illinois
3 through 7 November 1986—Dallas, Texas.

Any former member of the Navy or Marine Corps who desires a discharge review, either in Washington, D.C. or in a city nearer to their residence, should file an application with the Naval Discharge Review Board using DD Form 293. If a personal appearance is requested, the petitioner should enter on the application the hearing location which is preferred. Application forms (DD 293) may be obtained from, and the completed application should be mailed to, the following address: Naval Discharge Review Board, Suite 905, 801 North Randolph Street, Arlington, Virginia 22203-1989.

Notice is hereby given that, since the foregoing itinerary is subject to modification and since, following receipt of a new application, the Naval Discharge Review Board must obtain the applicant's military records before a hearing may be scheduled, the submission of an application to the Naval Discharge Review Board is not tantamount to scheduling a hearing. Applicants and representatives will be mailed a notification of the date and place of their hearing when personal appearance has been requested.

For further information concerning the NDRB, contact: Captain L. E. Hilder, U.S. Navy, Executive Secretary, Naval Discharge Review Board, Suite 905, 801 North Randolph Street, Arlington, Virginia 22203-1989, (202) 696-4881.

Dated: September 12, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85-22279 Filed 9-17-85; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Deputy Under Secretary for 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 October 18, 1985.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs.

Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426–7304.

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 Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the 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) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: September 13, 1985.

Linda M. Combs,

Deputy Under Secretary for Management.

Office of Intergovernmental and Interagency Affairs

Type of Review Requested: Revision
Title: Presidential Adcademic Fitness Award (PAFA) School Participation Order Form
Agency Form Number: L60–1P
Frequency: Annually
Affected Public: State or local governments; Non-profit institutions
Reporting Burden Responses: 50,000; Burden Hours: 16,650
Recordkeeping Burden, Recordkeepers: 0; Burden Hours: 0

Abstract: This form will be sent to all schools, public and private, grades K–12. Schools that wish to participate in the Presidential Academic Fitness Award (PAFA) program will return the form, confirming their address and other preprinted data from the NCES school universe tape, and indicate on the form the number of awards needed by the exit grade at the school.

Office of Special Education and Rehabilitative Services

Type of Review Requested: New
Title: Parent Survey
Agency Form Number: ED 925
Frequency: One-time
Affected Public: Individuals or households; State or local governments
Reporting Burden, Responses: 160; Burden Hours: 160
Recordkeeping Burden, Recordkeepers: 0; Burden Hours: 0

Abstract: This study will identify possible relationships between the needs of parents of children with severe handicaps and the family's decisions to place such children in out-of-home residential facilities.

Office of Educational Research and Improvement

Type of Review Requested: Revision
Title: National Assessment of Educational Progress 1985–86 Assessment Part II: Background/Attitude, Math, Reading, Science, Computers, Office of Bilingual Education and Minority Language Affairs, Foundations of Literacy—U.S. History and Literature
Agency Form Number: ED 2371–17
Frequency: Non-recurring
Affected Public: Individuals or households; State or local governments
Reporting Burden, Responses: 103,400; Burden Hours: 93,060
Recordkeeping Burden, Recordkeepers: 0; Burden Hours: 0

Abstract: Congress mandated the collection of National Assessment survey data. The data collection, to occur in the Spring of 1986, includes (1) cognitive exercises in math, reading, science, computers, U.S. history and literature; (2) achievement-related student, teacher and school background and attitude questionnaires; and (3) a study of language minority students. Respondents will be a national sample of students ages 9, 13 and 17 (grades 3, 7 and 11) and their teachers and principals. Data will be useful for policy makers in education, research, legislatures and the public.

Office of Planning, Budget and Evaluation

Type of Review Requested: New
Title: Selection Procedures for Identifying Students in Need of Special Language Services
Agency Form Number: P75–5P
Frequency: One-time
Affected Public: State or local governments
Reporting Burden, Responses: 1,200; Burden Hours: 1,800
Recordkeeping Burden, Recordkeepers: 0; Burden Hours: 0

Abstract: As required by section 735 (b)(4) of Title VII of the Elementary and Secondary Education Act, as amended by Pub. L. 98–511, the Department is conducting a study to determine the effectiveness of different testing procedures to identify students for placement into special language programs and for reclassification once they have developed sufficient English language proficiency to benefit from an all-English instructional program.

Office of Postsecondary Education

Type of Review Requested: Revision
Title: Student Aid Report
Agency Form Number: ED 255–1
Frequency: Annually
Affected Public: Individuals or households; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations
Reporting Burden: Responses: 15,102,102; Burden Hours: 1,954,094
Recordkeeping Burden: Recordkeepers: 6,100; Burden Hours: 491,086

Abstract: This report contains parental and/or student income and asset information which is used to determine the amount of Federal aid the student receives for educational purposes.

Type of Review Requested: Revision
Title: Report of Defaulted Loans as of December 31
Agency Form Number: E40–1P (formerly ED 574)
Frequency: Annually
Affected Public: Non-profit institutions; For-profit institutions
Reporting Burden, Responses: 4,000; Burden Hours: 2,000
Recordkeeping Burden, Recordkeepers: 2; Burden Hours: 512

Abstract: This report is used by institutions that have established a loan fund under the National Direct Student Loan Program to provide information to the Secretary on defaulted student loans. The data may be used to determine default trends and to compare the performance of various institutions.

[FR Doc. 85–22325 Filed 9–17–85; 8:45 am]

BILLING CODE 4000–01–M

Office of Postsecondary Education

National Resource Centers Program and Foreign Language and Area Studies Fellowships Program; Application for Non-Competing Continuation Awards for Fiscal Year 1986

Applications are invited for non-competing continuation awards under the National Resource Centers Program and the Foreign Language and Area Studies Fellowships Program. Applications are for the second funding year of a 3-year project period established by last year's competition.

Authority for these programs is contained in section 602 of the Higher Education Act of 1965, as amended. (20 U.S.C. 1122)

Under these programs, the Secretary makes awards to institutions of higher education.

The purpose of the National Resource Centers Program is to provide general assistance for nationally recognized centers of excellence in modern foreign languages and area studies and in modern foreign languages and international studies. The purpose of the Foreign Language and Area Studies Fellowships Program is to provide incentive awards to meritorious students undergoing advanced training in modern foreign languages and related area and international studies. The fellowships are awarded through approved institutions of higher education.

Closing Date for Transmittal of Applications

To be assured of consideration for funding, an application for a non-competing continuation grant should be mailed or hand delivered by December 2, 1985. If an application is late the Department of Education may lack sufficient time to review it with other non-competing continuation applications and may decline to accept it.

Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.015, National Resource Centers and Fellowships Programs, 400 Maryland Avenue, SW., Washington, D.C. 20202.

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 label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary 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 date postmark. Before relying on this method, an applicant should check with the local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications Delivered by Hand

An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

Available Funds

Fiscal year 1986 funds have not yet been appropriated for the National Resource Centers and Foreign Language and Area Studies Fellowships Programs. However, applications are invited to allow sufficient time to evaluate applications and complete the grants process prior to the end of the fiscal year, should the Congress appropriate funds for these programs. In FY 1985, approximately 93 awards were made to National Resource Centers at an average level of approximately $131,000. The apportioning of funds will favor priority activities described in the application closing date notice for the FY 1985 competition.

Approximately $7,550,000 may be available for the Fellowships Program. Approximately 800 awards could be made in FY 1986 at this level of funding. Expected stipend levels would be $5,000 for an academic year fellowship and $1,250 for a summer intensive language fellowship. Fellowships to be used at summer cooperative programs on other campuses or abroad may also include travel funds, which would be expected not to exceed $500 for each fellowship.

These estimates do not bind the U.S. Department of Education to a specific number of grants, or to the amount of any grant, unless the amount is otherwise specified by statute or regulations. This would be the second of a three-year funding commitment, with this and third year funding dependent on performance and availability of funds.

Application Forms

Application forms and program information packages are expected to be ready for mailing by September 20, 1985. They are available only for currently funded centers and fellowships programs and may be obtained by writing to the Advanced Training and Research Branch, Center for International Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3923 ROB-3), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The program information package is intended only to aid applicants in applying for assistance under this budget period. Nothing in the program information package is intended to impose any paperwork, application content reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations governing the competition. The Secretary strongly urges that the narrative portion of the application not exceed 30 pages, double-spaced, for single institutions and 45 pages for consortia, and that appendices be limited to course lists and vitae of any faculty and professional staff hired since the original application was submitted.

(Approved by OMB under control number 1840-0068)

Applicable Regulations

Regulations applicable to these programs include the following:

(a) Regulations governing the National Resource Centers Program 34 CFR Parts 655 and 656.

(b) Regulations governing the Foreign Language and Area Studies Fellowships Program, 34 CFR Parts 655 and 657.

(c) Regulations governing both programs: Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77 and 78.

Further Information

For further information contact Joseph F. Belmonte, Advanced Training and Research Branch, Center for International Education, U.S. Department of Education, 400 Maryland Avenue, S.W., (Room 3923, ROB-3).

Washington, D.C. 20202. Telephone: (202) 245-9425.

(Catalog of Federal Domestic Assistance No. 84.015—National Resource Centers and Fellowships Programs)

(20 U.S.C. 1122)

Dated: September 21, 1985.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 85-22327 Filed 9-17-85; 8:45 am]

BILLING CODE 4000-01-M

Office of Vocational and Adult Education

Bilingual Vocational Programs; Applications

AGENCY: Department of Education.

ACTION: Extension of closing date for transmittal of applications for new projects for the Bilingual Vocational Training Program, the Bilingual Vocational Instructor Training Program, and the Bilingual Vocational Materials, Methods, and Techniques Program for fiscal year 1986.

SUMMARY: The September 9, 1985 closing date for transmittal of applications for fiscal year 1986 new projects under the Bilingual Vocational Training Program, the Bilingual Vocational Instructor Training Program, and the Bilingual Vocational Materials, Methods, and Techniques Program is extended. The new closing date is October 7, 1985. The original closing date and application notices were published in the **Federal Register** of July 26, 1985, 50 FR 30498. Extension of the closing date is necessary because several requests for applications were not delivered to the new address of the Office of Vocational and Adult Education. Those potential applicants did not receive application packages.

Applications are invited for new projects under the Bilingual Vocational Training Program, the Bilingual Vocational Instructor Training Program, and the Bilingual Vocational Materials, Methods, and Techniques Program. Program information and procedures for applying are contained in the application notice published July 26, 1985.

Intergovernmental review: This program is subject to the requirements of the Executive Order 12372 and the regulations in 34 CFR Part 79. The new date for comments from the State single points of contact and all comments from State, areawide, regional, and local entities must be mailed or hand delivered by December 6, 1985 to the following address:

The Secretary, U.S. Department of Education, Room 4181, (CFDA Nos. 84.077, 84.099, or 84.100), 400 Maryland Avenue, SW., Washington, D.C. 20202. Proof of mailing will be determined on the same basis as that used for applications.

FOR FURTHER INFORMATION CONTACT: For further information contact Ron Castaldi, Program Coordinator, National Projects Branch, Office of Vocational and Adult Education, Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone (202) 732-2369.

(Catalog of Federal Domestic Assistance Nos. 84.077 (Bilingual Vocational Training Program), 84.099 (Bilingual Vocational Instructor Training program), and 84.100 (Bilingual Vocational Materials, Methods, and Techniques Program))

(20 U.S.C. 347(a))

Dated: September 12, 1985.

Robert M. Worthington,

Assistant Secretary, Office of Vocational and Adult Education.

[FR Doc. 85-22326 Filed 9-17-85; 8:45 am]

BILLING CODE 4000-01-M

Meeting; National Advisory Council on Adult Education

AGENCY: Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Adult Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: October 13, 1985, 8:00 p.m. to 10:00 p.m., Executive Committee Meeting; October 14-16, 1985, 9:00 a.m. to 5:00 p.m., Full Council Meeting.

ADDRESS: Sheraton-Tobacco Valley Inn, 450 Bloomfield Avenue, Windsor (Hartford), Connecticut.

FOR FURTHER INFORMATION CONTACT: Helen Banks, National Advisory Council on Adult Education, 2000 L Street, NW, Washington, DC 20036, 202/634-6300.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Adult Education is established under section 313 of the Adult Education Act (20 U.S.C. 1201). The Council is established to advise the Secretary on policy matters concerning the management of the Act, review program and administration effectiveness, and make reports and submit recommendations to the President and Congress relating to Federal adult education activities and services.

The meeting of the Council is open to the public. The proposed agenda includes:

Oath of Office Ceremonies
Department of Education Report
Federal Legislative Update
Adult Education Program Visitations
Standing Committee Reports

Records are kept of all Council proceedings, and are available for public inspection at the office of the National Advisory Council on Adult Education, 2000 L Street, NW, Suite 570, Washington, DC 20036, from the hours of 8:00 a.m. to 4:30 p.m.

Signed at Washington, DC on September 12, 1985.

Lynn Ross Wood,

Executive Director, National Advisory Council on Adult Education.

[FR Doc. 85-22334 Filed 9-17-85; 8:45 am]

BILLING CODE 4000-01-M

National Advisory Council on Women's Educational Programs; Meeting

AGENCY: National Advisory Council on Women's Educational Programs, Education.

ACTION: Notice of regular Council meeting, Executive committee, Civil Rights committee, WEEA Program committee, Federal Policies, Practices and Programs committee and national forum: Opportunities for Women in Transportation.

SUMMARY: This notice sets forth the schedule and proposed agenda of the National Advisory Council on Women's Educational Programs and its Executive; Civil Rights; WEEA Program; and Federal Policies, Practices and Programs Committees. This notice also sets forth the schedule and proposed agenda for the NACWEP-sponsored national forum on Opportunities for Women in Transportation.

The Council agenda will include budget-review, briefing on forum Opportunities for Women in Transportation, discussion of proposed site visits and study of proposal for NACWEP-sponsored national forum on Opportunities for Women at Home.

The agenda for the Civil Rights committee will include election of chairman and vice-chairman and general discussion. The agenda for the WEEA Program committee will include discussion of Education Publishing Center site visit and election of officers. The agenda for the Federal Policies Programs and Practices committee will

include election of officers and general discussion.

Agenda for forum on Opportunities for Women in Transportation will include presentations and discussion from representatives of the transportation industry and the educational system. This notice also describes the function of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: September 25, 1985: 7:00 p.m. to 9:00 p.m. (Executive Committee).

September 26, 1985: 8:00 a.m. to 9:00 a.m. (Civil Rights committee, WEEA Program committee, Federal Policies, Practices and Program committee).

September 26, 1985: 9:00 a.m. to 4:00 p.m. (NACWEP meeting) Recess.

September 26, 1985: 4:00 p.m. to 9:30 p.m. (Registration and opening session of forum on Opportunities for Women in Transportation.

September 27, 1985: 8:00 a.m. to 5:00 p.m. (Forum: Opportunities for Women in Transportation).

September 27, 1985: 5:00 p.m.–7:00 p.m. Council re-convenes.

ADDRESS: All meetings will be held at the Chase Hotel, 212 North Kingshighway, St. Louis, Missouri 63108.

FOR FURTHER INFORMATION CONTACT: Patricia Weber, Deputy Director, National Advisory Council on Women's Educational Programs, 2000 L Street, NW., Suite 568, Washington, DC 20036, (202) 634–6105.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Women's Educational Programs is established pursuant to Pub. L. 95–561. The Council is mandated to (a) advise the Secretary on matters relating to the administration of the Women's Educational Equity Act of 1978; (b) make recommendations to the Secretary with respect to the allocation of any funds pursuant to the Act, including criteria developed to insure an appropriate geographical distribution of approved programs and projects throughout the Nation; (c) recommend criteria for the establishment of program priorities; (d) make such reports as the Council determines appropriate to the President and Congress on the activities of the Council; and (e) disseminate information concerning the activities of the Council.

The Executive Committee will meet on Wednesday, September 25, 1985 from 7:00 p.m. to 9:00 p.m. The agenda will include budget review, briefing on transportation forum and general discussions.

The meetings of the Civil Rights Committee; WEEA Program Committees; and Federal Policies, Practices and Programs, will take place on Thursday, September 26, 1985, from 8:00 a.m to 9:00 a.m. The agenda will include election of officers and general discussions.

The meetings of the Council and forum are open to the public. Records will be kept of the proceedings and will be available for public inspection at the office of the National Advisory Council on Women's Educational Programs, 2000 L Street, NW., Suite 568, Washington, DC 20036.

Signed at Washington, D.C. on September 11, 1985.

Sally A. Todd,

Executive Director.

[FR Doc. 85–22364 Filed 9–17–85; 8:45 am]

BILLING CODE 4000–01–M

National Advisory Council on Continuing Education; Meeting

AGENCY: National Advisory Council on Continuing Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the National Advisory Council on Continuing Education and a conference on Continuing Education and Training in Industrial Nations. It also describes the functions of the Council. Notice of meetings is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: October 9–12, 1985.

ADDRESS: The Ramada Renaissance Hotel, 1143 New Hampshire Avenue, NW., Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: Dr. William G. Shannon, Executive Director, National Advisory Council on Continuing Education, 2000 L Street, NW., Suite 560, Washington, D.C. 20036, Telephone: (202) 634–6077.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Continuing Education is established under section 117 of the Higher Education Act (20 U.S.C. 1109), as amended. The Council is established to advise the President, the Congress, and the Secretary of the Department of Education on the following subjects:

(a) An examination of all federally supported continuing education and training programs, and recommendations to eliminate duplication and encourage coordination among these programs;

(b) The preparation of general regulations and the development of policies and procedures related to the administration of Title I of the Higher Education Act; and

(c) Activities that will lead to changes in the legislative provisions of this title and other federal laws affecting federal continuing education and training programs.

The meetings of the Council are open to the public. However, because of limited space, those interested in attending are asked to call the Council's office beforehand.

The meeting agenda follows:

October 9

9:00 a.m.–1:00 p.m. Briefing for Council members

2:00 p.m.–5:00 p.m. Conference registration

7:00 p.m.–10:00 p.m. Conference reception and dinner

October 10

9:00 a.m.–10:00 p.m. Conference on Continuing Education and Training in Industrial Nations

October 11

9:00 a.m.–10:00 p.m. Conference on Continuing Education and Training in Industrial Nations

October 12

9:00 a.m.–12:00 Noon Council meeting on policy implications and follow-up activities related to the conference.

Records are kept of all Council proceedings and are available for public inspection at the office of the National Advisory Council on Continuing Education, 2000 L Street, NW., Suite 560, Washington, D.C.

Signed at Washington, D.C. on September 11, 1985.

Richard F. McCarthy,

Acting Executive Director.

[FR Doc. 85–22294 Filed 9–17–85; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs and Energy Emergencies

Atomic Energy Agreements; Subsequent Arrangements; Proposed Subsequent Arrangement; Canada

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 Canada concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement, involved approval for disposal as waste within Canada of 282.6 kilograms or uranium enriched to 2.93% in U-235, and 84.5 kilograms of uranium enriched to 2.0% in U-235. The material, which is owned by the Department of Energy, is now in the form of irradiated fuel pieces which were irradiated in the NRU research reactor, then subjected to post-irradiation examination. The material was originally exported from the U.S. to Canada pursuant to U.S. Nuclear Regulatory Commission license XSNM 1671, Amendment 1. The contract for supply of this material by the Department of Energy was processed as a "subsequent arrangement." Disposal within Canada will be of economic benefit to the U.S., since the present value of the material would not justify the costs of return to the United States.

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.

For the Department of Energy.

Dated: September 12, 1985.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85-22368 Filed 9-17-85; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement; Japan

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 Japan concerning Civil Uses of Atomic Energy, as amended, 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 following retransfer: RTD/EU(JA)-83, from Mitsubishi Nuclear Fuel Co., Ltd, Japan to Belgonucleaire, Belgium, 13,086 grams of uranium, containing 785 grams of U-235 (6% enrichment) for irradiation testing in the BR-3 reactor. The test rods contain gadolinium, and are to be tested in order to investigate behavior during irradiation in an effort to develop high burn-up fuels. The material is to be disposed of by Belgonucleaire after completion of post-irradiation examination.

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.

For the Department of Energy.

Dated: September 12, 1985.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs, and Energy Emergencies.

[FR Doc. 85-22369 Filed 9-17-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP85-122-001]

Colorado Interstate Gas Co.; Revised Changes in Rates

September 11, 1985.

Take notice that Colorado Interstate Gas Company (CIG) on September 6, 1985, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume Nos. 1 and 2.

The purpose of this filing is to comply with the directive stated in Ordering Paragraph (D) of the Commission's Order of April 22, 1985, requiring CIG to eliminate from Docket No. RP85-122 all costs associated with facilities which have not been placed in service by September 30, 1985. The filing also incorporates the rate design principles requried by the Commission's Order of August 20, 1985, in Docket No. RP83-86. The proposed effective date of the replacement tariff sheets is September 28, 1985.

Copies of this filing have been served upon the Company's jurisdictional customers and upon interested bodies as well as all parties to this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 18, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-22313 Filed 9-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-652-000]

Diamond Shamrock Exploration Co.; Application

Issued September 12, 1985.

Take Notice that on September 9, 1985, Diamond Shamrock Exploration Company filed an Application for Limited-Term Partial Abandonment Authorization and for Blanket Limited-Term Certificate Authorization for Sales and Transportation. The authority sought therein would grant limited-terms abandonment of sales of gas released by purchasing pipelines and the resale of that and other committed or dedicated gas with pregranted abandonment, pursuant to section 7 of the Natural Gas Act. In addition, the proposed authorization would grant a limited-term certificate with pre-granted abandonment to cover transportation of gas sold under authorization therein and to cover transportation of gas which has been removed from Commission jurisdiction by reason of NGPA section 601(a). Diamond Shamrock is requesting the authorizations therein to the extent the Commission does not issue a final rule containing these authorizations on a generic basis and such rule is in effect on or before November 1, 1985.

These authorizations are being requested to permit continuation of sales and deliveries of gas previously initiated under Diamond Shamrock's Special Marketing Program and other special marketing programs and to permit Diamond Shamrock to maximize its efforts to sell gas to existing and new markets. Eligibility for these authorizations is limited to gas priced in excess of the prevailing ceiling price under NGPA section 109. Diamond Shamrock requests that such authorizations be issued prior to November 1, 1985 and be effective as of

November 1, 1985 to avoid market disruptions which may be caused by termination of sales under Diamond Shamrock's DSSMP and other authorized special marketing programs on October 31, 1985.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make protest with reference to said application should on or before September 24, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with he Commission's Rules.

Under the procedure herein provided for, unless Diamond Shamrock is otherwise advised, it will be unnecessary for Diamond Shamrock to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-22314 Filed 9-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI62-1015-000]

Perry L. Larson Operating Co.; Application

September 12, 1985.

Take notice that on September 10, 1985, Perry L. Larson Operating Company (Larson), 8350 North Central Expressway, Suite 808, Dallas, Texas, 75206, filed in Docket No. CI62-1015-000 an application pursuant to section 7(b) of the Natural Gas Act and Part 157 of the Commission's regulations thereunder, to abandon certain jurisdictional sales to Lone Star Gas Company (Lone Star) within the State of Texas.

More particularly, Larson seeks authorization to abandon the sale to Lone Star of natural gas produced from a single well (Craft #1-C) on the H. P. Craft lease, Grayson County, Texas. Larson states that sales from the subject well have effectively terminated due to pressure increases in Lone Star's pipeline facilities which have prevented the physical flow of Larson's production (at relatively low pressure) into Lone Star's pipeline. Larson further states that installation of compressor facilities necessary to permit resumption of deliveries of gas in commercial quantities is not economically feasible. According to Larson, Lone Star has consented to the release and proposed abandonment and has indicated that its ability to meet its inter-state supply and market requirements will not in any way be affected by Commission approval of Larson's application.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before September 25, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Larson to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-22316 Filed 9-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2209-000]

Edward J. Mroczka; Filing

September 12, 1985.

The filing party submits the following:

Take notice that on September 3, 1985, Edward J. Mroczka, pursuant to Section 305(b) of the Federal Power Act, submitted for filing a supplemental application for authority to hold the following position:

Assistant Treasurer, Connecticut Yankee Atomic Power Company, Public Utility

Any person desiring to be heard or to protest said supplemental application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such petitions or protests should be filed on or before September 21, 1985. 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 supplemental application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-22315 Filed 9-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8929-000 et al.]

Modular Hydro Research Corp. et al.; Availability of Environmental Assessment and Finding of No Significant Impact

September 13, 1985.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the application exemption from licensing listed below and has assessed the environmental impacts of the proposed development.

Project No.	Project Name	State	Water body	Nearest town	Applicant
			Exemptions		
8929-000	Tierckenkill Falls	NY	Mill Creek	Rensselaer	Modular Hydro Research Corps.
9045-000	Glenn-Colusa	CA	Glen-Colusa Canals	Maxwell	Glenn-Colusa Irrigation District.
8764-000	San Gabriel Dam	CA	San Gabriel River	Azusa	San Gabriel Hydroelectric Partnership
9079-000	Upper Spears	ME	Spears Stream	Peru	Mark A. Vaughn.

Project No.	Project Name	State	Water body	Nearest town	Applicant
			Licenses		
4659-002	White River Lock and Dam	AR	White River	Marcella	Independence County.
8496-000	Ingram Warm Springs	ID	Warm Springs Creek	Challis	Ingram Warm Springs Ranch Partnership.
8601-000	Jore	MT	Unnamed Tributary to Mollman Creek.	Ronan	Merle Jore and Son.

Environmental assessment (EA's) were prepared for the above proposed projects. Based on an independent analysis of the above action as set forth in the EA's, the Commission's staff concludes that this project would not have significant effects on the quality of the human environment. Therefore, an environmental impact statement will not be prepared.

Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-22312 Filed 9-17-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30257; FRL-2898-5]

Certain Companies; Applications To Register Pesticide Products

AGENCY: Environmental Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register a pesticide product containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by October 18, 1985.

ADDRESS: By mail submit comments indentified by the document control number [OPP-30257] and the registration/file number, attention Product Manager (PM) named in each application at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to:

Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Registration Division (TC-767C), Attn: (Product Manager (PM) named in each registration), Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

In person: Contact the PM named in each registration at the following office location/telephone number:

Product manager	Office location/ telephone number	Address
PM 15, George LaRocca.	Rm. 204, CM#2 (703-557-2400).	EPA, 1921 Jefferson Davis Hwy., Arlington, VA 22202.
PM 23, Richard Mountfort.	Rm. 237, CM#2 (703-557-1830).	Do.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register a pesticide product containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing an Active Ingredient Not Included in Any Previously Registered Product

1. File Symbol: 618-OU. Applicant: MSD AGVET, Division of Merck and Co., Inc, Rahway, NJ 07065. Product name: Affirm™ Fire Ant Insecticide. Insecticide. Active ingredient: [A mixture of avermectins containing >80% avermectin B_1a) (5-0-demethyl-avermectin A_1a) and <20% avermectin B_1b) (5-0-demethyl-25-de(1-methylpropyl)-25-(1-methylethyl) avermectin A_1a)] 0.011%. Proposed classification/Use: General. To control imported fire ants on turf, lawns, and non-agricultural areas. Type registration: Conditional. (PM 15)

2. File Symbol: 618-OG. Applicant: MSD AGVET, Division of Merck and Co., Inc. Product name: Affirm ™ Fire Ant Insecticide Bait. Insecticide. Active ingredient: [A mixture of avermectins containing >80% avermectin B_1a) (5-0-demethyl-avermectin A_1a) and <20% avermectin B_1b) (5-0-demethyl-25-de(1-methylpropyl)-25-(1-methylethyl) avermectin A_1a)] 0.011%. Proposed classification/Use: General. To control imported fire ants on turf, lawns, and non-agricultural areas. Type registration: Conditional. (PM 15)

3. File Symbol: 464-ANG. Applicant: Dow Chemical U.S.A. PO Box 1706, Midland, MI 48640. Product name: Verdict Herbicide. Herbicide. Active ingredient: Methyl 2-4-[(3-chloro-5-(trifluoromethyl)-2-pyridinyl)oxy)phenoxy) propanoate 25.7% Proposed classification/Use: General. For postemergence control of annual and perennial grass in soybeans. (PM 23)

4. File Symbol: 8340-RI. Applicant: American Hoechst Corp., Rt. 202-206 North, Somerville, NJ 08876. Product name: Acclaim 1 EC Herbicide. Herbicide. Active ingredient: Fenoxaprop-ethyl (±)-ethyl] 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoate 12.50%. Proposed classification/Use: General. For selective postemergence annual and perennial grass control in turfgrass, including sod farms, commercial and residential turf and right-of-way. Type registration: Conditional. (PM 23)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register.** The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support

Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703–557–3262), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: September 5, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85–22096 Filed 9–17–85; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00215; FRL–2897–7]

FIFRA Scientific Advisory Panel; Open Meeting of Subpanel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 1-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) Subpanel, which will be convened by EPA to provide a technical review of the preliminary design of a national survey for pesticides in ground water. The Subpanel will be chaired by Dr. Christopher Wilkinson of the SAP.

DATES: The meeting will be held Thursday, October 3, 1985, from 9 a.m. to 4 p.m.

ADDRESS: The meeting will be held at: Environmental Protection Agency Rm. 1112, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT:

By mail: Philip H. Gray, Jr., Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS–766C), Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 1115, Crystal Mall Building No. 2, Arlington, VA, (703–557–7096).

SUPPLEMENTARY INFORMATION: EPA's Office of Pesticide Programs (OPP) and Office of Drinking Water (ODW) have been designing a national survey for pesticides in ground water. The survey has a complex, statistical design, and will focus on several dozen different pesticides used in agriculture and turf management. Multi-residue methods will be used to detect a broad spectrum of chemicals in wells, including pesticides, pesticide metabolites, nitrates, and other related chemicals. The goals of the survey are to characterize the extent of the problem of pesticides in wells, correlate the well findings with field conditions related to ground water vulnerability and pesticide usage, and estimate the human exposure. The proposed design is stratified random sampling, with unequal precision in the different strata. The stratification variables are ground water vulnerability and pesticide usage. A three-stage design is proposed—select counties, then select county segments, then select wells. The survey is in the first design stage now.

The survey results are needed by OPP's and ODW's regulatory programs. Information will be useful to support restriction and cancellation actions, as well as Maximum Contaminant Levels (MCLs) and flexible monitoring requirements for MCLs. Other benefits will be listed at the meeting.

Before EPA undertakes a major study of this nature, it must be peer reviewed. This meeting is part of the peer review process.

Experts in the following areas have been selected to serve on the Subpanel: Survey statistics, State health regulation and monitoring, pesticide usage, modeling and survey design, hydrogeology, analytical chemistry, and environmental fate, in addition to a representative of the National Drinking Water Advisory Council.

Copies of documents relating to this peer review process may be obtained by contacting:

By mail: Stuart Cohen, Hazard Evaluation Division (TS–769), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 815, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–7347).

Any member of the public wishing to submit written comments should contact Philip H. Gray, Jr. at the address or telephone number given above to be sure that the meeting is still scheduled. Interested persons are permitted to file such statements before the meeting, and may, upon advance notice to the Executive Secretary, present oral statements to the extent that time permits. All statements will be made part of the record and will be taken into consideration by the Subpanel in formulating comments. Persons wishing to make oral and/or written statements should notify the Executive Secretary and submit 10 copies of a summary no later than September 25, 1985, in order to ensure appropriate consideration by the Panel.

Dated: September 6, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85–22085 Filed 9–17–85; 8:45 am]

BILLING CODE 6560–50–M

[PP 5G3233/T498; FRL–2897–3]

MAAG Agrochemicals; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for residues of the insect growth regulator fenoxycarb, ethyl[2-(4-phenoxyphenoxy)ethyl] carbamate in or on certain raw agricultural commodities. These temporary tolerances were requested by MAAG Agrochemicals.

DATE: These temporary tolerances expire August 9, 1986.

FOR FURTHER INFORMATION CONTACT:

By mail: Timothy Gardner, Product Manager (PM) 17, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–2690).

SUPPLEMENTARY INFORMATION: MAAG Agrochemicals, Research and Development, HLR Sciences, Inc., Kings Highway, P.O. Box X, Vero Beach, FL 32960, has requested in pesticide petition PP 5G3233 the establishment of temporary tolerances for residues of the insect growth regulator fenoxycarb, ethyl[2-(4-phenoxyphenoxy)ethyl] carbamate, in or on the raw agricultural commodities grass (pasture and rangeland) at 0.2 part per million (ppm) and grass hay (pasture and rangeland) at 0.05 ppm.

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 35977–EUP–2, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use

permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. MAAG Agrochemicals must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The compnay must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire August 9, 1986. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that regulations establishing new tolerances 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).

Authority: (21 U.S.C. 346a(j)).

Dated: September 3, 1985.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-22089 Filed 9-17-85; 8:45 am]

BILLING CODE 6560-50-M

[PP 2G2581/T496; FRL-2897-5]

Thiodicarb; Extension of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for the combined residues of the insecticide thiodicarb and its metabolite in or on certain raw agricultural commodites.

DATE: These temporary tolerances expire July 8, 1986.

FOR FURTHER INFORMATION CONTACT:

By mail: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 202, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2386).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of September 7, 1983 (48 FR 40438), announcing the establishment of temporary tolerances for the combined residues of the insecticide thiodicarb, dimethyl *N*', *N*'-[thiobis[[(methylamino) carbonyl]oxy]]bis[ethanimidothioate], and its metabolite methomyl, *N*-[(methylcarbamoyl)oxy] thioacetimidate, in or on the raw agricultural commodities cottonseed at 0.4 part per million (ppm) and soybeans at 0.1 ppm. A related document extending a feed additive regulation on soybean hulls at 0.4 part per million (ppm) and cottenseed hulls at 0.8 ppm appears elsewhere in this issue of the **Federal Register.**

These tolerances were issued in response to pesticide petition PP 2G2581, submitted by Union Carbide Agricultural Products Co., Inc., P.O. Box 12014, Research Triangle Park, NC 27709. These temporary tolerances have been extended to permit the continued marketing of the raw agricultural commodities named above when treated in accordance with the provisions of experimental use permit 264-EUP-61 which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension of these temporary tolerances will protect the public health. Therefore, the temporary tolerances have been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Union Carbide must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire July 8, 1986. Residues not in excess of this amount remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that regulations establishing new tolerances 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).

Authority: (21 U.S.C. 346a(j)).

Dated: July 29, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-22088 Filed 9-17-85; 8:45 am]

BILLING CODE 6560-50-M

[PP 3G2782/T497; FRL-2897-4]

Thiodicarb; Extension of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for the combined residues of the insecticide thiodicarb and its metabolite in or on certain raw agricultural commodities.

DATE: These temporary tolerances expire July 8, 1986.

FOR FURTHER INFORMATION CONTACT:

By mail: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection

Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 202, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–2386).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of August 17, 1983 (48 FR 37282), announcing the establishment of temporary tolerances for the combined residues of the insecticide thiodicarb, dimethyl *N*, *N*'-[thiobis[[(methylamino)carbonyl] oxy]]bis[ethanimidothioate], and its metabolite methomyl, N-[(methylcarbamoyl)oxy] thioacetimidate, in or on the raw agricultural commodities field corn grain at 0.1 part per million (ppm) and corn forage and fodder at 150 ppm.

These tolerances were issued in response to pesticide petition PP 3G2782, submitted by Union Carbide Agricultural Products Co., Inc., P.O. Box 12014, Research Triangle Park, NC 27709.

These temporary tolerances have been extended to permit the continuted marketing of the raw agricultural commodities named above when treated in accordance with the provisions of experimental use permits 264–EUP–63 and 264–EUP–64 which are being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension of these temporary tolerances will protect the public health. Therefore, the temporary tolerances have been extended on the condition that the pesticide be used in accordance with the experimental use permits and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permits.

2. Union Carbide must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire July 8, 1986. Residues not in excess of this amount remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permits and temporary tolerances. These tolerances may be revoked if the experimental use permits are revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances 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).

Authority: 21 U.S.C. 346a(j).

Dated: September 5, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85–22090 Filed 9–17–85; 8:45 am]

BILLING CODE 6560–50–M

[OPP–50642; PH–FRL 2899–4]

Issuance of Experimental Use Permits; Rohm and Haas Co. et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT:

By mail, the product manager cited in each experimental use permit at the address below: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

707–EUP–108. Issuance. Rohm and Haas Company, Independence Mall West, Philadelphia, PA 19105. This experimental use permit allows the use of 360 pounds of the herbicide oxyfluorfen on broccoli, cabbage, and cauliflower to evaluate the control of preemergence broadleaf weeds. A total of 720 acres are involved; the program is authorized only in the States of California, Delaware, Georgia, Florida, Illinois, Indiana, Maryland, Massachusetts, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, and Virginia. The experimental use permit is effective from July 9, 1985 to July 9, 1986. A temporary tolerance for residues of the active ingredient in or on broccoli, cabbage, and cauliflower has been established. (Richard Mountfort, PM 23, Rm. 237, CM#2, (703–557–1830))

707–EUP–111. Issuance. Rohm and Haas Company, Independence Mall West, Philadelphia, PA 19105. This experimental use permit allows the use of 2,400 pounds of the herbicide oxyfluorfen on almonds, pistachios, and walnuts to evaluate the control of various weeds. A total of 1,200 acres are involved; the program is authorized only in the State of California. The experimental use permit is effective from July 1, 1985 to December 31, 1986. A permanent tolerance for residues of the active ingredient in or on almonds, pistachios, and walnuts has been established (40 CFR 180.381). (Richard Mountfort, PM 23, Rm. 237, CM#2, (703–557–1830))

476–EUP–111. Issuance. Stauffer Chemical Company, 1200 South 47th St., Richmond, CA 94804. This experimental use permit allows the use of 400 pounds of the herbicide methyl-3-hydroxy-4-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]-pentanoate on soybeans to evaluate the control of grassy weeds. A total of 550 acres are involved; the program is authorized only in the States of Alabama, Arkansas, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, North Carolina, Ohio, Tennessee, and Wisconsin. The experimental use permit is effective from September 1, 1985 to September 1, 1986. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Richard Mountfort, PM 23, Rm. 237, CM#2, (703–557–1830))

264–EUP–60. Renewal. Union Carbide Agricultural Products Company, P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709. This experimental use permit allows the use

of 9,776 pounds of the insecticide thiodicarb on cotton an soybeans to evaluate the control of various insect pests. A total of 4,895 acres are involved; the program is authorized only in the States of Alabama, Arizona, Arkansas, California, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, North Carolina, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, and Virginia. The experimental use permit was previously effective from June 19, 1984 to June 11, 1985. The permit is not effective from July 8, 1985 to July 8, 1986. A temporary tolerance for residues of the active ingredient in or on cottonseed and soybeans has been established. A temporary feed additive tolerance for residues of the active ingredient in or on cottonseed hulls and soybean hulls has been established. (Jay Ellenberger, PM 12, Rm. 202, CM#2, (703–557–2386))

264–EUP–64. Renewal. Union Carbide Agricultural Products Company, P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709. This experimental use permit allows the use of 14,176 pounds of the insecticide thiodicarb on field corn and sweet corn to evaluate the control of various insect pests. A total of 4,895 acres are involved; the program is authorized only in the States of Alabama, Colorado, Delaware, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Texas, Virginia, Washington, West Virginia, and Wisconsin. A temporary tolerance for residues of the active ingredient in or a field corn grain and corn fodder and forage has been established. A permanent tolerance fo residues of the active ingredient in or on sweet corn grain has been established (40 CFR 180.407). The experimental use permit was previously effective from June 14, 1983 to June 14, 1984. The permit is now effective from July 8, 1985 to July 8, 1986. (Jay Ellenberger, PM 12, Rm. 202, CM#2, (703–557–2366))

264–EUP–70. Renewal. Union Carbide Agricultural Products Company, P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709. This experimental use permit allows the use of 21,640 pounds of the insecticide thiodicarb on cotton, field and sweet corn, and soybeans to evaluate the control of various insect pests. A total of 7,490 acres are involved; the program is authorized only in the States of Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, West Virginia, and Wisconsin. The experimental use permit was previously effective from June 13, 1984 to June 13, 1985. The permit is now effective from July 8, 1985 to July 8, 1986. A temporary tolerance for residues of the active ingredient in or on cottonseed, field corn grain, corn fodder and forage, and soybeans has been established. A permanent tolerance for residues of the active ingredient in or on sweet corn grain has been established. Also, a temporary feed additive tolerance for residues of the active ingredient in or on cottonseed hulls and soybean hulls has been established. (Jay Ellenberger, PM 12, Rm. 202, CM#2, (703–557–2386))

264–EUP–113. Renewal. Union Carbide Agricultural Products Company, P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709. This experimental use permit allows the use of 512 pounds of the insecticide thiodicarb on cotton to evaluate the control of various insect pests. A total of 100 acres are involved; the program is authorized only in the States of Arizona and California. The experimental use permit was previously effective from June 19, 1984 to June 19, 1985. The permit is now effective from July 8, 1985 to July 8, 1986. A temporary tolerance for residues of the active ingredient in or on cottonseed has been established. A temporary feed additive tolerance for residues of the active ingredient in or on cottonseed hulls have been established. (Jay Ellenberger, PN 12, Rm. 202, CM#2, (703–557–2386))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the pesons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: September 5, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85–22219 Filed 9–17–85; 8:45 am]

BILLING CODE 6560–50–M

[OPP–50646; PH–FRL 2899–3]

Issuance of Experimental Use Permits; E.I. dupont de Nemours & Co. et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT:

By mail, the product manager cited in each experimental use permit at the address below: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

352–EUP–106. Renewal. E.I. duPont de Nemours & Company, Inc., Barley Mill Plaza, Wilmington, DE 19898. This experimental use permit allows the use of 801 pounds of the insecticide methomyl on pineapples to evaluate the control of various insects. A total of 400 acres are involved; the program is authorized only in the State of Hawaii. The experimental use permit was previously effective from May 22, 1984 to April 26, 1985. The permit is now efective from August 8, 1985 to August 8, 1987. Temporary tolerances for residues of the active ingredient in or on pineapples and pineapple forage have been established. (Jay Ellenberger, PM 12, Rm. 202, CM#2, (703–557–2386))

279–EUP–66. Extension. FMC Corporation, Agricultural Chemical Group, 2000 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 686.40 pounds of the insecticide cypermethrin on various crops to evaluate the control of various

insects. A total of 1,227 acres are involved; the program is authorized in the States of Arizona, Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, and Wisconsin. The experimental use permit is effective from June 21, 1985 to June 21, 1986. This permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Timothy Gardner, PM 17, Rm. 207, CM#2, (703-557-2690))

279-EUP-109. Issuance. FMC Corporation, 2000 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 2,196 pounds of the herbicide 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone on fallow cropland to evaluate the control of annual grasses and broadleaf weeds. A total of 2,200 acres are involved; the program is authorized only in the States of Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, and Wyoming. The experimental use permit is effective from August 14, 1985 to August 14, 1987. This permit is issued with the limitation that wheat is planted no sooner than 10 months after a late summer of fall application. (Robert Taylor, PM 25, Rm. 245, CM#2, (703-557-1800))

35977-EUP-2, Extension. MAAG Agrochemicals, Research and Development, Kings Highway, P.O. Box X, Vero Beach, FL 32960. This experimental use permit allows the use of 50.25 ponds of the insect growth regulatory fenoxycarb on pastures and rangelands to evaluate the control of the imported fire ant. A total of 3,350 acres are involved; the program is authorized only in the States of Alabama, Arkansas, Georgia, Florida, Louisiana, Mississippi, and Texas. The experimental use permit is effective from August 9, 1985 to August 9, 1986. A temporary tolerance for residues of the active ingredient in or on grass and grass hay has been established. (Timothy Gardner, PM 17, R. 207, CM#2, (703-557-2690))

400-EUP-53. Extension. Uniroyal, Inc., 74 Amity Rd., Bethany, CT 06525. This experimental use permit allows the use of 105 pounds of the plant growth regulator dimethipin on sunflowers to evaluate seedhead desiccation of sunflowers. A total of 210 acres are involved; the program is authorized only in the States of Illinois, Minnesota, North Dakota, and South Dakota. The experimental use permit is effetive from August 7, 1985 to August 7, 1986. This permit is issued with the limitation that all crops are destroyed or usd for research purposes only. (Robert Taylor, PM 25, Rm. 245, CM#2, (703-557-1800))

20954-EUP-21. Extension. Zoecon Corporation, 975 California Ave., Palo Alto, Ca 94304. This experimental use permit allows the use of 117.4 pounds of the insecticide (alpha-*RS*,2*R*)-fluvalinate [(*RS*) alpha-cyano-3-phenoxybenzyl(*R*)-2-[2-chloro-4-(trifluoromethyl)-anilino]-3-methylbutanoate on various crops to evaluate the control of various insects. A total of 485 acres are involved; the program is authorized only in the States of Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Hawaii, Illinois, Louisiana, New Mexico, Mississippi, Missouri, North Carolina, Ohio, Oklahoma, South Carolina, and Texas. The experimental use permit is effective from June 19, 1985 to June 19, 1986. This permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Timothy Gardner, PM 17, Rm. 207, CM#2, (703-557-2690))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: September 5, 1985.

Douglas D. Campt.

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-22218 Filed 9-17-85; 8:45 am]

BILLING CODE 6560-50-M

[OW-4-FRL-2898-8]

Availability of the Freshwater Wetlands for Wastewater Management Handbook

AGENCY: Environmental Protection Agency.

ACTION: Announcing the Availability of the Freshwater Wetlands for Wastewater Management Handbook (EPA 904/9-85 135).

SUMMARY: EPA Region IV recently completed an environmental assessment handbook addressing the use of natural, freshwater wetlands for wastewater management in the southeastern United States. The Freshwater Wetlands for Wastewater Management Handbook provides institutional, scientific and engineering guidance for the use of natural, freshwater wetlands for wastewater management. The Handbook presents a variety of procedures, tools and options that can assist in making wetland wastewater management decisions.

ADDRESS: Copies of the Handbook may be obtained by contacting: Mr. Robert B. Howard, Chief, NEPA Compliance Section, EPA—Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365 (Commercial number: 404/881-3776, FTS number: 257-3776).

Dated: September 3, 1985.

John A. Little,

Acting Regional Administrator.

[FR Doc. 85-22217 Filed 9-17-85; 8:45 am]

BILLING CODE 6560-50-M

[A-4-FRL-2899-2]

PSD Permit Extension for Estech, Inc., Duette, FL

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that a Prevention of Significant Deterioration (PSD) permit extension has been granted to Estech, Inc. This action extends the effective date of their permit (PSD-FL-036) until February 2, 1987, for the commencement of construction of a phosphate mining and rock drying operation in Duette, Florida.

DATES: This action is effective as of August 1, 1985, and grants an 18-month permit extension beginning August 2, 1985, and expiring on February 2, 1987.

ADDRESSES: Copies of the PSD permit, permit application, preliminary and final determinations, and justification for permit extensions granted on August 5, 1982, January 31, 1984, and August 1, 1985, are available for public inspection upon request at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, Air, Pesticides, & Toxics Management Division, 345 Courtland Street, NE., Atlanta, GA 30365

Bureau of Air Quality Management, Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301

FOR FURTHER INFORMATION CONTACT: Michael Brandon of the EPA—Region IV, Air Programs Branch at the Atlanta address given above, telephone 404/881-4901 or (FTS) 257-4901.

SUPPLEMENTARY INFORMATION: On May 17, 1985, the Florida Department of Environmental Regulation (FDER) prepared a preliminary determination concerning the March 8, 1985, request for an 18-month extension to commence construction of the Estech, Inc. mine, located in Duette, Florida. In that determination the FDER recommended granting the 18-month extension with modifications to the permit conditions for the fluid bed rock dryer, eight dry rock storage silos, and two dry rock loading stations (reflecting New Source Performance Standards for Phosphate Rock Plants—40 CFR Part 60, Subpart NN), and more restrictive visible emission limits for the oil-fired boiler. After the public notice period, the FDER prepared a final determination dated July 2, 1985, recommending the 18-month extension be granted with modifications to the permit conditions as mentioned above.

On July 2, 1985, the FDER granted an 18-month extension requested by Estech, Inc. for the state air construction permit, because the company had pursued but had been unable to obtain all permits required to begin construction of their phosphate rock drying and handling facility. These permits include a ground water discharge permit from the FDER and an operating permit from Manatee County. Because these delays in starting of construction of the Duette Mine were related to permitting problems in the State of Florida independent of the PSD requirements and outside the control of Estech, Inc., EPA granted an additional 18-month extension to Estech, Inc. to commence construction of the air pollution facilities authorized by federal PSD permit PSD-FL-036 with the following modifications:

1. Visible emissions from the two fluidized bed rock dryers shall not exhibit greater than 10 percent opacity*.

2. Visible emissions from the eight dry rock storage silos and the two dry rock loading stations shall exhibit no visible emissions*.

3. Emissions from the 3.99 million Btu per hour oil-fired boiler shall not exhibit greater than 15 percent opacity*.

*As determined by EPA reference method 9.

These conditions become a binding part of federal PSD permit PSD-FL-036 which was issued by the Environmental Protection Agency on January 29, 1981. If construction has not commenced within 18 months from August 2, 1985 (or by February 2, 1987), or if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time, federal PSD permit PSD-FL-036 shall expire and authorizaiton to construct shall become void.

(Secs. 160-169 of the Clean Air Act (42 U.S.C. 7470-7479))

Dated: September 3, 1985.

John A. Little,

Acting Regional Administrator.

[FR Doc. 85-22214 Filed 9-17-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-66124; FRL-2890-5]

Certain Pesticide Products; Intent To Cancel Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

Correction

In FR Doc. 85-20927 beginning on page 35862 in this issue of Wednesday, September 4, 1985, make the following corrections:

1. On page 35863, at the end of the product name for Registration No. 912-43, insert "Insecticide".

2. On page 35864, in the Registrant column for Registration No. 10233-5, insert "do".

BILLING CODE 1505-01-M

[A-4-FRL-2898-9]

Ambient Air Monitoring Reference and Equivalent Methods; Designation of Ambient Air Monitoring Equivalent Method for Lead

Notice if hereby given that EPA, in accordance with 40 CFR Part 53 (40 FR 7049, 41 FR 11255, 44 FR 37916), has designated another equivalent method for the determination of lead in suspended particulate matter collected from ambient air. The new designated method is:

EQL-0785-059, "Determination of Lead Concentration in Ambient Particulate Matter by Flameless Atomic Absorption Spectrometry (Omaha-Douglas County Health Department)."

The applicant's request for an equivalent method determination for the above method was received on July 18, 1984. Additional requested information pertinent to the original submittal was received on April 1, 1985.

This method has been tested by the applicant, Omaha-Douglas County Health Department, in accordance with the test procedures prescribed in 40 CFR Part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with Part 53, that this method should be designated as an equivalent method. The information submitted by the applicant will be kept on file at EPA's Environmental Monitoring Systems Laboratory, Research Triangle Park, North Carolina, and will be available for inspection to the extent consistent with 40 CFR Part 2 (EPA's regulations implementing the Freedom of Information Act).

This method uses the sampling procedure specified in the reference method for the determination of lead in suspended particulate matter collected from ambient air (43 FR 46258). Lead in the particulate matter is solubilized by extraction using a hot extraction procedure similar to that of the reference method. The lead content of the sample is analyzed by flameless atomic absorption spectrometry using the 283.3 nm lead absorption line and instrumental conditions optimized by the applicant. In the analytical procedure, a sample of the extract solution is placed in a graphite furnace which is heated in three stages to dry, char, and atomize the sample. The graphite furnance is coupled to an atomic absorption spectrometer and is capable of improving the detection limit for lead by 2 to 3 orders of magnitude over that obtained with conventional flame atomic absorption. Technical questions concerning the method should be directed to the Omaha-Douglas County Health Department, 1819 Farnam Street, Omaha, Nebraska 68183.

As a designated equivalent method, this method is acceptable for use by states and other control agencies under requirements of 40 CFR Part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the procedures and specifications provided in the method description. States or other agencies using flameless atomic absorption spectrometric methods that employ procedures and specifications significantly different from those in this method must seek approval for their particular method under the provisions of section 2.8 of Appendix C to 40 CFR Part 58 (Modification of Methods by Users) or may seek designation of such methods as equivalent methods under the provisions of 40 CFR Part 53.

For Further Information Contact: Elenora Karicher at (202) 382-7355.

Additional information concerning this action may be obtained by writing to Director, Environmental Monitoring

Systems Laboratory, Quality Assurance Division (MD–77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not a major regulation because it imposes no additional regulatory requirements, but instead announces the designation of an additional equivalent method that is acceptable for use by states and other control agencies for purposes of 40 CFR Part 58. Ambient Air Quality Surveillance or other applications where use of a reference or equivalent method is required.

This notice was exempted by the Office of Management and Budget for review as required by Executive Order 12291.

September 6, 1985.

Thomas Murphy,

Acting Assistant Administrator for Research and Development.

[FR Doc. 85–22291 Filed 9–17–85; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Cape Cod Bank and Trust Co., Hyannis, MA; Application To Withdraw Securities From Listing With the Boston Stock Exchange

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

DATE: All comments must be received no later than September 30, 1985.

SUMMARY: The above-named bank has filed application with the Federal Deposit Insurance Corporation pursuant to section 12(d) of the Securities Exchange Act of 1934, to withdraw its common stock from listing on the Boston Stock Exchange, in order to allow the bank's shares to be traded in the over-the-counter market.

Interested persons are invited to submit written data, views and arguments concerning the above-referenced application. Following this opportunity for hearing, the Federal Deposit Insurance Corporation will approve the application if it finds, based upon all information available to it, that the withdrawing of the common stock from listing with the Boston Stock Exchange is consistent with the public interest and the protection of investors.

ADDRESS: Comments should be mailed to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C., 20429.

FOR FURTHER INFORMATION CONTACT: Dennis Wm. Chapman, Financial Analyst, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429 (202/389–4651).

By order of the Board of Directors, September 3, 1985.

Federal Deposit Insurance Corporation.

Hoye L. Robinson,

Executive Secretary.

[FR Doc. 85–22295 Filed 9–17–85; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Mississippi; Amendment to Notice of a Major-Disaster Declaration

[FEMA–741–DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi (FEMA–741–DR), dated September 4, 1985, and related determinations.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 646–3616.

NOTICE: The notice of a major disaster for the State of Mississippi, dated September 4, 1985, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 4, 1985: Pearl River County for Individual Assistance and Public Assistance.

Dated: September 11, 1985.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 85–22277 Filed 9–17–85; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 15 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217–010823.

Title: Canadian Transport Company/C.M.B. n.v. Space Charter Agreement.

Parties:

Canadian Transport Company CTCO)

C.M.B. n.v. (CMB)

Synopsis: The proposed agreement would permit CTCO to (1) charter vessel space to CMB for the carriage of full containers in the trade between ports in Europe on the one hand, and ports on the West Coast of the United States and Canada on the other, and inland points via such ports; (2) allow CMB to supply container equipment and have exclusive responsibility for marketing and sales; (3) permit the parties to share the difference between costs and revenues of the container service; and (4) allow CMB to operate a full container service between the same areas as owners or disponent owners of the container equipment required, but without deploying the vessels to carry the same containers.

By Order of the Federal Maritime Commission.

Dated: September 13, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–22318 Filed 9–17–85; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for

comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–010820.

Title: Philadelphia Terminal Agreement

Parties:

Philadelphia Port Corporation (PPC)

Lavino Shipping Company (LSC)

Synopsis: PPC currently leases to LSC certain property within the Port of Philadelphia which is used by LSC for the operation of container terminal facilities. Agreement No. 224–010820 provides for certain payments to be made or received by PPC or LSC, as the case may be, in respect of containers which are lifted onto or off of ships or barges docked at the port terminals subleased by LSC from PPC. The term of the agreement shall be for one year. The parties have requested a shortened review period for the agreement.

Agreement No.: 224–010821.

Title: Philadelphia Terminal Agreement

Parties:

Philadelphia Port Corporation (PPC)

I. T. O. Corporation (ITO)

Synopsis: PPC currently leases to LSC certain property within the Port of Philadelphia which is used by ITO for the operation of container terminal facilities. Agreement No. 224–010821 provides for certain payments to be made or received by PPC or ITO, as the case may be, in respect of containers which are lifted onto or off of ships or barges docked at the port terminals subleased by LSC to ITO. The term of the agreement shall be for one year. The parties have requested a shortened review period for the agreement.

Agreement No.: 222–010822

Title: Long Beach Terminal Equipment Agreement

Parties:

City of Long Beach (City)

Pacific Maritime Services, Inc. (PMS).

Synopsis: The agreement provides for the assigning of a crane to be used in connection with terminal operations as provided for under Agreement No. T–4016 between the City and PMS at Pier J within the Port of Los Angeles. The term of the agreement will terminate on the same date as the termination of Agreement No. T–4016. The compensation for the use of the crane is on a straight rental basis for the first segment of the term, with renegotiations required on a five year interval in accordance with the term of the Charter of the City.

By Order of the Federal Maritime Commission.

Dated: September 13, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–22317 Filed 9–17–85; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

First Indiana Bancorp et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also 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.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Baord of Governors not later than October 8, 1985.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Indiana Bancorp*, Elkhart, Indiana; to engage *de novo* through its subsidiary, First Indiana Life Insurance Company, Phoenix, Arizona, in acting as underwriter with respect to insurance limited to asuring repayment of the outstanding balance due on a specific extention of credit by the bank holding company or its subsidiary banks in the event of the death or disability of the debtor, pursuant to section 4(c)(8)(A) of the Act.

2. *Irvin Union Corporation*, Columbus, Indiana; to engage *de novo* through its subsidiary, Inland Mortgage Corporation, Indianapolis, Indiana, in the origination of FHA, VA and conventional mortgage loans.

B. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota; to engage *de novo* through its subsidiary, Norwest Financial Services, Inc., Des Moines, Iowa, and its subsidiaries, in general insurance activities pursuant to 4(c)(8)(G) of the Act. Norwest Corporation is a registered bank holding company and prior to January 1, 1971, was engaged directly or indirectly, in insurance agency activities as a consequence of Board approval prior to that date. These activities would be performed nationwide (except where the Company may not lawfully engage in such activities under state law).

Board of Governors of the Federal Reserve System, September 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–22272 Filed 9–17–85; 8:45 am]

BILLING CODE 6210–01–M

Peconic Bancshares, 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 October 9, 1984.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Peconic Bancshares, Inc.*, Riverhead, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Peconic Bank, Riverhead, New York.

B. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *N.B.W.P., Inc.*, Berlin, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Western Pennsylvania Bank, N.A., Inc., Berlin, Pennsylvania. Comments on this application must be received not later than October 10, 1985.

2. *National Bank of Western Pennsylvania Employee Stock Ownership Trust, Inc.*, Berlin, Pennsylvania; to become a bank holding company by acquiring 33.481 percent of the voting shares of N.B.W.P., Inc., Berlin, Pennsylvania. Comments on this application must be received not later than October 10, 1985.

C. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Union Corporation*, Charlotte, North Carolina; to acquire, through Queen City Special Company B, Charlotte, North Carolina 100 percent of the voting shares of Central Florida Bank Corporation, Dade City, Florida, thereby indirectly acquiring The Bank of Pasca County, Date City, Florida.

2. *M & M Financial Corporation*, Oak Hill, West Virginia; to acquire 100 percent of the voting shares of Valley Bank & Trust Company, Bluefield, West Virginia.

D. **Federal Reserve Bank of Talanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Ocean Bankshares, Inc.*, Miami, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Ocean Bank of Miami, Miami, Florida.

2. *Riverside Banking Company*, Fort Pierce, Florida; to become a bank holding company by acquiring 80 percent of the voting shares of Riverside National Bank of Florida, Fort Pierce, Florida.

3. *Wiregrass Bancorporation*, Ashford, Alabama; to become a bank holding company by acquiring 66.2 percent of the voting shares of The First National Bank of Ashford, Ashford, Alabama.

E. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Summcorp*, Fort Wayne, Indiana; to retain 15.5 percent of the voting shares of Decatur Financial, Inc., Decatur, Indiana.

F. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Commercial Corporation*, Little Rock, Arkansas and *FC Bancshares, Inc.*, Conway, Arkansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of First National Bank, Conway, Arkansas ("BANK").

FC Bancshares, Inc., a proposed bank holding company, will acquire direct control of BANK by acquiring at least 80 percent of the voting shares of BANK's parent, Faulkner County Bankshares, Inc., Conway, Arkansas. FC Bancshares, Inc., will be a wholly-owned subsidiary of First Commercial Corporation, Faulkner County Bankshares, Inc., will cease to exist. Comments on this application must be received not later than October 4, 1985.

G. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Lexington State Bank and Trust Co.*, Lexington, Nebraska and *Lexington State Bank and Trust Co. Employees Stock Ownership Plan*, Lexington, Nebraska; to become a bank holding company by acquiring 36.71 percent of the voting shares of Lexington State Bancshares, Inc., Lexington, Nebraska, parent of Lexington State Bank and Trust Co., Lexington, Nebraska and Seven V Banco, Inc., Callaway, Nebraska, and its subsidiary, Seven Valleys State Bank, Callaway, Nebraska.

Board of Governors of the Federal Reserve System, September 12, 1985

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-22273 Filed 9-17-85; 8:45 am]

BILLING CODE 6210-01-M

Baltimore Bancorp Proposed Acquisition of Savings and Loan Association

Baltimore Bancorp has applied under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) 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 all of the voting shares of Charles Street Savings and Loan Association, Inc. (in organization) ("Charles Street"), a state chartered stock savings and loan association. Charles Street will be the successor by merger to Municipal Savings and Loan Association, Inc., Baltimore, Maryland, a state chartered mutual savings and loan association. Baltimore Bancorp will thereby engage in the activity of operating a savings and loan association within Maryland. Upon consummation of the proposal, Applicant indirectly would acquire 100 percent of the voting shares of Towson Service Corporation, Towson, Maryland, a corporation engaged in real estate development activities.

Although the Board has not added the operation of a savings and loan association to the list of nonbanking activities permissible for bank holding companies set forth in § 225.25(b) of the Board's Regulation Y (12 CFR 225.25(b)), the Board has determined by individual order that the operation of a savings and loan association is closely related to banking.

Interested persons may express their views in writing on the question whether consummation of the proposed acquisitions 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 interest, or unsound banking practices." Any comments must conform with the requirements of the Board's Rules of Procedure (12 CFR 262.3(e)).

In light of the exigent situation involving savings and loan associations formerly insured by the Maryland Saving-Share Insurance Corporation, a shortened comment period is reasonable and appropriate in this case. Comments regarding this application must be submitted in writing and must be received at the offices of the Board of Governors not later than 5:00 P.M. on September 26, 1985. This application is available for immediate inspection at the offices of the Board of Governors

and the Federal Reserve Bank of Richmond.

Board of the Governors of the Federal Reserve System, September 16, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-22467 Filed 9-17-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Immunization Practices Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control announces the following Committee meeting:

Name: Immunization Practices Advisory Committee.

Date: October 24-25, 1985.

Place: Auditorium A, Centers for Disease Control 1600 Clifton Road, NW., Atlanta, Georgia 30333.

Time: 8:30 a.m.

Type of Meeting: Open.

Contact Person: Jeffrey P. Kpolan, M.D., Executive Secretary of Committee, Centers for Disease Control (1-2047), 1600 Clifton Road, NE., Atlanta, Georgia 30333. Telephones: FTS: 236-3751. Commercial: 404/329-3751.

Purpose: The Committee is charged with advising on the appropriate uses of immunizing agents.

Agenda: The Committee will review and discuss data on poliomyelitis, including efficacy and safety of oral polio vaccine (OPV) and inactivated polio vaccine (IPV), current status of the vaccination program, prospects for new vaccines, current vaccine policy and alternatives; discuss use of MMR/DTP/OPV (measles-mumps-rubella vaccine, diphtheria and tetanus toxoids and pertussis vaccine) vaccine at 15 months; hear updates on adult immunization, measles-rubella (MR) vaccine, pertussis vaccine development, influenza control, *Haemophilus influenzae* type b, and varicella zoster vaccine; and will consider other matters of relevance among the Committee's objectives.

Agenda items are subject to change as priorities dictate.

The meeting is open to the public for observation and participation. A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: September 12, 1985.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 85-22311 Filed 9-17-85; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Ear, Nose, and Throat Devices Panel

Date, time, and place. October 10, 8:30 a.m., Rm. 503-529A, 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m.; open committee discussion, 9:30 a.m. to 4:30 p.m.; Lillian Yin, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 8757 Georgia Ave.; Silver Spring, MD 20910, 301-427-7555.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 27, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application for a cochlear implant system.

Psychopharmacologic Drugs Advisory Committee

Date, time, and place. October 10 and 11, 9 a.m., Conference Rms. G and H, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD

Type of meeting and contact person. Open public hearing, October 10, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to conclusion; open public hearing, October 11, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to conclusion; Frederick J. Abramek, Center for Drugs and Biologics (HFN-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4020.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescription drug products for use in the practice of psychiatry and related fields.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The committee will (1) review the new drug application (NDA 18-936) submitted by Eli Lilly & Co. for fluoxetine, and (2) review the submission (NDA 18-701) by McNeil Pharmaceutical for haloperidol decanoate.

Peripheral and Central Nervous System Drugs Advisory Committee

Date, time, and place. October 18, 9 a.m., Conference Rms. G and H, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, October 18, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to conclusion; Frederick J. Abramek, Center for Drugs and Biologics (HFN-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4020.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational drugs proposed for marketing for use in the treatment of neurological disease.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The committee will discuss an investigational new drug application (IND 17,213; Gamma Vinyl GABA), an experimental anticonvulsant that was previously reviewed by the committee (May 18, 1984). At that meeting, the committee recommended that if brain vacuoles were detected in an ongoing monkey toxicity study, the committee should be reconvened to discuss the findings. The sponsor, Dow-Merrell Research Institute, has informed FDA that interim sacrifices of monkeys have detected vacuoles. The committee will be asked to assess these findings and give its opinion about whether testing of this potentially useful anticonvulsant drug should be allowed to continue.

Medical Radiation Advisory Committee

Date, time, and place. October 21 and 22, 9 a.m., Rm. T–416, 12720 Twinbrook Parkway, Rockville, MD.

Type of meeting and contact person. Open public hearing, October 21, 9 a.m. to 10 a.m.; open committee discusssion, October 21, 10 a.m. to 4:30 p.m., October 22, 9 a.m. to 4:30 p.m.; Donald R. Hamilton, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2436.

General function of the committee. The committee advises the Commissioner of Food and Drugs in the formulation of policy and development of a coordinated program relating to medical application of radiation directed at obtaining the maximum diagnostic information and therapeutic benefits per unit of radiation exposure through utilization of professional and technical resources and radiation related equipment.

Agenda—Open public hearing. Interested persons may present data, information, or views orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 7, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addressses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. General areas for consideration will include mammography screening programs, teleradiology, new imaging technology, imaging procedure databases, and consumer education. A complete agenda will be available on request after October 7.

Anti-Infective Drugs Advisory Committee

Date, time, and place. October 28 and 29, 8:30 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, October 28, 8:30 a.m. to 9:30 a.m.; open committee discussion, October 28, 9:30 a.m. to 4:30 p.m.; October 29, 8:30 a.m. to 4:30 p.m.; Thomas E. Nightingale, Center for Drugs and Biologics (HFN–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the treatment of infectious diseases.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the contact person.

Open committee discussion. The committee will discuss: (1) Draft guidelines for the prophylactic use of antibiotics; (2) antibiotic prophylaxis in surgery; (3) draft points to consider for the safety evaluation of antiviral drugs for non-life-threatening diseases; and (4) postmarketing studies of acyclovir capsules (ZOVIRAX/Burroughs Wellcome Co.; NDA 18–828).

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures to expedite electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: September 11, 1985.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–22258 Filed 9–17–85; 8:45 am]

BILLING CODE 4160–01–M

Health Professional Organizations' Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming meeting of health professional organizations to be chaired by Frank E. Young, Commissioner of Food and Drugs. The agenda will include presentations of FDA's Action Plan highlighting the new FDA fellowship program; acquired immunodeficiency syndrome (AIDS), which will address test kit results, clinical investigations and treatment, and precautions for health professionals; aspirin and Reye syndrome; the diversion of drugs (the "gray market"); and physicians' access to investigational drugs under the revised investigational new drug (IND) regulations.

DATE: The meeting will be held from 2 to 4 p.m., Monday, September 30, 1985.

ADDRESS: The meeting will be held in Conference Room 703A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Robert Veiga, Office of Health Affairs (HFY–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5470.

Dated: September 11, 1985.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–22259 Filed 9–13–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85M–0401]

Alcon Laboratories, Inc.; Premarket Approval of Opti-Soft Solution, Opti-Clean Daily Cleaner, and Opti-Tears™ Comfort Dops

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration [FDA] is announcing its approval of the application by Alcon Laboratories, Inc., Fort Worth, TX, for premarket approval, under the Medical Device Amendments of 1976, of the Soft™ Solution, Opti-Clean* Daily Cleaner, and Opti-Tears™ Comfort Drops. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by October 18, 1985.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard E. Lippman, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

SUPPLEMENTARY INFORMATION: On June 30, 1983 Alcon Laboratories, Inc., Fort Worth, TX 76101, submitted to CDRH an application for premarket approval of the Opti-Soft™ Solution, Opti-Clean* Daily Cleaner, and Opti-Tears™ Comfort Drops. The regimen is for use in a heat lens care system for soft (hydrophilic) contact leases with 45 percent or less water content worn on a daily or an extended wear basis. Opti-Soft™ Solution is indicated for rinsing, thermal disinfection, daily storage, and relief of dryness while wearing lenses; Opti-Clean* Daily Cleaner is indicated for daily cleaning of lenses; and Opti-Tears™ Comfort Drops is indicated for moistening of daily wear and extended wear lenses while wearing lenses during the day. On January 31, 1984, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On August 9, 1985, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

Before enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295, 90 Stat. 539–583), contact lenses made of polymers other than polymethylmethacrylate (PMMA) and solutions for use with such contact lenses were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)), contact lenses made of polymers other than PMMA and solutions for use with such lenses are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly regulated as new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of contact lenses made of polymers other than PMMA or solutions for use with such lenses comply with the records and reports provisions of Subpart D of Part 310 (21 CFR Part 310), until these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Docket Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Richard E. Lippman (HFZ–460), address above.

The labeling of the Opti-Soft™ Solution, Opti-Clean® Daily Cleaner, and Opti-Tears™ Comfort Drops states that the solutions are respectively designed for heat disinfection, rinsing, and storage; cleaning; and moistening of soft (hydrophilic) contact lenses with a water content of 45 percent or less. Manufacturers of any soft (hydrophilic) contact lenses that have been approved for marketing are advised that whenever CDRH publishes a notice in the **Federal Register** of CDRH's approval of a new solution for use with an approved soft contact lens, the manufacturer of each lens shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the manufacturer. A manufacturer who fails to update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the Federal Trade Commission Act (15 U.S.C. 41–58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93–637). Furthermore, failure to update the restrictive labeling to refer to new solutions that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens under section 515(e)(1)(F) of the act (21 U.S.C. 360e(e)(1)(F).

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practives and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 18, 1985, file with the Dockets Management Branch (address above) two copies of each petition and suppoting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday, through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices ad Radiological Health (21 CFR 5.53).

Dated: September 11, 1985

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85–22257 Filed 9–17–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85M–0391]

Lasers for Medicine, Inc.; Premarket Approval of Phototome™ System 2700 Nd:YAG Laser

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is anhouncing its approval of the application by Lasers for Medicine, Inc., Hauppauge, NY, for premarket approval, under the Medical Device Amendments of 1976, of the Phototome™ System 2700 Nd:YAG Laser. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by October 18, 1985.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Docket Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip J. Phillips, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–8221.

SUPPLEMENTARY INFORMATION: On April 26, 1985, Lasers for Medicine, Inc., Hauppauge, NY 11788, submitted to CDRH an application for premarket approval of the Phototome™ System 2700 Nd:YAG Laser. The Phototome™ System 2700 Nd:YAG Ophthalmic Laser is a neodymium:yttrium-aluminum-garnet (Nd:YAG) ophthalmic laser that is indicated for discission of the posterior capsule of the eye (posterior capsulotomy). On May 13, 1985, the Ophthalmic Devices Panel, and FDA advisory committee, reviewed and recommended approval of the application. On August 8, 1985, CDRH approved the application by letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file with the Dockets Management Branch (address above) and is available upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Philip J. Phillips (HFZ–460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a reviews of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 18, 1985, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: September 11, 1985.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85–22258 Filed 9–17–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 78P–0419 et al.]

Availability of Approved Variances for Laser Light Shows

Correction

In FR Doc. 85–20377 beginning on Page 34756 in the issue of Tuesday, August 27, 1985, make the following corrections:

In the third column, in the **SUMMARY,** in the fifth line, "Carter" should read "Center"; the last sentence should read as follows: "The projectors provide a laser light display to produce a variety of special lighting effects. The principal use of these products is to provide entertainment to general audiences."

BILLING CODE 1505–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N–85–1551]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Report Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755–6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of

information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what member of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding these proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Community Development Block Grant (CDBG) Entitlement Program
Office: Community Planning and Development
Form number: HUD-7091.1, 7091.2, 4949.1 thru 4949.7 SF-424 and Narrative
Frequency of submission: Anually
Affected public: State or Local Governments
Estimated burden hours: 324,000
Status: Revision
Contact:
James R. Broughman, HUD, (202) 755-9267
Robert Fishman, OMB, (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Deaprtment of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 29, 1985.

Proposal: Troubled Public Housing Agencies: Workout Plans and Quarterly Report on Workout Plan Progress
Office: Public and Indian Housing
Form number: HUD-53330, 53331, and 53332
Frequency of submission: Quarterly, Semi-Annually, and Annually
Affected public: State or Local Governments
Estimated burden hours: 4,000
Status: Extensioin
Contact:
Roger W. Braner, HUD, (202) 755-7970
Robert Fishman, OMB (202) 395-6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 3, 1985.

Proposal: Indian Preference Statement of Policy
Office: Public and Indian Housing
Form number: None
Frequency of submission: On Occasion
Affected public: State or Local Governments, Businesses or Other For-Profit, and Small Businesses or Organizations
Estimated burden hours: 4,680
Status: Revision
Contact:
John V. Meyers, HUD, (202) 755-1015
Robert Fishman, OMB, (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 29, 1985.

Dennis F. Geer,

Director of Information Policies and Systems.

[FR Doc. 85-22275 Filed 9-17-85; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On August 9, 1985, a notice was published in the **Federal Register** (Vol. 50, No. 154) that an application had been filed with the Fish and Wildlife Service by Dr. Donald Siniff, University of Minnesota (PRT-678319) for an amendment to his permit to take 150 Alaskan sea otters (*Enhydra lutris*). The amendment was requested to authorize recapture of these otters in order to obtain additional data.

Notice is hereby given that on September 9, 1985, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Fish and Wildlife Service amended the permit subject to certain conditions set forth therein.

The permit is available for public inspection during normal business hours at the Fish and Wildlife Service's Permit Office in Room 605, 1000 North Glebe Road, Arlington, Virginia 22201.

Dated: September 12, 1985.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85-22274 Filed 9-17-85; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Reclamation

Coordinated Operation Agreement Central Valley Project/State Water Project, California; Availability of Draft Joint Environmental Impact Statement-Environmental Impact Report and Public Hearing

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, and section 21002 of the California Environmental Quality Act, the Bureau of Reclamation, Department of the Interior, and the California Department of Water Resources have prepared a draft joint environmental impact statement-environmental impact report (EIS-EIR). The EIS-EIR assesses the impacts associated with executing the new Coordinated Operation Agreement (COA) for the State Water Project (SWP) and Federal Central Valley Project (CVP).

The purpose of the proposed COA is to provide a reliable and mutually acceptable basis for coordinating the operations of the SWP and the CVP while protecting the water-related environment in the Scaramento-San Joaquin Delta. The COA would obligate the SWP and CVP to meet water quality and outflow standards extracted from the State Water Resources Control Board Decision 1485 designed for protecting the beneficial uses of the Delta.

The COA quantifies the annual water supplies for each project and allows the SWP and CVP to operate facilites for mutual benefit. The COA also calls for negotiations toward a contract for the purchase of interim CVP water by the SWP.

Copies are available at the following locations:

Director, Office of Environmental Affairs, U.S. Bureau of Reclamation, Room 7425, Washington, D.C. 20240, Telephone: (202) 343-4991
Property and Services Branch, Technical Publications and Library Branch, Engineering and Research Center, Code 960, Denver, CO 80225, Telephone: (303) 238-6963
Regional Environmental Quality Officer, U.S. Bureau of Reclamation, 2800 Cottage Way, Room W-1102,

Scramento, CA 95825–1898. Telephone: (916) 978–5130

James U. McDaniel, California Department of Water Resources, 3251 S Street, P.O. Box 160088, Sacramento, CA 95816, Telephone: (916) 445–5631

Single copies of the statement may be obtained on request to the above-listed offices. Copies may be reviewed at the following libraries in the project vicinity:

Shasta County Library, 1855 Shasta Street, Redding, CA 96001

Beal Memorial Library, 1315 Truxton Avenue, Bakersfield, CA 93305

Sacramento Public Library, 828 I Street, Sacramento, CA 95814

Public Library of Stockton and San Joaquin County, 605 North El Dorado Street, Stockton, CA 95202

Fresno County Free Library, 2420 Mariposal Street, Fresno, CA 93721

Concord Public Library, 2900 Salvio Street, Concord, CA 94519

Written comments on the EIS–EIR should be submitted to the Bureau of Reclamation office in Sacramento, California; or the Department of Water Resources Office by the date stamped in the document.

The Bureau and the Department will schedule a public hearing process to receive comments on the draft EIS–EIR. The time and place will be announced at a later date.

Both oral and written comments on the draft EIS–EIR will be considered in preparing the final EIS–EIR on the proposed project.

Dated: September 13, 1985.

William C. Klostermeyer,

Acting Commissioner.

[FR Doc. 85–22370 Filed 9–17–85; 8:45 am]

BILLING CODE 4310–09–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–218]

Certain Automatic Bowling Machine Printed Circuit Control Boards

AGENCY: U.S. International Trade Commission.

ACTION: Review of the termination of the investigation, including that portion of the presiding administrative law judge's initial determination (Order No. 9) terminating the above-captioned investigation with respect to respondent Richard J. Lynch Company, Inc.

SUMMARY: On August 12, 1985, the presiding administrative law judge (ALJ) granted the motion of the complainant James C. Hudson d/b/a Omega-Tek to withdraw his complaint based on a settlement agreement with respondent Richard J. Lynch Company, Inc. (Lynch). The ALJ issued an initial determination that initial determination with respect to the termination of the investigation and the termination of respondent Lynch on the basis of the withdrawal of the complaint, and requests comments concerning Lynch's termination in light of the settlement agreement and in light of Commission rule 210.51(b) (19 CFR 210.51(b)).

FOR FURTHER INFORMATION CONTACT: Kristian E. Anderson, Esq., Office of the General Counsel, U.S. International Trade Commission, Washington, D.C. 20436, telephone 202–523–0074.

SUPPLEMENTARY INFORMATION:

Statutory Authority

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rules 210.51(b) and 210.55 (19 CFR 210.51(b), 210.55).

Written Comments

Interested persons may file written comments with the Commission concerning termination of respondent Lynch in light of the settlement agreement. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register.** Any person desiring to submit all or part of a document to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

Public Inspection

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By Order of the Commission.

Issued: September 12, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–22348 Filed 9–17–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 701–TA–248 (Final)]

Offshore Platform Jackets and Piles From the Republic of Korea

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: September 9, 1985.

FOR FURTHER INFORMATION CONTACT: Daniel Dwyer (202–523–4618), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION: On July 19, 1985, the Commission instituted the subject investigation and established a schedule for its conduct (50 FR 31932, August 7, 1985). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from September 30, 1985 to December 10, 1985 (50 FR 35108, August 29, 1985). The Commission, therefore, is revising its schedule in the investigation to conform with Commerce's new schedule.

The Commission's new schedule for the investigation is as follows: Requests to appear at the hearing must be filed with the Secretary to the Commission not later than December 2, 1985; the prehearing conference will be held in room 117 of the U.S. International Trade Commission Building at 10:30 a.m. on December 6, 1985; the public version of the prehearing staff report will be placed on the public record on November 27, 1985; the deadline for filing prehearing briefs is December 9, 1985; the hearing will be held in room 331 of the U.S. International Trade Commission Building on December 12, 1985; and the deadline for filing all other written submissions, including posthearing briefs, is December 19, 1985.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, Part 207, subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

Authority: This investigation is being conducted under authority of the Tariff Act of

1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: September 13, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-22349 Filed 9-17-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-258-260 (Preliminary) and 731-TA-283-285 (Preliminary)]

Certain Table Wine From the Federal Republic of Germany, France, and Italy

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with these investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigations Nos. 701-TA-258-260 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the Federal Republic of Germany, France, and Italy of certain table wine,[1] provided for in item 167.30 of the Tariff Schedules of the United States, which are alleged to be subsidized by the Governments of the Federal Republic of Germany, France, and Italy. As provided in section 703(a), the Commission must complete preliminary countervailing duty investigations in 45 days, or in these cases by October 25, 1985.

The Commission also gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-283-285 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the Federal Republic of Germany, France, and Italy of certain table wine, provided for in item 167.30 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in these cases by October 25, 1985.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: September 10, 1985.

FOR FURTHER INFORMATION CONTACT: Cynthia Wilson (202-523-0291), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to petitions filed on September 10, 1985, by the American Grape Growers Alliance for Fair Trade, a non-profit association that represents growers which produce grapes that are crushed for ordinary table wine production and wineries which produce ordinary table wine.

Participation in the Investigation

Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on October 1, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Cynthia Wilson (202-523-0291) not later than September 27, 1985, to arrange for their appearance. Parties in support of the imposition of countervailing and/or antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before October 3, 1985, a written statement of information pertinent to the subject of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority. These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

[1] For purposes of these investigations, "certain table wine" is defined as still wine produced from grapes, containing not over 14 percent of alcohol by volume, in containers each holding not over 1 gallon, other than wines categorized by the appropriate authorities in the Federal Republic of Germany as "Qualitatswein mit Pradikat"; in France as "Appelation d'Origine Controlee" or "Vins Delimites de Qualite Superieure"; and in Italy as "Denominazione di Origine Controllata."

Issued: September 12, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-22351 Filed 9-17-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 104-TAA-26]

Sugar Content of Certain Articles From Australia

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 104(b) of the Trade Agreements Act of 1979 (19 U.S.C. 1671 note), that industries in the United States would not be materially injured or threatened with material injury, nor would the establishment of an industry in the United States be materially retarded, by reason of imports of the sugar content of certain articles from Australia [2] if the countervailing duty order covering those imports were to be revoked.

Background

The outstanding countervailing duty order was issued on March 24, 1923, as a result of an investigation that was conducted by the U.S. Department of Treasury after the predecessor of the National Food Processors Association filed a countervailing duty petition in 1922.

On September 9, 1982, the U.S. International Trade Commission received a request from the Government of Australia to review the outstanding countervailing duty order under section 104(b)(1) of the Trade Agreements Act of 1979 to determine whether an industry in the United States would be materially injured, or threatened with material injury, or the establishment of an industry would be materially retarded, by reason of the sugar content of certain articles from Australia if the outstanding countervailing duty order regarding such merchandise were to be revoked. Accordingly, on May 9, 1985, the Commission instituted investigation No. 104-TAA-26, concerning the sugar content of certain articles from Australia.

Notice of the institution of the Commission's investigation and of a 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** on May 30, 1985 (50 FR 23086). The hearing was held in Washington, DC on July 18, 1985, 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 September 9, 1985. The views of the Commission are contained in USITC Publication 1748, entitled "Sugar Content Of Certain Articles From Australia: Determination of the Commission in Investigation No. 104-TAA-26 Under Section 104(b) of the Trade Agreements Act of 1979, Together With the Information Obtained in the Investigation."

By order of the Commission.

Issued: September 10, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-22350 Filed 9-17-85; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in § 207.2(i) of the Commission's rules of practice and procedure (19 CFR 207.2(i)).

[2] Imports covered by the investigation are canned peaches, classified in items 148.77 and 148.78 of the Tariff Schedules of the United States, canned pears, classified in TSUS item 148.86, and canned fruit mixtures, classified in TSUS item 150.05. The Commission terminated the investigation as to all other products covered by the outstanding countervailing duty order with a finding that no domestic industry would be materially injured or threatened with material injury, nor would the establishment of a domestic industry be materially retarded, by reason of the revocation of the countervailing duty order (50 FR 29001, July 17, 1985 and 50 FR 35170, August 19, 1985).

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30663]

Chicago, Central & Pacific Railroad Co.; Purchase (Portion), Trackage Rights, and Securities Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Chicago, Central & Pacific Railroad Company (CCPR) has filed a petition under 49 U.S.C. 10505 seeking exemption from the requirements of 49 U.S.C. 10901 for its acquisition and operation of Illinois Central Gulf Railroad Company's 679-mile Chicago, IL, to Omaha, NE, rail line and incidental trackage rights and from 49 U.S.C. 11301 for its issuance of securities. CCPR also seeks a protective order for certain exhibits in its petition. The Commission has denied the request without prejudice and has determined that further information on the merits is required because the impact of the proposed acquisition cannot be ascertained from the present record.

DATES: Interested parties desiring to file comments must first file and serve on CCPR's representative by October 3, 1985, a notice of intent to participate. CCPR shall file a motion for a protective order or alternative relief by September 30, 1985. Replies to the motion or alternative relief shall be filed by October 8, 1985. CCPR shall file evidence to supplement its petition by October 8, 1985, responsive evidence shall be filed by November 7, 1985, replies shall be filed by November 18, 1985.

ADDRESSES: Send comments referring to Finance Docket No. 30663 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Peter A. Gilbertson, Witkowski, Weiner, McCaffrey and Brodsky, P.C., 1575 Eye Street, NW, Washington, DC 20005

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: September 6, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Commissioner Lamboley concurred with a separate expression.

Kathleen M. King,

Acting Secretary.

[FR Doc. 85-22342 Filed 9-17-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Apollo Dyeing & Finishing Co. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period September 2, 1985-September 6, 1985.

In order for an affirmative determination to be made and a certification of eligibility to apply for

adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-15,975; Apollo Dyeing & Finishing Co., Paterson, NJ

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-16,003; Wilson Jones Co., Elizabeth, NJ

Separations form the subject firm resulted from a transfer of production to other domestic facilities.

TA-W-16,017; Consolidation Coal Co., Blacksville Operation, Wana, WV

Aggregate U.S. imports of coal are negligible.

TA-W-15,957; Bethlehem Steel Corp., Sparrows Point Shipyard, Sparrows Point, MD

The number of ships intended for United States registry under construction in foreign shipyards declined in 1984 compared to 1983.

TA-W-16,136; American Nuclear Corp., Gas Hills Project, Gas Hills, WY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

Affirmative Determinations

TA-W-15,984; Leader Dyeing & Finishing Co., Paterson, NJ

A certification was issued covering all workers of the firm separated on or after October 1, 1984.

TA-W-15,989; Zenith Dyeing & Finishing Co., Paterson, NJ

A certification was issued covering all workers of the firm separated on or after October 1, 1984.

TA-W-15,997; Standard Metals Corp., Silverton Div., Silverton, CO

A certification was issued covering all workers of the firm separated on or after August 2, 1984.

TA-W-15,903; Zenith Electronics Corp., of Texas, McAllen, TX

A certification was issued covering all workers of the firm separated on or after April 1, 1984 and before April 1, 1985.

TA-W-16,049; Revere Copper Products, Inc., Rome, NY

A certification was issued covering all workers of the firm separated on or after May 10, 1984.

TA-W-15,945; Kellwood Co., Alamo, TN

A certification was issued covering all workers of the firm separated on or after July 1, 1984 and before August 1, 1985.

TA-W-15,971; United Pioneer Co., Waycross, GA

A certification was issued covering all workers of the firm separated on or after November 1, 1984 and before July 1, 1985.

TA-W-16,082; Zenith Electronics Corp., Springfield, MO

A certification was issued covering all workers of the firm separated on or after February 15, 1985 and before August 15, 1985.

TA-W-16,085; Fiatallis North America, Inc., Springfield, IL

A certification was issued covering all workers of the firm separated on or after January 1, 1985.

TA-W-16,012; Ranco Controls Div., Plain City, OH

A certification was issued covering all workers of the firm separated on or after May 7, 1984.

TA-W-15,987; Umetco Minerals Corp., Grand Junction Offices, Grand Junction, CO

A certification was issued covering all workers of the firm separated on or after November 1, 1984.

TA-W-15,995; Morrison Machine Co., Paterson, NJ

A certification was issued covering all workers of the firm separated on or after May 6, 1985.

TA-W-15,960; Conaway-Winter, Inc., Willow Springs, MO

A certification was issued covering all workers of the firm separated on or after April 16, 1984.

I hereby certify that the aforementioned determinations were issued during the period September 2, 1985–September 6, 1985. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, D.C. during normal business hours or will be mailed to persons who write to the above address.

Dated: September 10, 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85-22267 Filed 9-17-85; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; AFA Corp. et al.

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than Septenber 30, 1985.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than (10 days after public.). September 30, 1985.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213.

Signed at Washington, D.C. this 9th day of September, 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
AFA Corporation (wdrkers)	Miami Lakes, FL	9/5/85	8/24/85	TA-W-16,374	Plastic trigger sprayers.
American Cyanamid Co., Fibers Div. (workers)	Milton, FL	8/30/85	8/23/85	TA-W-16,375	Acrylic fibers.
Basque Cedar Co. (workers)	Clallam Bay, WA	9/3/85	8/25/85	TA-W-16,376	Cedar shakes and shingles.
Boston Fashions (ILGWU)	Boston, MA	8/26/85	8/22/85	TA-W-16,377	Ladies jackets for suits.
Copperweld Steel Co. (company)	Warren, OH	8/30/85	8/15/85	TA-W-16,378	Hot rolled bars, rounds, squares, hexagon, octagon, flat coled finished bars thermal bars.
Danskin East #5 (workers)	York, PA	9/3/85	8/26/85	TA-W-16,379	Exercise bodywear, leg warmers, unitards.
Hino/Snowbridge, Inc. (workers)	Boulder, CO	8/30/85	8/27/85	TA-W-16,380	Bicycles bags, seat, handlebar, touring.
LTV Steel Co. (USWA)	Youngstown, OH	8/21/85	8/19/85	TA-W-16,381	Erw and cor pipes.
Western Nuclear, Inc. (workers)	Lakewood, CO	8/29/85	8/21/85	TA-W-16,382	Uranium oxide.
Do.	Jeffrey City, WY	8/29/85	8/21/85	TA-W-16,383	Do.
Do.	Welpinit, WA	8/29/85	8/21/85	TA-W-16,384	Do.
Do.	Thoreau, NM	8/29/85	8/21/85	TA-W-16,385	Do.
B.F. Goodrich Co. (URW)	Miami, OK	9/3/85	8/28/85	TA-W-16,386	Tires—passenger car, farm equipment, trucks.
Cooper Tire & Rubber Co. (UFIW)	Findlay, OH	9/3/85	8/30/85	TA-W-16,387	Passenger car and truck tires for replacements.
Hitachi-Magna Lock Corp. (workers)	Big Rapids, MI	9/3/85	8/26/85	TA-W-16,388	Magnetic chucks.
Washington State Dept. of Agriculture (workers)	Olympia, WA	9/4/85	8/30/85	TA-W-16,389	Grading, weighing and certification of export grain.
Do.	Pasco, WA	9/4/85	8/30/85	TA-W-16,390	Do.
Do.	Colfax, WA	9/4/85	8/30/85	TA-W-16,391	Do.
Do.	Spokane, WA	9/4/85	8/30/85	TA-W-16,392	Do.
Do.	Seattle, WA	9/4/85	8/30/85	TA-W-16,393	Do.
Do.	Tacoma, WA	9/4/85	8/30/85	TA-W-16,394	Do.
Do.	Longview, WA	9/4/85	8/30/85	TA-W-16,395	Do.
Do.	Kalama, WA	9/4/85	8/30/85	TA-W-16,396	Do.
Do.	Vancouver, WA	9/4/85	8/30/85	TA-W-16,397	Do.
Arbor Manufacturing Co. (ILGWU)	Harrison, NJ	8/5/85	8/1/85	TA-W-16,398	Children's apparel.
Cessna Aircraft Co. (company)	Wichita, KS	9/6/85	8/20/85	TA-W-16,399	Jet aircrafts.

[FR Doc. 85-22266 Filed 9-17-85; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-15, 771]

Wolverine World Wide, Inc., Factory C, Big Rapids, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 20, 1985, applicable to all workers of Factory C, Wolverine World Wide, Incorporated, Big Rapids, Michigan. The Notice of Certification was published in the **Federal Register** on June 4, 1985 (50 FR 23539).

On the basis of additional information, the Office of Trade Adjustment Assistance, reviewed the certification. The additional information revealed that some layoffs occurred a few months after the termination date set in the Department's certification.

The intent of the certification is to cover all workers at Factory C of Wolverine World Wide at Big Rapids, Michigan who were affected by the decline in the sales or production of women's and children's shoes related to increased import competition. The notice, therefore, is amended by providing a new termination date of May 1, 1985.

The amended notice applicable to TA-W-15, 771 is hereby issued as follows:

All workers of Factory C, Wolverine World Wide, Incorporation, Big Rapids, Michigan who became totally or partially separated from employment on or after January 22, 1984 and before May 1, 1985 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 10th day of September, 1985.

Stephen A. Wander,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 85-22268 Filed 9-17-85; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 85-61]

NASA Advisory Council; Renewal

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Renewal.

SUMMARY: Pursuant to section 14(b)(1) of the Federal Advisory Committee Act, Pub. L. 92-463, and after consultation with the Committee Management Secretariat, General Services Administration, the National Aeronautics and Space Administration has determined that renewal of the following NASA advisory committees is in each case in the public interest in connection with the performance of duties imposed upon NASA by law:

NASA Advisory Council (NAC);
NAC Aeronautics Advisory Committee;
NAC Aeronautics Advisory Committee, Subcommittee on Aviation Safety Reporting System;
NAC History Advisory Committee;
NAC Life Sciences Advisory Committee;
NAC Space Applications Advisory Committee;
NAC Space and Earth Science Advisory Committee;
NAC Space Systems and Technology Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. Nathaniel B. Cohen, National Aeronautics and Space Administration, Code LB, Washington, DC 20546 (202/453-8335).

SUPPLEMENTARY INFORMATION: The function of the Council is to consult with and advise the NASA Administrator or designee with respect to plans for, work in progress on, and accomplishments of NASA's aeronautics and space programs.

Dated: September 11, 1985.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

[FR Doc. 85-22269 Filed 9-17-85; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Forms Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357-9421

OMB Desk Officer: Carlos Tellez, (202) 395-7340

Title: Proposal/Award Information

Affected Public: Universities, Colleges, Small Businesses, and Individuals
Number of Responses: 35,000 respondents; total of 4,200,000 burden hours

Abstract: The National Science Foundation initiates and supports fundamental and applied research in all the scientific and engineering disciplines, science and engineering education and policy research. This support is through grants, contracts, and other agreements awarded to universities, university consortia, non-profit, and other research organizations.

Dated: September 13, 1985.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 85-22362 Filed 9-17-85; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for the Mathematical Sciences; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for the Mathematical Sciences.

Date and time: October 3, 1985—9:00 a.m. to 5:00 p.m. October 4, 1985—8:30 a.m. to 5:00 p.m. October 5, 1985—8:30 a.m. to 1:00 p.m.

Place: Room 540, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.

Type of meeting: 10/3 OPEN—9:00 a.m. to 11:00 a.m. 10/3 CLOSED—11:00 a.m. to 5:00 p.m. 10/4 CLOSED—8:30 a.m. to 2:30 p.m. 10/4 OPEN—2:30 p.m. to 5:00 p.m. 10/5 OPEN—8:30 a.m. to finish.

Contact person: Dr. Judith S. Sunley, Deputy Division Director, Division of Mathematical Sciences, Room 339, National Science Foundation, Washington, D.C. 20550. Telephone (202) 357-9669. Anyone planning to attend this meeting should notify Dr. Sunley no later than September 30, 1985.

Purpose of committee: To provide advice and recommendations concerning support for research in the mathematical sciences.

Agenda:

Thursday, October 3, 1985—9:00 a.m. to 11:00 a.m.—Open
- Introductory remarks
- Meeting with the Assistant Director for Mathematical and Physical Sciences
- Current status of the Division

Thursday, October 3, 1985—11:00 a.m. to 5:00 p.m.—Closed
- Program oversight review

Friday, October 4, 1985—8:30 a.m. to 2:30 p.m.—Closed
- Program oversight review

Friday, October 4, 1985—2:30 p.m. to 5:00 p.m.—Open
- Mathematical Sciences research at other Federal agencies; Activities of the Board of Mathematical Sciences; Planning for the future—setting priorities

Saturday, October 5, 1985—8:30 a.m. to finish—Open
- Report on program oversight reviews
- Planning for the future—setting priorities

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposal. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

September 13, 1985.

[FR Doc. 85-22330 Filed 9-17-85; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Ecology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Ecology.

Date and time: October 3 & 4, 1985—8:30 a.m. to 5:00 p.m. each day.

Place: Room 1242A, National Science Foundation, 1800 G St., NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Patrick W. Flanagan, Program Director, Ecology (202) 357-9734, Room 1140, National Science Foundation, Washington, D.C. 20550.

Purpose of panel: To provide advice and recommendations concerning support for research in ecology.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was designated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

September 13, 1985.

[FR Doc. 85-22328 Filed 9-17-85; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Ecosystem Studies; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Ecosystem Studies.

Dated and time: October 3 & 4, 1985—8:30 a.m. to 5:00 p.m. each day.

Place: Room 543, National Science Foundation, 1800 G St., NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. James R. Gosz, Program Director, Ecosystem Studies (202) 357-9596, Room 1140, National Science Foundation, Washington, D.C. 20550.

Purpose of panel: To provide advice and recommendations concerning support for research in ecosystem studies.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reasons for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(b)(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

September 13, 1985.

[FR Doc. 85-22329 Filed 9-17-85; 8:45 am]

BILLING CODE 7555-01-M

NSF Advisory Committee on Merit Review; Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: NSF Advisory Committee on Merit Review.

Date and time: October 3, 1985—9:00 a.m.–5:00 p.m. October 4, 1985—9:00 a.m.–3:30 p.m.

Place: Room 523, National Science Foundation 1800 G Street, NW., Washington, D.C. 20550.

Type of Meeting: Open.

Contact person: Dr. Carlos Kruytbosch, Head, Science Indicators Unit, National Science Foundation, Washington, D.C. 20550 (202) 634–4682.

Anyone planning to attend this meeting should notify Dr. Kruytbosch no later than September 30, 1985.

Summary minutes: Dr Carlos Kruytbosch, at above address.

Purpose of committee: To evaluate merit review as practiced by NSF and other agencies and provide its advice and recommendations concerning alternative systems of merit review and selection of projects.

Summarized agenda: Reports from the NSF Directorates on merit review systems in use, discussion with the NSF Director, and other items.

M. Rebecca Winkler,

Committee Management Officer.

September 13, 1985.

[FR Doc. 84–22302 Filed 9–17–85; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reports or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information, collection: Current Occupational Radiation Exposure.

3. The form number if applicable: NRC Form-5

4. How often the collection is required: Quarterly and annually.

5. Who will be required or asked to report: NRC Licensees.

6. An estimate of the number of responses: 3,600,000.

7. An estimate of the total number of hours needed to complete the requirements or request: 124,740.

8. An indication of whether Section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract:

Licensees use NRC Form-5 data to assess and control ongoing radiation protection programs and to document to the NRC and the licensee's workers that their occupational doses have not exceeded applicable limits.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, D.C. 20555.

Comments and questions should be directed to the OMB reviewer Jefferson B. Hill, (202) 395–7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland this 12th day of September 1985.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 85–22338 Filed 9–17–85; 8:45 am]

BILLING CODE 7550-01-M

Documents Containing Reports or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information, collection: Occupational Radiation Exposure History.

3. The form number if applicable: NRC Form-4.

4. How often the collection is required: On occasion.

5. Who will be required or asked to report: NRC Licensees.

6. An estimate of the number of responses: 30,000.

7. An estimate of the total number of hours needed to complete the requirements or request: 7500.

8. An indication of whether section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract:

A licensee needs to know the magnitude of a worker's prior occupational dose received during the current calendar year and planned special exposures and overexposures received during the lifetime of the worker so that additional exposure in the licensee's facility will not cause the worker's occupational dose to exceed applicable limits. Necessary data are recorded on NRC Form-4 or its equivalent.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer Jefferson B. Hill, (202) 395–7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland this 12th day of September 1985.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 85–22339 Filed 9–17–85; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Conservation Programs Task Force; Open Meeting

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Conservation Programs Task Force, to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I.

1–4. Activities will include:

- Discussion of the Conservation Action Plan.

DATE: Thursday, October 3, 1985, 9:00 a.m.–5:00 p.m.

ADDRESS: The meeting will be held at the Council's Central Office, 850 SW. Broadway; Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Mark Cherniack (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 85–22296 Filed 9–17–85; 8:45 am]

BILLING CODE 0000-00-M

Hydropower Assessment Steering Committee; Open Meeting

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Hydropower Assessment Steering Committee to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- River assessment study.
- Anadromous fish productivity analysis.
- Consultation on draft losses statement.
- FERC update.
- Other.
- Public comment.

DATE: September 24, 1985, 10:00 a.m.

ADDRESS: The meeting will be held at the Airport conference room, Boise, Idaho.

FOR FURTHER INFORMATION CONTACT: Peter Paquet 503–222–5161.

Edward Sheets,
Executive Director.

[FR Doc. 85–22297 Filed 9–17–85; 8:45 am]
BILLING CODE 0000–00–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–22396; Files Nos. SR–Amex–85–1 and SR–NYSE–85–25]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Proposed Rule Changes

AGENCY: Securities and Exchange Commission.

ACTION: Request for public comment.

SUMMARY: The American ("Amex") and New York ("NYSE") Stock Exchange propose to amend their rules to permit a member organization affiliated with a specialist or specialist unit to: (1) Trade specialty securities, (2) trade options on specialty securities, (3) accept orders in specialty securities from the issuer, its insiders and institutions, (4) perform research and advisory services with respect to specialty securities, (5) "popularize" specialty securities, and (6) engage in business transactions with a company in whose stock the specialist is registered, provided certain conditions are met which, among other things, result in the establishment of an exchange-approved "Chinese Wall" between such a person and the affiliated specialist unit on the floor. This release outlines the various issues presented by the proposed rule changes of the Amex and the NYSE and solicits comments on the proposals.

DATE: Comments must be received on or before October 18, 1985.

ADDRESS: Interested persons should submit three copies of their comments to John Wheeler, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Comment letters should refer to File Nos. SR–Amex–85–1 and SR–NYSE–85–25. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Pamela Konieczka, ESQ., (202) 272–2855, Division of Market Regulations, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Summary

The Securities and Exchange Commission ("Commission") today is issuing a release that describes and requests public comment on proposed rule changes by the Amex and the NYSE which would encourage retail broker-dealers to affiliate with specialists by easing the current restrictions imposed on such affiliates. Instead, the proposals would require an organizational separation (a so-called Chinese Wall) between the specialist activity and other parts of the firm. The proposals, therefore, if approved by the Commission, would alter significantly the current relationship between specialists and retail firms and thereby raise significant competitive, manipulation and conflict of interest issues. Commentators are asked to focus on whether: (1) The procedures for establishing the Chinese Wall are adequate; (2) the procedures for maintaining the Wall are adequate; (3) the procedures for auditing the maintenance of the wall are adequate; and (4) particular restrictions applicable to an approved person should continue to apply to the approved person notwithstanding the creation of the Wall. Specific questions target, among other topics, potential benefits achieved from easing the restrictions, the use of an unaffiliated broker by an affiliated retail firm, the forms of internal surveillance firms should develop to justify the concept, and the type of relationship an approved person and associated specialist unit should have when the approved person is engaged in underwriting activites in stock in which the associated specialist is registered.

II. Background

On January 30, 1985, the Amex filed with the Commission pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] proposed changes to its Rules 190 and 193 which would permit an approved person[2] or member organization affiliated with a specialist or specialist unit to: (1) Trade specialty securities, (2) trade options on specialty securities, (3) accept orders in specialty securities from the issuer, its insiders and institutions, (4) perform research and advisory services with respect to specialty securities, (5) "popularize" specialty securities, and (6) engage in business transactions with a company in whose stock the specialist is registered.[3] On March 19, 1985, Amex filed with the Commission Amendment No. 1 to the rule change describing the exemptive guidelines for establishing an exchange-approved "Chinese Wall" between the affiliated upstairs firm and the specialist unit on the floor.[4]

Similarly, on June 20, 1985, the NYSE filed with the Commission proposed Rule 98.[5] The Rule essentially provides

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] The term "approved person" is defined in Article I, Section 3(g) of the Amex Constitution (CCH ¶ 9003) as well as in Article I, section 3(g) of the NYSE Constitution (CCH ¶ 1003) as an individual or corporation, partnership or other entity which controls a member or member organization, or which is engaged in the securities business and is either controlled by, or under common control with, a member or member organization, or which is the owner of a membership held subject to a special transfer agreement. "Control" is defined as the power to direct or cause the direction of the management or policies of a person, whether through ownership of securities, by contract, or otherwise. A person is presumed to control another person if such person, directly or indirectly, has the right to vote or cause to be voted 25% or more of the voting securities, is entitled to receive 25% or more of the net profits, or is a director (or person occupying a similar status or performing similar functions) of such person. Any person who does not come within one of the foregoing categories shall be presumed not to control such other person. *See* Amex Definition 13 (CCH ¶ 9213) and NYSE Rule 2 (CCH ¶ 2002).

[3] *See* Amex Rules 170(e), 175, 190(b), 190 Commentary, 190(a); (CCH ¶ 9310, 9315, 9330).

[4] The Commission published notice of the Amex filing in Securities Exchange Act Release No. 21916, April 2, 1985; 50 FR 14058 (File No. SR–Amex–85–1).

[5] The Commission published notice of the NYSE filing in Securities Exchange Act Release No. 22183, June 28, 1985; 50 FR 27875 (File No. SR–NYSE–85–25). Both with respect to the Amex and NYSE proposals, prespective commentators were asked to consider whether they would prefer to comment on the Amex or NYSE proposals or in connection with the Commission's separate release. As of August 23, 1985, the Commission has received no comments on the Amex or NYSE proposals.

In conjunction with its filing of proposed Rule 98, the NYSE withdrew a pending proposed rule change (File No. SR–NYSE–78–59) which would have relieved approved persons of members and member organizations from the provisions of certain Exchange rules, including Rule 98, Rule 104.13, Rule 113 and Rule 113.20.

that an approved person which has established an organizational separation between itself and an associated specialist unit in conformity with guidelines published by the NYSE would be exempt from a number of significant restrictions on specialist activity similar to those imposed by the Amex.[6]

No Amex or NYSE rules currently prohibit exchange member firms from affiliating with specialist units. Relatively few retail firms on the Amex and NYSE,[7] however, are affiliated with specialist units because any activity which an affiliated firm might have in specialty stocks would be subject to exchange restrictions placed on approved persons of specialists.

The Amex and NYSE restrictions noted above would be eased if a retail firm and its affiliated specialist unit were to erect a Chinese Wall between themselves. Among other characteristics, the Wall would entail a separate and distinct organization between the retail firm and the affiliated specialist unit, separate and distinct books, records and accounts, separate satisfaction of all applicable capital requirements, confidential treatment of the specialist's book, and no influence or control over the other's conduct with respect to particular securities.

One significant difference between the Amex and NYSE guidelines is their approach with respect to underwriting activities of approved persons. While Amex would allow an upstairs affiliated firm to participate in an underwriting of a specialty issuer's equity security in any capacity, the NYSE would only permit an approved person to act as a member of an underwriting syndicate or selling group but not as a managing underwriter for a distribution of equity or convertible securities of an issuer in whose securities an associated specialist is registered.

Regional exchanges have not been required to adopt similar restrictions on approved persons affiliated with specialist units, primarily beause of their limited trading volume and because they are not the primary exchange market for most securities traded on those exchanges.[8] As a result, the Philadelphia ("Phlx"), Pacific "PSE") and Boston ("BSE") Stock Exchanges currently have a number of major retail firms associated with specialist units on their floors.[9]

The current restrictions imposed by Amex Rules 190 and 193 and by NYSE Rules 104, 105, 113, and 460 are intended to address two primary concerns that arise when a specialist unit becomes affiliated with a non-specialist retail organization. First, if an approved person of a specialist unit had access to the affiliated specialist's book, including confidential information relating to the number and size of buy and sell orders at various prices as well as information regularly provided to him by other market participants because of his central role as a primary market specialist, the approved person would have a perceived advantage over competing firms and the public at large in trading stocks assigned to the affiliated specialist. Conversely, if the specialist unit had advance information about the activities of the upstairs firm (*e.g.*, a change in the firm's buy or sell recommendation or an imminent block transaction away from the market), the specialist could position itself from price changes that might result once that information became publicly available. Second, an affiliated specialist unit could favor its approved person by providing orders placed by the affiliate with more favorable executions and by providing useful market information to the affiliated firm (or to its broker on the exchange trading floor) but not to others. In some cases, such conflicts of interest could result in the specialist neglecting his duty to make a fair and orderly market by giving an affiliate's principal or agency orders a more favorable execution.

The proposals suggested by the Amex and the NYSE have produced a range of reactions from member organizations. In response to its Special Membership Bulletin of July 26, 1984, discussing the topic of member firms as new entrants into the specialist business, and outlining possible NYSE Rule 98, the NYSE received twelve comment letters.[10] NYSE members supporting proposed NYSE Rule 98 generally believe that the rule change would strengthen the specialist system by attracting new sources of capital which would improve the liquidity and quality of exchange markets. In their view it would promote equality of regulation between exchange and over-the-counter market makers, by removing unnecessary regulatory burdens. In this regard, they believe that the integrity of the marketplace would be preserved if the retail firm and the associated specialist unit established a Chinese Wall to preclude the flow of potentially privileged information and to prevent conflicts of interest, manipulative opportunities or unfair advantages to one or both of the parties. The objective of the guidelines is to provide an exemption from the restrictions discussed above where an approved person and an associated specialist member organization organize their respective operations in such a way that the activities of each entity are clearly separate and distinct. Exchange guidelines attempt to ensure that regulatory objectives would not be compromised, and attempt to provide flexibility so that the association of a member organization with a specialist unit could be viewed as a viable business combination for those interesed in such an association.

Commentators opposing the proposals, however, stress the difficulty of maintaining the Chinese Wall in practice, if not in theory. They also do

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[6] *See* NYSE Rules 104, 104.13, 105, 113, 113.20, 460; (CCH ¶2104, 2105, 2113, 2460).

[7] Drexel Burnham Lambert, Inc. and Bear, Stearns & Co. are the two retail firms that are affiliated with specialist units on the Amex floor. Bear, Stearns & Co. is also affiliated with a specialist unit on the NYSE. In addition, the following NYSE specialist firms do retail business either directly or through an affiliate: Asiel & Co.; Ernst & Co.; Purcell, Graham & Co, Inc.; A.C. Partners; Spear, Leeds & Kellogg; and Quick & Reilly Spec. Corp.

[8] Because the large majority of stocks traded on the regional exchanges are listed on the NYSE or Amex, and are traded on the regionals pursuant to unlisted trading privileges granted by the Commission under section 12(f)(1) of the Act, traditionally the Commission has not required regional exchange specialists to operate under the same regulatory regime as primary market specialists. *See, e.g.*, Securities Exchange Act Release No. 7465 (November 23, 1964), at 3; SEC, *Report of Special Study of Securities Market*, 88th Cong., 1st Sess., H. Doc. No. 95, pt. 2, at 167.

[9] Drexel Burnham Lambert, Inc. and Dean Witter Reynolds, Inc. are the two retail trading firms that are affiliated with specialist units on the Phlx. Shearson/American Express, Inc.; Goldberg Securities; Wedbush, Noble, Cooke, Inc.; Moseley, Hallgarten, Estabrook & Weeden, Inc., Jeffries & Co.; AGF Securities; Crowell Weedon & Co.; Easton & Co.; Bateman Eichler, Hill Richards, Inc.; Trading Co. of the West; Mitchum Jones & Templeton, Inc.; Drexel Burnham Lambert, Inc.; ABD Securities, Inc.; Merrill Lynch, Pierce, Fenner & Smith, Inc.; the Pershing Division of Donaldson Lufkin Jenrette Securities, Inc.; Seidler Amdec Securities, Inc.; Paine Webber; and Spear Leeds and Kellogg are the retail trading firms affiliated with specialist units on the PSE. Dean Witter Reynolds, Drexel Burnham Lambert, Fidelity Brokerage Services, and Jospehthal & Co., Inc. are the retail trading firms affiliated with specialist units on the BSE.

In its filing with the Commission, Amex cites its need to remain competitive with the regional exchanges as a reason for easing its restrictions on affiliated upstairs firms associated with specialists. In its filing the NYSE states that an easing of restrictions would enhance competition in the specialist community, and would improve the liquidity and quality of exchange markets.

[10] Eight of the twelve comment letters supported the rule change (Ernst & Co-Homans & Co.—Ware & Keelips—Victor Inc; Paine Webber Mitchell Hutchins Inc.; Mesirow & Company; A.B. Tompane & Co; Prudential-Bache Securities; Dean Witter Reynolds, Inc; Stephen Peck (PPN Partners) and Donald Stott (Wagner, Stott, & Co); and Merrill Lynch, Pierce, Fenner, & Smith, Inc.) and three expressed opposition (J. Streicher & Co; Wertheim & Co., Inc.; and Morgan Stanley & Co., Inc.). In one letter (Securities Industry Association) a position was not stated.

not believe that the change would enable the specialist firm to function more effectively. On the contrary, they view the business and economic realities as making it highly likely that the combination of specialist and memer firm activities would create manipulative opportunities and substantial unfair advantages. They contend that the proposal would aggravate the problem of declining public participation in the equities markets by adding to the reality as well as to the perception of conflict of interest and advantage accruing to a few. Others criticized the proposals, perceiving them as restructuring the exchange and securities markets on an *ad hoc* basis outside the context of an overall plan.

To evaluate more fully the potential impact of the rule changes, the Commission is publishing this release to solicit comment on the proposals, in general, and the appropriateness and adequacy of the proposed guidelines for establishing a Chinese Wall between a specialist unit and an affiliated upstairs firm, in particular.

III. The NYSE Proposal

A. Restrictions Affected

The NYSE is proposing to renumber existing Rule 98 as Rule 98A and provide for the reporting of transactions by an approved person entitled to the exemptions provided by proposed Rule 98 in such form and with such frequency as the NYSE shall from time to time determine. Under this rule if an approved person establishes an organizational separation and adopts a "functional regulation" program in accordance with guidelines promulgated by the NYSE, it would be exempt from the following specialist regulations:

(1) NYSE Rule 104—a specialist cannot effect transactions for the account of an associated approved person unless such transactions are necessary to maintain fair and orderly markets;

(2) NYSE Rule 105—an approved person may trade in options overlying a specialty stock for hedging purposes only;

(3) NYSE Rule 104.13—the approved person's specialty stock transactions must be for investment purposes and must be effected in a stabilizing manner; the approved person's orders may not be executed ahead of agency orders received by the specialist;

(4) NYSE Rule 113.20—an approved person may not popularize (*e.g.*, solicit orders, issue buy/sell recommendations, etc.) a stock in which an associated specialist is registered;

(5) NYSE Rule 460—an approved person cannot engage in "business transactions" with a company in whose stock the specialist is registered.

B. Substance of Guidelines

The NYSE guidelines outline the minimum requirements that an approved person would be expected to demonstrate it has satisfied in order to achieve an organizational separation appropriate to its operations. The internal controls which the NYSE believes promote this separation include the following:

—Formal organizational separation should exist between the approved person and the associated specialist unit. The specialist member organization must function as an entirely freestanding, separate entity responsible for its own trading decisions, and may not function in any manner as a "downstairs" extension of an "upstairs" trading desk.

—Separate books, records and financial accounting must be maintained. The approved person should avoid commingling its funds or securities with funds or securities of the associated specialist member organization for any purpose other than as may be specifically approved by the NYSE.

—Applicable capital requirements must be met separately by both the approved person and specialist organization.

—The approved person may participate in general managerial oversight, such as fulfillment of profitability targets and personnel selection.

—The approved person should have no influence on particular specialist trading decisions.

—The specialist must accord confidential treatment to orders left on the specialist's book, information regarding trading positions, and information derived from margin and clearing arrangements.

—Trading information and information derived from clearing and margin financing arrangements of specialists' positions may be made available only to those employees actually performing clearing and margin financing activity and those persons in senior management positions at the approved person who are involved in exercising general managerial oversight over the specialist member organization. In general, this includes the approved person's chief executive officer, chief operational officer, chief financial officer, and senior officer responsible for managerial oversight of the associated member organization.

—An approved person must accord confidential treatment to information derived from business transactions between the approved person and the issuer of any specialty stock.

—Margin financing arrangements must be sufficiently flexible so as not to limit the ability of any specialist in the specialist member organization to meet market-making or other obligations under Exchange rules.

—No individual associated with the approved person may act as a Competitive Trader or Registered Competitive Market Maker in a specialty stock.

C. Implementation of Guidelines

The approved person seeking exemptive relief would be required to obtain prior written approval from the NYSE confirming that it had complied with the Exchange's guidelines in establishing its separate organizational structure and that it had established proper compliance and audit procedures to ensure the maintenance of the functional separation. If an approved person chooses not to develop internal controls and to submit them to the Exchange and obtain its approval, the approved person would remain subject to the present restrictions.

In addition to detailing internal controls, the written statement submitted to the Exchange by the approved person seeking the exemption and the specialist member organization with which such approved person is associated must also identify:

—Audit and compliance procedures to be adopted to ensure that internal controls are maintained;

—The individuals in senior management positions (and their titles/levels of responsibility) with supervisory responsibility over the specialist firm;

—The frequency with which information concerning the specialist member organization's trading activities and stock positions is made available to the approved person, and the format in which such information is made available;

—If any partner, director, officer or employee of the approved person intends to serve in any such capacity with the associated specialist member organization, or vice versa, the duties of the particular individual at both entities, and why it is necessary for such individual to be a partner,

director, officer or employee of both entities. Only if the dual affiliation is for overall management control purposes will this approval for service at both entities be granted.

Internal controls would include the following:

—The NYSE would not approve any joint accounts between a specialist member organization that is associated with an approved person entitled to the exemptions provided by proposed Rule 98, and any other specialist member organization unless and until such other specialist member organization, and such approved person, have agreed with the NYSE to comply with each of the guideline conditions as thought the approved person were associated with such other member organization.

—An approved person's proprietary orders that are executed as part of a "cross" transaction in the normal course of the approved person's block positioning activity may be handled by a broker affiliated with the approved person. The NYSE would require, however, that the approved person use an unaffiliated broker for its proprietary orders to minimize the possible appearance or perception that special treatment might be given to a broker affiliated with an approved person of a specialist member organization.

—Requests by an approved person for information about market conditions in a specialty stock, and all market "probes" in connection with an approved person's block trading activities in specialty stock, need not be made by an unaffiliated broker; rather, the rule allows a specialist to make available to a broker affiliated with an approved person only the sort of market information that it would make available in the normal course of its specializing activity to any other broker, and in the same manner that it would make information available to any other broker.

—An approved person would be permitted to be part of an underwriting syndicate or selling group, but not to act as a managing underwriter for a distribution of equity or convertible securities of an issuer in whose securities an associated specialist unit is registered. When the approved person is part of a distribution, the associated specialist unit must "give up the book" to another specialist unit, which shall act as a full time relief specialist for the period during which Rule 10b–6 under the Act [11] is applicable to the regular specialist unit.[12]

—If an approved person entitled to a Rule 98 exemption decides to popularize a security in which an associated specialist is registered, it must disclose that it is associated with a specialist who makes a market in the security, that at any given time the associated specialist may have an inventory position, either "long" or "short," in the security, and, as a result of the associated specialist's function as a market maker, such specialist may be on the opposite side of orders executed on the floor of the NYSE in the security.

—The NYSE would amend Rule 460 ("Specialists Participating in Contests") to enable an approved person entitled to an exemption from the rule to engage in business transactions with an issuer of a specialty stock, and to underwrite a specialty stock to the extent permitted in new Rule 460.20.

D. Surveillance and Oversight

To emphasize the NYSE's commitment to maintaining the integrity of its market under the functional regulation proposal, the Exchange's Board of Directors, in approving Rule 98, adopted a resolution stating that any breach of the Rule and the implementing Guidelines would be considered "an extremely serious matter." In any case brought by the Exchange staff alleging such a breach, the staff will be directed to seek as a penalty the de-registration of one or more of the specialist unit's most "profitable" stocks. If the Exchange Hearing Panel found for the staff but declined to impose such a penalty, the staff would be directed to appeal to the Exchange Board of Directors the sufficiency of whatever penalty the Hearing Panel did impose.

In its rule filing the NYSE also stressed that its current surveillance is more sophisticated than it was when the rules for which exemptive relief is being proposed were first adopted. The NYSE has developed substantial automated surveillance capability. In addition, NYSE is implementing an equity audit trail that it believes will permit it to accurately identify the parties to each trade. The NYSE asserts that its current surveillance capabilities augmented by the audit trail and member organizations' audit and compliance procedures, would provide sufficient means for detecting unusual trading activity by specialist member organizations and any approved persons associated with them.

IV. The Amex Proposal

A. Restrictions Affected

Amex is proposing to amend Rules 190 and 193 to exempt an approved person or member organization which is affiliated with a stock specialist or specialist unit from the following Amex restrictions:

(1) Amex Rule 170(e), prohibiting an affiliated upstairs firm from purchasing or selling any security, in which the specialist is registered, for any account in which such person or party has a direct or indirect interest;

(2) Amex Rule 175, prohibiting an affiliated upstairs firm from holding or granting any option in any security in which the specialist is registered;

(3) Amex Rule 950(k), extending certain of Rule 190's prohibitions to options specialists;

(4) Amex Rule 190(b), prohibiting an affiliated upstairs firm from accepting orders in specialty securities directly from the issuers, its insiders and certain designated institutions;

(5) Amex Rule 190, Commentary, prohibiting an affiliated upstairs firm from "popularizing" (*e.g.*, soliciting orders or issuing buy/sell recommendations) a security in which a specialist is registered;

(6) Amex Rule 190(a), prohibiting an affiliated upstairs firm from engaging in any business transactions with the issuer of a specialty security and its insiders.

B. Substance of Guidelines

Amex's proposed guidelines cover many of the same areas as the NYSE's guidelines. In brief, they would require the following:

—A separate and distinct organization between the affiliated upstairs firm and the specialist unit.

—Separate and distinct books, records and accounts.

—Separate satisfaction of all applicable capital requirements.

—Confidential treatment of the specialist's book.

[11] 17 CFR 240.10b–6.

[12] Rule 10b–6 prohibits an underwriter and its affiliates, including an affiliated specialist unit, from bidding for or purchasing the security being distributed or any related security during a distribution. Rule 10b–6(a)(3)(xi) excepts from that prohibition bids or purchases by an underwriter of the security being distributed prior to the applicable cooling-off period specified by the Rule. Thus, the underwriter and its affiliated specialist unit could not bid for or purchase the security being distributed or a related security as of the commencement of the cooling-off period until the completion of the distribution.

—No influence or control over the other's conduct with respect to particular securities.

Amex outlines the "influence or control" concept in detail, specifying that—

—Any general managerial oversight must not conflict with, or compromise in any way, the specialist's market-making responsibilities pursuant to the Amex rules;

—An affiliated upstairs firm and specialist organization must prohibit the use of material, non-public corporate or market information to influence particular trading decisions of an associated specialist or the misuse of specialist market information to influence particular day to day trading decisions of trading areas of the upstairs affiliated firm;

—Knowledge of pending transactions or the upstairs firm's recommendations should not be taken advantage of.

In addition, Amex would require that, if the upstairs affiliated firm is a participant in any capacity in an underwriting of a specialty issuer's equity securities, then the specialist unit must give up the book in the security being distributed to another specialist unit during the period of time required by Commission Rule 10b–6.[13]

C. Implementation of Guidelines

Under the Amex's guidelines, an affiliated upstairs firm must obtain prior Exchange approval of its procedures to qualify for the exemptions from the restrictions discussed above. Firms should develop guidelines to restrict the flow of material non-public information as appropriate to its operations. An upstairs firm affiliated with a specialist unit must outline in a written statement to Amex:

(1) The matter in which it intends to satisfy each of the guideline conditions, and the compliance and audit procedures it proposes to implement to ensure that the functional separation is maintained;

(2) Designation and identification of the individual within the affiliated upstairs firm responsible for the maintenance and surveillance of such procedures;

(3) The use of an unaffiliated broker for orders in a specialty security for the proprietary account of an affiliated upstairs firm of a specialist organization (other than orders left with the specialist for execution or orders to be executed in a cross-transaction to facilitate executions of customer orders in the normal course of block positioning activity);[14]

(4) Appropriate disclosures by a retail firm popularizing a specialty security that an associated specialist is making a market in the stock, may have a position in the stock, and may be on the opposite side of public orders executed on the Amex floor in the stock; in addition, the firm must notify the Exchange immediately after the issuance of a research report or written recommendation;

(5) Procedures under which the firm will take appropriate remedial action against any person violating these Guidelines or the firm's internal compliance and audit procedures;

(6) Procedures to ensure that information with respect to clearing activities will not be used to compromise the firm's Chinese Wall if an affiliated upstairs firm intends to clear proprietary trades of the specialist organization;[15]

(7) That an upstairs affiliated firm will file with the Exchange such information and reports as Amex may periodically require relating to its transactions in a specialty security;

(8) That the upstairs firm and its associated specialist organization each recognizes that Amex may take appropriate remedial action, including, without limitation, the reallocation of specialty securities and/or the revocation of the exemption provided in Rule 193, in the event of a violation; and

(9) That no individual associated with the affiliated upstairs firm may act as a Competitive Trader or Registered Equity Market Maker in a specialty stock.

D. Surveillance and Oversight

Amex states that, under the proposal, it would focus surveillance and oversight efforts in three areas:

(1) In assessing the applications of firms seeking the exemption, Amex would study not only whether the procedures meet Amex's guidelines but also the level of capability of the firm's compliance personnel and the firm's past record for meeting Amex's overall compliance record.

(2) Amex's existing market surveillance would be strengthened upon the forthcoming completion of its equity audit trail. The audit trail will enable Amex to reconstruct the market more rapidly and determine whether a specialist's trading activities are consistent with its market-making responsibilities.

(3) Amex intends to develp new surveillance and inspection programs which would entail additional reports of upstairs research and trading activities for firms exempt under Rule 193.

More specifically, Amex, in its discussion of exemptions,[16] suggests augmenting its surveillance for possible breaches of the Chinese Wall as follows:

(1) *Proprietary Trading*—Rule 170(e)—Amex would require daily reports of all proprietary trades in specialty securities directly from the upstairs firm, which it would then compare to specialist positions and market-making performance;

(2) *Business Transactions with Issuer*—Rule 190(a)—Amex's Securities Division, which monitors the business activities of Amex-listed companies, would direct relevant information to the Trading Analysis Division, which could then conduct reviews to determine whether the specialist traded while in possession of material non-public information, or was influenced by knowledge of business dealings by the affiliated upstairs firm, in carrying out his market-making responsibilities;

(3) *Overlying Options*—Rule 175(a)—Amex intends to institute a special surveillance routine for abusive trading by receiving and analyzing daily options trading reports and comparing them to underlying stock trading by the parent firm and the specialist.

IV. Request for Comment

A. Background

Traditionally, the trading activity of a primary exchange specialist has been subject to special scrutiny and regulation because, in view of the

[13] *See* note[12], *supra*.

[14] The specialist organization may make available to a broker affiliated with it only the type of market information that it would make available in the normal course of its specializing activity to any other broker and only in the same manner that it would make information available to any other broker. The specialist organization may only make such information available to a broker affiliated with the upstairs firm pursuant to a request by the broker for such information. It may not provide such broker with such information on its own initiative.

[15] Only firms that currently clear third party trades will be permitted to self-clear for the specialist organization. These procedures, at a minimum, must be the same as those presently used by the firms to clear trades of third parties.

[16] Both Amex and the NYSE would request a no-action position, or an interpretation from the Commission, that Rule 10a–1 under the Act, 17 CFR 240.10a–1, the short sale rule, would not require that an approved person and associated specialist unit "net" their respective stock positions to determine whether the entities were net long or net short, in the aggregate, for purposes of the rule. According to Amex, a firm seeking to abide by the exemption offered in proposed Rule 193 could not comply with the provisions of Rule 10a–1 and still preserve the integrity of a Chinese Wall because the Wall requires that there be no sharing of information regarding the specialty security positions of the specialist and its affiliated upstairs firm.

specialist's pivotal position in the trading process, the specialist's role provided unique opportunities for abuse.[17] Specifically, a specialist is required, in part, to trade, insofar as practicable, to maintain a fair and orderly market, and is precluded from trading, insofar as practicable, otherwise than as is reasonably necessary to maintain such a market.[18] Such restrictions are designed, in part, to minimize the potential that a specialist might abuse: (1) Its time and place advantage (that is, the advantages that accrue from the unique access a primary market specialist has to trading activity, trading crowd interest and orders on its limit order book), (2) a specialist's ability to influence, at least for short periods of time, the direction of a security's price, (3) the inherent conflict of interest created when a specialist acts both as dealer and agent, and (4) a specialist's ability to provide one customer or group of customers preferential treatment over another customer or group of customers.[19]

B. Regulatory Approaches

Implicitly at least, the traditional view has been that a specialist's dominant market position was justified by its contribution to market liquidity and orderliness. With regard to this view, it has been felt that the potential for abuse of the position could be ameliorated, if not eliminated, through regulation and surveillance (*e.g.*, affirmative and negative obligations).[20] The instant proposals, to some extent, represent a break from this model. These proposals would provide a framework whereby retail firm capital could be made available for the specialist's market-making role. In this light, these proposals appear to be a positive step toward increasing the liquidity of the nation's securities markets.

At the same time, however, combining the unique position of a primary market specialist[21] with the retail distribution networks and investment banking relationships of a large retail firm, significantly heighten the potential for abuse. These proposals, therefore, are critically dependent on the creation of effective internal controls, so-called Chinese Walls, to eliminate such potential.[22] Moreover, not only must effective controls be in place, these controls must be of such a nature that they can be adequately monitored.

Accordingly, in responding to the specific questions detailed below, the Commission specifically requests that commentators address whether: (1) The procedures for establishing the Chinese Wall are adequate; (2) the procedure for maintaining the Wall are adequate; [23] (3) the procedures for auditing the maintenance of the wall are adequate; and (4) particular restrictions presently applicable to an approved person should continue to apply to the approved person notwithstanding the creation of the Wall. With respect to the last issue, the Commission notes that, in the past, even when a Wall has been constructed, often certain types of information have been deemed to be so fraught with the potential for abuse that an absolute prohibition on certain types of activities should continue to be applied.[24] Turning to the specific proposals, areas that the Commission requests commentators to address include the use of an unaffiliated broker by an affiliated retail firm, the form of internal surveillance firms should develop to justify the concept, and the type of relationship an approved person and associated specialist unit should have when the approved person is engaged in underwriting activities in stock in which the associated specialist is registered. In addressing the issues raised by the proposals, please quantify your answers to the degree possible and provide appropriate data.

C. Potential Benefits of the Proposals

Several NYSE members and member organizations who express support for the proposed rule change believe that the NYSE's proposal would strengthen the specialist system by attracting new sources of capital which would improve the liquidity and quality of exchange markets. For instance, in its letter on NYSE proposed Rule 98, Prudential-Bache Securities wrote that:

The limited capitalization of some specialists has apparently dampened their enthusiasm to commit the funds often necessary to satisfy the demands of the institutional investor. Possible new Rule 98 and the guidelines will encourage, and we expect successfully, the entrance of major

[17] For an overview and history of the regulation of specialists, see N. Wolfson, R. Phillips & T. Russo, *Regulation of Brokers, Dealers and Securities Markets* 11-1 to 11-46 (1977) ("Wolfson").

[18] *See* Rule 11b-1 under the Act, 17 CFR 240.11b-1 (1984).

[19] *See, e.g., Special Study, supra* note[5], at 65-66. ("Although the [Pecora] investigation centered on . . . the activities of specialists as participants in the pools and other manipulative activities . . ., it is apparent from the face of section 11 [of the Act] that Congress was also concerned with the specialist's trading advantages and the conflicts of interest inherent in the mingled broker-dealer functions.").

[20] Another approach is revised stock allocation and reallocation procedures. *See, e.g.*, NYSE Rule 103A. Under this system, a specialist's performance is evaluated on a quarterly basis (both through statistical methods and questionnaires) with a view toward determining how, if at all, a specialist's performance may be improved. In effect, the evaluators are designed to serve as a surrogate for the marketplace discipline of reduced order flow in the event of poor performance.

[21] The Commission recognizes that there is a continuing debate regarding the degree to which specialists today retain significant time and place advantages over other market participants. [Cf. letter from James Buck, Secretary, NYSE, to George Fitzsimmons, Secretary, SEC, dated March 20, 1984.] The point here is that these proposals would, in effect, combine specialist firms with upstairs retail trading firms—the very trading firms which are supposed to counterbalance the specialists' time and place advantages.

[22] In this regard, the Commission notes that the so-called Chinese Wall solution to the problem of multi-service firms, with conflicting duties, acquiring confidential information has been used in a variety of circumstances. *See, e.g., Fund of Funds, Ltd. v. Arthur Anderson & Co.*, 567 F.2d 225 (2d Cir. 1977) (accounting firms); Harzel & Colling, The Chinese Wall Revisited, 6 *Corp. L. Rev.* 116 (1983) (banks); and Comment, The Chinese Wall Defense to Law-Firm Disqualification, 128 *U. Penn. L. Rev.* 677 (1980) (law firms). Indeed, the Commission has endorsed the use of Chinese Walls in limited circumstances. *See, e.g.*, Rule 14e-3(b) under the Act, 17 CFR 240.14e-3 (1984); and *In the Matters of Merrill Lynch, Pierce, Fenner & Smith, Inc.*, Securities Exchange Act Release No. 8459 (1967-69 Transf. Binder) *Fed. Sec. L. Rep.* (CCH) ¶ 77,629 at 83,349-50 (Nov. 25, 1968). (SEC entered into settlement with Merrill Lynch whereby Merrill Lynch adopted policy procedures prohibiting the disclosure of inside information obtained by the firm's underwriting department to anyone other than senior Merrill Lynch executives and employees working on the particular underwriting.]

[23] For example, one commentator has noted that many informal ways in which a Wall can be breached, *e.g.*, shop talk at a firm-wide gathering, particular transactions where the temptation to profit is too great to resist, and having the same person subject to the rule responsible for determining whether the information is privileged. *See* Comment, *supra*, note 22, at 707-708.

[24] For example, in promulgating Rule 14e-3, the Commission endorsed the continued use of so-called "watch lists" and "restricted lists" as well as "the practice that a broker-dealer does not trade for its own account . . . when the broker-dealer possesses material, nonpublic information relating to a tender offer." Securities Exchange Act Release No. 17120 (Oct. 14, 1980), 45 FR 60410, 60416 n.46. Similarly, one set of commentators believes a firm in possession of material, non-public information should not be allowed to invest for the firm's own account. They argued, in part, that:

The possibility of self-interest abuse mandates that the Chinese Wall approval not be extended to permit a firm with departmentally isolated information to invest for its own account through a department that does not have the information [W]here self-interest is intense, abuses are so likely as to warrant a proscription that is absolute.

Lipton & Mazur, The Chinese Wall Solution to the Conflict Problems of Securities Firms, 50 *N.Y.U. L. Rev.* 459, 501 (1975). *See* Varn, The Multi-Service Securities Firm and the Chinese Wall: A New Look in the Light of the Federal Securities Code, 63 *Neb. L. Rev.* 197 (1984). With respect to Messrs. Lipton and Mazur's similar suggestion that a firm refrain from recommending a security while in possession of material, non-public information, *compare* Chazen, Reinforcing the Chinese Wall: A Response, 51 *N.Y.U. L. REV.* 552 (1976) *and* Wolfson, Investment Banking and Broker-Dealers, *in* Twentieth Century Fund Report, *Abuse on Wall Street: Conflicts of Interest in the Securities Markets* 405-13 (1980), *with* Lipton & Mazur, The Chinese Wall: A Reply to Chazen, 51 *N.Y.U. L. Rev.* 579 (1976).

well-capitalized firms into the specialist business.[25]

The NYSE also contends that its proposal would both strengthen the capital base of the exchange trading system and stimulate competition among market makers on the Exchange. In this regard, commentators may wish to focus on the following concerns.

1. Do the NYSE or Amex suffer from a liquidity problem? Would the NYSE or Amex be adversely affected if the rule amendments suggested by their proposals were not adopted?

2. Will easing the restrictions imposed on approved persons affiliated with specialist units significantly benefit the current specialist system by providing additional capital from large retail broker-dealers? Will those firms commit substantial amounts of additional capital to market-making on the floor of the exchange? Should specialists particiapte more actively in block trading? What has been the quality of markets provided by specialists affiliated with large retail firms on regional exchanges? Please quantify your answers to the degree possible.

3. Will easing these restrictions stimulate and enhance competition in the specialist community and lead to a higher level of overall market quality on the exchanges? On the other hand, will the addition of specialists affiliated with retail firms increase the effort needed to receive sufficiently high floor broker ratings to ensure allocation of desirable new issues? So long as each specialist retains the preponderance of order flow in most of this specialty securities, is it clear that the introduction of new potential owners of specialist units will increase competition or affect market quality?

4. There has been a historical contraction in the number of specialist units on the exchange floors. In 1964, for example, 360 NYSE members were registered as specialists and organized into 110 specialist units. Currently, the NYSE has 416 specialists organized into 57 specialist units. What effect will the proposed rule change have upon this historical contraction and upon competition among exchange markets?

5. Assuming the capital adequacy of the specialist units is a problem, are there practical alternative approaches to resolving this problem without raising the regulatory concerns associated with retail firms acting as specialists? For example, is the continued combining of specialist units to increase capital in recent years, an approach that can provide for more effective utilization of capital, and hence improve market quality, without raising the concerns of the Amex and NYSE proposals?

D. Internal Controls

The key to avoiding the concerns raised by commentators about the Amex and NYSE proposals is the establishment of an effective organizational separation between the upstairs firm and associated specialist unit. Without an effective Chinese Wall, there would be significant opportunities for manipulation, conflicts of interest, possible unfair competitive advantages and other abuses. Under the exchange proposals, the upstairs firms and the associated specialist unit are to maintain separate organizational structures as well as separate books, records and financial accounting to restrict the two entities' access to each other. As discussed above, the exchanges' guidelines also provide for internal auditing systems and exchange surveillance procedures to monitor for possible breaches of the Chinese Wall.

6. Is this Chinese Wall approach, as laid out by the Amex and NYSE, a workable arrangement whereby potential conflicts arising between specialist units associated with member firms could be effectively avoided? Is it possible to audit compliance with such a Wall effectively? Would such an arrangement effectively prevent the upstairs firm and associated specialist unit from influencing one another's conduct regarding particular securities or the flow of otherwise privileged information between the two firms? [26] Would a Chinese Wall established on a permanent basis likely be less effective and more permeable than one established on a short-term basis (*e.g.*, a Wall established only for the duration of a particular underwriting)?

7. Under the proposed Amex and NYSE rule changes, an approved person affiliated with a specialist unit would be exempt from the following trading prohibitions: (1) The trading of specialty securities (Amex Rule 170(e); NYSE Rule 104, 104.13; (2) trading options on specialty securities (Amex Rule 190(b), NYSE Rules 105); (3) accepting orders in specialty securities from the issuer, its insiders and institutions (Amex Rule 190(b); NYSE Rules 104, 113) (4) performing advisory and research services with respect to the specialty securities (Amex Rule 190, Commentary; NYSE Rule 113.20); (5) "popularizing" specialty securities (Amex Rule 190, Commentary; NYSE Rules 113.20) and (6) engaging in business transactions with a company in whose stock and specialist is registered (Amex Rule 190(a); NYSE Rule 460). Should all of these restrictions be modified or could one or more of these restrictions be retained in some form without detracting from the overall effectiveness of the proposed system of functional regulation?

For example, the Amex and NYSE would require that popularization would have to be accompanied by clear disclosure of the relationship between the upstairs and associated specialist firms. Outside of the investment banking context (discusses below), is it necessary that the upstairs firm be able to have other business relationships with the issuers of specialty securities? Could a materiality test be used to reduce the risks of possible abuse from any business dealings? Similarly, how serious a hardship would be imposed on affiliated upstairs firms by preventing them from accepting orders in specialty securities from such issuers and their insiders?

8. Under proposed guidelines, an approved persons must accord confidential treatment to information derived from business transactions between the approved person and the issuer of any specialty stock. What other types of business transactions should be accorded confidential treatment?

Some commentators have suggested that the use of an unaffiliated broker by the upstairs firm provides at most cosmetic protection, because an associated specialist would quickly become aware of the unaffiliated broker used by its upstairs affiliate. Is the use by the affilated upstairs firm of an unaffilated broker an effective device for dealing with orders in a speciality stock for the proprietary account of the firm? Would allowing the sue of an affiliated broker with an audit trail and heightened surveillance be better? [27] Would the use of an affiliated broker, in fact, assist the "crowd" in detecting any improper trading arrangements in a specialty stock for the firm's proprietary

[25] Letter from Leland B. Paton, Executive Vice President, Prudential Bache Securities, to Donald J. Solodar, Senior Vice President, NYSE, dated August 31, 1984.

[26] For example, in its comment letter on proposed NYSE Rule 98, Merrill Lynch & Co., Inc., observed, "in short, a specialist's activities are conducted within a glass house, making it unlikely that any abusive practice would be tolerated or permitted." Letter from Robert P. Rittereiser, Executive Vice President, Merrill Lynch & Co., Inc., to Donald J. Solodar, Senior Vice President, NYSE, dated October 19, 1984.

[27] This is not to say that the firm might not be otherwise required to use an unaffiliated broker. *See* section 11(a)(1) of the Act, 15 U.S.C. 78k(a)(1); Rules 11a-1, 15 CFR 11a-1; 11(a)2-2(T) 15 CFR 11(a) 2-2[T] under the Act.

account? Requests by an approved person for information about market conditions in a specialty stock and all market probes in connection with an approved person's block trading activities in specialty stock, however, will be made by affiliated brokers. Is this appropriate?

10. Both exchanges' proposals would allow an affiliated upstairs firm to clear properietary trades of the specialist organization. This would appear to create a significant risk for breaches of the Chinese Wall, because it would give access to important financial and transactional information on a daily and even intra-day basis about both the upstairs and specialist organizaitons to a group of employees below the senior management level. That clearing information could serve as a conduit for breaches of the Chinese Wall by either entity. Should an upstairs firim be allowed to clear for an associated specialist unit? What are the costs or other consequences of not permitting such clearing arrangements? Please quantity your answers to the degree possible. Are there additional procedures which would help ensure that clearing information would not be used to compromise the firm's Chinese Wall?

11. One of the underlying purposes of the organizational separation of a member firm and an associated specialist unit is to prevent privileged information from flowing between the two entities. What information should be viewed as privileged in this context? What type of information legitimately should be allowed to flow between an upstairs firm and an associated specialist unit? What type of information would result in a trading advantage to the specialist unit or affiliated upstairs firm?

12. With regard to privileged information, Amex and NYSE draw a line based on an "influence or control" concept, and contrast general managerial oversight activities with day to day trading decisions, and allow only the former.[28] Is the distinction between "general managerial oversight" and "day to day trading" decisions sufficiently clear to be enforceable?[29] Are the other protections used to buttress the informational separation (*e.g.*, the limitation to identified senior management of any information exchange) sufficient even if it is not possible to draw a clear line between general oversight and particular decisions? Should the senior officer responsible for managerial oversight of the associated specialist be restricted in his dealings with the firm's trading and investment banking activities?

13. Applicant firms must specify "internal audit and compliance" procedures as part of the Exchange's qualification process. What forms of internal surveillance should firms develop to justify reliance on this concept? Given the size and complexity of some integrated firms, what elements of information should be captured and what sorts of abuses should be the focus of the internal surveillance programs? How can the exchanges and the Commission monitor the effectiveness of such programs (*e.g.*, routine examinations or periodic inspections)?

14. Under the NYSE's rule proposal, in any case brought by the Exchange staff alleging a serious breach of Rule 98 or the implementing guidelines adopted thereunder by an approved person or its associated specialist, the staff will be directed to seek as a penalty the de-registration of one or more of the specialist unit's most "profitable" stocks. Would such a sanction be too severe a sanction in some instances? Will it provide an adequate incentive to ensure that the Wall is maintained?

15. Should any of the NYSE's unique guidelines be factored into the Amex proposal or vice versa?

E. Unfair Competitive Advantages

16. In easing the restriction imposed on member firms associated with specialist units, some commentators voiced concerns that upstairs firms with associated specialists would have a competitive advantage over other upstairs firms. It was felt that even if such upstairs firms. It was felt tht even if such upstairs firms were not actually able to influence their specialist to provided the institution a better execution, or utilize information from the specialist in timing the trade or otherwise achieve an optimal execution, there would be a perception reinforced by tacit marketing efforts of upstairs firm, that it could provide such superior executions. For instance, one commentator on proposed NYSE Rule 98 argued that:

> If such a system were to become prevalent, it would occur to me that there would be a major proclivity on the part of institution to direct their orders toward those firms that own the specialist books in the stocks that they were interested in. What will this potentially do to institutional commissions, pressures for discounts or premium bids and other gimmickry? [30]

In contrast, the NYSE argues that no such proclivity would result if the guidelines are adhered to, as it believes will be the case. As a practical matter, would the Amex and NYSE's proposal eliminate any advantage, real or perceived, that an approved person might have in attracting institutional order flow?

F. Investment Banking

17. A significant difference between the NYSE and Amex proposals relates to restrictions on investment banking activities. Amex, for instance, would allow an upstairs firm to participate in an underwriting in any capacity, but the NYSE would only permit an approval person to act as a member of an underwriting syndicate or selling group but not as a managing underwriter for a distribution of equity or convertible securities of an issuer in whose securities an associated specialist unit is registered.[31] The NYSE believes such a

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[28] The NYSE filing states, at 22, "The Exchange intends the term 'particular trading decisions' of a specialist to mean the specialist's trading decisions made at the opening and at the close, as well as intra-day, moment-to-moment trading decisions made by a specialist in the discharge of his market-making responsibilities. The Exchange does not intend to preclude after-the-fact review of specialist trading activity as part of the managerial oversight of the specialist member organization conducted by the approved person's senior management."

[29] For example, it would appear that information about general trading strategies being pursued by one portion of the firm could be utilized profitably by the other even though it did not involve day-to-day or particular trading decisions. Similarly, it would appear that certain financial decisions (*e.g.*, a decision to reduce the risk exposure of a bullish specialist with aggressive risk positions) also could be used profitably by the upstairs firms. Finally, information that either the firm or the specialist had acquired an extremely large position and therefore was at unusally great risk might cause increased pressures on the Wall because of normal reactions of senior management to employ the firm's retail network (or the specialist's market making activity) to help the specialist (or the firm) out.

[30] Letter from Frederick A. Klingenstein, Chairman of the Board Wertheim & Co. Inc., to Donald J. Solodar, Senior Vice President, NYSE, dated August 6, 1984. In this regard, the Commission notes that when it addressed a similar issue in connection with potential amendments to Rule 113 it stated: [I]f it appeared that institutional fiduciaries were under undue pressure to deal directly with market makers the Commission would take prompt action to investigate the circumstances to ensure that institutional managers were not inhibited in exercising their judgement. . . . However, the possibility that the duties of institutional managers may require clarification in the manner set forth above in no event should be permitted to deter a national resolution of the issues raised by Rule 113 and 190."

SEC, Policy Statement on the Structure of a Central Market System (March 29, 1973) as reprinted in [1973] *Sec. Reg. & Rep.* (BNA) No. 196 at D-10 (April 4, 1973). *See also*, Subcommittee on Securities of the Senate Comm. on Banking, Housing & Urban Affs., Securities Industry Study 93rd Congr., 1st Sess. at 119.

[31] Under both the Amex and NYSE proposals, an approved person who participates in an underwriting would be required to "give up the book" to another specialist unit which would act as

Continued

procedure is appropriate because a managing underwriter has greater and more diverse contact with the issuer and a greater financial stake in the successful outcome of the distribution than does a syndicate or selling group member. The restriction against acting as a lead underwriter is an accommodation to those investment bankers who are concerned that diversified firms with specialist affiliates could enjoy a competitive advantage in being selective by issuers of specialty securities as lead underwriters.

What type of relationship should an approved person and associated specialist unit have when the approved person is engaged in underwriting activities in stock in which the associated specialist unit is registered? In NYSE's distinction between managing underwriters and participants necessary or appropriate? Is "giving up the book" on a regular basis feasible in the primary market, especially in connection with shelf offerings? If so, is the fact that the specialist must give up the book sufficient to mitigate any perceived competitive advantages the affiliated upstairs firm may have in competing to be managing underwriter?

G. Trading Restrictions

18. Both the Amex and NYSE request a no-action position or interpretation from the Commission, that Rule 10a–1 under the Act,[32] the short sales rule, would not require an approved person and an associated specialist unit to "net" their respective stock positions to determine whether the two positions were, in the aggregate, net long or net short for purposes of Rule 10a–1. Is such a clarification appropriate? Is similar clarification required with respect to a determination of the positions of an approved person and an associated specialist unit in the context of Rule 10b–4[33] (short tendering of securities) or other rules?

H. Equal Regulation

19. The NYSE believes that the current disparity in regulation between primary and regional exchanges has the effect of encouraging diversified firms that desire to enter the specialist business, without disrupting their other lines of business, to become specialists on a regional exchange rather than on the NYSE. In the NYSE's view this imposes a two-fold burden on competition: as between the NYSE and other market centers, and as between existing specialist member organizations on the NYSE and diversified firms that desire to enter the specialist business on the NYSE market. What have been the effects of the increased number of specialists with retail firms on regional exchanges? Do those firms route all or most of their order flow to the affiliated exchange? If the NYSE and Amex proposals are not adopted, should the regional exchanges adopt restrictions similar to those currently in place on the NYSE amd Amex? If the NYSE and Amex proposals are adopted, should the regional exchanges adopt similar internal control requirements? In the alternative, should such controls only be required for regional exchange specialists associated with a retail firm achieving a certain volume of trading, *e.g.*, 25% of the market?[34]

Dated: September 11, 1985.
By the Commission.

John Wheeler,

Secretary.

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a full-time relief specialist for the period during which Rule 10b-6 is applicable to the regular specialist unit.

[32] 17 CFR 240.10a–1.

[33] 17 CFR 240.10b–4.

[34] Traditionally, the Commission has not required regional exchange specialists to operate under the same regulatory regime as primary market specialists because the limited trading volume attributable to such specialists coupled with their dependence on dual trading (*i.e.*, trading stocks otherwise listed on a primary exchange) reduced their potential market impact. *See, e.g.*, Securities Exchange Act Release No. 7465 (Nov. 23, 1964), at 3; *Special Study, supra* note [8], at 167.

[Release No. 22393; File No. Phlx–85–18]

Self-regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Partially Approving Proposed Rule Change

The Philadelphia Stock Exchange, Inc. submitted on May 28, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, a portion of which would permit the use of cash or cash equivalents to collateralize escrow receipts or letters of guarantee issued to cover short put positions in foreign currency options. Under existing Phlx rules and the rules of the other options exchanges, cash and cash equivalents can be used to cover short put positions in individual equity options and index options. Under current Phlx rules, however, only cash can be used to cover short put positions in foreign currency options. Under the proposal, cash equivalents, as defined in § 220.8(a)(3)(ii) of Regulation T,[1] also would be permitted to be used as collateral to cover short put options positions in foreign currencies.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 22258, July 19, 1985) and by publication in the **Federal Register** (50 FR 30553). No comments were received on this portion of the proposed rule change.

The Commission finds that the portion of Phlx's rule change that would permit the use of cash equivalents, in addition to cash, in lieu of margin, to cover short put options positions in foreign currencies, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to Phlx and, in particular, the requirements of section 6 and the rules and the regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the portion of Phlx's proposed rule change discussed above, hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 9, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–22255 Filed 9–17–85; 8:45 am]

BILLING CODE 8010–01–M

[1] 12 CFR 220.8(a)(3)(ii) (1984).

[Release No. IC–14714; File No. 812–6088]

Application and Opportunity for Hearing; Variable Insurance Products Fund (Formerly Fidelity Cash Reserves II) and Certain Life Insurance Companies and Variable Life Insurance Separate Accounts Investing Therein

September 11, 1985.

Notice is hereby given that Variable Insurance Products Fund ("Fund"), 82 Devonshire Street, Boston, Massachusetts 02109, and certain life insurance companies and variable life insurance separate accounts investing therein (together, "Applicants"), filed an application on April 29, 1985, and an amendment thereto on August 23, 1985, for an order of the Commission, pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act"), exempting Applicants from the provisions of sections 9(a), 13(a), 15(a), and 15(b) of the Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Fund to be sold to and held by variable annuity and variable life insurance separate accounts of both

affiliated and unaffiliated life insurance companies. All persons are referred to the application on file with the Commission for a statement of the representations, which are summarized below, and to the Act and rules thereunder for a statement of the relevant provisions.

The Fund is a Massachusetts business trust registered under the Act as an open-end diversified management investment company. Fidelity Management and Research Company ("FMR") is the investment adviser for the Fund. Applicants state that the Fund currently serves as the underlying investment medium for variable annuity contracts issued by Fidelity Variable Annuity Account, a separate account of Pacific Fidelity Life Insurance Company. The Fund proposes to offer its shares to other separate accounts which issue either variable annuity contracts, scheduled premium variable life insurance contracts, or flexible premium variable life insurance contracts (together, "variable life"). These separate accounts will be separate accounts of either affiliated or unaffiliated insurance companies ("Participating Insurance Companies"). (The use of a common management company as the investment medium of both variable annuities and variable life insurance is referred to herein as "mixed funding." The use of a common management company as the investment medium for separate accounts of unaffiliated insurance companies is referred to herein as "shared funding.")

Rules 6e-2 and 6-3(T) under the Act provide certain exemptions from the Act in order to permit insurance company separate accounts to issue variable life insurance. Rule 6e-2(b)(15), however, precludes mixed and shared funding, and Rule 6e-3(T)(b)(15) precludes shared funding. Applicants propose that the requested relief extend to a class consisting of life insurers and variable life separate accounts investing in the Fund (and principal underwriters and depositors of such separate Accounts) which would otherwise be precluded from investing in the Fund by virtue of the Fund offering its shares to variable annuity separate accounts or unaffiliated variable life separate accounts.

Applicants assert that granting the request for relief to do mixed and shared funding will benefit variable contractowners by: (1) Eliminating a significant portion of the costs of establishing and administering separate funds; (2) allowing for the development of larger pools of assets resulting in greater cost efficiencies, diversification, and investment flexibility; (3) making the addition of new portfolios more feasible, thus, providing contract-owners with additional investment alternatives; and (4) encouraging more insurance companies to offer variable contracts, which should result in increased competition and lower contract charges. Applicants state that the Fund will not be managed to favor or disfavor any particular insurer or type of insurance product.

1. Disqualification

Applicants request relief from section 9(a) and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) to the extent necessary to permit mixed and shared funding: *i.e.*, Applicants propose that the relief granted by paragraphs (b)(15) of Rule 6e-2 and Rule 6e-3(T) from section 9(a) be extended to a class of insurance companies and variable life separate accounts which may be used to Fund as an investment medium to fund variable life insurance contracts, subject to the conditions regarding conflicts set out in the application and summarized *infra*. In support of this request for relief, Applicants assert that the same policies that led the Commission to limit the provisions of Section 9(a) to those employees of the insurance company engaged in managing the separate account are applicable to insurance companies and their separate accounts that are funded by a fund offering mixed and shared funding. Thus, Applicants argue that it is unnecessary to apply the provisions of section 9(a) to the many employees of the insurance companies whose separate accounts may utilize the Fund as a funding medium for variable life insurance contracts. Moreover, Applicants submit that applying the requirements of section 9(a) in such cases would increase the costs of monitoring for compliance with that section, which would reduce the net rates by contractowners.

2. Voting

Applicants request relief from sections 13(a), 15(a) and 15(b) of the Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder to the extent necessary to permit mixed and shared funding: *i.e.*, Applicants propose that the relief granted by paragraphs (b)(15) of Rules 6e-2 and 6e-3(T) from sections 13(a), 15(a), and 15(b) be extended to a class of insurance companies and variable life separate accounts which may use the Fund as an investment medium to fund variable life contracts, subject to the conditions regarding conflicts set out in the application and summarized *infra*.

In support of this request for relief, Applicants state that all variable annuity and variable life contractowners will be provided voting rights with respect to Fund shares attributable for their contracts inasmuch as all sponsoring insurance companies will vote these shares in accordance with contractowner instructions. Because paragraphs (b)(15) of both Rule 6e-2 and Rule 6e-3(T) permit the insurance company to disregard these voting instructions in certain limited circumstances, Applicants acknowledge that this may cause an irreconcilable conflict to develop among the separate accounts. Applicants propose to resolve these potential conflicts through undertakings it proposes as conditions to receipt of exemptive relief set out *infra*. Thus, according to Applicants, if a particular insurance company's disregard of voting instructions conflicted with a majority of contractowners' voting instuctions, or precluded a majority vote, the insurer may be required, at the Fund's election, to withdraw its separate account's investment in the Fund.

Applicants state that this requirement (which also encompasses the situation where a particular state insurance regulator's decision conflicts with the majority of other state regulators) will be provided for in agreements that will be entered into by Participating Insurance Companies with respect to participation in the Fund.

3. Conditions

Applicants state that they will comply with certain conditions set forth in the application, which are summarized as follows: (1) A majority of the board of trustees of the Fund ("board") shall consist of persons who are not "interested person" of the Fund, as defined by the Act. (2) The Fund will comply with all provisions of the Act requiring voting by shareholders, and in particular the Fund will either provide for annual meetings or comply with section 16(c) of the Act (although the Fund is not one of the trusts described in section 16(c) of the Act) as well as with section 16(a) and, if applicable, section 16(b). Further, the Fund will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic election of trustees and with whatever rules the Commission may promulgate with respect thereto. (3) The board will monitor the Fund for the existence of any material irreconcilable conflict between the interests of the contract-owners of all separate accounts investing in the Fund. An irreconcilable material conflict may arise for a variety of reasons, including: (a) An action by

any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any series are being managed; (e) a difference in voting instructions given by variable annuity contractowners and variable life insurance contractowners; or (f) a decision by an insurer to disregard the voting instructions of contractowners. (4) Participating Insurance Companies and FMR will report any potential or existing conflicts to the Fund's board. Participating Insurance Companies and FMR will be responsible for assisting the board in carrying out its responsibilities under these conditions, by providing the board with all information reasonably necessary for the board to consider any issues raised. This includes, but is not limited to, an obligation by each Participating Insurance Company to inform the board whenever contractowner voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the board will be a contractual obligation of all insurers investing in the Fund under their agreements governing participation in the Fund and such responsibilities will be carried out with a view only to the interests of the contract-owners. (5) If it is determined by a majority of the board of the Fund, or a majority of its disinterested trustees, that a material irreconcilable conflict exists, the relevant insurance companies shall, at their expense and to the extent reasonable practicable (as determined by a majority of the disinterested trustees), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, up to and including: (a), Withdrawing the assets allocable to some or all of the separate accounts from the Fund or any series and reinvesting such assets in a different investment medium, including another series of the Fund, or submitting the questions whether such segregation should be implemented to a vote of all affected contractowners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity contractowners, life insurance contractowners, or variable contractowners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contractowners the option of making such a change; and (b), establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of an insurer's decision to disregard contractowner voting instructions and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the Fund's election, to withdraw its separate account's investment in the Fund and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a board determination of an irreconcilable material conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Fund, and these responsibilities will be carried out with a view only to the interests of contractowners. For purposes of this condition 5, a majority of the disinterested members of the board shall determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will the Fund or FMR be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by this condition 5 to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of contractowners materially adversely affected by the irreconcilable material conflict. (6) The Board's determination of the existence of an irreconcilable material conflict and its implications shall be made known promptly to all Participating Insurance Companies. (7) Participating Insurance Companies will provide pass-through voting privileges to all variable contractowners so long as the Commission continues to interpret the Act to require pass-through voting privileges for variable contractowners. Participating Insurance Companies shall be responsible for assuring that each of their separate accounts participating in the Fund calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the Fund shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Fund. (8) The Fund will notify all Participating Insurance Companies that prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. (9) All reports received by the board of potential or existing conflicts, and all board action with regard to determining the existence of a conflict, notifying Participating Insurance Companies of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request. (10) Finally, Applicants represent that if and to the extent that Rule 6e–2 and Rule 6e–3(T) are amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the Act or the rules promulgated thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in this Application, then the Fund and/or the Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

Notice is further given that any interested person wishing to request a hearing on the application may, no later than October 7, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices or orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–22360 Filed 9–17–85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14720; 812-6163]

Application for an Order Pursuant to Section 6(c) of the Act Exempting Applicant From the Provisions of Section 12(d)(3) of the Act; Shearson Lehman Special Portfolios

September 12, 1985.

Notice is hereby given that Shearson Lehman Special Portfolios ("Applicant"), Two World Trade Center, New York, New York 10048, registered under the Investment Company Act of 1940 ("Act") as a diversified, open-end investment company, filed an application on July 31, 1985, for an order pursuant to section 6(c) of the Act exempting Applicant from the provisions of section 12(d)(3) to permit the Tax-Exempt Income Portfolio ("Portfolio") of Applicant to acquire stand-by commitments for its portfolios securities from broker/dealers. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below and to the Act and rules thereunder for the relevant provisions.

As described in its registration statement, Applicant intends to offer investors a selection of three investment portfolios, one of which is the Portfolio. The investment objective of the Portfolio is the maximization of current income exempt from federal income taxes by investing primarily in intermediate and long-term municipal bonds and notes rated A, Baa or Ba by Moody's Investors Service or A, BBB or BB by Standard & Poor's Corporation ("Municipal Securities").

Applicant states that in order to permit the Portfolio to be as fully invested as practicable in Municipal Securities, while achieving a reasonable level of portfolio liquidity to permit Applicant to honor redemption orders received from shareholders in the Portfolio and to meet payment obligations for securities purchased on a when-issued basis, the Board of Trustees of Applicant proposes to adopt policies permitting Applicant to acquire stand-by commitments on behalf of the Portfolio. When Applicant purchases a Municipal Security for the Portfolio from a broker, dealer or other financial institution, it proposes to have the flexibility from time to time to acquire, in addition, the option to sell the same principal amount of such securities back to the seller or to a third party at a specified price ("stand-by commitments"). The investment policies adopted by Applicant relating to the Portfolio will permit the acquisition of stand-by commitments solely to facilitate liquidity of the Portfolio.

Applicant submits that it intends to acquire stand-by commitments for the Portfolio which will have the following features: (1) They will be in writing and will be physically held by Applicant's custodian; (2) they will be exercisable by Applicant on behalf of the Portfolio at any time prior to the maturity of the underlying securities; (3) they will be entered into only with brokers, dealers and banks which, in the opinion of the Portfolio's investment advisers, present minimal risks of default; (4) Applicant's right to exercise them will be unconditional and unqualified; (5) although they will not be transferable, municipal obligations purchased subject to a commitment could be sold to a third party at any time, even though the commitment is outstanding; and (6) their exercise price will be (i) with respect to Municipal Securities with remaining maturities of 60 days or less, (a) the Portfolio's acquisition cost of the Municipal Securities which are subject to a commitment (excluding any accrued interest which the Portfolio paid on their acquisition), less any amortized market premium or plus any amortized market or original issue discount during the period it owned the securities, plus (b) all interest accrued on the securities since the last interest payment date during the period the securities were owned by the Portfolio, and (ii) with respect to all other Municipal Securities, (a) the market value of the Municipal Securities which are subject to a commitment (excluding any accrued interest which the Portfolio paid on their acquisition), plus (b) all interest accrued on the securities since the last interest payment date during the period the securities were owned by the Portfolio. The Portfolio's ability to exercise a stand-by commitment will depend on the ability of the issuing institution to pay for the underlying securities at the time the stand-by ommitment is exercised. The Applicant's investment advisers intend to periodically evaluate the credit of institutions issuing stand-by commitments to the Portfolio.

According to the application, Applicant expects that stand-by commitments purchased on behalf of the Portfolio will generally be available without the payment of any direct or indirect consideration. Payment of consideration for stand-by commitments either separately in cash or by paying a higher price for portfolio securities acquired subject to commitments will be made if such payment is deemed necessary or advisable. As a matter of operating policy, the total amount "paid" in either manner for outstanding stand-by commitment held as assets of the Portfolio will not exceed ½ of 1% of the value of the Portfolio's total assets calculated immediately after any stand-by commitment is acquired.

Applicant submits that during the term of a stand-by commitment, it will be difficult to evaluate the likelihood that the commitment will be exercised or the potential benefit to the Portfolio should the commitment be exercised. In light of such uncertainties, the stand-by commitments will be valued at zero, regardless of whether any direct or indirect consideration is paid for the commitment. Where Applicant has paid for a stand-by commitment, that cost will be reflected as unrealized depreciation for the period during which the commitment is held in the Portfolio. Applicant states that the proposed acquisition of stand-by commitments will not affect the net asset value per share of the Portfolio for purposes of sales and redemption.

Applicant contends that the requested exemption is appropriate, is in the public interest and is consistent with the protection of investors. The acquisition of stand-by commitments will not impose new investment risks, but rather will improve the Portfolio's liquidity, ability to promptly meet redemptions, and to meet its payment obligations for securities purchased on a when-issued basis.

Notice is further given that any interested person wishing to request a hearing on the Application may, not later than October 7, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon the Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the Application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-22358 Filed 9-17-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22402; SR-NASDA-85-6]

Self-Regulary Organizations; National Association of Securities Dealers, Inc.; Order Approving Rule Change

September 12, 1985.

The National Association of Securities Dealers, Inc. ("NASD"), submitted on March 11, 1985, a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder to amend the Venture Capital Restrictions ("Venture Capital Restrictions") of the Interpretation of the Board of Governors—Review of Corporate Financing ("Interpretation") pursuant to Article III, Section 1 of the NASD's Rules of Fair Practice.[1] The Venture Capital Restrictions prohibit members and certain of their control persons from selling shares that they beneficially own during an initial public offering of such securities and also establish one year holding period for those securities.

Under the proposed rule change, an underwriter may sell its own securities in a initial public offering and is not subject to a holding period if the price of an issue is established by a qualified independent underwriter.[2] In addition, the proposed rule change would provide a *de minimis* exception from the rule's application if the number of securities sold by the member in the offering does not exceed one percent of the securities offered. If an underwriter does not use a qualified independent underwriter to price its securities or if the *de minimis* exception is not available, the proposed rule would continue to prohibit an underwriter or its control persons from selling its shares during an offering but would reduce the post-offering holding period from one year to ninety days. The proposal also clarifies that the provision applies to immediate family members and sister subsidiaries of NASD members.[3]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Release No. 21861, March 18, 1985) and by publication in the **Federal Register** (50 FR 11777). No comments were received with respect to the proposed rule change.

The proposed rule change significantly reduces certain of the limitations contained in the NASD's Venture Capital Restrictions. Nevertheless, the Commission believes that the protections contained in the proposed rule change should be sufficient to deter conflicts of interest when broker-dealer acts as both an underwriter and selling shareholder. In addition, the *de minimis* exception appears to be set at a level that should not give rise to serious risks of abuse. The Commission also finds that the proposal's increased flexibility should facilitate venture capital and related financings without seriously increasing possible risks of abuse. Therefore, the proposed rule change furthers the goals of section 15A(b)(6) of the Act. Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to 19(b)(2) of the Act, that proposed rule change SE–NASD–85–6, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: September 12, 1985.

[FR Doc. 85–22357 Filed 9–17–85; 8:45 am]

BILLING CODE 8010-01-M

[1] During the time that the Commission was reviewing the proposed rule change, the NASD filed two amendments. The first amendment makes certain technical amendments to the filing. *See* Amendment No. 1 to SR–NASD–85–6 (March 11, 1985). The second amendment makes an additional technical change to the proposed rule and also adds a footnote defining "immediate family member." *See* Amendment No. 2 to SR–NASD–85–6 (August 23, 1985).

[2] A "qualified independent underwriter" is defined in section 2(k) of Schedule E to Article VII, section 1(a)(4) of the NASD's By-Laws. This definition also specifies that such an underwriter must not beneficially own securities of the issuer, must participate in the preparation of the registration statement and the prospectus, and must exercise the usual standards of "due diligence."

[3] The present rule proposal evolved from the Policy of the Board of Governors on Venture Capital and Other Investments by Broker/Dealers Prior to Public Offerings ("Venture Capital Policy") under the interpretation. The Venture Capital Policy was adopted by the NASD in 1968 and governed venture capital investments in securities prior to the initial public offerings of such securities. The Venture Capital Policy established an eighteen month holding period for members who make venture capital investments and receive securities in return. In addition, the Venture Capital Policy barred without exception a member who sells such securities in a public offering from acting as an underwriter or participating in the distribution of that issue. In 1983, the Venture Capital Policy was rescinded and the current Venture Capital Restrictions were imposed. *See* Securities Exchange Act Release 19828 (May 23, 1983), 48 FR 28164.

[Release No. 34-22399; File No. SR-NASD-85-22]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") submitted on July 31, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, to amend the NASD's Certificate of Incorporation, which presently permits the NASD to transact business in the United States. The proposed rule change deletes the references to the United States thereby enabling the NASD to transact business anywhere it chooses.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 22301, August 5, 1985) and by publication in the **Federal Register** (50 FR 32941, August 15, 1985). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the NADS's proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: September 11, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–22381 Filed 9–17–85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22401; File No. SR-PSDTC-85-07]

Self-Regulatory Organizations; Proposed Rule Change by Pacific Securities Depository Trust Co., Relating to Proposed Underwriting Program; Filing

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 19, 1985, the Pacific Securities Depository Trust Company ("PSDTC") filed with the Security and Exchange Commission ("Commission")

the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PSDTC and its affiliated clearing corporation, Pacific Clearing Corporation ("PCC"), are proposing to implement a program to provide settlement and distribution services in connection with certain underwritings of PSDTC-eligible securities. The proposed underwriting program will consist of a consolidation of various services currently provided by PSDTC (including book-entry movement and safekeeping of securities) and PCC (including window services and securities collections and deliveries). Pending Commission approval of the underwriting program, PSDTC and PCC are proposing to implement it on a limited basis as a pilot program.

A PSDTC participant serving as a managing underwriter may request PSDTC and PCC to act as its agent in connection with a specific underwriting by submitting a completed letter of authorization at least two weeks before the expected settlement date, accompanied by additional information about the underwriting. In the letter of authorization, PSDTC and PCC may be requested to provide (1) pick-up services, (2) distribution services only or (3) distribution and money settlement services. The managing underwriter will instruct the issuer's transfer agent or trustee bank to issue the securities in appropriate denominations, registered in the name of PSDTC's nominee. PSDTC will require the applicable instruction forms, money settlement schedule and distribution information to be delivered to it forty-eight hours before the closing of the underwriting.

If requested by the managing underwriter, PCC personnel will arrange to pick up the securities from the transfer agent or trustee bank on the day before settlement of the underwriting. The securities will be retained in safekeeping in a custody account pending the closing of the underwriting. When it has been advised that the underwriting has closed, PSDTC will transfer the securities out of the custody account and process bookentry movements and physical releases, in accordance with instructions previously given to PSDTC. Drafts and third party items will be forwarded to PCC's Securities Collection Division for distribution in accordance with its procedures. Non-PSDTC participants may receive securities against payment by cashiers check at a PCC branch office, or may effect settlement directly with the underwriter or through a correspondent. At the end of the day, all securities remaining in PSDTC's possession will be valued and forwarded to its vault in San Francisco, California, for safekeeping.

Where PSDTC and PCC are to provide distribution services only, the underwriter will deliver the securities to PCC's clearing window on the settlement day, and the position will be credited to the underwriter's account. Upon receipt of a release from the transfer agent or trustee bank, movements and releases will be processed. Where PSDTC and PCC are to provide money settlement and distribution services, selling group members will make payment to PSDTC, and settlement proceeds will be transmitted to the underwriter by PSDTC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in (A), (B) an (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed underwriting program is intended to facilitate securities underwritings, by expediting the issuance and distribution of securities, reducing the issuance and distribution of securities, reducing the necessity for physical deliveries and encouraging the use of bookentry transfers of securities.

PSDTC believes that the proposed rule change is consistent with section 17A(b)(3)(F) of the Act, in that it is intended to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding fo securities and funds and in general to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition.

PSDTC perceives no burden on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others.

Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Secrities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 9, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 11, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-22355 Filed 9-17-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22400; File No. SR-PCC-85-05]

Self-Regulatory Organizations; Proposed Rule Change by Pacific Clearing Corp. Relating to Proposed Underwriting Program; Filing

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 19, 1985, the Pacific Clearing Corporation ("PCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCC and its affiliated securities depository, Pacific Securities Depository Trust Company ("PSDTC"), are proposing to implement a program to provide settlement and distribution services or connection with certain underwritings of PSDTC-eligible securities. The proposed underwriting program will consist of a consolidation of various services currently provided by PSDTC (including bookentry movement and safekeeping of securities) and PCC (including window services and securities collections and deliveries). Pending Commission approval of the underwriting program, PCC and PSDTC are proposing to implement it on a limited basis as a pilot program.

A PSDTC participant serving as a managing underwriter may request PCC and PSDTC to act as its agent in connection with a specific underwriting by submitting a completed letter of authorization at least two weeks before the expected settlement date, accompanied by additional information about the underwriting. The signed letter of authorization will be retained at the PCC office through which the underwriting will be completed. (PCC's principal office is located in San Francisco, California; PCC also maintains offices in Los Angeles, California; Denver, Colorado; New York, New York; Portland, Oregon; and Seattle, Washington.) In the letter of authorization, PCC and PSDTC May be requested to provide (1) pick-up services, (2) distribution services only or (3) distribution and money settlement services. The managing underwriter will instruct the issuer's transfer agent or trustee bank to issue the securities in appropriate denominations, registered in the name of PSDTC's nominee. Applicable instruction forms, money settlement schedules and distribution information must be delivered to PSDTC by the managing underwriter forty-eight hours before the closing of the underwriting.

If requested by the managing underwriter, PCC personnel will arrange to pick up the securities from the transfer agent or trustee bank on the day before settlement of the underwriting. Authorized PCC staff members and one or more representatives of the underwriter wil count, verify and package the securities at the office of the transfer agent or trustee bank and deliver them to PCC's clearing area, where they will be retained for safekeeping in a custody account pending the closing of the underwriting. When it has been advised that the underwriting has closed, PSDTC will transfer the securities out of the custody account and process bookentry movements and physical releases, in accordance with instructions previously given to it. Drafts and third party items will be forwarded to PCC's Securities Collection Division in accordance with its procedures. PCC's Securities Collection Division may make arrangements for the delivery of securities to other registered securities depositories and for the making of physical withdrawals and draft deliveries through PCC's branch offices. Non-PSDTC participants may effect settlement directly with the underwriter or through a correspondent. At the end of the day, all securities remaining in PSDTC's possession at any PCC branch office will be valued and forwarded to PSDTC's vault in San Francisco, California, for safekeeping.

Where PCC and PSDTC are to provide distribution services only, the underwriter will deliver the securities to PCC's clearing window on the settlement day, and the position will be credited to the underwriter's account. Upon receipt of a release from the transfer agent or trustee bank, movements and releases will be processed. Where PCC and PSDTC are to provide money settlement and distribution services, selling group members will make payment to PSDTC, and settlement proceeds will be transmitted to the underwriter by PSDTC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed underwriting program is intended to facilitate securities underwritings, by expediting the issuance and distribution of securities, reducing the necessity for physical deliveries and encouraging the use of bookentry transfers of securities.

PCC believes that the proposed rule change is consistent with section 17A(b)(3)(F) of the Act, in that it is intended to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds and in general to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PCC preceives no burden on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 9, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 11, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-22356 Filed 9-17-85; 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.

September 12, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange 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:

Herman's Sporting Goods, Inc., Common Stock, $0.01 Par Value (File No. 7-8597)

Intelogic Trace, Inc., Common Stock, $0.01 Par Value (File No. 7-8598)

LAC Minerals Ltd., Common Shares, No Par Value (File No. 7-8599)

OKC Limited Partnership, Depository receipts (File No. 7-8601)

Placer Development Limited, Common Stock, No Par Value (File No. 7-8602)

Cubic Corporation (Delaware), Common Stock, No Par Value (File No. 7-8603)

Northrop Corporation (Delaware), Common Stock, $1.00 Par Value (File No. 7-8604)

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 October 3, 1985, 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, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-22359 Filed 9-17-85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02-5485]

Formosa Capital Corp.; Issuance of License To Operate as a Small Business Investment Company

On April 17, 1985, a notice was published in the **Federal Register** (50 FR 15265) stating that an application had been filed by Formosa Capital Corp., 605 King George Post Road, Fords, New Jersey 08863, with the Small Business Administration (SBA), for a license to operate as a small business investment company (SBIC), pursuant to § 107.102 of the Regulations governing SBICs (13 CFR 107.102 (1985)).

Interested parties were given until the close of business May 17, 1985, to submit their comments on the application to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other information, SBA issued License No. 02/02-5485 to Formosa Capital Corp. on August 22, 1985 to operate as a section 301(d) SBIC.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: September 9, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-22289 Filed 9-17-85; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area 2202]

Declaration of Disaster Loan Area; Alabama

As a result of the President's major disaster declaration on September 7, 1985, I find that the Counties of Baldwin and Mobile constitute a disaster loan area because of damage from hurricane Elena and flooding beginning on or about September 2, 1985. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on November 7, 1985, and for economic injury until June 9, 1986, at: Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Bldg., 75 Spring St., SW., Suite 822, Atlanta, Georgia 30303, or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	11.125

The number assigned to this disaster is 220208 for physical damage and for economic injury the number is 633100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 10, 1985.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 85-22298 Filed 9-17-85; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area 2204]

Declaration of Disaster Loan Area; Louisiana

The Parish of Washington and the adjacent Parishes of St. Tammany and Tangipahoa in the State of Louisiana constitute a disaster area because of damage caused by Hurricane Elena which occurred on September 2, 1985. Applications for loans for physical damage may be filed until the close of business on November 12, 1985, and for economic injury until the close of business on June 11, 1986, at the address listed below: Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051, or other locally announced locations.

The interest rates are:

Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	11.125

The number assigned to this disaster is 220408 for physical damage and for economic injury the number is 663300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 11, 1985.

Martin D. Teckler,

Acting Administrator.

[FR Doc. 85-22299 Filed 9-17-85; 8:45 am]

BILLING CODE 8025-01-M

[Designation of Disaster Loan Area #2203]

Declaration of Disaster Loan Area; New Jersey

The area affected is bordered on the north by South Street, on the south by Lodi Street and 8th Street, on the east by the Passaic River, and on the west by 7th Street, including residential buildings bordering on Boundary streets in the City of Passaic, Passaic County, New Jersey. This constitutes a disaster area because of damage resulting from a fire which occurred on September 2, 1985. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on November 12, 1985, and for economic injury until the close of business on June 11, 1986, at the address listed below: Disaster Area 1 Office, Small Business Administration, 15-01 Broadway, Fair Lawn New Jersey 07410, or other locally announced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Business without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	11.125

The number assigned to this disaster is 220305 for physical damage and for economic injury the number is 633200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 11, 1985.

Martin D. Teckler,

Acting Administrator.

[FR Doc. 85-22300 Filed 9-17-85; 8:45 am]

BILLING CODE 8025-01-M

Minority Small Business and Capital Ownership Development; Management and Technical Assistance Application Announcement

Summary: The Small Business Administration, Office of Minority Small Business and Capital Ownership Development (MSB&COD) announces that it is soliciting applications under its 7(j) Program to provide management and technical assistance services nationally to cover 68 separate geographical areas. Projects for each area are to operate for an 8 month period beginning February 1, 1986, and will range from approximately $14,000.00 to $245,000.00, with a total cost not to exceed $3,125,000.00.

The announcement number is MSB-86-001-01.

Funding Instrument: The funding instruments, as defined by the Federal Grants and Coperative Agreements Act of 1977 (Pub. L. 95-224) will be cooperative agreements.

Program Description: The SBA provides management and technical assistance services to eligible small businesspersons under two Programs, 7(j) (1-9) and 7(j)(10). Cooperative agreements awarded under both programs will be on a competitive basis to small business consulting firms. Firms who are eligible to receive services offered under 7(j) (1-9) are existing or potential businesspersons who are economically or socially disadvantaged or who are located in areas of high concentration of unemployed, or who are participants in activities authorized by section 7(i) of the Small Business Act, as amended.

Applicants applying for 7(j)(1-9) awards must be capable of providing assistance in such areas as accounting, production, engineering and technical assistance, feasibility studies, market analyses, specialized services, government contracts, and advertising assistance. Small businesspersons certified by the SBA as 8(a) are eligible to receive assistance under the 7(j)(10) Program. Applicants responding to one of the geographical areas under 7(j)(10) must be capable of providing services in such cases as loan packaging, the development of business plans, financial counseling, surety bond and construction management assistance, and areas of specialized assistance particularly germane to a specific 8(a) firm. All applicants responding to any one of the geographical areas listed in the announcement must have had an office physically located within that geographical area for a period of one year prior to the release date of the announcement. No partial applications will be accepted for consideration. Important—"a *separate* application must be submitted for each geographical area as specified in our program announcement. Any multiple/combined submissions for two or more geographical areas will be rejected fom consideration." Applicants must submit their application/proposal on or before October 11, 1985, at 5:00 p.m., local time, at the respecive SBA Regional Office. The Grant Application reporting requirements have been approved under the Office of Management and Budget number 3245-0140.

Eligible Applicants: This announcement is a total 100% small business set-aside. Any concern making application for services is classified as small if its average annual sales or receipts for its preceeding three (3) fiscal years do not exceed 3.5 million.

Application Materials: Applications will be forwarded to interested participants upon telephone request, contact Ms. Bernita Kane at (202) 653-5689 or Ms. Lillian Harris at (202) 653-6439 or upon written request to the U.S. Small Business Administration, Office of Minority Small Business and Capital Ownership Development, Office of Private Industry Programs, 1441 L Street, NW, Room 602, Washington, DC 20416. All awards will be announced in the **Federal Register** and the Commerce Business Daily.

Evaluation and Award Process: All proposals received as a result of this announcement will be evaluated by an SBA review panel. the awarding of MSB&COD Cooperative Agreements is discretionary. Generally, projects are

supported in order of merit to the extent permitted by available funds.

Disposition of Proposals: Notification of awards will be made by the Grants Management Officer. Organizations whose proposals are unsuccessful will be sent an awards list advising them of the successful awardees. Nothing in this announcement shall be construed as committing MSB&COD to divide available funds among all qualified applicants.

(59.007 Management and Technical Assistance for Disadvantaged Businesspersons)

Dated: September 12, 1985.

Martin D. Teckler,

Acting Administrator.

[FR Doc. 85-22301 Filed 9-17-85; 8:45 am]

BILLING CODE 8025-01-M

Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of Action Subject to Intergovernmental Review Under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to refund two of its 41 Small Business Development Centers (SBDC's) for calendar year 1986. It should be noted that fiscal year 1986 funding is contingent upon legislative appropriation of the SBDC program. The following SBDC's are intended to be refunded: California, and Texas at Arlington. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to each of the SBDC's to be refunded. This publication is being made to provide the State single points of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed refunding in accord with the Executive Order and SBA's regulations found at 13 CFR Part 135.

DATE: Comments will be accepted through December 17, 1985.

ADDRESS: Comments should be addressed to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Same as above.

Notice of Action Subject to Intergovernmental Review

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR Part 135, effective September 30, 1983.

In accord with these regulations, specifically § 135.4, SBA is publishing this notice to provide public awareness of the pending application of presently existent Small Business Development Centers (SBDC's) for refunding. Also, published herewith is an annotated program announcement describing the SBDC program in detail.

This notice is being published three months in advance of the date of refunding of these existent SBDC's. Relevant information identifying these SBDC's and providing their mailing address is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to each affected State single point of contact which has been established under the Executive Order.

The State single points of contact and other interested State and local entities are expected to advise the relevant SBDC of their comments regarding the proposed refunding in writing as soon as possible. Copies of such written comments should also be furnished to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Porgrams, U.S. Small Business Administration, 1441 L Street, NW, Washington, DC 20416. Comments will be accepted by the relevant SBDC and SBA for a period of 90 days from the date of publication of this notice. The relevant SBDC will make every effort to accommodate these comments during the 90-day period. If the comments cannot be accommodated by the relevant SBDC, SBA will, prior to refunding the SBDC, either attain accommodation of any comments or furnish an explanation of why accommodation cannot be attained to the commentor prior to refunding the SBDC.

Description of the SBDC Program

The Small Business Development Center Program is a major management assistance delivery program of the U.S. Small Business Administration. SBDC's are authorized under section 21 of the Small Business Act (15 U.S.C. 648). SBDC's operate pursuant to the provisions of section 21, a Notice of Award (Cooperative Agreement) issued by SBA, and a Program Announcement. The Program represents a partnership between SBA and the State-endorsed organization receiving Federal assistance for its operation. SBDC's operate on the basis of a State plan which provides small business assistance throughout the State. As a condition to any financial award made to an applicant, an additional amount equal to the amount of assistance provided by SBA must be provided to the SBDC from sources other than the Federal Government.

Purpose and Scope

The SBDC Program has been designed to meet the specialized and complex management and technical assistance needs of the small business community. SBDC's focus on providing indepth quality assistance to small businesses in all areas which promote growth, expansion, innovation, increased productivity and management improvement. SBDC's act in an advocacy role to promote local small business interests. SBDC's concentrate on developing the unique resources of the university system, the private sector, and State and local governments to provide services to the small business community which are not available elsewhere. SBDC's coordinate with other SBA programs of management assistance and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the State academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources; and

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDC's are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters of offer service coverage to the small business

community. The SBDC network is managed and directed by a single full-time Director. SBDC's must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDC's provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDC's emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: Management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agribusiness, computer application, business law information, and referral (any legal services beyond basic legal information and referral require the endorsement of the State Bar Association,) exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State.

The degree to which SBDC resources are directed toward specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDC's should emphasize the provision of training is specialized areas other than basic small business management subjects. SBDC's should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas is provided to the State small business community through the State SBDC network. As a condition of this agreement, SBDC must perform but not be limited to the following activities.

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small businesses that are not presently associated with the SBDC district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

(a) Lead SBDC's shall operate on a 40-hour week basis, or during normal State business hours, with National holidays or State holidays as applicable excluded.

(b) SBDC subcenters shall be operated on a full-time basis. The lead SBDC shall ensure that staffing is adequate to meet the needs of the small business community.

(c) All counseling assistance offered through the Small Business Development Center network shall be provided at no cost to the client.

Dated: September 9, 1985.

Martin D. Teckler,

Acting Administrator.

Addresses of Relevant SBDC Director

Ms. Brooke Bassett, SBDC Director, Department of Commerce, State of California, 1121 L Street, Suite 600, Sacramento, California 95814, (916) 324-8102

Dr. John E. Troutman, Arlington SBDC Director, Technology Enterprises Development Center, University of Texas at Arlington, College of Engineering, P.O. Box 19209, Arlington, Texas 76019, (817) 273-2559

[FR Doc. 84-22302 Filed 9-17-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.); Week Ended March 1, 1985

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
Feb. 24, 1985	42895	Wardair Canada Inc., c/o Walter D. Hansen, Burwell, Hansen, Manley & Peters, 1706 New Hampshire Avenue, NW., Washington, D.C. 20009. Application of Wardair Canada Inc., pursuant to Section 402 of the Act and Subpart Q of the Regulations applies for a foreign air carrier permit to engage in foreign air transportation of persons, property and mail between the co-terminal points Montreal and Toronto, Canada, on the one hand, and the terminal point San Juan, Puerto Rico, on the other hand. Answers may be filed by March 25, 1985.

Date filed	Docket No.	Description
Mar. 1, 1985	42053	Trans-Panama, S. A., c/o Richard P. Taylor, Steptoe & Johnson, 1330 Connecticut Avenue, NW., Washington, D.C. 20036. Supplement to Application of Trans-Panama, S. A. for renewal of foreign air carrier permit. Answers may be filed by March 29, 1985.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 85-22305 Filed 9-17-85; 8:45 am]

BILLING CODE 4910-62-M

[Order 85-9-18; Docket 43009]

Application of Sierra Trans Air, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 85-9-18) Docket 43009.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order granting Sierra Trans Air, Inc., a certificate to engage in interstate and overseas charter air transportation of persons, property and mail.

DATES: Persons wishing to file objections should do so no later than October 3, 1985.

ADDRESSES: Responses should be filed in Docket 43009 and addressed to the Office of Documentary Services, Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, D.C. 20590 and should be served the parties listed in Appendix B to the order.

FOR FURTHER INFORMATION CONTACT: Dayton Lehman, Jr., Office of Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4116, Washington, D.C. 20590 (202) 426-7631.

SUPPLEMENTARY INFORMATION: The complete text of Order 85-9-18 is available for inspection at our Documentary Services Division at the above address.

Dated: September 12, 1985.

Jeffrey N. Shane,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-22307 Filed 9-17-85; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

[Order 85-9-19; Docket No. 43210]

Application of Bassett and Tesini, Inc. d.b.a. Amerijet International, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause, (Order 85-9-19) Docket 43210.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding that Bassett and Tesini, Inc. d/b/a Amerijet International continues to be fit, willing, and able to conduct operations as a domestic all-cargo air carrier, and that its domestic all-cargo certificate should be reissued in the name of Amerijet International, Inc.

DATES: Persons wishing to file objections should do so no later than October 3, 1985.

ADDRESSES: Responses should be filed in Docket 43210 and addressed to the Office of Documentary Services, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Barbara P. Dunnigan, Special Authorities Division, Department of Transportation, 400 7th Street, SW. Washington, D.C. 20590 (202) 755-3812.

Dated: September 12, 1985.

Jeffery N. Shane

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-22306 Filed 9-17-85; 8:45 am]

BILLING CODE 4910-62-M

Request for Letters To Implement Surety Bonding Program

AGENCY: Department of Transportation, Office of the Secretary, Office of Small and Disadvantaged Business Utilization (OSDBU).

ACTION: Notice and Request for Applicants Interested in Establishing a Surety Bonding Program for Minority and Women-Owned Business Enterprises (M/WBEs) Bidding on or Performing Transportation-Related Contracts.

Background

The Department of Transportation's Office of Small and Disadvantaged Business Utilization (OSDBU) through the Minority Business Resource Center has conducted a surety bonding program for M/WBEs since 1982. The program began by focusing on providing bonding for M/WBEs working on railroad revitalization projects and was expanded in 1983 to a Department-wide program.

Since its inception, the program has operated through an agreement with the Fireman's Fund Insurance Companies. That agreement provides that DOT will cover 50 percent of any losses (up to $5 million) incurred by Fireman's Fund in bonding disadvantaged business enterprises (DBEs) which are referred by DOT and bonded through the program. By mutual agreement the Fireman's Fund and DOT plan to terminate their agreement by March of 1986.

In addition, the 1985 DOT Appropriations Act and accompanying House and Senate reports directed the Federal Highway Administration (FHWA) and the Urban Mass Transportation Administration (UMTA) to conduct a feasibility study for implementing a Department-wide surety bonding program for socially and economically disadvantaged businesses. In the House report on that Act, the FHWA was also directed to conduct a $5 million demonstration bonding program in at least three states (Pennsylvania, New York and Florida).

The FHWA and UMTA performed the feasibility study and submitted it to the Congress in June 1985. The study concluded that a unified Departmentwide bonding program is feasible because it already exists in the OSDBU program. In light of this conclusion the FHWA has decided to expand the funding for the OSDBU program as an element of its demonstration bonding program.

SUMMARY: The OSDBU is interested in soliciting letters of interest from surety organizations to implement a surety bonding program for socially and economically disadvantaged businesses. The letters should outline the organization's concept for the program, the organization's past experience in surety bonding, experience with the surety bonding of DBEs and if the surety organization has been authorized by the Department of the Treasury as a surety company acceptable on Federal bonds and as acceptable reinsuring companies. The bonding program should be designed to provide bonding to DBEs on a nation-wide scale. The FHWA will be conducting an intensive "bonding readiness" program to qualify DBEs in highway construction for bonding in the

three States of Pennsylvania, New York and Florida. The OSDBU envisions that their bonding program will be compatible with the FHWA "bonding readiness" effort and that the selected surety will have the ability to conduct business in those three States.

The total available Federal funding for this program may be up to $9.4 million depending on the nature of the proposed surety bonding program.

DATE: The deadline for submitting a letter expressing interest in the program and requesting additional information is October 21, 1985.

ADDRESS: Interested surety organizations may submit letters to the Director, Office of Small and Disadvantaged Business Utilization, U.S. Department of Transportation, 400 7th Street, SW, room 9414, Washington, D.C. 20590, not later than the submission date shown above. Such submission shall indicate the docket number shown on this notice.

Issued this 13th day of September, 1985, at Washington, D.C.

Amparo B. Bouchey,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 85-22308 Filed 9-17-85; 8:45 am]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

[Docket No. IP84-9; Notice 2]

Mack Trucks, Inc., Grant of Petition for Exemption From Notice and Recall for Inconsequential Noncompliance

This grants the petition by Mack Trucks, Inc., of Allentown, Pa., to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.302, Motor Vehicle Safety Standard No. 302, *Flammability of Interior Materials*. The basis of the grant is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of the petition was published on April 30, 1984, and an opportunity afforded for comment (49 FR 18373).

Section 54 of Standard No. 302 and related interpretations require that headlining and components incorporated into it, when tested in accordance with specified procedures, shall not burn or transit a flame across its surface, at a rate of more than 4 inches per minute. Radio speaker covers supplied in the headling of 5,015 Mack Trucks manufactured between August 1977 and June 1983 may not comply with the standard. Mack discovered that the radio grille does not meet the requirements "and causes assemblies to exceed the burn rate by a nominal 1.3 to 1.8 inches per minute." Other components of the assembly (speaker housing and grille retainer ring) "easily meet" the flammability requirements. Mack understands that the covers are also used by other manufacturers in the heavy duty truck and recreational vehicle industries.

Petitioner argued that the noncompliance was inconsequential because "it is our considered opinion that these speaker covers, with a minimal area of 26 square inches will not expedite the spread of a fine * * *." In Mack's experience, vehicle fires are most likely to originate" in the lower portions of a cab either in the firewall area of on the floor"; the speaker assemblies at issue are located in the "sleeper box" in the upper portion of the cab behind the driver's head, and by the time flames reached it, the entire cab might be in flames. The risk of a fire originating in the speaker area is considered low "due to the low level electrical current running through the related wiring in that area."

No comments were received in response to the petition.

The agency has decided to grant the petition. Grilles are normally perforated, and these performations can cause erratic of variable burn rates. The small total area of the component and its remote location in the headlining area of the cab minimize the possibility that the component represents a fire hazard.

Accordingly, it is hereby found that petitioner has met its burden of persuasion that the noncompliance with Standard No. 302 herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on September 13, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-22303 Filed 9-17-85; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. IP84-17; Notice 2]

Western Star Trucks, Inc.; Grant of Petition for Exemption From Notice and Recall for Inconsequential Noncompliance

This notice grants the petition by Western Star Trucks, Inc., of Kelowna, B.C., Canada, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.302, Motor Vehicle Safety Standard No. 302, *Flammability of Interior Materials*. The basis of the grant is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on December 3, 1984 and an opportunity afforded for comment (49 FR 47354).

Section S4 of Standard No. 302 and related interpretations require that headlining and components incorporated in it, when tested in accordance with specified procedures, shall not burn or transmit a flame across its surface at a rate of more than 4 inches per minute. Plastic speaker grille retainer rings located in the headlining of the cab, and supplied in 514 trucks manufactured between January 1982 and June 1984, may not comply with the standard. Petitioner discovered that the rings do not meet the requirements and cause assemblies to exceed the burn rate by ½ to ¾ inch per minute. Petitioner averred tghat the rings were also used by other manufacturers in the heavy duty truck, automotive and recreational vehicle industries.

Petitioner argued that the noncompliance was inconsequential because "rings with a minimal volume of 2.75 cubic inches, will not expedite the spread of a fire". In petitioner's experience, vehicle fires are most likely to originate in the lower portions of a cab, either in the firewall area or on the floor; the speaker grille retaining rings at issue are located in the sleeper box, in the upper portion of the cab behind the driver's head, and by the time flames reached it, the entire cab might be in flames. The risk of a fire originating in the speaker area is considered low du to the low level electrical current running through the related wiring in that area.

No comments were received in response to the petition.

The agency has decided to grant the petition. The small total area of the component and its remote location in the headlining area of the cab minimize the possibility that the component represents a fire hazard.

Accordingly, it is hereby found that petitioner has met its burden of persuasion that the noncompliance with Standard No. 302 herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on September 13, 1985.

Barry Felrice

Associate Administrator.

[FR Doc. 85-22304 Filed 9-17-85; 8:45 am]

BILLING CODE 4910-59-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 181
Wednesday, September 18, 1985

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).

CONTENTS

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FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:45 p.m. on Thursday, September 12, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Moncor Bank, National Association, Roswell, New Mexico, which was closed by the Deputy Comptroller of the Currency on Thursday, September 12, 1985; (2) accept the bid for the transaction submitted by First National Bank of Chaves County, Roswell, New Mexico, a newly-chartered national bank; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael A. Mancusi, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 13, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-22403 Filed 9-16-85; 11:15 am]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552B), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, September 23, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for consent to purchase assets and assume liabilities:

Metropolitan Bank St. Paul, St. Paul, Minnesota, an insured State nonmember bank, for consent to purchase the assets of and assume the liabilities of Metro Thrift Company, Inc., St. Paul, Minnesota, a non-FDIC-insured institution.

Application for consent to merge and establish one branch:

Oxford Bank and Trust, Oxford, Maine, an insured State nonmember bank, for consent to merge, under its charter and title, with Mechanic Falls Savings and Loan Association, Mechanic Falls, Maine, a non-FDIC-insured institution, and to establish the sole office of Mechanic Falls Savings and Loan Association as a branch of the resultant bank.

Application for consent to transfer assets in consideration of the assumption of deposit liabilities:

Equibank, Latrobe, Pennsylvania, an insured State nonmember bank, for consent to transfer certain assets to Charleroi Federal Savings and Loan Association, Charleroi, Pennsylvania, a non-FDIC-insured institution, in consideration of the assumption of the liability to pay deposits made in the New Eagle Branch of Equibank.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,311-L
Girod Trust Company, San Juan, Puerto Rico
Case No. 46, 312-SR
Prairie County Bank, Hazen, Arkansas
Case No. 46,323-NR
Franklin National Bank, New York, New York

Memorandum and Resolution re: Final amendments to Part 338 of the Corporation's rules and regulations, entitled "Fair Housing," which provide that insured State nonmember banks having assets of $50 million or less and having received fewer that 25 home loan applications in the prior calendar year would no longer be required to collect and record in a log-sheet certain data concerning home loan applications, with the Corporation's Board of Directors retaining the right to require such recordkeeping by a bank if it has reason to believe the bank may be engaged in discriminatory home loan practices (including illegal prescreening).

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and Resolution re: Issuance of a Statement of Policy Regarding Bank Merger Transactions which would (1) provide the framework to permit the Corporation's Board of Directors to approve all proposed mergers between financially sound financial service institutions unless there is compelling evidence of an anticompetitive impact which would clearly violate the antitrust standards; (2) reflect the Corporation's view of an expanding market for financial services products; and (3) serve as a workable policy position as interstate expansion in the banking industry becomes more prevalent.

The meeting will be held in the Board Room on the sixth floor of the FDIC

Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: September 16, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–22436 Filed 9–16–85; 3:06 pm]

BILLING CODE 6714–01–M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, September 23, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshne Act" (5 U.S.C. 552(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Application for Federal deposit insurance and for consent to exercise full trust powers:

Drexel Trust Company, an operating noninsured trust company located at Five Marineview Plaza, Hoboken, New Jersey.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: September 16, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–22437 Filed 9–16–85; 3:06 pm]

BILLING CODE 6714–01–M

4

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

September 11, 1985.

TIME AND DATE: 10:00 a.m., Tuesday, September 17, 1985.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: In addition to the previously announce item, the Commission will also consider and act upon the following:

2. Youghiogheny & Ohio Coal Company, Docket No. LAKE 84–98. (Consideration of the operator's petition for discretionary review.)

It was determined by a unanimous vote of Commissioners that this item be added to the agenda and that no earlier announcement of the addition was possible. 5 U.S.C. 552b(e)(1).

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission may, subject to the limitations of 29 CFR 2706.150(a)(3) and 2706.160(e), ensure access for any handicapped person who gives reasonable advance notice.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5632.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 85–22372 Filed 9–16–85; 9:45 am]

BILLING CODE 6735–01–M

5

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, September 23, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on September 16, 1985.)

2. Proposed purchase of computers within the Federal Reserve System.

3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

4. 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: September 13, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–22363 Filed 9–13–85; 4:37 pm]

BILLING CODE 6210–01–M

6

FEDERAL TRADE COMMISSION

TIME AND DATE: 10:00 a.m., Monday, September 16, 1985.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

STATUS: Open.

MATTER TO BE CONSIDERED: Consideration of staff recommendation that the Commission terminate the Standards and Certification Rulemaking R911001.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 523–1892, Recorded Message: (202) 523–3806.

Emily H. Rock,

Secretary.

[FR Doc. 85–22383 Filed 9–16–85; 10:46 am]

BILLING CODE 6750–01–M

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SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [To be published].

STATUS: Open meeting.

PLACE: 450 Fifty Street, NW., Washington, D.C.

DATES PREVIOUSLY ANNOUNCED: September 6, 1985.

CHANGE IN THE MEETING: Additional item.

The following additional item will be considered at an open meeting scheduled for Thursday, September 19, 1985, at 10:00 a.m.:

In connection with the Commission consideration of side-by-side market making pilot, as previously announced in 50 FR 37110, Sept 11, 1985 the Commission also will consider the NASD's Petition for Reconsideration of and comments on Securities Exchange Act Release No. 22026 ("OTC Options release"). For further information, please contact Alden Adkins at (202) 272–2843 or Sharon Lawson at (202) 272–2825.

Commissioner Cox, as duty officer, determines 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: David Powers at (202) 272–2091.

John Wheeler,

Secretary.

September 12, 1985.

[FR Doc. 85–22413 Filed 9–16–85; 12:49 pm]

BILLING CODE 8010-01-M

federal register

Wednesday
September 18, 1985

Part II

Environmental Protection Agency

40 CFR Part 300

Amendment to National Oil and Hazardous Substances Contingency Plan; the National Priorities List; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[SWH-FRL 2874-1]

Amendment to National Oil and Hazardous Substances Contingency Plan; the National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency ("EPA") is proposing the fourth update to the National Priorities List ("NPL"). This update contains 38 sites, including one re-proposed site. The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan ("NCP"), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") and Executive Order 12316. CERCLA requires that the NPL be revised at least annually, and today's notice proposes the fourth such revision.

These sites are being proposed because they meet the eligibility requirements of the NPL. EPA has included on the NPL releases and threatened releases of designated hazardous substances, as well as "pollutants or contaminants" which may present an imminent and substantial danger to the public health or welfare. This notice provides the public with an opportunity to comment on the listing of these 38 sites on the NPL.

DATES: Comments may be submitted on or before November 18, 1985.

ADDRESSES: Comments may be mailed to Russel H. Wyer, Director, Hazardous Site Control Division (Attn: NPL Staff), Office of Emergency and Remedial Response (WH-548E), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. The Headquarters public docket for the fourth update to the NPL will contain: Hazard Ranking System (HRS) score sheets for each proposed site and each Federal facility site listed in Section IV of this notice; a Documentation Record for each site describing the information used to compute the scores; and a list of document references. The Headquarters public docket is located in EPA Headquarters, Waterside Mall sub-basement, 401 M St., SW., Washington, D.C. 20460, and is available for viewing by appointment only from 9:00 a.m to 4:00 p.m., Monday through Friday excluding holidays. Requests for copies of the documents from the Headquarters public docket should be directed to the EPA Headquarters docket office. The HRS score sheets and the Documentation Record for each site in a particular EPA Region will be available for viewing in that Regional Office when this notice is published. These Regional dockets will also contain documents with the background data EPA relied upon in calculating or evaluating the HRS scores. Copies of these background documents may be viewed in the appropriate Regional Office and copies may be obtained from the Region. A third category of documents with some relevance to the scoring of each site also may be viewed and copied by arrangement with the appropriate EPA Regional Office. An informal written request, rather than a formal request, should be the ordinary procedure for obtaining copies of any of these documents. Requests for HRS score sheets and Documentation Records should be directed to the appropriate Regional Office docket (see addresses below). Requests for background documents should be directed to the appropriate Regional Superfund Branch office.

Copies of comments submitted to headquarters during the 60-day public comment period may be viewed only in the Headquarters docket during the comment period. A complete set of comments pertaining to sites in a particular EPA Region will be available for viewing in the Regional Office docket approximately one week following the close of the formal comment period. Comments received after the close of comment period will be available at Headquarters and in the appropriate Regional Office docket on an "as received" basis. An informal written request, rather than a formal request, should be the ordinary procedure for obtaining copies of these comments. Addresses for the Headquarters and Regional Office dockets are:

Denise Sines, Headquarters, U.S. EPA CERCLA Docket Office, Waterside Mall, Subbasement, 401 M Street, SW., Washington, DC 20460, 202/382-3046

Peg Nelson, Region I, U.S. EPA Library, Room E121, John F. Kennedy Federal Bldg., Boston, MA 02203, 617/223-5791

Carol Peterson, Region II, U.S. EPA Library, 26 Federal Plaza, 7th Floor, Room 734, New York, NY 10278, 212/264-8677

Diane McCreary, Region III, U.S. EPA Library, 5th Floor, 841 Chestnut Bldg., 9th & Chestnut Streets, Philadelphia, PA 19106, 215/597-0508

Gayle Alston, Region IV, U.S. EPA Library, Room G-6, 345 Courtland Street, NE., Atlanta, GA 30365, 404/881-4216

Lou Tilley, Region V, U.S. EPA Library, Room 1420, 230 South Dearborn Street, Chicago, IL 60604, 312/353-2022

Martha McKee, Region VI, InterFirst II Bldg., 1201 Elm Street, Dallas, TX 75270, 214/767-9809

Connie McKenzie, Region VII, U.S. EPA Library, 726 Minnesota Avenue, Kansas City, KS 66101, 913/236-2828

Dolores Eddy, Region VIII, U.S. EPA Library, 1960 Lincoln Street, Denver, CO 80295, 303/844-2560

Jean Circiello, Region IX, U.S. EPA Library, 6th Floor, 215 Fremont Street, San Francisco, CA 94105, 415/974-8076

Joan McNamee, Region X, U.S. EPA, 11th Floor, 1200 6th Avenue, Seattle, WA 98101, 206/442-4903

FOR FURTHER INFORMATION CONTACT: Jane Metcalfe, Hazardous Site Control Division, Office of Emergency and Remedial Response (WH-548E), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, Phone (800) 424-9346 (or 382-3000 in the Washington, D.C., metropolitan area).

SUPPLEMENTARY INFORMATION:

Table of Contents:

I. Introduction

Pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601-9657 ("CERCLA" or "the Act") and Executive Order 12316 (46 FR 42237, August 20, 1981), the Environmental Protection Agency ("EPA" or "the Agency") promulgated the revised National Contingency Plan ("NCP"), 40 CFR Part 300, on July 16, 1982 (47 FR 31180). Those amendments to the NCP implement the responsibilities and authorities created by CERCLA to respond to releases and threatened releases of hazardous substances, pollutants, or contaminants.

Section 105(8)(A) of CERCLA requires that the NCP include criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action, for the purpose of taking removal action.

Removal action involves cleanup or other actions that are taken in response to emergency conditions or on a short-term or temporary basis (CERCLA section 101(23)). Remedial action tends to be long-term in nature and involves response actions which are consistent with a permanent remedy for a release (CERCLA section 101(24)). Criteria for determining priorities are included in the Hazard Ranking System ("HRS"), which EPA promulgated as Appendix A of the NCP (47 FR 31219, July 16, 1982).

Section 105(8)(B) of CERCLA requires that the statutory criteria be used to prepare a list of national priorities among the known releases or threatened releases throughout the United States, and that to the extent practicable, at least 400 sites be designated individually. CERCLA requires that this National Priorities List ("NPL") be included as part of the NCP. Today, the Agency is proposing the addition of 38 sites to the NPL. This brings the number of proposed sites to 309 in addition to the 541 that have been promulgated.

EPA is proposing to include on the NPL sites at which there are or have been releases or threatened releases of hazardous substances, or of "pollutants or contaminants." The discussion below may refer to "releases or threatened releases" simply as "releases," "facilities," or "sites."

II. Purpose of the NPL

The primary purpose of the NPL is stated in the legislative history of CERCLA (Report of the Committee on Environment and Public Works, Senate Report No. 96-848, 96th Cong., 2d. Sess. 60 (1980)):

> The priority lists serve primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign liability to any person. Subsequent government action in the form of remedial actions or enforcement actions will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to serve as an informational tool for use by EPA in identifying sites that appear to present a significant risk to public health or the environment. The initial identification of a site for the NPL is intended primarily to guide EPA in determining which sites warrant further investigation, to assess the nature and extent of the public health and environmental risks associated with the site, and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. Inclusion of a site on the NPL does not establish that EPA necessarily will undertake remedial actions. Moreover, listing does not require any action of any private party, nor does it determine the liability of any party for the cost of cleanup at the site. In addition, a site need not be on the NPL to be the subject of CERCLA-financed removal actions or of actions brought pursuant to sections 106 or 107(a)(4)(B) of CERCLA.

In addition, although the HRS scores used to place sites on the NPL may be helpful to the Agency in determining priorities for cleanup and other response activities among sites on the NPL, EPA does not rely on the scores as the sole means of determining such priorities, as discussed below. The information collected to develop HRS scores is not sufficient in itself to determine the appropriate remedy for a particular site. EPA relies on further, more detailed studies to determine what response, if any, is appropriate. These studies will take into account the extent and magnitude of contaminants in the environment, the risk to affected populations and environment, the cost to correct problems at the site, and the response actions that have been taken by potentially responsible parties or others. Decisions on the type and extent of action to be taken at these sites are made in accordance with the criteria contained in Subpart F of the NCP. After conducting these additional studies, EPA may conclude that it is not desirable to conduct response action at some sites on the NPL because of more pressing needs at other sites. Given the limited resources available in the Hazardous Substance Response Trust Fund established under CERCLA, the Agency must carefully balance the relative needs for response at the numerous site it has studied. Also, it is possible that EPA will conclude after further analysis that no action is needed at a site because the site does not present a significant threat to public health, welfare, or the environment.

III. NPL Update Process and Schedule

Pursuant to section 105(8)(B) of CERCLA, 42 U.S.C. 9605(8)(B), EPA is required to establish, as part of the NCP, a priority list of sites. The NPL fulfills that obligation. The purpose of this notice is to propose the addition to the NPL of 38 new sites.

CERCLA requires that the NPL be revised at least once per year. Accordingly, EPA published the first NPL on September 8, 1983 (48 FR 40658), containing 406 sites. EPA has proposed three updates to the NPL since then. One hundred and thirty-three sites were proposed on September 8, 1983 as NPL Update #1. Four of these sites were promulgated on May 8, 1984 (48 FR 19480) and 128 sites, including five sites deferred from the September 8, 1983 rulemaking, were promulgated on September 21, 1984 (49 FR 37030). On October 15, 1984 (49 FR 40320), 244 sites were proposed as NPL Update #2. Two of these 244 sites were placed on the final NPL on February 14, 1985 (50 FR 6320) and 242 remain proposed. In Update #3, twenty-six sites were proposed on April 10, 1985 for inclusion on the NPL. One of these sites was recently added to the NPL, bringing the number of final NPL sites to 541.

In addition to these periodic updates, EPA believes it may be desirable in rare instances to propose or promulgate separately individual sites on the NPL because of the apparent need for expedited remedial action. This occurred in the case of the proposing listing of Times Beach, Missouri (48 FR 9311, March 4, 1983), the promulgation of four San Garbriel Valley, California, sites (49 FR 19480, May 8, 1984), the promulgation of two New Jersey radium sites (50 FR 6320, February 14, 1985), and the promulgation of the Lansdowne Radiation site in Lansdowne, Pennsylvania.

As with the establishment of the initial NPL and subsequent revisions, States have the primary responsibility for selecting and scoring sites that are candidates and submitting the candidate sites to the EPA Regional Offices. States may also designate a single site as the State priority site. For each proposed NPL update, EPA informs the States of the closing dates for submission of candidate sites to EPA. This proposed update is the third within one year and continues EPA's plan to increase the frequency of updating of the NPL. The EPA Regional Offices then conduct a quality control review of the State's candidate sites. After conducting this review, the EPA Regional Offices submit candidate sites to EPA Headquarters. The Regions may include candidate sites in addition to those submitted by States. In reviewing these submissions, EPA Headquarters conducts further quality assurance audits to ensure accuracy and consistency among the various EPA and State offices participating in the scoring.

EPA recently promulgated an amendment to section 300.66(b)(4) of the NCP allowing certain sites with HRS scores below 28.50 to be eligible for the NPL. These sites may qualify for the NPL if all of the following occur:

• The Agency for Toxic Substances and Disease Registery of the U.S. Department of Health and Human Services (ATSDR) has issued a health advisory which recommends dissociation of individuals from the release.

• The Agency determines that the release poses a significant threat to public health.

• EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

This **Federal Register** notice lists sites not currently on the NPL that the Agency is proposing to add to the NPL. These proposed additions are listed immediately following this preamble.

Public Comment Period

EPA requests public comment on these 38 proposed sites. Comments on the proposed sites will be accepted for 60 days following publication of this notice in the **Federal Register**. EPA is also soliciting comments on three Federal facilities that have HRS scores of 28.50 or higher and that may be added to the NPL in the future. The following section of this preamble identifies these sites and discusses EPA's Federal facility approach. See the "ADDRESSES" portion of this notice for information on where to obtain documents relating to the scoring of the 38 non-Federal and three Federal sites. After considering the relevant comments received during the comment period and determining the final score for each site, the Agency will add to the NPL all proposed sites that meet EPA's criteria for listing. In past NPL rulemakings, EPA has considered comments received after the official close of the comment period. Because the Agency has now increased the schedule of rulemaking to three NPL updates per year, EPA may no longer have the opportunity to consider late comments. EPA may add the three Federal facility sites without a further comment period, contingent upon the outcome of proposed changes to the NCP (50 FR 5862, February 12, 1985). This is discussed in greater detail in the following section.

IV. Eligibility

CERCLA restricts EPA's authority to respond to certain categories of releases and expressly excludes some substances from the definition of release. In addition, as a matter of policy, EPA may choose not to use CERCLA to respond to certain types of releases because other authorities can be used to achieve cleanup of these releases. Preambles to previous NPL rulemakings have discussed examples of these policies. See, e.g., 48 FR 40658 (September 8, 1983); 49 FR 37074 (September 21, 1984); and 49 FR 40320 (October 15, 1984). Generally, this proposed update continues these past eligibility policies.

NPL eligibility policies of particular relevance to this proposed update are discussed below, and include the RCRA, Federal facilities and the mining waste site policies.

RCRA-Related Sites

The Hazardous and Solid Waste Amendments of 1984 expanded the Agency's authority to require corrective measures under the Resource Conservation and Recovery Act (RCRA). The Agency intends to use the new RCRA authorities, where practical, to effect cleanup. In the preamble to Update #3 (50 FR 14115, April 10, 1985), the Agency discussed a concept for a revised policy for listing RCRA-related sites. Specifically, EPA suggested deferring the listing of certain categories of RCRA-related sites that scored 28.50 or above until the Agency determines that RCRA measures are not likely to succeed due to factors such as: (1) The inability or unwillingness of the owner/operator to pay for such action; (2) the inadequacies of the financial responsibility guarantees to pay for such costs; or (3) Agency or State priorities for addressing the sites under RCRA. This suggested deferred listing policy would be applicable only to sites with releases subject to RCRA regulatory or enforcement authorities.

As stated in the preamble to proposed NPL Update #3, the Agency intends to apply any revised RCRA-related site listing policy to RCRA-related sites that are currently proposed or promulgated on the NPL, and, in appropriate cases, delete sites from the NPL. For example, such sites could be removed from the proposed or final NPL if the Agency determines that: (1) All necessary corrective measures are likely to be completed under RCRA authorities and (2) CERCLA Fund-financed activities, such as remedial investigation/feasibility studies, remedial design or remedial action, or CERCLA enforcement action have not been initiated. If such a policy were applied to currently proposed and promulgated sites on the NPL and it is determined that such sites should be removed from the proposed or final NPL, these sites could be relisted if the Agency later determines that RCRA corrective measures at these sites are not likely to succeed.

EPA presented this information in more detail in the preamble to Update #3 and requested comment on the suggested RCRA listing policy. Because the Agency is still receiving and evaluating comments on this suggested RCRA listing policy and has not yet adopted a final policy, RCRA-related sites will be considered for listing on the basis of the current RCRA listing policy (See 49 FR 37070, September 21, 1984). EPA will use the expanded RCRA permitting authorities and RCRA enforcement authorities, and, if necessary, appropriate CERCLA authorities, for cleaning up sites.

Under the current RCRA listing policy, EPA has considered eligible for listing those RCRA facilities where a significant portion of the release appeared to come from a "non-regulated land disposal unit" of the facility. Non-regulated land disposal units are defined as portions of the facility that ceased receiving hazardous waste prior to January 26, 1983, the effective date of EPA's permitting standards for land disposal (47 FR 32339, July 26, 1982). Under the current policy, regulated land disposal units of RCRA facilities generally would not be included on the NPL, except where the facility had been abandoned or lacked sufficient resources and RCRA corrective action could not be enforced.

The Agency proposed four RCRA-related sites for Update #3 on the basis of the current RCRA listing policy. Nine RCRA-related sites with HRS scores of 28.50 or above were submitted for Update #4. We have applied our current RCRA listing policy to these sites and have included them on the proposed list. These sites are:

• Interstate Lead Co. (ILCO), Leeds, Alabama

• Martin Marietta (Denver Aerospace), Waterton, Colorado

• Firestone Industrial Products Co., Noblesville, Indiana

• Prestolite Battery Division, Vincennes, Indiana

• John Deere (Dubuque Works), Dubuque, Iowa

• Hooker (Montague Plant), Montague, Michigan

• Kysor Industrial Corp., Cadillac, Michigan

• Monroe Auto Equipment Co., Cozad, Nebraska

• Matlack, Inc., Woolwich Township, New Jersey

Of the nine RCRA-related sites listed above, eight are nonregulated units. One site, Interstate Lead Company in Leeds, Alabama, is a regulated unit which is currently under Chapter 11 bankruptcy and therefore may lack sufficient resources for cleanup. The listing of this site is consistent with our existing RCRA listing policy as outlined in the

preamble to the **Federal Register** notice announcing the promulgation of NPL Update #1 (49 FR 37070, September 21, 1984).

Federal Facility Releases

CERCLA section 111(e)(3) prohibits use of the Trust Fund for remedial actions at Federally-owned facilities and § 300.66(e)(2) of the NCP prevents including Federal facilities on the NPL. The Agency has approached this issue in a number of different ways. Prior to proposed NPL Update #2 (49 FR 40320, October 15, 1984), EPA did not list any sites on the NPL where the release resulted solely from a Federal facility, regardless of whether contamination remained on-site or migrated off-site. However, based on public comments received from previous NPL announcements, EPA proposed 36 Federal facilities for NPL Update #2. As discussed in the preamble to Update #2, EPA will promulgate the 36 Federal facilities only if the NCP is revised to permit the listing of Federal facilities on the NPL.

On February 12, 1985, EPA proposed amendments to § 300.66(e)(2) of the NCP and requested public comments on whether to list Federal facilities on the NPL. In Update #3 (50 FR 14115, April 10, 1985), the Agency identified six new sites in the preamble to the **Federal Register** notice that met the criteria for proposal. EPA requested comments on the scoring of these sites pending resolution of the NCP amendments.

Because the amendments to § 300.66(e)(2) of the NCP have not yet been promulgated, EPA is continuing the procedure of naming those Federal facilities that meet the criteria for proposal in the preamble to the **Federal Register** notice.

For Update #4, the Agency has applied the HRS to Federal facilities and has determined that the following Federal facilities would qualify for proposed listing:

NPL group	State	Site name	City or county	Response category [1]	Cleanup status [2]
04	NJ	Naval Air Engineering Center	Lakehurst	R	
04	WA	Naval Air Station (Ault Field)	Whidbey Island	R	
07	WA	Naval Air Station (Seaplane Base)	Whidbey Island	R	

[1] R = Federal or State response: F = Federal enforcement; S = State enforcement, V = Voluntary or negotiated response, D = Actions to be determined.
[2] I = Implementation activity underway, one or more operable units; O = one or more operable units completed, others may be underway; C = Implementation activity completed for all operable units.

The Agency is requesting comments on the scoring of these sites and may promulgate them without another comment period if the Agency determines that listing Federal facilities is appropriate.

Mining Waste Sites

It is the Agency's position, as discussed in the preambles to previous rulemakings (47 FR 58476, December 30, 1982; 48 FR 40658, September 8, 1983), that mining wastes may be hazardous substances, pollutants or contaminants under CERCLA. This position was affirmed recently by the United States Court of Appeals for the District of Columbia Circuit (*Eagle-Picher Industries, Inc.* v. *EPA*, 759 F. 2d 922 D.C. Cir. 1985)

In the past, EPA has included mining waste sites on the NPL. However, in proposed Update #3 (50 FR 14115, April 10, 1985), EPA deferred the listing of one mining waste site—Silver Creek Tailings in Park City, Utah—until the Agency could determine whether the Department of Interior (DOI) would take appropriate action under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) to protect public health and the environment at this site. The Agency has had preliminary discussion with DOI and the State of Utah on their programs for addressing mining sites, and plans to continue these and other discussions until a more comprehensive Federal policy can be developed. While this policy is under development, we are moving forward with proposing the Silver Creek Tailings site on the NPL. In addition, the Agency is currently developing an appropriate NPL listing policy for any sites which may be adequately addressed under the response authorities of SMCRA.

Pratt & Whitney Aircraft, United Technologies Corp., West Palm Beach, Florida

The Pratt & Whitney Aircraft Site was proposed on October 15, 1984 (49 FR 40320) as an NPL Update #2 site. In response to comments on the proposal, the Agency completely re-evaluated the site and has made a significant change in the HRS scoring for the Pratt & Whitney Aircraft site. Consequently, the Agency has determined that it would be most appropriate to repropose the site in NPL Update #4 and solicit comment on the revised HRS score. Comments on the reproposal will be accepted for the same period as for other sites in this proposal.

V. Contents of the Proposed Fourth NPL Update

All sites in today's proposed revision to the NPL received HRS scores of 28.50 or above.

Following this preamble is a list of the 38 proposed Update #4 sites. Each entry on the list contains the name of the facility, the State and city or county in which it is located, and the corresponding EPA Region. Each proposed site is placed by score in a group corresponding to the groups of 50 sites presented within the final NPL. For example, sites in group 3 of the proposed update have scores that fall within the range of scores covered by the third group of 50 sites on the final NPL. Each entry is accompanied by one or more notations referencing the status of response and cleanup activities at the site at the time this list was prepared. This site status and cleanup information is described briefly below.

EPA categorizes the NPL sites based on the type of response at each site (Fund-financed, Federal enforcement, State enforcement, and/or voluntary action). In addition, codes indicating the general status of site cleanup activities are provided. EPA is including the cleanup status codes to identify sites where significant response activities are underway or completed. The cleanup status codes on this NPL update are included in response to public requests for information regarding actual site cleanup activities and to acknowledge situations where EPA, States, or responsible parties have undertaken response actions. The response categories/status codes for these proposed sites and all final NPL sites will be updated each time EPA promulgates additional sites to the NPL.

Response Categories

The following response categories are used to designate the type of response underway. One or more categories may apply to each site.

Federal and/or State Response (R). This category includes sites at which EPA or State agencies have started or completed response actions. These include removal actions, nonenforcement remedial planning, initial remedial measures, and/or remedial actions under CERCLA [NCP, § 300.66(f)–(i) 47 FR 31217, July 16, 1982]. For purposes of assigning a category, the response action commences when EPA obligates funds.

Federal Enforcement (F). This category includes sites where the United

States has filed a civil complaint (including cost recovery actions) or issued an administrative order under CERCLA or RCRA. It also includes sites where a Federal court has mandated some form of response action following a judicial proceeding. All sites at which EPA has obligated funds for enforcement-lead remedial investigations and feasibility studies are also included in this category.

A number of sites on the NPL are the subject of legal investigations or have been formally referred to the Department of Justice for possible enforcement action. EPA's policy is not to release information concerning a possible enforcement action until a lawsuit has been filed. Accordingly, sites subject to pending Federal action are not included in this category, but are included under "Category To Be Determined."

State Enforcement (S). This category includes sites where a State has filed a civil complaint or issued an administrative order under CERCLA or RCRA. It also includes sites at which a State court has mandated some form of response action following a judicial proceeding. Sites where a State has obligated funds for enforcement-lead remedial investigations and feasibility studies are also included in this category.

It is assumed that State policy precludes the release of information concerning possible enforcement actions until such action has been formally taken. Accordingly, sites subject to possible State legal action are not included in this category, but are included under "Category To Be Determined."

Voluntary or Negotiated Response (V). This category includes sites where private parties have started or completed response actions pursuant to settlement agreements, consent decrees, or consent orders to which EPA or the State is a party. Usually, the response actions result from a Federal or State enforcement action. This category includes privately-financed remedial planning, removal actions, initial remedial measures, and/or remedial actions.

Category To Be Determined (D). This category includes all sites not listed in any other category. A wide range of activities may be in progress at sites in this category. EPA or a State may be evaluating the type of response action to undertake, or a response action may be determined but funds not yet obligated. Sites where a Federal or State enforcement case may be under authorities other than CERCLA or RCRA are also included in this category. Additionally included in this category are sites where responsible parties may be undertaking cleanup actions that are not covered by a consent decree, consent order, or administrative order.

Cleanup Status Codes

EPA has decided to indicate the status of Fund-financed or private party cleanup activities underway or completed at proposed and final NPL sites. Fund-financed response activities which are coded include: significant removal actions, initial remedial measures, source control remedial actions, and off-site remedial actions. The status of cleanup activities conducted by responsible parties under a consent decree, court order, or an administrative order also is coded, as are similar cleanup activities taken independently of EPA and/or the State. Remedial planning activities or engineering studies do not receive a cleanup status code.

Many sites listed on the NPL are cleaned up in stages or "operable units." For purposes of cleanup status coding, an operable unit is a discrete action taken as part of the entire site cleanup that significantly decreases or eliminates a release, threat of release, or pathway of exposure. One or more operable units may be necessary to complete the cleanup of a hazardous waste site. Operable units may include significant removal actions taken to stabilize deteriorating site conditions or provide alternative water supplies, initial remedial measures, and remedial actions. A simple removal action (constructing fences or berms or lowering free-board) that does not eliminate a significant release, threat of release, or pathway of exposure is not considered an operable unit for purposes of cleanup status coding.

The following cleanup status codes (and definitions) are used to designate the status of cleanup activities at proposed and final sites on the NPL. Only one code is used to denote the status of actual cleanup activity at each site since the codes are mutually exclusive.

Implementation Activities Are Underway for One or More Operable Units (I). Field work is in progress at the site for implementation of one or more removal or remedial operable units, but no operable units are completed.

Implementation Activities Are Completed for One or More (But Not All) Operable Units. Implementation Activities May be Underway for Additional Operable Units (O). Field work has been completed for one or more operable units, but additional site cleanup actions are necessary.

Implementation Activities Are Completed for All Operable Units (C). All actions agreed upon for remedial action at the site have been completed, and performance monitoring has commenced. Further site activities could occur if EPA considers such activities necessary.

VI. Regulatory Impact Analysis

The costs of cleanup actions that may be taken at sites are not directly attributable to listing on the NPL, as explained below. Therefore, the Agency has determined that this rulemaking is not a "major" regulation under Executive Order 12291. The EPA has conducted a preliminary analysis of the economic implications of today's proposal to add new sites. The EPA believes that the kinds of economic effects associated with this revision are generally similar to those effects identified in the regulatory impact analysis (RIA) prepared in 1982 for the revisions to the NCP pursuant to section 105 of CERCLA (47 FR 31180, July 16, 1982) and the economic analysis prepared for the recently proposed amendments to the NCP (50 FR 5882, February 12, 1985). The Agency believes the anticipated economic effects related to proposing the addition of 38 sites to the NPL can be characterized in terms of the conclusions of the earlier RIA and the most recent economic analysis.

Costs

The EPA has determined that this proposed rulemaking is not a "major" regulation under Executive Order 12291 because inclusion of a site on the NPL does not itself impose any costs. It does not establish that EPA will necessarily undertake remedial action, nor does it require any action by a private party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Nonetheless, it is useful to consider the costs associated with responding to all sites included in a proposed rulemaking. This action was submitted to the Office of Management and Budget (OMB) for review.

The major events that follow the proposed listing of a site on the NPL are a responsible party search and a remedial investigation/feasibility study (RI/FS) which determines whether remedial actions will be undertaken at a site. Design and construction of the selected remedial alternative follow completion of the RI/FS, and operation and maintenance (O&M) activities may

continue after construction has been completed.

Cost associated with responsible party searches are initially borne by EPA. Responsible parties may bear some or all the costs of the RI/FS, design and construction, and O&M, or the costs may be shared by EPA and the States on a 90%:10% basis (50%:50% in the case of State-owned sites). Additionally, States assume all costs for O&M activities after the first year at sites involving Fund-financed remedial actions.

Rough estimates of the average per-site and total costs associated with each of the above activities are presented below. At this time EPA is unable to predict what portions of the total costs will be borne by reponsible parties, since the distribution of costs depends on the extent of voluntary and negotiated response and the success of cost recovery actions where such actions are brought.

Cost category	Average total cost per site[1]
RI/FS	$800,000
Remedial design	440,000
Remedial action	7,200,000
Initial remedial measures (IRM) at 10% of sites	80,000
Net present value of O&M [2]	3,770,000

[1] 1985 U.S. dollars.
[2] Assumes cost of O&M over 30 years, $400,000 for the first year and 10% discount rate.

Source: "Extent of the Hazardous Release Problem and Future Funding Needs-CERCLA Section 301(a)(1)(c) Study", December 1984, Office of Solid Waste an Emergency Response, U.S. EPA.

Costs to States associated with today's proposed amendment arise from the required State cost-share of: (1) 10 percent of remedial implementation (remedial action and IRM) and first year O&M costs at privately-owned sites; and (2) 50 percent of the remedial planning (RI/FS and remedial design), remedial implementation and first year O&M costs at State or locally-owned sites. States will assume all the cost for O&M after the first year. Using the assumptions developed in the 1982 RIA for the NCP, EPA has assumed that 90 percent of the 38 non-Federal sites proposed to be added to the NPL in this amendment will be privately-owned and 10 percent will be State or locally-owned. Therefore, using the budget projections presented above, the cost to States of undertaking Federal remedial actions at all 38 sites would be $172 million, of which $130 million is attributable to the State O&M cost.

The act of listing a hazardous waste site on the final NPL does not itself cause firms responsible for the site to bear costs. Nonetheless, a listing may induce firms to clean up the sites voluntarily, or it may act as a potential trigger for subsequent enforcement or cost recovery actions. Such actions may impose costs on firms, but the decisions to take such actions are discretionary and made on a case-by-case basis. Consequently, precise estimates of these effects cannot be made. EPA does not believe that every site will be cleaned up by a responsible party. EPA cannot project at this time which firms or industry sectors will bear specific portions of response costs, but the Agency considers such factors as: the volume and nature of the wastes at the site; the parties' ability to pay; and other factors when deciding whether and how to proceed against potentially responsible parties.

Economy-wide effects of this proposed amendment are aggregations of effects on firms and State and local governments. Although effects could be felt by some individual firms and States, the total impact of this revision on output, prices, and emploment is expected to be negligible at the national level, as was the case in the 1982 RIA.

Benefits

The benefits associated with today's proposed amendment to list additional sites are increased health and environmental protection as a result of increased public awareness of potential hazards. In addition to the potential for more Federally-financed remedial actions, this proposed expansion of the NPL could accelerate privately-financed, voluntary cleanup efforts to avoid potential adverse publicity, private lawsuits, and/or Federal or State enforcement actions.

As a result of the additional NPL remedies, there will be lower human exposure to high risk-chemicals, and higher quality surface water, ground water, soil, and air. The magnitude of these benefits is expected to be significant, although difficult to estimate in advance of completing the RI/FS at these particular sites.

Associated with the costs of remedial actions are significant potential benefits and cost offsets. The distributional costs to firms of financing NPL remedies have corresponding "benefits" in that funds expended for a response generate employment, directly or indirectly (through purchased materials).

VII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities the Act refers to small businesses, small governmental jurisdictions, and nonprofit organizations.

While proposed modifications to the NPL are considered revisions to the NCP, they are not typical regulatory changes since the revisions do not automatically impose costs. The proposed listing of sites on the NPL does not in itself require any action of any private party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are effected as a whole. As a consequence, it is hard to predict impacts on any group. A site's proposed inclusion on the NPL could increase the likelihood that adverse impacts to responsible parties (in the form of cleanup costs) will occur, but EPA cannot identify the potentially affected businesses at this time nor estimate the number of small businesses that might be affected.

The Agency does expect that certain industries and firms within industries that have caused a proportionately high percentage of waste site problems could be significantly affected by CERCLA actions. However, EPA does not expect the impacts from the proposed listing of these 38 sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would only occur through enforcement and cost recovery actions which are taken at EPA's discretion on a site-by-site basis. EPA considers may factors when determining what enforcement actions to take, including not only the firm's contribution to the problem, but also the firm's ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

For the reasons set forth in the preamble, Part 300, Subpart J, Chapter I of Title 40, of the Code of Federal Regulations is proposed to be amended as set forth below.

Dated: September 5, 1985.

J. Winston Porter,

Assistant Administrator, Office of Solid Waste and Emergency Response.

PART 300—[AMENDED]

It is proposed to amend Appendix B of 40 CFR Part 300 by adding 38 sites to the National Priorities List. In addition, it is proposed to amend the format of Appendix B of 40 CFR Part 300 by adding the columns "NPL Rank" and "Cleanup Status". The sites would appear in the list of proposed non-Federal sites as follows:

NATIONAL PRIORITIES LIST PROPOSED UPDATE 4 SITES

NPL rank	EPA RG	State	Site name	City/county	Response category #	Cleanup status(#)
			Group 2			
	07	NE	Monroe Auto Equipment Co	Cozad	D	
			Group 3			
	05	OH	Ormet Corp	Hannibal	D	
	07	IA	Lawrence Todtz Farm	Camanche	D	
	05	IL	H.O.D. Landfill	Antioch	S	
			Group 5			
	08	CO	Martin Marietta, Denver, Aerospace	Waterton	F S	
	05	MN	Freeway Sanitary Landfill	Burnsville	D	
	05	IN	Columbus Old Municipal Lndfill #1	Columbus	D	
	07	IA	A.Y. McDonald Ind., Inc	Dubuque	F	
	03	PA	Route 940 Drum Dump	Pocono Summit	D	I
	03	PA	C&D Recycling	Foster Township	D	I
			Group 6			
	04	AL	Interstate Lead Co. (ILCO)	Leeds	D	
			Group 7			
	08	UT	Silver Creek Tailings	Park City	D	
	05	WI	Hagen Farm	Stoughton	S	
			Group 8			
	05	IN	Prestolite Battery Division	Vincennes	D	
			Group 9			
	03	DE	Standard Chlorine of Delaware, Inc	Delaware City	D	
	07	IA	John Deere (Dubuque Works)	Dubuque	D	
	06	AR	Arkwood, Inc	Omaha	D	O
	05	MI	Hooker (Montague Plant)	Montague	V S	I
	02	NJ	Matlack, Inc	Woolwich Township	D	
	05	WI	Lemberger Fly Ash Landfill	Whitelaw	S	
	05	MI	Kysor Industrial Corp	Cadillac	D	
	05	MN	St. Augusta SLF/St. Cloud Dump	St. Augusta Township	S	
	05	WI	Sheboygan Harbor & River	Sheboygan	D	
			Group 10			
	03	PA	Bendix Flight Systems Division	Bridgewater Township	D	O
	05	MI	Kent City Mobile Home Park	Kent City	D	
	10	WA	Wyckoff Co.—Eagle Harbor	Bainbridge Island	D	
	04	FL	Pratt & Whitney Air/ United Tech	West Palm Beach	V S	O
	07	IA	Midwest Manufacturing/North Farm	Kellogg	D	
	05	MN	Waite Park Wells	Waite Park	R	
	03	PA	Croydon TCE	Croydon	D	
	03	PA	Revere Chemical Co	Nockamixon Township	R	O
	03	DE	Halby Chemical Co	New Castle	D	
			Group 11			
	05	IN	Firestone Industrial Products Co	Noblesville	D	
	04	FL	Yellow Water Road Dump	Baldwin	R	O
	07	IA	Shaw Avenue Dump	Charles City	D	
	02	NY	Warwick Landfill	Warwick	D	
	05	IN	Tri-State Plating	Columbus	D	
	05	MN	East Bethel Demolition Landfill	East Bethel Township	D	

#: V = Voluntary or negotiated response; R = Federal and State response; F = Federal Enforcement; S = State enforcement; D = Actions to be determined.

(#): I = Implementation activity underway, one or more operable units; O = one or more operable units completed, others may be underway; C = Implementation activity completed for all operable units.

[FR Doc. 85-22222, Filed 9-17-85; 8:45 am]

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federal register

Wednesday
September 18, 1985

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Review of Vertebrate Wildlife; Notice of Review

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Review of Vertebrate Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: The Service issues a revised notice identifying vertebrate animal taxa, native to the U.S., being considered for possible addition to the List of Endangered and Threatened Wildlife. The Service emphasizes that this notice is not a proposal for such addition, and that the involved taxa do not receive substantive or procedural protection pursuant to the Endangered Species Act of 1973, as amended. The Service does, however, encourage Federal agencies and other appropriate parties to take these taxa into account in environmental planning. Also identified in this notice are vertebrate taxa that were previously under consideration for listing, but that are currently presumed either to be extinct, to not be valid species or subspecies, or to be more abundant and widespread than previously thought and/or not subject to substantial threats.

DATE: Comments may be submitted until further notice.

ADDRESSES: Interested persons or organizations are requested to submit comments to: Director (OES), 500 Broyhill Building, U.S. Fish and Wildlife Service, Washington, DC 20240. Comments and materials relating to this notice are available for public inspection, by appointment, during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 North Glebe Road, Arlington, Virginia.

Information relating to particular taxa may be obtained from appropriate Service Regional Offices, as listed below:

Region 1. California, Hawaii, Idaho, Nevada, Oregon, Washington, American Samoa, Commonwealth of the Northern Mariana Islands, Guam, and Trust Territory of the Pacific Islands.

Regional Director (ARD/FA), U.S. Fish and Wildlife Service, Suite 1692, Lloyd 500 Building, 500 N.E. Multnomah Street, Portland, Oregon 97232 (503/231-6131 or FTS 429-6131).

Region 2. Arizona, New Mexico, Oklahoma, and Texas.

Regional Director (ARD/AFF), U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972).

Region 3. Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.

Regional Director (ARD/AFF), U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111 (612/725-3596 or FTS 725-3596).

Region 4. Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the Virgin Islands.

Regional Director (ARD/FA), U.S. Fish and Wildlife Service, The Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, Georgia 30303 (404/221-3583 or FTS 242-3583).

Region 5. Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.

Regional Director (ARD/FA), U.S. Fish and Wildlife Service, Suite 700, One Gateway Center, Newton Corner, Massachusetts 02158 (617/965-5100 ext. 316 or FTS 829-9316, 7, 8).

Region 6. Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.

Regional Director (ARD/FA), U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225 (303/234-2496 or FTS 234-2496).

Region 7. Alaska.

Regional Director (ARD/AFF), U.S. Fish and Wildlife Service, 1101 East Tudor Road, Anchorage, Alaska 99503 (907/263-3539 or FTS 263-3539).

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, 500 Broyhill Building, U.S. Fish and Wildlife Service, Washington, DC. 20240 (703/235-2771 or FTS 235-2771), or the appropriate Regional Office.

SUPPLEMENTARY INFORMATION: The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) requires determination of whether species of wildlife and plants are endangered or threatened based on the best available scientific and commercial data. For many years, the U.S. Fish and Wildlife Service has been gathering data on taxa of vertebrates (fishes, amphibians, reptiles, birds, and mammals), native to the United States, that have appeared, at least at times, to warrant consideration for addition to the List of Endangered and Threatened Wildlife. The accompanying table identifies many of these taxa (including, by definition, biological subspecies) and assigns each to one of the three categories described below. Unless the subject of a published proposed or final rule determining endangered or threatened status, none of these taxa receive substantive or procedural protection pursuant to the Act.

Category 1 comprises taxa for which the Service currently has substantial information on hand to support the biological appropriateness of proposing to list as endangered or threatened. Proposals have not yet been issued because they have been precluded at present by other listing activity. Development and publication of proposed rules on these taxa are anticipated, however, and the Service encourages Federal agencies and other appropriate parties to give consideration to such taxa in environmental planning.

Category 2 comprises taxa for which information now in possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which conclusive data on biological vulnerability and threat are not currently available to support proposed rules. The Service emphasizes that these taxa are not being proposed for listing by this notice, and that there are no specific plans for such proposals, unless additional information becomes available. Further biological research and field study may be needed to ascertain the status of taxa in this category, and it is likely that many will be found to not warrant listing. The Service hopes that this notice will encourage investigation of the status and vulnerability of these taxa, and consideration of them in the course of environmental planning.

Category 3 comprises taxa that were once being considered for listing as endangered or threatened, but are not currently receiving such consideration. These taxa are included in one of the following three subcategories.

Subcategory 3A comprises taxa for which the Service has persuasive evidence of extinction. If rediscovered, however, such taxa might warrant high priority for addition to the List of Endangered and Threatened Wildlife.

Subcategory 3B comprises taxa that were once thought to be biological species or subspecies, but that, on the basis of recent systematic work, usually as represented in published revisions and monographs, are not now considered distinctive and do not meet the Act's legal definition of species. Future systematic investigation could lead to reevaluation of the listing qualifications of such taxa.

Subcategory 3C comprises taxa that are now considered to be more abundant or widespread, and/or substantially less subject to identifiable threats, than previously thought. Should new information suggest that any such taxon is experiencing a numerical or distributional decline, or is under a substantial threat, it may be considered for transfer to category 1 or 2.

Many of the taxa in the accompanying table were also covered by the Service's previous Review of Vertebrate Wildlife, published in the **Federal Register** of December 30, 1982 (47 FR 58454–58460), as corrected on May 17, 1983 (48 FR 22173–22174). Certain of the taxa covered by the previous notice, however, have already had emergency, proposed, and/or final determinations of endangered or threatened status, and therefore these taxa are not included in this notice of review (for the complete U.S. Lists of Endangered and Threatened Wildlife and Plants, contact any of the offices in the above "**ADDRESSES**" section).

The Service hereby solicits data concerning the taxa in the accompanying table. Especially sought is information:

(1) Indicating that a taxon would more properly be assigned to a category other than the one in which it appears;

(2) Nominating a taxon not included in the table;

(3) Recommending an area as critical habitat for a taxon, or indicating why critical habitat may not be prudent or determinable for a taxon;

(4) Documenting threats to any listed taxon;

(5) Pointing out taxonomic changes for any taxon;

(6) Suggesting new or more appropriate names; or

(7) Noting errors, such as in the indicated distributions.

The Service intends to consider all data received in response to this notice, to make appropriate amendments to the accompanying table, and to indicate intentions with regard to future listing actions. Substantive changes in status may be announced by periodic notices in the **Federal Register.**

The accompanying table is arranged in a general systematic order, beginning with fishes and ending with mammals. For each taxon, the assigned category appears on the left, followed by the common name, the scientific name, the family name, and the known range. Range is indicated by abbreviations of State names (also AS = American Samoa, CM = Commonwealth of the Northern Mariana Islands, GU = Guam, PR = Puerto Rico, TT = Trust Territory of the Pacific Islands, and VI = Virgin Islands), and by the full names of foreign regions and Navassa Island, a U.S. possession in the Caribbean. The species may no longer occur in some of the areas shown. Some taxa have been included that have not yet been formally described in the scientific literature. Such taxa are indicated by the abbreviation "sp." after the generic name, or "ssp." after the generic and specific names. In the section on birds, the abbreviation "N" indicates the nesting range of the species, and the abbreviation "V" indicates additional areas in which the species is a regular visitor.

The primary authors of this notice are C. Kenneth Dodd, Jr. (herpetologist), George E. Drewry (programmer), Ronald M. Nowak (mammalogist), Jay M. Sheppard (ornithologist), and James D. Williams (ichthyologist), Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1975 or FTS 235–1975).

Authority: Endangered Species Act (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: September 6, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

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CATEGORY AND COMMON NAME		SCIENTIFIC NAME	FAMILY	RANGE
	FISHES			
2	Lake sturgeon	*Acipenser fulvescens*	Acipenseridae	AL,AR,GA,IA,IL,IN,KS,KY,LA, MI,MN,MO,MS,NE,NY,OH,PA,SD, TN,VT,WI,WV, Canada.
2	Gulf sturgeon	*Acipenser oxyrhocus desotoi*	Acipenseridae	AL,FL,GA,LA,MS.
2	Pallid sturgeon	*Scaphirhynchus albus*	Acipenseridae	AR,IA,IL,KS,KY,LA,MO,MS,MT,ND, NE,SD,TN.
2	Alabama shovelnose sturgeon	*Scaphirhyncus platorynchus* ssp.	Acipenseridae	AL,MS.
3C	Paddlefish	*Polyodon spathula*	Polyodontidae	AL,AR,IA,IL,IN,KS,KY,LA,MN, MO,MS,MT,ND,NE,OH,OK,PA,SD, TN,TX,WI.
3A	Deepwater cisco	*Coregonus johannae*	Salmonidae	IL,IN,MI,MN,WI, Canada.
2	Kiyi	*Coregonus kiyi*	Salmonidae	IL,IN,MI,MN,NY,WI, Canada.
3A	Blackfin cisco	*Coregonus nigripinnis nigripinnis*	Salmonidae	IL,IN,MI,WI, Canada.
1	Shortnose cisco	*Coregonus reighardi*	Salmonidae	IL,IN,MI,NY,WI, Canada.
2	Shortjaw cisco	*Coregonus zenithicus*	Salmonidae	IL,IN,MI,MN,WI, Canada.
2	Colorado cutthroat trout	*Salmo clarki pleuriticus*	Salmonidae	CO,UT,WY.
1	Bonneville cutthroat trout	*Salmo clarki utah*	Salmonidae	UT,WY,NV.
3C	Rio Grande cutthroat trout	*Salmo clarki virginalis*	Salmonidae	CO,NM.
3A	Alvord cutthroat trout	*Salmo clarki* ssp.	Salmonidae	NV,OR.
2	Willow/Whitehorse cutthroat trout	*Salmo clarki* ssp.	Salmonidae	OR.
2	Kern River rainbow trout	*Salmo gairdneri gilberti*	Salmonidae	CA.
2	Redband trout	*Salmo* sp.	Salmonidae	CA,OR,ID,NV.
2	Bull trout	*Salvelinus confluentus*	Salmonidae	CA,ID,MT,NV,OR,WA.
2	Montana Arctic grayling	*Thymallus arcticus montanus*	Salmonidae	MT.
2	Olympic mudminnow	*Novumbra hubbsi*	Umbridae	WA.
2	Mexican stoneroller	*Campostoma ornatum*	Cyprinidae	AZ,TX, Mexico.
2	Devil's River minnow	*Dionda diaboli*	Cyprinidae	TX.
2	Sheldon tui chub	*Gila bicolor eurysoma*	Cyprinidae	NV,OR.
3A	Independence Valley tui chub	*Gila bicolor isolata*	Cyprinidae	NV.
2	Newark Valley tui chub	*Gila bicolor newarkensis*	Cyprinidae	NV.
2	Lahontan tui chub	*Gila bicolor obesa*	Cyprinidae	NV.
2	Oregon Lakes tui chub	*Gila bicolor oregonensis*	Cyprinidae	OR.
2	Cowhead Lake tui chub	*Gila bicolor vaccaceps*	Cyprinidae	CA.
2	Big Smoky Valley tui chub	*Gila bicolor* ssp.	Cyprinidae	NV.
2	Catlow tui chub	*Gila bicolor* ssp.	Cyprinidae	OR.
2	Dixie Valley tui chub	*Gila bicolor* ssp.	Cyprinidae	NV.
2	Fish Creek Springs tui chub	*Gila bicolor* ssp.	Cyprinidae	NV.
2	Fish Lake Valley tui chub	*Gila bicolor* ssp.	Cyprinidae	NV.
2	Hot Creek Valley tui chub	*Gila bicolor* ssp.	Cyprinidae	NV.
2	Railroad Valley tui chub	*Gila bicolor* ssp.	Cyprinidae	NV.
2	Summer Basin tui chub	*Gila bicolor* ssp.	Cyprinidae	OR.
2	Leatherside chub	*Gila copei*	Cyprinidae	ID,UT,WY.
3A	Thicktail chub	*Gila crassicauda*	Cyprinidae	CA.
2	Gila chub	*Gila intermedia*	Cyprinidae	AZ,NM.
2	Gila roundtail chub	*Gila robusta grahami*	Cyprinidae	AZ,NM.
1	Virgin River chub	*Gila robusta seminuda*	Cyprinidae	AZ,NV,UT.
2	Moapa roundtail chub	*Gila robusta* ssp.	Cyprinidae	NV.
2	Oregon chub	*Hybopsis crameri*	Cyprinidae	OR.
2	Sturgeon chub	*Hybopsis gelida*	Cyprinidae	AR,IA,IL,KY,KS,LA,MO,MS,MT, NB,ND,SD,WY,TN.
2	Sicklefin chub	*Hybopsis meeki*	Cyprinidae	AR,IA,IL,KS,KY,LA,MO,MS,NB,ND,SD,TN.
2	Least chub	*Iotichthys phlegethontis*	Cyprinidae	UT.
2	Virgin spinedace	*Lepidomeda mollispinis mollispinis*	Cyprinidae	AZ,NV,UT.
2	Smalleye shiner	*Notropis buccula*	Cyprinidae	TX.
2	Blue shiner	*Notropis caeruleus*	Cyprinidae	AL,GA,TN.
2	Bluestripe shiner	*Notropis callitaenia*	Cyprinidae	AL,FL,GA.
2	Chihuahua shiner	*Notropis chihuahua*	Cyprinidae	TX.
2	Arkansas River shiner	*Notropis girardi*	Cyprinidae	AR,KS,NM,OK,TX.
3C	Rio Grande shiner	*Notropis jemezanus*	Cyprinidae	NM.
1	Cape Fear shiner	*Notropis mekistocholas*	Cyprinidae	NC.
3A	Phantom shiner	*Notropis orca*	Cyprinidae	TX, Mexico.
2	Sharpnose shiner	*Notropis oxyrhyncus*	Cyprinidae	TX.
3C	Peppered shiner	*Notropis perpallidus*	Cyprinidae	AR,OK.
2	Proserpine shiner	*Notropis proserpinus*	Cyprinidae	TX.
2	Rio Grande bluntnose shiner	*Notropis simus simus*	Cyprinidae	NM.
2	Blacksouth shiner	*Notropis* sp.	Cyprinidae	FL.
1	Cahaba shiner	*Notropis* sp.	Cyprinidae	AL.
2	Palezone shiner	*Notropis* sp.	Cyprinidae	AL,KY,TN.
2	Kanawha minnow	*Phenacobius teretulus*	Cyprinidae	NC,VA,WV.
1	Blackside dace	*Phoxinus cumberlandensis*	Cyprinidae	KY,TN.
2	Relict dace	*Relictus solitarius*	Cyprinidae	NV.
2	Cheat minnow	*Rhinichthys bowersi*	Cyprinidae	WV.
1	Independence Valley speckled dace	*Rhinichthys osculus lethoporus*	Cyprinidae	NV.
2	Moapa speckled dace	*Rhinichthys osculus moapae*	Cyprinidae	NV.
1	Clover Valley speckled dace	*Rhinichthys osculus oligoporus*	Cyprinidae	NV.
2	Pahranagat speckled dace	*Rhinichthys osculus velifer*	Cyprinidae	NV.
2	Amargosa Canyon speckled dace	*Rhinichthys osculus* ssp.	Cyprinidae	CA.
2	Diamond Valley speckled dace	*Rhinichthys osculus* ssp.	Cyprinidae	NV.
2	Meadow Valley Wash speckled dace	*Rhinichthys osculus* ssp.	Cyprinidae	NV.
2	Monitor Valley speckled dace	*Rhinichthys osculus* ssp.	Cyprinidae	NV.
2	Oasis Valley speckled dace	*Rhinichthys osculus* ssp.	Cyprinidae	NV.
2	White River speckled dace	*Rhinichthys osculus* ssp.	Cyprinidae	NV.
2	Sandhills chub	*Semotilus lumbee*	Cyprinidae	NC,SC.

CATEGORY	COMMON NAME	SCIENTIFIC NAME	FAMILY	RANGE
2	White River desert sucker	*Catostomus clarki intermedius*	Catostomidae	NV.
2	Meadow Valley Wash desert sucker	*Catostomus clarki* ssp.	Catostomidae	NV.
2	Zuni Mountain sucker	*Catostomus discobolus yarrowi*	Catostomidae	AZ,NM.
3B	Webug sucker	*Catostomus fecundus*	Catostomidae	UT.
2	Goose Lake sucker	*Catostomus occidentalis lacusanserinus*	Catostomidae	CA,OR.
2	Jenny Creek sucker	*Catostomus rimiculus* ssp.	Catostomidae	CA,OR.
2	Klamath largescale sucker	*Catostomus snyderi*	Catostomidae	CA,OR.
2	Wall Canyon sucker	*Catostomus* sp.	Catostomidae	NV.
2	Lost River sucker	*Deltistes luxatus*	Catostomidae	CA,OR.
2	Shortnose sucker	*Chasmistes brevirostris*	Catostomidae	CA,OR.
2	Blue sucker	*Cycleptus elongatus*	Catostomidae	AL,AR,IA,IL,IN,KS,KY,LA,MN, MO,MS,MT,ND,NE,NM,OH,OK,PA, SD,TN,TX,WI,WV, MEXICO.
3C	Rustyside sucker	*Moxostoma hamiltoni*	Catostomidae	VA.
2	Razorback sucker	*Xyrauchen texanus*	Catostomidae	AZ,CA,CO,NV,UT,WY.
3C	Headwater catfish	*Ictalurus lupus*	Ictaluridae	NM,TX.
2	Carolina madtom	*Noturus furiosus*	Ictaluridae	NC.
1	Orangefin madtom	*Noturus gilberti*	Ictaluridae	NC,VA.
2	Ouachita madtom	*Noturus lachneri*	Ictaluridae	AR.
2	Frecklebelly madtom	*Noturus munitus*	Ictaluridae	AL,GA,LA,MS,TN.
1	Neosho madtom	*Noturus placidus*	Ictaluridae	KS,MO,OK.
2	Pygmy madtom	*Noturus stanauli*	Ictaluridae	TN.
2	Caddo madtom	*Noturus taylori*	Ictaluridae	AR.
2	Widemouth blindcat	*Satan eurystomus*	Ictaluridae	TX.
2	Toothless blindcat	*Trogloglanis pattersoni*	Ictaluridae	TX.
2	Northern cavefish	*Amblyopsis spelaea*	Amblyopsidae	IN,KY.
2	Preston White River springfish	*Crenichthys baileyi albivallis*	Cyprinodontidae	NV.
2	Moapa White River springfish	*Crenichthys baileyi moapa*	Cyprinodontidae	NV.
2	Conchos pupfish	*Cyprinodon eximius*	Cyprinodontidae	TX, Mexico.
2	Pecos pupfish	*Cyprinodon pecosensis*	Cyprinodontidae	NM,TX.
2	White Sands pupfish	*Cyprinodon tularosa*	Cyprinodontidae	NM.
3A	Monkey Springs pupfish	*Cyprinodon* sp.	Cyprinodontidae	AZ.
2	Palomas pupfish	*Cyprinodon* sp.	Cyprinodontidae	NM, Mexico.
3A	Whiteline topminnow	*Fundulus albolineatus*	Cyprinodontidae	AL.
3C	Barrens topminnow	*Fundulus julisia*	Cyprinodontidae	TN.
2	Waccamaw killifish	*Fundulus waccamensis*	Cyprinodontidae	NC.
2	Blotched gambusia	*Gambusia senilis*	Poeciliidae	TX, Mexico.
1	Waccamaw silverside	*Menidia extensa*	Atherinidae	NC.
2	Barred pygmy sunfish	*Elassoma* sp.	Centrarchidae	NC,SC.
1	Spring pygmy sunfish	*Elassoma* sp.	Centrarchidae	AL.
2	Guadalupe bass	*Micropterus treculi*	Centrarchidae	TX.
2	Crystal darter	*Ammocrypta asprella*	Percidae	AL,AR,FL,IA,IL,IN,KY,LA,MN, MO,MS,OH,OK,TN,WI,WV.
2	Eastern sand darter	*Ammocrypta pellucida*	Percidae	IL,IN,KY,MI,NY,OH,PA,VT,WV.
2	Sharphead darter	*Etheostoma acuticeps*	Percidae	NC,TN,VA.
2	Coppercheek darter	*Etheostoma aquali*	Percidae	TN.
2	Coldwater darter	*Etheostoma ditrema*	Percidae	AL,GA,TN.
2	Rio Grande darter	*Etheostoma grahami*	Percidae	TX, Mexico.
3C	Greenthroat darter	*Etheostoma lepidum*	Percidae	NM,TX.
2	Pinewoods darter	*Etheostoma mariae*	Percidae	NC,SC.
3C	Yellowcheek darter	*Etheostoma moorei*	Percidae	AR.
2	Cumberland Johnny darter	*Etheostoma nigrum susanae*	Percidae	KY.
2	Finescale saddled darter	*Etheostoma osburni*	Percidae	VA,WV.
3C	Palezback darter	*Etheostoma pallididorsum*	Percidae	AR.
3B	Waccamaw darter	*Etheostoma perlongum*	Percidae	NC.
2	Trispot darter	*Etheostoma trisella*	Percidae	AL,GA,TN.
2	Tuscumbia darter	*Etheostoma tuscumbia*	Percidae	AL,TN.
2	Jewel darter	*Etheostoma (Doration)* sp.	Percidae	TN.
2	Elk River darter	*Etheostoma (Nothonotus)* sp.	Percidae	AL,TN.
2	Yazoo darter	*Etheostoma (Ulocentra)* sp.	Percidae	MS.
1	Goldline darter	*Percina aurolineata*	Percidae	AL,GA.
2	Bluestripe darter	*Percina cymatotaenia*	Percidae	MO.
2	Freckled darter	*Percina lenticula*	Percidae	AL,GA,LA,MS.
2	Longhead darter	*Percina macrocephala*	Percidae	KY,NC,NY,OH,PA,TN,VA,WV.
2	Longnose darter	*Percina nasuta*	Percidae	AR,MO,OK.
1	Roanoke logperch	*Percina rex*	Percidae	VA.
2	Stargazing darter	*Percina uranidea*	Percidae	AR,IL,IN,LA,MO.
2	Tidewater goby	*Eucyclogobius newberryi*	Gobiidae	CA.
1	O'opu alamo'o	*Lentipes concolor*	Gobiidae	HI.
2	Rough sculpin	*Cottus asperrimus*	Cottidae	CA.
2	Malheur mottled sculpin	*Cottus bairdi* ssp.	Cottidae	OR.
1	Shoshone sculpin	*Cottus greenei*	Cottidae	ID.
2	Wood River sculpin	*Cottus leiopomus*	Cottidae	ID.
1	Pygmy sculpin	*Cottus pygmaeus*	Cottidae	AL.
	AMPHIBIANS			
2	Flatwoods salamander	*Ambystoma cingulatum*	Ambystomatidae	AL,FL,GA,MS,SC.
2	California tiger salamander	*Ambystoma tigrinum californiense*	Ambystomatidae	CA.
2	Sonoran tiger salamander	*Ambystoma tigrinum stebbinsi*	Ambystomatidae	AZ, Mexico.
2	Hellbender	*Cryptobranchus alleganiensis*	Cryptobranchidae	AL,AR,GA,IA,IL,IN,KY,KS,MD, MN,MO,MS,NC,NY,OH,PA,SC,TN, VA,WV.
2	Green salamander	*Aneides aeneus*	Plethodontidae	AL,GA,KY,MD,MS,NC,OH,PA,SC,TN,VA,WV.
2	Sacramento Mountains salamander	*Aneides hardii*	Plethodontidae	NM.
2	Inyo Mountains salamander	*Batrachoseps campi*	Plethodontidae	CA.

CATEGORY	COMMON NAME	SCIENTIFIC NAME	FAMILY	RANGE
2	Channel Islands slender salamander	*Batrachoseps pacificus pacificus*	Plethodontidae	CA.
2	Kern Canyon slender salamander	*Batrachoseps simatus*	Plethodontidae	CA.
2	Tehachapi slender salamander	*Batrachoseps stebbinsi*	Plethodontidae	CA.
2	Yellow-blotched ensatina	*Ensatina eschscholtzi croceator*	Plethodontidae	CA.
2	Large-blotched ensatina	*Ensatina eschscholtzi klauberi*	Plethodontidae	CA.
2	Barton Springs salamander	*Eurycea* sp.	Plethodontidae	TX.
2	Dark-sided salamander	*Eurycea aquatica*	Plethodontidae	AL, TN.
2	Junaluska salamander	*Eurycea junaluska*	Plethodontidae	NC.
3B	Cascade Caverns salamander	*Eurycea latitans*	Plethodontidae	TX.
2	Texas salamander	*Eurycea neotenes*	Plethodontidae	TX.
2	Comal blind salamander	*Eurycea tridentifera*	Plethodontidae	TX.
3B	Valdina Farms salamander	*Eurycea troglodytes*	Plethodontidae	TX.
2	Oklahoma salamander	*Eurycea tynerensis*	Plethodontidae	AR,OK,MO.
2	Tennessee cave salamander	*Gyrinophilus palleucus*	Plethodontidae	AL,GA,TN.
2	West Virginia spring salamander	*Gyrinophilus subterraneus*	Plethodontidae	WV.
2	Georgia blind salamander	*Haideotriton wallacei*	Plethodontidae	GA,FL.
2	Limestone salamander	*Hydromantes brunus*	Plethodontidae	CA.
2	Mount Lyell salamander	*Hydromantes platycephalus*	Plethodontidae	CA.
2	Shasta salamander	*Hydromantes shastae*	Plethodontidae	CA.
2	Caddo Mountain salamander	*Plethodon caddoensis*	Plethodontidae	AR.
2	Fourche Mountain salamander	*Plethodon fourchensis*	Plethodontidae	AR.
2	Peaks of Otter salamander	*Plethodon hubrichti*	Plethodontidae	VA.
3C	Coeur d'Alene salamander	*Plethodon idahoensis*	Plethodontidae	ID.
2	Larch Mountain salamander	*Plethodon larselli*	Plethodontidae	OR,WA.
2	Jemez Mountain salamander	*Plethodon neomexicanus*	Plethodontidae	NM.
2	Cheat Mountain salamander	*Plethodon nettingi*	Plethodontidae	WV.
2	Ouachita salamander	*Plethodon ouachitae*	Plethodontidae	AR,OK.
2	White-spotted salamander	*Plethodon punctatus*	Plethodontidae	VA,WV.
2	Shenandoah salamander	*Plethodon shenandoah*	Plethodontidae	VA.
2	Siskiyou Mountain salamander	*Plethodon stormi*	Plethodontidae	CA,OR.
2	Blanco blind salamander	*Typhlomolge robusta*	Plethodontidae	TX.
3C	Carolina waterdog	*Necturus lewisi*	Proteidae	NC.
2	Sipsey Fork waterdog	*Necturus maculosus* ssp.	Proteidae	AL.
2	Black-spotted newt	*Notophthalmus meridionalis*	Salamandridae	TX, Mexico.
2	Gulf Hammock dwarf siren	*Pseudobranchus striatus lustricolus*	Sirenidae	FL.
2	Rio Grande lesser siren	*Siren intermedia texana*	Sirenidae	TX, Mexico.
2	Black toad	*Bufo exsul*	Bufonidae	CA.
2	Puerto Rican toad	*Bufo lemur*	Bufonidae	PR.
2	Arroyo toad	*Bufo microscaphus californicus*	Bufonidae	CA, Mexico.
2	Amargosa toad	*Bufo nelsoni*	Bufonidae	NV.
2	Sonora green toad	*Bufo retiformis*	Bufonidae	AZ, Mexico.
2	Pine Barrens treefrog (northern populations)	*Hyla andersonii*	Hylidae	NC,NJ.
2	Illinois chorus frog	*Pseudacris streckeri illinoensis*	Hylidae	AR,IL,MO.
2	Guajon	*Eleutherodactylus cooki*	Leptodactylidae	PR.
2	Web-footed coqui	*Eleutherodactylus karlschmidti*	Leptodactylidae	PR.
3B	Ramos bromeliad frog	*Eleutherodactylus ramosi*	Leptodactylidae	PR.
3B	Duckwater frog	*Rana* sp.	Ranidae	NV.
3A	San Felipe leopard frog	*Rana* sp.	Ranidae	CA.
2	Florida gopher frog	*Rana areolata aesopus*	Ranidae	FL,GA.
2	Carolina gopher frog	*Rana areolata capito*	Ranidae	GA,NC,SC.
2	Dusky gopher frog	*Rana areolata sevosa*	Ranidae	AL,FL,LA,MS.
2	California red-legged frog	*Rana aurora draytoni*	Ranidae	CA, Mexico.
3B	Vegas Valley leopard frog	*Rana (pipiens) fisheri*	Ranidae	NV.
3A	Relict leopard frog	*Rana onca*	Ranidae	AZ,NV,UT.
1	Tarahumara frog	*Rana tarahumarae*	Ranidae	AZ, Mexico.
	REPTILES			
2	Alligator snapping turtle	*Macroclemys temminckii*	Chelydridae	AR,AL,FL,GA,IL,IN,KY,MS,LA, MO,MS,OK,TN,TX.
2	Western pond turtle	*Clemmys marmorata*	Emydidae	CA,OR,WA,Canada.
2	Bog turtle	*Clemmys muhlenbergii*	Emydidae	CT,DE,GA,MA,MD,NC,NY,NJ,PA,RI,SC,VA.
2	Barbour's map turtle	*Graptemys barbouri*	Emydidae	AL,FL,GA.
2	Cagle's map turtle	*Graptemys caglei*	Emydidae	TX.
2	Yellow-blotched sawback	*Graptemys flavimaculata*	Emydidae	MS.
3C	Black-knobbed sawback	*Graptemys nigrinoda*	Emydidae	AL,MS.
1	Ringed sawback	*Graptemys oculifera*	Emydidae	LA,MS.
3C	Sabine map turtle	*Graptemys ouachitensis sabinensis*	Emydidae	LA,TX.
2	Texas map turtle	*Graptemys versa*	Emydidae	TX.
2	Alabama red-bellied turtle	*Pseudemys alabamensis*	Emydidae	AL.
3C	Suwannee cooter	*Pseudemys concinna suwanniensis*	Emydidae	FL,GA.
2	Jicotea	*Pseudemys (decussata) stejnegeri*	Emydidae	PR.
2	Big Bend slider	*Pseudemys scripta gaigeae*	Emydidae	TX, Mexico.
2	Key mud turtle	*Kinosternon baurii baurii*	Kinosternidae	FL.
3C	Arizona mud turtle	*Kinosternon flavescens arizonense*	Kinosternidae	AZ, Mexico.
1	Yellow mud turtle (northern populations)	*Kinosternon flavescens flavescens*	Kinosternidae	IA,IL,MO,NE.
3B	Illinois mud turtle	*Kinosternon flavescens spooneri*	Kinosternidae	IA,IL,MO.
2	Big Bend mud turtle	*Kinosternon hirtipes murrayi*	Kinosternidae	TX, Mexico.
1	Flattened musk turtle	*Sternotherus depressus*	Kinosternidae	AL.
2	Desert tortoise	*Scaptochelys agassizii*	Testudinidae	AZ,CA,NV,UT, Mexico.
2	Gopher tortoise	*Gopherus polyphemus*	Testudinidae	AL,FL,GA,LA,MS,SC.
3C	Baker's legless lizard	*Amphisbaena bakeri*	Amphisbaenidae	PR.
2	Panamint alligator lizard	*Elgaria panamintinus*	Anguidae	CA.
2	Black legless lizard	*Anniella pulchra nigra*	Anniellidae	CA.

CATEGORY	AND COMMON NAME	SCIENTIFIC NAME	FAMILY	RANGE
2	Barefoot gecko	*Anarbylus switaki*	Gekkonidae	CA, Mexico.
3C	Big Bend gecko	*Coleonyx reticulatus*	Gekkonidae	TX, Mexico.
2	Gila monster	*Heloderma suspectum*	Helodermatidae	AZ,CA,NM,NV,UT, Mexico.
2	Puerto Rican pygmy anole	*Anolis occultis*	Iguanidae	PR.
2	Reticulate collared lizard	*Crotaphytus reticulatus*	Iguanidae	TX, Mexico.
3A	Navassa Island iguana	*Cyclura cornuta bigerrima*	Iguanidae	Navassa Island.
3A	No common name	*Leiocephalus eremitus*	Iguanidae	Navassa Island.
2	San Diego horned lizard	*Phrynosoma coronatum blainvillei*	Iguanidae	CA, Mexico.
2	Flat-tailed horned lizard	*Phrynosoma mcalli*	Iguanidae	AZ,CA, Mexico.
3C	Sand dune lizard	*Sceloporus graciosus arenicolous*	Iguanidae	TX,NM.
2	Florida scrub lizard	*Sceloporus woodi*	Iguanidae	FL.
2	Colorado Desert fringed-toed lizard	*Uma notata notata*	Iguanidae	CA, Mexico.
3C	Cowles fringe-toed lizard	*Uma notata rufopunctata*	Iguanidae	AZ, Mexico.
3C	Pandanus skink	*Aulacoplax leptosoma*	Scincidae	TT.
2	Florida Keys mole skink	*Eumeces egregius egregius*	Scincidae	FL.
2	Blue-tailed mole skink	*Eumeces egregius lividus*	Scincidae	FL.
3C	Arizona skink	*Eumeces gilberti arizonensis*	Scincidae	AZ.
2	Sand skink	*Neoseps reynoldsi*	Scincidae	FL.
2	Blue-tailed ground lizard	*Ameiva wetmorei*	Teiidae	PR.
3C	Gray-checkered whiptail	*Cnemidophorus dixoni*	Teiidae	NM,TX.
2	Orange-throated whiptail	*Cnemidophorus hyperythrus*	Teiidae	CA, Mexico.
2	Southern rubber boa	*Charina bottae umbratica*	Boidae	CA.
3A	St. Croix ground snake	*Alsophis sanctecrucis*	Colubridae	VI.
2	Culebra garden snake	*Arrhyton exiguum exiguum*	Colubridae	PR.
2	Kirtland's snake	*Clonophis kirtlandi*	Colubridae	IL,IN,KY,MI,OH,PA,WI.
2	Key ringneck snake	*Diadophis punctatus acricus*	Colubridae	FL.
3C	Desert king snake	*Lampropeltis getulus splendida*	Colubridae	AZ,NM,OK,TX.
3C	Gray-banded king snake	*Lampropeltis mexicana alterna*	Colubridae	TX.
2	San Diego Mountain king snake	*Lampropeltis zonata pulchra*	Colubridae	CA.
2	Alameda striped racer	*Masticophis lateralis euryxanthus*	Colubridae	CA.
2	Copperbelly water snake	*Nerodia erythrogaster neglecta*	Colubridae	IL,IN,KY,MI,OH.
3C	Brazos water snake	*Nerodia harteri harteri*	Colubridae	TX.
1	Concho water snake	*Nerodia harteri paucimaculata*	Colubridae	TX.
2	Lake Erie water snake	*Nerodia sipedon insularum*	Colubridae	OH, Canada.
2	Black pine snake	*Pituophis melanoleucus lodingi*	Colubridae	AL,LA,MS.
2	Florida pine snake	*Pituophis melanoleucus mugitus*	Colubridae	AL,FL,GA,SC.
2	Santa Cruz Island gopher snake	*Pituophis melanoleucus pumilis*	Colubridae	CA.
2	Louisiana pine snake	*Pituophis melanoleucus ruthveni*	Colubridae	LA,TX.
2	Short-tailed snake	*Stilosoma extenuatum*	Colubridae	FL.
2	Rimrock crowned snake	*Tantilla oolitica*	Colubridae	FL.
2	Short-headed garter snake	*Thamnophis brachystoma*	Colubridae	NY,PA.
2	Giant garter snake	*Thamnophis couchi gigas*	Colubridae	CA.
2	Mexican garter snake	*Thamnophis eques*	Colubridae	AZ,NM, Mexico.
2	Narrow-headed garter snake	*Thamnophis rufipunctatus*	Colubridae	AZ,NM, Mexico.
2	No common name	*Tropidophis melanurus bucculentus*	Colubridae	Navassa Island.
3C	Arizona ridge-nosed rattlesnake	*Crotalus willardi willardi*	Viperidae	AZ, Mexico.
2	Eastern massasauga	*Sistrurus catenatus catenatus*	Viperidae	IA,IL,IN,MI,MO,MN,NY,OH,PA, Canada.
	BIRDS			
2	Reddish egret	*Egretta rufescens*	Ardeidae	N=FL,TX, Mexico, West Indies; V=AL,CA,LA,MS.
2	White-faced ibis (Great Basin population)	*Plegadis chihi*	Threskiornithidae	N=AZ,CA,CO,NM,NV,OR,UT; V=ID,WY, Mexico.
3C	Tule white-fronted goose	*Anser albifrons elgasi*	Anatidae	N=AK ; V=CA,OR.
2	West Indian whistling duck	*Dendrocygna arborea*	Anatidae	PR,VI, West Indies.
2	Fulvous whistling duck (Southwestern U.S. population)	*Dendrocygna bicolor*	Anatidae	N=AZ,CA; V=Mexico.
2	Lesser white-cheeked pintail	*Anas bahamensis bahamensis*	Anatidae	PR,VI, West Indies, South America.
2	West Indian ruddy duck	*Oxyura jamaicensis jamaicensis*	Anatidae	PR,VI, West Indies.
2	American swallow-tailed kite	*Elanoides forficatus forficatus*	Accipitridae	N=AL,AR,FL,GA,IA,IL,KS,LA,MN, MO,MS,NC,OK,SC,TN,TX,WI; V=Central America.
2	Puerto Rican sharp-shinned hawk	*Accipiter striatus venator*	Accipitridae	PR.
2	Puerto Rican broad-winged hawk	*Buteo platypterus brunnescens*	Accipitridae	PR.
2	Swainson's hawk	*Buteo swainsoni*	Accipitridae	N=AK,AZ,CA,CO,IA,ID,KS,MN,MO, MT,ND,NE,NM,NV,OK,OR,SD,TX,UT, WA,WY, Canada; V=FL, Mexico, Central and South America.
2	Ferruginous hawk	*Buteo regalis*	Accipitridae	N=CO,ID,MT,ND,NE,NM,NV,OK,OR, SD,TX,UT,WA,WY, Canada; V=AZ,CA, Mexico.
2	Crested caracara (Florida population)	*Polyborus plancus audubonii*	Falconidae	FL.
2	Southeastern American kestrel	*Falco sparverius paulus*	Falconidae	AL,FL,GA,LA,MS.
2	Western sage grouse	*Centrocercus urophasianus phaios*	Phasianidae	OR,WA, Canada.
2	Mangrove clapper rail	*Rallus longirostris insularum*	Rallidae	FL.
2	California black rail	*Laterallus jamaicensis coturniculus*	Rallidae	AZ,CA, Mexico.
2	Caribbean coot	*Fulica caribaea*	Rallidae	PR,VI, West Indies.
2	Western snowy plover	*Charadrius alexandrinus nivosus*	Charadriidae	N=CA,CO,KS,NM,NV,OK,OR,TX,UT, WA ; V=AZ, Mexico.
2	Southeastern snowy plover	*Charadrius alexandrinus tenuirostris*	Charadriidae	AL,FL,LA,MS,PR, Greater Antilles.
2	Mountain plover	*Charadrius montanus*	Charadriidae	N=CO,KS,MT,ND,NE,NM,OK,SD,TX, WY ; V=AZ,CA,NV,UT, Mexico.
2	Long-billed curlew	*Numenius americanus*	Scolopacidae	N=CA,CO,IA,ID,KS,MT,ND,NE,NM, NV,OK,OR,SD,TX,UT,WA,WI,WY, Canada; V=AZ,LA,MN, Mexico.

CATEGORY	COMMON NAME	SCIENTIFIC NAME	FAMILY	RANGE
1	Roseate tern (North American population)	*Sterna dougallii dougallii*	Laridae	N=CT,FL,MA,ME,NJ,NY,PR,VA,VI, Canada, West Indies; V=Central and South America.
2	White-crowned pigeon	*Columba leucocephala*	Columbidae	FL, West Indies, Central America.
2	Radak Micronesian pigeon	*Ducula oceanica ratakensis*	Columbidae	TT (Marshall Islands).
2	Truk Micronesian pigeon	*Ducula oceanica terraoki*	Columbidae	TT (Caroline Islands).
3C	Mariana fruit dove	*Ptilinopus roseicapillus*	Columbidae	GU,CM.
3C	Guam white-throated ground dove	*Gallicolumba xanthonura xanthonura*	Columbidae	GU,CM.
3C	Palau Nicobar pigeon	*Caloenas nicobarensis pelewensis*	Columbidae	TT (Caroline Islands).
2	Western yellow-billed cuckoo	*Coccyzus americanus occidentalis*	Cuculidae	N=AZ,CA,CO,ID,NM,NV,OR,TX,UT,WA, Canada, Mexico; V=Central and South America.
2	Virgin Islands screech owl	*Otus sudipes newtoni*	Strigidae	PR,VI.
2	Southern spotted owl	*Strix occidentalis lucida*	Strigidae	AZ,CO,NM,TX,UT, Mexico.
1	Ponape short-eared owl	*Asio flammeus ponapensis*	Strigidae	TT (Caroline Islands).
1	Florida scrub jay	*Aphelocoma coerulescens coerulescens*	Corvidae	FL.
2	Appalachian Bewick's wren	*Thryomanes bewickii altus*	Troglodytidae	AL,GA,KY,MD,NC,OH,PA,SC,TN,VA,WV, Canada.
3A	San Clemente Bewick's wren	*Thryomanes bewickii leucophrys*	Troglodytidae	CA.
2	Coastal black-tailed gnatcatcher	*Polioptila melanura californica*	Muscicapidae	CA, Mexico.
3C	Truk monarch	*Metabolus rugensis*	Muscicapidae	TT (Caroline Islands).
1	Guam rufous-fronted fantail	*Rhipidura rufifrons uraniae*	Muscicapidae	GU.
1	Palau white-breasted wood-swallow	*Artamus leucorhynchus pelewensis*	Artamidae	TT (Caroline Islands).
2	Migrant loggerhead shrike	*Lanius ludovicianus migrans*	Laniidae	N=AR,CT,DE,DC,IA,IL,IN,KS,KY,MA,MD, ME,MI,MN,MO,MS,NC,NE,NH,NJ,NY,OH, OK,PA,RI,TN,TX,VA,VT,WI,WV,Canada; V=AL,FL,GA,LA,SC.
3C	Cardinal honey-eater	*Myzomela cardinalis saffordi*	Melephagidae	GU,CM.
2	Bishop's oo	*Moho bishopi*	Melephagidae	HI.
2	Rota bridled white-eye	*Zosterops conspicillata rotensis*	Zosteropidae	CM.
1	Truk greater white-eye	*Rukia ruki*	Zosteropidae	TT (Caroline Islands).
3C	Arizona Bell's vireo	*Vireo bellii arizonae*	Vireonidae	N=AZ,CA,NV,UT; V=Mexico.
1	Black-capped vireo	*Vireo atricapillus*	Vireonidae	N=KS,OK,TX; V=Mexico.
3C	Colima warbler	*Vermivora crissalis*	Emberizidae	N=TX; V=Mexico.
2	Golden-cheeked warbler	*Dendroica chrysoparia*	Emberizidae	N=TX; V=Mexico, Central America.
2	Stoddard's yellow-throated warbler	*Dendroica dominica stoddardi*	Emberizidae	AL,FL.
2	Elvin woods warbler	*Dendroica angelae*	Emberizidae	PR.
2	Saltmarsh yellowthroat	*Geothlypis trichas sinuosa*	Emberizidae	CA.
3C	Yuma brown towhee	*Pipilo fuscus relictus*	Emberizidae	AZ.
2	Bachman's sparrow	*Aimophila aestivalis*	Emberizidae	AL,AR,FL,GA,IL,IN,KY,LA,MD,MO,MS,NC, OH,OK,PA,SC,TN,TX,VA,WV.
2	Texas Botteri's sparrow	*Aimophila botterii texana*	Emberizidae	TX, Mexico.
3C	Yuma rufous-crowned sparrow	*Aimophila ruficeps rupicola*	Emberizidae	AZ.
2	Belding's savannah sparrow	*Passerculus sandwichensis beldingi*	Emberizidae	CA, Mexico.
2	Large-billed savannah sparrow	*Passerculus sandwichensis rostratus*	Emberizidae	N=Mexico; V=AZ,CA.
1	Florida grasshopper sparrow	*Ammodramus savannarum floridanus*	Emberizidae	FL.
3A	Texas Henslow's sparrow	*Ammodramus henslowii houstonensis*	Emberizidae	TX.
2	Wakulla seaside sparrow	*Ammodramus maritima juncicola*	Emberizidae	FL.
2	Smyrna seaside sparrow	*Ammodramus maritima pelonota*	Emberizidae	FL.
2	Amak song sparrow	*Melospiza melodia amaka*	Emberizidae	AK.
2	Tricolored blackbird	*Agelaius tricolor*	Emberizidae	CA,OR, Mexico.
3C	Palau blue-faced parrotfinch	*Erythrura trichroa pelewensis*	Estrildidae	TT (Caroline Islands).
	MAMMALS			
2	Tuckahoe masked shrew	*Sorex cinereus nigriculus*	Soricidae	NJ.
2	Pribilof shrew	*Sorex hydrodromus*	Soricidae	AK.
2	Lyell shrew	*Sorex lyelli*	Soricidae	CA.
2	Preble's shrew	*Sorex preblei*	Soricidae	ID,MT,OR,WA,WY.
2	Homosassa shrew	*Sorex longirostris exsonis*	Soricidae	FL.
2	Salt marsh vagrant shrew	*Sorex vagrans halicoetes*	Soricidae	CA.
3B	San Bernardino dusky shrew	*Sorex monticolus parvidens*	Soricidae	CA.
2	Buena Vista Lake shrew	*Sorex ornatus relictus*	Soricidae	CA.
2	Monterey ornate shrew	*Sorex ornatus salarius*	Soricidae	CA.
2	Ornate salt marsh shrew	*Sorex ornatus salicornicus*	Soricidae	CA.
2	Suisun shrew	*Sorex ornatus sinuosus*	Soricidae	CA.
2	Santa Catalina shrew	*Sorex ornatus willetti*	Soricidae	CA.
2	Ashland shrew	*Sorex trigonirostris*	Soricidae	OR.
2	Southern water shrew	*Sorex palustris punctulatus*	Soricidae	MD,PA,TN,VA,WV.
2	Glacier Bay water shrew	*Sorex alaskanus*	Soricidae	AK.
2	Arizona shrew	*Sorex arizonae*	Soricidae	AZ,NM.
2	Long-tailed shrew	*Sorex dispar*	Soricidae	MA,ME,NC,NH,NY,PA,TN,VA,VT,WV.
2	Destruction Island shrew	*Sorex trowbridgii destructioni*	Soricidae	WA.
2	Northeastern pygmy shrew	*Microsorex hoyi thompsoni*	Soricidae	MA,ME,MI,NH,NY,OH,PA,VT,WI,WV.
2	Southern pygmy shrew	*Microsorex hoyi winnemana*	Soricidae	IL,IN,KY,MD,NC,OH,TN,VA.
2	Martha's Vineyard short-tailed shrew	*Blarina brevicauda aloga*	Soricidae	MA.
2	Nantucket short-tailed shrew	*Blarina brevicauda compacta*	Soricidae	MA.
2	Aransas short-tailed shrew	*Blarina brevicauda pluabra*	Soricidae	TX.
2	Sherman's short-tailed shrew	*Blarina brevicauda shermani*	Soricidae	FL.
3C	Dismal Swamp short-tailed shrew	*Blarina brevicauda telmalestes*	Soricidae	NC,VA.
2	Anastasia Island mole	*Scalopus aquaticus anastasae*	Talpidae	FL.
2	Englewood mole	*Scalopus aquaticus bassi*	Talpidae	FL.
2	Presidio mole	*Scalopus aquaticus texanus*	Talpidae	TX.
2	Star-nosed mole	*Condylura cristata parva*	Talpidae	GA,MD,NC,SC,TN,VA,WV.
2	Mariana fruit bat (northern populations)	*Pteropus mariannus mariannus*	Pteropodidae	CM.

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2 Pagan fruit bat	*Pteropus mariannus paganensis*	Pteropodidae	CM.
2 Samoan fruit bat	*Pteropus samoensis samoensis*	Pteropodidae	AS, Western Samoa.
2 Sheath-tailed bat	*Emballonura semicaudata*	Emballonuridae	CM,GU,TT (Caroline Islands).
2 Insular long-tongued bat	*Monophylus plethodon frater*	Phyllostomidae	PR.
2 Big long-nosed bat	*Leptonycteris nivalis*	Phyllostomidae	TX, Mexico.
2 Little long-nosed bat	*Leptonycteris sanborni*	Phyllostomidae	AZ,NM, Mexico.
2 Desmarest's fig-eating bat	*Stenoderma rufum*	Phyllostomidae	PR.
2 Eastern small-footed bat	*Myotis subulatus leibii*	Vespertilionidae	AR,CT,DE,GA,IL,IN,KY,MA,MD, ME,MO,NC,NH,NJ,NY,OH,OK,PA, RI,TN,VA,VT,WV, Canada.
2 Occult bat	*Myotis lucifugus occultus*	Vespertilionidae	AZ,CA,NM,TX, Mexico.
2 Southeastern bat	*Myotis austroriparius*	Vespertilionidae	AL,AR,FL,GA,IL,IN,KY,LA,MD, MS,NC,OK,SC,TN,TX.
2 Southwestern cave bat	*Myotis velifer brevis*	Vespertilionidae	AZ,CA,NM.
2 Spotted bat	*Euderma maculatum*	Vespertilionidae	AZ,CA,CO,ID,MT,NM,NV,OR,UT, WY,TX, Canada, Mexico.
2 Townsend's western big-eared bat	*Plecotus townsendii townsendii*	Vespertilionidae	CA,OR,WA, Canada.
2 Southeastern big-eared bat	*Plecotus rafinesquii*	Vespertilionidae	AL,AR,FL,GA,IL,IN,KY,LA,MD, MS,NC,OH,OK,SC,TN,TX,VA,WV.
2 Greater mastiff bat	*Eumops perotis californicus*	Molossidae	AZ,CA,NM,TX, Mexico.
2 Underwood's mastiff bat	*Eumops underwoodi*	Molossidae	AZ, Mexico, Central America.
2 Florida mastiff bat	*Eumops glaucinus floridanus*	Molossidae	FL.
2 Barnes' pika	*Ochotona princeps barnesi*	Ochotonidae	UT.
2 Cinnamon pika	*Ochotona princeps cinnamomea*	Ochotonidae	UT.
2 Copenhagen Basin pika	*Ochotona princeps clamosa*	Ochotonidae	ID.
2 Lasal pika	*Ochotona princeps lasalensis*	Ochotonidae	UT.
2 Heliotrope pika	*Ochotona princeps moorei*	Ochotonidae	UT.
2 Goat Peak pika	*Ochotona princeps nigrescens*	Ochotonidae	NM.
2 Wasatch pika	*Ochotona princeps wasatchensis*	Ochotonidae	UT.
2 Riparian brush rabbit	*Sylvilagus bachmani riparius*	Leporidae	CA.
2 Lower Keys rabbit	*Sylvilagus palustris hefneri*	Leporidae	FL.
2 Micco cottontail rabbit	*Sylvilagus floridanus anmophilus*	Leporidae	FL.
2 Smiths Island cottontail rabbit	*Sylvilagus floridanus hitchensi*	Leporidae	VA.
2 Davis Mountains cottontail rabbit	*Sylvilagus floridanus robustus*	Leporidae	TX.
2 New England cottontail rabbit	*Sylvilagus transitionalis*	Leporidae	AL,GA,KY,MA,MD,ME,NC,NH,NJ, NY,PA,TN,VA,VT,WV.
2 Sierra Nevada snowshoe hare	*Lepus americanus tahoensis*	Leporidae	CA.
1 White-sided jackrabbit	*Lepus callotis gaillardi*	Leporidae	NM, Mexico.
2 Sierra Nevada Mountain beaver (Mono Basin population)	*Aplodontia rufa californica*	Aplodontidae	CA.
2 Point Arena mountain beaver	*Aplodontia rufa nigra*	Aplodontidae	CA.
2 Point Reyes mountain beaver	*Aplodontia rufa phaea*	Aplodontidae	CA.
3A Penasco chipmunk	*Eutamias minimus atristriatus*	Sciuridae	NM.
2 Organ Mountains chipmunk	*Eutamias quadrivittatus australis*	Sciuridae	NM.
2 Hidden Forest chipmunk	*Eutamias umbrinus nevadensis*	Sciuridae	NV.
2 Mount Ellen chipmunk	*Eutamias umbrinus zedulus*	Sciuridae	UT.
2 Palmer's chipmunk	*Eutamias palmeri*	Sciuridae	NV.
2 Wet Mountains marmot	*Marmota flaviventris notiocra*	Sciuridae	CO.
2 Nelson's antelope ground squirrel	*Ammospermophilus nelsoni*	Sciuridae	CA.
1 Northern Idaho ground squirrel	*Spermophilus brunneus* ssp.	Sciuridae	ID.
2 Southern Idaho ground squirrel	*Spermophilus brunneus* ssp.	Sciuridae	ID.
2 Richardson's ground squirrel	*Spermophilus richardsoni nevadensis*	Sciuridae	ID,NV,OR.
2 Allen's 13-lined ground squirrel	*Spermophilus tridecemlineatus allensi*	Sciuridae	WY.
3C White Mountains ground squirrel	*Spermophilus tridecemlineatus monticola*	Sciuridae	AZ.
2 Mohave ground squirrel	*Spermophilus mohavensis*	Sciuridae	CA.
2 Palm Springs ground squirrel	*Spermophilus tereticaudus chlorus*	Sciuridae	CA.
2 Arizona prairie dog	*Cynomys ludovicianus arizonensis*	Sciuridae	AZ,NM,TX, Mexico.
2 mangrove fox squirrel	*Sciurus niger avicennia*	Sciuridae	FL.
2 Sherman's fox squirrel	*Sciurus niger shermani*	Sciuridae	FL.
2 Chiricahua squirrel	*Sciurus nayaritensis chiricahuae*	Sciuridae	AZ.
2 Santa Catalina Mountains squirrel	*Sciurus arizonensis catalinae*	Sciuridae	AZ.
2 Graham Mountains red squirrel	*Tamiasciurus hudsonicus grahamensis*	Sciuridae	AZ.
2 San Bernardino flying squirrel	*Glaucomys sabrinus californicus*	Sciuridae	CA.
2 Prince of Wales flying squirrel	*Glaucomys sabrinus griseifrons*	Sciuridae	AK.
2 Roy Prairie pocket gopher	*Thomomys mazama glacialis*	Geomyidae	WA.
2 Goldbeach pocket gopher	*Thomomys mazama helleri*	Geomyidae	OR.
2 Louie's pocket gopher	*Thomomys mazama louiei*	Geomyidae	WA.
2 Tacoma pocket gopher	*Thomomys mazama tacomensis*	Geomyidae	WA.
2 Fish Spring pocket gopher	*Thomomys umbrinus abstrusus*	Geomyidae	NV.
2 Anargosa pocket gopher	*Thomomys umbrinus anargosae*	Geomyidae	CA.
2 Bonneville pocket gopher	*Thomomys umbrinus bonnevillei*	Geomyidae	UT.
2 Clear Lake pocket gopher	*Thomomys umbrinus covexus*	Geomyidae	UT.
2 San Antonio pocket gopher	*Thomomys umbrinus curtatus*	Geomyidae	NV.
2 Pistol River pocket gopher	*Thomomys umbrinus detumidus*	Geomyidae	OR.
2 Mount Ellen pocket gopher	*Thomomys umbrinus dissimilis*	Geomyidae	UT.
3C Animas pocket gopher	*Thomomys umbrinus exutus*	Geomyidae	NM.
3C Graham Mountains pocket gopher	*Thomomys umbrinus grahamensis*	Geomyidae	AZ.
2 Guadalupe pocket gopher	*Thomomys umbrinus guadalupensis*	Geomyidae	NM,TX.
2 Hualapai pocket gopher	*Thomomys umbrinus hualpaiensis*	Geomyidae	AZ.
2 Limpia pocket gopher	*Thomomys umbrinus limpiae*	Geomyidae	TX.
2 Mearns' pocket gopher	*Thomomys umbrinus mearnsi*	Geomyidae	NM.
2 Stansbury Island pocket gopher	*Thomomys umbrinus nibleus*	Geomyidae	UT.
2 Prospect Valley pocket gopher	*Thomomys umbrinus ruralis*	Geomyidae	AZ.
2 Antelope Island pocket gopher	*Thomomys umbrinus xerophilus*	Geomyidae	UT.
2 Cebolleta pocket gopher	*Thomomys umbrinus paguatae*	Geomyidae	NM.
2 Salt Gulch pocket gopher	*Thomomys umbrinus powelli*	Geomyidae	UT.

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2	Pajarito pocket gopher	*Thomomys umbrinus quercinus*	Geomyidae	AZ.
2	Skull Valley pocket gopher	*Thomomys umbrinus robustus*	Geomyidae	UT.
2	Swasey Spring pocket gopher	*Thomomys umbrinus sevieri*	Geomyidae	UT.
2	Searchlight pocket gopher	*Thomomys umbrinus suboles*	Geomyidae	AZ.
2	Harquahala pocket gopher	*Thomomys umbrinus subsimilis*	Geomyidae	AZ.
2	Limpia Creek pocket gopher	*Thomomys umbrinus texensis*	Geomyidae	TX.
2	Mer Rouge pocket gopher	*Geomys bursarius breviceps*	Geomyidae	LA.
3C	White Sands pocket gopher	*Geomys arenarius brevirostris*	Geomyidae	NM.
2	Maritime pocket gopher	*Geomys personatus maritimus*	Geomyidae	TX.
2	Carrizo Springs pocket gopher	*Geomys personatus streckeri*	Geomyidae	TX.
3A	Sherman's pocket gopher	*Geomys pinetis fontanelus*	Geomyidae	GA.
3A	Goff's pocket gopher	*Geomys pinetis goffi*	Geomyidae	FL.
3B	Colonial pocket gopher	*Geomys colonus*	Geomyidae	GA.
2	Cumberland pocket gopher	*Geomys cumberlandius*	Geomyidae	GA.
2	White-eared pocket mouse	*Perognathus alticola alticola*	Heteromyidae	CA.
2	Tehachapi pocket mouse	*Perognathus alticola inexpectatus*	Heteromyidae	CA.
2	Silky pocket mouse	*Perognathus flavus goodpasteri*	Heteromyidae	AZ.
2	Los Angeles pocket mouse	*Perognathus longimembris brevinasus*	Heteromyidae	CA.
2	Pacific pocket mouse	*Perognathus longimembris pacificus*	Heteromyidae	CA.
2	Coconino pocket mouse	*Perognathus amplus amoenus*	Heteromyidae	AZ.
2	Yavapai pocket mouse	*Perognathus amplus amplus*	Heteromyidae	AZ.
2	Mupatki pocket mouse	*Perognathus amplus cineris*	Heteromyidae	AZ.
2	San Joaquin pocket mouse	*Perognathus inornatus inornatus*	Heteromyidae	CA.
2	Salinas pocket mouse	*Perognathus inornatus psammophilus*	Heteromyidae	CA.
2	Black Mountain pocket mouse	*Perognathus intermedius nigrescens*	Heteromyidae	AZ.
2	Fletcher kangaroo mouse	*Microdipodops megacephalus nasutus*	Heteromyidae	NV.
2	Desert Valley kangaroo mouse	*Microdipodops megacephalus albiventer*	Heteromyidae	NV.
2	Dolphin Island awl-toothed kangaroo rat	*Dipodomys ordii cineraceus*	Heteromyidae	UT.
2	Gunnison Island kangaroo rat	*Dipodomys microps alfredi*	Heteromyidae	UT.
2	Marble Canyon kangaroo rat	*Dipodomys microps leucotis*	Heteromyidae	AZ.
2	Dolphin Island chisel-toothed kangaroo rat	*Dipodomys microps russeolus*	Heteromyidae	UT.
2	Marysville kangaroo rat	*Dipodomys heermanni exilus*	Heteromyidae	CA.
1	Stephen's kangaroo rat	*Dipodomys stephensi*	Heteromyidae	CA.
2	Big-eared kangaroo rat	*Dipodomys elephantinus*	Heteromyidae	CA.
2	Texas kangaroo rat	*Dipodomys elator*	Heteromyidae	TX.
2	Merriam's kangaroo rat	*Dipodomys merriami frenatus*	Heteromyidae	UT.
2	Short-nosed kangaroo rat	*Dipodomys nitratoides brevinasus*	Heteromyidae	CA.
2	Tipton kangaroo rat	*Dipodomys nitratoides nitratoides*	Heteromyidae	CA.
2	Pine Island rice rat	*Oryzomys palustris plaviventris*	Muridae	FL.
2	Sanibel Island rice rat	*Oryzomys palustris sanibeli*	Muridae	FL.
1	Silver rice rat	*Oryzomys argentatus*	Muridae	FL.
2	Chiricahua harvest mouse	*Reithrodontomys megalotis arizonensis*	Muridae	AZ.
2	Southern marsh harvest mouse	*Reithrodontomys megalotis limicola*	Muridae	CA.
2	Stansbury Island harvest mouse	*Reithrodontomys megalotis ravus*	Muridae	UT.
2	Santa Cruz harvest mouse	*Reithrodontomys megalotis santacruzae*	Muridae	CA.
2	Pinacate mouse	*Peromyscus eremicus papagensis*	Muridae	AZ, Mexico.
2	Black Mountain mouse	*Peromyscus eremicus pullus*	Muridae	AZ.
3A	Pallid beach mouse	*Peromyscus polionotus decoloratus*	Muridae	FL.
2	Santa Rosa beach mouse	*Peromyscus polionotus leucocephalus*	Muridae	FL.
2	Southeast beach mouse	*Peromyscus polionotus niveiventris*	Muridae	FL.
2	St. Andrews beach mouse	*Peromyscus polionotus peninsularis*	Muridae	FL.
2	Anastasia beach mouse	*Peromyscus polionotus phasma*	Muridae	FL,SC.
2	Anacapa mouse	*Peromyscus maniculatus anacapae*	Muridae	CA.
2	San Clemente mouse	*Peromyscus maniculatus clementis*	Muridae	CA.
2	Monomoy mouse	*Peromyscus leucopus amoenitas*	Muridae	MA.
2	Fungo mouse	*Peromyscus leucopus easti*	Muridae	VA.
2	Martha's Vineyard mouse	*Peromyscus leucopus fuscus*	Muridae	MA.
2	Anastasia Island cotton mouse	*Peromyscus gossypinus anastasae*	Muridae	FL,GA.
2	Chadwick Beach cotton mouse	*Peromyscus gossypinus restrictus*	Muridae	FL.
2	Palo Duro mouse	*Peromyscus comanche*	Muridae	TX.
2	Florida mouse	*Peromyscus floridanus*	Muridae	FL.
2	Yuma cotton rat	*Sigmodon hispidus eremicus*	Muridae	CA,AZ, Mexico.
3C	Lower Keys cotton rat	*Sigmodon hispidus exsputus*	Muridae	FL.
2	Insular cotton rat	*Sigmodon hispidus insulicola*	Muridae	FL.
2	Micco cotton rat	*Sigmodon hispidus littoralis*	Muridae	FL.
2	Yavapai cotton rat	*Sigmodon arizonae jacksoni*	Muridae	AZ.
2	Colorado River cotton rat	*Sigmodon arizonae plenus*	Muridae	CA.
2	Hot Springs cotton rat	*Sigmodon fulviventer goldmani*	Muridae	NM.
2	Southern Appalachian woodrat	*Neotoma floridana haematoreia*	Muridae	GA,NC,SC.
2	Eastern woodrat	*Neotoma floridana magister*	Muridae	AL,CT,IL,IN,KY,MD,NC,NJ,NY, OH,PA,TN,VA,WV.
2	White Sands woodrat	*Neotoma micropus leucophaea*	Muridae	NM.
2	Santa Catalina Mountains woodrat	*Neotoma mexicana bullata*	Muridae	AZ.
2	San Joaquin Valley woodrat	*Neotoma fuscipes riparia*	Muridae	CA.
2	Kentucky red-backed vole	*Clethrionomys gapperi maurus*	Muridae	KY.
2	Pymatuning red-backed vole	*Clethrionomys gapperi paludicola*	Muridae	OH,PA.
2	Kittatiny red-backed vole	*Clethrionomys gapperi rupicola*	Muridae	PA.
2	White-footed vole	*Arborimus albipes*	Muridae	CA,OR.
2	Duke's salt marsh vole	*Microtus pennsylvanicus dukecampbelli*	Muridae	FL.
2	Potholes meadow vole	*Microtus pennsylvanicus kincaidi*	Muridae	WA.
2	Block Island meadow vole	*Microtus pennsylvanicus provectus*	Muridae	RI.
2	Penobscot meadow vole	*Microtus pennsylvanicus shattucki*	Muridae	ME.
2	Beach vole	*Microtus breweri*	Muridae	MA.
3C	Arizona montane vole	*Microtus montanus arizonensis*	Muridae	AZ,NM.
2	Pahranagat Valley vole	*Microtus montanus fucosus*	Muridae	NV.

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2 Ash Meadows vole	*Microtus montanus nevadensis*	Muridae	NV.
2 Virgin River montane vole	*Microtus montanus rivularis*	Muridae	UT.
2 San Pablo vole	*Microtus californicus sanpabloensis*	Muridae	CA.
2 Owens Valley vole	*Microtus californicus vallicola*	Muridae	CA.
2 Shaw Island vole	*Microtus townsendii pugetl*	Muridae	WA.
2 Anak vole	*Microtus oeconomus anakensis*	Muridae	AK.
2 Montague vole	*Microtus oeconomus elymocetes*	Muridae	AK.
3C Graham Mountains vole	*Microtus longicaudus leucophaeus*	Muridae	AZ.
2 Southern rock vole	*Microtus chrotorrhinus carolinensis*	Muridae	NC,TN,VA,WV.
1 Hualapai Mexican vole	*Microtus mexicanus hualpaiensis*	Muridae	AZ.
2 Navaho Mountain Mexican vole	*Microtus mexicanus navaho*	Muridae	AZ,UT.
3A Louisiana vole	*Microtus ochrogaster ludovicianus*	Muridae	LA,TX.
2 Round-tailed muskrat	*Neofiber alleni*	Muridae	FL,GA.
3C Dismal Swamp bog lemming	*Synaptomys cooperi helaletes*	Muridae	NC,VA.
2 Nebraska bog lemming	*Synaptomys cooperi relictus*	Muridae	NE.
2 Kansas bog lemming	*Synaptomys cooperi paludis*	Muridae	KS.
2 Northern bog lemming	*Synaptomys borealis sphagnicola*	Muridae	ME,NH, Canada.
2 New Mexican jumping mouse	*Zapus hudsonius luteus*	Zapodidae	AZ,NM.
2 Preble's jumping mouse	*Zapus hudsonius preblei*	Zapodidae	CO,WY.
2 Point Reyes jumping mouse	*Zapus trinotatus orarius*	Zapodidae	CA.
2 Sierra Nevada fox	*Vulpes vulpes necator*	Canidae	CA,NV.
2 Swift fox	*Vulpes velox*	Canidae	CO,KS,MT,ND,NE,NM,OK,SD,TX, WY, Canada.
2 Santa Catalina fox	*Urocyon littoralis catalinae*	Canidae	CA.
2 San Clemente fox	*Urocyon littoralis clementae*	Canidae	CA.
2 San Nicolas fox	*Urocyon littoralis dickeyi*	Canidae	CA.
2 San Miguel fox	*Urocyon littoralis littoralis*	Canidae	CA.
2 Santa Cruz fox	*Urocyon littoralis santacruzae*	Canidae	CA.
2 Santa Rosa fox	*Urocyon littoralis santarosae*	Canidae	CA.
3C Glacier bear	*Ursus americanus emmonsii*	Ursidae	AK.
2 Florida black bear	*Ursus americanus floridanus*	Ursidae	FL,GA.
2 Louisiana black bear	*Ursus americanus luteolus*	Ursidae	LA,MS,TX.
2 Key Vaca raccoon	*Procyon lotor auspicatus*	Procyonidae	FL.
2 Key West raccoon	*Procyon lotor incautus*	Procyonidae	FL.
3C Eastern marten	*Martes americana americana*	Mustelidae	MA,ME,MI,ND,NH,NY,OH,PA,VT, WI, Canada.
2 Florida long-tailed weasel	*Mustela frenata peninsulae*	Mustelidae	FL.
2 Everglades mink	*Mustela vison evergladensis*	Mustelidae	FL.
2 Florida mink	*Mustela vison lutensis*	Mustelidae	FL.
2 North American wolverine	*Gulo gulo luscus*	Mustelidae	CO,ID,MN,MT,ND,NV,UT,WY.
2 California wolverine	*Gulo gulo luteus*	Mustelidae	CA,OR,WA.
2 Channel Islands spotted skunk	*Spilogale putorius amphialo*	Mustelidae	CA.
2 Colorado hog-nosed skunk	*Conepatus mesoleucus figginsi*	Mustelidae	CO.
2 Big Thicket hog-nosed skunk	*Conepatus mesoleucus telealestes*	Mustelidae	TX.
2 Southwestern otter	*Lutra canadensis sonorae*	Mustelidae	AZ,CA,CO,NM,UT.
2 North American lynx	*Felis lynx canadensis*	Felidae	AK,CO,ID,ME,MI,MN,MT,ND,NH, NV,NY,OR,UT,VT,WA,WI,WY, Canada.
2 Texas margay	*Felis wiedii cooperi*	Felidae	TX, Mexico.
2 Yuma puma	*Felis concolor browni*	Felidae	AZ,CA, Mexico.
2 Wisconsin puma	*Felis concolor schorgeri*	Felidae	IA,IL,KS,MN,MO,WI, Canada.
2 Hilton Head deer	*Odocoileus virginianus hiltonensis*	Cervidae	SC.
2 Blackbeard Island deer	*Odocoileus virginianus nigribarbis*	Cervidae	GA.
2 Bulls Island deer	*Odocoileus virginianus taurinsulae*	Cervidae	SC.
2 Hunting Island deer	*Odocoileus virginianus venatoria*	Cervidae	SC.
2 Woodland caribou (Montana population)	*Rangifer tarandus caribou*	Cervidae	MT.
2 California bighorn	*Ovis canadensis californiana*	Bovidae	CA,OR,WA, Canada.
2 Peninsular bighorn	*Ovis canadensis cremnobates*	Bovidae	CA, Mexico.

[FR Doc. 85-22293 Filed 9-17-85; 8:45 am]

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federal register

Wednesday
September 18, 1985

Part IV

Department of Transportation

Federal Highway Administration

23 CFR Part 658

Truck Size and Weight; Interpretation and Policy Statement; Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. 83-14]

Truck Size and Weight; Interpretation and Policy Statement; Proposed Rulemaking

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: This notice provides a statement of FHWA interpretation and policy addressing issues in relation to the truck size and weight provisions contained in the Surface Transportation Assistance Act of 1982 (STAA), as amended by the Tandem Truck Safety Act of 1984 (TTSA). This notice addresses (1) conditions under which segments of the National System of Interstate and Defense Highways may be deleted from the National Network for trucks, (2) conditions affecting the designation of new routes on the Federal-aid Primary System as part of the National Network, and (3) new access provisions for 102-inch wide 28½-foot semitrailers. The TTSA issue relative to the qualifications of highways previously designated with lane widths less than 12 feet is the subject of a separate rulemaking (April 1, 1985, 50 FR 12825, FHWA Docket No. 83-14).

DATE: Written comments must be received on or before November 4, 1985.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 83-14, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m. ET, 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. Sheldon G. Strickland, Office of Traffic Operations, (202) 426-1993, Mr. David C. Oliver, Office of the Chief Counsel, (202) 426-0825, or Mr. Richard A. Torbik, Office of Highway Planning (202) 426-0233, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: On October 30, 1984, the Tandem Truck Safety Act of 1984 (TTSA), (Pub. L. 98-554, 98 Stat. 2829) amending the Surface Transportation Assistance Act of 1982 (STAA), (Pub. L. 97-424, 96 Stat. 2097) became law. In addition to the 12-foot lane issue which is being addressed in a separate notice, the TTSA also amended the STAA as described in the following sections:

Interstate Deletion—Length

Section 411 was amended to enable the deletion of a specific segment of an Interstate route from the National Network either on the Secretary's own initiative or at the request of the Governor of the State (see proposed § 658.11(b)(2)) if that segment is not capable of safely accommodating the longer trucks or combinations authorized by the STAA. Before making a request to the Secretary, the Governor shall consult with units of local government within the State in which the specific highway segment is located and with the Governor of any State adjacent to that State that might be directly affected by such deletion. As part of these consultations, potential alternative routes must be considered.

Further guidance is offered by the Senate Committee Report: [1]

> The Committee does not intend that this consultative procedure be lengthy or complicated. In requiring a Governor to consult with units of local government and Governors of adjacent States, the Committee seeks to ensure that the effects of an exemption of a highway segment—in terms of ths safety impacts and the impacts of interstate commerce—on the entire surrounding area be carefully considered and evaluated. For example, during the Surface Transportation Subcommittee's hearing on S. 2217, Senator Frank Lautenberg expressed concern about a potential "spillover" problem—for example, if all highways in New York City were closed to tandem truck traffic, highways in New Jersey, some of which might not be able safely to handle the traffic, might be forced to accept the tandem units. * * * If, however, the Governor of an adjacent State or local government representatives do not choose to participate in the consultative process, the Governor seeking the exemption need only note in his or her petition that contact was made with the other parties and that they did not choose to participate.
>
> In requiring the Governor seeking an exemption to consider alternative routes during the consultative process, the Committee wishes to emphasize its desire for the unimpeded flow of commerce, subject to safety criteria. The Committee intends that these alternative routes provide a logical connection to the interstate and primary system, to the maximum extent feasible, and do not create conditions of unreasonable circuity. The Committee also intends that governors consider and provide to the Secretary available data on the potential economic impact of the alternative route or routes on the businesses and industries that would be affected by the change.
>
> * * * * *
>
> The Committee intends that the Secretary consider four factors in making an exemption determination pursuant to this legislation: (1) The effect of an exemption on transportation safety, (2) the effect of an exemption on interstate commerce, (3) the presence and suitability of an alternative route or routes, and (4) the effect on other segments of the interstate and defense highway system and other highways. It is unequivocally the Committee's intent that highway safety, the first factor, be the Secretary's primary concern.

Any request for deletion of an Interstate segment must include a discussion of the above four factors prior to consideration by the Secretary of Transportation (see proposed § 658.11(b)(2)).

An additional factor established by FHWA in this proposal includes consideration and discussion of operating restrictions in lieu of deletion. This would allow the segment's continued use by STAA vehicles, but with restraints such as peak hour use limitations and lane use requirements.

Interstate Deletion—Width

Section 416 was also amended to enable the deletion of a specific segment of an Interstate from the National Network on the Secretary's own initiative or at the request of the Governor of the State if that segment is not capable of safely accommodating the 102-inch wide vehicles authorized by the STAA. The procedures for the 102-inch wide vehicles are identical to those established for the longer trucks and tandem trailer units, and are incorporated in proposed § 658.11(b)(2).

National Network Additions

Section 416 of the 1982 STAA was amended to provide that the designation of additional routes in a State subsequent to those designated in the June 5, 1984, rule, must be approved by the Governor of the State (see proposed 23 CFR 658.11(a)(2)). A new sentence has been added to section 416(a)[2] and reads as follows:

> Section 416. (a) * * * After the date of the enactment of this sentence, any Federal-aid highway (other than any Interstate highway) which was not designated under this subsection on June 5, 1984, may be designated under this subsection only with

[1] S. Rep. No. 505, 98th Cong., 2nd Sess. 11, 12 (1984).

[2] Tandem Truck Safety Act of 1984, section 105 of Pub. L. 98-554, 98 Stat. 2829, 2832, enacted on October 30, 1984.

the agreement of the Governor of the State in which the highway is located.

Reasonable Access

Section 412 was amended to extend the reasonable access privileges, previously afforded only to household goods carriers, to truck tractor-semitrailer combinations where the semitrailer does not exceed 28½ feet in length and 102 inches in width, and which generally operates as part of a tandem trailer combination described in section 411(b) of the STAA. The following is quoted from the Senate Committee Report[3]:

While the STAA authorized and guaranteed access to terminals and facilities for food, fuel and rest for the twin trailer combination vehicles, it did not include the necessary language to assure access for local delivery operations for the individual, 28-foot by 102-inch, trailers. If any State requirement were interpreted to restrict access for such local operations, the value to the carrier and shippers of the more efficient equipment would be substantially diminished. There would be sharp decline in purchases of new equipment from manufacturers while the inconsistency in Federal and State law was under judicial and/or administrative review.

* * * * *

* * * [The TTSA] therefore provides authority for safer and more efficient motor carrier operations in pickup and delivery service by assuring reasonable access to points of loading and unloading to a limited and clearly-defined class of commercial motor vehicles on a uniform national basis. * * * As more carriers convert to the STAA-authorized equipment, single 28-foot trailers will replace the standard 45-foot trailer in pickup and delivery service, thus resulting in significantly improved traffic conditions in local service as well as more economical and efficient motor carrier service to shipper and the consuming public through a reduction in freight handling costs.

While the Senate report consistently refers to 28-foot trailers, the actual language in the approved bill refers to 28½-foot trailers in recognition of the grandfather right for 28½-foot trailers to operate under the provisions of section 411(b) of the STAA of 1982. This revision is incorporated in proposed § 658.19(a).

This notice proposes to amend 23 CFR Part 658 as described above and requests comments on these proposed changes.

Regulatory Impact

The FHWA has considered the impacts of this proposal and has determined that it is not a major rulemaking action within the meaning of E.O. 12291 and not a significant rulemaking under the regulatory policies and procedures of the Department of Transportation (DOT). These determinations by the agency are based on the nature of the rulemaking. The FHWA has determined that this rulemaking action proposes to technically amend the June 5 final rule, incorporating revisions mandated by the TTSA. The proposed revisions address finalizing procedures for additions and deletions to the system and the degree of local access afforded to 102-inch-wide trailing units of twin trailers as well as clarifying current law as opposed to substantively revising the current regulations or changing the impacts initially projected. A Regulatory Impact Analysis has been prepared for the June 5 rulemaking while a Draft Regulatory Evaluation has been prepared for this notice of proposed rulemaking. Both are available for inspection in the headquarters office of FHWA, 400 7th Street, SW., Washington, DC. Copies may be obtained by contacting Mr. Sheldon G. Strickland, Mr. Richard A. Torbik, or Mr. David C. Oliver at the address provided under the heading **"FOR FURTHER INFORMATION CONTACT"**.

For the same reasons and under the criteria of the Regulatory Flexibility Act, FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

In consideration of the foregoing, the FHWA is proposing to amend Chapter I of Title 23, Code of Federal Regulations, by amending Part 658 as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation and Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 658

Grant programs—transportation, Highways and roads, Motor carriers—size and weight.

Issued on: September 10, 1985.

R.D. Morgan,

Executive Director, Federal Highway Administration.

PART 658—TRUCK SIZE AND WEIGHT ROUTE DESIGNATIONS—LENGTH, WIDTH AND WEIGHT LIMITATIONS AMENDED

1. The authority citation for 23 CFR Part 658 is revised to read as follows:

Authority: Secs. 133, 411, 412, 413, and 416 of Pub. L. 97-424, 96 Stat. 2097 [23 U.S.C. 127; 49 U.S.C. 2311, 2312, 2313; 49 U.S.C. App. 2316], as amended by Pub. L. 98-17, 97 Stat. 59, and Pub. L. 98-554, 98 Stat. 2829; 23 U.S.C. 315; and 49 CFR 1.48.

2. Section 658.1 is revised to read as follows:

§ 658.1 Purpose.

The purpose of this part is to identify a National Network of highways available to vehicles authorized by provisions of the Surface Transportation Assistance Act of 1982 (STAA) (Pub. L. 97-424, 96 Stat. 2097), as amended by Pub. L. 98-17, 97 Stat. 59 and Pub. L. 98-554, 98 Stat. 2829, and to prescribe national policies that govern truck size and weight.

3. In § 658.11, paragraphs (a) and (b) are revised to read as follows:

§ 658.11 Additions, deletions, exceptions, and restrictions.

* * * * *

(a) *Additions.* (1) Requests for additions to the National Network, including justification, shall be submitted in writing to the appropriate FHWA Division Office. Routes proposed for addition to the National Network shall be assessed on the basis of the criteria of § 658.9.

(2) Proposals for additions that meet the criteria of § 658.9 and have the endorsement of the Governor or the Governor's authorized representative will be published as necessary in the **Federal Register** for public comment as a Notice of Proposed Rulemaking (NPRM), and if found acceptable, as a final rule.

(b) *Deletions*— (1) *Federal-aid Primary—Other than Interstate.* Changed conditions or additional information may require the deletion of a designated route or a portion thereof. The deletion of any route or route segment shall require FHWA approval. Requests for deletion of routes from the National Network, including the reason(s) for the deletion, shall be submitted in writing to the appropriate FHWA Division Office. These requests shall be assessed on the basis of the criteria of § 658.9.

(2) *Federal-aid Interstate.* The deletion of any specific segment of the Interstate highway system from the National Network shall be made on the Secretary's own initiative, or by the request of the Governor of the State in which the Interstate segment is located. Requests from the Governor shall be submitted in writing to the appropriate FHWA Division Office for transmittal to Washington Headquarters. Such submission shall as a minimum (i) specify evidence of safety problems supporting the deletion as identified in § 658.11(d); (ii) analyze impact on interstate commerce; (iii) analyze and recommend any alternative routes that

[3] S. Rep. No. 505, 98th Cong. 2nd Sess. 16, 17 (1984).

can safely accommodate the commercial motor vehicle of the dimensions and configurations described in §§ 658.13 and 658.15 and serve the area in which such segment is located: (iv) show consultation with the local government in which the segment is located, as well as the Governor of any adjacent State that might be directly affected by such a deletion; and (v) consider and discuss operating restrictions in lieu of deletion.

(3) Proposed deletions will be published in the **Federal Register** as a Notice of Proposed Rulemaking, except in the case of an emergency deletion as prescribed in § 658.11(c).

* * * * *

4. In § 658.19 paragraph (a) is revised to read as follows:

§ 658.19 Reasonable access.

(a) All States must allow vehicles with dimensions authorized by the STAA reasonable access between the National Network described in the regulation and terminals and facilities for food, fuel, repairs, and rest. For household goods carriers, and for any truck tractor-semitrailer combination in which the semitrailer has a length not to exceed 28½ feet and which generally operates as part of a vehicle combination described in §§ 658.13 and 658.15, the lenght and width provisions require reasonable access to points of loading and unloading in addition to terminals and facilities as listed above.

* * * * *

[FR Doc. 85-22248 Filed 9-17-85; 8:45 am]

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federal register

Wednesday
September 18, 1985

Part V

Department of Education

Office of Elementary and Secondary Education

34 CFR Part 298

Chapter 2 of the Education Consolidation and Improvement Act of 1981; Final Rule

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 298

Chapter 2 of the Education Consolidation and Improvement Act of 1981

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations amending the regulations published on November 19, 1982 in 47 FR 52368–86 for activities authorized under Subchapters A, B, and C of Chapter 2 of the Education Consolidation and Improvement Act of 1981 (ECIA). These final regulations implement changes made to Chapter 2 by the Education Consolidation and Improvement Act of 1981 Technical Amendments to improve the administration of the program. The final regulations also make other changes in certain provisions of the November 19, 1982 regulations to implement statutory language and to conform provisions to the corresponding provisions that apply to Chapter 1 of the ECIA.

EFFECTIVE DATE: These regulations 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 of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mr. Allen King, Deputy Director, Division of Educational Support, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Mail Stop 6264, Washington, DC 20202. Telephone: (202) 245–7965.

SUPPLEMENTARY INFORMATION:

Overview of Chapter 2

Chapter 2 of the Education Consolidation and Improvement Act of 1981 (ECIA) was enacted as part of Subtitle D of Title V of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35). Chapter 2 consolidated over 40 education grant programs into a single authorization of grants to States for the same purposes as the antecedent programs, but to be used in accordance with the educational needs and priorities of State and local educational agencies (SEAs and LEAs) as determined by those agencies. The basic responsibility for the administration of Chapter 2 funds is in the SEAs. Responsiblity for the design and implementation of Chapter 2 programs, however, rests mainly with LEAs, school superintendents and principals, and classroom teachers and supporting personnel. Final regulations implementing the provisions of Chapter 2 were published on November 19, 1982 in 47 FR 52368–86 as 34 CFR Part 298.

On December 8, 1983, the President signed into law the Education Consolidation and Improvement Act of 1981 Technical Amendments (Pub. L. 98–211) to improve the implementation of the ECIA. A notice of proposed rulemaking (NPRM) was published on July 10, 1984 in 49 FR 28212–14. These final regulations implement the changes made to Chapter 2 by Pub. L. 98–211. The final regulations also make other changes in certain provisions in the final Chapter 2 regulations published on November 19, 1982 to implement statutory language and to conform provisions to the corresponding provisions that apply to Chapter 1 of the ECIA.

Overview of These Final Regulations

The following discussion summarizes the changes made by these final regulations to the final Chapter 2 regulations published on November 19, 1982.

Sections Implementing Changes Made to Chapter 2 by Pub. L. 98–211

Section 298.3 General responsibilities of State and local educational agencies

This section implements three changes made by Pub. L. 98–211. First, paragraph (a)(2) implements section 9(b) of Pub. L. 98–211, which requires States to assure in their Chapter 2 applications that, apart from providing technical and advisory assistance and monitoring compliance with Chapter 2, an SEA has not exercised any influence in the decisionmaking processes of its LEAs concerning the LEAs' expenditures of Chapter 2 funds. Second, paragraph (b) incorporates the provision on State rulemaking contained in section 15 of Pub. L. 98–211. This provision replaces the prior authority for State rulemaking contained in § 298.3(a)(2). Third, paragraph (c)(2) implements section 9(c) of Pub. L. 98–211, which places responsibility on each LEA to ensure that each expenditure of funds under Chapter 2 is for the purpose of meeting the educational needs within the schools of the LEA.

Section 298.5 Allotments to States of Chapter 2 funds

Paragraph (a)(1) implements the change made by section 11 of Pub. L. 98–211, which requires the Secretary to reserve one percent of the Chapter 2 appropriation for payments to the Insular Areas.

Section 298.7 LEA applications

Paragraph (a) implements the requirement in section 13 of Pub. L. 98–211 that SEAs certify LEA applications.

Section 298.8 Allocation of Chapter 2 funds to LEAs

Paragraph (b) implements the change made by section 21(a) of Pub. L. 98–211, which deletes the world "nonpublic" and inserts instead "private, nonprofit" in section 565(a) of Chapter 2.

In the Conference Report accompanying Pub. L. 98–211, the conferees stated that it was their intent, under Section 565(a) of Chapter 2, "that State Chapter 2 distribution formulas provide adjusted allocations to LEAs with only the greatest numbers or percentages of high cost children rather than allocations to LEAs with any number or percentage of such children." H. Rept. 574, 98th Cong., 1st Sess. 15 (1983) (Conference Report). Paragraph (b) does not incorporate the Conference Report language because the Secretary believes that regulating the SEAs' distribution of funds to their LEAs would intrude on the flexibility and responsibility vested in SEAs under Chapter 2, thereby undermining the central legislative decision made by Congress in enacting Chapter 2—namely, to make it a State-administered program with a minimum Federal role.

Consistent with this philosophy, paragraph (b) allows each SEA to decide whether to implement the Conference Report language. Upon careful analysis of the overall needs within the State, an SEA may determine that adjusted allocations under Section 565(a) should go only to those LEAs with the greatest numbers or percentages of high-cost children. The Secretary encourages SEAs to review their allocation formulas in light of the Conference Report language.

Section 298.51 Practice and procedure

Section 16 of Pub. L. 98–211 deletes the references to a hearing "on the record" in section 592(a) of the ECIA. In so doing, Congress made clear that it did not intend the lengthy and time-consuming hearing procedures required by the Administrative Procedure Act (APA) to apply to withholding hearings under the ECIA. Therefore, as paragraph (a) indicates, practice and procedure before the Education Appeal Board (EAB) for withholding hearings under the ECIA will be governed by the same rules that govern other Chapter 2

proceedings. These rules include transcribing the proceedings. *See* 34 CFR 78.48.

Section Implementing Other Changes

Section 298.14 Availability of funds

Section 298.14 has been amended to clarify that references to fiscal year mean the Federal fiscal year.

Section 298.16 Federal audits and access to records

Paragraph (a)(1) reflects the language on access to records contained in section 437(b) of the General Education Provisions Act (GEPA), made applicable to Chapter 2 by section 18(a) of Pub. L. 98–211. Paragraph (a)(2) implements the authority granted to the Inspector General by the Inspector General Act of 1978. Paragraph (b) incorporates minor editorial changes to make the language consistent with the corresponding provision in Chapter 1 of the ECIA.

Section 298.17 State audits

Paragraph (a) indicates that the Single Audit Act of 1984, enacted on October 19, 1984, applies to SEAs and LEAs that receive Chapter 2 funds. That Act establishes audit requirements for State and local governments and applies to those governments with respect to any of their fiscal years that begin after December 31, 1984. The Secretary recently published final regulations in 50 FR 37356 (September 13, 1985) implementing the provisions of the Act. Paragraph (b)(1) deletes the reference to "other subgrantees," thereby indicating that an LEA is responsible for repaying to the SEA any Chapter 2 funds the LEA or its subgrantee has misspent.

Section 298.18 Audit claims

Paragraph (a) states that the Department may establish an audit claim after a State or Federal audit is conducted. Paragraph (b)(1) lists the factors contained in 4 CFR Part 103 (Standards for the Compromise of Claims) and section 452(f) of GEPA that the Secretary takes into account when considering whether to compromise an audit claim. This list does not include the factor regarding a debtor's inability to pay the claim in full contained in 4 CFR 103.2 because it is not applicable to collection actions against States. Paragraph (b)(2) indicates that it is the policy of the Secretary to consider the probability of the claim being upheld to be the most important factor in deciding whether to compromise an audit claim.

Section 298.31 By-pass—General

Paragraph (c) incorporates the statutory provision in section 586(e)(2) of Chapter 2 concerning the withholding of funds pending final resolution of an investigation or a complaint that could result in a by-pass.

Section 298.37 Judicial review of by-pass actions

Section 298.37 concerning judicial review of by-pass action implements the statutory provision in section 586(h)(2) of Chapter 2.

Section 298.38 Continuation of the by-pass

Section 298.38 implements the statutory provision in section 586(f) of Chapter 2, which indicates that a by-pass action continues until the Secretary determines that there will no longer be any failure or inability on the part of the SEA or LEA that is being by-passed to meet the requirements in §§ 298.21–298.28.

Section 298.41 General; 298.42 Jurisdiction; 298.43 Definitions; 298.45 Written notice; 298.46 Filing an application for review; 298.47 Review of the written notice; 298.49 Rejection of the application; 298.52 The Panel's decision

Section 451(a)(4) of GEPA authorizes the Secretary to designate proceedings to be reviewed by the EAB. This statutory provision has been incorporated into the final regulations at a number of places to indicate that the Secretary may designate other Chapter 2 proceedings to be reviewed by the EAB.

Section 298.44 Eligibility for review

Paragraph (a)(4) incorporates the provision in section 451(a)(4) of GEPA authorizing the Secretary to designate other Chapter 2 proceedings to be reviewed by the EAB. Paragraph (b) indicates that a recipient who is dissatisfied with a Department action that may be reviewed by the EAB must seek this administrative review before seeking judicial review. Paragraph (c) indicates that a Panel of the EAB may dismiss an appeal if there are no issues in the appeal within the EAB's jurisdiction.

Section 298.51 Practice and procedure

Paragraph (b) implements the provision in section 452(b) of GEPA, which requires an appellant to prove before the EAB the allowability of the expenditures disallowed in a final audit determination.

Section 298.54 The Secretary's decision

Section 452(d) of GEPA authorizes the Secretary, for good cause shown, to modify or set aside an EAB Panel's decision in the review of a final audit determination. Under the authority in sections 451(a) and (e) of GEPA to designate cases to be heard by the EAB and to establish appropriate procedures to guide the EAB's review, § 298.54 permits the Secretary to remand a Panel's decision to the EAB for further review and consideration. If the Secretary does remand a Panel's decision, no final agency action will have occurred.

Application of Other Statutes and Regulations

Public Law 98–211 makes several changes in the applicability of other statutes that affect Chapter 2. Section 18(a) of Pub. L. 98–211 amends section 596 of the ECIA to clarify the applicability of GEPA to Chapter 2. As amended, section 596 provides that, unless a section of GEPA is specifically excluded by section 596, the provisions in GEPA apply to chapter 2. With two exceptions, the amendment to section 596 coincides with the Department's position on the applicability of GEPA published on November 19, 1982 in 47 FR 52370. The first exception concerns the applicability of section 425 of GEPA, which deals with appeal procedures at the State and Federal levels available to an LEA that has been adversely affected by a decision of its SEA. The second exception concerns the applicability of section 437(b) of GEPA, which authorizes the Secretary and the Comptroller General of the United States to have access to records of recipients' funds for purposes of audit or program compliance. Pub. L. 98–211 makes sections 425 and 437(b) applicable to Chapter 2.

Section 18(b) of Pub. L. 98–211 repeals a portion of the "State Uses of Federal Funds" report required by sections 406A(a) of GEPA. The repealed section required States to collect and furnish information on the amount of Federal funds received by each LEA, the purposes for which those funds were spent, and the individuals served by those activities, all tabulated with respect to the second preceding year.

According to section 596 of the ECIA, sections 434, 435, and 436 of GEPA are not applicable to Chapter 2 "except to the extent that such sections relate to fiscal control and fund accounting procedures. . . ." The Secretary indicated in the preamble of the final Chapter 2 regulations that the provision in section 434 that applies to Chapter 2 is subsection (a)(2) pertaining to the Secretary's discretionary authority to request a plan on audits. The Secretary decided not to require such a plan for audits of the Chapter 2 program. *See* 47

FR 52370 (Nov. 19, 1982). Upon further consideration in conjunction with the review of GEPA applicability in Pub. L. 98–211, the Secretary has determined that sections 434(b) (2) and (3) relating to SEA suspension and withholding of payments to LEAs that have failed to comply with Federal program requirements also deals with fiscal control and fund accounting procedures and is therefore applicable to Chapter 2.

Public Participation

During the ninety-day comment period, approximately sixty-three comments and recommendations were received. The Secretary carefully considered all comments received and made changes to the proposed regulations warranted by those comments. A summary of the comments and the Secretary's responses to those comments are contained in the appendix to these regulations. The appendix will not appear in the Code of Federal Regulations.

In addition, the Secretary has made other changes to certain provisions in the final Chapter 2 regulations published on November 19, 1982 to implement statutory language and to conform provisions to the corresponding provisions that apply to Chapter 1 of the ECIA. For the reasons stated below, the Secretary is waiving proposed rulemaking for these changes.

Waiver of Proposed Rulemaking

It is the practice of the Secretary to publish proposed regulations for comment in accordance with section 431(b)(2)(A) of GEPA (20 U.S.C. 1232(b)(2)(A)) and section 553 of the APA (5 U.S.C. 553). However, under certain circumstances, the Secretary may waive proposed rulemaking under section 553(b) of the APA. Specifically, section 553(b) permits waiver of interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice, or when an agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

These final regulations include changes to the Chapter 2 regulations that were not published as proposed rules. The Secretary has decided to waive proposed rulemaking on the provisions containing these changes for several reasons. First, for most of the provisions, the Secretary has determined that it is unnecessary to take public comment under the good cause exception in section 553(b)(B) because the revised provisions merely restate the law and establish no new substantive policy. The changes in § 298.14 concerning the availability of funds, for example, indicate that section 412(b) of GEPA refers to Federal fiscal years. The changes in § 298.16 concerning Federal audits and access to records conform the provision to section 437(b) of GEPA and implement the Inspector General's authority under the Inspector General Act of 1978. In § 298.17 concerning State audits, the changes implement the Single Audit Act of 1984. In § 298.18 concerning audit claims, paragraph (a) implements the authority to establish claims contained in section 452(a) of GEPA and paragraph (b)(1) implements the authority to compromise claims contained in 4 CFR Part 103 and section 452(f) of GEPA. New §§ 298.31(c), 298.37, and 298.38 implement statutory provisions in section 586 of Chapter 2 concerning by-pass arrangements. Likewise, the change in § 298.51(b) concerning practice and procedure before the EAB implements the provision in section 452(b) of GEPA, which requires an appellant to prove before the EAB the allowability of the expenditures disallowed in a final audit determination. The changes in § 298.54 concerning the Secretary's decision, which indicate that the Secretary may remand a Panel's decision to the EAB for further review or consideration, implement section 452(d) of GEPA. Finally, changes implementing section 451(a)(4) of GEPA, which authorizes the Secretary to designate other proceedings to be reviewed by the EAB, have been made in the following due process provisions to indicate that the Secretary may designate other Chapter 2 proceedings to be reviewed by the EAB: § 298.41 General; § 298.42 Jurisdiction; § 298.43 Definitions; § 298.45 Written notice; § 298.46 Filing an application for review; § 298.47 Review of the written notice; § 298.49 Rejection of the application; and § 298.52 The Panel's decision. All of these changes restate or implement statutory provisions and most of the changes were included, as a result of public comment, in the final regulations for Chapter 1 of the ECIA published on April 30, 1985 in 50 FR 18415–19.

The Secretary has decided to waive proposed rulemaking on two other provisions for different reasons. In § 298.18 concerning audit claims, paragraph (b)(2) indicates that it is the general policy of the Secretary to consider the probability of the claim being upheld to be the most important factor in deciding whether to compromise an audit claim. Because this is a general, nonbinding statement of policy that indicates the Secretary's intent to give the probability of the claim being upheld the greatest weight, the Secretary has decided to waive proposed rulemaking. A notice of proposed rulemaking is not required for general statements of policy under section 553(b)(A) of the APA.

The changes in § 298.44 concerning eligibility for review indicate that a recipient of Chapter 2 funds must exhaust its administrative remedies before seeking judicial review. Exhaustion of administrative remedies is well-established in the case law interpreting the APA. Moreover, section 455 of GEPA, which authorizes judicial review of certain decisions of the Secretary regarding Chapter 2, contemplates exhaustion of administrative remedies first. Thus, the Secretary has determined that this provision is an interpretative rule within the meaning of section 553(b)(A) of the APA. It should be noted that the Secretary proposed identical changes to the corresponding provision that applies to Chapter 1 of the ECIA on August 9, 1984 in 49 FR 31918–23. No public comments were received challenging the substance of that provision.

Executive Order 12291

These final regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities. To the extent that these regulations affect States and State agencies, they will not have an impact on small entities because States and State agencies are not considered to be small entities under the Regulatory Flexibility Act.

These regulations will affect all small LEAs receiving Federal financing assistance under Chapter 2. However, the regulations will not have a significant economic impact on the LEAs affected. The regulations implement technical amendments enacted by Congress and make other changes in the existing Chapter 2 regulations to implement statutory language and to conform provisions to the corresponding provisions that apply to Chapter 1 of the ECIA. The regulations contain minimal requirements to ensure the proper allocation and expenditure of Chapter 2 funds. Some provisions of the regulations may reduce burdens and increase flexibility for LEAs.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States. Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 298

Administrative practice and procedure, Education, Elementary and secondary education, Grant programs—education, Private schools, Reporting and recordkeeping requirements, State-administered programs.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

(Catalog of Federal Domestic Assistance No. 84-151, Chapter 2 of the Education Consolidation and Improvement Act of 1981)

Dated: September 13, 1985.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 298 of Title 34 of the Code of Federal Regulations as follows:

1. The Table of Contents is revised to read as follows:

PART 298—CHAPTER 2 OF THE EDUCATION CONSOLIDATION AND IMPROVEMENT ACT OF 1981

Authority: Secs. 561-596 of the Education Consolidation and Improvement Act of 1981, 20 U.S.C. 3811-3876, unless otherwise noted.

2. Section 298.3 is revised to read as follows:

§ 298.3 General responsibilities of State and local educational agencies.

(a) *State educational agencies.* (1) Except as provided in paragraph (a)(2) of this section, a State educational agency (SEA)—

(i) Has the basic responsibility for the administration of funds made available under Chapter 2; and

(ii) Is the State agency responsible for the administration and supervision of programs assisted with Chapter 2 funds.

(2) Apart from providing technical and advisory assistance and monitoring compliance with Chapter 2, an SEA may not exercise any influence in the decisionmaking process of a local educational agency (LEA) concerning the expenditures described in the LEA's application under section 566 of Chapter 2.

(b) *State rulemaking.* (1) Chapter 2 does not—

(i) Authorize States to issue rules, regulations, or policies that apply to LEAs operating programs or projects funded under Chapter 2, except as related to State audits and financial responsibilities; or

(ii) Encourage, preempt, or prohibit rules, regulations, or policies issued under State law.

(2) If a State issues, pursuant to procedures established by State law, any rules, regulations, or policies relating to the administration and operation of programs funded under Chapter 2 (including those based on State interpretation of any Federal statute, regulation, or guideline), the State shall—

(i) Ensure that the rules, regulations, or policies do not conflict with the provisions of—

(A) Chapter 2;

(B) The regulations in this part; or

(C) Other applicable Federal statutes and regulations; and

(ii) Identify the State rules, regulations, or policies as State-imposed requirements.

(c) *Local educational agencies.* (1) Section 566(c) of Chapter 2 provides that each LEA has complete discretion, subject only to the provisions of Chapter 2, in determining how funds the agency receives under section 565(a) of Chapter 2 are distributed among the purposes of Chapter 2 in accordance with the LEA's Chapter 2 application.

(2) In exercising this discretion, an LEA shall ensure that each expenditure of Chapter 2 funds is for the purpose of meeting the educational needs within the schools of that LEA.

(Sec. 561(b), 20 U.S.C. 3811(b); Sec. 564(a), 20 U.S.C. 3814(a); Sec. 566(c), 20 U.S.C. 3816(c); Sec. 591(d), 20 U.S.C. 3871(d))

3. Section 298.5 is amended by revising paragraph (a)(1) to read as follows:

§ 298.5 Allotments to States of Chapter 2 funds.

(a) * * *

(1) Reserves one percent of the Chapter 2 appropriation for payments to Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana

Islands to be allotted in accordance with their respective needs. If no more reliable data are available, the Secretary determines respective needs according to the relative enrollments in public and private schools within each territory;

* * * * *

(Sec. 563, 20 U.S.C. 3813)

4. Section 298.7 is amended by revising paragraph (a) to read as follows:

§ 298.7 LEA applications.

(a) An LEA may receive its allocation of funds under Chapter 2 for any year for which its application to the SEA has been certified by the SEA to meet requirements in Section 566(a) of Chapter 2.

* * * * *

(Sec. 566, 20 U.S.C. 3816)

5. Section 298.8 is amended by revising paragraph (b) to read as follows:

§ 298.8 Allocation of Chapter 2 funds to LEAs.

* * * * *

(b) From the funds made available each year under Chapter 2, an SEA shall distribute not less than 80 percent to LEAs within the State according to the relative enrollments in public and private, nonprofit schools within the school districts of those agencies, adjusted, in accordance with criteria approved by the Secretary, to provide higher per pupil allocations to LEAs that have the greatest numbers or percentages of children whose education imposes a higher than average cost per child, such as—

(1) Children from low-income families;

(2) Children living in economically depressed urban and rural areas; and

(3) Children living in sparsely populated areas.

* * * * *

(Sec. 565, 20 U.S.C. 3815)

6. Section 298.14 is revised to read as follows:

§ 298.14 Availability of funds.

(a) An SEA or LEA may obligate funds during the Federal fiscal year for which the funds were appropriated and during the succeeding Federal fiscal year.

(b) The SEA or LEA shall return to the Department any funds not obligated by the end of the succeeding Federal fiscal year.

(c)(1) Chapter 2 funds are obligated when an SEA or LEA—

(i) Commits funds, according to State law or practice, to the support of specific programmatic or administrative activities; and

(ii) Identifies Chapter 2 funds allocated for a particular Federal fiscal year as supporting those specific programmatic or adminstrative activities.

(2) For purposes of this section, the SEA's distribution of funds to LEAs under Section 565(a) of Chapter 2 is not the obligation of those funds.

(Sec. 596(a), 20 U.S.C. 3876(a); Sec. 412(b) of the General Education Provisions Act (GEPA), 20 U.S.C. 1225(b))

7. Section 298.16 is amended by revising paragraphs (a) and (b)(1) and the citation of authority to read as follows:

§ 298.16 Federal audits and access to records.

(a)(1) For the purpose of evaluating and reviewing the use of Chapter 2 funds, the Secretary and the Comptroller General of the United States, and their authorized representatives, shall have access to any records and personnel that may be related or pertinent to programs assisted with Chapter 2 funds.

(2) Any SEA, LEA, or other subgrantee that receives Chapter 2 funds shall cooperate with the Inspector General of the Department in the conduct of audits authorized by the Inspector General Act of 1978, including providing access to information and access to agency personnel for the purpose of obtaining explanations of the information.

(b)(1) An SEA shall repay to the Department the amount of Chapter 2 funds that the Department determines after an audit was not spent in accordance with applicable law.

* * * * *

(Sec. 564(a)(6), 20 U.S.C. 3814(a)(6); Sec. 566(a)(3), 20 U.S.C. 3816(a)(3); Sec. 437(b) of GEPA, 20 U.S.C. 1232f(b); Sec. 452 of GEPA, 20 U.S.C. 1234a; Sec. 1744 of the Omnibus Budget Reconciliation Act of 1981, 31 U.S.C. 7304; Secs. 3, 4, and 6 of the Inspector General Act of 1978, as amended, 5 U.S.C. App.; Sec. 202 of the Intergovernmental Cooperation Act of 1968, 42 U.S.C. 4212)

8. Section 298.17 is amended by removing paragraphs (b) and (c), by redesignating paragraph (d) as paragraph (b), and by revising paragraphs (a) and newly designated (b)(1), and the citation of authority to read as follows:

§ 298.17 State audits.

(a) *Basic requirement.* Each SEA and LEA shall comply with the audit requirements in the Single Audit Act of 1984 with respect to any of the agency's fiscal years that begin after December 31, 1984.

(b) *Audit remedy.* (1) An LEA shall repay to the SEA the amount of Chapter 2 funds that the State determines was not spent in accordance with applicable law.

* * * * *

(Single Audit Act of 1984, 31 U.S.C. 7501 *et seq.*)

9. Section 298.18 is revised to read as follows:

§ 298.18 Audit claims.

(a) *Establishment of claims.* After a State or Federal audit is conducted, the Department may establish an audit claim.

(b) *Compromise.* (1) In deciding whether to compromise an audit claim, or in recommending possible compromise to the United States Department of Justice, the Secretary considers the following factors in accordance with 4 CFR Part 103 and Section 452(f) of the General Education Provisions Act:

(i) The probability of the claim being upheld.

(ii) The cost of collecting the claim.

(iii) Whether the Department's enforcement policy in terms of deterrence and securing compliance would be adequately served.

(iv) Whether the practices of the SEA or LEA that resulted in the claim have been corrected and will not recur.

(v) Whether collection would be in the public interest or practical.

(2) It is the policy of the Secretary to consider the probability of the claim being upheld to be the most important of the factors in paragraph (b)(1) of this section.

(Sec. 564(a)(6), 20 U.S.C. 3814(a)(6); Sec. 566(a)(3), 20 U.S.C. 3816(a)(3); Sec. 452 of GEPA, 20 U.S.C. 1234a; Federal Claims Collection Act, 31 U.S.C. 3701 *et seq.*; 4 CFR Part 103)

10. Section 298.31 is amended by adding paragraph (c) to read as follows:

§ 298.31 By-pass—General.

* * * * *

(c) Pending the final resolution of an investigation or a complaint that could result in a by-pass action, the Secretary may withhold from the allocation of the affected SEA or LEA the amount the Secretary estimates is necessary to pay the cost of the services referred to in paragraph (b) of this section.

(Sec. 586 (d), (e),a nd (g), 20 U.S.C. 3882 (d), (e), and (g))

11. A new § 298.37 is added to read as follows:

§ 298.37 Judicial review of by-pass actions.

If an SEA or LEA is dissatisfied with the Secretary's final action after a proceeding under §§ 298.33–298.36, it

may, within 60 days after receiving notice of that action, file a petition for review with the United States court of appeals for the circuit in which the State is located.

(Sec. 586(h)(2), 20 U.S.C. 3862(h)(2))

12. A new § 298.38 is added to read as follows:

§ 298.38 Continuation of the by-pass.

Any by-pass action by the Secretary continues until the Secretary determines that there will no longer be any failure or inability on the part of the SEA or LEA that is being by-passed to meet the requirements in §§ 298.21–298.28.

(Sec. 586(f), 20 U.S.C. 3862(f))

13. Section 298.41 is revised to read as follows:

§ 298.41 General.

(a) Sections 298.41–298.57 contain rules for the conduct of proceedings arising under Chapter 2 regarding—

(1) The review of final audit determinations;

(2) Withholding hearings;

(3) Cease and desist proceedings; and

(4) Other proceedings designated by the Secretary.

(b) If the Secretary designates other proceedings to the Education Appeal Board (Board) under paragraph (a)(4) of this section, the designation may specify that certain of the rules governing Board proceedings are modified as may be appropriate.

(Sec. 592, 20 U.S.C. 3872; Sec. 451(a) of GEPA, 20 U.S.C. 1234(a); Sec. 452 of GEPA, 20 U.S.C. 1234a; Sec. 454 of GEPA, 20 U.S.C. 1234c)

14. Section 298.42 is revised to read as follows:

§ 298.42 Jurisdiction.

Under Chapter 2, the Education Appeal Board has jurisdiction to—

(a) Review final audit determinations;

(b) Conduct withholding hearings;

(c) Conduct cease and desist proceedings; and

(d) Conduct other proceedings designated by the Secretary.

(Sec. 592, 20 U.S.C. 3872; Sec. 451(a) of GEPA, 20 U.S.C. 1234(a); Sec. 452 of GEPA, 20 U.S.C. 1234a; Sec. 454 of GEPA, 20 U.S.C. 1234c)

15. Section 298.43 is amended by revising the definitions of "appellant," "final audit determination," "panel," and "party" to read as follows:

§ 298.43 Definitions.

* * * * *

"Appellant" means an SEA that requests—

(a) A review of a final audit determination;

(b) A withholding hearing; or

(c) A hearing in other proceedings designated by the Secretary.

* * * * *

"Final audit determination" means a written notice by an authorized Department official issued after an audit disallowing expenditures made by a recipient under Chapter 2.

* * * * *

"Panel" means an Education Appeal Board Panel, consisting of at least three members of the Board, designated by the Board Chairperson to conduct any case.

* * * * *

"Party" means—

(a) The recipient requesting or appearing at a hearing under these regulations;

(b) The authorized Department official who issued the final audit determination being appealed, notice of an intent to withhold funds, the cease and desist complaint, or any other notice that the Board has jurisdiction to review; and

(c) Any person, group, or agency whose application to intervene is approved.

* * * * *

(Sec. 592, 20 U.S.C. 3872; Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452 of GEPA, 20 U.S.C. 1234a; Sec. 454 of GEPA, 20 U.S.C. 1234c)

16. Section 298.44 is revised to read as follows:

§ 298.44 Eligibility for review.

(a) Review under these regulations is available to a recipient of Chapter 2 funds that receives a written notice from an authorized Department official of—

(1) A final audit determination;

(2) An intent to withhold funds;

(3) A cease and desist complaint; or

(4) A proceeding designated by the Secretary.

(b) If a recipient receives written notice and brings a lawsuit to challenge that notice, the recipient has failed to exhaust administrative remedies and the Secretary may move for dismissal of the lawsuit on that basis.

(c) If the Panel assigned to hear an appeal finds that there are no issues in the appeal within the Board's jurisdiction, the Panel may, at the request of a party or Panel member, issue a decision or order to that effect.

(Sec. 592, 20 U.S.C. 3872; Sec. 451(a) of GEPA, 20 U.S.C. 1234(a); Sec. 452 of GEPA, 20 U.S.C. 1234a; Sec. 454 of GEPA, 20 U.S.C. 1234c; Sec. 455 of GEPA, 20 U.S.C. 1234d)

17. Section 298.45 is amended by revising paragraphs (a)(2) (iii) and (iv), (b)(2) (i) and (ii), and (c)(2) (i) and (ii) and by adding paragraph (d) to read as follows:

§ 298.45 Written notice.

(a) * * *

(2) * * *

(iii) Cites the requirements with which the recipient has allegedly failed to comply; and

(iv) Advises the recipient that it must repay the disallowed expenditures to the Department or, within 30 calendar days of its receipt of the written notice, request a review by the Board of the final audit determination.

* * * * *

(b) * * *

(2) * * *

(i) Indicates the reasons for finding that the recipient failed to comply substantially with a requirement that applies to the funds;

(ii) Cites the requirement with which the recipient has allegedly failed to comply; and

* * * * *

(c) * * *

(2) * * *

(i) Indicates the reasons for finding that the recipient failed to comply substantially with a requirement that applies to the funds;

(ii) Cites the requirement with which the recipient has allegedly failed to comply; and

* * * * *

(d) *Written notice of other determinations.* (1) The Secretary may issue a written notice to a recipient under Chapter 2 of any other determination with regard to the recipient's use of these funds.

(2) That notice indicates that the Secretary has designated the Board to hear any application for review that the recipient may file and specifies that the recipient may file an application for review within 30 calendar days of receipt of the notice.

(3) The Secretary sends the written notice to the recipient by certified mail with return receipt requested.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(a) of GEPA, 20 U.S.C. 1234a(a); Sec. 454(a) of GEPA, 20 U.S.C. 1234c(a))

18. Section 298.46 is amended by revising the heading and paragraph (a) to read as follows:

§ 298.46 Filing an application for review.

(a) An appellant seeking review of a final audit determination, a withholding hearing, or other determination designated by the Secretary shall file a written application with the Board Chairperson no later than 30 calendar days after the date it receives the written notice.

* * * * *

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451 (a), (e) of GEPA, 20 U.S.C. 1234 (a), (e); Sec. 452(b) of GEPA, 20 U.S.C. 1234a(b))

19. Section 298.47 is revised to read as follows:

§ 298.47 Review of the written notice.

(a) The Board Chairperson reviews the written notice of the final audit determination, intent to withhold funds, or other determination after an application is received under § 298.46 to ensure that the written notice meets the applicable requirements in § 298.45.

(b) If the Board Chairperson decides that the written notice does not meet the applicable requirements in § 298.45, the Board Chairperson—

(1) Returns the determination to the official who issued it so that the determination may be properly modified; and

(2) Notifies the appellant of that decision.

(c) If the official makes the appropriate modifications and the appellant wishes to pursue its appeal to the Board, the appellant shall amend its application within 30 calendar days of the date it receives the modifications.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451 (a), (e) of GEPA, 20 U.S.C. 1234 (a), (e); Sec. 452(b) of GEPA, 20 U.S.C. 1234a(b))

20. Section 298.49 is amended by revising paragraph (c) to read as follows:

§ 298.49 Rejection of the application.

* * * * *

(c) If an application is rejected twice, the Department may take appropriate administrative action to—

(1) Collect the expenditures disallowed in the final audit determination;

(2) Withhold funds; or

(3) Carry out the decision described in the written determination.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451 (a), (e) of GEPA, 20 U.S.C. 1234 (a), (e); Sec. 452(b) of GEPA, 20 U.S.C. 1234a(b))

21. Section 298.51 is revised to read as follows:

§ 298.51 Practice and procedure.

(a) *General.* Practice and procedure before the Board in proceedings conducted under the regulations in this part are governed by the rules in Subpart E of 34 CFR Part 78 (Education Appeal Board).

(b) *Burden of proof.* The appellant shall present its case first and shall have the burden of proving the allowability of the expenditures disallowed in a final audit determination.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(e) of GEPA, 20 U.S.C. 1234(e); Sec. 452(b) of GEPA, 20 U.S.C. 1234a(b))

22. Section 298.52 is amended by revising paragraph (a) to read as follows:

§ 298.52 The Panel's decision.

(a) The Panel issues a decision, based on the record as a whole, in an appeal from a final audit determination, a notice of an intent to withhold funds, or other final determination within 180 days after receiving the parties' final submissions, unless the Board Chairperson, for good cause shown, grants the Panel an extension of this deadline.

* * * * *

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451 (a), (e) of GEPA, 20 U.S.C. 1234 (a), (e); Sec. 452(d) of GEPA, 20 U.S.C. 1234a(d))

23. Section 298.54 is amended by revising paragraphs (a), (c), (d), and (e) and the citation of authority to read as follows:

§ 298.54 The Secretary's decision.

(a) The Panel's decision in § 298.52 becomes the final decision of the Secretary 60 calendar days after the date the appellant receives the Panel's decision unless the Secretary, for good cause shown—

(1) Modifies or sets aside the Panel's decision; or

(2) Remands the Panel's decision to the Board for further review or consideration.

* * * * *

(c)(1) Execpt as provided in paragraph (c)(2) of this section, the final decision of the Secretary is the final decision of the Department.

(2) If the Secretary remands the Panel's decision to the Board, neither the Panel's decision nor the Secretary's remand becomes the final decision of the Department.

(d) The Board Chairperson sends to the Panel and to each party a copy of the Secretary's final decision and statement of reasons, a notice that the Panel's decision has become the Secretary's final decision, or a copy of the Secretary's decision to remand.

(e) In proceedings involving an appeal from a final audit determination, intent to withhold funds, or other determination, to the extent feasible but consistent with the Secretary's obligation to enforce compliance with Chapter 2, the Secretary defers to a State's interpretation of the statutory requirements under Chapter 2.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451 (a), (e) of GEPA, 20 U.S.C. 1234 (a), (e); Sec. 452(d) of GEPA, 20 U.S.C. 1234a(d); Sec. 455 of GEPA, 20 U.S.C. 1234d)

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

Appendix—Summary of Revisions, Comments, and Responses

The following paragraphs summarize public comments received on the notice of proposed rulemaking (NPRM) implementing changes made to Chapter 2 of the Education Consolidation and Improvement Act of 1981 (ECIA) by Pub. L. 98–211, and the Secretary's responses to those comments. Those comments relating to the text of the regulations are organized according to the order of the sections in the final regulations. Those comments relating to additional rules not included in the final regulations are discussed at the end of the summary.

Several commenters did not recommend changes in the regulations but, instead, requested clarification about certain regulatory provisions. The Department will provide clarification on many of those provisions in the Chapter 2 nonregulatory guidance.

Preamble

Application of Other Statutes and Regulations.

Comment: One commenter, representing SEAs, noted with pleasure the Department's recognition that section 434(b) (2) and (3) of the General Education Provisions Act (GEPA) applies to Chapter 2. The commenter pointed out that since that section provides the authority for suspending and withholding payment to LEAs that have failed to comply with Chapter 2 program requirements, it clearly concerns fiscal control and fund accounting procedures. The commenter also noted approvingly the Department's recognition of the modification in section 406A(a) of GEPA, which reduces the data gathering burden of SEAs.

Response: No change has been made. The Secretary appreciates the commenter's approval of the regulations.

Section 298.3 General responsibilities of State and local educational agencies

Comment: Two commenters welcomed the clarification of general responsibilities of State and local educational agencies. Two other commenters, however, noted that the requirement in § 298.3(a)(2) that an SEA not exercise any influence in the decisionmaking process of an LEA could hamper SEA technical assistance and monitoring. One of those commenters pointed out that § 298.3(a)(1) assigns the SEA responsibility to administer Chapter 2 funds while § 298.3(a)(2) hampers that administration. The second commenter, noting the same

conflict, suggested that "influence" be defined or that a list be included of what actions by an SEA would be considered to influence the decionmaking process of an LEA.

Response: No change has been made. The provisons in § 298.3(a)(2) accurately reflect the statutory language in the technical amendment to section 564(a)(7) of Chapter 2. Moreover, the Secretary does not believe § 298.3(a)(2) hampers an SEA's ability to provide technical assistance or to monitor. The assurance in section 564(a)(7) of Chapter 2 must be read in conjunction with the provision in Section 566(c) that grants each LEA "complete discretion," subject only to the provisions of Chapter 2, in determining how to distribute its Chapter 2 funds among the purposes of Chapter 2. Thus, an SEA must assure that it will not influence an LEA's decisionmaking process in selecting those Chapter 2 activities for which to use its Chapter 2 funds. This assurance, however, does not prevent the SEA from ensuring that the activities selected by an LEA are allowable under Chapter 2 or that the LEA is complying with other Chapter 2 requirements. It also does not prevent the SEA from working with an LEA to advise or suggest ways of meeting the LEA's educational needs. It does, however, prohibit the SEA from substituting its judgment for that of an LEA as to the LEA's needs or from applying pressure on the LEA to fund projects in which there is little or no local interest. *See* 129 Cong. Rec. H1891 (daily ed. Apr. 12, 1983). The Secretary declines to define "influence" or list unallowable SEA activities in the regulations. According to the House Report accompanying the technical amendments, section 564(a)(7) "does not confer authority on the Secretary to issue regulations defining those activities in which [SEAs] either may or may not engage." H. Rept. 51, 98th Cong., 1st Sess. 6 (1983).

Comment: A number of commenters commented on the State rulemaking provision in § 298.3(b). Several of those commenters expressed concern that State-imposed rules could limit the discretion granted to LEAs under § 298.3(a)(2) and (c). Other commenters expressed concern that the provision in § 298.3(b)(2)(ii), which requires a State to identify State-imposed rules relating to the administration and operation of Chapter 2, conflicts with the provision in § 298.3(b)(1)(i), which only specifically authorizes a State to issue rules relating to State audits and financial responsibilities. Several commenters recommended that the provision in § 298.3(b)(2)(ii) be deleted. Others recommended that the kinds of rules relating to the administration and operation of Chapter 2 be clarified.

Response: No change has been made. The provisions in § 298.3(b) accurately reflect the statutory provisions in section 591(d) of the ECIA that were added by the technical amendments. Section 591(d)(1) and § 298.3(b)(1)(i) only specifically authorize a State to issue regulations related to a State's audit and financial responsibilities. However, as indicated in section 591(d)(2) and § 298.3(b)(1)(ii), a State is not preempted or prohibited by Chapter 2 from issuing other regulations as long as they are issued pursuant to State law and they do not conflict with the provisions of Chapter 2. According to the House and Senate reports accompanying the technical amendments, Congress intended Chapter 2 to be neutral on the issue of State rulemaking. *See* H. Rept. 51, 98th Cong., 1st Sess. 8 (1983); S. Rept. 166, 98th Cong., 1st Sess. 13 (1983). Thus, if State law permits, a State may issue regulations that relate to topics other than the State's audit and financial responsibilities. Nothing in section 591(d) or § 298.3(b), however, permits a State to issue regulations that conflict with section 566(c) of Chapter 2 giving LEAs complete discretion to decide how to distribute their Chapter 2 funds among the authorized activities. *See id.*

The Secretary has not deleted § 98.3(b)(2)(ii) requiring States to identify regulations that they issue under Chapter 2 as State-imposed requirements, because that provision is required by section 591(d). Likewise, the Secretary does not believe that clarification in § 298.3(b)(2) as to what rules relate to the administration and operation of Chapter 2 is necessary because, according to Congress, section 591(d) requires States to identify *any* State rule or policy relating to Chapter 2 as a State-imposed requirement. *See* H. Rept. 51, 98th Cong., 1st Sess. 8 (1983); S. Rept. 116, 98th Cong., 1st Sess. 13 (1983). Thus, the phrase "rules, regulations, or policies relating to the administration and operation of programs funded under Chapter 2" includes all rules that a State promulgates to implement Chapter 2—even those relating to a State's audit and financial responsibilities.

Comment: One commenter questioned why § 298.3(b)(1)(i) does not include the statutory language that a State regulation must be "issued pursuant to procedures as established by State law . . . ."

Response: A change has been made. Section 298.3(b)(2) has been revised to include the phrase "issues, pursuant to procedures established by State law, . . ."

Comment: A number of commenters commented on the provision in § 298.3(c)(2) that requires an LEA to ensure that each expenditure of Chapter 2 funds is for the purpose of meeting the educational needs within the schools of the LEA. One commenter, for example, asked whether this provision should be added to the list of assurances required in an LEA's application and whether the phrase "educational needs" precludes the use of Chapter 2 funds for improving school management. Another commenter questioned whether an SEA would be justified in requesting LEAs to include in their applications statements of educational needs, objectives that address those needs, and an evaluation design that demonstrates progress toward meeting those needs. One commenter recommended adding "or the educational needs of children enrolled in private, nonprofit schools located in the LEA" to § 298.3(c)(2).

Response: No change has been made. The technical amendment to section 566(c) of Chapter 2, upon which the provision in § 298.3(c)(2) is based, was made to ensure that an LEA uses its Chapter 2 funds to meet the needs of children in the LEA, and that the State will not control how the LEA uses those funds. The amendment was added to guard against a practice that allegedly occurred under Titles III and IV-C of the Elementary and Secondary Education Act of 1965 whereby LEAs were used as "conduits" to fund projects of interest to the State, using Federal dollars that were intended by Congress to go to the LEAs. *See* H. Rept. 51, 98th Cong., 1st Sess. 6 (1983); 129 Cong. Rec. H1890-91 (daily ed. Apr. 12, 1983); 129 Cong. Rec. H10604-05 (daily ed. Nov. 18, 1983). Thus, this section requires that an LEA expend Chapter 2 funds only to meet the educational needs of children in its own district. The phrase "educational needs," however, does not in any way limit the activities authorized under Chapter 2 for which an LEA may use its funds. Moreover, included in the requirement are the needs that an LEA has identified for children in private, nonprofit schools in the LEA. Therefore, the Secretary does not believe it is necessary to add specific language relating to the needs of children in private schools.

Because the legislative history indicates that the amendment to section 566(c) was added to ensure that an LEA uses Chapter 2 funds only to meet the educational needs of children in the LEA, the Secretary does not believe that

either section 566(c) or § 298.3(c)(2) adds a needs assessment requirement not otherwise required by Chapter 2. As a result, it does not appear that the addition of this provision in the statute or the regulations should stimulate extensive State rulemaking. For example, because section 566(a)(2) of Chapter 2 already requires an LEA to assure in its application that it will comply with the provisions of Chapter 2, the Secretary does not believe that an additional assurance relating to § 298.3(c)(2) is required. However, an SEA, under its administrative and supervisory responsibilities under Chapter 2, may decide that additional rules relating to § 298.3(c)(2) are necessary. Any State rulemaking concerning this provision, of course, must comport with the requirements in section 591(d) of the ECIA and § 298.3(b).

Section 298.5 Allotments to States of Chapter 2 funds

Comment: One commenter, representing one of the Insular Areas, questioned whether the distribution of Chapter 2 funds to the Insular Areas on the basis of enrollment data fulfills the requirement for a distribution based on respective needs. The commenter suggested that relative per pupil expenditures be used as a basis for determining respective needs.

Response: No change has been made. The Secretary is not convinced that relative per pupil expenditures, in the absence of any measure of the cost of providing an adequate education, are a better measure of respective needs than enrollment. Moreover, no objections to the use of enrollment data to determine respective needs were received from any other Insular Area.

Section 298.17 State audits

Comment: One commenter applauded the modification of the biennial audit requirement for LEAs receiving less than an average of $5,000 per year because of the reduction in burden for small LEAs.

Response: A change has been made. Subsequent to publication of the NPRM, Congress enacted the Single Audit Act of 1984, which supersedes the effect of the technical amendments with regard to the performance of LEA audits. Section 298.17, therefore, has been changed to incorporate the audit requirements in the Single Audit Act.

Section 298.51 Practice and procedure

Comment: One commenter, noting that § 298.51 requires Chapter 2 due process proceedings before the Education Appeal Board (EAB) to follow the rules in 34 CFR Part 78 governing other EAB proceedings, questioned why the provision in 34 CFR Part 78 that only requires a lead time of ten days from notice before funds are cut off applies to Chapter 2 when the Chapter 2 statute provides for sixty days.

Response: No change has been made. Section 298.51 only makes the regulations in Subpart E of 34 CFR Part 78 governing practice and procedure before the EAB applicable to Chapter 2 due process proceedings. None of the provisions in Subpart E deals with the length of time from notice until funds are cut off. Rather, the provision to which the commenter is apparently referring is 34 CFR 78.25(b)(2) concerning written notice of an intent to suspend funds. This provision, which implements section 453(c) of GEPA, is not applicable to Chapter 2 both because it is not contained in Subpart E and because section 453 of GEPA has been superseded by section 592 of the ECIA. *See* section 596(b)(6) of the ECIA as amended by the technical amendments. Accordingly, under Chapter 2, the Secretary would not withhold funds until sixty days after the date he provided notice of his intent to do so.

Allocation of Chapter 2 funds to LEAs

Comment: A number of commenters recommended that the regulations include a provision that would require SEAs under section 565(a) of Chapter 2 to provide higher per pupil allocations only to LEAs having the greatest numbers or percentages of children whose education imposes a higher than average cost per child rather than to LEAs with any number or percentage of those children. In support of their position, the commenters cited the Conference Report accompanying the technical amendments, which states:

> It is the intent of the conferees that section 565(a) of the Education Consolidation and Improvement Act of 1981 be interpreted such that State Chapter 2 distribution formulas provide adjusted allocations to LEAs with only the greatest numbers or percentages of high cost children rather than allocations to LEAs with any number or percentage of such children.

H. Rept. 574, 98th Cong., 1st Sess. 15 (1983) (Conference Report). One of the commenters urged that the regulations specify the percentage of LEAs that would be eligible to receive funds generated by high-cost children and the percentage of the State's allocation that would be distributed on that basis. Another commenter suggested that the regulations require a State to demonstrate that its formula has been designed to produce an actual impact which reasonably reflects overall differences in costs among LEAs and, in particular, that the formula gives sufficient weight to the high-cost factors the State has chosen to accomplish that result.

Other commenters disagreed with this position and recommended that the Conference Report language not be followed in the regulations. One commenter, representing the SEAs, noted that, "under present allocation formulas, more LEAs than ever before are receiving Federal education dollars and districts which have high cost students *are* receiving larger per pupil allocations."

Another commenter, after surveying school district superintendents in one State, reported a consensus that there should be no changes in the formula requirements.

Response: No change has been made. Section 298.8(b) repeats the statutory requirement in section 565(a) of Chapter 2. In the technical amendments to Chapter 2, Congress did not change that requirement with respect to the distribution of funds on the basis of high-cost children. However, in the Conference Report accompanying the technical amendments to Chapter 2, the conferees stated that it was their intent "that State Chapter 2 distribution formulas provide adjusted allocations to LEAs with only the greatest numbers or percentages of high cost children rather than allocations to LEAs with any number or percentage of such children." H. Rept. 574, 98th Cong., 1st Sess. 15 (1983) (Conference Report).

The Secretary has not incorporated the Conference Report language in § 298.8(b) of the Chapter 2 regulations because the Secretary believes that requiring SEAs to implement the Conference Report language, and therefore prohibiting them from exercising other options that may also be consistent with the statutory language, would undermine the decisionmaking authority regarding allocation formulas that Chapter 2 vests in SEAs. For the same reason, the Secretary has not specified the percentage of LEAs that should be eligible to receive funds generated by high-cost children or the percentage of a State's allocation that should be distributed on that basis. As provided in section 561 of Chapter 2, SEAs have the basic responsibility for the administration of Chapter 2. Consistent with this policy, section 565 gives SEAs wide latitude to allocate funds to their LEAs in the manner that best meets each State's particular needs and priorities. Regulating their area at the Federal level would intrude on the flexibility and responsibility vested in

the SEAs under Chapter 2, thereby undermining the central legislative decision made by Congress in enacting Chapter 2—namely, to make it a State-administered program with a minimum Federal role.

Consistent with this philosophy, § 298.8 allows each SEA to decide whether to implement the Conference Report language. Upon careful analysis of the overall needs within the State, an SEA may determine that adjusted allocations under section 565(a) should go only to those LEAs with the greatest numbers or percentages of high-cost children. The Secretary encourages SEAs to review their allocation formulas in light of the Conference Report language.

Use of Funds Reserved for a State's Use

Comment: One commenter encouraged the Department to promulgate a regulation that would require an SEA to use most of the Chapter 2 funds reserved for the State's use to support school effectiveness directly. The commenter expressed concern that a disproportionate amount of a State's Chapter 2 funds is being used for the administration of Chapter 2 and for the SEA's internal operations. Another commenter also suggested that the Department require an SEA to develop criteria for directing funds reserved for the State's use to LEAs having the highest concentrations of high-cost children.

Response: No change has been made. Section 561(a) of Chapter 2 states that the purpose of Chapter 2 is to consolidate over 40 categorical programs into a single authorization of grants to States for the same purposes contained in the antecedent categorical programs, but to be used in accordance with the educational needs and priorities of SEAs and LEAs as determined by those agencies. Similiarly, section 561(b) indicates that the basic responsibility for the administration of Chapter 2 funds is in the SEAs.

Under Chapter 2, SEAs are authorized to reserve for their own use up to 20 percent of the State's Chapter 2 funds for activities authorized by Chapter 2. The Secretary believes it would be contrary to the statutory purpose and intent of Chapter 2 for the Department to promulgate a regulation that would interfere with the discretion afforded an SEA in deciding how to use the Chapter 2 funds reserved for the State's use. As long as the SEA uses those funds for activities authorized under Chapter 2, the statute permits the SEA, with advice from the State Advisory Committee, to decide how to use its Chapter 2 funds.

Parental Participation

Comment: A number of commenters recommended that the final regulations include a requirement that an LEA must have written policies to ensure that: parents have been consulted in the planning, development, and operation of Chapter 2 programs; parents have had an opportunity to express their views concerning those policies; and Chapter 2 program plans and evaluations are provided to parents and the public. As the basis for their recommendation, the commenters cited the Conference Report accompanying the technical amendments:

> The conferees agree that, in eliminating the House provision regarding the applicability of Sec. 427 of the General Education Provisions Act to ECIA, the responsibility of the local education agencies to assure adequate parental involvement shall in no way be diminished. Accordingly, LEAs shall have policies to assure parental consultation in the planning, development and operation of programs; assure that parents have had an opportunity to express their views concerning those policies, and; [sic] have policies to assure the adequate provision of program plans and evaluations to parents and the public.

H. Rept. 574, 98th Cong., 1st Sess. 13 (1983) (Conference Report). Another commenter supported parental involvement, but opposed any Federal regulations that would regulate the manner of this involvement. It was the commenter's belief that regulations would interfere with the flexibility afforded an LEA under Chapter 2 to provide for parent participation that best meets the needs of the LEA.

Response: No change has been made. Section 566(a)(4) of Chapter 2 requires an LEA to provide, in its Chapter 2 application, for systematic consultation with parents concerning the allocation of Chapter 2 funds for authorized programs and the design, planning, and implementation of those programs. Section 298.7(c) of the Chapter 2 regulations currently in effect specifically highlights that requirement. In addition, the Chapter 2 nonregulatory guidance contains several questions and answers that provide clarification of the parent consultation requirement.

As indicated in the preamble to the Chapter 2 regulations currently in effect (*see* 47 FR 52370 (1982)), the parental consultation requirement in section 566(a)(4) supersedes section 427 of GEPA (concerning parental involvement and dissemination). Congress clearly recognized this fact (*see* H. Rept. 574, 98th Cong., 1st Sess. 13 (1983) (Conference Report)). Moreover, in the technical amendments, Congress did not change the parental consultation requirement in section 566(a)(4). It was only in the Conference Report accompanying the technical amendments that the conferees suggested that an LEA should develop policies concerning parental involvement and dissemination similar to those that would be required if the Secretary invoked section 427 of GEPA. Consistent with the purpose of Chapter 2 to return decisionmaking to the State and local levels, the Secretary is not adding regulatory requirements not contained in the statute. The fact that the Secretary is not adding regulations requiring an LEA to establish written policies, however, in no way diminishes the Chapter 2 requirement that the LEA systematically consult with parents concerning the allocation of Chapter 2 funds for authorized programs and the design, planning, and implementation of those programs. The Secretary is merely affording an LEA the flexibility to decide how that consultation can best be accomplished. The Secretary will consider incorporating some of the commenters' suggestions in the Chapter 2 nonregulatory guidance.

Participation of Children in Private Schools

Comment: One commenter urged the Department to promulgate a regulation permitting an LEA to charge administrative costs for providing equitable participation under Chapter 2 to children enrolled in private schools.

Response: No change has been made. An LEA may use Chapter 2 funds to pay for reasonable administrative costs for providing Chapter 2 services to private school children as well as to public school children. The rate for charging those administrative costs, however, must be applied equally to the amounts of Chapter 2 funds available for services to public and private school children.

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