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

WHO: The Office of the Federal Register.

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

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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

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WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202–523–5240.

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WHEN: June 18, at 1:00 p.m.
WHERE: Bishop Henry Whipple Federal Building, Room 570, Ft. Snelling, MN.
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KANSAS CITY, MO

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

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 27 and 28

[CN-90-002]

Revisions of User Fees for Cotton Classification and Testing

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is making final without change the increases in user fees charged for cotton classification and testing services proposed in the regulatory revision published in the Federal Register on March 23, 1990. The 1990 user fee charged to producers for classification services under the Cotton Statistics and Estimates Act will be maintained at the 1989 level. The user fee increases in other services are needed to cover the costs of providing these services. The new fees are effective on July 1, 1990, to be in effect at the beginning of the classing season.

EFFECTIVE DATE: July 1, 1990.

FOR FURTHER INFORMATION CONTACT: Ronald H. Read, 202-447-2145.

SUPPLEMENTARY INFORMATION: A proposed rule detailing the user fee charges for cotton classification and testing was published on March 23, 1990, in the Federal Register (55 FR 10781). A 15-day comment period was provided for interested persons to respond to the proposed rule; no comments were received.

Therefore, AMS is making final these user fees as proposed.

This final rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be "non-major" since it does not meet the criteria for a major regulatory action as stated in the order.

The Administrator, Agricultural Marketing Service (AMS), has certified that this action will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because: (1) The fee increases merely reflect a minimal increase in the cost-per-unit currently borne by those entities utilizing the services; (2) the cost increase will not affect competition in the marketplace; and (3) the use of classification and testing services and the purchase of standards is voluntary.

The information collection reguirements contained in this final rule have been previously approved by the Office of Management and Budget and assigned OMB control numbers under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Fees for Classification Under the Cotton Statistics and Estimates Act of 1927

The user fee charged to cotton producers for manual classification services under the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was $1.23 during the 1989 harvest season (54 FR 23449) as determined using the formula provided in the Uniform Cotton Classing Fees Act of 1987. The charges cover salaries, cost of equipment and supplies, and other overhead and include administrative and supervisory costs. This final rule maintains the user fee for manual classification charged to producers at $1.23 per bale. This fee was calculated by adjusting the 1989 base fee for the rate of inflation and the projected size of the crop and adding a surcharge necessary to maintain a minimum operating reserve as required by the Act. The 1989 base fee is $1.20 per bale. A 4.1 percent, or five cents per bale, increase due to the Implicit Price Deflator of the Gross National Product is added to the $1.20 resulting in a 1990 base fee of $1.25 per bale. The 1990 crop is currently estimated at 14,671,000 running bales. The base fee is decreased 15 percent based on the estimated size of the crop (one percent for every 100,000 bales or portion thereof above the base of 12,500,000 bales, limited to a maximum adjustment of 15 percent). This percentage factor amounts to a 19 cents per bale reduction and is subtracted from the base fee of $1.25 per bale resulting in a fee of $1.06 per bale. A five cents surcharge is added to the $1.06 per bale fee since the projected operating reserve is less than 25 percent. The five cent surcharge results in a 1990 season fee of $1.11 per bale. Assuming a fee of $1.11, the projected operating reserve is one percent. An additional 12 cents per sample must be added to provide an ending accumulated operating reserve for the fiscal year of at least 10 percent of the projected cost of operating the program. This establishes the 1990 season fee at $1.23 per sample, the same as for 1989. Accordingly, no change to the language that appears in § 28.909(b) is necessary.

The additional fee for High Volume Instrument (HVI) classification remains 50 cents per bale. Thus, the fee for HVI classification during the 1990 harvest season remains at $1.73 per bale. As provided for in the Uniform Cotton Classing Fees Act of 1987, a 5 cent per bale discount continues to be applied to voluntary centralized billing and collecting agents.

The fee for a manual review classification in § 28.911 will also remain at $1.23 per bale since the fee for review classification is the same as the original classification fee. Likewise, the fee for HVI review classification will remain at $1.73 per bale. Accordingly, since the 1990 harvest season fees for manual and HVI classification and review classification are the same as the current fees, no change to the language of §§ 28.909 and 28.911 is needed.

Fees for Classification Services Under the United States Cotton Standards Act

Certain cotton classification services are conducted under the United States Cotton Standards Act. Fees for these services have been reviewed. In order to recover increased costs, including supervision and overhead, the fees for classification of cotton or samples in § 28.116 are increased: For grade, staple and micronaire readings from $1.45 per sample to $1.50; for grade and staple only from $1.25 per sample to $1.30; and for grade only or staple only from $1.00 to $1.05. A fee for High Volume Instrument (HVI) classification under this act is established for HVI classification; including grade, the fee is $2.00 per sample; excluding grade, the fee is $1.65 per sample. The current additional fee of 25 cents per sample increases to 30 cents per sample unless

the sample became Government property immediately after classification. In addition, for any review classification of any cotton, the fees are the same.

The fee in § 28.117 for each new memorandum or certificate issued in substitution for a prior one is established at 10 cents per bale. The current fee for this service is $4.50 per sheet. A minimum fee is established at $4.75 per sheet. The additional hourly fee charged for Form C determinations in §§ 28.120 and 28.149 increases from $20.00 per hour or each portion thereof to $21.00 per hour, or each portion thereof, plus traveling expenses and subsistence or per diem. The fee in § 28.122 for a complete practical classing examination for cotton or cotton linters increases from $135.00 to $140.00 and the fee for reexamination for a failed part, either grade or staple, increases from $80.00 to $85.00. Fees for the classification, comparison, or review of linters in § 28.148 increase from $1.30 to $1.35 per bale or sample involved. In § 28.148, the fee for classification or comparision of cotton linters and the issuance of a memorandum increases from $1.30 to $1.35 per sample.

Fees for Classification Services Under the U.S. Cotton Futures Act

The United States Cotton Futures Act (7 U.S.C. 15b) authorizes the Secretary to make such regulations as are necessary to carry out the provisions of that Act. Pursuant to that authority, part 27 of the regulations (7 CFR part 27) provides for cotton classification under the Cotton Futures Act including fees to recover the costs of classifications and micronaire. Under this final rule, the fees charged for the services are increased to cover the costs of providing such services, including overhead costs.

These fees have been reviewed and the fees in § 27.80 for initial classification is increased from $1.30 per bale to $2.00 per bale; the fee for review classification is increased from $1.50 per bale to $2.00 per bale. The fee for combination service (initial classification, review classification and micronaire determination covered by the same request and only the review classification and Micronaire determination results certified on cotton class certificates) is increased from $2.80 per bale to $3.50 per bale. All supervision fees are increased by 5 cents to 10 cents. Pursuant to § 27.85, fees for withdrawal of requests or applications for review, after such services have been started, are the same as the fees in § 27.80 for services completed, so such charges are affected by this final rule. Fees for certificates which appear in § 27.81 increase from 65 cents to 70 cents per certificate.

Testing Services

Cotton testing services are provided by the USDA Laboratory in Clemson, South Carolina under the authority of the Cotton Statistics and Estimates Act of 1927 (7 U.S.C. 471–478). The tests are available, upon request, to private sources on a fee basis. The Cotton Service Testing Amendment (7 U.S.C. 473d) specifies that the fees for the services be reasonable and cover as nearly as practicable the costs of rendering the services. The cost of providing High Volume Instrument (HVI) measurement has increased since the last fee increases in 1989 due to higher costs for salaries and miscellaneous overhead costs including supplies and materials. Therefore, this fee is increased to recover the cost of this service.

The fee for HVI measurement in § 28.956, item 5.0 is increased from $1.60 to $1.65 per sample.

List of Subjects

7 CFR 27

Commodity futures, Cotton, Classification, Samples, Micronaire, Spot markets.

7 CFR 28

Administrative practice and procedures, Cotton, Reporting and recordkeeping requirements, Warehouse, Cotton samples, Standards, Cotton linters, Grades, Staples, Market news, Testing.

For the reasons set forth in the preamble, 7 CFR Parts 27 and 28 are amended as follows:

PART 27—[AMENDED]

1. The authority citation for Part 27 continues to read as follows:

Authority: 90 Stat. 1841–1846; 7 U.S.C. 15b.

2. Sections 27.80 except paragraph (c), and 27.81 are revised to read as follows:

§ 27.80 Fees; classification, micronaire, and supervision.

For services rendered by the Cotton Division pursuant to this subpart, whether the cotton involved is tenderable or not, the person requesting the services shall pay fees as follows:

(a) Initial classification and certification—$2.00 per bale.

(b) Review classification and certification—$2.00 per bale.

* * * * *

(d) Combination service—$3.50 per bale. (Initial classification, review classification, and Micronaire determination covered by the same request and only the review classification and Micronaire determination results certified on cotton class certificates.)

(e) Supervision, by a supervisor of cotton inspection, of the inspection, weighing, or sampling of cotton when any two or more of these operations are performed together—$1.60 per bale.

(f) Supervision, by a supervisor of cotton inspection, of the inspection, weighing, or sampling of cotton when any one of these operations is performed individually—$1.60 per bale.

(g) Supervision, by a supervisor of cotton inspection, of transfers of cotton to a different delivery point, including issuance of new cotton class certificates in substitution for prior certificates—$2.75 per bale.

(h) Supervision, by a supervisor of cotton inspection, of transfers of cotton to a different warehouse at the same delivery point, including issuance of new cotton class certificates in substitution for prior certificates—$2.00 per bale.

§ 27.81 Fees; certificates.

For each new certificate issued in substitution for a prior certificate at the request of the holder thereof, for the purpose of business convenience, or when made necessary by the transfer of cotton under the supervision of any exchange inspection agency as provided in § 27.73, the person making the request shall pay a fee of $.70 cents for each certificate issued.

PART 28—[AMENDED]

3. The authority citation for subpart A of part 28 continues to read as follows:

Authority: Sec. 5, 50 Stat. 62, as amended (7 U.S.C. 55); Sec. 10, 42 Stat. 1519 (7 U.S.C. 61).

4. Section 28.116 is amended by revising paragraphs (a), (b) and (c) to read as follows:

§ 28.116 Amounts of Fees for classification; exemption.

(a) For the classification of any cotton or samples, the person requesting the services shall pay a fee, as follows, subject to the additional fee provided by paragraph (c) of this section.

(1) Grade, staple, and micronaire reading—$1.50 per sample.

(2) Grade, staple only—$1.30 per sample.

(3) Grade only or staple only—$1.05 per sample.

(4) High Volume Instrument (HVI), including grade—$2.00 per sample.

(5) HVI, excluding grade—$1.65 per sample.

(b) When a comparison is requested of any samples with a type or with other samples, the fees prescribed in paragraph (a) (1) (2) and (3) of this section shall apply to every sample involved, including each of the samples of which the type is composed.

(c) An additional fee of 30 cents per sample shall be assessed for services described in paragraphs (a) and (b) of this section unless the request for service is so worded that the samples become Government property immediately after classification.

* * * * *

5. Sections 28.117, 28.120, and 28.122 are revised to read as follows:

§ 28.117 Fee for new memorandum or certificate.

For each new memorandum or certificate issued in substitution for a prior memorandum or certificate at the request of the holder, thereof, on account of the breaking or splitting of the lot of cotton covered thereby or otherwise for his business convenience, the person requesting such substitution shall pay a fee of 10 cents per bale or a minimum fee of $4.75 per sheet.

§ 28.120 Expenses to be borne by party requesting classification.

For any samples submitted for Form A or Form D determinations, the expenses of inspection and sampling, the preparation of the samples and delivery of such samples to the classification room or other place specifically designated for the purpose by the Director shall be borne by the party requesting classification. For samples submitted for Form C determinations, the party requesting the classification shall pay the fees prescribed in this subpart and, in addition, a fee of $21.00 per hour, or each portion thereof, plus the necessary traveling expenses and subsistence, or per diem in lieu of subsistence, incurred on account of such request, in accordance with the fiscal regulations of the Department applicable to the Division employee supervising the sampling.

§ 28.122 Fee for practical classing examination.

The fee for the complete practical classing examination for cotton or cotton linters shall be $140.00. Any applicant who passes both parts of the examination may be issued a certificate indicating this accomplishment. Any person who passes one part of the examination, either grade or staple, and fails to pass the other part, may be reexamined for that part that was failed. The fee for this practical reexamination is $85.00.

6. Sections 28.148 and 28.149 are revised to read as follows:

§ 28.148 Fees and costs; classification; review; other.

The fee for the classification, comparison, or review of linters with respect to grade, staple, and character or any of these qualities shall be at the rate of $1.35 for each bale or sample involved. The provisions of §§ 28.115 through 28.126 relating to other fees and costs shall, so far as applicable apply to services performed with respect to linters.

§ 28.149 Fees and costs; Form C determination.

For samples submitted for Form C determinations, the party requesting the classification shall pay the fees prescribed in this subpart and, in addition, a fee of $21.00 per hour, or each portion thereof, plus the necessary traveling expenses and subsistence, or per diem in lieu of subsistence, incurred on account of each request, in accordance with the fiscal regulations of the Department applicable to the Division employee supervising the sampling.

7. The authority citation of subpart B of part 28 continues to read as follows:

Authority: Sec. 205, 60 Stat. 1090, as amended (7 U.S.C. 1624).

8. Section 28.184 is revised to read as follows:

§ 28.184 Cotton Linters; general.

Requests for the classification or comparison of cotton linters pursuant to this subpart and the samples involved shall be submitted to the Cotton Division. All samples classed shall be on the basis of the official cotton linters standards of the United States. The fee for classification or comparison and the issuance of a memorandum showing the results of such classification or comparison shall be $1.35 per sample.

9. The authority citation for subpart D of part 28 continues to read as follows:

Authority: Sec. 3a, 50 Stat. 62, as amended (7 U.S.C. 473a); Sec. 3c, 50 Stat. 62 (7 U.S.C. 473c); unless otherwise noted.

10. Paragraph (b) of § 28.910 is amended by revising it to read as follows:

§ 28.910 Classification of samples and issuance of classification data.

* * * * *

(b) Upon request of an owner of cotton for which classification memoranda have been issued under this subpart, a new memorandum shall be issued for the business convenience of such owner without the reclassification of the cotton. Such rewritten memorandum shall bear the date of its issuance and the date or inclusive dates of the original classification. The fee for a new memorandum shall be 10 cents per bale or a minimum of $4.75 per sheet.

11. The authority citation for subpart E of part 28 continues to read as follows:

Authority: Sec. 3c, 50 Stat. 62; 7 U.S.C. 473c; Sec. 3d, 55 Stat. 131 (7 U.S.C. 473d).

12. Section 28.956 is amended by revising the fee charged for item No. 5 to read as follows:

§ 28.956 Prescribed Fees.

Fees for fiber and processing tests shall be assessed as listed below:

Item No.	Kind of test	Fee per test
*	* * * *	*
5.0	High Volume Instrument (HVI) measurement. Readings micronaire, length, length uniformity, ⅛-inch gage strength, color and trash content. Based on a 6 oz. (170 g) sample, per sample.	1.65
*	* * * *	*

Dated: May 14, 1990.

[FR Doc. 90-11498 Filed 5-16-90; 8:45 am]

BILLING CODE 3410-02-M

Agricultural Marketing Service
7 CFR Part 54

[No. LS-90-101]

Changes in Fees for Federal Meat Grading and Certification Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends § 54.27 of the regulations governing the grading and certification of meats, prepared meats, and meat products by increasing the hourly fee rates for voluntary Federal meat grading and certification services. The hourly fees will be adjusted by this final rule to reflect the increased cost of providing service and to ensure that the Federal meat grading and certification program is operated on a financially self-supporting basis as required by law.

EFFECTIVE DATE: The final rule will be effective on May 20, 1990.

FOR FURTHER INFORMATION CONTACT: Eugene M. Martin, Chief, Meat Grading and Certification Branch, Livestock and Seed Division, AMS, USDA, Rm. 2638-S, P.O. Box 96456, Washington, DC 20090-6456 (202/382-1113).

SUPPLEMENTARY INFORMATION:

Regulatory Impact Analysis

This action was reviewed under the USDA procedures established to implement E.O. 12291 and was classified as a nonmajor proposed rule pursuant to section 1(b) (1), (2), and (3) of that Order. Accordingly, a regulatory impact analysis is not required. This action was also reviewed under the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*) The Administrator of the Agricultural Marketing Service has determined that this rule will not have a significant economic impact on a substantial number of small entities. The changes in the hourly fee rates are necessary to recover the costs of providing voluntary Federal meat grading and certification services. The cost per unit of meat grading and certification services to the industry will continue to be approximately $0.0015 per pound.

Background

The Secretary of Agriculture is authorized by the Agricultural Marketing Act (AMA) of 1946, as amended, 7 U.S.C. 1621 *et seq.*, to provide voluntary Federal meat grading and certification services to facilitate the orderly marketing of meat and meat products and to enable consumers to obtain the quality of meat they desire. The AMA also provides for the collection of fees from users of Federal meat grading and certification services that are approximately equal to the costs of providing these services. The hourly fees for service are established by equitably distributing the projected annual program operating costs over the estimated hours of service—revenue hours—provided to users of the service. Program operating costs include salaries and fringe benefits of meat graders, supervision, travel, training, and all administrative costs of operating the program. Employee salary and benefits account for approximately 80 percent of the total operating budget. Revenue hours include base hours, premium hours, and service performed on Federal legal holidays. As program operating costs and/or revenue hours change, the hourly fees must be adjusted to enable the program to remain financially self-supporting as required by law.

In fiscal year 1989, the program experienced an operating deficit of over $400,000. In fiscal year 1990, the program is faced with the following increases in operating expenses: (1) A congressionally mandated, Governmentwide 3.6-percent salary increase for Federal employees, effective January 14, 1990; (2) a 13.3-percent increase in the Agency's contribution to the Federal Employees Health Benefits Program (applicable to all government Agencies), effective January 14, 1990; and (3) a projected 4.2-percent inflation for nonsalary costs for fiscal year 1990. In conjunction with an increase in direct operating expenses in fiscal year 1990 due to the aforementioned factors, the program will experience a 2.5-percent reduction in revenue hours. The reduction in revenue hours is due to the ongoing consolidation of the meat industry which continues to result in the more efficient utilization of program personnel. The reduction in revenue hours significantly impacts on the hourly fee rate, since increases in direct operating expenses must be recouped through less revenue hours. In this regard, the Agency has determined that due to the increases in program operating costs and the reduction in revenue hours, the program will have an operating deficit of over $1.06 million in fiscal year 1990, unless the hourly fee rates are appropriately adjusted.

In recent years, the Agency has significantly improved the operating efficiency of the program without adversely affecting the effectiveness, integrity, and credibility of nationwide grading and certification services. However, any further reductions in employee supervision, training, or travel at this time would affect the Agency's ability to ensure continued accurate and uniform application of the U.S. grade standards and specifications nationwide. Any reductions in the accuracy or uniformity of service would, most likely, have an adverse impact on the orderly marketing of red meat and on the uniform identification of meat and meat products available to consumers.

Comments

On February 6, 1990, the Agency published in the **Federal Register** (55 FR 3962) a proposed rule to increase the fees for Federal meat grading and certification services. This proposed rule was published with requests for comments as a means of providing full public participation in the rulemaking process. Comments on this proposed rule were requested by March 8, 1990. During the 30-day comment period, the Agency received five comments in response to the proposed rule. The organizations commenting on the proposed rule were as follows: two meat industry trade associations, two meat processors, and one beef slaughterer and fabricator.

Discussion of Comments

The comments reflected an overall dissatisfaction with the fee increase, expressed the view that any increase would only further burden the meat industry, and may render the use of meat grading and certification services cost prohibitive. The comments generally suggested the Agency reduce costs rather than implement the fee rate change, although one commenter cautioned against a decline in service because of reduced travel or an applicant's timely access to supervisory review.

The Agency acknowledges the importance of providing meat grading and certification services in an efficient and cost-effective manner. During recent years, the Agency has significantly improved the operating efficiency of the program without adversely affecting the integrity and credibility of nationwide grading and certification services. The Agency continues to search for opportunities to improve efficiency and reduce costs. However, the Agency is faced with the cost increases that are detailed in the background section above and must find ways to recover these costs as required by law.

Two commenters requested the Agency reduce overhead costs rather than increase the fees. The Agency continues to search for opportunities to improve operating efficiency and reduce costs.

In the past year, program overhead costs have been reduced by collocating three meat grading and certification offices with those of other Ageny functions. Further consolidation of offices is currently being effected in a fourth location. Such collocation efforts result in cost-savings through more efficient utilization of clerical staff, office space, and related services. The Agency also continues to seek the full utilization of full-time meat grading and certification employees and strives to maximize the use of part-time and cross-utilized employees on less than full-time assignments.

Two commenters expressed concern over the reduction in revenue hours. One of these comments questioned whether these reductions were also accompanied by appropriate reductions in grading and supervisory staff. The other comment questioned whether a future increase in the number of revenue hours would result in a reduction in the fees. The number of grading positions is routinely adjusted to reflect changes in demand for service caused by plant closings, realignment of workload, etc. Supervisory requirements have not

changed significantly, since the number of grading positions eliminated in any particular geographic area do not justify a change in the supervisory staffing. However, the Agency does plan to reduce supervisory staffing through attrition, in those geographic areas where workload reductions and shifts make such changes feasible. An increase in revenue hours may result in a reduction or fees or, more likely, a partial offset to future cost increases.

One commenter expressed concern that the fees charged for premium and holiday hours were not proportionate to the Agency's actual cost of providing service during these periods. The Agency agrees that the fees charged during premium hours and on holidays may exceed the cost of providing such service. However, the structure of charges for meat grading and certification services was established to: (1) Recover the total cost of providing requested services and (2) promote efficiency in providing services by encouraging requests for service during the basic workweek. Any changes in the fee structure would require adjustments in all hourly rates and were not a part of this proposed rule.

One commenter requested the Agency consider alternatives to increasing the fee rate. The Agency has considered three alternatives to raising the fee rates. These alternatives were (1) financing a portion of the cost of providing service with appropriated money; (2) reducing overhead by reducing supervisory cost, travel, and training; and (3) reducing the number of services provided. However, these alternatives were not practical or feasible in that they would result in a reduction of the quality or amount of services available. The use of appropriated funds would be inconsistent with the Agricultural Marketing Act of 1946, as amended, which requires that the cost of providing such services be recovered by collecting fees approximately equal to the cost of providing the services. After these alternatives were considered, the decision was made to propose a change in the fees.

Two commenters stated that their service costs exceeded the $0.0015 per pound cited in the Regulatory Impact Analysis section of the proposed rule. They also stated that they would have to pass along these higher costs to their customers. The Agency calculates the unit cost of meat grading and certification services by dividing program costs by the total tonnage of products graded and certified. The Agency realizes that the actual unit cost of service for a particular establishment will depend on: (1) The establishment's relative operational efficiency and (2) the service requirements of specific processing operations. Meat grading and certification services add marketing value to the products graded or certified, and the costs of these services are routinely recovered in the value of the product or services marketed by the plant.

In view of the foregoing considerations, the Agency will increase the base hourly rate for commitment applicants for voluntary Federal meat grading and certification services for $28.80 to $30.80. A commitment applicant is a user of the service who agrees, by commitment or agreement memorandum, to the use of meat grading and certification services for 8 consecutive hours per day, Monday through Friday, between the hours of 6 a.m. and 6 p.m., excluding legal holidays. The base hourly rate for noncommitment applicants for voluntary Federal meat grading and certification services will increase from $31.20 to $33.20 and would be charged to applicants who utilize the services for 8 consecutive hours or less per day, Monday through Friday, between the hours of 6 a.m. and 6 p.m., excluding legal holidays. The premium hourly rate for all applicants will be increased from $36.80 to $38.80 and will be charged to users of the service for hours worked in excess of 8 hours per day between the hours of 6 a.m. and 6 p.m. and for hours worked from 6 p.m. to 6 a.m., Monday through Friday, and for any time worked on Saturday and Sunday, except on legal holidays. The holiday rate for all applicants will be increased from $57.60 to $61.60 and will be charged to users of the service for all hours worked on legal holidays.

The Agricultural Marketing Act of 1946 requires that fees approximately cover the cost of services provided under the meat grading and certification program. The Agency is responsible for operating the meat grading and certification program in a prudent manner. Since January 14, 1990, when the Governmentwide salary and benefit increases became effective, the program's hourly fee rate has not been sufficient to recover the cost of providing such services. Therefore, the Agency must act to increase fees and reduce operating losses as soon as possible.

Pursuant to 5 U.S.C. 553, it is hereby found that good cause exists for not delaying the effective action until 30 days after publication of this final rule in the **Federal Register**. Therefore, this final rule will be effective on May 20, 1990.

Accordingly, the section of the regulations appearing in 7 CFR part 54 relating to hourly fees for Federal meat grading and certification of meats, prepared meats, and meat products is amended as follows:

List of Subjects in 7 CFR Part 54

Meat and meat products, Grading and certification—beef, veal, lamb, and pork.

PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

1. The authority citation for part 54 continues to read as follows:

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

2. 7 CFR part 54 is amended as follows:

§ 54.27 [Amended]

(a) Section 54.27(a), sentence 3, change the following: $31.20 to $33.20; $36.80 to $38.80; and $57.60 to $61.60.

(b) Section 54.27(b), sentence 2, change the following: $28.80 to $30.80; $36.80 to $38.80; and $57.60 to $61.60.

Done at Washington, DC, on May 14, 1990.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 90-11500 Filed 5-16-90; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1210

[WRPA Docket No. 1; FV-88-1, FV-90-104 FR]

Watermelon Research and Promotion Plan; Rules and Regulations Thereunder

AGENCY: Agricultural Marketing Service (AMS), Agriculture.

ACTION: Final rule; correction.

SUMMARY: AMS is correcting an error in rule document 90-8236, beginning on page 13253, in the **Federal Register** issue of Tuesday, April 10, 1990. In that issue make the following correction:

On page 13258, in the first column, § 1210.518(c)(2)(iv) "Total quantity of watermelons handled during the reporting period, pursuant to § 1210.516;" should read "Total quantity of watermelons handled during the reporting period".

FOR FURTHER INFORMATION CONTACT: Richard Matthews (202) 447-4140.

Dated: May 14, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-11497 Filed 5-16-90; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1260

[No. LS-90-102]

Beef Promotion and Research

AGENCY: Agricultural Marketing Service, Agriculture.

ACTION: Final rule.

SUMMARY: This rule makes final, with some changes, the provisions of a proposed rule which were published in the **Federal Register** on February 23, 1990 (55 FR 6400). This final rule adjusts representation on the Cattlemen's Beef Promotion and Research Board, established under the Beef Promotion and Research Act of 1985, to reflect changes in cattle inventories and cattle and beef imports which have occurred since the present Board was appointed. Such adjustments are required by the Beef Promotion and Research Order and will result in a decline in Board membership from 113 to 111 effective with the Secretary's 1990 appointments. Indiana, Oregon, and Tennessee will each lose one Board member while the importer unit will gain one member.

EFFECTIVE DATE: June 18, 1990.

ADDRESSES: Ralph L. Tapp, Chief, Marketing Programs Branch, Livestock and Seed Division, Agricultural Marketing Service, USDA, Room 2624-S, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, at 202/382-1115.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order No. 12291 and Departmental Regulations 1512-1 and has been designated as a "nonmajor" rule under the criteria contained therein. This action was also reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601, et seq.). The Administrator of the Agricultural Marketing Service has determined that this action will not have a significant impact on a substantial number of small entities as defined by the RFA since it only adjusts representation on the Cattlemen's Beef Promotion and Research Board (Board) to reflect changes in domestic cattle inventory and imports.

The Board was initially appointed August 4, 1986, pursuant to the provisions of the Beef Promotion and Research Act of 1985 (7 U.S.C. 2901, et seq.) (Act), and the Order issued thereunder (7 CFR 1260.101, et seq.). Domestic representation on the Board is based on cattle inventory numbers and importer representation is based on the conversion of the volume of imported cattle, beef, or beef products into live animal equivalencies.

Section 1260.141(c) of the Order provides that, in accordance with regulations approved by the Secretary, at least every three (3) years, and not more than every two (2) years, the Board shall review the geographic distribution of cattle inventories throughout the United States and the volume of imported cattle, beef and beef products and, if warranted, reapportion units and/or modify the number of Board members from units in order to best reflect the geographic distribution of cattle production volume in the United States and the volume of cattle, beef, or beef products imported into the United States. This final rule amends § 1260.141(c) by deleting the phrase "in accordance with regulations approved by the Secretary." The reason for this is that the Act and Order currently contain the provisions necessary for the Board to review and to recommend the reapportionment of units and number of Board members.

Section 1260.141(d) of the Order authorizes the Board to recommend to the Secretary modification in the number of cattle per unit necessary for representation on the Board. Section 1260.141(e)(1) provides that each geographic unit or State that includes a cattle inventory equal to or greater than 500,000 head of cattle shall be entitled to one representative on the Board. Section 1260.141(e)(2) provides that States which do not have cattle inventories equal to or greater than 500,000 head shall be grouped, to the extent practicable, into geographically contiguous units each of which have a combined total inventory of not less than 500,000 head. Such grouped units are entitled to at least on representative on the Board. Each unit which has an additional one million head of cattle within a unit qualifies for additional representation on the Board as provided in § 1260.141(e)(4). As provided in § 1260.141(e)(3), importers are represented by a single unit with the number of Board members based upon a conversion of the total volume of imported cattle, beef, or beef products into live animal equivalencies.

To date, Board representation by States or units has been based on the January 1, 1986, inventory of cattle in the various States as reported by the National Agricultural Statistics Service of the USDA. Importer representation has been based on the combined totals of 1985 live cattle imports as published in the February 1986 issue of the Foreign Agriculture Circular, "Dairy, Livestock, and Poultry," published by USDA, and the live animal equivalents for imported beef products contained in that publication.

Recommendations concerning Board reapportionment were approved by the Board at its July 9-11, 1989, meeting. In considering reapportionment, the Board reviewed cattle inventories as well as cattle, beef, and beef product import data for the period January 1, 1986 to January 1, 1989. While reviewing the January 1, 1987, January 1, 1988, and January 1, 1989, cattle inventory numbers published by USDA, the Board noted some fluctuations in cattle inventories from year to year. The Board determined that factors such as the drought had distorted the "normal" distribution of cattle by State in some years. The January 1, 1989, cattle inventory numbers confirmed the Board's determination. To best reflect a representative number of cattle in each State or unit since the initial Board apportionments, the Board recommended that a 3-year average of the USDA inventory numbers as of January 1, 1987, 1988, and 1989 be used.

The Board review to determine proper importer representation utilized official USDA import data for the years 1986, 1987, and 1988 published by USDA. Also, the calculations used to determine the total number of live cattle equivalents imported in 1986, 1987, and 1988 were the same as those used in establishing the original Board. The new importer representation is based on a 3-year average of 1986, 1987, and 1988 data to be consistent with the procedures used for domestic representation.

On February 23, 1990, the (Agricultural Marketing Service) AMS published in the **Federal Register** (55 FR 6400) a proposed rule providing for the adjustment in Board membership based on data reviewed by the Board. The proposed rule was published with a request for comments to be submitted by March 26, 1990. The Department of Agriculture received five written comments. Three commenters including the Board and two importer organizations supported the proposed rule. Two commenters representing producer organizations suggested modifications in the proposed adjustment of Board membership.

The Board comments specifically supported the use of the 3-year average of cattle inventories in determining Board membership and the amendment

to § 1260.141(c) of the Beef Promotion and Research Order deleting the phrase "In accordance with regulations approved by the Secretary".

One importer organization specifically supported the use of the 3-year average for both domestic producers and importers in determining Board membership. The other importer organization supported the proposed adjustment of importer representation on the Board as being in accord with the relevant statutory and regulatory language. Both importer organizations supported the adoption of the rule.

Changes suggested by the commenters are discussed below. One commenter contended that importer representation on the Board was in excess of that warranted based on the proportion of total assessments received from imports and recommended that appropriate steps be taken to overcome this inequity. The Act does not provide authority for determining representation on the Board based on assessments collected. The Act only provides for representation on the Board based on cattle numbers or the volume of imported beef and beef products converted to live animal equivalencies. Pursuant to § 1260.141(e)(3) of the Order, importer representation on the Board is to be determined by converting the total volume of imported cattle, beef and beef products into live animal equivalencies. Accordingly, this recommendation cannot be adopted.

Two commenters requested that data from the most recent Agricultural Census be incorporated to more accurately determine proper adjustment in Board membership. One commenter indicated that the National Agricultural Statistics Service data used by the Board to determine the new representation on the Board, as proposed, had recently been revised to reflect information from the 1987 Agricultural Census, and requested the Department use the new data now available for 1987, 1988 and 1989 cattle inventories. The Department agrees that the reapportionment of Board membership should be based on this revised data.

Accordingly these revised numbers as published by USDA's National Agricultural Statistics Service in "Cattle Final Estimates for 1984–1988" published January 22, 1990, and "Cattle" published February 2, 1990, which incorporate the 1987 census data, have been used in recalculating the average of 1987, 1988 and 1989 cattle inventory numbers used as the basis of adjustment in Board membership for the 41 geographical units. The impact of this recalculation is that Nebraska which was slated to lose one of its six members on the Board based on data used in the proposed rule will retain its current six member representation. The number of representatives on the Board from the other 40 geographical units and the importer unit was not affected by the recalculation and their number of members remain unchanged from those in the proposed rule.

Thus, the final reapportionment reduces the number of representatives on the Board for three units by one member each and increases by one the number of representations on the Board from the importer unit. The geographical units and the importer unit affected by the reapportionment and a comparison between the original and new member representation per unit are shown below:

	Original representation	New representation
1. Indiana	2	1
2. Oregon	2	1
3. Tennessee	3	2
4. Importer unit	5	6

New Board representation for the entire 42 units is shown in the revised § 1260.141(a) contained herein. The new Board reapportionment will begin with the 1990 nominations and appointments.

This action makes final the provisions of the proposed rule published at 55 FR 6400 on February 23, 1990, with modifications to the table in 1260.141(a) to reflect current inventory data for 1987, 1988, and 1989.

List of Subjects in 7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreement, Meat and meat products, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, 7 CFR part 1260 is amended as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

1. The authority citation for 7 CFR part 1260 continues to read as follows:

Authority: U.S.C. 2901 et seq.

2. Section 1260.141 is amended by revising the section heading and paragraph (a) to read as follows:

§ 1260.141 Membership of Board.

(a) For Board nominations and appointments beginning with those in 1990, the United States shall be divided into 41 geographical units and one unit representing importers, and the number of Board members from each unit shall be as follows:

Unit	Cattle and calves [1] (1,000 head)	Directors
1. Alabama	1,800	2
2. Arizona	947	1
3. Arkansas	1,813	2
4. California	4,700	5
5. Colorado	2,750	3
6. Florida	2,028	2
7. Georgia	1,557	2
8. Idaho	1,600	2
9. Illinois	2,083	2
10. Indiana	1,373	1
11. Iowa	4,517	5
12. Kansas	5,740	6
13. Kentucky	2,467	2
14. Louisiana	1,120	1
15. Michigan	1,258	1
16. Minnesota	2,930	3
17. Mississippi	1,371	1
18. Missouri	4,500	5
19. Montana	2,480	2
20. Nebraska	5,667	6
21. Nevada	543	1
22. New Mexico	1,343	1
23. New York	1,632	2
24. North Carolina	875	1
25. North Dakota	1,767	2
26. Ohio	1,793	2
27. Oklahoma	5,100	5
28. Oregon	1,383	1
29. Pennsylvania	1,913	2
30. South Carolina	617	1
31. South Dakota	3,560	4
32. Tennessee	2,333	2
33. Texas	13,533	14
34. Utah	800	1
35. Virginia	1,743	2
36. West Virginia	500	1
37. Wisconsin	4,207	4
38. Wyoming	1,360	1
39. Northwest		2
Washington	1,297	
Alaska	9	
Hawaii	205	
Total	1,511	
40. Northeast		1
Massachusetts	79	
Maine	120	
Vermont	308	
New Hampshire	57	
Total	564	
41. Mid-Atlantic		1
Maryland	326	
Delaware	32	
Rhode Island	7	
Connecticut	80	
New Jersey	82	
District of Columbia	0	
Total	527	
42. Importer	5,934	6

[1] 1987, 1988, and 1989 average.

* * * * *

3. Section 1260.141 is amended by revising paragraph (c) to read as follows:

§ 1260.141 Membership of Board.

* * * * *

(c) At least every three (3) years, and not more than every two (2) years, the Board shall review the geographic

distribution of cattle inventories throughout the United States and the volume of imported cattle, beef, and beef products and, if warranted, shall reapportion units and/or modify the number of Board members from units in order to best reflect the geographic distribution of cattle production volume in the United States and the volume of imported cattle, beef, or beef products into the United States.

Done at Washington, DC, on May 14, 1990.

Daniel Haley,

Administrator.

[FR Doc. 90-11499 Filed 5-16-90; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 385

[Docket No. 45614, Amdt. 385-5]

RIN 2105-AB67

Staff Assignments and Review of Action Under Assignments

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Final rule.

SUMMARY: The Department is revising part 385 in order to (1) make permanent certain temporary assignments of functions and delegations of authority, (2) reflect new assignments of authority to staff and changes in assignments to staff necessitated by functional reorganizations, and (3) make technical corrections and eliminate obsolete terms. The revisions are being made solely to facilitate the efficient administration of the Department's air carrier economic regulatory functions; the changes do not alter the functions themselves and will have no effect on air carriers or the public.

EFFECTIVE DATE: June 18, 1990.

FOR FURTHER INFORMATION CONTACT: Carol A. Woods, Air Carrier Fitness Division, P-56, (202) 366-2340, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Section 204 of the Federal Aviation Act (Act) (72 Stat. 743, 49 U.S.C. 1324) empowers the Department, in part, to make rules and establish procedures to enable it to carry out its functions under the Act. Pursuant to that authority, 14 CFR part 385 subpart B sets forth the specific continuing assignments of authority that have been made by Department officials to staff members in order to facilitate the efficient administration of the Department's programs.

The particular sections being addressed in this rulemaking are § 385.13, which contains the authority assigned to the Director, Office of Aviation Operations; § 385.14, which lists the authority assigned to the Director, Office of Essential Air Service; and § 385.16, which describes the authority assigned to the Director, Office of International Aviation Relations.

In December 1986, the Office of the Assistant Secretary for Policy and International Affairs, Office of the Secretary of Transportation, issued an Interim Final Rule (51 FR 44598, Dec. 11, 1986) which made temporary assignments of functions and delegations of authority for a number of aviation economic regulatory functions to the Office of Aviation Operations and the Office of Essential Air Service. Specifically, in § 385.13 the Office of Aviation Operations was assigned the authority to extend the time permitted by statute for acting on complaints filed under the International Air Transportation Fair Competitive Practices Act of 1974 (IATFCPA). In § 385.14, the Office of Essential Air Service was assigned additional responsibilities related to air carrier fitness determinations and the conduct of formal hearing cases before administrative law judges, as well as other air transportation regulatory activities. The present rulemaking notifies the public that these assignments and delegations have been made permanent.

In addition, the names of the two organizational units have been changed so as to reflect more accurately the functions assigned to them: The Office of Aviation Operations has been redesignated the Office of International Aviation, and the Office of Essential Air Service has been renamed the Office of Aviation Analysis. Also, the Office of International Aviation Relations, which previously had been assigned the responsibility for complaints filed under IATFCPA, has been merged into the Office of International Aviation. This rule serves to notify the public of these organizational changes.

The revisions being made to part 385 to reflect these changes are as follows: The title "Director, Office of Aviation Operations" appears twice in § 385.10(a) and once in the introductory text of § 385.13. In these locations, the title "Director, Office of International Aviation" is being substituted. Similarly, the title "Director, Office of Essential Air Service" appears in the introductory text of § 385.14; these words are being changed to "Director, Office of Aviation Analysis."

A number of assignments of authority that were transferred by action of the 1986 Interim Final Rule are listed in both the old and the new locations. The obsolete references, which are being removed, and the corresponding correct assignments are as follows: § 385.16—authority formerly assigned to the Director, Office of International Aviation Relations [superseded by § 385.13(hhh)]; § 385.13(c)—registration of air carrier name changes [superseded by § 385.14(r) as revised herein]; § 385.13(e)—actions on applications for section 401 interstate and overseas authority [superseded by § 385.14(t) and by revisions made herein to §§ 385.13 (ss) and (tt)]; § 385.13(g)—approval of air carrier escrow agreements [superseded by § 385.14(v)]; § 385.13(h)—acceptance of public charter prospectuses [superseded by § 385.14(w)]; § 385.13(l)—actions on applications for air ambulance operations [superseded by § 385.14(x)]; and § 385.13(aaa)—review of Federal Aviation Administration Air Carrier certification documents [superseded by § 385.14(ee) as revised herein].

The DOT-administered Essential Air Service Program was extended and revised in two respects by section 202 of the Airport and Airways Safety and Capacity Expansion Act of 1985 (Pub. L. 100-223, 101 Stat. 1486). Those changes and the revisions they made necessary in the authority assigned to the Director, Office of Aviation Analysis, are as follows:

(1) The authority given to the Department to require a carrier to maintain essential air service at a community was moved from section 419(a)(6) to section 419(b)(5) of the Act. Therefore, paragraph (f) of § 385.14 is being changed to reflect the proper reference to section 419(b)(5).

(2) The authority given to the Department to pay an air carrier compensation for "losses incurred" when the carrier is required to continue providing essential air service at an eligible point after filing proper notice of intent to reduce, suspend, or terminate such service, was revised to state that the authority to pay compensation is for "continued service" under section 419(b)(6) of the Act. Obsolete references to "compensation for losses" in paragraphs (i), (j), and (m) of § 385.14 accordingly are being changed to "compensation for continued service."

The authority to grant subsidy mail pay under section 406 of the Act has effectively been terminated by Public Laws 97-276 and 97-369 for periods

subsequent to fiscal year 1983. The reference to "subsidy mail pay" in paragraph (j) of § 385.14 is therefore being deleted. Also, paragraphs (k) and (l) of that section are being removed and reserved.

In May 1988, part 215, which contains the Department's rules concerning the use and change of names by air carriers and foreign air carriers, was revised to reflect the fact that the Department no longer approves or disapproves the use of air carrier names; rather, once certain notification conditions have been met, the Department registers use of the name. (See 53 FR 17923, May 19, 1988.) The rule directs a name registrant to notify air carriers with the same or similar names of its proposed registration and to settle any resulting disputes over the use of names by means of the appropriate laws and courts. As a result of this change, a revision is being made in § 385.14(r) stating that the Director, Office of Aviation Analysis, is assigned the authority to accept the registration of names and trade names by air carriers.

On November 20, 1988, responsibility for administering certain functions associated with the establishment and modification of mail rates and air mail contracts, and the related assignments of authority, were transferred from the Office of International Aviation to the Office of Aviation Analysis. Accordingly, the assignments of authority associated with these functions, which presently are described in § 385.13 paragraphs (x), (y), (z), and (aa), are being transferred to § 385.14 as paragraphs (hh), (ii), (jj), and (kk). (Paragraphs (y), (z) and (aa) of § 385.13 are being reserved for use in future revisions.) The authority discussed in current § 385.13(x) to issue show-cause orders proposing to establish service mail rates for air taxi operators is being removed since the U.S. Postal Service, and not the Department, now establishes service mail rates for air taxi operators. In addition, the word "Board" (referring to the fomer Civil Aeronautics Board) in new § 385.14(kk) [as well as in §§ 385.13 (ss)(1) and (ss)(2)] is being changed to "Department."

A new paragraph (x) is being added to § 385.13 to set forth the authority assigned to the Director, Office of International Aviation, to approve and reject Statements of Authorization to foreign air carriers to conduct intermodal cargo services under part 222 of this chapter and to require applicants to submit additional information where such information is deemed necessary. This assignment to the Director was adopted by the Civil Aeronautics Board on June 4, 1981 (OR–181, 46 FR 32563), and, not having been rescinded, was transferred to the Department under the Civil Aeronautics Board Sunset Act of 1984 (Pub. L. 98–443, 98 Stat. 1703, Oct. 4, 1984). The assignment, however, was inadvertently replaced in § 385.13 by OR–187 (46 FR 52591, Oct. 27, 1981) and, thus, was not reflected in subsequent editions of § 385.13. That inadvertent error is being corrected in this rulemaking.

As they concern applications for and modifications to air carrier economic authority, certain assignments of authority to the Director, Office of Aviation Analysis, in § 385.14 refer only to air carriers whose authority is drawn from section 401 of the Act. However, the responsibilities delegated to this office extend also to carriers applying for or holding Domestic All-Cargo Air Service Certificates under section 418 and commuter air carrier authority under section 419 of the Act. Therefore, this rulemaking corrects those omissions by inserting references to section 418 and domestic all-cargo air carrier authority, and section 419 and commuter air carrier authority, as appropriate, in § 385.14 paragraphs (q), (bb), (dd), (ee), and (ee)(1).

Section 385.13(e) sets forth the authority previously assigned to the Director, Office of International Aviation, to take certain actions on applications for section 401 interstate and overseas authority. As stated above, the assignment was transferred to the Director, Office of Aviation Analysis, and § 385.13(e) was superseded by § 384.14(t). Two complementary provisions, §§ 385.13 (ss) and (tt), authorize the Director, Office of International Aviation, to take specified actions on applications under section 401 and 402 for foreign air transportation authority. On infrequent occasions, however, an application primarily for foreign authority also requests interstate and overseas authority. In such cases, it is administratively convenient for the Office of International Aviation to process the entire application. Therefore, for purposes of administrative simplification, the word "foreign" in §§ 385.13 (ss) and (tt) is being removed so that the Director, Office of International Aviation, is not precluded from taking action on the interstate and overseas portions of such applications.

Sections 385.13(a) and 385.14(p) presently set forth the authority of the Director, Office of International Aviation, and the Director, Office of Aviation Analysis, respectively, to approve or deny applications of certificated air carriers for exemptions to perform operations barred by a term, condition, or limitation in a certificate. We can eliminate these paragraphs if a phrase is added to § 385.13(b)(1) and § 385.14(q) as follows: "Approve or deny applications of air carriers for exemptions from section 401 of the Act, *from orders issued thereunder*, and from applicable regulations under this chapter where the course of action is clear under current precedent or policies."

Paragraphs § 385.13(yy) and § 385.14(dd) describe the authority of the respective Directors to issue a Certificate of Public Convenience and Necessity when a revision thereof is required due to a change in an air carrier's name or in the points specified in its certificate. In each section, the words "Fitness Certificate" are incorrect and are being removed; there is no such document. In addition, the word "Issue" is being changed to "Reissue." The latter word is more appropriate since the rule concerns a revision in a previously issued certificate or commuter registration. (As discussed above, § 385.14(dd) is one of several sections which are being revised to include Domestic All-Cargo Air Service Certificates and commuter air carrier registrations under part 298.) Furthermore, in § 385.14(dd), the words "or of points specified in the certificate" are being removed since certificates authorizing domestic air transportation no longer refer to points or routes served. Authority is assigned to the Director, Office of International Aviation, in § 385.13(yy) to reissue an air carrier certificate because of a change in the points specified in the certificate. In addition, since the responsibility for registering air carrier names is assigned to the Director, Office of Aviation Analysis, the words in § 385.13(yy) which authorize the Director, Office of International Aviation, to reissue certificates because of a change in a carrier's name are being deleted.

Paragraph (ee) of § 385.14 incorrectly states that the Director, Office of Aviation Analysis, has authority to review Federal Aviation Administration "reports on the safety of newly certificated air carriers." Rather, what the Director reviews is the authority contained in a new or revised Air Carrier Certificate and Operations Specifications issued to an air carrier by the FAA in order to confirm that it corresponds with the new or revised certificate or commuter authority issued to that carrier by the Office of the Secretary. The condition that a satisfactory review of those FAA

documents must be made before any new air carrier authority can be made effective is contained in both show-cause and final orders making fitness determinations.

Other circumstances which could lead the Department to stay the effectiveness of an air carrier's authority are that the carrier has undergone significant changes since its fitness was established (for example, in the areas of key management, financial condition, or compliance disposition), or that credible allegations have been received which cast doubt on the carrier's continuing fitness to hold air carrier authority. As a condition precedent to receiving effective authority, the fitness orders state that an applicant must provide to the Director, Office of Aviation Analysis, information on any changes it has undergone that would render inaccurate fitness information previously supplied and relied upon by the Department in making its fitness determination.

Since the rules do not reflect the authority assigned with respect to such situations, new language is being added in § 385.14(ee) which states that the Director, Office of Aviation Analysis, has the authority to review updated fitness information on carriers.

Paragraph (ee)(2) of § 385.14 states that the Director, Office of Aviation Analysis, is authorized to stay the effectiveness of orders issuing certificates (and, as added by this rulemaking, commuter air carrier authority) under certain circumstances. However, no provision was included in the rule for lifting such a stay. Therefore, new paragraph (ee)(3) is being added to § 385.14 assigning authority to the Director, Office of Aviation Analysis, to lift the stay of effectiveness of certificate or commuter air carrier authority imposed under paragraph (ee)(2) when he has determined that the unsatisfactory conditions which required the issuance of the stay have been resolved.

The Department's rules do not provide for the issuance of an order to make effective a commuter air carrier's authority; rather, it has been the Department's practice, when it is satisfied that the commuter air carrier continues to be fit and that its FAA documents are in order, to publish a notice announcing the effective date of the carrier's commuter authority. In addition, such notices also are issued to announce the effective date of certificate of authority if no further issues have arisen which would need to be discussed and decided in an order granting effective authority.

Since the Department's rules do not describe the authority assigned to issue such notices, new paragraph (ee)(4) is being added to § 385.14 stating that the authority is assigned to the Director, Office of Aviation Analysis, to issue notices announcing the effective dates of new certificate and commuter air carrier authority.

New paragraph (ff) is being added to § 385.14 to set forth the authority assigned to the Director, Office of Aviation Analysis, to approve, deny, or cancel registrations filed by air taxi operators and commuter air carriers pursuant to part 298 of this chapter, and new paragraph (gg) is being added to this section to set forth his authority to approve certificates of insurance filed on behalf of U.S. and foreign air carriers in accordance with the provisions of parts 205 and 298 of this chapter. The authority to take these actions was assigned to the Director, Office of Aviation Analysis, as a result of the functional reorganizations made in the Office of the Assistant Secretary for Policy and International Affairs in December 1986; however, no provision to address these matters was made in the Interim Final Rule issued at that time. That oversight is being corrected in this rulemaking.

Executive Orders 12291 and 12612, Regulatory Flexibility Act, and Paperwork Reduction Act of 1980

This proposed action has been reviewed under Executive Order 12291 and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographic regions. Furthermore, this proposed rule would not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The proposed regulation amendments would result in no change in reporting burden for certificated air carriers. Accordingly, a regulatory impact analysis is not required.

The proposed regulation amendments are not significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because they are concerned solely with changes in the internal procedures used by the Department to administer its air carrier economic regulatory functions and do not alter the functions themselves. They would result in no economic impact and a full regulatory evaluation is not required.

I certify that this rule will not have a significant economic impact on a substantial number of small entities. (For purposes of its aviation economic regulations, Departmental policy categorizes air carriers operating small aircraft (60 seats or less or 18,000 pounds maximum payload or less) in strictly domestic service as small entities for purposes of the Regulatory Flexibility Act.) The ability of such entities to engage in air carrier operations will be unaffected by the proposed regulation amendments. Furthermore, in accordance with Executive Order 12612, I have determined that this rule does not have sufficient federalism implications to warrant preparation of a federalism assessment.

Notice and comment are not required on this final rule because this rulemaking relates solely to agency organization and practice.

Economic Impact

Because the proposed amendments are concerned solely with changes in the internal procedures used by the Department to administer its air carrier economic regulatory functions and do not alter the functions themselves, there will be no economic impact on the public. Therefore, a full regulatory evaluation is not required.

List of Subjects in 14 CFR Part 385

Organization and functions (government agencies).

Final Rule

For the reasons set out in the preamble, and under authority delegated to me by 49 CFR 1.54(b)(1) and 14 CFR 385.2, 14 CFR part 385 is amended as follows:

PART 385—[AMENDED]

1. The authority citation for part 385 continues to read as follows:

Authority: Secs. 102, 204, 401, 402, 403, 407, 416, Pub. L. 85–726, as amended, 72 Stat. 740, 743, 754, 757, 758, 766, 771, 49 U.S.C. App. 1302, 1324, 1371, 1372, 1373, 1377, 1386; Pub. L. 98–443, October 4, 1984; 49 CFR 1.53(g).

§ 385.10 [Amended]

2. In § 385.10(a), remove the words "Office of Aviation Operations" and add, in their place, the words "Office of International Aviation".

3. In § 385.13, the section heading, introductory text, and paragraphs (b)(1), (x), (ss) introductory text, (ss)(1), (ss)(2), (tt), and (yy) are revised, paragraphs (a),

(c), (e), (g), (h), (l), (y), (z), (aa), and (aaa) are removed and reserved, as follows:

§ 385.13 Authority of the Director, Office of International Aviation.

The Director, Office of International Aviation, has authority to:

(a) [Reserved]

(b)(1) Approve or deny applications of air carriers for exemptions from section 401 of the Act, from orders issued thereunder, and from applicable regulations under this chapter where the course of action is clear under current precedent or policies.

* * * * *

(c) [Reserved]

* * * * *

(e) [Reserved]

* * * * *

(g) [Reserved]

(h) [Reserved]

* * * * *

(l) [Reserved]

* * * * *

(x)(1) Approve applications for Statements of Authorization to conduct intermodal cargo services under part 222 of this chapter where no person with a substantial interest raises objections citing specific facts of nonreciprocity or of restraints on competition by U.S. air carriers;

(2) Reject applications under part 222 where there is no agreement by the United States permitting the proposed services; or

(3) Require that an applicant under part 222 submit additional information.

(Y) [Reserved]

(z) [Reserved]

(aa) [Reserved]

* * * * *

(ss) With respect to applications filed under sections 401 and 402 of the Act for authority to engage in air transportation:

(1) Issue an order to show cause proposing to grant such application in those cases where no objections to the application have been filed and where the applicant has already been found by the Department to be fit, willing, and able to provide service of the same basic scope and character;

(2) Issue an order stating the Department's intention to process the application through show cause or other expedited procedures, where the course of action is clear under precedent or policy;

* * * * *

(tt) With respect to an application filed under section 401 or 402 of the Act for authority to provide air transportation and with respect to which an order instituting an oral evidentiary hearing has not been issued:

* * * * *

(yy) Reissue Certificates of Public Convenience and Necessity when revisions thereof are necessitated by a change in points specified in the certificate: *Provided,* That no issue of substance concerning the operating authority of a carrier is involved.

* * * * *

(aaa) [Reserved]

4. In § 385.14, the section heading, introductory text, and paragraphs (f), (i), (j), (m), (q), (r), (bb), (dd), (ee) introductory text, and (ee)(1) are revised, paragraphs (k), (l), and (p) are removed and reserved, and paragraphs (ee)(3), (ee)(4), (ff), (gg), (hh), (ii), (jj), and (kk) are added to read as follows:

§ 385.14 Authority of the Director, Office of Aviation Analysis.

The Director, Office of Aviation Analysis, has authority to:

* * * * *

(f) Renew, up to five times in succession, an order under section 419(b)(5) of the Act to an air carrier to continue providing essential air transportation while the Department attempts to find a replacement carrier.

* * * * *

(i) Send a statement under § 324.3 of this chapter, to an air carrier, disagreeing with its application for compensation for continued service under section 419, and to arrange an informal conference under § 324.4 of this chapter for the purpose of resolving these disagreements.

(j) Issue final orders establishing temporary or final subsidy rates under section 419 or final adjustments of compensation for continued service under section 419 in those cases where no objection has been filed to a show-cause order, and where the rates established are the same as those proposed in the approved show-cause order.

(k) [Reserved]

(l) [Reserved]

(m) Dismiss applications for compensation for continued service if they do not contain the information required by § 324.2(b) of this chapter, and close the case if the required information is not submitted within 90 days after the application is dismissed.

* * * * *

(p) [Reserved]

(q) Approve or deny applications of air carriers for exemptions from section 401 or 418 of the Act, and from orders issued thereunder, and from applicable regulations under this chapter where the course of action is clear under current precedent or policies.

(r) Register names and trade names of air carriers and commuter air carriers pursuant to part 215 of this chapter.

* * * * *

(bb) With respect to an application filed under section 401, 418, or 419 of the Act for authority to provide interstate and overseas, foreign, domestic all-cargo, or commuter air transportation and with respect to which an order instituting an oral evidentiary hearing has not been issued:

* * * * *

(dd) Reissue certificates of Public Convenience and Necessity and All-Cargo Air Service Certificates when revisions thereof are necessitated by a change in the name of a carrier: *Provided,* that no issue of substance concerning the operating authority of the carrier is involved.

(ee) Review Air Carrier Certificates and Operations Specifications issued by the Federal Aviation Administration to carriers that have been granted new certificate or commuter air carrier authority, and information concerning carriers' fitness to operate under that authority which emerged following the issuance of orders establishing their fitness, and

(1) Amend orders issuing the certificate or commuter air carrier authority to advance the effective dates of the authority if the review is satisfactory,

* * * * *

(3) Lift the stay of effectiveness imposed under (ee)(2) when the unsatisfactory conditions that required issuance of the stay have been resolved, or

(4) Issue notices announcing the effective date of the certificate or commuter air carrier authority.

(ff) Approve, deny or cancel registrations filed with the Department by air taxi operators and commuter air carriers pursuant to part 298 of this chapter.

(gg) Approve certificates of insurance filed with the Department on behalf of U.S. and foreign air carriers in accordance with the provisions of parts 205 and 298 of this chapter.

(hh) Issue show-cause orders proposing to make modifications of a technical nature in the mail rate formula applicable to temporary or final service mail rate orders.

(ii) Issue final orders establishing temporary and final service mail rates (1) in those cases where no objection has been filed following release of the show-cause order, and where the rates established are the same as those proposed in the show-cause order, and

(2) in those cases where it is necessary to make modifications of a technical nature in the rates proposed in the show-cause order.

(jj) Issue final orders amending mail rate orders of air carriers to reflect changes in the names of the carriers subject to the orders.

(kk) Issue a letter, in the case of air mail contracts filed with the Department under 14 CFR 302.1501 through 302.1508 against which no complaints have been filed, stating that the contract will not be disapproved by the Department and may become effective immediately. The letter will state that it is issued under assigned authority and may be appealed to the Assistant Secretary for Policy and International Affairs by any person.

§ 385.16 [Removed and reserved]

5. Section 385.16 is removed and reserved.

Issued in Washington, DC, on May 11, 1990.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 90–11427 Filed 5–16–90; 8:45 am]

BILLING CODE 4910–62–M

FEDERAL TRADE COMMISSION

16 CFR Part 417

Trade Regulation Rule: Failure to Disclose the Lethal Effects of Inhaling Quick-Freeze Aerosol Spray Products Used for Frosting Cocktail Glasses

AGENCY: Federal Trade Commission.

ACTION: Announcement of results of review under the Regulatory Flexibility Act.

SUMMARY: Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) and a published Plan for Periodic Review of Commission Rules (46 FR 35118 (1981)), the Federal Trade Commission has conducted a review of the Rule on failure to disclose the lethal effects of inhaling quick-freeze aerosol spray products used for frosting cocktail glasses. The Commission concludes that based on this review that there is no reason to believe that the Rule has had a significant impact on a substantial number of small entities and that there is a continued need for the Rule.

FOR FURTHER INFORMATION CONTACT: Robert Eliot Easton, Sr., Esq., Special Assistant—Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326–3029.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act requires the Federal Trade Commission to conduct a periodic review of rules issued by the Commission which have or will have a significant economic impact upon a substantial number of small entities and, if a rule has such impact, whether it should be amended to minimize any significant economic impact on small entities (5 U.S.C. 601 et seq.).

The Rule on failure to disclose the lethal effects of inhaling quick-freeze aerosol spray products used for frosting cocktail glasses makes it an unfair or deceptive act or practice to fail to provide a clear and conspicuous warning on quick-freeze aerosol spray products containing Fluorocarbon 12 (dichlorodifluoromethane) designed for the frosting of beverage glasses that the contents should not be inhaled because inhalation could cause death or injury. The statement of basis and purpose for the rule states that in several instances direct inhalation of quick-freeze aerosol spray, albeit intentional, had resulted in death. Because of this the Commission concluded that it was in the public interest to caution purchasers who may not otherwise be aware of the lethal effects of inhaling the product.

The Rule was promulgated February 20, 1969, 34 FR 2417 (1969).

For the purpose of this review, on October 25, 1989, the FTC published a notice in the **Federal Register** soliciting public comments on the Rule's impact on small entities (54 FR 43435 (1989)).

Questions were posed on: (1) The continued need for the Rule, (2) the burdens, if any, compliance with the Rule places on small entities, (3) changes which should be made to minimize any economic impact the Rule has had on small business, (4) the extent to which the Rule overlaps, duplicates or conflicts with other rules, and (5) any changed conditions that may have occurred which affect the Rule. The Commission received no comments.

Because there were no public comments, there is no basis from this Regulatory Flexibility Act review record to conclude that the Rule has had or has not had a significant economic impact on a substantial number of small entities. Further, there is no indication in the record that there is or is not a continued need for the Rule.

Because the record is silent and because the Rule relates to safety warnings which, if followed, can prevent physical harm and loss of life, the Commission has determined to leave the Rule in effect as is. At the present time it appears that the risks of potential consumer injury or death from repeal of the Rule outweigh any anticipatable benefits from repeal of the Rule. If in the future it is established that the product no longer exists or that other changed conditions show that the Rule serves no public interest, the Commission can at that time reconsider the appropriate action needed.

List of Subjects in 16 CFR Part 417

Quick-Freeze aerosol spray, Trade practices.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 90–11400 Filed 5–16–90; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 274

[Docket No. RM87–29–000; Order No. 524]

Natural Gas Policy Act of 1978; Application for Approval of Alternative Filing Requirements by the State Corporation Commission of the State of Kansas

Issued May 10, 1990.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending § 274.208 of its regulations to provide alternative filing requirements for Natural Gas Policy Act (NGPA) section 103 applications for infill wells drilled in the Hugoton Field (Chase Group) in the State of Kansas. Under the approved alternative filing requirements, an operator seeking to qualify infill wells under NGPA section 103 will be able to apply for well category determinations without repeated submissions of geological and engineering data to show that the additional wells are necessary to effectively and efficiently drain the portion of the reservoir where the well is located.

EFFECTIVE DATE: This rule is effective June 18, 1990.

FOR FURTHER LEGAL INFORMATION CONTACT: David Faerberg, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0491.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document

during normal business hours in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this final rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426. In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Hearing Room A at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending § 274.208 of its regulations to provide alternative filing requirements for NGPA section 103 applications for infill wells drilled in the Hugoton Field (Chase Group) in the State of Kansas. Under the approved alternative filing requirements, an operator will be able to apply for NGPA section 103 well category determinations without repeated submissions of geological and engineering data to show that the additional wells are necessary to effectively and efficiently drain the portion of the reservoir where the well is located.

II. Background

In 1984, the State Corporation Commission of the State of Kansas (Kansas) was requested to authorize the drilling of an additional well on existing proration units in the Hugoton Gas Field (Chase Group). In 1986, after a lengthy and contested proceeding (the infill proceeding), Kansas approved the drilling of an additional well in each unit of 480 or more acres, at the operator's option, in the Hugoton Field.[1] In its 1986 order on rehearing, Kansas stated that the request for infill drilling was a conservation proceeding to prevent waste and was not a well classification application under the Natural Gas Policy Act of 1978 (NGPA).[2] Kansas stated that it would assess the impact of the order approving infill drilling on well classification determinations in a future proceeding.

On June 26, 1987, as supplemented on December 28, 1987, Kansas requested, pursuant to § 274.207 of the Commission's regulations,[3] approval of alternative filing requirements for NGPA section 103[4] applications for infill wells drilled in the Hugoton Field. Kansas requested the alternative filing requirements to ease the administrative burden placed on Kansas and each applicant by § 274.104 of the Commission's regulations[5], which requires the submission to the Commission of all records upon which the jurisdictional agency determination was made. The amount of geological and engineering evidence on the Hugoton Field gathered at the infill proceeding is extensive. The alternative filing requirements will enable operators to apply for NGPA section 103 well category determinations without repeated submissions of geological and engineering data to show that the additional wells are necessary to effectively and efficiently drain the portion of the reservoir where the wells are located. Kansas submitted the record of its infill proceeding to support that infill drilling is necessary to effectively and efficiently drain the Hugoton Field. Kansas' request was contested by several parties.

On March 23, 1988, the Commission issued an order remanding Kansas' request for alternative filing requirements for further consideration.[6] The Commission found that Kansas' infill proceeding was a state conservation proceeding as Kansas itself had stated, not an NGPA well determination proceeding, and that Kansas had not made the explicit "effective and efficient" finding required by § 271.305 of the Commission's regulations.[7] The Commission stated that since Kansas had not considered the impact of the infill drilling order on NGPA well classification proceedings, it would be premature to approve the alternative filing requirements.

Kansas held a hearing (the NGPA hearing) pursuant to the Commission's March 23, 1988 order to determine whether there was enough evidence in the Hugoton infill record to support a finding that additional wells are necessary to effectively and efficiently drain a portion of the reservoir which cannot be effectively and efficiently drained by the existing well on the proration unit. The NGPA hearing also addressed "new" evidence based on the results of infill drilling activity, and whether such evidence changed the earlier finding that additional wells are necessary to drain the reservoir.

On December 26, 1989, Kansas filed its second supplemental application with the Commission requesting alternative filing requirements for infill wells in the Hugoton Field. The application includes an order approved at Kansas' administrative meeting on October 11, 1989, based on the NGPA proceeding, the complete record of the NGPA proceeding, and incorporates Kansas' original and initial supplemental applications.[8]

In its order, Kansas found that an additional well is necessary, on each proration unit on a field-wide basis, to effectively and efficiently drain the Hugoton Field, and the geological and engineering data collected in the infill proceeding provides substantial evidence for its finding. Kansas found that it is appropriate to use the evidence from the infill proceeding in the NGPA well classification proceeding because the use of the term "effective and efficient" in the Commission's regulations was simply intended to conform to existing practices of state conservation bodies in performing their duties to prevent waste. Kansas noted that the Commission has approved alternative filing requirements for infill wells in other states.[9] These approvals constituted an acknowledgement that the states' conservation tests used to determine proper reservoir drainage to prevent waste are the same tests used in § 271.305 to determine whether an additional well is necessary for effective

[1] The Basic Proration Order for the Hugoton Gas Field issued in 1944 had established a standard drilling unit of 640 acres per well.

[2] 15 U.S.C. 3301 *et seq.* (1988).

[3] 18 CFR 274.207 (1989).

[4] 15 U.S.C. 3313 (1988).

[5] 18 CFR 274.104 (1989).

[6] 42 FERC ¶ 61,352 (1988).

[7] 18 CFR 271.305 (1989).

[8] The Kansas Supreme Court upheld Kansas' infill drilling orders on January 20, 1989. *Southwest Kansas Royalty Owners Association* v. *State Corporation Commission of the State of Kansas*, 244 Kan. 157, 769 P.2d 1 (1989).

[9] FERC Statutes and Regulations (Regulations Preambles) ¶ 30,123 (1980) (New Mexico); FERC Statutes and Regulations (Regulations Preambles) ¶ 30,143 and ¶ 30,162 (1980) (Colorado).

and efficient drainage. Kansas also stated that it applied the phrase "effectively and efficiently" in the same manner in both the infill conservation proceeding and the NGPA proceeding. Kansas found the evidence submitted by the proponents of infill drilling convincing and stated that there is nothing which detracts from its findings in the original infill order that an additional 3.5 to 5 Tcf of gas would be recovered by the infill wells which would not be recovered by existing wells.

Kansas' order also addressed "new" evidence which some parties argued showed that infill wells were not needed on a field-wide basis. Kansas found that the Hugoton Field is heterogeneous and discontinuous and that those opposing the alternative filing requirements failed to submit any new data or evidence to support their assertions that the Hugoton Field is a homogeneous reservoir. Kansas concluded that the 72-hour shut-in pressures submitted by the opponents in support of their position were not reliable in determining effective and efficient drainage in the vast majority of the zones of an individual well because they fail to detect the high pressure zones that primarily contain the additional 3.5 to 5 Tcf of recoverable reserves.

Notice of Kansas' application was issued January 23, 1990, and published in the **Federal Register** on January 29, 1990.[10] Mesa Operating Limited Partnership and Mesa Midcontinent Limited Partnership (jointly), and ARCO Oil and Gas Company filed motions to intervene in support of the alternative filing requirements. Amoco Production Company filed a motion for leave to file a restatement of its position in support of the alternative filing requirements. Mobil Natural Gas Inc., Plains Petroleum Operating Company and Colorado Interstate Gas Company filed motions to intervene but did not state a position. Pursuant to Rule 214[11] any timely motions to intervene are granted unless an answer in opposition is filed within 15 days of the date such motion is filed.

III. Discussion

An infill well drilled pursuant to Kansas' infill orders may qualify as a new onshore production well under NGPA section 103 only if the jurisdictional agency finds that the well is necessary to effectively and efficiently drain a portion of the reservoir which cannot be effectively and efficiently drained by the existing well on the proration unit. Section 271.305(b) requires the jurisdictional agency to make an explicit "effective and efficient" finding and to submit geological and engineering evidence to support its finding. Section 274.204(e) requires a producer to file geological and engineering evidence demonstrating that a second well is necessary when he seeks to qualify a second well under NGPA section 103.

Under Kansas' alternative filing requirements proposal, the infill orders would constitute the "effective and efficient" finding required by § 271.305(b) for all infill wells in the Hugoton Field. The records from the infill proceeding and the NGPA proceeding would constitute the geological and engineering data supporting the finding that the infill wells are necessary. Operators seeking to qualify infill wells under NGPA section 103 would refer to Kansas' infill orders only rather than submit geological and engineering data.

The Commission finds that Kansas' explicit "effective and efficient" finding that infill wells in the Hugoton Field are needed to recover reserves which cannot be physically recovered by existing unit wells satisfies the requirements of § 271.305. The Commission finds that the substantial body of geological and engineering data from the infill proceeding and the NGPA proceeding fully support the "effective and efficient" finding. Based on the record, Kansas has concluded that the infill wells will recover an additional 3.5 to 5 Tcf of gas that would not be recovered by the existing unit wells, that the geological and engineering evidence prove the Hugoton reservoir is heterogeneous and discontinuous, and that an additional well is necessary to effectively and efficiently drain portions of the Hugoton Field. Therefore, Kansas' request for alternative filing requirements for infill wells in the Hugoton Field (Chase Group) is approved.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act[12] requires the Commission to describe the impact that a rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. The Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

V. Information Collection Statement

The Office of Management and Budget's (OMB) regulations[13] require OMB to approve certain information collection requirements imposed by agency rule. This final rule does not increase the information collection provisions covered in § 274.104 of the Commission's regulations. The Commission, however, is notifying OMB of its action in this final rule.

VI. Environmental Review Statement

The Commission certifies that this final rule does not constitute a major federal action significantly affecting the quality of the human environment.

VII. Effective Date

This rule is effective June 18, 1990.

List of Subjects in 18 CFR Part 274

Natural gas, Price controls, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends part 274, chapter I, title 18 of the Code of Federal Regulations as set forth below.

By the Commission.

Lois D. Cashell,

Secretary.

PART 274—DETERMINATIONS BY JURISDICTIONAL AGENCIES

1. The authority citation for part 274 continues to read as follows:

Authority: Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1988); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982).

2. In § 274.208, a new paragraph (f) is added to read as follows:

§ 274.208 Alternative filing and notice requirements accepted by the Commission.

* * * * *

(f) Certain infill wells in the Hugoton Gas Field, Chase Group in the state of Kansas.

(1) A person seeking a determination for purposes of subpart C of part 271 that an infill well drilled in the Hugoton Field, Chase Group, Kansas, in accordance with the State Corporation Commission of the State of Kansas orders in Docket No. C–164, is a new, onshore production well, shall file with the Kansas jurisdictional agency an application which contains in lieu of the information specified in § 274.204, the following items:

(i) FERC Form No. 121;

(ii) The well completion report;

[10] 55 FR 2869 (Jan. 29, 1990).

[11] 18 CFR 385.214 (1989).

[12] 5 U.S.C. 601–612 (1988).

[13] 5 CFR 1320.13 (1989).

(iii) A location plat which locates and identifies the State law proration unit (as defined in § 271.305(a)(2)) and the well for which a determination is sought and all other wells within the State law proration unit in which the well for which a determination is sought is located;

(iv) A statement by the applicant under oath;

(A) That the surface drilling of the well for which he seeks a determination was begun on or after February 19, 1977;

(B) That the well satisfies any applicable Federal or State well spacing requirements;

(C) That the applicant has concluded that to the best of his information, knowledge and belief, the natural gas for which he seeks a determination is produced from a new, onshore production well; and

(D) That the applicant has no knowledge of any other information not described in the application which is inconsistent with his conclusion;

(v) A statement referencing Kansas' order in Docket No. C–164.

(2) With respect to wells to which this paragraph applies, receipt by the Commission of a notice of determination pursuant to § 274.104 shall be deemed to satisfy:

(i) The requirement of notice to the Commission under § 271.305(c), and

(ii) The requirement of § 271.305(b)(1) that appropriate geological and engineering data be included in the notice of determination.

[FR Doc. 90–11429 Filed 5–16–90; 8:45 am]

BILLING CODE 6717–01–M

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1303

Equal Employment Opportunity—TVA Contracts; Removal of Obsolete Rule

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule; removal.

SUMMARY: The Tennessee Valley Authority (TVA) hereby removes 18 CFR part 1303, which is obsolete. This part, which was issued in 1969 to implement equal employment opportunity requirements applicable to Government contractors, is no longer needed because regulations issued by the Department of Labor fully implement the requirements.

EFFECTIVE DATE: May 17, 1990.

FOR FURTHER INFORMATION CONTACT: Robert H. Thompson, Attorney, TVA, 615–632–7338.

SUPPLEMENTARY INFORMATION: When TVA issued part 1303 (originally issued as part 303 and subsequently renumbered) in 1969, TVA had primary responsibility for obtaining compliance by its contractors with the equal employment opportunity requirements of Executive Order No. 11246 of September 24, 1965, and regulations issued by the Department of Labor. Since that time, as a result of changes in the Office of Federal Contract Compliance Program's compliance procedures, TVA no longer has the primary responsibility for obtaining compliance by its contractors with equal employment opportunity requirements; thus, the regulations at part 1303 are obsolete. Moreover, the subject matter of these regulations is fully addressed by the Department of Labor's regulations at 41 CFR chapter 60. Accordingly, TVA is repealing part 1303 as no longer necessary.

Because this rule simply repeals obsolete regulations that address subject matter fully covered by other regulations, no notice of proposed rulemaking or comment period is necessary, and the Regulatory Flexibility Act does not apply. This rule is not a major rule for the purposes of Executive Order No. 12291. No information collections are involved.

List of Subjects in 18 CFR Part 1303

Equal Employment Opportunity—Government contracts.

For the reasons set out in the preamble, 18 CFR chapter XIII is amended as follows:

PART 1303—[REMOVED AND RESERVED]

Part 1303 is removed and reserved.

Authority: 16 U.S.C. 831–831dd (1988).

By authority of the TVA Board of Directors.

W.F. Willis,

Executive Vice President and Chief Operating Officer.

[FR Doc. 90–11488 Filed 5–16–90; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Parts 353 and 355

[Docket No. 91033–9233]

Antidumping and Countervailing Duties; Interim Final Rule; Extension of Comment Period

AGENCY: Import Administration/ International Trade Administration, Department of Commerce.

ACTION: Interim Final Rule and request for comments; extension of comment period.

SUMMARY: The International Trade Administration announces that the deadline for receipt of comments on the Interim Final Rule on antidumping and countervailing duties (19 CFR parts 353 and 355), regarding certain provisions of the Omnibus Trade and Competitiveness Act of 1988 ("1988 Act"), published on March 9, 1990 (55 FR 9046) is extended for 30 days.

DATES: Written comments on the Interim Final Rule must be received by June 18, 1990.

ADDRESSES: Address written comments (10 copies) to Eric I. Garfinkel, Assistant Secretary for Import Administration, Room B–099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. Comments should be addressed: Attention: 1988 Act Antidumping and Countervailing Duty Interim Final Regulations. Each person submitting a comment should include his or her name and address, and give reasons for any recommendation.

FOR FURTHER INFORMATION CONTACT: Robert Nielsen, Office of Chief Counsel for Import Administration (202) 377–0833.

SUPPLEMENTARY INFORMATION: On March 9, 1990, the Department of Commerce, International Trade Administration, published in the **Federal Register** (55 FR 9046) interim final rules to amend its regulations relating to antidumping and countervailing duties (19 CFR parts 353 and 355). The interim final rules provide, in particular, for procedures relating to certain provisions of the 1988 Act. This notice stated that the public comment period would close 60 days after publication of the Interim Final Rule.

The Department has received requests for additional time for comment. In view of the importance of the matters covered by the Interim Final Rule, the Department of extending the comment period.

Accordingly, this notice announces that the public comment period for the Interim Final Rule is extended until June 18, 1990. Comments on the Interim Final Rule must be submitted on or before that date.

Dated: May 10, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90–11491 Filed 5–16–90; 8:45 am]

BILLING CODE 3510–25–M

RAILROAD RETIREMENT BOARD

20 CFR Part 212

RIN 3220-AA70

Military Service

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) amends part 212 of its regulations by adding a new period of military service which is now creditable under the Railroad Retirement Act (RRA) in certain cases in order to reflect certain amendments to that Act.

EFFECTIVE DATE: May 17, 1990.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Stanley Jay Shuman, General Attorney, Railroad Retirement Board, 844 Rust Street, Chicago, Illinois 60611, (312) 751-4568 (FTS 386-4568).

SUPPLEMENTARY INFORMATION: Military service is creditable under the RRA if it was performed during a war service period and was preceded by railroad service. See section 3(i)(2) of the RRA.

Section 1(g)(2) of the RRA defines a war service period as any war period, or, with respect to any individual who was in military service at the end of a war period, the period during which such individual was required to remain in service following the end of the war period, or a period of involuntary military service or a period after September 7, 1939, with respect to which there was proclaimed a state of national emergency. Section 7304(a) of the Railroad Unemployment Insurance and Retirement Improvement Act of 1988 (title VII of Pub. L. 100-647) amended section 1(g)(2) of the RRA to provide that military service between June 15, 1948, and December 15, 1950 (the period between the end of the national emergency which had been proclaimed with respect to World War II and the beginning of the next state of national emergency resulting from the Korean conflict) shall be deemed a war service period with respect to an individual if, following the employee's release from active military service, he or she returned to railroad service in the year he or she was separated from service or the following year without any other intervening employment.

The Board published this rule as a proposed rule on November 13, 1989 (54 FR 47220), and invited comments by December 13, 1989. No comments were received.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no Regulatory Impact Analysis is required. In addition, this part does not impose any requirement for the collection of information within the meaning of the Paperwork Reduction Act of 1980.

List of Subjects in 20 CFR Part 212

Railroad employees, Railroad retirement.

For the reasons set out in the preamble, part 212, chapter II, title 20 of the Code of Federal Regulations is amended as follows:

PART 212—MILITARY SERVICE

1. The authority citation for part 212 is revised to read as follows:

Authority: 45 U.S.C. 231f.

2. Section 212.4, paragraph (f) is revised to read as follows:

§ 212.4 Periods of creditable military service.

* * * * *

(f) June 15, 1948, through December 15, 1950. This service is creditable if:

(1) Entered into involuntarily; or

(2) Entered into voluntarily, but only if:

(i) The individual who seeks credit for this service performs service as an employee for an employer as defined in part 202 of this chapter either in the year of his or her release from active military service or in the year following such release, and;

(ii) The individual does not engage in any employment not covered by part 203 between his or her release from active military service and his or her commencement of service for an employer.

* * * * *

Dated: May 7, 1990.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 90-11477 Filed 5-16-90; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject to Certification; Nitrofurazone Ointment

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Biomed Laboratories, providing for use of a nitrofurazone ointment (water soluble dressing) for the prevention or treatment of surface bacterial infections on dogs, cats, or horses. The agency is also removing "054016" from the list of sponsors in 21 CFR 524.1580b(b) that was inadvertently added in the Federal Register of July 13, 1989 (54 FR 29543).

EFFECTIVE DATE: May 17, 1990.

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

SUPPLEMENTARY INFORMATION: Biomed Laboratories, 438 West Arrow Highway, Unit 30, San Dimas, CA 91773, is sponsor of NADA 140-881 which provides for use of a 0.2-percent nitrofurazone ointment (water soluble dressing) for the prevention or treatment of surface bacterial infections of wounds, burns, and cutaneous ulcers of dogs, cats, or horses. The application is approved, and 21 CFR 524.1580b(b) is amended to reflect the approval. The basis of this approval is discussed in the freedom of information summary.

The agency announced in the Federal Register of August 26, 1988 (53 FR 32610), that several NADA's had been transferred from Vet Labs Ltd., Inc., to Veterinary Laboratories, Inc. Section 524.1580b was one of several sections amended (removed Vet Labs Ltd., Inc., drug labeler code 054016 and added 000857 for Veterinary Laboratories, Inc.) to reflect the change of sponsor. However, a subsequent Federal Register document (July 13, 1989; 54 FR 29543 at 29544) inadvertently listed 054016 in § 524.1580b(b). Accordingly, § 524.1580b(b) is also amended to remove "054016".

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

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore,

neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 524.1580b is amended by revising paragraph (b) to read as follows:

§ 524.1580b Nitrofurazone ointment.

* * * * *

(b) *Sponsor.* For use on dogs, cats, or horses, see Nos. 000857, 000864, 011519, 011801, 023851, 050604, 051259, and 054273 in § 510.600(c) of this chapter. For use on dogs and horses, see No. 017135 in § 510.600(c) of this chapter. For use on horses, see No. 017153 in § 510.600(c) of this chapter.

* * * * *

Dated: May 9, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90-11470 Filed 5-16-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 177

San Carlos Irrigation Project

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: Pursuant to 25 CFR 177.54, the Area Director of the Phoenix Area Office, Bureau of Indian Affairs is authorized to adjust the rate schedules in §§ 177.51, 177.52 and 177.53 upon giving sufficient notice to customers and other interested parties.

This notice, therefore, adjusts the rate schedules in §§ 177.51 and 177.52 to defray the increases in cost of power and energy purchased by the San Carlos Irrigation Project (SCIP) from the power supplier, Arizona Public Service.

EFFECTIVE DATE: This notice shall become effective May 17, 1990.

FOR FURTHER INFORMATION CONTACT: Henry Dodge, Project Engineer or Vernon Strickland, Power Manager, San Carlos Irrigation Project, P.O. Box 250, Coolidge, Arizona 85228. Telephone: (602) 723-5439.

SUPPLEMENTARY INFORMATION:

Authority

The authority to issue this notice is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of March 1928 (45 Stat. 210, 211).

This authority is delegated to the Assistant Secretary for Indian Affairs by the Secretary of the Interior in 209 DM 8 and redelegated by the Assistant Secretary for Indian Affairs to the Area Director in 10 BIAM 3 and § 177.54 of part 177, subchapter H, chapter 1, title 25 of the Code of Federal Regulations.

Basis for Adjustment

On March 3, 1989, Arizona Public Service Company (APS) filed for a rate increase with the Federal Energy Regulatory Commission (FERC), Docket Number ER89-265-000, for wholesale customers. San Carlos Irrigation Project (SCIP), as a wholesale customer of APS, purchases approximately 49 percent of the power and energy used by SCIP customers.

The APS rate change consist of increased contract demand charge by $4.68 per kilowatt (KW); increased energy charge by $.0008 per kilowatt hour (KWH); and a decreased monthly customer charge by $583. Table I shows the present APS rates and the proposed rates.

TABLE 1.—APS RATES

	Present	Proposed
Contract Demand Charge	$11.82/KW	$16.50/KW
Energy Charge	0.0202/KWH	0.021/KWH
Customer Charge	1000.00	417.00

Since SCIP purchased 27,040 KW of monthly demand and 207,794,889 KWH of energy between February 1988 and February 1989, the APS rate change will result in a total annual increase in cost of purchase power to SCIP of $1,677,806.31.

On July 23, 1989, APS implemented the rates on an interim basis pending a final FERC determination. SCIP is negotiating with APS which will provide for the requested increase of APS to be spread out from July 1989 to January 1, 1994, to limit the financial impact upon SCIP customers. The negotiated settlement, when mutually accepted, will be subject to review and approval by FERC.

SCIP has explored alternatives to passing on the increased purchase power cost to its customers. The method selected takes into account passing on the increase based upon the demand and energy that SCIP purchases for the three classes of customers that it serves; namely, residential, commercial and street and area lighting. SCIP management has determined that this approach provides equity in distribution of the increased cost to both the residential and the general classes of customers. There is no change proposed for SCIP Rate Schedule 3—Street and Area Lighting. Also, only 20.62% of the proposed APS rate increase is initially being passed through to the SCIP customers until final settlement is reached with APS.

Based upon SCIP customers' energy usage for 1989, this increase will result in a total bill of $61.94 per month for the residential customer that uses an average of 700 KWH per month of electricity, or an increase of $0.65 per month. Whereas, those customers on Schedule 2, General Rate, who consume an average energy of 10,300 KWH per month will see an increase of $10.31 per month.

Public Notices of the proposed rate adjustments were provided to SCIP customers through the following activities:

1. Advertisements were paid for and press releases provided to the newspapers that cover the SCIP service territory during the week of January 15, 1990.

2. An open meeting was held in Coolidge, Arizona from 6:00 p.m. to 8:00 p.m. on January 18, 1990. Only three people attended.

3. A presentation was given by Mr. Vernon Strickland before the Natural Resources Standing Committee of the Gila River Indian Community in Sacaton, Arizona on January 30, 1990.

4. A presentation was given by Mr. Michael Miller before the Tribal Council of the Gila River Indian Community on February 7, 1990. Mr. Strickland travelled to San Carlos to provide information per invitation, however, the Council agenda did not allow for his presentation.

5. A presentation was made by Mr. Vernon Strickland for Mr. Ron Edwards, Vice-Chairman, and Mr. Joe Sparks, Attorney, of the San Carlos Apache Tribe during a meeting, in Coolidge, Arizona on January 30, 1990.

6. Public Notices and handouts were posted and made available to the public in SCIP offices at San Carlos, Oracle

and Coolidge, Arizona from January 15, 1990.

Since SCIP's tentative negotiated settlement with APS provides for the APS rate increase to be spread out from July 1989 to January 1, 1994, future adjustments will be made to reflect the actual periodic increases that APS will impose upon SCIP. Sufficient notices to the customers and other interested parties will be provided by the Area Director before the adjustments are approved and implemented.

The Bureau of Indian Affairs has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291. In monetary terms, the economic effects of the proposed adjustment will be below $100 million and do not meet the other tests for a major rule under E.O. 12291. The Bureau of Indian Affairs certifies that this document 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.). The expected effect on the individual and commercial electric power meters will be small and insignificant; and, in monetary terms, the proposed action involves no additional revenue for the Project. The anticipated impacts on competition, employment, investment and the general economic environment is minimal and insignificant. The Bureau of Indian Affairs also has determined that this document does not constitute a major Federal action significantly affecting the human environment which would require preparation of an Environmental Document pursuant to the National Environmental Policy Act.

List of Subjects in 25 CFR Part 177

Electric power, Indian lands, Irrigation.

The final rule as required by 25 CFR 177.54 reads as follows:

PART 177—SAN CARLOS INDIAN IRRIGATION PROJECT, ARIZONA

1. The authority citation for part 177 continue to read as follows:

Authority: Sec. 5, 43 Stat. 476; 45 Stat. 210, 211; 5 U.S.C. 301.

2. Section 177.51 is amended by revising paragraph (b) to read as follows:

§ 177.51 Rate schedule no. 1—Residential rate.

* * * * *

(b) *Monthly rate.* (1) $10.74 minimum which includes the first 50 kilowatt-hours.

(2) 11.8 cents per kilowatt-hour for the next 100 kilowatt-hours.

(3) 7.6 cents per kilowatt-hour for the next 350 kilowatt-hours.

(4) 6.4 cents per kilowatt-hour for all additional kilowatt-hours.

* * * * *

3. Section 177.52 is amended by revising paragraph (b) to read as follows:

§ 177.52 Rate schedule no. 2—General rate.

* * * * *

(b) *Monthly Rate.* (1) $13.87 minimum which includes the first 50 kilowatt-hours.

(2) 17.0 cents per kilowatt-hour for the next 350 kilowatt-hours.

(3) 10.0 cents per kilowatt-hour for the next 600 kilowatt-hours.

(4) 7.7 cents per kilowatt-hour for the next 9,000 kilowatt-hours.

(5) When use is 10,000 kilowatt-hours or more: First 10,000 kilowatt-hours $853.38/month.

* * * * *

Barry W. Welch,

Acting Phoenix Area Director.

[FR Doc. 90-11375 Filed 5-16-90; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

28 CFR Part 0

Delegation of Authority to DEA Official

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: This final rule amends DEA regulations relating to the redelegation of functions to authorize the Deputy Assistant Administrator for Investigative Support, DEA, to cross-designate Federal law enforcement officers to undertake title 21, United States Code, drug investigations under the supervision of DEA.

EFFECTIVE DATE: May 17, 1990.

FOR FURTHER INFORMATION CONTACT: Terrance C. Dunne, Chief, Special Investigative Support Section, DEA, (202) 307-8923 (FTS 367-8923).

SUPPLEMENTARY INFORMATION: Under the Controlled Substances Act, as amended, 21 U.S.C. 873, 965, the Attorney General may request other Federal law enforcement agencies to provide law enforcement assistance to DEA. Designated Federal law enforcement officers may undertake title 21 drug investigations under the supervision of DEA. The Attorney General has delegated the functions vested in him by that Act to the Administrator of DEA. 28 CFR 0.104. The Attorney General has also authorized the Administrator to redelegate those functions to any of his subordinates. 28 CFR 0.104.

The Acting Administrator certifies that this action will have no impact on entities whose interests must be considered under the Regulatory Flexibility Act (5 U.S.C. 601). Pursuant to section 1(a)(3) and 1(b) of E.O. 12291, this rule is not a major rule and relates only to the organization of functions within DEA. Accordingly, it has not been reviewed by the Office of Management and Budget. This action has been analyzed in accordance with E.O. 12616 and it has been determined that this matter has no federalism implications which would warrant the preparation of a Federalism Assessment.

By virtue of the authority vested in the Administrator of DEA by 28 CFR 0.100 and 0.104, the following section is added to title 28, appendix to subpart R, Redelegation of Functions, of the Code of Federal Regulations.

List of Subjects in 28 CFR Part 0

Organization of the Department of Justice, Drug Enforcement Administration, Redelegation of Authority.

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for part 0 is revised to read as follows:

Authority: 5 U.S.C. 301, 2303; 8 U.S.C. 1103, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 3621, 3622, 3624, 4001, 4041, 4044, 4082, 420.1 et seq., 4241 et seq., 6003(b); 21 U.S.C. 871, 873, 878(a), 904, 965; 22 U.S.C. 263a, 1621-1645o, 1622 note; 28 U.S.C. 509, 510, 515, 524, 542, 543, 552, 552a, 569; 31 U.S.C. 1108; 50 U.S.C. App. 2001-2017p; Pub. L. 91-513, sec. 501; E.O. 11919; E.O. 11267; E.O. 11300.

2. The appendix to subpart R is amended by adding section 11 as follows:

Subpart R—Drug Enforcement Administration

Appendix to Subpart R—Redelegation of Functions

* * * * *

Section 11, Cross-Designation of Federal Law Enforcement Officers

The Deputy Assistant Administrator for Investigative Support is authorized to exercise all necessary functions with respect to the cross-designation of Federal law enforcement officers to undertake title 21 drug investigations under the supervision of DEA pursuant to 21 U.S.C. 873(a).

Dated: May 9, 1990.

Terrence M. Burke,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 90-11409 Filed 5-16-90; 8:45 am]

BILLING CODE 4410-09-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 550, 580 and 581

[Docket No. 85-19; Docket No. 89-04]

Tariff Publication of Free Time and Detention Charges Applicable to Carrier Equipment Interchanged With Shippers or Their Agents; Tariff Publication of Free Time and Detention Charges

AGENCY: Federal Maritime Commission.

ACTION: Extension of effective date for lifting of stay in Docket No. 85-19 and final rule in Docket No. 89-04.

SUMMARY: On March 13, 1990, the Federal Maritime Commission ("Commission") served an order lifting the stay in Docket No. 85-19, and issued a final rule in Docket No. 89-04 that amended its domestic offshore tariff, and its foreign tariff and service contract filing regulations pertaining to the publication of free time and detention charges applicable to carrier-provided equipment interchanged with inland carriers, consignees and shippers (55 FR 10238, March 20, 1990).

The North Europe-USA Rate Agreement and USA-North Europe Rate Agreement ("NEC") have requested that the Commission extend, by 60 days the effective date of the final rules in Docket No. 89-04 and the lifting of the stay of the final rules in Docket No. 85-19. The new rules now are scheduled to become effective May 21, 1990. Similar requests have been received from P&O Containers (TFL) Ltd. ("TFL") and Sea-Land Service, Inc. ("Sea-Land"), except that Sea-Land requests that the effective date be extended 90 days for Equipment Interchange Agreements ("EIAs") applicable in foreign locations. Numerous filings in support of the NEC request have been received from other carriers and conferences. The NEC state that special senior executive meetings have been scheduled to try to reach agreement on uniform rate agreement provisions, and contend such uniform provisions would better serve the regulatory purposes and intent of the rules, and would ease tariff filing and maintenance burdens on carriers and the Commission alike.

TFL states that an extensive review is required of every EIA, and consideration of uniform EIA free time and detention or free time and per diem provisions will take time. TFL also supports the NEC request.

Sea-Land also supports the NEC request except with respect to EIA's in foreign locations. For those EIA's, Sea-Land requests a 90 day extension. Sea-Land claims that the need to work through local representatives in foreign locations and translate and transform existing arrangements into the required format make it virtually impossible to comply with the current effective date. A number of filings in support of the NEC request have also been received from various other carriers and conferences.

The NEC, TFL and Sea-Land, have provided sufficient reasons for extending the effective date. The final rules are complex and took several years to develop. There appears to be good cause to grant a 60 day extension of effective date for EIAs applicable in U.S. locations and 90 day extension of effective date for EIAs applicable in foreign locations.

EFFECTIVE DATE: Both the lifting of the stay in Docket No. 85-19 and the final rule in Docket No. 89-04 are effective on July 20, 1990. However, with respect to EIAs applicable in foreign locations, tariff provisions need not be filed with the Commission until August 19, 1990.

FOR FURTHER INFORMATION CONTACT: Bryant L. Van Brakle, Acting Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573-0001, (202) 523-5796.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90-11410 Filed 5-16-90; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 513, 514, 515 and 553

[APD 2800.12A, CHGE 7]

General Services Administration Acquisition Regulation; Miscellaneous Amendments

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) (APD 2800.12A), chapter 5, is amended to revise section 513.505-70(a) to provide for use of Standard Form 1447, Solicitation/Contract, instead of GSA Form 3514, Solicitation, Offer and Award—Small Purchase, which is abolished; to revise section 514.201-70 to add a reference to the new Standard Form 1447; to add section 514.202-7 to provide agency procedures for authorizing facsimile bids under FAR 14.202-7; to add section 514.213 to authorize the submission of annual representations and certifications as an alternative to submission with each solicitation subject to the requirements of FAR 14.213; to delete section 514.301-70, facsimile bids are now addressed in FAR 14.202-7 and GSAR 514.202-7; to add section 515.402(c) to provide agency procedures for authorizing facsimile proposals under FAR 15.402; to revise section 514.414-70(c) to add a reference to the new Standard Form 1447; to amend section 515.501 by revising the organizational title of the Office of GSA Acquisition Policy and Regulation; to delete section 553.370-3514; Standard Form 1447 will be used instead of GSA Form 3514. The intended effect is to implement Federal Acquisition Circular (FAC) 84-53 and to provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: May 25, 1990.

FOR FURTHER INFORMATION CONTACT: Ida Ustad, Director, Office of GSA Acquisition Policy, (202) 566-1224.

SUPPLEMENTARY INFORMATION:

A. Public Comments

This rule was not published in the **Federal Register** for public comment because it merely revises the GSAR to conform to the Federal Acquisition Regulation as amended by FAC 84-53 which had already undergone the public comment process.

B. Background

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. This rule amends the GSAR as necessary to conform with the FAR as amended by FAC 84-53. The Regulatory Flexibility Act does not apply to this rule because the proposed policy was not required to be published in the **Federal Register**. This rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

List of Subjects in 48 CFR Parts 513, 514, 515 and 553

Government procurement.

PART 513—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

1. The authority citation for 48 CFR parts 513, 514, 515 and 553 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. Section 513.505–70 is amended by revising paragraph (a) to read as follows:

513.505–70 Two-party contract forms.

(a) When a determination is made that it is in the Government's interest to negotiate a two-party contract (see FAR 13.104(f)) for services, Standard Form 1447, Solicitation/Contract, may be used, together with GSA Form 3519, Representations and Certifications.

* * * * *

PART 514—SEALED BIDDING

3. Section 514.201–70 is amended by revising paragraph (c) to read as follows:

514.201–70 GSA forms.

* * * * *

(c) The GSA Form 3501, Solicitation Provisions (Sealed bid), may be used when bids are solicited using Standard Forms 33, 1442 or 1447.

* * * * *

4. Section 514.202–7 is added to read as follows:

514.202–7 Facsimile bids.

Contracting officers may authorize facsimile bids (see FAR 14.201–6(w)) after considering factors outlined in FAR 14.202–7, provided that facsimile equipment is available in the office designated to receive bids, and procedures and controls have been established for receiving and safeguarding incoming bids.

5. Section 514.213 is added to read as follows:

514.213 Annual submission of representations and certifications.

The Commissioners of the Federal Supply Service, Information Resources Management Service, and the Public Buildings Service may establish procedures for contracting activities in their respective organizations and assign responsibility within contracting activities for centrally requesting, receiving, storing, verifying and updating offerors' annual submissions.

514.301–70 [Removed]

6. Section 514.301–70 is removed.

PART 515—CONTRACTING BY NEGOTIATION

7. Section 515.402 is amended by adding paragraph (c) to read as follows:

515.402 General.

* * * * *

(c) Contracting officers may authorize facsimile proposals (see FAR 15.407(j)) after considering the factors outlined in FAR 15.402(i), provided that facsimile equipment is available in the office designated to receive proposals, and procedures and controls have been established for receiving and safeguarding incoming proposals.

8. Section 515.414–70 is amended by revising paragraph (c) to read as follows:

515.414–70 GSA forms.

* * * * *

(c) The GSA Form 3502, Solicitation Provisions (Negotiated), may be used when offers are solicited using Standard Forms 33, 1442 or 1447.

* * * * *

9. Section 515.501 is revised to read as follows:

515.501 Definitions.

"Coordinating office," as used in this subpart, means the (a) Director of the Office of GSA Acquisition Policy, (b) Assistant Commissioner, Office of Commodity Management, FSS, (c) Assistant Commissioner, Office of Information Resources Procurement, IRMS, (d) Assistant Commissioner, Office of Procurement, PBS, or (e) Director, Regional Acquisition Management Staff. The Director of the Office of GSA Acquisition Policy serves as the coordinating office for Central Office activities outside of FSS, IRMS, and PBS.

Note: GSA Forms listed in this rule are made a part of the GSAR looseleaf edition. The forms will not appear in this volume of the **Federal Register** or title 48, chapter 5 of the Code of Federal Regulations. Copies may be obtained from the Director of the Office of GSA Acquisition Policy (VP), 18th & F Streets NW., Washington, DC 20405.

Dated: May 7, 1990.

Richard H. Hopf III,

Associate Administrator for Acquisition Policy.

[FR Doc. 90–11419 Filed 5–16–90; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 90920–0091]

Taking and Importing of Marine Mammals Incidental to Commercial Fishing Operations

AGENCY: National Marine Fisheries Service, NOAA, DOC.

ACTION: Interim final rule with request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) issues this interim final rule to establish a system of performance standards for operators of U.S.-flag tuna purse seine fishing vessels that catch yellowfin tuna associated with marine mammals in the eastern tropical Pacific Ocean (ETP). The purpose of this system is to reduce dolphin mortalities while allowing vessel operators with good records of marine mammal safety to continue fishing throughout the year. Operators with marine mammal mortality rates that are higher than the fleet average rate are required to have additional training before returning to the fishery while operators whose rates are substantially higher than fleet average, or remain high after training, will be suspended from the fishery in order to reduce the kill of marine mammals.

DATES: This rule is effective May 16, 1990. Comments on this rule must be received by September 3, 1990.

ADDRESSES: Comments should be mailed to E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731. A copy of an Environmental Assessment/Regulatory Impact Review prepared for this rule is also available upon request.

FOR FURTHER INFORMATION CONTACT: E.C. Fullerton (Director, Southwest Region, NMFS) telephone (213) 514–6196.

SUPPLEMENTARY INFORMATION:

Background

In 1988 Congress reauthorized the Marine Mammal Protection Act (MMPA) and amended it to require development and implementation of a system of performance standards to maintain the diligence and proficiency of U.S. tuna purse seine fishery vessel operators in the use of the best marine mammal safety techniques and equipment that are economically and technologically practicable. The system is required to

include provisions to identify vessel operators with a marine mammal mortality rate consistently and substantially higher than the average rate for the fleet as a whole. It must also include provisions for suspending or revoking certificates of operators whose unacceptably high mortality rates reflect a lack of diligence or proficiency in use of marine mammal safety techniques or equipment. Depending on an identified operator's rate of kill, the operator's certificate of inclusion would be suspended or the operator would be required to undertake remedial training and be subject to supplemental observer obligations. If such remedial training did not improve an operator's performance to acceptable levels, the operator's certificate of inclusion would be suspended or permanently revoked. These measures are intended to reduce marine mammal mortality for the U.S.-flag tuna purse seine fleet and to allow vessel operators who are diligent and proficient in using marine mammal safety techniques and equipment to have the entire year to catch yellowfin tuna.

Comments on the Proposed Rule

A variety of performance systems were considered including individual vessel quotas, vessel or operator performance ratings based on the kill of marine mammals per ton of yellowfin tuna caught in association with marine mammals, and a multiple-standard system for rating operator performance. The Environmental Assessment/Regulatory Impact Analysis (see **ADDRESSES**) prepared for this rule sets forth the details on the alternative systems that were considered. NOAA published a proposed rule for comment on November 1, 1989 (54 FR 46086). Prior to publication, several draft versions of that proposed rule were circulated to interested parties representing environmental and conservation groups, the tuna fishing industry, and Government agencies. Four comments were received on the proposed rule. The Marine Mammal Commission (MMC) commented on the proposed rule before its publication. The American Tunaboat Association (ATA), Greenpeace, and Earth Island Institute submitted comments during the public comment period. All four sets of comments are addressed below.

Comments from Earth Island Institute and Greenpeace expressed concern that the system proposed allowed too long a period for operators to continue higher than average kill rates before action is taken to suspend their certificate of inclusion and that the system involved too much industry involvement. They also restated their belief that dolphin mortality rate measured as kill-per-set of a purse seine on dolphins is a better indication of an operator's skill and diligence in releasing dolphins, rather than the kill-per-ton measure used in the proposed rule. Earth Island Institute recommended that the final rule not exclude trips with fewer than five sets made on dolphins. Greenpeace urged that the final rule not establish a new fishing season (*i.e.*, July 1 to June 30) for these performance standards. They also urged that the final rule establish standards for the performance of vessel certificate holders who are responsible for ensuring that the required marine mammal safety gear is aboard the vessel and is in seaworthy condition. Greenpeace further recommended that the National Marine Fisheries Service (NMFS) ensure that it has the authority to suspend or revoke the certificate of inclusion of any vessel operator or vessel owner who repeatedly violates the regulations related to dolphin safety or interferes with an observer's duties.

The ATA, which holds the MMPA general permit for tuna purse seining with dolphins, objected to the provision in the proposed rule for immediate suspension of the operator's certificate of inclusion after a trip during which the operator's mortality rate exceeds five times the fleet average. They argued that the MMPA amendments give no authority for such a provision; rather the amendments only require that the performance system identify operators who consistently and substantially exceed the average fleet mortality rate. Performance on one trip does not constitute a pattern of consistent poor performance in their view and an operator with a history of low dolphin kill should not have his certificate suspended based on problems on one trip. In a related comment, ATA asserted that high mortality sets can result from a variety of causes some of which are not within the operator's control. They recommended that the list of malfunctions on which the Regional Director may base exclusion of a high mortality set from the operator's mortality rate for a trip be expanded to include environmental conditions, such as subsurface currents, and dolphin behavior.

Comments from the MMC focussed on the statistical foundation of the standards set under the proposed performance system and urged, in particular, that the factors of 1.5 and 5.0 times the fleet average mortality rate should have a statistical basis. They pointed out that because sundown sets are now prohibited, only daylight sets from the past five years should be used to calculate the performance standard starting in 1990. In addition, they recommended NMFS exclude from the 5-year performance standard any trips or sets excluded by the Regional Director when determining an individual skipper's performance.

The MMC also recommended that NMFS review not only the operator's mortality rate at the end of each trip but also compare the operator's performance to the fleet standard at fixed intervals, annually for example. The MMC recommended that any skipper who failed to achieve the specified kill rate over a season or a specified number of trips would be subject to certificate suspension. This suggestion was intended to prevent the possibility of an operator alternating high mortality trips and acceptable mortality level trips and thereby never being subject to the more serious consequences of the system which are triggered by poor performance on consecutive trips. Finally, the MMC made certain recommendations regarding observer placement when less than 100 percent observer coverage is maintained and for permanently revoking certificates when operators are suspended for a third time in any five year period.

Changes From the Proposed Rule and Response to Comments

NMFS has considered the above comments in preparing this interim final rule. In response, changes from the proposed rule have been made in how the performance standards are derived, how the standards are applied, and the consequences of failing to meet the performance standards.

The selection of a mortality rate measurement for comparison under the interim final rule has been changed to the number of dolphins killed per purse seine set on dolphins. The reason for this change is that the number of sets on dolphin can be counted directly and independently by the observer while the number of tons caught in a set on dolphins must be estimated and is subject to some degree of uncertainty.

Rather than basing the performance standards on a multiple of the fleet average mortality rate during the most recent five year period (1.5 times in the proposed rule), NMFS is establishing fixed performance standards based on the actual performance of the U.S. fleet during the base period of July 1, 1984 through June 30, 1989. The basic performance standard identifies the mortality rate that separates 67 percent of the lower mortality rate trips from the

higher 33 percent mortality rates for trips. That mortality rate is 3.89 dolphins per set averaged for the trip. Similarly, the previously proposed standard of five times the fleet average, which would have caused immediate suspension after a single trip, is replaced by the mortality rate that separates the better 95 percent of operators during the base period from the poorer five percent. The mortality rate that will trigger immediate suspension of an operator's certificate is 26.30 dolphins killed per set averaged for the trip. It should be noted that these performance criteria are established as an interim rule for this year, are subject to review and comment, and may be modified subsequently through publication in the Federal Register.

NMFS agrees with the MMC recommendation that only daylight sets be used in determining the mortality rate standards. Since operators are permitted only to make daylight sets under the current regulations, an individual operator's performance should be compared to a fleet average which excludes the higher mortality sundown sets. In determining the 67 percent and 95 percent mortality rate standards, NMFS has excluded all identified sundown sets. NMFS also agrees with the MMC recommendation to exclude from the calculation of the fleet average all sets and all trips (*i.e.*, those trips making less than five sets on dolphin) that have been excluded by the Regional Director when calculating individual operators' performances under this rule. This will be taken into account upon review of the 1990 results.

NMFS agrees with the comment from Greenpeace regarding the potential for confusion raised by applying a performance standard from July through the following June. However, this concern is no longer an issue because the mortality rate standards under this rule will be fixed.

With regard to the length of time over which an operator's mortality rate performance is examined, the rule provides for a three level analysis. First, an operator's performance is evaluated after each trip. If the average mortality rate for that trip exceeds 26.30 dolphins per set, the operator's certificate is immediately suspended. Second, if the average mortality rate exceeds 3.89 dolphins per set but is less than 26.30 dolphins per set, the dolphin set logs from the trip will be reviewed and corrective actions will be ordered by the NMFS Regional Director as more fully discussed below in the Description of the Interim Final Rule. Third, an operator's performance is also evaluated on a multiple trip basis for determining whether suspension or revocation of a certificate of inclusion is warranted. An operator's certificate will be suspended if the operator's mortality rate exceeds 3.89 dolphins per set on three consecutive observed trips, or on any four observed trips (of which no more than two are consecutive) completed within a period of twenty-four months or on four observed trips (of which no more than two are consecutive) within eight consecutive observed trips. This change responds to the concerns raised about the potential for alternating unacceptable and acceptable mortality rates on fishing trips under the proposed rule which relied on performance in consecutive trips. A 24-month period was chosen, rather than the annual window to determine performance as recommended by the MMC, because trips may carry over from one year to the next and few fishermen would complete enough trips within a twelve month period to meet the four-trip criterion. To avoid these problems, NMFS has determined that the basic unit for reviewing an operator's performance should continue to be the fishing trip and that the suspension of the certificate of an operator failing any four trips completed within a 24-month period would meet the concerns of the MMC. However, NMFS plans to report on the first year implementation of the performance system in the first quarter of 1991. If modifications to the system are needed, the changes will be implemented at that time.

The initial period of suspension of an operator's certificate of inclusion has been changed from six months to one year to more effectively regulate those operators who have only a few trips as the certificated operator in a year. NMFS thinks that this system is sufficiently rigorous that it will not be necessary to permanently revoke a certificate after an operator is suspended for a third time in any five year period, as the MMC suggests, unless those suspensions resulted from mortality levels greater than 26.30 dolphins per set. However, if at any time one year suspensions prove inadequate, NMFS will reassess the sanctions.

The multiple trip suspension system is designed to comport with Congressional intent as reflected in the MMPA Amendments and Committee Reports that a performance system identify and correct certificate holders who "consistently" exceed the mortality rate of the fleet as a whole. Thus, the multiple trip review system is intended to correct an operator's performance problems and to suspend or revoke the certificate of inclusion only if corrective measures are not successful. To further ensure that the mortality rate observed for an operator is representative of that operator's performance, NMFS will not consider under this program performance on fishing trips with five or fewer sets on marine mammals. Five or fewer sets on marine mammals would likely account for less than ten percent of the fishing effort on a trip. However, an operator's certificate will be suspended if his mortality rate exceeds 26.30 dolphins per set on a trip regardless of the number of sets on marine mammals.

Immediate suspension of an operator's certificate at the end of a trip during which the mortality rate substantially exceeds the fleet average is retained in this interim final rule with changes to ensure that an operator with an excessively high mortality rate on a single trip is now allowed to continue fishing for three trips. The previously proposed standard of five times the fleet average, which would have caused immediate suspension after a single trip, is replaced by the mortality rate that separates the better 95 percent of operators during the base period from the poorer five percent (*i.e.*, 26.30 dolphins killed per set). Even a single trip typically has multiple marine mammal sets. According to the analysis of fishing trips during the base period, approximately six percent of the 85 observed operators exceeded this mortality rate on a trip. Some of these trips included equipment breakdowns that may have been excluded from the calculation. NMFS finds that, in cases of exceptionally high dolphin kill rates, immediate suspension of the operator's certificate pending review is reasonable and is supported by the statute's requirement that the performance system have "provisions for suspension or revocation of certificates of inclusion of those certificate holders whose unacceptably high rate of incidental taking reflects a lack of diligence or proficiency in the use of the best marine mammal safety techniques and equipment."

To ensure that operators who have substantial history of consistently low dolphin mortality are not subjected to this suspension provision unfairly, the interim final rule has incorporated an additional review appeal stage for operators who may exceed 26.30 dolphins killed per set on a trip. Upon petition of the operator, the Regional Director will review the operator's performance on the previous eight consecutive trips. If the operator has not exceeded the basic performance standard on any of the previous eight

trips, the Regional Director may lift the suspension and the operator will be subject to the normal performance review system as a first trip exceeding the base performance standard. The suspension of an operator without eight previous observed trips cannot be lifted under this provision. Eight trips represents approximately two years of fishing for an active operator.

Involvement of fishermen with practical experience and proven histories of low dolphin mortality as well as other gear experts is critical to the success of this system in analyzing the causes of and recommending steps to prevent high mortality rates. In the proposed rule the ATA, the General Permit holder, was identified to fill that role. In this interim final rule, the Porpoise Rescue Foundation (PRF) will be the vehicle for bringing these experts together. The PRF is organized to operate exclusively for charitable, educational, and scientific purposes. The PRF Articles of Information state that the purpose of PRF is to promote and support research, studies, education, training and activities relating to maintaining the present dolphin and marine mammal population by any available means including reduction of dolphin mortality and serious injury to as low as possible.

The decision on actions to be taken by an operator or against an operator's certificate by NMFS remains the responsibility of the NMFS Southwest Regional Director. Regarding comments concerning NMFS' authority to suspend or revoke certificates for repeated violations of regulations or for interfering with the observer's duties, such authority exists already under the MMPA and 15 CFR part 904 and is not limited by this interim final rule.

With regard to expanding the scope of causes of malfunctions that may exclude a set from consideration under the performance system, NMFS has retained the relatively short list of specific equipment breakdowns that was published in the proposed rule and is restated in the description of this interim final rule. Environmental conditions and dolphin behavior are factors in determining marine mammal mortality, but the skilled operator recognizes circumstances that may lead to high mortality in a set and must choose whether to make each set.

The vessel certificate holders continue to be responsible for ensuring that the vessel has the required marine mammal safety gear and that it is maintained in seaworthy condition. If the required marine mammal safety gear is not available for use, sets involving marine mammals may not be made. Vessel certificate holders are subject to fines for failure to properly equip their vessel(s) for fishing in association with marine mammals. This gear is inspected by an NMFS observer on every observed trip. The results of the observer's inspection are provided to the vessel certificate holder after the trip is completed so that any potential deficiencies may be corrected before the next fishing trip. The observer records also are reviewed by NMFS enforcement agents to detect violations of the regulations. Whether or not a notice of gear deficiency is issued, the vessel certificate holder is responsible for ensuring that the required marine mammal safety equipment is carried on the vessel and maintained in a seaworthy condition.

Description of the Interim Final Rule

The performance system tracks individual operators and measures their performance against a kill-per-set standard derived from an analysis of the data recorded on observed fishing trips during a five-year, based period of July 1, 1984, through June 30, 1989. The basic mortality rate standard which will trigger review and remedial actions under the performance system is fixed at 3.89 dolphins killed per set, the mortality rate that separates the 67 percent lower mortality rate trips from the 33 percent higher mortality rate trips during the based period. In determining this mortality rate, sundown sets were excluded from the calculation of the average mortality rate for trips during the base period.

For any fishing trip during which one or more purse seine sets are made on marine mammals, any operator who has an observed mortality rate exceeding 26.30 marine mammals killed per purse seine set on marine mammals will have his operator certificate of inclusion suspended immediately for a period of one year or until NMFS determines that the cause of the high mortality rate on the trip was beyond the control of the operator. A kill rate of 26.30 dolphins per set or less was achieved by 95 percent of the operators during the base period. A ranking in the worst 5 percent indicates that a serious problem in need of immediate action exists.

If the operator's certificate is suspended, NMFS will require the operator to participate in remedial training to review marine mammal release and safety techniques before making another trip as a certificated operator.

An operator whose certificate of inclusion is suspended for exceeding the 26.30 rate but has a substantial history of consistently low dolphin mortality (*i.e.*, not exceeding 3.89 dolphins per set on eight previous consecutive observed trips) may petition the Regional Director for relief from the suspension. Upon petition of the operator, the Regional Director will review the operator's performance on the previous eight consecutive trips. If the operator has not exceeded the basic performance standard (3.89 dolphins killed per set) on any of the previous eight trips, the Regional Director may lift the suspension and the operator will be subject to the normal performance review system as a first trip exceeding the basic performance standard. The suspension of an operator without eight previous observed trips cannot be lifted under this provision. Eight trips represents approximately two years of fishing for an active operator.

An operator whose certificate of inclusion is suspended under this system of performance standards may appeal the suspension to the NOAA Assistant Administrator for Fisheries. The appeal may be presented at the option of the operator at a hearing before a person appointed by the assistant administrator to hear the appeal. The Assistant Administrator will determine, based upon the record, including any record developed at a hearing, if the suspension or revocation is supported under the criteria set forth in these regulations.

Fishing trips with five or fewer sets on marine mammals are not subject to evaluation under the operator performance system provided the mortality rate does not exceed 26.30 dolphins per set. A representative fishing trip for a U.S.-flag purse seine vessel in the ETP yellowfin tuna fishery would include 50 or more purse seine sets. Therefore, five or fewer sets on marine mammals would likely account for less than ten percent of the fishing effort on a trip and would not be representative for determining consistency of performance. For this reason, trips with five or fewer marine mammal sets will not be considered trips under the performance system for determining the operator's performance in consecutive trips.

For fishing trips during which more than five sets on marine mammals are made, the operator will not have met the performance standard for that trip if the marine mammal mortality rate exceeds 3.89 dolphins killed per set. The consequence of not meeting the standard for a trip depends upon the operator's performance on previous trips.

Should an operator fail to meet the performance standard on one trip, the

NMFS Regional Director will request that the PRF review the records of that fishing trip and recommend to the operator corrective actions to reduce marine mammal mortality before the operator's next fishing trip. In conducting this review, it is expected that the PRF will consult with expert skippers and apply whatever other expertise may be appropriate. The PRF will inform the Regional Director what actions were taken. The Regional Director may require the operator to participate in additional training in marine mammal safety techniques or to take other actions to reduce mortality. The Regional Director also will order the operator to carry an observer on the next trip. However, under the current schedule, an observer is assigned to every vessel departing on a trip. Should an operator refuse or fail to follow the remedial actions ordered by the Regional Director, the operator's certificate of inclusion will be suspended for one year.

An operator whose average kill-per-set exceeds 3.89 marine mammals on a second consecutive trip or on a third trip within a 24-month period or on a third trip within eight consecutive observed trips will be required to undergo full review once again by the PRF and may be required by the Regional Director to participate in additional training related to marine mammal release and to carry on the next trip an experienced operator with particular expertise in reducing marine mammal mortality. The PRF will provide the experienced operator subject to the Regional Director's approval. The operator must be accompanied by an observer on that trip.

If the operator's average kill-per-set exceeds 3.89 marine mammals on a third *consecutive* trip, the operator's certificate of inclusion automatically becomes invalid for a period of one year upon the Regional Director notifying the operator. A one year suspension will be applied also to an operator who exceeds 3.89 dolphins killed per set during any four out of eight consecutive observed trips or any four observed trips within a 24-month period.

After a period of an operator's certificate of inclusion being suspended, the operator is required to carry an observer on the first trip following the suspension. After completion of a suspension and reinstatement of a certificate, an operator's certificate of inclusion will become invalid again for a period of one year if the operator has an average marine mammal mortality rate exceeding 3.89 dolphins per set on any subsequent trip which results in the operator reaching the standard of four out of eight consecutive observed trips or any four observed trips within a 24-month period based on trips completed prior to as well as after the original suspension. Under this regulation, therefore, an operator failing to keep trip mortality below 3.89 dolphins per set on his first trip after returning from a suspension would be suspended again for one year.

To give sufficient comparable weight to a suspension imposed on an operator for a trip exceeding 26.30 dolphins killed per set when evaluating a skipper's performance after reinstatement, each 26.30 dolphin kill suspension will be considered equivalent to and counted as a suspension for exceeding the average marine mammal mortality rate of 3.89 dolphins killed per set for three consecutive trips. For example, a skipper who has completed his suspension for exceeding the trip average of 26.30 dolphins killed per set, will be considered to have made three consecutive trips with an average set rate exceeding 3.89 dolphins killed per set and must have eight consecutive observed trips with mortality rates less than or equal to 3.89 dolphins per set in order to avoid a second suspension.

When determining whether an operator has exceeded the mortality standard on a trip, the Regional Director may exclude from consideration one or more sets, if the operator establishes to the satisfaction of the Regional Director that the high kill in those sets was caused by an unforeseeable equipment breakdown that could not have been avoided by reasonable diligence in operating or maintaining the vessel. When considering a petition to exclude a set, the Regional Director will examine observer records to determine whether one or more of the following equipment problems occurred during the set and was the cause of marine mammal mortality: Failure of the main engine, net skiff, winch, power block, bow thruster; or breakage of the purse cable, towline cable, leadline, vang guy line, topping winch cable, bunchline, or corkline. Other equipment problems will be considered on a case-by-case basis and may allow for the exclusion of the set from calculations under this performance system. Speed boat failure will not be an acceptable reason for excluding a set because multiple speed boats should be available when fishing on dolphin.

If an equipment malfunction occurred and was the cause of dolphin mortality in the set, the Regional Director will determine whether the equipment malfunction could have been foreseen or prevented. If the same or a related equipment failure occurred on previous sets, establishing that the malfunction should have been foreseen, the set in question will not be excluded from calculating the operator's mortality rate.

Should exclusion of a set or sets cause the operator's performance to fall within the standard performance, that trip will not be counted as a trip for the purposes of the performance evaluation system. Such a trip will count neither as a trip which exceeded the standard nor as a trip that fully met the performance standard in determining performance on consecutive trips.

The Regional Director in making these various determinations on performance will consider whatever information is provided by the operator, the vessel certificate of inclusion holder, and the PRF, as well as NMFS' own records. In order to implement this peformance system, NMFS and Inter-American Tropical Tuna Commission (IATTC) have agreed on a procedure for NMFS to obtain the necessary data from observers placed under the IATTC program. As a part of this procedure, the certificate holders authorize release of the observer logbooks from IATTC to NMFS. If both the vessel and operator certificate holders do not provide releases before observer placement arrangements are completed, the observer will be placed as a NMFS observer.

Timely delivery and review of observer data are critical because NMFS determination of the operator's status in the performance system and, if warranted, trip review and remedial training must take place before the operator departs on his next trip. In addition, the certificated fishing vessel cannot depart on its next trip until the required IATTC observer records are delivered to the NMFS Tuna/Porpoise Branch Field Office, 1520 State Street, suite 200, San Diego, California 92101.

NMFS will review the observer records and notify the operator whether the performance standard was met and, if not, what steps must be taken, within five days (excluding Saturdays, Sundays and Federal holidays) after receiving the complete data in the Tuna/Porpoise Management Branch Office in San Diego, California. An operator cannot operate a vessel until the Regional Director determines whether the operator met or failed to meet the performance standard on the previous trip.

The General Permit holder also will be notified of all failures to meet the standards. The Expert Skippers' Panel, now used by the General Permit holder

to work with operators, is expected to continue its function for the General Permit holder of monitoring individual operator's performance throughout the year and offering assistance to operators who have marine mammal related problems before those operators become subject to the sanctions under the performance system.

Expected Impacts

The primary impact of this regulation will be to increase the personal accountability of individual tuna vessel operators for their marine mammal mortality. The system is expected to encourage operators to improve their personal marine mammal safety performance, thereby reducing the overall fleet mortality rate to the benefit of the marine mammal populations. The fleetwide quota now allows poorly performing operators to continue fishing to the detriment of the skilled and conscientious operators.

Existence of an individual performance review by the General Permit holder and counseling by the Expert Skippers' Panel under the current situation has had a positive effect on the performance of some operators. The additional influence of NMFS authority and the prospect of having the operator's certificate of inclusion suspended or revoked for inadequate performance is expected to increase the willingness of operators to cooperate with the General Permit holder and and PRF to reduce marine mammal mortalities.

The impact of the performance system in this final rule differs from that outlined in the proposed rule and in the environmental assessment. More operators will fail to meet the standards under this system, unless their dolphin safety performance improves substantially. If this performance system had been applied to the observed trips, excluding sundown sets, between July 1984 and June 1989 (without excluding any sets for equipment breakdown), the following results would have occurred. Due to the annual variability in dolphin mortality rates and fishing activity, it is not possible to predict whether the performance of current operators would produce similar results.

One Year Suspensions

—Of 16 operators who made at least eight observed trips four (25 percent) would have had their certificate of inclusion suspended for one year.
—The certificates of five of the 85 operators (5.9 percent) who had at least one observed trip would have been suspended for one year for exceeding the 26.3 kill-per-set level.
—The certificates of four of the 41 operators (9.8 percent) with three or more observed trips would have been suspended for one year for exceeding the 3.89 kill-per-set level on three consecutive trips.
—Three of the 36 operators (8.3 percent) with four or more trips would have been suspended for one year for exceeding the 3.89 kill-per-set level on four non-consecutive trips within eight observed trips.

Second Suspension of an Operator's Certificate

—Of the 16 operators with eight or more observed trips, 15 exceeded the 3.89 kill-per-set level at least once in eight trips. Therefore, there is a high likelihood that an operator whose certificate is suspended and then reinstated after one year would be subject to a second suspension based upon his performance after reinstatement.

Expert Operator Required

—Nine of the sixteen operators with eight or more trips would have been subject to the potential of having an expert operator assigned to them for a fishing trip based on exceeding the 3.89 kill-per-set level on two consecutive trips or three trips within eight trips.

Suspension of an operator's certificate of inclusion precludes that individual from serving as the certificated operator on a tuna purse seine vessel under the General Permit issued to the ATA. If a suspended operator does accompany a vessel on a fishing trip during the term of suspension, another individual holding a valid operator's certificate must direct the fishing operations. Since the number of certificated operators exceeds the number of certificated vessels by a factor of two, an operator under suspension would likely be replaced on the vessel for at least the period of suspension. During 1987 and 1989, when 100 percent of the trips were observed, more than 80 percent of the operators made two or more trips per year. Therefore, suspension of a certificate of inclusion would cause about 80 percent of any suspended operators to forego making between one and six trips as the certificated operator of a tuna vessel.

The requirement to carry an expert operator/consultant and an observer may reduce the crew available for fishing operations causing a potential reduction of efficiency which cannot be quantified at this time. In addition, the expense of the expert operator/consultant may be borne in part by the operator, depending on the operator's arrangements with the PRF.

Marine mammal populations of the ETP will benefit from this regulation, but the benefits will accrue slowly. Fleet performance also is expected to improve due to the sundown set prohibition (see 54 FR 411, Jan. 6, 1989). The magnitude of the reduction in marine mammal mortality related to the performance system will depend on several factors.

NMFS will monitor the system carefully and report the results of the first year's application in the first quarter of 1991.

Classification

The NOAA Assistant Administrator for Fisheries has determined, based on an environmental assessment (EA) prepared by NOAA, that the modifications to the regulations being made at 50 CFR 216.24 (c) and (d) will not have a significant impact on the environment. As a result of this determination, an environmental impact statement will not be prepared. The EA is available upon request (see **ADDRESSES**).

The Administrator of NOAA has determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. NMFS prepared a regulatory impact review as part of its EA which concluded that this rule will not result in (1) an annual major increase in costs or prices for consumers, individual industries or government agencies; (2) an annual effect on the economy of $100 million or more; or (3) significant adverse effect on competition, employment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. The annual economic impact of this rule on the U.S. tuna fishery in the ETP is related to the expense of providing an expert operator/consultant to accompany operators that fail to meet the performance standard on two trips. The estimated cost is $25,000 per trip and the frequency of requiring an expert operator is unpredictable at this time. Based on applying the performance standard to fishing trip data in the base period, 18 percent of the operators who made at least three observed trips would have exceeded the performance standard on two consecutive trips without consideration of possible exclusions of gear malfunction sets. How the costs related to that operator/consultant will be paid has not yet been determined, except that the U.S. Government will not bear the expense. A copy of the Regulatory Impact Review

is available upon request (see **ADDRESSES**).

This regulation will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act. In 1989, 28 vessels, which are about 35 percent of the U.S.-flag tuna purse seiners larger than 400 tons carrying capacity, fished in the ETP for yellowfin tuna associated with marine mammals. A similar number are expected to operate this year and will be subject to this rule. These vessels all have essentially the same capabilities and would be affected similarly. The expected operating cost increase is not a significant increase for a U.S. tuna vessel operation. The EA prepared by NMFS serves as an initial regulatory flexibility analysis for the purposes of the Regulatory Flexibility Act.

This rule does not contain collection of information requirements subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Information required under this rule is collected and reported by observers employed by NMFS or IATTC.

In order to attempt to meet the statutory requirement that this rule become effective by January 1, 1990, the 30-day delay normally required under the Administrative Procedures Act is waived. This waiver will not cause hardship to the affected public. The number of tuna vessel operators affected is small and their representatives have been involved in the development of this performance system and are aware of its provisions.

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

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: May 9, 1990.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble to this rulemaking, section 50 CFR part 216 is amended as follows:

PART 216—[AMENDED]

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise stated.

§ 216.24 [Amended]

2. In § 216.24 paragraph (c)(4)(ii) is amended by removing the old address, and adding in its place the words "National Marine Fisheries Service, Southwest Region, 1520 State Street, suite 200, San Diego, California 92101."

3. In § 216.24 a new paragraph (c)(9) is added to read as follows:

(c) * * *

(9) By using an operator or vessel certificate of inclusion under the Category 2 general permit, the certificate holder authorizes the release to the National Marine Fisheries Service of all data collected by observers aboard purse seine vessels during fishing trips under the Inter-American Tropical Tuna Commission observer program or any other international observer program in which the United States may participate. The certificate holder must furnish the international observer program all release forms required to provide the observer data to the National Marine Fisheries Service. Data obtained under such releases will be used for the same purposes as data collected directly by observers placed by the National Marine Fisheries Service and will be subject to the same standards of confidentiality.

4. In § 216.24 paragraphs (d)(2) (ii)(C), (iii)(A) and (v)(B) are amended by removing the old address, and adding in its place the words "National Marine Fisheries Service, Southwest Region, 1520 State Street, suite 200, San Diego, California 92101, telephone 619–557–6540."

5. In § 216.24(d)(2) a new paragraph (ix) is added to read as follows:

(d) * * *

(2) * * *

(ix) Operator Certificate of Inclusion Holder Performance Requirements.

(A) The certificate of inclusion of any operator who makes one or more purse seine sets on marine mammals resulting in an average kill-per-set for a fishing trip which exceeds 26.30 marine mammals is suspended. Such suspension shall be effective upon notification from the National Marine Fisheries Service Southwest Regional Director and shall be for a period of one year. If the operator exceeds the 26.30 marine mammals killed per set average for a subsequent trip within three years of reinstatement, the certificate is suspended. Such suspension shall be effective upon notification by the Regional Director and shall be for a period of one year. If the operator's average mortality rate exceeds 26.30 marine mammals kill-per-set on a subsequent trip within five years of the second reinstatement, the certificate is revoked. The revocation shall be effective upon notification by the Regional Director and shall be permanent. An operator who is subject to a suspension or revocation under this paragraph may petition the Regional Director to review the operator's marine mammal mortality history. The Regional Director may reinstate the operator's certificate if the operator demonstrates that the operator has not exceeded a kill-per-set of 3.89 marine mammals during any of the eight consecutive observed trips immediately preceding the trip which caused the suspension. However, that trip will be considered as a single trip exceeding a kill-per-set of 3.89 marine mammals and subject to the conditions described in paragraph (d)(2)(ix)(F) of this section. The Regional Director may exclude from the mortality calculation for a trip, those purse seine sets in which marine mammal mortality resulted from an unavoidable and unforeseeable equipment breakdown. The mortality rate calculated after exclusion of a set or sets under this paragraph will determine the action taken under this performance evaluation system.

(B) Fishing trips with five or fewer sets on marine mammals and an average kill-per-set less than or equal to 26.30 marine mammals are not subject to further action under the operator performance system. Such trips neither count as trips meeting the performance standard nor count as trips failing to meet the performance standard for the purpose of determining actions based on performance in consecutive fishing trips.

(C) Fishing trips with more than five sets on marine mammals resulting in an average kill-per-set of not greater than 26.30 marine mammals are subject to review under the operator performance system as follows:

(*1*) The operator's kill of marine mammals in purse seine sets on marine mammals will be determined from observer records.

(*2*) The kill-per-set will be determined by dividing the total kill of marine mammals by the number of sets involving marine mammals during the fishing trip.

(*3*) If the calculated kill-per-set for the trip is equal to or less than 3.89 marine mammals, the operator has met the performance standard and is not subject to further action under the performance system based on the current trip.

(*4*) If the calculated kill-per-set for the trip exceeds 3.89 marine mammals, the operator failed to meet the mortality performance standard and is subject to further action under the performance system.

(D) The Southwest Regional Director may exclude from the mortality calculation for a trip, those purse seine sets in which marine mammal mortality resulted from an unavoidable and unforeseeable equipment breakdown. Should exclusion of a set or sets cause the operator's performance to fall within the standard performance, that trip will not be counted as a trip for the purposes of the performance evaluation system.

(E) An operator shall not serve as a certificated operator until the Southwest Regional Director has determined under this subpart and notified the operator that the operator's marine mammal mortality rate performance met or failed to meet the applicable performance standard on the previous observed trip. The Southwest Regional Director will make the determination within five days (excluding Saturdays, Sundays and Federal holidays) after receiving the observer data from the trip.

(F) An operator whose average marine mammal mortality rate exceeds 3.89 kill-per-set for a trip must have observer data and other pertinent records reviewed by the Southwest Regional Director and the Porpoise Rescue Foundation for the purpose of determining the causes of higher than acceptable mortality, must participate in supplemental marine mammal safety training as ordered by the Southwest Regional Director and must comply with actions for reducing marine mammal mortality which may be ordered by the Southwest Regional Director. The operator must carry an observer on the next trip for which he serves as the certificated operator. If the Southwest Regional Director determines that the required training or other ordered action has not been completed satisfactorily or is refused, the Regional Director will suspend the operator's certificate of inclusion for one year.

(G) An operator whose average marine mammal mortality rate exceeds 3.89 marine mammals killed per set on two consecutive trips or on three trips ending within a period of twenty-four months or on three trips within eight consecutive trips must have observer data and other pertinent records reviewed by the Southwest Regional Director and the Porpoise Rescue Foundation for the purpose of determining the causes of higher than acceptable mortality, must participate in supplemental marine mammal safety training as ordered by the Southwest Regional Director and must comply with actions for reducing marine mammal mortality which may be ordered by the Southwest Regional Director. The operator must carry an expert fisherman (*i.e.*, an experienced vessel operator with a history of low dolphin mortality), if required to do so by the Southwest Regional Director, to assist in perfecting marine mammal safety techniques, and must also carry an observer on the next trip for which he serves as the certificated operator. The selection of the expert fisherman will be provided by the General Permit holder or the Porpoise Rescue Foundation and subject to the approval of the Southwest Regional Director. If the Southwest Regional Director determines that the required training or other ordered action has not been completed satisfactorily or is refused, the Regional Director will suspend the operator's certificate of inclusion for one year.

(H) The operator certificate of inclusion or an operator whose average marine mammal mortality rate exceeds 3.89 kill-per-set on three *consecutive* trips, or on any four trips (of which no more than two are consecutives) completed within a period of twenty-four months or on four trips (of which no more than two are consecutive) within eight consecutively observed trips, is suspended upon notification to the operator from the Regional Director.

(I) Following a suspension and a reinstatement of a certification of inclusion, the operator certificate of inclusion is suspended for any operator whose average marine mammal mortality rate exceeds 3.89 marine mammals killed per set on any subsequent trip as required under the criteria for a suspension established in paragraph (d)(2)(ix)(H) of this section. Under this paragraph, trips completed by the operator prior to suspension will be carried over and counted along with trips completed subsequent to the suspension. Such suspension shall be effective upon notification from the NMFS Southwest Regional Director and shall be for a period of one year. For purposes of this paragraph only, each suspension under paragraph (d)(2)(ix)(A) of this section will be considered equivalent to and counted as three consecutive trips exceeding the trip kill rate of 3.89 marine mammals killed per set.

(J) An operator may appeal suspension of revocation of a certificate of inclusion under paragraphs (d)(2)(ix)(A), (d)(2)(ix)(H), or (d)(2)(ix)(I) of this section to the Assistant Administrator. Appeals must be filed in writing within 30 days of suspension or revocation and must contain a statement setting forth the basis for the appeal. Appeals must be filed with the Regional Director, Southwest Region, NMFS. The appeal may be presented at the option of the operator at a hearing before a person appointed by the Assistant Administrator to hear the appeal. The Assistant Administrator will determine, based upon the record, including any record developed at a hearing, if the suspension or revocation is supported under the criteria set forth in these regulations. The decision of the Assistant Administrator will be the final decision of the Department of Commerce.

(K) An operator must carry an observer on the operator's first trip after a suspension under this performance system has expired. An operator must also participate in supplemental marine mammal safety training and comply with actions for reducing marine mammal mortality as ordered by the Southwest Regional Director before making another trip as a certified operator.

(L) A person obtaining an operator certificate of inclusion for the first time must carry an observer on the operator's first trip.

* * * * *

[FR Doc. 90-11403 Filed 5-16-90; 8:45 am]
BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 900239-0039]

Groundfish of the Gulf of Alaska; Fishery Conservation and Management

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

ACTION: Emergency interim rule, extension of effective date.

SUMMARY: An emergency interim rule that provides quarterly allocations for halibut for hook-and-line and trawl gear is in effect through May 15, 1990. The Secretary of Commerce (Secretary) extends the emergency interim rule for an additional 90 days, from May 16, through August 13, 1990. The extension of the emergency interim rule is necessary to promote effective management of the groundfish fishery. Specifically, this emergency rule reduces the likelihood of a premature closure of the trawl or hook-and-line groundfish fisheries by spreading the halibut prohibited species catch (PSC) limits for 1990 over the year, thereby allowing for a greater opportunity to harvest established groundfish quotas.

EFFECTIVE DATE: Effective from 0001 hours, Alaska Daylight Time, May 16, 1990, through 2400 hours, Alaska Daylight Time, August 13, 1990.

ADDRESSES: Copies of the environmental assessment may be obtained from Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Susan Salveson (Fishery Management Biologist, NMFS), (907) 871–7229.

SUPPLEMENTARY INFORMATION: Under section 305(e) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Secretary promulgated an emergency interim rule that allocated PSC limits for Pacific halibut for hook-and-line and trawl gear on a quarterly basis in the Gulf of Alaska, as recommended by the North Pacific Fishery Management Council (Council) (55 FR 5994; February 21, 1990). That rule was effective for 90 days, from February 15, 1990, through May 15, 1990. With the agreement of the Council, the Secretary extends the emergency interim rule for another 90 days under section 305(e)(3)(B), because conditions warranting the emergency still exist. In addition to the extension of the emergency interim rule, the Council also recommends a subdivision of the trawl gear PSC allocation for Pacific halibut available on July 1, 1990. Therefore, the Secretary is considering an amendment to this emergency interim rule for possible implementation before July 1, 1990, to further subdivide the PSC limit for Pacific halibut for trawl gear. The Council recommends this action because of a projected early closure of the bottom trawl in the Bering Sea and Aleutian Islands area and an anticipated movement of the bottom trawl effort into the Gulf of Alaska that would contribute toward high halibut bycatch rates that normally occur in the summer trawl fishery for Pacific cod.

List of Subjects in 50 CFR Part 672

Fisheries.

Dated: May 14, 1990.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 672 is amended to read as follows:

PART 672—[AMENDED]

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

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

§ 672.20 [Amended]

2. In § 672.20, the effective dates for temporary suspension of paragraphs (f)(1), (f)(3)(ii), and (f)(3)(iii), and temporary addition of paragraphs (f)(4) and (f)(5), are extended from May 16, 1990 through August 13, 1990.

[FR Doc. 90–11522 Filed 5–14–90; 2:04 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 55, No. 96
Thursday, May 17, 1990

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

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Nonmanufacturer Rule Waiver Procedures; Small Business Size Standards

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) proposes to amend its regulations to provide for the granting of waivers of the so-called "nonmanufacturer rule," pursuant to the Business Opportunity Development Reform Act of 1988 (Pub. L. 100–656). That Act establishes in law the previously existing regulation which required that recipients of small business set-asides and 8(a) contracts be themselves small businesses and that they also provide the product of a small business manufacturer or processor. The new legislation also authorizes SBA to grant waivers for classes of products for which there are no small business manufacturing or processing concerns in the Federal market. Under the proposed rule, a small business would be permitted to supply a product manufactured or produced by a manufacturing or processing concern which is other than a small business if such a product is among a class of products for which there are no small business manufacturing or processing concerns in the Federal market, as determined by SBA.

DATES: Comments will be accepted until June 18, 1990.

ADDRESSES: Written comments should be addressed to: Mr. Robert J. Moffitt, Chairman, Size Policy Board, Small Business Administration, 1441 L Street NW., room 600, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Thomas, Program Manager, Size Determinations Program, Office of Procurement Policy and Liaison, 202/653–6588.

SUPPLEMENTARY INFORMATION: On November 15, 1988, the enactment of Public Law 100–656 incorporated into the Small Business Act the previously existing regulation that recipients of small business set-asides and 8(a) contracts be themselves small businesses and that they also provide the product of a small business manufacturing or processing concern.

Section 303(h) of the Act provided for waiver of this requirement by SBA for any class of products for which there are no small business manufacturing or processing concerns in the Federal market. The requirement that a small business supplier provide a product manufactured or produced by a small business concern in contracts set-aside for small business or under 8(a) contracts is already in SBA regulations, 13 CFR 121.906(b). These proposed regulations would implement the statutory provisions for waivers of those requirements. Under the proposed rule, a small business would be permitted to supply a product manufactured or produced by a manufacturing or processing concern which is other than a small business if such a product is among a class of products for which there are no small business manufacturing or processing concerns in the Federal Market, as determined by SBA.

Section by Section Review

Section 121.2101 would describe the underlying policy of the law that the SBA may waive the nonmanufacturer rule for any class of products for which there are no small manufacturing or processing concerns in the Federal market.

Section 121.2102 would provide definitions of the pertinent terms: "class of products", "Deputy Administrator", "Federal market", "nonmanufacturer rule", and "United States". SBA is particularly interested in obtaining the views of the public concerning the definition of "Federal market".

Section 121.2103 would describe the procedures to be followed in granting waivers. Any person or concern wishing to suggest a waiver would submit a request to SBA, together with supporting evidence that a waiver is justified under the criterion established by Public Law 100–656. If SBA determined that there is a sufficient cause to conduct a review, SBA would then conduct a review, including publication in the **Federal Register** of a Notice of the Agency's interest in sources and consideration of the possibility of issuance of a waiver. The waiver issuance or denial would be the result of determinations and findings by the Deputy Administrator and would be published in the **Federal Register** as a Notice. Public comment would also be accepted on that Notice. In terms of time, this process would mean that the party requesting a waiver would receive prompt notice if SBA found no grounds for a study or if SBA had found a small business manufacturing or processing concerns of the class of products in question. It is anticipated that the entire process would normally be completed within 90 days, although complex or disputed cases would require longer periods.

Section 121.2104 would set forth the single statutory standard which must be met to justify issuance of a waiver. Specifically, a waiver would be granted when there are no small business manufacturing or processing concerns of the class of products in the Federal market. A "class of products" is by the Federal Procurement Data System, or a product line within a PSC. For example, in evaluating whether a waiver would be appropriate for a type of construction equipment called a "loader", SBA could consider the product line of "loaders" which is within the PSC for "construction equipment", but would not consider a subdivision of loaders by capacity or some other product characteristic.

In deciding to define "class of products" by PSCs or product lines within PSCs, SBA also considered defining "class of products" in terms of PSCs alone or subdivisions of product lines within a PSC (product differentiations). Both alternative definitions were rejected. The first alternative which would use PSCs alone was rejected because, in most cases, PSCs are such broad industry categories that no waivers would be granted. Since Congress, by passing the waiver authorization, clearly intended that some waivers be granted, using PSCs alone would not comport with congressional intent in most cases. The second alternative was also rejected. By defining "class of products" to include product differentiations would so vastly increase the potential number of product variations for which waivers might be

sought that it would be extremely costly and difficult to administer. Further, it could permit so many waivers that it would defeat the purpose of the nonmanufacturer rule, which requires the nonmanufacturer to supply the product of a small business manufacturing or processing concern. Therefore, SBA has defined class of products in terms of a PSC or a product line within a PSC. Section 121.2104 would also identify the principal data.

SBA will presume that the United States is the relevant Federal market area for a product, unless it is demonstrated that a class of products is not procured on a national basis. If the practical aspects of providing an item create a geographic limitation on competition, SBA will consider waivers on that basis. Section 121.2104 sets forth examples of situations in which geographic waivers would be appropriate.

Section 121.2105 would contain a list of the classes of products for which waivers have been granted.

A review of eight classes of construction equipment products was recently conducted to determine if there were any small manufacturing concerns in the Federal market. Based on this review, a Notice was published in the **Federal Register** on December 28, 1989, granting waivers for Backhoes, Graders, Scrapers, all product lines in PSC 3805; and, Cranes, a product line in PSC 3810. These waivers were effective on December 21, 1989, and public comment was solicited.

Compliance With Executive Orders 12291 and 12612, the Regulatory Flexibility Act (55 U.S.C. 601 et seq.) and the Paperwork Reduction Act (45 U.S.C. 601 Ch. 35)

SBA has determined that this proposed rule would not constitute a major rule for purposes of Executive Order 12291 because the annual economic effect would not exceed $100 million. Since there are very few classes of products for which there are no small manufacturing or processing concerns in the Federal market as defined, SBA anticipates granting only a small number of waivers affecting a small number of businesses.

SBA certifies that this proposed rule does not warrant the preparation of a Federalism Assessment in accordance with Executive Order 12612.

For purposes of compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, this proposed rule, if promulgated in final form, would not have a significant economic effect on a substantial number of small entities for the same reasons that it would not be a major rule.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, § 121.2103 will require reporting of information to SBA because it sets forth specific information needed in a request for a waiver. SBA is currently seeking approval of this requirement by the Office of Management and Budget.

List of Subjects in 13 CFR Part 121

Small businesses, Size standards.

For the reasons set forth above, subpart B of part 121 of title 13, Code of Federal Regulations (CFR), is proposed to be amended as follows:

PART 121—[AMENDED]

1. The authority citation for part 121 would continue to read as follows:

Authority: Sections 3(a) and 5(b)(6) of the Small Business Act, as ameded (15 U.S.C. 632(a), 634(b)(6)), and Public Law 100–656 (102 Stat. 3853 (1988)).

2. Subpart B of part 121 is amended by adding §§ 121.2100 through 121.2105 to read as follows:

Waiver of the Nonmanufacturer Rule

§ 121.2101 Policy.

(a) Public Law 100–656 provides that suppliers of products under small business set-asides or 8(a) contracts shall not only themselves be small businesses but shall also supply the products of small business manufacturing or processing concerns. This requirement is known as the "nonmanufacturer rule." (*See* 13 CFR 121.906.)

(b) Recognizing that this requirement may be impossible for some qualified dealers to meet, Congress has authorized SBA in Public Law 100–656 to waive the requirement for classes of products for which there are no small business manufacturing or processing concerns in the Federal market as defined in § 121.2102(c).

§ 121.2102 Definitions.

(a) *Class of products* means a Product and Service Code (PSC) established for use by the Federal Procurement Data System, or a product line within a Product and Service Code.

(b) *Deputy Administrator* means the individual appointed to or acting in the capacity of the Deputy Administrator of the Small Business Administration, which position is established by section 4(b) of the Small Business Act.

(c) *Federal market* means acquisition by the Federal Government from offerors located in the United States.

(1) For this purpose participants in the Federal market are those who receive contract awards; and,

(2) Includes the entire geographic United States, except as provided in paragraph (c)(5) of this section.

(3) Potential contractors within the geographic United States who have not received contract awards by the Federal Government are not included in the Federal market.

(4) Subcontracts, except for 8(a) contracts, are not considered to be part of the Federal market.

(5) More narrowly defined geographic market areas may be considered for purposes of evaluating a waiver request if it is demonstrated that a class of products is not supplied on national basis, e.g., if the practical aspects of providing an item create a geographic limitation on competition, SBA will consider waivers on that basis.

(d) *Nonmanufacturer rule* means the requirement set forth in 13 CFR 121.906 that a contractor under a small business set-aside or 8(a) contract be a small business under the applicable size standard and provide its own product or that of another small business manufacturing or processing concern.

(e) *Person* means an individual, partnership, corporation, association, or other business entity.

(f) *United States* includes the several States, the Territories and possessions of the United States, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia.

§ 121.2103 Procedures for requesting and granting waivers.

(a) SBA may, at its own initiative, institute examination of classes of products for possible waiver of the nonmanufacturer rule.

(b) Any interested person may submit to the Chairperson, Size Policy Board, a request for waiver of the nonmanufacturer rule for a particular class of products.

(c) Waiver requests need not be in any particular form but shall, at a minimum, include:

(1) Identification of the specific class of products for which the waiver is sought;

(2) Attempts made to locate a small business source;

(3) Identification of one or more procuring agencies responsible for acquisition of products of the named class;

(4) Any available documentation of information which supports the view that there are no small business manufacturing or processing concerns in

the Federal market for the specified class of products; and,

(5) Name, address, and telephone number of any individual(s) who may provide further information or explanation of the request.

(d)(1) SBA shall examine the information provided and such other data as may be pertinent to preliminary consideration and shall determine whether sufficient cause exists to warrant a full study to determine whether a waiver should be granted.

(2) If it is determined that there is insufficient cause to begin a review, or if one or more small manufacturing or processing concerns are identified in the Federal market, SBA shall terminate its review and advise the requesting party of its conclusion and the basis for such conclusion.

(3) If SBA determines that there is sufficient cause to warrant a full study, it shall begin its own study of the class of products concerned and shall so advise the requesting party.

(4) SBA will notify the requesting party of its decision on whether to begin a study within 30 days of receipt of the request.

(5) No study shall be considered complete without publication in the **Federal Register** of the interest of SBA in locating small manufacturing or processing concerns of the subject class of products. Such manufacturers must have supplied the Federal Government during the year of the request or the preceding three fiscal years. SBA will solicit public comment on the appropriateness of granting the waiver in question.

(e) Waivers shall be granted or denied by determinations and findings of the Deputy Administrator, whose decision shall be the final administrative ruling by SBA.

(f) The grant or denial of a waiver shall be published as a Notice in the **Federal Register.**

(g) Waivers shall be issued for indefinite periods but shall be subject to a regularly scheduled review (approximately every two years) or shall be reviewed if SBA receives information that the basis for the waiver is no longer valid.

(h) If the Deputy Administrator determines, as a result of a scheduled review or because of other evidence, that the conditions required for waiver no longer exist and that the waiver should be terminated, that decision shall also be by determinations and findings.

(i) Such a decision will be the final administrative action for termination of waivers by SBA, and will be published as a Notice in the **Federal Register**, effective 90 days after publication.

§ 121.2104 Conditions justifying waiver.

(a) The only condition which justifies waiver of the nonmanufacturer rule is the absence from the Federal market of any small manufacturing or processing concerns of the class of products.

(b) The following data sources will be used to evaluate whether small manufacturing or processing concerns are in the Federal market:

(1) Procurement Automated Source System (PASS), U.S. Small Business Administration;

(2) Special Reports, Federal Procurement Data System, Federal Procurement Data Center, U.S. General Services Administration;

(3) Economic Censuses, Bureau of the Census, U.S. Department of Commerce;

(4) Small Business Data Base, Office of Advocacy, U.S. Small Business Administration; and

(5) Other public and private sources of industry data and information relevant to a class of products.

(c) In considering the market area for a product, SBA will presume that the United States is the relevant Federal market area, unless it is demonstrated that a class of products is not procured on a national basis. This presumption will be particularly difficult to overcome in the case of manufactured products as typically such items have a very large market area, generally encompassing the entire United States.

(d) When considering geographic segmentation of a market, SBA will not necessarily use market definitions dependent on airline radius or political or SBA regional boundaries. This is because market areas typically follow established transportation routes rather than jurisdictional borders. SBA may examine the following factors, among others, for a class of products in cases where geographic segmentation is urged:

(1) Whether perishability affects the area in which the product can, practically, be sold.

(2) Whether transportation costs are high as a proportion of the total value of the product so as to limit the economic distribution of the product.

(3) Whether there are legal barriers to transportation of the item.

(4) Whether a fixed, well-delineated boundary exists for the purported market area and whether this boundary is stable over time.

(5) Whether a small business, not currently selling in the defined market area, could potentially enter the market from another area and supply the market at a reasonable price.

(e) In the evaluation of the case for a waiver, SBA will, unless circumstances justify the use of some other time frame, consider the record for the most recent three fiscal years for which data are available and that for the fiscal year in which the evaluation is being performed, to the extent that the data are available.

§ 121.2105 Classes of products for which waivers have been granted.

Backhoes (PSC 3805), Cranes, Construction (PSC 3810), Graders, Road (Construction Machinery) (PSC 3805), Scrapers, Construction (PSC 3805).

Dated: March 8, 1990.

Susan B. Engeleiter,

Administrator.

[FR Doc. 90–11361 Filed 5–16–90; 8:45 am]

BILLING CODE 8025–01–M

FEDERAL TRADE COMMISSION

16 CFR Part 4

Privacy Act; New Exempt System of Records

AGENCY: Federal Trade Commission (FTC).

ACTION: Proposed rule and request for comments.

SUMMARY: The FTC is establishing a new system of records under the Privacy Act of 1974, as amended, to consist of the investigatory files of the FTC's Office of the Inspector General (OIG). The FTC proposes to exempt the system from certain Privacy Act provisions, due to the law enforcement nature of the records. This proposed rule amendment is required in order to invoke the relevant exemptions. By relieving the OIG of certain restrictions, the exemptions will help ensure that the OIG may efficiently and effectively perform investigations and other authorized duties and activities.

DATES: Comments must be received on or before June 16, 1990. The proposed rule amendment will become effective upon its final publication in the **Federal Register.** This date may be postponed if the Director of the Office of Management and Budget (OMB) declines, in whole or part, the FTC's request to waive the 60-day period prescribed by OMB for advance notice to OMB and Congress. *See* OMB Circular No. A–130, app. I, at 4(b)(4).

ADDRESSES: Forward comments to the Office of the Secretary, Federal Trade Commission, 6th Street & Pennsylvania Avenue, NW., Washington, DC, 20580. Comments will be placed on the public record and made available for inspection during regular Commission business hours.

FOR FURTHER INFORMATION CONTACT: Alex Tang, Attorney, Office of the

General Counsel (OGC), FTC, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2447.

SUPPLEMENTARY INFORMATION:

Elsewhere in today's Federal Register, the FTC is publishing a proposed system notice to establish a new system of records, "Office of Inspector General Investigative Files—FTC," under the Privacy Act, 5 U.S.C. 552a, as amended. The following proposed amendment of FTC Rule of Practice 4.13(m), 16 CFR 4.13(m), is necessary to exempt the new system of records from certain provisions of the Act. These provisions require, among other things, that the agency provide notice when collecting information, account for certain disclosures, permit individuals access to their records, and allow them to request that the records be amended. These provisions would interfere with the conduct of OIG investigations if applied to the OIC's maintenance of the proposed system of records.

Accordingly, the FTC proposes to exempt the system of records under sections (j)(2) and (k)(2) of the Privacy Act. Section (j)(2), 5 U.S.C. 552a(j)(2), exempts a system of records maintained by "the agency or component thereof which performs as its principal function any activity pertaining to enforcement of criminal laws * * *." Section (k)(2), 5 U.S.C. 552a(k)(2), exempts a system of records consisting of "investigatory materials compiled for law enforcement purposes," where such materials are not within the scope of the (j)(2) exemption pertaining to criminal law enforcement.

Where applicable, section (j)(2) may be invoked to exempt a system of records from any Privacy Act provision except: 5 U.S.C. 552a(b) (conditions of disclosure); (c) (1) and (2) (accounting of disclosures and retention of accounting, respectively); (e)(4) (A) through (F) (system notice requirements); (e) (6), (7), (9), (10), and (11) (certain agency requirements relating to system maintenance); and (i) (criminal penalties). Section (k)(2) may be invoked to exempt a system of records from: 5 U.S.C. 552(c)(3) (making accounting of disclosures available to the subject individual); (d) (access to records); (e)(1) (maintaining only relevant and necessary information); (e)(4) (G), (H), and (I) (notice of certian procedures); and (f) (promulgation of certain Privacy Act rules).

The proposed system of records consists of information covered by the (j)(2) and (k)(2) exemptions. The OIG investigatory files are maintained pursuant to official investigational and law enforcement functions of the Commission's Office of Inspector General under the authority of the 1988 amendments to the Inspector General Act of 1978. *See* Public Law No. 100–504, amending Public Law No. 95–452, 5 U.S.C. app. Furthermore, the OIG constitutes an agency component that performs as one of its principal functions activities pertaining to the enforcement of criminal laws. *See* 5 U.S.C. 552a(j)(2). Information covered under the (j)(2) exemption includes, but is not limited to, information compiled for the purpose of identifying criminal offenders and alleged offenders and consisting of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; information compiled for the purpose of a criminal investigation, including reports of informants and investigators, that is associated with an identifiable individual; or reports of enforcement of the criminal laws from arrest or indictment through release from supervision. *Id.* Information contained in OIG investigative files under the (k)(2) exemption relates to non-criminal law enforcement matters, such as information pertaining to the investigation of civil, administrative, or regulatory violations and similar wrongdoing.

Access by subject individuals, among others, to this system of records, including the names of persons or agencies to whom the information has been transmitted, would substantially compromise the effectiveness of OIG investigations. Knowledge of such investigations could enable suspects to take action to prevent detection of unlawful activities, conceal or destroy evidence, or escape prosecution. Disclosure of this information could lead to the intimidation of, or harm to, informants, witnesses, and their families, and could jeopardize the safety and well-being of investigative and related personnel and their families. The imposition of certain restrictions on the manner in which investigative information is collected, verified or retained would significantly impede the effectiveness of OIG investigatory activities and, in addition, could preclude the apprehension and successful prosecution or discipline of persons engaged in fraud or other illegal activity.

For these reasons, the FTC proposes to exempt the proposed system of records containing the OIG investigative files under exemptions (j)(2) and (k)(2) and of the Privacy Act by amending 16 CFR 4.13(m), in which the FTC specifies its systems of records that are exempt under the Privacy Act. Pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), the FTC certifies that the proposed rule amendment will not, if adopted, have a significant impact on a substantial number of small entities, because the Privacy Act applies only to "individuals," and individuals are not "small entities" within the meaning of the Regulatory Flexibility Act. The Commission further certifies that the rule amendment has been reviewed under Executive Order No. 12291, and has been determined not to be a "major rule," since it will not have an annual effect on the economy of $100 million or more, result in major cost increases or prices, or have significant adverse effects on competition or otherwise.

List of Subjects in 16 CFR Part 4

Administrative practice and procedure, Freedom of Information, Privacy, Sunshine Act.

In consideration of the foregoing, the FTC proposes to amend title 16, chapter I, subchapter A of the Code of Federal Regulations, as follows:

PART 4—MISCELLANEOUS RULES

1. The authority for part 4 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46.

2. Section 4.13(m) is amended by adding the following text to the end of the existing text:

§ 4.13 Specific exemptions.

* * * * *

(m) * * *

Office of Inspector General Investigative Files—FTC

In addition, pursuant to 5 U.S.C. 552(j)(2), investigatory materials maintained by an agency component in connection with any activity relating to criminal law enforcement in the following systems of records is exempt from all subsections of 5 U.S.C. 552a, except (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i), and from the provisions of this section, except as otherwise provided in 5 U.S.C. 552a(j)(2):

Office of Inspector General Investigative Files—FTC

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 90–11398 Filed 5–16–90; 8:45 am]

BILLING CODE 6750–01–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 212

Regulations Implementing Freedom of Information Act; Correction

AGENCY: Agency for International Development (A.I.D.).

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a proposed rule on regulations implementing the Freedom of Information Act that appeared in the Federal Register of Thursday, May 3, 1990 (55 FR 18620). The **"DATES"** caption was not included in the preamble.

FOR FURTHER INFORMATION CONTACT: Jan Miller, Office of General Counsel, 202–647–8218.

Accordingly, A.I.D. is correcting the preamble found in the second column of page 18620 to include a **"DATES"** caption as follows:

DATES: Comments on the proposed rule must be submitted by July 3, 1990.

Dated: May 9, 1990.

Jan Miller,

Assistant General Counsel for Employee and Public Affairs.

[FR Doc. 90–11436 Filed 5–16–90; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1204

[NHTSA Docket No. 81–12; Notice 06]

Highway Safety Program Guideline No. 17; Pupil Transportation Safety

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

ACTION: Request for comments.

SUMMARY: As a part of a series of efforts to improve school bus safety, this notice requests comments on NHTSA's proposed revisions to Highway Safety Program Guideline No. 17, Pupil Transportation Safety. Guideline 17 contains recommendations to the States on various operational aspects of their school bus and pupil transportation safety programs. NHTSA is proposing to update Guideline 17 to address new pupil transportation safety issues that have arisen since the guideline's last revision and to emphasize the importance of existing recommendations. The proposal would also ensure consistency with the provisions and terminology of NHTSA's Federal motor vehicle safety standards for school buses. NHTSA will revise Highway Safety Program Manual No. 17 to reflect any revisions that are made to Guideline 17 resulting from this document and the public comments on it. The manual provides guidance to the States and their political subdivisions in developing pupil transportation policies and procedures.

Although the safety record of school buses is extremely positive overall, school bus safety issues have received substantial attention from the public and this agency following two tragic crashes. In May 1988, 27 persons died, apparently of smoke inhalation, in the fire resulting from the high-speed crash of a pick-up truck (driven by a drunk driver) and a used school bus in Carrollton, Kentucky. This crash focused considerable public interest on the continuing problem of drunk driving, as well as school bus safety. In the second crash, 21 students drowned in Alton, Texas in September 1989, when their bus rolled into a water-filled gravel pit after being struck by a truck. Attention was also focused on school bus safety by a May 1989 report from the National Academy of Sciences on "Improving School Bus Safety," which, while noting the excellent overall safety record of school buses, also highlighted areas where further improvements might be made.

As a result of these events, NHTSA has undertaken a review of its school bus safety program to determine whether improvements could be made. The agency is issuing today's document to help provide States and other school bus operators with up-to-date information on operational measures that the agency believes should be a part of every pupil transportation safety program.

Other actions being taken by the agency to improve school bus safety include commencing rulemaking actions to improve the crashworthiness and post-crash performance of school buses, and to improve the safety of pupils boarding and leaving school buses. In addition, the agency made available $4.5 million in Federal funds for fiscal year 1990 for pupil transportation safety, and has awarded funds to each of the States, territories and the District of Columbia, for such programs as improving driver training, upgrading school bus safety equipment, and teaching children safe bus riding, pedestrian and bicycle behavior to and from school.

DATES: Comments on this document must be received by NHTSA no later than July 2, 1990.

ADDRESSES: Comments should reference the docket and notice numbers of this document and be submitted (preferably in ten copies) to: Docket Section, room 5109, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Docket hours are from 9:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Dr. Frances Baker Dickman, Office of Alcohol and State Programs, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366–2731.

SUPPLEMENTARY INFORMATION: This document requests comments on NHTSA's proposed revisions to Highway Safety Program Guideline 17: Pupil Transportation Safety. Guideline 17 contains recommendations to the States on various operational aspects of their school bus and pupil transportation safety programs. The agency has issued today's document to help provide States and other school bus operators with up-to-date information on operational measures that the agency believes should be a part of every pupil transportation safety program. This document complements other activities the agency is taking to improve school bus safety, including rulemaking actions to improve the crashworthiness and post-crash performance of school buses, and to improve the safety of pupils boarding and leaving school buses.

General Introduction

Since there are many different persons having a role in determining the safety of school buses, school bus safety depends closely on the actions of, and relationships between, all of those persons. For example, school bus safety depends on how well school buses are designed and manufactured to avoid or withstand a crash; the crash protection afforded occupants; the training and skill of school bus drivers to safely inspect and operate the vehicle on the road, among traffic and near children; the manner in which administrators plan school bus routes and provide for seating; how safely motorists drive near school buses transporting children and near children boarding or leaving the buses; the training and behavior of school children in and around buses; and the accuracy with which accidents are reported and data from them are gathered and analyzed. The agency's school bus safety program addresses each of those diverse yet interrelated facets of pupil transportation safety.

The safety record of school buses is remarkably good, which indicates that these facets are being well addressed. School buses, which together travel 3.3 billion miles each year, are one of the safest means of travel. Between 1980 and 1988, on a vehicle-mile basis, there was an annual average of 0.5 school bus occupant fatalities per 100 million vehicle miles travelled, compared to 2.0 for passenger cars.

Notwithstanding the very good safety record of school buses, the agency seeks to improve school bus safety to the extent possible, and believes that school bus safety can best be improved by reassessing each of the facets discussed above. As discussed in more detail below, NHTSA has begun a new examination of its motor vehicle safety standards for new school buses, evaluating how the performance of a school bus could be improved to reduce injuries and fatalities both inside and outside the vehicle. Since NHTSA has the authority to regulate the manufacture of new school buses, the agency has been very active in this area. The agency also has accident data files on school bus crashes, and continually examines its accident reporting system to determine ways in which data from school bus crashes can be better obtained and analyzed.

Of course, although new school buses are designed and manufactured to provide passengers very high levels of safety, safety can best be served if crashes could be avoided. Also, safety would be increased if school buses were properly maintained and operated and drivers and students properly trained in proper seating and emergency evacuation procedures so that, in the event of a crash, passengers would receive the maximum benefit of crash protection. To this end, the agency has made available nearly $4.5 million in Federal funds this year for pupil transportation safety, and has awarded these funds to each of the States, territories and the District of Columbia, for such programs as improving driver training, upgrading school bus safety equipment, and teaching children safe bus riding, pedestrian and bicycle behavior to and from school.

Issuance of Original Highway Safety Program Standard No. 17

Many of these pupil transportation safety issues are addressed in Highway Safety Program Guideline No. 17 (formerly "Highway Safety Program Standard No. 17"). The agency issued that guideline under section 402 of the Highway Safety Act to assist States in developing effective pupil transportation policies. The stated purpose of the guideline (as Standard 17) under the Highway Safety Act, was to reduce "the danger of death or injury to school children while they are being transported to and from school." 37 FR 9212; May 6, 1972. The last substantial revision to Guideline 17 was in 1973. 38 FR 12399; May 11, 1973.

Conversion of Standards to Guidelines and Selection of Priority Programs

Section 402 of the Highway Safety Act of 1966 directed the Secretary of Transportation to promulgate uniform standards for State highway safety programs, specified the subjects of several standards, and required States to conform to these uniform standards or risk losing portions of their Federal-aid highway funds. Between 1967 and 1972, the Secretary promulgated 18 Uniform Standards for State Highway Safety Programs, including Standard (now "Guideline") 17.

Until 1976, the section 402 program was principally directed at achieving State and local conformance with the 18 Highway Safety Program Standards, which were considered mandatory requirements with financial sanctions available for non-compliance. In 1976, Congress provided for a more flexible implementation of the program so that the Secretary would not have to require State compliance with every uniform standard or with each element of every uniform standard. As a result, the standards became more like guidelines for use by the States. Management of the program shifted from enforcing standards to one problem identification, countermeasure development and evaluation, with the standards to be used as a framework for the State programs. This approach was formalized by Congress in 1987.

Section 1107(d) of the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, made substantial revisions to the section 402 program. The Act directed the Secretary to conduct a rulemaking process to determine those State and local highway safety programs most effective in reducing crashes, injuries, and fatalities. 23 U.S.C. 402(j). Those programs would then receive priority for section 402 funding.

Pursuant to the 1981 act, NHTSA and the Federal Highway Administration (FHWA) issued a final rule on April 8, 1982 (47 FR 15116), identifying five NHTSA program areas and one FHWA program area as national priority program areas. Pupil transportation safety was not designated a priority program area because the agencies did not believe it was a large enough problem to merit its being so designated, and because the commenters on the proposal did not recommend that it be so designated.

The April 1982 final rule provided also that the national priority program areas would continue to be eligible for Federal funding under the section 402 program using an expedited review process, and established a mechanism by which additional programs identified by a State, such as pupil transportation safety, may be eligible for Federal funding.

The Highway Safety Act of 1987 (Pub. L. 100–17) directed the agencies to review the national priority program areas periodically. It also conformed the language of the section 402 statute to the approach already being used for the program, under which the highway safety program standards served as non-binding guidelines for use by the States.

On April 1, 1988, pursuant to the 1987 Act, NHTSA and FHWA issued a final rule (53 FR 11255) reassessing which State and community highway safety programs were most effective in reducing crashes, injuries, and fatalities. The reassessment was based on the extent of national concern (including size) of highway safety problems, and the availability of effective countermeasures to address these problems. In the proposal preceding the final rule, the agencies did not propose to make pupil transportation safety a national priority program. Although a few commenters suggested that pupil transportation safety should be added to the list of national priority program areas, the agencies concluded, based on the strong safety record of pupil transportation, that the problem was not of a magnitude to be considered national in scope, particularly when compared with the other areas reviewed.

Other Highway Safety Programs for School Buses

NHTSA has separately undertaken extensive measures to encourage States' efforts to improve or maintain school bus safety through grant set aside programs and recommendations on effective pupil transportation programs. In 1974, NHTSA published model School Bus Driver and School Bus Driver Supervisor's Training courses, and made these available to all State and local pupil transportation officials. In 1976, § 406 funds were made available to all States to conduct school bus driver training, and by 1983, a total of $33 million of these funds was expended. As mentioned above in this notice, NHTSA has awarded $4.5 million in § 402 funds this year to assist the States in implementing school bus safety

measures identified by NHTSA in a 1989 **Federal Register** notice to be "most effective" or "effective" in improving school bus safety. (54 FR 30497; July 20, 1989.) The agency intends to make similar funding available for pupil transportation safety in 1991.

Vehicle Safety Act Standards for School Buses

In addition to the agency's §§ 402 and 406 programs for pupil transportation safety, NHTSA administers an important school bus safety program under the National Traffic and Motor Vehicle Safety Act of 1966. ("Vehicle Safety Act"). NHTSA is authorized by the Vehicle Safety Act to regulate the manufacture and sale of new motor vehicles, including school buses. This program includes NHTSA's comprehensive set of Federal motor vehicle safety standards (FMVSS's) for school buses. (Under NHTSA's FMVSS's, a "bus" is a motor vehicle designed for carrying 11 or more persons (driver included). A "school bus" is a "bus" that is sold for purposes that include carrying students to and from school or related events. 49 CFR 571.3(b).)

In 1974, Congress enacted the Schoolbus and Motor Vehicle Safety Amendments which directed NHTSA to issue motor vehicle safety standards for specific aspects of school bus safety, and apply those standards to all new "school buses." NHTSA issued three new standards for school buses, and amended several existing school bus standards. These comprehensive school bus standards became effecitve April 1, 1977. They set requirements for passenger crash protection ("compartmentalization," which requires higher, stronger seats that are well-anchored and padded with energy-absorbing materials); FMVSS No. 222); rollover protection (No. 220); body joint strength (No. 221); emergency exists (No. 217); fuel system integrity (No. 301); and hydraulic brake systems (No. 105). Numerous other FMVSS's had already applied to school buses prior to April 1977, and continue to apply to school buses. For example, FMVSS No. 108 requires school buses to have a system of special warning lamps, and FMVSS No. 111 requires mirror system. The Vehicle Safety Act requires any person selling a new bus for pupil transportation purposes to sell a vehicle that has been certified as meeting these school bus standards.

While the safety record to pre-1977 school buses was good, the 1977 school bus standards improved this record and contributed to a reduction in the number of non-fatal injuries to school bus occupants. In a 1987 report on 43 accidents involving large poststandard school buses, the National Transportation Safety Board concluded that the standards "worked well * * * ot protect schoolbus passengers from injuries in all types of accidents." (NTSB, Crashworthiness of Large Poststandard Schoolbuses, NTSB/SS–87/01, 1987.)

Recent School Bus Crashes and Other Important School Bus Events

School bus safety issues received new attention from the public and the agency following two tragic crashes in the past two years. In May 1988, 27 persons died, apparently of smoke inhalation, in the fire resulting from the high-speed crash of a pick-up truck (driven by a drunk driver) and a used school bus in Carrollton, Kentucky. This crash focused considerable public interest on the continuing problem of drunk driving, as well as school bus safety. In the second crash, 21 students drowned in Alton, Texas in September 1989, when their bus rolled into a water-filled gravel pit after being struck by a truck. Attention was also focused on school bus safety by a May 1989 report from the National Academy of Sciences entitled Improving School Bus Safety, which, while noting the excellent overall safety record of school buses, also highlighted areas where further improvements might be made.

Reexamination of NHTSA School Bus Activities and Proposal of Improvements

As a result of these events, NHTSA undertook a review of its school bus safety program to determine whether improvements could be made in the program. Following that review, the agency initiated rulemaking to upgrade the school bus safety standards for mirrors, emergency exits, fuel system integrity, and the flammability of interior material (FMVSS No. 302). In addition, the agency initiated rulemaking to require school bus stop signal arms. As part of this effort, NHTSA proposes to update Guideline 17 to address new pupil transportation safety issues that have arisen since the guideline's last revision, to emphasize the importance of existing recommendations, and to ensure consistency with the provisions and terminology of NHTSA's existing FMVSS's for school buses.

NHTSA emphasizes that the updated guideline would, like the existing guideline, not be binding on the States in accordance with the legislative and rulemaking history summarized above. Nonetheless, NHTSA requests comments on its recommendations for the safe operation of pupil transportation programs at the State and local level.

Proposed Changes

Definitions. The identification, maintenance and operational recommendations for Guideline 17 presently distinguish between school vehicles based on their seating capacity. Under the present guideline, "Type I" school vehicles are motor vehicles used to carry more than 16 pupils to and from school (excluding vehicles operating as common carriers). "Type II" school vehicles are vehicles used to carry 16 or fewer pupils, excluding family vehicles. As explained below, NHTSA believes these definitions should be revised to be consistent with the "school bus" definition set forth in the FMVSS at 49 CFR 571.3. NHTSA seeks consistency to clear up confusion that may have resulted from an application of the school bus definition used in the agency's FMVSS's , and the Guideline 17 "school vehicle" definition, to some vehicles (especially small, van-type buses).

Under the FMVSS's and the Vehicle Safety Act, a school bus is a "bus" (i.e., a vehicle carrying 11 or more persons, including the driver) sold for purposes that include carrying children to or from school and related events. Transit vehicles are excluded from the definition of school bus. The agency proposes to amend Guideline 17 by adding and defining the terms "school bus" and "school-chartered bus," redefining the term "school vehicle," and simplifying the guideline's identification and equipment recommendations to make clearer which recommendations apply to a particular vehicle.

Guideline 17's definitions have not been revised since NHTSA issued the existing school bus definition for the FMVSS's. They differ from the FMVSS "school bus" definition in two major respects. First, unlike the school bus FMVSS's, the existing guideline (as set forth in 23 CFR part 1204) only applies to buses used to carry students to and from school, and does not apply to buses used for "school-related events." Yet, since 1977, when the FMVSS school bus definition was amended, NHTSA has interpreted the phrase "to and from school" in Guideline 17 to include all school-related trips. NHTSA has announced this broader view of "to and from school" in a DOT notice (Notice 900, June 1, 1977), which was disseminated to State directors of pupil transportation, and NHTSA interpretation letters (e.g., NHTSA's

June 26, 1979 letter to the State of New Hampshire regarding school-related trips), which are placed in the public docket. NHTSA believes the guideline should be amended to reflect this inclusion of school-related trips.

Second, some of the guideline's recommendations for identifying Type II school vehicles have been complicated by the guideline's use of the 16-passenger seating capacity in its definition of Type I and Type II school vehicles.

Under the Vehicle Safety Act, if any person sells a new "bus" (a vehicle carrying 11 or more persons) for pupil transportation purposes, that vehicle must be one that has been certified as meeting the FMVSS's for school buses. Accordingly, the vehicle must have school bus lamps (FMVSS 108), as well as many other safety features. Guideline 17, however, presently recommends (paragraph IV.B.5.a) that Type II school vehicles either comply with all the requirements for Type I school vehicles (yellow paint, black bumpers, mirrors, warning lights and "School Bus" signs), or be devoid of the paint, warning lights and school bus signs. NHTSA believes the guideline should recommend school bus lamps for all school buses, including those carrying betweern 11 and 16 persons, since FMVSS 108 requires the lamps for these vehicles. The agency also believes these small school buses should be painted yellow and equipped with school bus signs.

Although NHTSA seeks to expand the guideline's present definitions to include school vehicles used for school-related events, NHTSA also believes that the guideline should make allowances for vehicles that a school occasionally may charter for special events. On those occasions when a school charters a bus instead of using a school vehicle for a school-related event, the guideline's recommendations for the safe operation of the vehicle would apply, since adoption of those recommendations should promote safety on trips to school-related events without imposing unreasonable burdens on school administrators. However, the guideline's recommendations for identifying and equipping school vehicles would not apply to these chartered vehicles. This is because charter buses are used primarily for purposes other than pupil transportation, and therefore it is unlikely that these vehicles would have the equipment or the identifying features of school buses. For example, it may be extremely difficult for a school to rent a yellow school bus for a special, one-time event. The guideline would recognize this difficulty, and recognize also that schools occasionally may need to rent a vehicle to meet a special need, by excluding charter buses from school bus equipment and identification recommendations. (As discussed in more detail below, FHWA's safety regulations may apply to charter buses and their drivers.)

NHTSA also proposes to extend identification and equipment recommendations to small vans that schools use to carry school children. These vans, which use truck chassis, are designed to carry 10 or fewer persons. Their passenger capacity makes them too small to meet NHTSA's definition of "school bus;" however, they are increasingly being used to transport school children. Because of this usage, the agency believes these vans should be clearly identified to motorists as school vehicles.

To address the concerns discussed above, NHTSA proposes to remove the present definition of Type I and Type II school vehicles in Guideline 17, and replace them with four new vehicle definitions. First, "bus" would be defined as "a motor vehicle designed for carrying more than 10 persons (including the driver)." This definition is similar to the "bus" definition for purposes of the FMVSS (49 CFR 571.3).

Second, "school-chartered vehicle" would be defined as "a motor vehicle that is operated under a short-term contract with State or school authorities who have acquired the exclusive use of the vehicle at a fixed charge to provide transportation for a group of students to a special school-related event." The agency has tentatively determined that the guideline can make clear which of its recommendations apply to charter vehicles and which do not by setting forth a definition for "school-chartered vehicle," excluding school-chartered vehicles from the guideline's "school bus" and "school vehicle" definitions, and expressly specifying when any recommendation is intended to apply to school-chartered vehicles.

The third new definition would be for a "school bus." "School bus" would be defined as "a bus that is used for purposes that include carrying students to and from school or related events on a regular basis, but does not include a transit bus operated under contract with State or local authorities to provide transportaion for these purposes or a school-chartered vehicle." This definition is based on the "school bus" definition in the FMVSS's. However, unlike the FMVSS's school bus definition, which can only apply to new buses, the guideline's definition includes any bus used for carrying students to and from school or related events, including previously-owned buses acquired for such purposes.

Fourth, "school vehicle" would be defined as "any vehicle that is a 'school bus,' a transit bus operated under contract with State or local authorities to transport students to and from school or related events on a regular basis, or a passenger van (a passenger vehicle constructed on a truck chassis) that is owned by, or operated under contract with, school officials or with State or local authorities for that purpose, but does not include a school-chartered vehicle." This definition is intended to be broad so as to ensure that the guideline's operational and maintenance recommendations apply to all vehicles regularly used to carry students, yet exclude private vehicles, such as the family car or taxis, that might be used to carry school children.

The agency also wishes to include in the guideline a definition of the "Federal Motor Carrier Safety Regulations" (FMCSR's) issued by the FHWA, because some of the vehicles covered by Guideline 17's recommendations are also subject to the FMCSR's. Because of this dual coverage of certain vehicles by both NHTSA's Guideline 17 and FHWA's regulations, some of the guideline's recommendations (e.g., driver qualification, vehicle inspection and maintenance) refer to the FMCSR's. NHTSA tentatively believes a definition of the FMCSR's would serve to clarify the guideline, and could serve safety by possibly increasing the awareness of schools and other potential users of commercial buses about the FMCSR's.

The FMCSR's definition NHTSA proposes for Guideline 17 would primarily impart information about the applicability of the FMCSR's to "commercial motor vehicles." Commercial motor vehicles include vehicles with a gross vehicle weight rating (GVWR) greater than 10,000 pounds, or those designed to carry "more than 15 passengers, including the driver" (i.e., 16 or more persons, including the driver), used in interstate commerce, FHWA's regulations for commercial motor vehicles do not apply to transportation provided by government entities, such as school districts, or to the use of school buses to transport school children to and from school and home, even if the school buses cross State boundaries. However, private companies that contract with a school district to transport pupils to a school-related event, such as a field trip or a sporting event, may be subject to FHWA regulations if they transport passengers across State or international

boundaries. The FHWA requirements for commercial motor vehicles are found in 49 CFR parts 385, 390–399.

Accordingly, for purposes of Guideline 17, NHTSA proposes to define "Federal Motor Carrier Safety Regulations (FMCSR)" as "the regulations of the Federal Highway Administation (FHWA) for commercial motor vehicles in interstate commerce, including buses with a gross vehicle weight rating (GVWR) greater than 10,000 pounds or designed to carry 16 or more persons (including the driver), other than buses used to transport school children from home to school and from school to home."

Equipment. The guideline would encourage the use of safety equipment for all school vehicles. It would also encourage the use of identifying features for all school vehicles, but the type of identifying features encouraged would depend on whether the vehicle is a "school bus" or "school vehicle" under the guideline's definitions. For example, the recommendation for school bus lamps and mirrors would apply only to school buses since they are the only type of school vehicle required to have such equipment under FMVSS 108 and 111. The recommendations for yellow paint and black bumpers would apply to all school vehicles except transit buses, in recognition of the use of the latter vehicles for purposes other than carrying school children. (School-chartered vehicles would not be considered school vehicles; thus, they would be excluded from these identification requirements.)

The guideline's language concerning mirrors would also be modified by today's proposed revision. The guideline would refer the reader to FMVSS No. 111 for the school bus mirror requirement.

Other safety measures. NHTSA is considering revising the guideline to include a recommendation that pupil transportation safety programs screen school vehicle drivers for drug and alcohol involvement. NHTSA tentatively concludes that this type of screening would help ensure that school vehicles are operated in the safest possible manner.

The agency proposes to include a recommendation that baggage and other items transported in the passenger compartment should be stored so that the aisles are kept clear and the doors and emergency exits of school vehicles remain unobstructed at all times. The agency is also considering the merits of a recommendation that buses intended for sports, marching band and other activities that may involve transporting large items of equipment, be ordered with storage compartments beneath the passenger compartment. NHTSA specifically requests comments on these recommendations.

The agency is considering expanding the guideline to recommend that pupil transportation safety programs include requirements for safe pedestrian and bicycle riding practices. NHTSA also seeks to revise the guideline to encourage States to consider adoption of safety measures, such as the school safety patrol, school vehicle monitor and crossing guard programs, for their pupil transportation safety programs. These areas are among those determined by the National Academy of Sciences (NAS) as capable of enhancing school bus safety, and identified by NHTSA as "most effective" in protecting the safety of school children (54 FR 29629; July 13, 1989).

Additionally, the guideline would recommend the replacement of school buses not manufactured to meet the April 1, 1977 FMVSS's for school buses with those that do. Those FMVSS's pertain to various aspects of school bus safety, including passenger crash protection, fuel system integrity, roof crush, body joint strength and emergency exits. This recommendation is consistent with NAS's, NTSB's and NHTSA's determination that replacing pre-1977 school buses with complying school buses would make school bus transportation even safer.

The agency requests comments that would help NHTSA decide whether it would be appropriate for the guideline to recommend that purchasers of these pre-1977 school buses should be informed by the seller (e.g., the State or a school) that the buses were manufactured prior to the April 1, 1977 effective date of the agency's comprehensive school bus safety standards. The purpose of this information would be to increase the likelihood that the purchaser would be aware that the 1977 school bus safety standards did not apply to the bus. The agency is interested in comments on the merits of the recommendation in general, on whether the guideline is an appropriate vehicle for the recommendation, and on the form and timing of the notice (i.e., at what point in the sales transaction). The agency is particularly interested in comments from State and school officials on the potential burdens they may have if such a notification procedure were incorporated into the guideline and adopted by a State.

A number of editorial changes are also proposed in this notice to improve the clarity of the guideline.

The agency will revise Highway Safety Program Manual No. 17 to reflect the revisions that would be made to Guideline 17 resulting from this notice. The manual is designed as a guide for States and their political subdivisions in developing pupil transportation policies and procedures. It also would be non-binding. (NHTSA has placed copies of the present program manual in docket number 81–12–N06. A copy of the present manual can be obtained from NHTSA's Docket Section at the address provided in the "**ADDRESSES**" section of this notice.)

Comments

Interested persons are invited to submit comments on this proposal. It is requested but not required that 10 copies be submitted.

In order to expedite the submission of comments, simultaneous with issuance of this notice, copies will be mailed to all Governors, Governors' Representatives for Highway Safety, and State Directors of Pupil Transportation.

Comments should not exceed 15 pages in length. 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.

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 revisions to Guideline 17 may proceed at any time after that date. The agency will continue to file relevant material in the docket as it becomes available 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 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.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that it has no federalism implication that warrants the preparation of a federalism assessment.

List of Subjects in 23 CFR Part 1204

Grant programs. Highway safety.

In consideration of the foregoing, NHTSA proposes to amend 23 CFR part 1204 as follows:

PART 1204—[AMENDED]

1. The authority citation for part 1204 would continue to read as follows:

Authority: 23 U.S.C. 402; delegations of authority at 49 CFR 1.48 and 1.50.

§ 1204.4 [Amended]

2. Highway Safety Program Guideline No. 17, Pupil Transportation Safety, would be revised to read as follows:

Highway Program Guideline No. 17—Pupil Transportation Safety

I. *Scope.* This guideline establishes minimum recommendations for a State highway safety program for pupil transportation safety including the identification, operation, and maintenance of vehicles used for carrying students; training of passengers, pedestrians, and bicycle riders; and administration.

II. *Purpose.* The purpose of this guideline is to minimize, to the greatest extent possible, the danger of death or injury to school children while they are traveling to and from school and school-related events.

III. *Definitions.*

"Bus" is a motor vehicle designed for carrying more than 10 persons (including the driver).

"Federal Motor Carrier Safety Regulations (FMCSR)" are the regulations of the Federal Highway Administration (FHWA) for commercial motor vehicles in interstate commerce, including buses with a gross vehicle weight rating (GVWR) greater than 10,000 pounds or designed to carry 16 or more persons (including the driver), other than buses used to transport school children from home to school and from school to home. (The FMCSR are set forth in 49 CFR parts 385, 390–399.)

"School-chartered vehicle" is a motor vehicle that is operated under a short-term contract with State or school authorities who have acquired the exclusive use of the vehicle at a fixed charge to provide transportation for a group of students to a special school-related event.

"School bus" is a "bus" that is used for purposes that include carrying students to and from school or related events on a regular basis, but does not include a transit bus operated under contract with State or local authorities to provide transportation for these purposes or a school-chartered vehicle.

"School vehicle" is any vehicle that is a "school bus," a transit bus operated under contract with State or local authorities to transport students to and from school or related events on a regular basis, or a passenger van (a passenger vehicle constructed on a truck chassis) that is owned by, or operated under contract with, school officials or with State or local authorities for that purpose, but does not include a school-chartered vehicle.

IV. *Pupil Transportation Safety Program Administration and Operations.*

Recommendation. Each State, in cooperation with its school districts and other political subdivisions, should have a comprehensive pupil transportation safety program to assure that school vehicles and school-chartered vehicles are operated and maintained so as to achieve the highest possible level of safety.

A. *Administration.*

1. There should be a single State agency having primary administrative responsibility for pupil transportation, and employing at least one full-time professional to carry out these responsibilities.

2. The responsible State agency should develop an operating system for collecting and reporting information needed to improve the safety of operating school vehicles and school-chartered vehicles. This includes the collection and evaluation of uniform crash data consistent with the criteria set forth in Highway Safety Program Guidelines No. 10, "Traffic Records" and No. 18, "Accident Investigation and Reporting."

B. *Identification and equipment of school vehicles.* Each State should establish procedures to meet the following recommendations for identification and equipment of school vehicles.

1. All school vehicles other than a transit bus operated under contract with State or local authorities to provide pupil transportation should:

a. Be identified with the words "School Bus" printed in letters not less than eight inches high, located between the warning signal lamps as high as possible without impairing visibility of the lettering from both front and rear, and have no other lettering on the front or rear of the vehicle.

b. Be painted National School Bus Glossy Yellow, in accordance with the colorimetric specification of National Institute of Standards and Technology (NIST) Federal Standard No. 595a, Color 13432, except that the hood should be either that color or lusterless black, matching NIST Federal Standard No. 595a, Color 37038.

c. Have bumpers of glossy black, matching NIST Federal Standard No. 595a, Color 17038, unless, for increased night visibility, they are covered with a reflective material.

d. Be equipped with safety equipment for use in an emergency, including a charged fire extinguisher, that is properly mounted near the driver's seat, with signs indicating the location of such equipment.

e. Be equipped with device(s) demonstrated to enhance the safe operation of school vehicles, such as a stop signal arm.

2. In addition to meeting the recommendations specified under section IV.B.1, all school buses should:

a. Be equipped with a system of signal lamps that conforms to the school bus requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, 49 CFR 571.108.

b. Have a system of mirrors that conforms to the school bus requirements of FMVSS No. 111, 49 CFR 571.111, and provides the seated driver a view to the rear along both sides of the bus and a view of the front bumper and the area in front of the bus. Mirrors should be positioned and adjusted such that when a rod, 30 inches long, is placed upright on the ground at any point along a traverse line 1 foot forward of the forward-most point of a school bus, at least 7½ inches of the length of the rod should be visible to the driver, either by direct view or by the system of mirrors.

3. Transit buses operated under contract with State or local authorities to provide pupil transportation should:

a. Be equipped with safety equipment for use in an emergency, including a charged fire extinguisher, that is properly mounted near the driver's seat, with signs indicating the location of such equipment.

b. While transporting children to and from school, be equipped with temporary signs, located conspicuously on the front and back of the vehicle. The sign on the front should have the words "School Bus" printed in black letters not less than 6 inches high, on a background of National School Bus Glossy Yellow, as specified in section 1.b. The sign on the rear should be at least 10 square feet in size and should be painted National School Bus Glossy Yellow as specified in section 1.b, and have the words "School Bus" printed in black letters not less than 8 inches high. Both the 6-inch and 8-inch letters should be Series "D" as specified in the Standard Alphabet for Highway Signs, FHWA, D.O.T., 1966.

4. Any school vehicle meeting the identification recommendations of sections 1.a–e or 2.a–b above that is permanently converted for use wholly for purposes other than transporting children to and from school or school-related events should be painted a color other than National School Bus Glossy Yellow, and should have the stop arms and school bus signal lamps described by §§ 1.e and 2.a removed.

5. School vehicles, while being operated on a public highway and transporting primarily passengers other than school children, should have the words "School Bus" covered, removed, or otherwise concealed, and the stop arm and signal lamps described by §§ 1.e and 2.a should not be operable through the usual controls.

C. *Operations.* Each State should establish procedures to meet the following recommendations for operating school vehicles and school-chartered vehicles:

1. *Personnel.* a. Each State should develop a plan for selecting, training, and supervising persons whose primary duties involve transporting school children in order to assure that such persons will attain a high degree of competence in, and knowledge of, their duties.

b. Every person who drives a school vehicle or school-chartered vehicle occupied by school children should, as a minimum:

(1) Have a valid State driver's license to operate such a vehicle. All drivers who operate a vehicle designed to carry 16 or more persons (including the driver) are required by FHWA's Commercial Driver's License Standards (49 CFR part 383) to have a valid commercial driver's license.

(2) Meet all physical, mental, and moral requirements established by the State agency having primary responsibility for pupil transportation.

(3) Have a traffic record free from arrests, convictions, and crashes for at least three years and provide clear documentation that there is no evidence of drug and/or alcohol misuse or abuse.

(4) Be qualified as a driver under the Federal Motor Carrier Safety Regulations of the FHWA, 49 CFR part 391, if the driver's employer is subject to those regulations.

2. *Vehicles.* a. Each State should enact legislation that provides for uniform procedures regarding school vehicles stopping on public highways for loading and discharge of children. Public information campaigns should be conducted on a regular basis to ensure that the driving public fully understands the implications of school bus warning signals and requirements to stop for school vehicles that are loading or discharging school children.

b. Each State should develop plans for minimizing highway use hazards to school vehicle and school-chartered vehicle occupants, other highway users, pedestrians, bicycle riders and property. They should include, but not be limited to:

(1) Careful planning and annual review of routes for safety hazards.

(2) Planning routes to assure maximum use of school vehicles and school-chartered vehicles, and avoid passengers standing while these vehicles are in operation.

(3) Providing loading and unloading zones off the main traveled part of highways, whenever it is practical to do so.

(4) Establishing restricted loading and unloading areas for school vehicles and school-chartered vehicles at or near schools.

(5) Ensuring that school bus operators, when stopping on a highway to take on or discharge children, adhere to State regulations for loading and discharging including the use of signal lamps as specified in section 2.a.

(6) Prohibiting, by legislation or regulation, operation of any school vehicle unless it meets the equipment and identification recommendations of this guideline.

(7) Replacing, consistent with the economic realities which typically face school districts, those school buses which are not manufactured to meet the April 1, 1977 Federal Motor Vehicle Safety Standards for School Buses, with those manufactured to meet the stricter school bus standards.

c. Use of amber signal lamps while loading or unloading children is at the option of the State. Use of red warning signal lamps as specified in § 2.a above for any purpose or at any time other than when the school bus is stopped to load or discharge passengers should be prohibited.

d. When school vehicles are equipped with stop arms, such devices should be operated only in conjunction with red warning signal lamps, when vehicles are stopped.

e. Seating. (1) Standing while school vehicles and school-chartered vehicles are in motion should not be permitted. Routing and seating plans should be coordinated so as to eliminate passengers standing when a school vehicle or school-chartered vehicle is in motion.

(2) Seating should be provided that will permit each occupant to sit in a seat intended by the vehicle's manufacturer to provide accommodation for a person at least as large as a 5th percentile adult female, as defined in 40 CFR 571.208.

(3) There should be no auxiliary seating accommodations such as temporary or folding jump seats in school vehicles.

(4) Drivers of school vehicles and school-chartered vehicles should be required to wear occupant restraints whenever the vehicle is in motion.

(5) Passengers in school vehicles and school-chartered vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or less should be required to wear occupant restraints (where provided) whenever the vehicle is in motion.

f. Emergency exit access. Baggage and other items transported in the passenger compartment should be stored so that the aisles are kept clear and the door(s) and emergency exit(s) remain unobstructed at all times.

D. *Vehicle maintenance.* Each State should establish procedures to meet the following recommendations for maintaining vehicles used to carry school children:

1. School vehicles should be maintained in safe operating condition through a systematic preventive maintenance program.

2. All school vehicles should be inspected at least semiannually. In addition, school vehicles and school-chartered vehicles subject to the Federal Motor Carrier Safety Regulations of FHWA should be inspected and maintained in accordance with those regulations (49 CFR parts 393 and 396).

3. School vehicle drivers should be required to perform daily pre-trip inspections of their vehicles, and the safety equipment thereon (especially fire extinguishers), and to report promptly and in writing any problems discovered that may affect the safety of the vehicle's operation or result in its mechanical breakdown. Pre-trip inspection and condition reports for school vehicles and school-chartered vehicles subject to the Federal Motor Carrier Safety Regulations of FHWA should be performed in accordance with those regulations (40 CFR 392.7, 392.8, and 396).

E. *Other Aspects of Pupil Transportation Safety.*

1. At least once during each school semester, each pupil transported in a school vehicle should be instructed in safe riding practices, proper loading and unloading techniques, proper street crossing to and from school bus stops and participate in supervised emergency evacuation drills.

2. Parents and school officials should work together to select and designate the most safe pedestrian and bicycle routes for the use of school children.

3. All school children should be instructed in safe transportation practices for walking to and from school. For those children who routinely walk to school, training should include preselected routes and the importance of adhering to those routes.

4. Children riding bicycles to and from school should receive bicycle safety education, wear bicycle safety helmets, and not deviate from preselected routes.

5. Local school officials and law enforcement personnel should work together to establish crossing guard programs.

6. Local school officials should investigate programs which incorporate the practice of escorting students across streets and highways when they leave school vehicles. These programs may include the use of school safety patrols or adult monitors.

7. Local school officials should establish passenger vehicle loading and unloading points at schools that are separate from the school vehicle loading zones.

V. *Program evaluation.* The pupil transportation safety program should be evaluated at least annually by the State agency having primary administrative responsibility for pupil transportation.

Issued on May 11, 1990.

Howard M. Smolkin,

Executive Director, National Highway Traffic Safety Administration.

Thomas D. Larson,

Federal Highway Administration.

[FR Doc. 90–11426 Filed 5–11–90; 4:59 pm]

BILLING CODE 4910–59–M

Coast Guard

33 CFR Part 117

[CGD1–90–040]

Drawbridge Operation Regulations; Newtown Creek (East Branch), East River, and Dutch Kills, NY

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the New York City Department of Transportation (NYCDOT), the Coast Guard is considering a change to the regulations governing the Grand Street/Avenue drawbridge over East Branch of New town creek, at mile 3.1 between the boroughs of Brooklyn and Queens, New York the Roosevelt Island drawbridge over the East River, at mile 6.4 between Roosevelt Island and Queens, New York, and the Borden Avenue and Hunters Point Avenue drawbridges over Dutch Kills, at miles 1.2 and 1.4, respectively in Queens, New York by permitting these NYC moveable highway bridges to be manned and operated on an advance notice basis with a roving team normally based at the Borden Avenue bridge across Dutch Kills. This proposal is being made because of the relatively close proximity and limited openings of these bridges, as well as desire to provide timely openings and efficient utilization of manpower. This action should relieve the bridge owner of the burden of having a person constantly available to open the draw of the Grand Street/Avenue bridge and should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before July 2, 1990.

ADDRESSES: Comments should be mailed to Commander (obr), First Coast Guard District, Bldg. 135A, Governors Island, NY 10004–5073. The comments

and other materials referenced in this notice will be available for inspection and copying at that address. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668–7170.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposals. Persons desiring acknowledgement that their comments have been received should enclose a stamped self-addressed post card or envelope.

The Commander, First Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of these regulations are Waverly W. Gregory, Jr., project officer, and Lieutenant John Gately, project attorney.

Discussion of Proposed Regulations

The current regulations for Roosevelt Island, and the Borden Avenue and Hunters Point Avenue drawbridges provide for six hours advance notice to the New York City Hotline for openings with provisions for openings as soon as possible for Federal, State and local public safety vessels. Openings for these bridges are presently provided by personnel stationed at Borden Avenue. However, the current regulations for the Grand Street/Avenue drawbridge require that it opens on signal at all times, except for specific periods during the morning and evening rush hours. The proposed revision would formalize a roving team and permit more efficient utilization of manpower and ensure timely openings in the event of a fire or other emergencies upstream of each of the bridges. Additionally, the proposed revision to the regulations would provide for radiotelephones and clearance gauges at the drawbridge to facilitate communications and marine transits. The existing Grand Street/Avenue swing bridge provides a vertical clearance of 10 and 15 feet, at mean high and low water, respectively. During preliminary investigations of the requested change, all upstream facilities and known marine users were contacted. Concerns expressed by affected mariners and facility owners were the ability to contact and the reliability of NYCDOT personnel to be available and ensure the bridges will be open on signal at the required time. Recent acquisitions of waterside facilities have sparked renewed interest of businesses along Newtown Creek. The Greenpoint Avenue and Pulaski drawbridges across Newtown Creek and the Metropolitan Avenue bridge across English Kills, a tributary of Newtown creek will continue to be manned full time by NYCDOT. NYCDOT stated that by placing the Grand Street/Avenue bridge on advance notice they would be able to reassign the personnel and utilize them in their current mobile crews. Use of these mobile crews would reportedly allow NYCDOT to improve their training, testing, cleaning, and maintenance of the moveable bridges with the limited personnel available. The 1988 NYCDOT Annual Operating Report for openings of the Grand Street/Avenue bridge totaled 82 openings; 51 for vessels and 31 for tests. The report also indicates the following data for the other moveable bridges: (1) Roosevelt Island; 23 openings, 14 for vessels and 9 tests; (2) Borden Avenue; 117 openings, 77 for vessels and 40 tests; and (3) Hunters Point Avenue; 88 openings, 77 for vessels and 11 tests.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This opinion is based on the fact that the regulation will not prevent the passage of vessels but just require giving advance notice of arrival. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Implication Assessment

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a Federal assessment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—[AMENDED]

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

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

2. Section 117.777 is removed and §§ 117.781 and 117.801 are revised to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.781 East River.

(a) The following requirements apply to the Roosevelt Island bridge, mile 6.4 at New York City, as follows:

(1) Public vessels of the United States Government, State or local vessels used for public safety, and vessels in distress shall be passed; through the draw of the bridge as soon as possible without delay at anytime. The opening signal from these vessels shall be four or more short blasts of a whistle, horn or radio request.

(2) The owners of this bridge shall provide and keep in good legible condition clearance gauges for each draw with figures not less than 12 inches high designed, installed and maintained according to the provisions of § 118.160 of this chapter.

(3) The draw of the Roosevelt Island bridge shall open on signal if at least one hour advance notice is given to the drawtender at the Borden Avenue bridge, mile 1.2 across Dutch Kills or the New York City Highway Department Radio (Hotline) Room. In the event the drawtender is at Hunters Point Avenue bridge mile 1.4 across Dutch Kills or the Grand Street/Avenue bridge, mile 3.1 across Newtown Creek (East Branch), up to an additional half hour may be expected.

§ 117.801 Newtown Creek, Dutch Kills, English Kills and their tributaries.

(a) The following requirements apply to all bridges across Newtown Creek, Dutch Kills, English Kills and their tributaries:

(1) Public vessels of the United States Government, State or local vessels used for public safety, and vessels in distress shall be passed through the draw of the bridge as soon as possible without delay at anytime. The opening signal from

these vessels shall be four or more short blasts of a whistle, horn or radio request.

(2) The owners of this bridge shall provide and keep in good legible condition clearance gauges for each draw with figures not less than 12 inches high designed, installed and maintained according to the provisions of § 118.160 of this chapter.

(3) Trains and locomotives shall be controlled so that any delay in opening the draw shall not exceed five minutes. However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting opening of the bridge is given, that train may continue across the bridge and must clear the bridge interlocks before stopping.

(4) Except as provided in paragraph (b) through (d) of this section the draw shall open on signal.

(b) The draws of the Long Island Railroad bridges, mile 1.1 across Dutch Kills, both at New York City shall open on signal if at least six hours notice is given to the Long Island Railroad Movement Bureau except as provided in (a)(3).

(c) The Borden Avenue bridge, mile 1.2, across Dutch Kills at New York City, shall open on signal unless the drawtender is at the Hunters Point bridge, mile 1.4 across Dutch Kills, New York, the Roosevelt Island bridge, mile 6.4 across East River or Grand Street/ Avenue bridge, mile 3.1 across Newtown Creek (East Branch). In this event, a delay of up to one hour may be expected.

(d) The draw of the Hunters Point Avenue bridge, mile 1.4 across Dutch Kills, New York City, shall open on signal if at least one hour advance notice is given to the drawtender at the Borden Avenue bridge, mile 1.2 across Dutch Kills or the New York City Highway Department Radio (Hotline) Room. In the event the drawtender is at the Roosevelt Island bridge, mile 6.4 across East River, or the Grand Street/Avenue bridge, mile 3.1 across Newtown Creek (East Branch), up to an additional half hour may be expected.

(e) The draw of the Grand Street/ Avenue bridge, mile 3.1 across Newtown Creek (East Branch), shall open on signal if at least one hour advance notice is given to the drawtender at the Borden Avenue bridge, mile 1.2 across Dutch Kills or the New York City Highway Department Radio (Hotline Room). In the event the drawtender is at the Roosevelt Island bridge, mile 1.4 across Dutch Kills, New York up to an additional half hour may be expected.

Dated: May 8, 1990.

R.I. Rybacki,

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

[FR Doc. 90-11428 Filed 5-16-90; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3778-1; AM 603 MD]

Approval and Promulgation of Implementation Plans; Revision to the State of Maryland Implementation Plan for Ozone

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is today announcing that it is proposing to approve a request by Maryland to revise its State Implementation Plan (SIP) for attainment of the ozone standard. This revision will reduce emissions of volatile organic compounds from gasoline by reducing the Reid Vapor Pressure (RVP) of gasoline. This action will contribute to progress towards attainment of the ozone standard and is therefore appropriate for approval under section 110 of the Clean Air Act. Furthermore, the EPA is proposing to find that this control is necessary to achieve the ozone NAAQS in Maryland as set forth in section 211(c)(4)(2) of the Clean Air Act.

EFFECTIVE DATE: Comments must be received by June 18, 1990.

ADDRESSES: Copies of the proposed regulations and accompanying support material are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Program Planning Section, Air, Toxics & Radiation Management Division, 841 Chestnut Building, 8th floor, Philadelphia, Pennsylvania 19107. Attn: David L. Arnold.

Air Management Administration, Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224. Attn: George P. Ferreri.

All comments submitted on the proposed revision within 30 days of this Notice will be considered and should be addressed to Mr. David L. Arnold, Chief, Program Planning Section, at the EPA Region III address above. Please reference the EPA docket number found in the heading of this Notice.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond K. Forde, (215) 597-8239, at the EPA Region III address above. The commercial and FTS numbers are the same.

SUPPLEMENTARY INFORMATION: On October 30, 1989, the Maryland Department of the Environment (MDE) submitted a SIP revision to EPA. This SIP revision would amend COMAR 26.11.13.01 and add a subsection .06 which would prohibit persons from selling or supplying gasoline from a bulk plant, terminal or gas station having a Reid Vapor Pressure (RVP) greater than 9.0 pounds per square inch (psi) from May 1 through September 15 beginning in 1990 and continuing each year thereafter. In accordance with the requirements of 40 CFR 51.102, public hearings concerning the SIP revision were held on August 1, 1989 in Cambridge, Maryland; August 2, 1989 in Annapolis, Maryland; and on August 4, 1989 in Hagerstown, Maryland.

Background

Beginning in January 1988, six of the States comprising Northeast States for Coordinated Air Use Management (NESCAUM) held public hearings and adopted regulations to limit RVP to 9.0 psi between May 1 and September 15 of each year, beginning in 1989. As of January 1990, those six States had submitted requests to the EPA to obtain a federal preemption waiver so that they may regulate gasoline RVP, as provided in Section 211(c)(4)(C) of the Federal Clean Air Act. EPA has taken proposed and/or final action on these requests. Several Mid-Atlantic States are also proceeding to adopt regulations to control RVP to 9.0 psi. Maryland is limiting RVP to 9.0 psi from May 1 to September 15, starting in 1990 and continuing each year thereafter. Maryland adopted its RVP regulation on October 4, 1989 and submitted it to EPA as a requested SIP revision on October 30, 1989.

EPA published a notice of final rulemaking on March 22, 1989 (54 FR 11868) which also requires the control of RVP. The EPA rule calls for the control of the volatility of gasoline nationally. Beginning in 1989, that rule requires that in the Mid-Atlantic region, the standard is 10.5 psi. The Federal standard applies each year beginning June 1 for retail stations and other end users of gasoline and May 1 for all other points in the distribution system, including refiners and importers, pipelines and terminals. The requirement that RVP not exceed 10.5 psi ends at all points in the system on September 16 of each year. The EPA

regulation would normally preempt the State provision under section 211(c)(4)(A) of the Clean Air Act. However, section 211(c)(4)(C) of the Act provides for approval of the State control of fuel or fuel additives if the control is part of the SIP and is necessary to achieve the primary or secondary National Ambient Air Quality Standard (NAAQS) for which the plan is in effect.

Criteria for Approval

Section 211(c)(4)(A) of the Act, in describing Federal preemption authority, states: "Except as otherwise provided in subparagraph (B) or (C), no State (or political subdivision thereof) may prescribe or attempt to enforce, for the purposes of motor vehicle emission control, any control or prohibition respecting use of a fuel or fuel additive in a motor vehicle or motor vehicle engine—(i) If the Administrator has found that no control or prohibition under paragraph (1) Is necessary and has published his finding in the **Federal Register**, or (ii) if the Administrator has prescribed under paragraph [211(c)](1) a control or prohibition applicable to such fuel or fuel additive, unless the State prohibition or control is identical to the prohibition or control prescribed by the Administrator." Thus in light of the new Federal volatility rule, the State control would normally be preempted.

However, even though federal preemption has occurred, EPA may still approve certain state provisions for limits on RVP of fuel where a finding under section 211(c)(4)(C) is made which would authorize EPA approval and, thus, eliminate the preemption problem.

Section 211(c)(4)(C) of the Act, in setting forth the circumstances under which an exception to Federal preemption of State regulations may occur, states: "A State may prescribe and enforce, for purposes of motor vehicle emission control, a control or prohibition respecting the use of a fuel or fuel additive in a motor vehicle or motor vehicle engine if an applicable implementation plan for such State under section 110 so provides. The Administrator may approve such provision in an implementation plan, or promulgate an implementation plan containing such a provision, only if he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements".

EPA has recently issued final approval of the Massachusetts, Connecticut, Rhode Island, New York and New Jersey federal preemption waiver requests which included regulations to prohibit the sale of gasoline greater than 9.0 psi RVP between May 1 and September 15 of each year [1] (Maine's waiver request is currently under review). EPA's decisions on the final approval of these five federal preemption waivers were based on the recognition that they were necessary to achieve the ozone standard. In the **Federal Register** [54 FR 19173 (May 4, 1989)] discussion of EPA's approval of limiting the RVP of gasoline in the Massachusetts SIP, EPA interpreted the language in Section 211(c)(4)(C) of the Act as requiring the Agency to find that a fuel control requirement was essential to achieve timely attainment of the primary standard for ozone. EPA stated that even though the "State's (Massachusetts) RVP regulation might not by itself . . . achieve the standard does not mean the rule would not be 'necessary' to achieve the standard within the meaning of section 211(c)(4)(C)".[2] EPA believes that the "necessary to achieve" standard must be interpreted to apply to measures which are needed to reduce ambient levels (thus bringing the area closer to achieving the NAAQS) when other reasonable measures taken together would not be sufficient to achieve this reduction.

Evaluation of how the Maryland Revision Satisfies the "Necessary" Criterion

In its 1982 SIP, Maryland estimated that emissions of volatile organic compounds (VOCs) would need to be reduced by 48 percent from 1980 levels in order to attain the ozone standard during the ozone season in the Metropolitan Baltimore Air Quality Control Region (AQCR) by December 31, 1987. The same estimates projected that emissions of VOCs also must be reduced by 46 percent from 1980 levels to attain the standard during the ozone season in the Maryland portion of the National Capital AQCR. The percent reduction necessary was estimated to be equivalent to 215 tons per day (tpd) in the Metropolitan Baltimore AQCR and 93 tpd in the Maryland portion of the National Capital AQCR. EPA has reviewed the progress the State has made in achieving these emission reductions and determined that the State has achieved only a 26.7 percent reduction in VOCs from 1980 levels in the Metropolitan Baltimore area and only a 22 percent reduction in the Maryland/National Capital AQCR, using the inventories and assumptions of the 1982 SIP. An additional reduction of 95 tpd in the Metropolitan Baltimore AQCR and 48 tpd reduction in the Maryland/National Capital AQCR is identified in the SIP as necessary to attain the standard and has yet to be achieved. The reasons for these shortfalls are varied and include increased RVP in gasoline, inability to implement certain measures, higher than anticipated growth in vehicle miles traveled, and the fact that other measures identified in the 1982 SIP do not appear to provide sufficient controls in light of all the circumstances.

On May 26, 1988, EPA issued a notification (known as a SIP call) to Maryland that it must revise its SIP because of the State's failure to attain the National Ambient Air Quality Standard (NAAQS) for ozone in the Metropolitan Baltimore and Maryland/National Capital AQCRs. This notification also stated that the State must update their emission inventory for the areas mentioned above.

It should be recognized that once the revised emission inventory is completed and a new demonstration of attainment through use of updated computer modeling is performed, it is likely that additional VOC reductions will be necessary beyond those required by the 1982 SIP. EPA believes that the 9.0 RVP regulation will result in significant and expeditious reduction of VOC emissions, but will not make up the entire VOC reduction necessary to move the Metropolitan Baltimore and Maryland/National Capital AQCRs into attainment. This control measure will thus tend to move Maryland air quality towards attainment of the ozone NAAQS in the Metropolitan Baltimore and Maryland/National Capital AQCR's. RVP control is an essential control measure for Maryland's current and future VOC control plans intended to reduce ozone in nonattainment areas.

It is important to note that while the proposed State limit of 9.0 psi in gasoline will result in real emission reductions, Maryland cannot claim full emission reduction credit for purposes of determining VOC reductions achieved under the 1982 SIP. The reason the State cannot claim full credit under its 1982 SIP is because that plan's 1980 base year emission inventory was developed using the MOBILE2 emission factor model which assumed that the RVP of gasoline was 9.0 psi for purposes of estimating certain emissions from operating motor vehicles. Therefore, the portion of those RVP emission reductions which were already

[1] 54 FR 19173 (May 4, 1989), 54 FR 23650 (June 2, 1989), 54 FR 26030 (June 21, 1989), 54 FR 25572 (June 16, 1989).

[2] 54 FR 19174 (May 4, 1989).

accounted for in the 1982 SIP, cannot be used to make up the shortfall in projected emission reductions under the 1982 SIP.

The Maryland submittal concludes that by lowering gasoline RVP to 9.0 psi, VOC emission reduction of approximately 82.5 tpd would be obtained statewide with 49.5 tpd of the reduction occurring in the Metropolitan Baltimore area and 33 tpd occurring in the Maryland/National Capital AQCR. The quantity of this reduction was calculated using the AP-42 emission factors for storage and transfer of gasoline and the new EPA MOBILE4 emission factor model for motor vehicle emissions. This estimate includes the emission reductions that would result from decreased running losses associated with lower volatility gasoline. Running losses are emissions from the gasoline tank and fuel system that occur while a car is being driven and which overload the evaporative control system or escape through the filler cap. The 49.5 tpd reduction represents over 11 percent of the Metropolitan Baltimore AQCR 1980 VOC inventory, and the 33 tpd represents nearly 16.3 percent of the Maryland/National Capital AQCR VOC inventory.

The VOC strategies identified by Maryland as having the greatest potential for significant future VOC reductions are:

TABLE 1

Measure	Baltimore AQCR 1980 reduction (TPD)	Baltimore AQCR 1980 (percent of inventory)	Maryland/National Capital AQCR 1980 reduction (TPD)	Maryland/National Capital AQCR 1980 (percent of inventory)
Reducing RVP from 10.5 to 9.0 psi	49.5	11.0	33.0	16.3
Stage II/on board controls	12.0	2.7	8.0	3.9
Enhanced Motor Vehicle Inspection Maintenance Program	7.0	1.6	5.0	2.5

All three measures for the Metropolitan Baltimore AQCR mentioned above, if found practicable, would provide emission reductions of 15.3 percent if all control measures are 100 percent effective. This still leaves an additional 6.0 percent [3] VOC emission reduction needed to achieve attainment as projected in the 1982 SIP. The emission reduction for the Maryland/National Capital AQCR, assuming controls are 100 percent effective, would be 22.7 percent, leaving at least a 0.71 percent [3] shortfall from the 1982 SIP projection. In order to make up for these shortfalls, the State is examining other VOC control strategies such as those listed in Table 2. Table 2 lists control measures that individually would provide at least 2 tons per day VOC reductions in both metropolitan areas combined. The potential combined reductions from these VOC control strategies may satisfy the remaining shortfalls in the Metropolitan Baltimore and the Maryland/National Capital AQCRs. However, in light of all of the circumstances, these measures do not appear to be sufficient sources of controls to make up the shortfall without the RVP controls proposed here, since EPA's March 22, 1989 RVP regulation only requires control to 10.5 psi in 1989.

[3] The shortfall does not include the amount of RVP emission reductions which were assumed baseline in the 1982 SIP. The baseline RVP in the 1982 SIP assumed 9.0 psi in gasoline.

TABLE 2.—MAJOR ADDITIONAL VOC CONTROL ALTERNATIVES FOR THE BALTIMORE AND WASHINGTON, DC AREAS

Other strategies	Baltimore AQCR 1980 reduction (TPD)	Baltimore AQCR 1980 (percent of inventory)	Maryland/National Capital AQCR 1980 reduction (TPD)	Maryland/National Capital AQCR 1980 (percent of inventory)
Solvent recovery	9.7	2.2	6.0	2.96
Architectural coatings	6.0	.3	4.1	2.0
Fleet alternative fuels	4.6	1.0	3.1	1.5
Can manufacturing	3.8	.84	—	—
Pesticide application	2.0	.44	.9	.44
High occupancy vehicles	1.8	.4	1.1	.54
Auto refinishing	1.5	.3	.8	.39
Auto undercoating	1.6	.35	.6	.29

Thus Maryland's RVP program appears to meet the appropriate test of being "necessary" to achieve attainment of the ozone standard. With the reduction in RVP to 9.0 psi and implementing the additional control strategies, the Metropolitan Baltimore and Maryland/National Capital AQCRs appear to be able to reduce VOC emissions sufficiently to eliminate the shortfall needed to demonstrate attainment as projected in the 1982 SIP. Consequently, EPA believes that approving this Maryland proposal is "necessary to achieve" the NAAQS, because no combination of other available control measures can achieve the substantial VOC emission reductions necessary to meet the SIP projections of controls necessary to bring the Metropolitan Baltimore and Maryland/National Capital AQCRs into attainment of the ozone standard without state-wide RVP control. Without such an approval, Maryland would be substantially impeded in its attempt to achieve the ozone standard. Therefore, EPA is proposing to approve this Maryland SIP revision.

Maryland's submittal demonstrated that the State must apply the RVP rule on a state-wide basis in order to maximize the use of 9.0 RVP gasoline and insure compliance in the two nonattainment areas without producing supply and distribution problems throughout the State. While the benefits

associated with controlling VOC emissions in nonattainment areas are apparent, reducing these emissions in attainment areas is also beneficial. Ozone is a regional concern because VOC emissions originating in one area may be transported through the atmosphere and adversely affect air quality in another area. This phenomenon may cause VOC emissions in attainment areas to increase ozone levels in nonattainment areas—such as the Metropolitan Baltimore and Maryland/National Capital AQCRs. Thus, reducing VOC emissions in attainment areas may help reduce ozone levels in nonattainment areas.

Therefore, EPA concludes that based on the State submittal the state-wide implementation of this regulation to limit gasoline volatility is necessary to improve air quality within the nonattainment AQCRs and throughout the State as well in order to achieve the NAAQS in the nonattainment areas. The fact that Maryland has adopted regulations similar to those in the NESCAUM States is an important step in expanding the regional application of gasoline volatility restrictions which will also reduce interstate transport of ozone and ozone precursors. EPA's evaluation of this SIP is presented in the Technical Support Document (TSD) that is available for public inspection at the EPA Regional Office listed in the "address" section of this document.

The sampling and test methods in the Maryland regulation are in accordance with the methods contained in EPA's March 22, 1989 **Federal Register** Final Rulemaking Notice (54 FR 11868). Therefore, EPA is proposing to approve the State RVP limit and its sampling and test methods.

Proposed Action

EPA is proposing to approve this revision to the Maryland Ozone State Implementation Plan which amends COMAR 26.11.13.01 and adds subsection .06 to control gasoline volatility. As part of this approval, EPA is also proposing to make a finding that this SIP revision meets the requirements of section 211(c)(4)(C) of the Act for an exception to federal preemption. This finding is required since EPA has promulgated national fuel volatility standards.

EPA is soliciting public comments on its proposed action. Comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking process by submitting written comments to the address noted at the beginning of today's notice.

This notice is issued as required by section 110 of the Clean Air Act, as amended. The Administrator's decision regarding the approval of this plan revision is based on its meeting the requirements of section 110 of the Clean Air Act, and 40 CFR part.

Under 5 U.S.C. section 605(b), I certify that this SIP revision, regarding the proposed approval of the Maryland RVP regulation, will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52:

Air Pollution Control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: March 19, 1990.

Stanley L. Laskowski,

Acting Regional Administrator.

[FR Doc. 90–11516 Filed 5–16–90; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

46 CFR Parts 515, 525, 530, 560 and 572

[Docket No. 90–06]

Inquiry; Marine Terminal Operator Regulations

AGENCY: Federal Maritime Commission.

ACTION: Notice of Inquiry; extension of comment period.

SUMMARY: The Federal Maritime Commission ("Commission") adopted certain recommendations of the *Report of Fact Finding Officer* in Fact Finding Investigation No. 17, *Rates, Charges and Services Provided at Marine Terminal Facilities* ("FF–17"). The Notice of Inquiry, published February 16, 1990 (55 FR 5626), initiated an inquiry to solicit public comment on a potential restructuring of the Commission's marine terminal operator regulations in the areas identified in FF–17 as warranting revision. The comments received will assist the Commission in proposing an appropriate rule to update its regulations in this area. Comments were originally due April 17, 1990, but that time was extended to May 17, 1990, at the request of the National Association of Stevedores.

The American Association of Port Authorities ("AAPA") now has requested a further 14 day enlargement of time. AAPA cites the variety of operational schemes, different relationships between private operators, and diversity of government structures within the marine terminal industry as reasons for not yet reaching a consensus position among its members, and believes the additional 14 days may provide an opportunity for a more complete response. There appears to be good cause for granting AAPA's request. Accordingly, this notice extends the time for filing comments to the Notice of Inquiry to May 31, 1990.

DATE: Comments due May 31, 1990.

ADDRESS: Comments (original and fifteen (15) copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573–0001, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Bryant L. Van Brakle, Acting Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573–001, (202) 523–5796.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90–11411 Filed 5–16–90; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 32

[CC Docket No. 90–215; DA 90–680]

Uniform System of Accounts for Telecommunications Companies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Order denying extension of time to file comments.

SUMMARY: This action denies a motion requesting an extension of time to file comment in response to the Notice of Proposed Rulemaking in CC Docket No. 90–215, 55 FR 144.38, April 18, 1990. We believe that parties have had sufficient time to study the effects of the proposed rule change and that an extension of time from May 10, 1990 to June 22, 1990 is unwarranted.

DATES: Comments must be received on or before May 10, 1990. Reply comments must be received on or before May 25, 1990.

FOR FURTHER INFORMATION CONTACT: John T. Curry, Accounting Systems Branch, Accounting and Audit Division, Common Carrier Bureau, (202) 634–1861.

SUPPLEMENTARY INFORMATION:

Order

In the matter of amendment of part 32, Uniform System of Accounts for Telecommunications Companies, to Revise the Accounting for General Purpose Computer and Information Management Expenses; CC Docket No. 90–215.

Adopted: May 9, 1990. Released: May 9, 1990.

By the Deputy Bureau Chief, Common Carrier Bureau.

1. On April 10, 1990, the Commission released a *Notice of Proposed Rulemaking* in which it proposed to eliminate Account 6124, General Purpose Computers Expense, and Account 6724, Information Management.[1] Interested parties were given until May 10, 1990, to file comments. On May 3, 1990, several parties [2] jointly filed a motion requesting that the time for filing initial comments in this proceeding be extended to June 22, 1990.

2. The parties state that they need additional time to make the appropriate, detailed analysis of the successive effects of the Commission's proposed rule changes on: (a) The shifts from the accounts proposed for elimination to the remaining accounts; (b) the shifts between regulated and nonregulated operations; (c) the shifts between interstate and intrastate jurisdictions; and, (d) the shifts between access and non-access elements. The parties contend that without adequate time to analyze the effects of the Commission's proposed elimination of Accounts 6124 and 6724, they will be denied the opportunity for full and informed participation in this rulemaking.

3. We believe that the parties interested in this proceeding have had sufficient time to study the effects of the Commisssion's proposed rule change. We are not persuaded by the circumstances presented and do not believe that an extension of 43 days to file comments is warranted. Therefore, we are denying the motion requesting an extension of time for filing initial comments in this proceeding.

4. *It is Therefore Ordered*, that the Motion for Extension of Time IS DENIED.

[1] Amendment of part 32, Uniform System of Accounts for Telecommunications Companies, to Revise the Accounting for General Purpose Computer and Information Management Expenses, 55 FR 14438 (April 18, 1990).

[2] The following parties jointly filed the motion: The ALLTEL Companies, Century Telephone Enterprises System, Illinois Consolidated Telephone Company, Pacific Telesis, Southwestern Bell Telephone Company, Sugarland Telephone Company, Perco Telephone Company, Waterwood Telephone Company, Tri-County Telephone Company and the Telephone Utilities Exchange Carrier Association.

Federal Communications Commission.

Gerald P. Vaughan,

Deputy Bureau Chief, Common Carrier Bureau.

[FR Doc. 90–11402 Filed 5–16–90; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding and Commencenment of Status Review for Petition To List Hawaiian Freshwater Goby Fish (Lentipes concolor) as Threatened and Endangered, and To Designate Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to add the Hawaiian freshwater goby fish (*Lentipes concolor*) to the List of Endangered and Threatened Wildlife. The petition has been found to present substantial information indicating that the requested actions may be warranted. The species is classified as a category 1 candidate. Through issuance of this notice, the Service is commencing a formal review of the status of this species.

DATES: Comments and information must be submitted by July 16, 1990.

ADDRESSES: Data, information, comments, or questions concerning the status of *Lentipes concolor* should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, 300 Ala Moana Blvd., room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. The petition, this finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ernest Kosaka, Field Supervisor, at the above address (808/541–2749 or FTS 551–2749).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maxium extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**.

Arnold L. Lum and Michael R. Sherwood, attorneys with the Sierra Club Legal Defense Fund, Inc., submitted to the Service a petition on behalf of the Sierra Club, Conservation Council for Hawaii, Life of the Land, Hawaii Audubon Society, and 1000 Friends of Kauai (petitioners), to list the endemic Hawaiian freshwater goby fish *Lentipes concolor*, family Gobiidae, as a threatened species on the islands of Kauai and Molokai, and as an endangered species on the islands of Oahu, Maui and Hawaii. The petition also requested the Service designate as critical habitat, all streams from headwaters to stream mouths and associated tributaries within the following areas:

Kauai: Na Pali Coast and northeast coast from Makaha Point to Kilauea Point;
Molokai: northeast coast from Makalii Point to Cape Halawa;
Maui: Kahakuloa and Makamakaole Streams and tributaries on West Maui, Keanae Point Kaupo on East Maui;
Hawaii: northest coast from Upolu Point to Mokupane Point.

The petition was dated September 28, 1989, and was received by the Service on October 4, 1989.

Information and data provided by the petitioners documents that although individual fishes of this endemic species have been found in 56 perennial streams (15 percent of the 366 perennial streams within the Hawaiian Islands), high population densities are known from fewer than 10 perennial streams. The reproductive potential of this species appears to be far less than that of other native goby fishes in Hawaiian streams, and effective breeding populations may be confined to only a few perennial streams. *Lentipes concolor* is reported to have the most limited distribution of any native freshwater fish in the Hawaiian Islands.

Previous scientific studies and collections indicate that adults of this species may be found in tributaries of major streams having terminal estuaries, in mainstreams between 700 feet and 1,500 feet elevation on large streams lacking terminal estuaries, and throughout the mainstream in small streams that discharge across terminal falls or cascades. Both large and small island streams are subject to potential adverse effects of habitat loss through continued dewaterment, channelization and watershed development.

Based on the best scientific and commercial information presently available, the Service has found that the petition has presented substantial information indicating that the actions requested may be warranted. The species was classified as a category 1 candidate species in the September 18, 1985 vertebrate notice of review (50 FR 37961). As part of a formal review of the status of *Lentipes concolor*, the Service would appreciate any additional data, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the status of this species.

Author

This notice was prepared by John I. Ford, Honolulu Field Office, at the above address.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 17

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

Dated: May 10, 1990.

David L. McMullen,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 90–11465 filed 5–16–90; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 55, No. 96
Thursday, May 17, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Public Meeting of Assembly

Notice is hereby given, pursuant to the Federal Advisory Committee Act, Public Law No. 92–463, that the membership of the Administrative Conference of the United States, which makes recommendations to administrative agencies, to the President, Congress, and the Judicial Conference of the United States regarding the efficiency, adequacy, and fairness of the administrative procedures used by Federal agencies in carrying out their programs, will meet in Plenary Session on Thursday, June 7 and Friday, June 8, 1990, in the Amphitheater of the Office of Thrift Supervision, Second Floor, 1700 G Street NW., Washington, DC. The meeting on June 7 will begin at 1 p.m. and end at approximately 5 p.m.; the meeting on June 8 will begin at 9 a.m. and end at approximately 12:15 p.m.

The Conference will consider, not necessarily in the order stated, proposed recommendations on the following subjects:

1. Agency Administration of Failed or Failing Depository Institutions.
2. Civil Money Penalties for Federal Aviation Violations.
3. Federal Agency Use of Ombudsmen.
4. Use of Risk Communication by Regulatory Agencies in Protecting Health, Safety, and the Environment.
5. Social Security Disability Program Appeals.

The Conference also will receive, as a nonaction item, a presentation on the results of a study of judicial remands in agency cases.

Plenary sessions are open to the public. Further information on the meeting, including copies of proposed recommendations, may be obtained from the Office of the Chairman, 2120 L Street NW., Suite 500, Washington, DC 20037, telephone (202) 254–7020.

Dated: May 14, 1990.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 90–11538 Filed 5–16–90; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office Management and Budget

May 11, 1990.

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, DC 20250, (202) 447–2118.

Revision

• National Agricultural Statistics Service.

Field Crops Objective Yield Surveys.

Annually.

26,919 responses; 9,095 hours; not applicable under 3504(h).

Larry Gambrell (202) 447–7737.

• Food & Nutrition Service.

Development of Evaluatation Survey for Food Stamp Cash-Out Demonstration.

Projects.

One time only.

Individuals or households; State or local governments; 9,368 responses; 17,245 hours; not applicable under 3504(h).

Boyd Kowal (703) 756–3130.

Extension

• Forest Service.

Application for Prospecting Permit.

On occasion.

Individuals or households; 40 responses; 10 hours; not applicable under 3504(h).

W. Mark Weber (FTS) 585–3592.

• Food and Nutrition Service.

WIC Program Regulations—Reporting and Recordkeeping Burden.

On occasion; Monthly; Quarterly; Annually.

Individuals or households; State or local governments; businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 9,207,414 responses; 1,027,499 hours; not applicable under 3504(h).

Mike Buckley (703) 756–3730.

New Collection

• Forest Service.

Wilderness Aircraft Overflight Study.

One time.

Individuals or households; 3,600 responses; 740 hours; not applicable under 3504(h).

Lawrence A. Hartmann (406) 721–5694.

Reinstatement

• Forest Service.

Certified Bidders Statement of the Relationship to other Bidders or Operators—(Certification of Nonaffiliation).

On Occasion.

Businesses or other for-profit; 1200 responses; 20 hours; not applicable under 3504(h).

Jim Pharo (202) 475–3756.

Donald E. Hulcher,

Acting Departmental Clearance Officer.

[FR Doc 90–11443 Filed 5–16–90; 8:45 am]

BILLING CODE 3410–01–M

Office of the Secretary

[CN 90–003]

Committees; Establishment, Renewal, Termination, Etc.: Cotton Marketing National Advisory Committee

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of renewal.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463) notice is hereby given that the Secretary of Agriculture has renewed the national advisory committee to review the cotton marketing system and recommend ways of improving its efficiency.

ADDRESSES: For further information contact: Jesse F. Moore, Director, Cotton Division, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456.

SUPPLEMENTARY INFORMATION: The continuing purpose of the committee is to review the cotton marketing system and to recommend ways of improving its efficiency. Much progress has been made, but the review cannot be finished by expiration of the current charter. The review includes but is not limited to the cotton classification program, cotton standards, market quotations, and the impact of High Value Instrument (HVI) classing on the price support loan structure.

The Secretary has determined that the work of the committee is in the public interest and is in connection with the duties of the Department of Agriculture. No other advisory committee in existence is capable of advising and assisting the Department on the task assigned, nor does the Department have an alternative means of obtaining the technical and practical expertise needed from private industry.

Balanced committee membership will be continued through appointment by the Secretary of Agriculture of one grower from each of the four general areas of cotton production and two representatives each from the ginner, cooperative, merchant, manufacturer, and academic/research areas. One alternate member for every two regular members will also be appointed. USDA policy with respect to equal opportunity will be followed in the appointment process.

Done at Washington, DC this 9th day of May 1990.

Adis M. Vila,

Assistant Secretary for Administration.

[FR Doc. 90–11444 Filed 5–16–90; 8:45 am]

BILLING CODE 3410–02–M

Food Safety and Inspection Service

[Docket No. 90–006N]

SLD Policy Memoranda; Semi-Annual Listing

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document lists and makes available to the public a memorandum issued by the Standards and Labeling Division (SLD), Regulatory Programs, Food Safety and Inspection Service (FSIS), which contains a significant new application or interpretation of the Federal Meat Inspection Act, the Poultry Products Inspection Act, the regulations promulgated thereunder, or departmental policy concerning labeling.

FOR FURTHER INFORMATION CONTACT: Ashland L. Clemons, Director, Standards and Labeling Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–6042.

SUPPLEMENTARY INFORMATION: FSIS conducts a prior approval program for labels or other labeling (specified in 9 CFR 317.4, 317.5, 381.132 and 381.134) to be used on federally inspected meat and poultry products. Pursuant to the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), and the regulations promulgated thereunder, meat and poultry products which do not bear approved labels may not be distributed in commerce.

FSIS's prior label approval program is conducted by label review experts within SLD. A variety of factors, such as continuing technological innovations in food processing and expanded public concern regarding the presence of various substances in foods, has generated a series of increasingly complex issues which SLD must resolve as part of the prior label approval process. In interpreting the Acts or regulations to resolve these issues, SLD may modify its policies on labeling or develop new ones.

Significant or novel interpretations or determinations made by SLD are issued in writing in memorandum form. This document lists one SLD policy memorandum which was issued during the period of October 1, 1989, through April 1, 1990.

Persons interested in obtaining a copy of the following SLD policy memorandum, or in being included on a list for automatic distribution of future SLD policy memoranda, may write to: Printing and Distribution Section, Paperwork Management Branch, Administrative Services Division, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

Memo No.	Title and date	Issue	Reference
098A	Labeling and Use of Beef Cheek Meat and Beef Head Meat, and Pork Cheek Meat and Pork Head Meat, March 30, 1990.	What guidelines should be followed for the labeling and use of beef cheek meat and/or beef head meat, and pork cheek meat and/or pork head meat?	(Supersedes Policy Memo 098); 9 CFR 319.15, 319.81, 319.100, 319.300, 319.301, and 319.303.

The SLD policy specified in this memorandum will be uniformly applied to all relevant labeling applications unless modified by a future memorandum or more formal Agency action. Applicants retain all rights of appeal regarding decisions based upon this memorandum.

Done at Washington, DC, on: May 11, 1990.

Ashland L. Clemons,

Director, Standards and Labeling Division, Regulatory Programs, Food Safety and Inspection Service.

[FR Doc. 90–11441 Filed 5–16–90; 8:45 am]

BILLING CODE 3410–D–M

Forest Service

Trails Mannagement Plan—Santa Lucia Ranger District; Los Padres National Forest, San Luis Obispo County, CA

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an environmental impact statement addressing the development of a Trails Management Plan for the San Luis

Obispo County portion of Los Padres National Forest. The areas tobe studied include: La Panza/Pozo, Central, Rockfront and West Cuesta. The EIS will analyze opportunities for trail development, connecting loops, improved access and trailhead facilities, and methods to minimize conflicting uses.

The decisions to be made through this environmental analysis are:

(1) Identify a system of designated trails open and available for use;

(2) Identify designated trails or segments of designated trails to be closed and rehabilitated;

(3) Identify trails and trail segments to be relocated;

(4) Identify routes available for permitted trail events.

The agency invites comments and suggestions on the scope of the analysis to be included in the draft environmental impact statement. In addition, the agency gives notice of the full environmental analysis and decision-making process that is beginning so that interested and affected people know how they may participate and contribute to the final decision.

DATES: Written comments concerning the scope of the analysis must be received on or before June 30, 1990.

ADDRESSES: Send written comments to Keith Guenther, District Ranger, Santa Lucia Ranger District, 1616 Carlotti Drive, Santa Maria, CA 93454.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and EIS should be directed to Manuel Madrigal, ID Team Leader, Santa Lucia Ranger District, 1616 Carlotti Drive, Santa Maria, CA 93454, 805–925–9538.

SUPPLEMENTARY INFORMATION: Preliminary scoping, data collection, and analysis for development of this environmental study have been in process for approximately 2 years. The scoping process has included public meetings; establishment of a Citizens' Working Group; on-the-ground reviews; news releases; and correspondence with interested and affected individuals and organizations, as well as Federal, state and local agencies.

The environmental analysis progressed to the point of identifying a preliminary range of alternatives when it was determined that the effects of alternative implementation on the quality of the human environment were potentially significant, thus requiring preparation of an environmental impact statement.

Additional scoping will be conducted so that all interested and affected agencies, organizations, or individuals may participate. The scoping process will include:

(1) Confirmation of issues identified to date. Identification of new issues.

(2) Identification of issues to be analyzed in depth.

(3) Elimination of insignificant issues or those which have been covered by a previous environmental review.

The following preliminary issue categories have been identified:

(1) Conflicts among user groups,

(2) Impact of OHV noise on wildlife, forest visitors, landowners,

(3) Impacts on T&E species and other wildlife,

(4) Impacts on wild horses,

(5) Impacts on riparian areas,

(6) Soil erosion resulting primarily from OHV use,

(7) Fire hazard,

(8) Access to National Forest System lands,

(9) Conflicts with grazing permittees,

(10) Trespass onto private land from NFS land,

(11) Liability of Forest Service, users, landowners,

(12) Adequacy of funding—current and foreseeable—for mitigating and monitoring.

In preparing the Environmental Impact Statement, the Forest Service will evaluate a range of alternatives for managing the trail system. One of these will be the "no action" alternative which will continue current management. Other alternatives will address various options for managing user conflicts while protecting natural resources.

The responsible official for the Forest Service and NEPA process is Arthur J. Carroll, Forest Supervisor of the Los Padres National Forest.

The analysis is expected to take approximately 18 months. The estimated date for completion of the Draft Environmental Impact Statement is June, 1991.

The comment period on the DEIS will be 60 days from the date the Environmental Protection Agency's notice of availability of the DEIS appears in the **Federal Register**. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed.

The estimated date for completion of the Final EIS is December, 1991. The Decision Notice will be published in the **Federal Register**. A legal notice announcing the decision will be published in the San Luis Obispo Telegram Tribune, the newspaper of record for the San Luis Obispo County portion of the Los Padres National Forest. The public will have 45 days from the date that notice is published in which to file an appeal of the decision.

During the period of time in which the EIS is being prepared, a few minor trail improvements may be initiated based on separate environmental analyses, if required for public safety or to prevent significant resource damage.

Federal court decisions have established that reviewers of DEIS's must structure his/her participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corporation* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when these comments can be meaningfully considered and responded to in the final environmental impact statement (FEIS).

Dated: May 11, 1990.

Arthur J. Carroll,

Forest Supervisor.

[FR Doc. 90–11527 Filed 5–16–90; 8:45 am]

BILLING CODE 3410–11–M

Pelican Butte Recreation Area; Intent To Prepare Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) for a proposal to develop the Pelican Butte Recreation Area on the Klamath Ranger District, Winema National Forest, Klamath County, Oregon. The Forest Service invites written comments and suggestions on the scope of the analysis. In addition, Forest Service gives notice of the full environmental analysis and decision-making process that will occur on the Forest Service proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis should be submitted by June 14, 1990.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Lee F. Coonce, Forest Supervisor, Winema National Forest, 2819 Dahlia Street, Klamath Falls, Oregon 97601.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Larry Swan, Pelican Butte Area Planner, Winema National Forest, phone (503) 883–6828; and Robert Shull, District Ranger, Klamath Ranger District, Winema National Forest, 1936 California Avenue, Klamath Falls, Oregon 97601, phone (503) 883-6824.

SUPPLEMENTARY INFORMATION: The Forest Service proposal for Pelican Butte Recreation Area will include opportunities for the following: downhill and cross country skiing, snowmobiling; and in the summer months, an environmental education and nature study program. In preparing the draft EIS, the Forest Service will identify and consider a range of alternatives for this site and an analysis of alternate sites. One alternative (No Action Alternative) will consider no development. Another alternative will consider the development specified in the special use permit application filed by the City of Klamath Falls on August 11, 1989. A range of alternatives will be developed and examined to deal with the significant issues developed during the scoping process.

Lee F. Coonce, Forest Supervisor, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, and other individuals or organizations who may be interested in or affected by the proposed action. This information will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental process.
4. Exploring additional alternatives.
5. Identifying potential environmental affects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

Public meetings will be held in communities in southern Oregon and northern California. Notice of meeting dates and locations will be published in local newspapers and a newsletter and posted in public buildings well in advance of the meetings.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by September 1991. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. EPA will publish a notice of availability of the draft EIS in the **Federal Register**.

The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register**. It is very important that those interested in the managment of the Pelican Butte Recreation Area participate at that time.

To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental reviews of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS, *City of Angoon* v. *Hodel*, 803 F.2d. 1016, 1022, (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

After the comment period on the draft EIS ends, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed by February 1992. In the final EIS, the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, envronmental laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to review under 36 CFR 217.

Dated: May 4, 1990.

Lee F. Coonce,

Forest Supervisor.

[FR Doc. 90–11483 Filed 5–16–90; 8:45 am]

BILLING CODE 3410–11–M

Rural Electrification Administration

Coast Electric Power Association; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, Agriculture.

ACTION: Finding of no significant impact relating to the approval of construction of a district office in Harrison County, MS.

SUMMARY: Notice is hereby given that the Rural Electrification Administration, pursuant to the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations (40 CFR parts 1500–1508) and the Rural Electrification Administration Environmental Policies and Procedures (7 CFR part 1794), has made a Finding of No Significant Impact with respect to the construction of a district office in Harrison County, Mississippi. Coast Electric Power Association has requested the Rural Electrification Administration's approval to construct the project.

FOR INFORMATION CONTACT: Alex M. Cockey, Jr., Director, Southeast Area—Electric, room 0270, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382–8436.

SUPPLEMENTARY INFORMATION: The proposed location for the Harrison County District Office is on the east side of Highway 49 North in the Lyman Community approximately 4.8 kilometers (3 miles) north of the intersection of Highway 49 North and Interstate 10.

The Harrison District Office will be made up of a 1,020 square meter (11,000 square foot) office building, a 670 square meter (7,200 square foot) warehouse, a 790 square meter (8,500 square foot) service building with diesel and gasoline fuel pumps and a 15,140 liter (4,000 gallon) underground storage tank for each, a 500 square meter (5400 square foot) open storage area, a 335 square meter (3600 square foot) wire storage area, a 335 square meter (3600 square foot) covered parking area, approximately 50 open parking spaces and miscellaneous asphalt, gravel and concrete surface areas. The total site area is approximately 3.6 hectares (9 acres). Approximately 2.4 hectares (6

acres) will be used for placement of the facilities.

Alternatives examined for the proposed project were no action and construction of the district office at the proposed site.

The Rural Electrification Administration, in accordance with its environmental policies and procedures, required that Coast Electric Power Association develop a Borrower's Environmental Report (BER) reflecting the potential impacts of the proposed district office. The Rural Electrification Administration has reviewed the BER and believes it represents a fair and accurate representation of the project and its potential impacts.

Coast Electric Power Association published a legal notice and advertisement in the *The Sun Herald* which has a general circulation in Harrison County, Mississippi. The notice and advertisement appeared in the March 12, 1990 issue. The notice described the project, announced the availability of the BER, gave information on how the BER could be obtained for review and gave addresses where comments could be sent. The advertisement appeared in the same issue of the newspaper and briefly described the project and referred the reader to the legal notice. The public was given at least 30 days to respond to the notice. No responses to the notice were received by Coast Electric Power Association or the Rural Electrification Administration.

Based on its review of the BER, the plans and specifications for the district office and other relevant information provided by Coast Electric Power Association, the Rural Electrification Administration prepared an Environmental Assessment to assess the potential environmental impacts resulting from the construction and operation of the project.

As a result of its Environmental Assessment, the Rural Electrification Administration has concluded that there is a demonstrated need for the project and constructing it at the proposed site will have no significant impact on air quality and water quality. The project will have no affect on federally listed threatened and endangered species or designated critical habitat or species proposed for listing or proposed critical habitat. There are no wetlands, 100-year floodplains, prime farmlands, or properties listed or eligible for listing on the National Register of Historic Places on the proposed Harrison District Office site.

No other potential significant impacts resulting from the construction and use of the proposed district office have been identified. Therefore, the Rural Electrification Administration has determined that its action related to this project will have no significant impact on the quality of the human environment and has subsequently reached a Finding of No Significant Impact.

The Rural Electrification Administration has determined that the Finding of No Significant Impact fulfills its obligations under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508) and the Rural Electrification Administration's Environmental Policies and Procedures (7 CFR part 1794) for its action related to the proposed district office.

Copies of the Environmental Assessment and Finding of No Significant Impact can be obtained from REA at the address provided herein or at the office of Coast Electric Power Association, P.O. Box 2430, Bay St. Louis, Mississippi 39521–2430.

Dated: May 14, 1990.

John H. Arnesen,

Assistant Administrator—Electric, Rural Electrification Administration, U.S. Department of Agriculture.

[FR Doc. 90–11526 Filed 5–16–90; 8:45 am]

BILLING CODE 3410–15–M

Soil Conservation Service

Long-Cross Lakes Watershed, ME

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Long-Cross Lakes Watershed, Aroostook County, Maine.

FOR FURTHER INFORMATION CONTACT: Charles Whitmore, State Conservationist, Soil Conservation Service, USDA Office Building, University of Maine, Orono, Maine 04473, telephone 207–581–3446.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Charles Whitmore, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection and water quality improvement. The planned works of improvement include land treatment, animal and agricultural waste management systems, road ditch improvements and nutrient control systems. One hundred and fifteen farms and some 9,600 acres of cropland will be involved in the project.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Charles Whitmore.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904-Watershed Protection and Flood Prevention— and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials).

Dated: May 7, 1990.

Charles Whitmore,

State Conservationist.

[FR Doc. 90–11510 Filed 5–16–90; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Idaho Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Idaho Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 4 p.m. on June 8, 1990, at the Guadalupe Center, 630 Falls Avenue, Twin Falls, Idaho 83303. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Gladys Esquibel, or Philip Montez, Director of the Western Regional Division (213)

894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 10, 1990.

Wilfredo J. Gonzalez,

Staff Director.

[FR Doc. 90–11421 Filed 5–16–90; 8:45 am]

BILLING CODE 6335-01-M

Montana Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Montana Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 1:30 p.m., on June 9, 1990, at the Northern Hotel, Broadway and First Avenue, North, Billings, Montana 59101. The purpose of the meeting is to obtain information on statewide aging services and Native American issues.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Betty Babcock or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD/894–3737). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 10, 1990.

Wilfredo J. Gonzalez,

Staff Director.

[FR Doc. 90–11422 Filed 5–16–90; 8:45 am]

BILLING CODE 6335-01-M

South Dakota Advisory Committee Meeting

Notice is hereby given, pursuant to the provisons of the Rules and Regulations of the U.S. Commission on Civil Rights, that the South Dakota Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 3:30 p.m. on June 15, 1990, at the Holiday Inn Centre, 100 West 8th Street, Sioux Falls, South Dakota 57102. The purpose of the meeting is to plan project activities for the new charter period and to discuss civil rights issues affecting the State of South Dakota.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Committee Chairperson, Marcella Prue or Philip Montez, Director of the Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the schedulded date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 10, 1990.

Wilfredo J. Gonzalez,

Staff Director.

[FR Doc. 90–11423 Filed 5–16–90; 8:45 am]

BILLING CODE 6335-01-M

Tennessee Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Tennessee Advisory Committee to the Commission scheduled from 2 p.m. until 5 p.m., on May 17, 1990, at the Vanderbilt Law School, Room 145, 21st and Grand Avenue, in Nashville, has been cancelled.

Wilfredo J. Gonzalez,

Staff Director.

[FR Doc. 90–11424 Filed 5–16–90; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

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

Agency: Bureau of the Census.

Title: Survey of 1990 Census Participation.

Form number: D–1406.

Type of request: New.

Burden: 333 hours.

Number of respondents: 1,000.

Avg hours per response: 20 minutes.

Needs and uses: The mail-back rate for the 1990 Decennial Census of Population and Housing was appreciably lower than anticipated. This survey will collect information to help determine why the return rate was lower than expected. The Census Bureau will use the data to plan for the 2000 census and household surveys conducted in the decade of the 1990s.

Affected public: Individuals or households.

Frequency: One-time.

Respondent's obligation: Voluntary.

OMB desk officer: Don Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 11, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc 90–11502 Filed 5–16–90; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB)

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

Agency: Bureau of the Census.

Title: Telephone Surveys of Census Participation—Cleveland and New York City.

Form number: D–68.

Type of request: New.

Burden: 166 hours.

Number of respondents: 2,000.

Avg hours per response: 5 minutes.

Needs and uses: The main-back rate for the 1990 Decennial Census of Population and Housing was appreciably lower than anticipated, especially in large cities. This random-digit-dialing telephone survey of New York City and Cleveland residents will yield insights into the Census Bureau's address preparation and delivery, as well as respondents's reactions to the receipt of the form. The Census Bureau will use the data to plan for the 2000 census and household surveys conducted in the decade of the 1990s.

Affected public: Individuals and households.

Frequency: One-time.

Respondent's obligation: Voluntary.

OMB desk officer: Don Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 11, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90–11503 Filed 5–16–90; 8:45 am]

BILLING CODE 3510–07–M

Agency Form Under Review by the Office of Management and Budget (OMB)

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

Agency: Bureau of the Census.

Title: Current Population Survey—October 1990 School Enrollment Supplement.

Form number(s): CPS–1.

Agency approval number: 0607–0464.

Type of Request: Reinstatement of a previously approved collection for which approval has expired.

Burden: 5,700 hours.

Number of respondents: 57,000.

Avg hours per reponse: 6 minutes.

Needs and uses: This supplement to the October collection of the Current Population Survey (CPS) is distributed annually to the entire CPS sample. The supplement gathers data for persons 3 years old or older who are enrolled in nursery school/kindergarten, elementary school, high school, and college and vocational/technical schools. The school enrollment data collected in the October supplement provide basic information on enrollment status of various segments of the population necessary for policy formation and implementation. These data are also used by employers and analysts who need current information on the educational characteristics of the population to anticipate the composition of the labor force in the future.

Affected public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 11, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Mangement and Organization.

[FR Doc. 90–11504 Filed 5–16–90; 8:45 am]

BILLING CODE 3510–07–M

Agency Form Under Review by the Office of Management and Budget (OMB)

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

Agency: Bureau of the Census.

Title: Quarterly Survey of Residential Alterations and Repairs.

Form number(s): CE–701, CE–702.

Agency approval number: 0607–0130.

Type of request: Revision of a currently approved collection.

Burden: 1,600 hours.

Number of respondents: 2,400.

Average hours per response: 10 minutes.

Needs and uses: The Census Bureau uses data from the Quarterly Survey of Residential Alterations and Repairs to publish estimates of expenditures for residential upkeep and improvement from a nationwide sample of rental and vacant residential housing units. The statistical estimates are used extensively by the Federal Government in making policy decisions. The Bureau of Economic Analysis uses the information to develop the construction components of gross private domestic investment in the GNP. The private sector uses these statistics marketing studies, economic forecasts, and assessments of the construction industry.

Affected public: Individuals or households; State or local governments; and Businesses or other for-profit organizations.

Frequency: Quarterly.

Respondent's obligation: Voluntary.

OMB desk officer: Don Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 11, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90–11505 Filed 5–16–90; 8:45 am]

BILLING CODE 3510–07–M

International Trade Administration

[A–301–602]

Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On January 5, 1990, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on certain fresh cut flowers from Colombia. The review covers 218 producers and/or exporters of this merchandise to the United States and the period March 1, 1988, through February 28, 1989.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and the correction of certain clerical errors, we have changed the final results for most of the exporters. The review indicates the existence of dumping margins for certain firms during the period.

EFFECTIVE DATE: May 17, 1990.

FOR FURTHER INFORMATION CONTACT: Edward F. Haley or Robert J. Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On March 18, 1987, the Department of Commerce ("the Department")

published in the Federal Register (52 FR 8492) the antidumping duty order on certain fresh cut flowers from Colombia. The Floral Trade Council, the petitioner, and 34 respondents requested in accordance with 19 CFR 353.53a(a) (1988) that we conduct an administrative review. We published a notice of initiation on April 28, 1989 (54 FR 8320). On January 5, 1990, we published the preliminary results of the administrative review (55 FR 456). We have 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 certain fresh cut flowers from Colombia (standard carnations, miniature (spray) carnations, standard chrysanthemums, and pompon chrysanthemums). Through December 31, 1988, this merchandise was classifiable under items 192.1700, 192.2110, 192.2120, and 192.2130 of the Tariff Schedules of the United States Annotated ("TSUSA"). This merchandise is currently classifiable under items 0603.10.30.00, 0603.10.70.10, 0603.10.70.20, and 0603.10.70.30 of the Harmonized Tariff Schedule of the United States ("HTS"). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers 218 producers and/or exporters of certain fresh cut flowers from Colombia to the United States and the period March 1, 1988, through February 28, 1989. One firm, Exportaciones Bochica, was incorrectly listed separately in our preliminary notice but has now been combined with Floral Ltda. because the two firms are related. We have also combined Fantasia Flowers, Sun Flowers, and Splendid Flowers with Claveles Colombianos because those flower exporters are related and operate as a single business entity. Additionally, we have combined with Flores Horizonte its related farms, Flores De Los Andes, Flores De La Pradera, Inversiones Penas Blancas, Cultivos Buenavista, and Agricola Arenales.

Foreign Market Value

In our preliminary results of review, we used home market ("HM") sales or sales to third countries as the basis for foreign market value ("FMV"). We used constructed value ("CV") when home and third country market sales were not viable. We have reconsidered the basis for FMV and have concluded that constructed value is the most appropriate FMV for all firms.

Section 773(a) of the Tariff Act outlines three methods for determining FMV—sales or offers for sale in the home market, sales or offers for sale in third country markets, or the CV of the merchandise. Section 773(a)(1) provides that home market sales are preferred unless, among other things, "* * * the quantity sold for home consumption is so small in relation to the quantity sold for exportation to countries other than the United States as to form an inadequate basis for comparison * * *." The Department's regulations define "small" as, normally, less than five percent of third country sales (19 CFR 353.48(a)). In this case, we have tested the HM sales against U.S. sales as well since, as 19 CFR 353.49 implies, the purposes of the home market viability test is to ensure a comparison of U.S. sales with a market that has an adequate sales volume. We found that only three companies had viable home markets and that many companies had viable third-country markets.

The three companies with viable home markets for certain flower types are Florandia Herrera, Jardines del Muna, and Pompones Ltda. However, we have concluded that these sales were not in the ordinary course of trade for home consumption and have therefore rejected these HM sales in favor of CV as the basis for FMV. Section 773(a)(1)(A) requires the Department to compare sales in the United States with sales of such or similar merchandise sold in the ordinary course of trade for consumption in the home market. We could not make such a comparison because such or similar flowers to those sold in the United States (i.e., export quality flowers) are not sold in the ordinary course of trade in Colombia. The ordinary course of trade in Colombia is sales of culls or defective flowers, and there is no satisfactory way to compare sales of culls with sales of export quality flowers.

The cut flower industry in Colombia is primarily an export industry, and most flower growers plan their production cycle around the U.S. market. The HM sales of most companies consist of culls or defective flowers. Occasionally, private vendors buy export quality flowers from the flower farms at the end of the day. However, these sales are the result of excess production. Flower growers do not plan on them, the growers incur no selling expenses as a result of them, and even the buyers cannot plan on them. Rather, the buyers take a chance in driving out to the farms, where they may or may not find export quality flowers. In most cases, they will take back culls. The very fact that all flower growers distinguish between "export quality" flowers and other flowers leads us to conclude that sales of export quality flowers in the home market are the exception rather than the rule. Therefore, even though three out of 50 companies that we examined happened to have had HM sales of export quality flowers in excess of five percent of third country or U.S. sales, we do not consider such sales to be in the ordinary course of trade.

Since we have rejected home market sales as the basis of FMV for all companies, pursuant to section 773(a) of the Tariff Act, we must compute foreign market value either by use of third country prices or by use of CV. Although the Department's regulations (19 CFR 353.48(b)) state a preference for third country prices over CV, we believe that the use of the words "normally" and "prefer" allow the Department the discretion to disregard third country sales in favor of CV as the basis for FMV in extraordinary circumstances.

In this case, we are presented with an unusual set of facts that, when viewed as a whole, make third country prices inappropriate as a basis for FMV. The evidence of the record indicates that U.S. and European (the most common third country markets analyzed) price movements and volume movements in the cut flower industry are not positively correlated for a variety of reasons. This negative correlation means that price differences between markets can either mask dumping in some instances or exaggerate dumping in other instances.

In general, the United States market is marked by extreme price volatility due to the sporadic gift-giving nature of U.S. demand and by very pronounced peaks during holidays and equally pronounced lulls during the off season. In Europe, there is a mature market for fresh cut flowers throughout the year that is not subject to the extreme volatility that marks the U.S. market. Europe supplies most of its own flowers, and at periods of peak European production, Colombian flowers cannot easily be sold there. European flower prices are primarily determined by auction houses, such as the Aalsmeer auction in Holland. Auction participants must guarantee the auction houses a certain amount of production each year in order to sell there. The Colombian flower growers cannot assure adequate flower production of the type and color demanded in European markets on a yearly basis and are prevented from participating in the Aalsmeer auction. In addition, European holidays often do not coincide with those the the United

States, resulting in different peak periods in the two markets. Even when holidays do coincide, the limited access of the Colombian growers to the European market does not assure them of obtaining peak prices. These factors lead to the conclusion that different forces operate in the two markets, in some instances pushing prices in opposite directions, as when different holidays are present.

Another factor that we considered is that third country sales, although constituting a viable market in some instances, were often not made over the entire year. Instead, they were made only in peak months, which would have hindered our ability to find contemporaneous sales. We would have been forced to compare U.S. sales with European sales made several months before or after the U.S. sale. This could have resulted in inaccurate comparisons of low-sale U.S. sales in off-peak months with high-value third country sales in peak months, or vice versa.

Fresh cut flowers are highly perishable and subject to economic and natural forces totally different from those facing nonperishable products. Respondents have submitted sufficient evidence to show that producers cannot effectively control the short-term supply of this merchandise because the biological process of growth is subject to random, unpredictable natural factors such as weather conditions, disease, and pests. In fact, in the short run, differences between planned production and actual production can be striking. Since the merchandise is highly perishable, excess production cannot be stored or otherwise transformed into another product. In *Fall Harvested Round White Potatoes from Canada* (48 FR 51669 (1983)), we noted that potatoes could be stored for up to six months from the time of harvest, and in *Red Raspberries from Canada* (54 FR 6559 (1988)), we noted that respberries could be sold fresh, or frozen and stored in a warehouse for sale at a much later date. In contrast, fresh cut flowers cannot be stored for any length of time.

The inability to control short-term supply and to store flowers in especially significant considering that, as noted above, most Colombian flower growers plan their production cycles around the U.S. market, where nearly 80 percent of their export sales are made. It means that flower growers must sell their excess production in markets that they did not necessarily plan to sell in, which adds an element of chance to the level of prices they may be able to command in those markets. This chance element may involve different holidays, different flower types in high demand, or different flower colors in high demand, often leading to different prices in different markets that have little to do with the presence of absence of dumping.

All of these factors, taken as a whole, lead us to reject third country sales as an appropriate basis for foreign market value in favor of constructed value because third country prices will not provide an accurate measure of dumping.

Of the fifty producers we reviewed, we did not have complete CV information for all flower types produced and sold by the following firms: Universal Flowers, Pompones Ltda., Claveles Colombianos, Agricola Los Arboles, Dianticola Colombianos, Combiflor, Flores Bachue, Flores Condor, Flores El Puente, Flores Colombianas, and La Valvanera. As the best information available for these firms, we used the weighted-average CV, by flower type, of the firms for which we did have constructed value data.

In calculating Florandia Herrera's constructed value for pompons, we have denied the firm's claimed amortization of certain costs. The amount amoritized was based on a claim that an unusually high number of flowers was destroyed after being shipped to the consignee in the United States. However, there was insufficient historical evidence of normal production and sales to support the claim that this was an abnormal situation.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the request of the petitioner, respondents, and the Colombian Government ("the GOC"), we held a public hearing on March 14, 1990. We received comments from the petitioner, the respondents, and the Colombian Government.

Because we have determined to use constructed values as the basis for foreign market value, certain comments submitted by the petitioner and respondents are no longer relevant. Therefore, we will not specifically address the issues regarding the selection of a third country market, adjustments to third country sales prices, and the "90/60-day rule."

Rate Calculations

Petitioner and several respondents commented on the basis for developing and applying the "sample" and the "all other" rates. Rather than address each comment individually, we are including this section to explain the basis for developing these rates and how they were applied.

As stated in the preliminary results, 35 firms requested a review of themselves (the "self-requesting firms"). In addition, the petitioner requested a review of another 183 firms, bringing the total firms subject to review up to 218. We requested, reviewed, and analyzed data from all 35 self-requested firms and calculated a separate rate for each of them. Of the remaining 183 (all requested by petitioner), 33 had no exports, leaving 150 firms with exports subject to review. From this 150, we selected 15 firms at random, after taking into account the number and relative market strength of small and large firms (see preliminary results notice for complete explanation). Each of the 15 firms in the sample received its own individual rate. Of the 15, 11 were small and four were medium or large. We weight-averaged the small group and the medium/large group according to export shares. The results is the "sample group"rate, which applies to all firms from the sample universe (but not the 15 sampled firms themselves) that shipping during the review period (135 firms). The chart below illustrates our rate application methodology:

Category	Number of firms	Rate
1. Self-requested firms	35	Individual.
2. Sampled firms	15	Individual.
3. "Sample group" firms.	135	"Sample group."
4. Firms requested by petitioner that did not export.	29	All other
5. Firms with no shipments during review but covered in LTFV investigation.	4	Individual.*
6. Total Requested firms.	218	—
7. All other firms	—	All other.

*Company-specific rates established in LTFV investigation.

In this case, the "all other" rate is the simple average of the weighted-average rates for: 1) the sample group comprising 15 firms, and 2) the self-requesting group comprising 35 firms. The two respective group rates represent the weighted-average rates for all of the firms included in each group. We used a simple average of the two group rates rather than an overall weighted average because each group was weighted on a different basis—one according to value and the other according to quantity.

We believe that this all other rate is the most appropriate rate to use for firms for which no request was made and which did not receive a company-

specific rate in the less that fair value (LTFV) investigation because it is a broad-based average rate, encompassing the results of all firms reviewed. It is our best estimate of dumping duties that may apply to an uninvestigated and unreviewed firm. Absent company-specific information, the best indication of eventual dumping margins is an average of all firms for which we calculated individual rates.

Regarding the sample group rate, we did not exclude any firm randomly selected from the sample universe because to do so would taint the random nature of the sample. Therefore, we included in the sample group rate the rates from all 15 sampled firms, whether their margins were *de minimis* or high (such as the preliminary rate of 81.53 percent for Flores Juncalito, which in these final results has changed to 15.48 percent).

The all other rate established in this review (2.42 percent) applies to all firms not included in the sample universe, not included in the self-requested group, and not possessing an individual rate from the LTFV investigation. Only four firms fall into the last category. These are firms that obtained individual rates in the LTFV investigation but had no shipments during the review period.

Petitioner's Comments

Comment 1: The petitioner claims that the Department should base its final results of review on the best information available (BIA) pursuant to 19 U.S.C. 1677e because respondents' questionnaire responses are incomplete in that they lack sufficient detail and fail to include supporting documentation for average prices and adjustments. Additionally, the petitioner claims that the Department should resort to BIA because the selection of sample companies for verification was inadequate and the verification findings produced inconclusive results.

Department's Position: We are satisfied with the questionnaire responses and believe that they provide an adequate basis for reaching a final determination in this review. Similarly, we are satisfied with the results of our verification and believe that the results sufficiently reflect the adequacy of the questionnaire responses as a whole. Although we discovered minor errors in the questionnaire responses at verification, we do not believe that these errors warrant rejection of the entire responses.

Comment 2: The petitioner challenges the two economic reports submitted by respondents in this review on several grounds. First, the petitioner asserts that the reports should be disregarded because they do not sufficiently explain the methodology used to reach many of the conclusions. Second, the petitioner challenges the claim that color preferences in the various markets cause short-term price differences. Petitioner notes that Colombian growers have expressed their ability to adjust their production plans to compensate for changing demand patterns based on color preference. Third, the petitioner claims that the Litan report does not conclusively demonstrate that there is no correlation between the price movements in the U.S. and European markets. To the contrary, petitioner claims that the Litan report shows similar pricing trends for fancy, select, and standard carnation sales in the two markets. Fourth, the petitioner claims that, contrary to the Litan report, prices do not necessarily follow demand. Instead, the petitioner claims that the oversupply of Colombian flowers is responsible for the downward price trend in the United States. Fifth, the petitioner claims that the respondents do in fact have control over their production and over their terms of sale. The petitioner concludes that the reports do not support respondents' contention that the Department should use annual averaging in this case.

Department's Position: We agree with the petitioner that the economic reports submitted by respondents do not support the use of annual averaging of U.S. price. Annual averaging of U.S. price can mask dumping by allowing high prices in peak months to offset low prices in other months. To account for perishability, we have used monthly averaging of U.S. price (see our response to Comment 4). To account for seasonality, we have used an annualized constructed value rather than third country or home market prices (see FMV section).

We disagree with the petitioner that the major points made in the reports are inaccurate or unsubstantiated. Even though the reports do not indicate the sources of all of the information they rely upon, we believe that they are sufficiently well documented and explained to warrant serious consideration. The reports show that prices in Europe and the United States are not well correlated for a variety of reasons and that seasonal and holiday demand have a strong impact on prices. They also show that, although growers have considerable control over production in the long run, they have little control in the short run. Similarly, growers have only limited control over the terms of sale in both the European and U.S. markets. For the reasons explained in the FMV section, these factors lead us to conclude that constructed value is the most appropriate basis for FMV in this case.

Comment 3: The petitioner argues that the Department's downward adjustment to the estimated duty deposit rate to account for the difference between the Department's calculated U.S. price and the entered value is contrary to the Department's practice and undermines the intent of the statute. The Department made no such adjustment in the original investigation of this case or in any other administrative review of a case involving fresh cut flowers. In addition, the Department has argued before the Court of International Trade that there is no legal or factual basis for determining whether deposit rates are understated or overstated until entries are reviewed and actual dumping margins are calculated. As support, petitioner cites *Television Receivers, Monochrome and Color, from Japan* (52 FR 8940, March 20, 1987), where the Department refused the domestic industry's request to make an adjustment to the duty deposit rate to account for the fact that U.S. price is frequently higher than Customs value, the basis used by Customs to calculate estimated duties.

Finally, to the extent that the volume of flowers shipped exceeds the volume ultimately sold, which is normally the case, the adjustment reduces the amount of estimated duty deposits collected, thereby denying the petitioner the full protection intended by the statute.

Department's Position: We disagree. An adjustment to the estimated duty deposit rate to account for unsold merchandise is appropriate in this case. The adjustment is not based on the difference bwtween U.S. price and Customs value, which we specifically denied in *Televisions from Japan*, but on the differences between the quantity shipped and the quantity sold. Without this adjustment, Customs would effectively be collecting deposits of estimated antidumping duties on merchandise not subject to antidumping duties because some flowers will be destroyed and not sold to U.S. purchasers.

Because of the perishability of fresh cut flowers and the frequent occurrence of consignment sales, normally a significant portion of the entered merchandise is never sold to U.S. purchasers, as the petitioner recognizes. Since Customs cannot determine at the time of entry which merchandise will not be sold, Customs must collect deposits of estimated antidumping duties on all of the subject merchandise that is entered into the United States.

We calculated the adjustment using the ratio of merchandise sold to merchandise entered during the review period.

Finally, we disagree that the petitioner is denied any protection accorded by the law. For the above reasons, the rates we calculated are the best estimate of potential antidumping duties that may be found in a future administrative review and thus are in accordance with the provisions of the law regarding collection of estimated antidumping duties.

Comment 4: The petitioner contends that monthly averaging of United States prices understates dumping margins and that daily or weekly averaging of United States prices would more appropriately account for flower perishability.

Department's Position: To account for the effect of perishability on price, it was necessary to average price over a period long enough to ensure that the entire range of distress and nondistress sale prices was covered. In selecting an appropriate averaging period, we considered that (1) Flowers can last more than a week, (2) flower perishability is a function of variables other than time, such as packaging, shipment, and maintenance, for which there is some element of randomness, and (3) new technologies permit storage for limited periods, which we understand can be more than a week. Given these factors, a month is more appropriate than a day or a week to use as an averaging period. We note that, in *Floral Trade Council v. United States*, 11 CIT ———, 704 F. Supp. 237 (1988), the Court of International Trade affirmed the Department's use of monthly averages in the less than fair value investigation of fresh cut flowers from Colombia.

Comment 5: The petitioner contends that box charges should only be included in U.S. price when it is clearly demonstrated that such charges are remitted to the grower.

Department's Position: We included box charges as revenue if the respondent could demonstrate that such charges were remitted to the grower.

Comment 6: The petitioner argues that the Department should limit offsets for interest expenses to interest income traceable to short-term deposits.

Department's Position: We agree. We did in fact limit offsets for interest expenses to short-term interest income. Where we could not distinguish between short- and long-term interest income, we allowed no offset at all.

Comment 7: The petitioner contends that in some cases selling expenses and unit cost of production were computed on the basis of flowers shipped. The Department should ensure that all per unit calculations are allocated on the basis of flowers sold, not shipped.

Department's Position: We agree and did in fact base the per-unit average constructed value and cost of production on the quantity of export quality flowers actually sold by each grower/exporter in all markets.

Comment 8: The petitioner argues that salaries for company officers and partners should be included in the cost of production (COP) as a cost of manufacture (COM) unless those officers did not contribute to the day-to-day administration of the farm.

Department's Position: We included salaries in factory overhead, which is part of COM, where the individual spent the majority of his time as a farm manager. Where the individual spent the majority of his time as a company administrator, we considered his salary to be a general expense, which is part of COP.

Comment 9: The petitioner argues that the Department should reject all related party transfer prices because no supporting data was provided showing that materials purchased from related parties were at fair market value.

Department's Position: We reviewed the respondents' submissions and did not note any unusual variations in material prices between producers who purchased from related parties and those who did not. Therefore, we have accepted the related party transfer prices.

Comment 10: The petitioner argues that income obtained from currency hedging should not be used to offset finance expenses.

Department's Position: We agree and did not include income from currency hedging as an offset to finance expense.

Comment 11: The petitioner argues that Asocolflores, an association of foreign producers, is not an "interested party" under the Department's regulations, and therefore has no legal standing to participate in this administrative reveiw.

Department's Position: Each grower subject to this review is an interested party under the statute and the Department's regulations. Because Asocolflores acts as a representative of some of these interested parties, we have permitted Asocolflores to submit comments on the record on their behalf. Therefore, we do not need to address the issue of whether Asocolflores is itself an interested party.

Comment 12: The petitioner states that the Department should record all *ex parte* meetings for the official record.

Department's Position: We have placed in the official administrative record memoranda relating to all *ex parte* meetings.

Comment 13: The petitioner claims that, pursuant to 19 CFR 353.31 (a)(3) and (b)(2), the Department should reject as untimely all factual information, including two economic studies filed with certain respondents' case briefs, that was submitted after the preliminary determination. Additionally, the petitioner claims that the Department should reject all submissions of factual data not certified in accordance with 19 CFR 353.31(i)(1)

Department's Position: With the exception of the two economic studies noted above, we have rejected all factual information submitted by respondents after the preliminary determination. Because we consider the economic studies to be critical to a reasoned decision on the question of the appropriate basis for foreign market value in this review, and because the Department may request new information at anytime under 19 CFR 353.31(b)(1), we have decided to retain the economic studies in the record. We provided petitioner with a special opportunity to submit information in rebuttal to the economic studies (see Comment 2). Finally, we have ensured that all factual information relied upon in this notice has been properly certified.

We have taken the same position with respect to all comments regarding the timeliness of submissions of factual information. We have not separately listed all of those comments.

Colombian Government's Comments

Comment 14: The Government of Colombia ("the GOC") claims that requiring nonsampled exporters to pay antidumping duties that reflect the pricing behavior of a random sample of wholly unrelated firms is inequitable. Under the GATT Antidumping Code, antidumping duties can only be collected as the result of an affirmative finding of dumping by a particular exporter. In the case of nonsampled exporters, the United States has made no such finding. As a consequence, nonreviewed exporters end up paying duties that do not reflect their own pricing behavior. In fact, those nonreviewed firms may not have been dumping at all during the review period.

Department's Position: The large number of flower exporters subject to review posed a significant problem for the Department. A review of all exporters would have made impossible the timely completion of the review. To reduce the problem to manageable proportions, we relied on sampling.

Section 777A of the Tariff Act specifically authorizes the Department to use generally recognized sampling techniques in administrative reviews. The random selection of firms for review is a sampling technique that the Court of International Trade found to be acceptable in its review of the Department's final determination in the LTFV investigation. *See The Asociacion Colombiana de Exportadores de Flores v. United States*, 704 F. Supp. 1114 (CIT 1989).

The use of sampling techniques did not in any way preclude Colombian exporters from seeking and obtaining company-specific rates. Thus, an exporter had the choice of (1) requesting a review and paying duties that reflect the exporter's actual margin of dumping during the review period, or (2) not requesting a review and risking duty assessment at a rate calculated on the basis of sample results. Because this choice rested entirely with the exporter, the risk associated with sampling was completely avoidable. Contrary to claims made by the GOC, the Department reviewed each exporter making such a request.

Comment 15: The GOC claims that the imposition of antidumping duties on Colombian flowers interferes with U.S. bound tariffs on flower imports. Moreover, such duties violate the Most Favored Nation (MFN) principle of the GATT because other flower exporting nations, not subject to the same duties, may sell their goods in the United States under more favorable conditions.

Department's Position: We disagree. Article VI of the GATT explicitly authorizes the imposition of antidumping duties on any injuriously dumped product. The GATT allows such duties with the understanding that they may exceed bound tariffs. Accordingly, the imposition of antidumping duties does not violate the MFN provision of the GATT.

Comment 16: The GOC claims that the Department's analysis should include consideration of the public interest, that is, the effect on consumer prices resulting from the imposition of antidumping duties.

Department's Position: We believe that such proposals are more appropriate for address in the context of GATT negotiations and before the Congress of the United States. Currently, neither the GATT Antidumping Code nor United States law requires the Department to consider the effect on consumer prices caused by the imposition of antidumping or countervailing duties.

Comment 17: The GOC argues that the Department should use the discretion allowed it under the law to account for the special characteristics of the flower industry. In addition, the GOC urges the Department to recognize the effect that sales volume, market position, and demand have on prices.

Department's Position: In this administrative review, we have recognized the perishable nature of fresh cut flowers by using monthly averages of U.S. prices. In addition, we are using constructed value, rather than home market or third country prices, as the basis for foreign market value (see FMV section). In this way, we have addressed the concerns raised by the GOC.

Comment 18: The Government of Colombia claims that Article III of the GATT, relating to national treatment, is clearly infringed upon because "price discrimination" is viewed differently under U.S. law depending on whether domestic (under antitrust law) or foreign suppliers are being analyzed. In order to resolve the inconsistency between U.S. domestic and foreign trade laws, the Department should use its discretion and resort to annual averaging of prices.

Department's Position: Article VI of the GATT explicitly permits contracting parties to levy an antidumping duty on imports of any dumped product in order to offset or prevent dumping when the effect of the dumping is such as to cause or threaten material injury to an established domestic industry. Article III of the GATT is concerned with the provision of national treatment with respect to *internal* taxation and regulatory practices. Insofar as U.S. antidumping law and practice are in complete conformity with Article VI, the Government of Colombia's concern with respect to GATT Article III is misplaced. Moreover, there is nothing in Article VI which even suggests that antidumping practice should conform with domestic antitrust laws or policies, which have entirely different purposes and standards.

Respondents' Comments

Comment 19: Asocolflores states that the Department should not consolidate grades of a flower type when the mix of grades sold in Colombia and the United States is different because a comparison of consolidated prices of mismatched grades leads to unfair results. Instead, the Department should use an individual CV for each grade of a type of flower sold in the United States.

Department's Position: Since the CVs submitted and used represent a consolidation of grades for each type of flower, we have compared U.S. prices on a flower type basis without regard to grade.

Comment 20: Asocolflores, other respondents, and the Colombian Government maintain that the Department should use annual rather than monthly average price comparisons to account for the perishability and seasonality of fresh cut flowers.

Department's Position: We have determined to use monthly average U.S. prices to account for perishability and an annual CV to moderate the impact of seasonality. See the FMV section as well as our responses to Comment 2 and Comment 4.

Agrodex Group

Comment 21: The Agrodex Group maintains that where CV is used as the basis for FMV, the Department should include home market sales of export quality flowers in the total sales quantity used to calculate per unit constructed values.

Department's Position: To the extent that this information was submitted prior to publication of our preliminary results, we have included all home market sales of export quality flowers in our calculation of constructed value. However, we cannot use the information submitted on December 26, 1989, because that submission reported only the quantity, and not the value, of HM sales of export quality flowers. Our questionnaires of August 9, 1989, clearly requested quantity and value information. Without more complete HM sales data, we cannot assess the reasonableness of allocating production costs to these HM sales.

Comment 22: The Agrodex Group argues that CV of the Flores dos Hectareas should be based on "expected" production rather than actual production because of a disaster—the sudden collapse of the company's water table—which resulted in an abnormally low yield during the review period.

Department's Position: We did not adjust Hectareas' cost of production for production problems resulting from lack of water because the company did not provide sufficient or timely information enabling us to conclude that there was such a problem, or what the magnitude of the problem was. Hectareas' questionnaire response of October 16, 1989, does not indicate that it suffered from unusual production problems. Not until December 26, 1989, did the company raise the issue. Additionally, Hectareas has placed no information on the record discussing its "projected" or historical production yield. Without these details, we are unable to conclude that the water problems resulted in an extraordinary production loss.

Comment 23: Agrodex contends that the Department should make an inventory adjustment to the CV calculation to account for the difference between quantities sold and quantities shipped.

Department's Position: We used quantities sold in all months. In many cases there was no difference in the two quantities. Where differences existed, respondents did not demonstrate that such differences would result in a significant change in our calculations, as required by 19 CFR 353.59(a).

Flores Condor

Comment 24: Condor has requested that the Department correct arithmetic errors: the shipments values for June 1988, January 1989, and February 1989.

Department's Position: We have corrected the shipments values.

The Floramerica Group (Floramerica, Cultivos de Caribe, Jardines de Colombia and Flores Las Palmas)

Comment 25: The Floramerica Group contends that the Department incorrectly calculated the packing costs for standard carnations.

Department's Position: We agree and have recalculated the packing costs.

Comment 26: The Floramerica Group contends that the Department failed to consolidate consistently the operations of its related farms in computing both the U.S. price and constructed value for pompons.

Department's Position: We agree and have calculated a consolidated U.S. price and constructed value for pompons produced by Floramerica and Cultivos de Caribe, which are related.

Comment 27: The Floramerica Group believes that the Department should adjust constructed value for inland freight and credit when U.S. price was reduced by the same factors.

Department's Position: We agree and have made the necessary changes where appropriate.

Comment 28: The Floramerica Group argues that the Department computed the constructed value for standard chrysanthemums based on the operations only at the Floramerica farm. Cultivos de Caribe, a related company, grows spider chrysanthemums, and its costs should be weight-averaged with the costs of Floramerica's standard chrysanthemums to compute a combined constructed value.

The petitioner argues that the ITA was not required to consider the sales and cost information for these two farms on a consolidated basis given that standard chrysanthemums and spider chrysanthemums are different flowers in their physical characteristics and production processes.

Department's Position: In these final results, we have computed the constructed value for chrysanthemums based on the production costs incurred at both farms. Although the flowers are somewhat different, we consider spider chrysanthemums and standard chrysanthemums to be the same type and therefore calculated one CV for both.

Comment 29: The petitioner argues that Floramerica Group's processing costs incurred with respect to bouquets should not be allocated to the entire bouquet, but only to sales of the subject flowers contained in the bouquets. The petitioner further argues that since the costs attributable to the bouquets are not separately identifiable, the Department should not adjust ESP or CV.

Department's Position: Since we could not separate the processing costs attributable to only the flowers covered by the review, we deducted the amounts reported from ESP and CV.

Comment 30: The petitioner argues that the U.S. selling expenses of Sunburst, Floramerica's consignment agent, are understated. The petitioner maintains that the Floramerica Group did not submit supporting documentation showing that certain common selling expenses should be excluded.

Department's Position: We randomly selected several companies and several types of expenses to examine at verification. Although we found minor discrepancies, we were satisfied with the overall adequacy of the responses. Because the verification was satisfactory, we have accepted the adequacy of the responses from all companies. Moreover, the petitioner has not demonstrated that any of Floramerica's claimed expenses are inaccurate.

Comment 31: The petitioner argues that Floramerica Group's U.S. credit costs should be calculated on the basis of interest rates in Colombia since the flowers are exported through Crown in Panama, which ships them to Sunburst Miami. The petitioner maintains that the credit costs should be calculated on the basis of the interest rate incurred by Floramerica, not the rate attributed to the agent. Floramerica maintains that the consignment agent bears this cost.

Department's Position: We use the interest rates prevailing in the country in which the borrowing occurs. Since the consignment agent in Miami bears these costs, we used U.S. interest rates to calculate Floramerica's credit costs.

Comment 32: The petitioner argues that the Floramerica Group's sales of standard chrysanthemums in Colombia are not sales of culls and thus the revenue from those sales should not be added to the revenue from the sale of culls to offset the cost of production.

The Floramerica Group argues that if the Department does not consider the volume of export quality standard chrysanthemums sold in the home market as a factor in computing the per unit cost of production, then at a minimum the revenue earned on the sale of such flowers should be used as an offset to production costs.

Department's Position: We calculated the CV of standard chrysanthemums based on the actual quantity of export quality sales reported by respondent. Floramerica failed to report the quantity and value of home market sales of export quality flowers. Accordingly, we did not allocate total production costs to the claimed home market sales of export quality flowers, nor did we use home market sales revenue as an offset to production costs.

Comment 33: The petitioner points out that the Floramerica Group changed its cost accounting system since the original antidumping investigation with regard to inventory in process. The petitioner believes that there is no basis from the information presented in the questionnaire response to assume that full production costs are reasonably represented in the data submitted by Floramerica.

Department's Position: We disagree. The fact that Floramerica Group changes its cost accounting system does not lead us to believe that the information presented is inaccurate. Furthermore, information from the new cost accounting system properly reflects production costs.

Comment 34: The petitioner maintains that the Floramerica Group did not submit any supporting documentation regarding related party transfer prices. Without adequate or supporting documentation, there is no basis upon which the Department can make a determination that the transfer prices are at arm's length.

Department's Position: We disagree. See Comment 9.

Comment 35: The petitioner argues that income earned by Floramerica on exchange rate hedging and interest income should not offset financial costs.

Department's Position: We agree. We offset COP only with revenues directly related to production. Income from currency hedging and other interest income is not directly related to the production of the flowers.

Dianticola Colombiana

Comment 36: The petitioner objects to Dianticola's claim that funds placed in a U.S. bank account represent additional revenue for Dianticola. The petitioner contends that Dianticola offers no explanation or proof that the funds placed in its U.S. bank account are directly related to the sales under consideration. Therefore, no increase in U.S. price should be made to account for this income.

Department's Position: We agree with the petitioner and have recalculated Dianticola's U.S. price without regard to this income.

Jardines Del Muna

Comment 37: Jardines Del Muna explains that the Department made a clerical error in calculating the margins on chrysanthemums. In consolidating standard mums and spider mums, the Department did not account for the fact that standard mums were reported in stems, and spider mums were reported in bunches.

Department's Position: We agree and have recalculated the margins for chrysanthemums.

Agricola Los Arboles

Comment 38: The petitioner argues that the Department was unable to verify home market sales (*sic*) data information submitted by Agricola Los Arboles and should therefore reject the response.

Department's Position: In our verification of Agricola Los Arboles, we examined sales to the United States, not home market sales. We discovered a small difference in the April 1988 total sales figure, and we used the corrected figure in our final calculations. Similarly, in the November sales listing, we discovered and corrected a minor difference in quantity reported in the response. In both instances, the differences were less than 1.75 percent, which we consider insignificant for this review. We are therefore satisfied with the adequacy of Agricola's response and did not reject it.

Comment 39: Agricola Los Arboles contends that the Department improperly failed to include box charges in calculating the United States price for certain of its sales.

Department's Position: We agree and have included box charges where appropriate.

Florandia Herrera

Comment 40: The petitioner argues that the Department correctly included Florandia Herrera's U.S. distress sales even though the firm excluded these sales from its total sales data.

Florandia Herrera argues that its distress sales should be excluded from the calculation of U.S. price. The flowers sold as distress were of such poor quality that they could not be sold in the ordinary course of trade and were sold to street vendors. Such sales were excluded from the LTFV investigation.

Department's Position: We agree with the petitioner. All U.S. sales of export quality merchandise covered by the antidumping duty order have been included. Florandia does not provide any basis for treating these sales differently from its other U.S. sales.

Comment 41: The petitioner argues that Florandia Herrera should allocate all U.S. expenses over the quantity of flowers sold rather than the quantity shipped.

Department's Position: Florandia used two steps in allocating expenses. The first step involved allocating expenses to individual product types, *e.g.*, carnations, pompons, and vegetables. The second step involved allocation for purposes of establishing a per unit cost. While we agree that the latter allocation should be based on quantities sold, we believe that it is reasonable to distribute expenses among product types on the basis of quantities shipped because the expenses that the petitioner refers to, such as inland freight and packing, are incurred on the basis of actual quantities shipped.

We have also reconsidered Florandia's claimed normalization of expenses on U.S. sales and have denied the claim. Florandia failed to provide sufficient historical evidence that the actual expenses incurred were not normal.

Agricola Papagayo

Comment 42: Papagayo states that the Department should offset Omniflora's (an affiliate of Papagayo) short-term interest income against Papagayo's interest expense.

Department's Position: We disagree. Omniflora's short-term interest income is not related to flower production. Therefore, we did not allow the offset.

Flores Tiba

Comment 43: Flores Tiba contends that it erred in its constructed value submission for miniature carnations by allocating production costs to the actual volume of flowers produced. Because miniature carnations were grown as a test crop, the actual yield was much less than the expected yield. Production costs should be allocated to the expected yield to avoid overestimation of unit costs.

The petitioner argues that Tiba failed to show that the projected yield is a normal yield and in any event made the claim only after publication of the preliminary results. Furthermore, the statement by Tiba that it "mistakenly assumed" its reported production figures were normal indicates that the figures submitted were only estimates, not actual yields. Therefore, the Department should accept neither the originally submitted information nor the untimely new information.

Department's Position: We agree with the petitioner in part. We allocated flower production costs over quantities actually sold, not expected or projected quantities, in calculating CV. Tiba did not provide any data supporting its contention that its production volume of miniature carnations was not normal. The claim was based on estimates of expected yield and not on data reflecting actual experience. Furthermore, Tiba did not account for costs that would not be absorbed by flowers actually sold if production costs were normalized. In addition, the new information concerning expected yields was untimely, having been submitted after publication of the preliminary results.

We disagree with the petitioner's contention that statements made by Tiba show that its reported production volume was not accurate. Tiba's belated conclusion that its reported actual production volume was not normal in no way implies that the figure was not accurate.

Las Amalias

Comment 44: The petitioner states that the questionnaire response should be rejected in favor of the best information otherwise available because Las Amalias did not report certain U.S. sales transactions or production cost data for six months of the review period.

Department's Position: We disagree. As in other cases, we interpreted Las Amalias' response to mean that there were no sales during those months. There is no other information in the record which contradicted this assumption. Regarding the production cost data, we allocated the total production costs, as reported by respondents, over flowers sold during the period of review.

Comment 45: The petitioner maintains that, contrary to the Department's instructions, Las Amalias did not give a full description of how it allocated its costs among various flowers.

Department's Position: We disagree. We determined that Las Amalias charges materials and direct labor to the specific cost center in which these costs were incurred. We accepted as

reasonable that each flower type is a separate cost center.

Comment 46: The petitioner claims that Las Amalias omitted accounting and legal costs from the constructed value calculation. The petitioner states that any accounting and legal costs that are not specifically related to the antidumping proceeding should be either deducted from exporter's sales price or added to constructed value.

Department's Position: Las Amalias excluded only those fees paid in dollars to U.S. accountants and lawyers for the antidumping proceeding. As the petitioner notes, such expenses are properly excluded from constructed value.

Comment 47: The petitioner states that the Department misallocated inland freight in calculating U.S. price for Las Amalias.

Department's Position: We disagree. Since Las Amalias reported inland freight transport costs for months during which there were no sales, it was necessary to reallocate these costs. In the absence of more detailed information, we used the total monthly reported amounts to arrive at a yearly inland freight transport cost figure. We divided this figure by the number of months during which sales were made to derive a simple monthly average. We then weighted this figure by the quantity shipped in each month.

Comment 48: The petitioner asserts that the U.S. sales information reported by Las Amalias in unreliable because the company submitted, as evidence of its U.S. sales, the same invoice submitted by its affiliate (Pompones Limitada). Petitioner contends that the use of the same invoice by two related companies claiming to conduct separate sales operations casts doubt on the accuracy and veracity of both companies' sales listings and that therefore the questionnaire response should be rejected.

Department's Position: Las Amalias and Pompones are affiliated in the sales aspect of their operations. Pompones is strictly a grower; Las Amalias is a grower but also acts as a selling agent for Pompones. Both Pompones and Las Amalias share the same invoicing agent. Therefore, it is reasonable that the two companies use the same invoice.

Pompones Limitada

Comment 49: The petitioner argues that Pompones' sales of carnations and miniature carnations, reported as home market sales, should be treated as purchase price sales. The petitioner claims that these sales are purchase price sales because Pompones was aware, by its own admission, that its flowers would be combined with flowers and fillers purchased by an unrelated home market customer, who would then ship them as mixed bouquets to the United States. Moreover, the fact that the flowers are repacked into "bouquets" does not amount to substantial transformation of the merchandise. Because Pompones knew the destination of these flowers was the United States, because the sales were made in dollars, and because Pompones' invoices specified that the flowers were to be exported, the petitioner concludes that Pompones' sales were purchase price sales within the meaning of section 772(b) of the Act. As Pompones reported no third country sales and failed to submit a constructed value response, the Department should, for the purposes of the final results, assign to Pompones as best information available the highest margin received by a respondent that filed a complete response.

Department's Position: We are satisfied that the sales reported by Pompones as home market sales were not purchase price sales. Although Pompones sells flowers to an unrelated home market customer which it knows will be combined with other flowers and fillers purchased elsewhere for export to the United States, the unrelated home market customer adds well over 70 percent of the value of the end product (the bouquet). Therefore, we determined that these sales are home market sales.

Claveles Colombianos

Comment 50: The petitioner maintains that Claveles' so-called distress sales should be included in the U.S. sales listing for purposes of the final results.

Department's Position: We agree in principle. However, in this case, the aggregate monthly figures provided by Claveles combined distress, destroyed, and damaged flowers. We could not separate distress sales from this category, and because we believe that most sales in this category are sales of destroyed and damaged flowers, we excluded the entire category.

Comment 51: Respondents argue that the Department erred by calculating a separate dumping margin for Claveles Colombianos while applying the all other rate to the three remaining farms in the Clavecol Group. Since all four farms (Claveles Colombianos, Sun Flowers, Fantasia Flowers, and Splendid Flowers) are related by joint participation of the majority partner in each of the farms, and since the farms share common management, marketing, materials, and personnel, the group as a whole must be treated as a single entity and must receive the same dumping margin.

Department's Position: We agree. We have applied the same rate to the entire Clavecol Group: Claveles Colombianos, Sun Flowers, Fantasia Flowers, and Splendid Flowers. It is Department practice to apply one rate to related parties when we determine that they function as one entity.

Flores Horizonte

Comment 52: Respondent asserts that the Department erroneously subtracted both packing and inland freight costs from USP when calculating the dumping margin for Flores Horizonte.

Department's Position: Because we were unable to separate packing costs from inland freight costs in Flores Horizonte's response, we deducted the combined amount from U.S. price.

Comment 53: The petitioner argues that all members of the Grupo Andes Farm (Flores de los Andes, Flores de la Pradera, Inversiones Penas Blancas, Cultivos Buenavista, and Agricola Arenales) should pay the same estimated duty deposit rate as that calculated for Flores Horizonte (formerly, Flores Monte Verde) because the Grupo Andes importer returns to each of the six flower growers the average price received for all of the farms.

Department's Response: We agree. Since all six flower farms are under 100 percent common ownership and share general facilities, laboratory, maintenance of equipment, mother block production of cuttings, as well as common management, we have determined that all the farms which are members of Grupo Andes Farms operate as a single entity. Therefore, the rate for Flores Horizonte applies to the entire group. The names of the other five farms (Flores de los Andes, Flores de la Pradera, Inversiones Penas Blancas, Cultivos Buenavista, and Agricola Arenales) are now listed along with Flores Horizonte.

Comment 54: The petitioner maintains that since Flores Horizonte reported different information on quantities of flowers sold and shipped in its questionnaire response and on its computer disk, the questionnaire response should be rejected.

Department's Position: The difference between quantities reported on the computer disk and quantities reported in the questionnaire response were not significant. Therefore, we used the information shown on Flores Horizonte's computer disk to perform our calculations.

Comment 55: The petitioner argues that costs for equipment rental and personnel service charges, alleged to have been incurred by the importer on behalf of the wholesaler, should not be deducted from Flores Horizonte's reported U.S. selling expenses. The petitioner maintains that since Flores Horizonte did not provide supporting documentation for these costs, the Department should reject the data as incomplete and use the highest rate available as best information.

Department's Position: We disagree. There is nothing in the record indicating that these expenses should be allowed as deductions and we have not done so.

Comment 56: The petitioner claims that Flores Horizonte should not have deducted from U.S. selling expenses interest income earned on revenues from the sale of flowers in the United States. The petitioner asserts that this is not a permissible adjustment to U.S. price, as described in section 772(d)(1) of the Tariff Act and therefore should not be allowed.

Department's Position: We disagree. Because such short-term interest is directly related to the sale of flowers, it is an appropriate adjustment to Flores Horizonte's selling expenses. See also our response to Comment 6.

Comment 57: The petitioner alleges that the deduction of imputed credit costs from Horizonte's selling expenses is inappropriate. The petitioner argues that since the reported selling expenses are in reality operating expenses taken from the related importer's financial statements, there is no reason to assume that these operating costs include financing costs associated with carrying inventory or with extending payment.

Department's Position: We disagree. Because Horizonte's U.S. selling expenses did not include interest expenses, it is appropriate for the firm to impute credit costs.

Comment 58: The petitioner asserts that Flores Horizonte should not be permitted to increase exporter's sales price by adding inter-company interest expenses, particularly without sufficient supporting documentation or verification.

Department's Position: We determined that no such addition was made by Flores Horizonte. Instead, Flores Horizonte properly deducted from its U.S. selling expenses interest paid on an inter-company loan.

Comment 59: The petitioner asserts that Flores Horizonte claimed an upward adjustment to exporter's sales price to account for profits earned by Atlantic Bouquet Company (a wholesaler wholly owned by the related importer) upon the resale of Flores Horizonte's carnations contained in bouquets and arrangements. The petitioner maintains that absent adequate information to calculate the U.S. price for the flowers sold by Horizonte as part of bouquets and arrangements made by Atlantic, the highest margin found for any respondent should be attributed to those sales as the best information available.

Department's Position: We disagree. Flores Horizonte calculated the price of carnations in the bouquets sold by Atlantic Bouquet by approximating the value of the carnations in the bouquet. This amount was added to the price for carnations in the company's sales listing. We find this methodology to be reasonable.

Universal Flowers

Comment 60: Universal Flowers argues that the Department made a mathematical error in its calculation of a net ESP for one of its consignees.

Department's Position: We agree and have corrected the calculation.

Floral, Ltda.

Comment 61: The petitioner states that the addition of a box charge to Floral's per unit revenue is inappropriate because there is no evidence on the record that the box charge collected by the importer is ultimately remitted to Floral.

Department's Position: The box charge is additional revenue remitted to the grower, and we therefore added the revenue from box charges to the per unit revenue column to capture all revenue received on the sale of flowers.

Comment 62: The petitioner states that Floral excluded from its calculation of indirect selling expense fees that were incurred in relation to the antidumping proceeding. Since Floral did not properly tie these expenses to this review, they should be included in its selling expenses.

Department's Position: We disagree. We analyzed Floral's worksheets and the calculation of its selling expenses in section C–5 of its questionnaire response. Floral only excluded legal expenses related to the antidumping proceeding. Therefore, these expenses should not be included in the company's pool of indirect selling expenses.

Comment 63: Floral states that the Department correctly treated Floral/Bochica as one entity for purposes of calculating an individual rate but it erroneously included Bochica in its calculation of the average sample rate.

Department's Position: We agree. We erroneously listed Bochica's name with the firms who received a sample rate in our preliminary results. We have now treated Floral and Bochica as a single entry.

Comment 64: Floral claims that, in combining data for standard mums and spider mums, the Department failed to combine figures for the following categories: gross sales value, box charge, total gross revenue, return value, packing, and indirect selling expenses.

Department's Position: We agree and have corrected our calculations.

Comment 65: Floral states that the Department double counted destroyed flowers by assuming that the gross sales value did not include such flowers. Destroyed flowers are already included in the gross sales value.

Department's Position: We agree and have corrected the amount and value of flowers sold.

Comment 66: Floral and Inversiones Targa assert that the Department should deduct distress sales from total volume sold because they are not the same class or kind of merchandise as those sold in the United States.

Department's Position: In our *Final Determination of Sales at Less than Fair Value*, we stated that we could not ignore the fact that end-of-the-day sales occur in the ordinary course of trade in this product. We consider distress sales to be the same class or kind of merchandise as export quality flowers. Therefore, we include these sales in our calculations.

Flores Colombianas

Comment 67: Colombianas claims that the Department erred in assigning it a margin because its review of our printouts indicates no dumping margin.

Department's Position: The computer printout mistakenly showed no dumping margin for Colombianas. In fact, the company's rate is 0.41 percent.

Inversiones Targa

Comment 68: Inversiones Targa states that the Department double-counted destroyed flowers.

Department's Position: We agree. In calculating total net volume, we have deducted the amount of destroyed flowers listed in Targa's response.

Comment 69: Targa claims that the Department made an error in the table showing figures for consolidated carnations. Total volume returned reported by Targa in column four of that table was different from the Department's printout.

Department's Position: The information submitted by Targa in its questionnaire response did not match the information it submitted on floppy disks, which we used for our analysis. However, since the discrepancy would

result in an insignificant adjustment, pursuant to 19 CFR 353.59, we have made no change to our calculations.

Flores La Valvanera

Comment 70: Flores La Valvanera states that the Department should adjust CV to account for an abnormally low yield resulting from a virus carried by insects.

Department's Position: We disagree. Viral or insect damage to agricultural products is not typically an extraordinary event. While the extent of damage, type of virus, or species of insect may be unusual, damage is not. Valvanera failed to provide any information regarding what it considers to be unusual damage or and what its "expected" production level should be. Furthermore, without details of what Valvanera claims to be its "normal" production experience, we are unable to conclude that the infestation resulted in an extraordinary production loss.

Comment 71: La Valvanera states that the Department incorrectly increased general and administrative expenses in calculating CV by not allowing foreign exchange gains as an offset.

Department's Position: We did not allow an offset to general and administrative expenses for foreign exchange gains because the record does not show that such gains are directly related to the production of the subject merchandise.

Comment 72: Valvanera argues that the Department made a clerical error in not including HM sales of export quality flowers in its CV calculation.

The petitioner states that revenue from HM sales of export quality flowers should not be deducted from total costs. Petitioner further asserts that the quantity and value of claimed HM sales of export quality and cull flowers is not known.

Department's Position: We agree with the respondent and have corrected the error. Contrary to the petitioner's claim, the record in this case does not contain the HM quantity and value of Valvenera's export quality flowers.

Final Results of the Review

As a result of our review of the comments received and the correction of certain clerical errors, we determine that there are margins in the amounts listed below for the period March 1, 1988 through February 28, 1989.

The following thirty-five firms requested and received individual reviews:

Producer/exporter	Margin (percent)
Agrodex (Paso Ancho/Ukrania)	0.80
Argicola Los Gaques	.57
Agrosuba	.41
Cultivos De Caribe	.00
Flores El Trentino	9.49
Flores El Zorro (Zorro/Agrodex)	.25
Floralex	1.88
Floramerica	.00
Flores Colombianas	.41
Flores Colon	.17
Flores Condor De Colombia	.00
Flores De Las Mercedes	.00
Flores De Los Amigos	.95
Flores De Los Arrayanes	2.28
Flores De Serrezuela	.47
Flores Dos Hectareas	41.26
Flores Del Gallinero	.94
Flores El Lobo	1.86
Flores El Puente	.70
Flores Juanambu	1.70
Flores La Conejera	.59
Flores La Maria	1.84
Flores Las Palmas	.00
Florlinda	.00
Inverflores	.19
Inverpalmas	.77
Iversiones Santa Rosa	.54
Jardines De Colombia	.00
Jardines De Los Andes	.41
Flores De La Comuna	1.84
Las Amalias	.00
Pompones Limitada	.00
Flores del Potrero	.00
Productos El Cartucho	.41
Flores Tibati	.11

The following fifteen firms were among those requested only by the petitioner and were selected as representative by random sample:

Producer/exporter	Margin (percent)
Agricola Los Arboles	0.56
Agricola Papagayo	.61
Claveles Colombianos (Claveles, Sun Flowers, Fantasia Flowers, and Splendid Flowers)	.28
Combiflor	.00
Dianticola Colombiana	5.70
Floral Ltda./Exportaciones Bochica	.72
Florandia Herrera-Camacho	12.59
Flores Bachue	11.38
Flores Juncalito	15.48
Flores La Valvanera	13.19
Flores Horizonte (formerly Monte Verde) (Horizonte, Flores De Los Andes, Flores De La Pradera, Inversiones Penas Blancas, Cultivos Buenavista, and Agricola Arenales)	3.24
Flores Tiba	7.82
Iversiones Targa	2.39
Jardines Del Muna	17.66
Universal Flowers	6.90

The following one hudnred twenty-eight firms were requested only by the petitioner but were not selected in the sample. They will receive the weighted-average sample group rate of 4.16 percent.

Producer/Exporter
Abaco Tulipanes De Colombia
Agricola Benilda
Agricola Bojaca
Agricola Del Monte
Agricola El Jardin
Agricola Guali
Agricola Jicabal
Agricola La Floresta
Agricola La Fontana
Agricola Malqui
Agroindustrial Del Rio Frio
Agromec
Agromonte
Agropecuaria Cuernavaca
Arawac
Astro
Beall Company
Ciba Geigy Colombiana
Cienfuegos
Claveles De Los Alpes
Cultivos El Lago
Cultivos Medellin
Daflor
De La Pava Guevara
Del Tropico
Edir
El Rancho
Flores Agua Clara
Flores Aguila
Flores Alfaya
Flores Andinas
Flores Aurora
Flores Calaypso
Flores Califchana
Flores Cigarral
Flores De Cota
Flores De Funza
Flores De Hunza
Flores De La Sabana
Flores De Nemocon
Flores De Suba
Flores De Suesco
Flores Del Bosque
Flores Del Campo
Flores Del Cauca
Flores Del Cielo
Flores Del Lago
Flores Del Monte
Flores Del Pinar
Flores Del Rio
Flores Del Tambo
Flores El Arenal
Flores El Rosal
Flores El Vino
Flores Estrella
Flores Galia
Flores Generales
Flores Hana Ichi De Colombia
Flores Intercontinental
Flores Internacionales
Flores La Conchita
Flores La Estancia
Flores La Pampa
Flores Las Union
Flores Las Caicas
Flores Llanogrande
Flores Marandua

Flores Monserrate
Flores Mountgar
Flores Petaluma
Flores San Carlos
Flores Santa Fe
Flores Santa Rosa
Flores Sausalito
Flores Suasque
Flores Tairona
Flores Tejas Verdes
Flores Tokai Hisa
Flores Tomine
Flores Tropicales
Flores Urimaco
Floresa
Florex
Florexpo
Floricola La Gaitana
Hacienda Gurubital
Horticultura De La Sabana
Industrial Agricola
Ingro
Internacional De Flores
Invermel
Inversiones Agricolas
Inversiones Almer
Inversiones El Bambu
Iversiones Istra
Inversiones La Serena
Iversiones Morcote
Iversiones Santa Rita
Jaramillo Y Daza
Jardines Bacata
Jardines De Chia
Jardines Fredonia
Jardines La Aurora
Kingdom
Las Plazoleta
Linda Colombiana
Los Gaques
Los Geranios
MG Consultores
Monteverde
Orquideas Acatayma
Plantaciones Delta
Plantas Ornamentales De Colombia
Productora El Rosal
Rosaflor
Rosales De Colombia
Rosas Colombianas
Rosas Sabantilla
Rosas Tesalia
Rosas Y Flores
Rosas Y Jardines Del Tropico
Roselandia
Rosex
Sansa Flowers
Santa Helena
Santana Flowers
Tropiflora
Velez De Monchaux Y Hijos

The following twenty-nine firms were requested only by the petitioner and, based on information provided, had no exports to the United States. They will receive the "all other" rate of 2.42 percent. This rate is the simple average of the weighted-average rates for the thirty-five self-requested firms and for the sample group.

Producer/Exporter

Achalay
Agricola Bonanza
Agricola De Occidente
Agricola Floral
Agro Imperial
Agrotabio
Arboles Azules
Bogota Flowers
Con Flores
Epsilon-Editores
Flamingo Flowers
Flores Alcala
Flores Corinto
Flores Del Cortijo
Flores El Chircal
Flores La Macarena
Flores Los Rosales
Flores Maria Luisa
Flores Palimana
Flores Tecnicas
Flores Tenerife
Flores Tequendama
Hacienda La Embarrada
Jardines La Florida
Jardines Natalia
Las Flores
Rosas De Colombia
Tecniflores
Turismo El Globo

The following firms were subject to the fair value investigation. They were the subject of a review request, but had no exports during the review period. They will retain the deposit rates established in the fair value investigation, as noted below.

Producer/exporter	Margin (percent)
Inversiones Paxti	83.14
Prismaflor	83.14
Royal Carnations	83.14
Universal De Flores	83.14

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions on each exporter directly to the Customs Service. Individual differences between United States price and foreign market value may vary from the percentages stated above.

Furthermore, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required on shipments of certain fresh cut flowers from Colombia by the companies reviewed. A cash deposit shall not be required for those companies whose margins were less than 0.5 percent, an amount the Department considers *de minimis*.

For any future entries of this merchandise from a producer and/or exporter, other than those specified above and unrelated to the specified firms, a cash deposit of 2.42 percent shall be required.

These deposit requirements are effective for all shipments of certain fresh cut flowers from Colombia entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review and shall remain in effect until the publication of final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 (1989).

Dated: May 10, 1990.

Eric I. Garfinkel

Assistant Secretary for Import Administration.

[FR Doc. 90-11501 Filed 5-15-90; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; Hospital for Special Surgery et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 90-076. *Applicant:* Hospital for Special Surgery, 535 E. 70th Street, New York, NY 10021. *Instrument:* Electron Microscope, Model CM 12. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used for studies of biological material and material compatible with biological tissues. The experiments to be conducted can be categorized into the following general groups:

(a) analysis of mineral loss from bone due to reduced weight bearing or absence of mechanical stress.

(b) development of methods to induce or increase mineral formation in cells and tissues cultured in vitro,

(c) analysis of metabolic and structural effects of metals or plastics on specific cellular activities,

(d) studies of biological acceptance of metal or plastic components used for prostheses and

(e) analysis of vascular integrity in bone, muscle and connective tissues will be made during non-weight bearing and in presence of non-biological implants. *Application received by Commissioner of Customs:* May 1, 1990.

Docket Number: 90–077. *Applicant:* University of California, San Diego, 8655 Production Avenue, San Diego, CA 92121. *Instrument:* Mass Spectrometer, Model 252. *Manufacturer:* Finnigan, MAT, West Germany. *Intended use of article:* The instrument will be used in research courses for studies of rocks, e.g. basalt, gabbro, limestone, chert, and shale; minerals, e.g. rock forming minerals, ore deposits; fluids, gases with emphasis on atmospheric gases, and gases dissolved in seawater and trapped in Arctic and Antarctic ice sheets; and marine plants and animals. *Application received by Commissioner of Customs:* May 1, 1990.

Docket Number: 90–078. Applicant: Yale University, Immunology Department, 333 Cedar Street, New Haven, CT 06510. *Instrument:* Magnetic Cell Sorter. *Manufacturer:* Miltenyl Biotech, GmbH, West Germany. *Intended use:* The instrument will be used in a research project entitled: The isolation and characterization of murine and human T cell populations. Experiments that demonstrate functional activities of T cells will include several bioassays, utilizing cell lines that act as indicators for presence of particular soluble factors produce by T cells. T cells will also be used to isolate DNA and RNA for analysis of expression of genes whose products mediate functional activities of T cells. *Application received by Commissioner of Customs:* May 1, 1990.

Docket number: 90–079. *Applicant:* NASA Langley Research Center, Mail Stop 188A, Hampton, VA 23665–5225. *Instrument:* Scanning Electron microscope, Model JSM–840A. *Manufacturer:* JEOL, Ltd., Japan. *Intended use:* The instrument will be used to perform high resolution morphological characterization and precise elemental analysis of advanced aerospace materials. Materials to be studied include light element, e.g. aluminum and titanium based alloys, metal and polymer matrix composites, and metal powders. These analyses are essential for determining the potential application of these materials for advanced aerospace vehicles. *Application received by Commissioner of Customs:* May 2, 1990.

Docket number: 90–081. *Applicant:* University of California, Center for Quantized Electronic Structures, Phelps Hall, 1413/UCSB, Santa Barbara, CA 93106. *Instrument:* Electron Microscope, Model JEM 1200EXII. *Manufacturer:* JEOL, Ltd., Japan. *Intended use:* The instrument will be used for research on quantum structure (quantum wires and boxes). The materials to be explored are GaAs-GaA1As and GaSb-GaA1Sb and other I11–V compounds alloys. The objective of the investigations is to build quantum structures to make use of the special optoelectronic properties for device applications. In addition, the instrument will be used for laboratory training in microcharacterization techniques. *Application received by Commissioner of Customs:* May 2, 1990.

Docket Number: 90–082. *Applicant:* The Johns Hopkins University, Department of Biology, Charles and 34th Streets, Baltimore, MD 21218. *Instrument:* Flash Lamp System, Model JML–3. *Manufacturer:* Optoelektronik, West Germany. *Intended use:* The instrument will be used to study muscle contraction during experiments aimed at measuring changes in force with time following the photolysis of caged ATP on caged calcium compounds. *Application received by Commissioner of Customs:* May 3, 1990.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90–11495 Filed 5–16–90; 8:45 am]

BILLING CODE 3510–DS–M

Consolidated Decision on Applications for Duty-Free Entry of Accessories for Foreign Instruments; Michigan State University et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 89–295. *Applicant:* Michigan State University, East Lansing, MI 48824–1325. *Instrument:* Dedicated Automatic Controlling Computer, Model 900. *Manufacturer:* David Bishop Instruments, Inc., United Kingdom. *Intended Use:* See notice at 55 FR 2862, January 29, 1990.

Docket Number: 89–299. *Applicant:* University of Southern California, Los Angeles, CA 90089–0740. *Instrument:* Isocarb Single Acid Bath Carbonate Preparation System. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* See notice at 55 FR 3438, February 1, 1990.

Docket Number: 90–008. *Applicant:* University of Miami, Coral Gables, FL 33124. *Instrument:* Digital Pressure Interface Hall Effect Transducer. *Manufacturer:* GDS Instruments, Ltd., United Kingdom. *Intended Use:* See notice at 55 FR 4650 February 9, 1990.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments, for the purposes for which the instruments are intended to be used, is being manufactured in the United States. *Reasons:* These are compatible accessories for instruments previously imported for the use of the applicants. In each case, the instrument and accessory were made by the same manufacturer.

We know of no domestic accessories which can be readily adapted to the previously imported instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90–11493 Filed 5–16–90; 8:45 am]

BILLING CODE 3510–DS–M

National Institutes of Standards and Technology, Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public law 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 A.M. and 5 p.m. in room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 89–172. *Applicant:* National Institutes of Standards and Technology, Gaithersburg, MD 20899. *Instrument:* Ultraviolet Fourier Transform Spectrometer, Model FT500. *Manufacturer:* Chelsea Instruments, Ltd., United Kingdom. *Intended Use:* See notice at 54 FR 30789, July 24, 1989. *Reasons:* The foreign instrument provides a resolution of 0.05cm^{-1} t 190 nm and a S/N ratio of 250. *Advice Submitted by:* National Institutes of Health, January 30, 1990.

Docket Number: 89–183. *Applicant:* University of California at Santa

Barbara, Santa Barbara, CA 93106. *Instrument:* Electron Spin Resonance Spectrometer, Model ESP 300–10/7. *Manufacturer:* Bruker Instruments, West Germany. *Intended Use:* See notice at 54 FR 34541, August 21, 1989. *Reasons:* The foreign instrument provides a 10 inch magnet with a field strength of 12.5 kG and sample cooling to 4°K. *Advice submitted by:* National Institutes of Health, January 30, 1990.

Docket Number: 89–187. *Applicant:* University of California at San Francisco, San Francisco, CA 94143–0446. *Instrument:* Mass Spectrometer, Model VG 70–VSE. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* See notice at 54 FR 34541, August 21, 1989. *Reasons:* The foreign instrument provides: (1) Resolution to 50,000, (2) accuracy to 5 ppm and (3) scan rate to 0.1s/decade. *Advice Submitted by:* National Institutes of Health, January 30, 1990.

The National Institutes of Health advice that (1) The capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90–11494 Filed 5–16–90; 8:45 am]

BILLING CODE 3510–DS–M

Thomas Jefferson University, et al.; Consolidated Decision of Applications for Duty-Free Entry of Election Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 2841, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket number: 89–280. *Applicant:* Thomas Jefferson University, Philadelphia, PA 19107. *Instrument:* Electron Microscope, Model JEM–100CX. *Manufacturer:* JEOL, Ltd., Japan. *Intended use:* See notice at 55 FR 2125, January 22, 1990. *Order date:* May 4, 1989.

Docket Number: 89–285. *Applicant:* VA Medical Center, Houston, TX 77030. *Instrument:* Electron Microscope, model JEM–1200EXII/SEG/DP/DP. *Manufacturer:* JEOL, Ltd., Japan. *Intended use:* See notice at 55 FR 2125, January 22, 1990. *Order Date:* September 29, 1989.

Docket number: 89–300. *Applicant:* Lehmann College, Bronx, NY 10466. *Instrument:* Electron Microscope, Model H–7000. *Manufacturer:* Hitachi, Japan. *Intended use:* See notice at 55 FR 3436, February 1, 1990. *Order date:* May 9, 1989.

Docket number: 89–301. *Applicant:* Mayo Clinic, Rochester, MN 55905. *Instrument:* Electron Microscope, JEM1200EX. *Manufacturer:* JEOL, Ltd., Japan. *Intended use:* See notice at 55 FR 3436, February 1, 1990. *Order date:* August 22, 1989.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90–11496 Filed 5–16–90; 8:45 am]

BILLING CODE 3510–DS–M

[C–201–405]

Certain Textile Mill Products From Mexico; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on certain textile mill products from Mexico. We preliminarily determine the total bounty or grant to be zero or *de minimis* for 20 companies, 9.79 percent *ad valorem* for Maclin, 7.50 percent *ad valorem* for Textiles Tepeji, and 3.50 percent *ad valorem* for all other companies during the period January 1, 1987, through December 31, 1987. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: May 17, 1990.

FOR FURTHER INFORMATION CONTACT: Patricia Cooper or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On September 5, 1989, the Department of Commerce (the Department) published in the **Federal Register** (54 FR 36841) the final results of its last administrative review of the countervailing duty order on certain textile mill products from Mexico (50 FR 10824; March 18, 1985). On March 29, 1988, the Government of Mexico requested an administrative review of the order for the period January 1, 1987, through December 31, 1987. On March 30, 1988, Tapetes Luxor, an exporter of certain textile mill products from Mexico, also requested an administrative review for this period. We initiated the review on April 27, 1988 (53 FR 10583). The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of certain textile mill products from Mexico. During the review period, such merchandise was classifiable under item numbers of the *Tariff Schedule of the United States Annotated* (TSUSA) listed in appendix A. This merchandise is currently classifiable under item numbers of the *Harmonized Tariff Schedule* (HTS) listed in appendix B. On February 14, 1990, the Department published a notice of partial revocation of this order (55 FR 5641). As a result of this partial revocation, all duty-free merchandise classifiable during 1987 under the following TSUSA item numbers is no longer within the scope of this order: 319.0300, 319.0700, 339.1000, 355.8100, 356.2510, 358.0690, 358.1400, 360.7900, 360.8400, 364.0500, 364.1800 and 364.2500.

We verified the questionnaire response of the Government of Mexico from June 6, 1989, through June 12, 1989. The review covers the period from January 1, 1987, through December 31, 1987 and eighteen programs.

Analysis of Programs

(1) FOMEX

The Fund for the Promotion of Exports of Mexican Manufactured Products (FOMEX) is a trust of the Mexican Treasury Department, with the National Bank of Foreign Trade acting as trustee for the program. The National Bank of Foreign Trade, through financial institutions, makes FOMEX loans available at preferential rates to Mexican exporters and their U.S. importers for two purposes, pre-export financing and export financing. We consider both pre-export and export FOMEX loans to confer export bounties or grants since these loans are given only on merchandise destined for export.

We found that the annual interest rate financial institutions charged borrowers for peso-denominated FOMEX pre-export loans outstanding during the 1987 period of review ranged from 59.5 percent to 96 percent. The annual interest rate for the dollar-denominated FOMEX export loans outstanding in the 1987 period ranged from 5.8 percent to 8.3 percent. We consider the benefit from loans to occur when the interest is paid. Interest on FOMEX pre-export loans is paid at maturity, and those that matured during the period of review were obtained between October 1986 and November 1987. Since interest on FOMEX export loans is pre-paid, we calculated benefits from all FOMEX export loans received during the period of review.

The Banco de Mexico stopped publishing data on nominal and effective commercial lending rates in Mexico after 1984. Therefore, as the basis for our peso loan benchmark, we have relied in part on the effective lending rates for the years 1981 through 1984, as published in the Banco de Mexico's Indicadores Economicos y Moneda (I.E). We calculated the average difference between the I.E. effective rates and the Costo Porcentual Promedio (CPP) rates, the average short-term cost of funds to banks for the years 1981 through 1984. We added this average difference to the 1987 CPP rates.

Thus, we calculated an annual benchmark of 167.26 percent for pre-export peso loans obtained in 1987.

To determine the effective annual interest rate benchmark for dollar loans, we used an average of the quarterly weighted-average effective interest rates published in the Federal Reserve Bulletin, which was 9.81 percent in 1987.

Twenty-three of the 46 exporters of certain textile mill products used FOMEX pre-export and/or export financing during the review period. Because we found that the exporters were able to tie both types of FOMEX loans to exports of specific merchandise to specific countries, we measured the benefit only from FOMEX loans tied to shipments of subject merchandise to the United States. We allocated each company's FOMEX benefit over the value of its exports to the United States. We then weight-averaged the resulting benefit by each company's proportion of Mexican exports of the subject merchandise to the United States during 1987, excluding those companies with significantly different aggregate benefits. On this basis, we preliminarily determine the benefit from FOMEX during the review period to be zero for Maclin, 1.32 percent *ad valorem* for Textiles Tepeji, and 1.53 percent *ad valorem* for all other companies, except those companies with zero or *de minimis* aggregate benefits.

(2) CEPROFI

Certificates of Fiscal Promotion (CEPROFI) are tax certificates used to promote the goals of the National Development Plan (NDP). They are granted in conjunction with investments in designated industrial activities or geographic regions and can be used to pay a variety of federal tax liabilities. Article 26 of the decree revising the authority for issuing CEPROFI certificates, published in the Diario Oficial on January 22, 1986, requires each recipient to pay a four-percent supervision fee. The four-percent supervision fee is "paid in order to qualify for, or to receive" the CEPROFI certificates. Therefore, it is an allowable offset, as defined in section 771(6)(A) of the Tariff Act, from the gross bounty or grant.

During the review period, companies in Mexico could receive CEPROFI benefits under three provisions: Category I, which makes CEPROFI certificates available for the manufacture and processing of certain raw materials, construction and capital goods; Category II, which makes CEPROFI certificates available for particular industrial activities, and a third provision, which grants CEPROFI certificates to companies that purchase Mexican-made equipment.

The Department has determined that CEPROFI certificates granted for the purchase of Mexican-made equipment are not countervailable because such certificates are available to any company that purchases Mexican-made equipment. We consider the other two types of CEPROFI certificates to provide domestic bounties or grants because they are available only to certain industries.

For the six companies that received tax certificates from Category I or Category II provisions, we allocated each company's benefits, less the four-percent supervision fee, over the value of its sales to all markets during the period of review. We then weight-averaged the resulting benefits by each company's proportion of the total exports to the United States of this merchandise during the review period, excluding those companies with significantly different aggregate benefits. We preliminarily determine the benefit from this program during the review period to be zero for Maclin, 6.18 percent *ad valorem* for Textiles Tepeji, and 0.14 percent *ad valorem* for all other companies, except those companies with zero or *de minimis* aggregate benefits.

(3) FONEI

The Fund for Industrial Development (FONEI) administered by the Banco de Mexico, is a specialized financial development fund that provides long-term loans at below-market rates. FONEI loans are available under various provisions with different eligibility requirements. The plant expansion provision is designed for the creation, expansion, or modernization of enterprises in order to promote the efficient production of goods capable of competing in the international market or to meet NDP objectives, which include industrial decentralization. We consider this FONEI loan provision to confer a bounty or grant because it restricts loan benefits to those enterprises located outside of Zone IIIA. Four companies made payments on variable-rate peso-denominated FONEI loans for plant expansion or modernization outstanding during the period of review.

We treated these variable-rate loans as a series of short-term loans. To calculate the benefit, we used the same benchmarks as for the FOMEX peso-denominated pre-export loans and compared them to the preferential interest rates in effect for each FONEI loan payment made during the period of review. We allocated the benefits over each company's total sales to all markets. For the companies that made interest payments on FONEI loans, we weight-averaged the resulting benefits by each company's proportion of exports to the United States of this merchandise during the review period, excluding those companies with significantly different aggregate benefits. We preliminarily determine the benefit from this program during the review period to be zero for those companies with significantly different

aggregate benefits, and 0.004 percent *ad valorem* for all other companies.

(4) FOGAIN

The Guarantee and Development Fund for Medium and Small Industries (FOGAIN) is a program that provides long-term loans to small- and medium-size companies in Mexico. The interest rates available under the program vary depending on whether a small- or medium-size business has been granted priority status, and whether a business is located in a zone targeted for industrial growth. Although FOGAIN loans are available to all small- and medium-size companies in Mexico, regardless of the type of industry or location, some companies get more beneficial rates than others. Therefore, to the extent that this program provides financing at rates below the least beneficial rate available under FOGAIN, we consider it to be countervailable.

Three companies had FOGAIN loans on which interest payments were due during the review period. One company had both long-term fixed-rate and variable-rate FOGAIN loans and the other two companies had only long-term variable-rate FOGAIN loans. For both the variable-rate and fixed-rate loans, we used as our benchmarks the least beneficial interest rates in effect for each FOGAIN loan payment made during the period of review. We treated each loan with a variable interest rate as a series of short-term loans. To calculate the benefit from the variable-rate FOGAIN loans, we compared the benchmark rate to the FOGAIN preferential rate for each loan payment made during the review period.

To calculate the benefit from the fixed-rate loans, we found the difference between the annual amounts of principal and interest paid under the terms of the preferential loans and the annual amounts of principal and interest that would have been paid if the loans had been obtained at the least preferential FOGAIN interest rate. We then calculated the "grant equivalent" of each loan by determining the present value (at the time the preferential loan was made) of the differences in the annual payments that occurred during the life of the loan. Using our declining balance methodology, with the least preferential FOGAIN interest rates as the discount rate, we allocated the grant equivalents over the life of the loan, to yield the annual benefit in the review period from each loan.

We allocated the benefits from each loan over each company's total sales to all markets. Two of the three companies had *de minimis* aggregate benefits. The remaining company, Maclin, had a significantly different aggregate benefit. We preliminarily determine the benefit from this program during the review period to be 0.20 percent *ad valorem* for Maclin, and zero or *de minimis* for all other companies.

(5) PITEX

At verification, the Mexican government informed us of a program called the Program for Temporary Importation of Products Used in the Production of Exports (PITEX). Subsequent to the verification, we asked for and received more information on this program from the Mexican government.

The decree establishing PITEX was published in the *Diario Oficial* on May 9, 1985, and amended in the *Diario Oficial* on September 19, 1986. The program is administered by the Ministry of Commerce and Industrial Development (SECOFI). Under the program, exporters with a proven export record may temporarily import products to be used in the production of exports for up to three years without having to pay the import duties normally imposed on these imports. Machinery and other equipment used to produce exports, as well as imports of inputs to be physically incorporated in the export products, qualify for duty exemptions under the program. The importer must post a bond to guarantee the reexportation of the imports.

The Department does not consider the nonexcessive exemption, remission, deferral or drawback of import charges levied on goods that are physically incorporated in the exported product, making normal allowances for waste (but not for import charges on services, catalysts, and other items not so incorporated), to confer a countervailable benefit. Duty drawback is a practice acceptable under U.S. countervailing duty law and consistent with item (i) of the Illustrative List of Export Subsidies appended to the *Agreement on the Interpretation and Application of Article VI, XVI and XXIII of the General Agreement on Tariffs and Trade* (Subsidies Code). However, rebates, remissions or exemptions of import charges on products that are not physically incorporated into the exported product (and that are limited to exporters) are countervailable. *See, Cotton Yarn from Peru; Preliminary Results of Countervailing Duty Administrative Review* (52 FR 13271; April 22, 2987), and *Cotton Yarn from Peru; Final Results for Countervailing Duty Administrative Review* (52 FR 23193; June 18, 1987).

According to the Government of Mexico's October 1, 1989 supplemental questionnaire response, eight exporters of the subject merchandise used PITEX during the review period. Only seven of these exporters were respondents to the original questionnaire. All of these exporters used PITEX for the importation of some products (*i.e.*, machinery and spare parts) not physically incorporated in exports of certain textile mill products. Because PITEX was used in this case for the exemption of import charges on items not physically incorporated in exports, and because it is available only to exporters, we preliminarily determine that it confers a countervailable bounty or grant.

In its supplemental response, the Government of Mexico provided information on companies that used PITEX, the products they imported under the program, and the normal rates of duty for each product. The Department asked for, but did not receive, the value of the products imported free of duties for each company. Therefore, we have used the best information available to compute the benefit from this program. Because we did not have information on how much equipment and machinery companies that participated in this program imported during the review period, we assumed that they replaced one-tenth of their machinery and equipment each year (based on the ten-year average useful life of assets in the textile industry, according to the "Asset Guideline Classes" of the Internal Revenue Service.

We took the average replacement value of machinery and equipment from the 1987 financial statements of the only two companies for which we had verified such information in this review and divided that value by ten to obtain an estimated average cost of purchases of machinery and equipment in the review period, or what it would have cost each compay to replace machinery and equipment in 1987. We then took a ratio of total exports to total sales for each company that used the program and multiplied it by the cost of replacing machinery and equipment in 1987 to estimate the proportion of machinery and equipment that a textile mill product exporter would have imported to manufacture exports during the review period. We then multiplied the average rate of import duty from the supplemental response by the estimate of imported capital equipment to arrive at the benefit, *i.e.*, what the company would have paid in import duties in 1987 absent the PITEX program. We allocated the benefit over total exports of each company. We then weight-

averaged the benefits by each company's proportion of Mexican exports of the subject merchandise to the United States during 1987, excluding those companies with significantly different aggregate benefits. On the basis of the best information available, we preliminarily determine the benefit from PITEX during the review period to be 9.59 percent *ad valorem* for Maclin, zero for Textiles Tepeji, and 1.83 percent *ad valorem* for all other companies, except those companies with zero or *de minimis* aggregate benefits.

(6) Other Programs

We also examined the following programs and preliminarily determine that exporters of certain textile mill products from Mexico did not use them during the review period:

(A) National Industrial Development Find (FOMIN);
(B) NDP preferential discounts;
(C) Trust Fund for the Study and Development of Industrial Parks (FIDEIN);
(D) Bancomext loans;
(E) Delay of payments on loans;
(F) Delay of payments to PEMEX of fuel charges;
(G) PROFIDE loans;
(H) Export credit insurance;
(I) Tax Rebate Certificate (CEDI);
(J) Accelerated depreciation;
(K) Article 15 loans;
(L) Preferential state investment incentives; and
(M) Import duty reductions and exemptions.

Companies Not Receiving Benefits

We preliminary determine that the following 20 companies received zero or *de minimis* benefits during the period of review:

(1) Acytex, S. de R.L.
(2) Celanese Mexicana, S.A.
(3) D'Velvet, S.A.
(4) El Pilar, S.A. de C.V.
(5) Encajes Mexicanas, S.A. de C.V.
(6) Extrafil, S.A. de C.V.
(7) Fabrica Hilados y Tejidos SINDEC
(8) Fieltros Finos, S.A. de C.V.
(9) Fisher Price, S.A.
(10) Hilados y Tejidos Tepeji, S.A. de C.V. (HYTT).
(11) Hilaturas Maya, S.A.
(12) J.B. Martin, S.A. de C.V.
(13) Jeramex, S.A. de C.V.
(14) Noblis Lees, S.A. de C.V.
(15) Ryltex, S.A. de C.V.
(16) Tamacani, S.A.
(17) Tapetes Luxor, S.A. de C.V.
(18) Telares Ajijic, S.A.
(19) Telas Extra, S.A. de C.V.
(20) Terpel, S.A. de C.V.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant during the period January 1, 1987 through December 31, 1987 to be zero or *de minimis* for 20 companies, 9.79 percent *ad valorem* for Maclin, 7.50 percent *ad valorem* for Textiles Tepeji, and 3.50 percent *ad valorem* for all other companies.

Therefore, for all merchandise listed in appendix A, the Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, shipments from the 20 companies listed above and to assess countervailing duties of 9.79 percent of the f.o.b. invoice price on all shipments of this merchandise from Maclin, 7.50 percent of the f.o.b. invoice price on all shipments of this merchandise from Textiles Tepeji, and 3.50 percent of the f.o.b. invoice price on all shipments of this merchandise from all other companies, exported on or after January 1, 1987 and on or before December 31, 1987.

The Department also intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on any shipments of merchandise from the 20 companies listed above, and to collect a cash deposit of 9.79 percent of the f.o.b. invoice price on all shipments of this merchandise from Maclin, 7.50 percent of the f.o.b. invoice price on all shipments of this merchandise from Textiles Tepeji, and 3.50 percent of the f.o.b. invoice price on all shipments of this merchandise from all other companies entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Parties to the proceeding may request disclosure of the calculations methodology and interested parties may request a hearing not later than 10 days after date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with § 355.38(e) of the Commerce regulations. Any request for disclosure under an administrative protection order must be made no later than five days after the date of publication of this notice.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief, and discussed at a hearing, if one is requested.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: May 9, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

Appendix A—Certain Textile Mill Products From Mexico

C-201-405

1987 TSUSA Numbers

300.6005
300.6010
300.6024
300.6028
301.0100 through 301.0900
301.1000 through 301.1900
301.2000 through 301.2900
301.3000 through 301.3800
302.0124 through 302.0924
302.1024 through 302.1924
302.1028 through 302.1928
302.2020 through 302.2920
302.2024 through 302.2924
302.2026 through 302.2926
302.2028 through 302.2928
302.3024 through 302.3924
302.3026 through 302.3926
302.3028 through 302.3928
302.4026 through 302.4926

303.2040	310.0208	310.4047
303.2042	310.0249	310.4050
307.7000	310.0250	310.5046
310.0106	310.0270	310.5047
310.0107	310.0510	310.5049
310.0108	310.1015	310.6034
310.0110	310.1070	310.9000
310.0114	310.1205	310.9310
310.0130	310.1210	310.9320
310.0149	310.1555	310.9500
310.0150	310.1570	316.5500
310.0206	310.2150	316.5800
310.0207	310.4027	316.7000

320.0103 through 320.0903
320.0121 through 320.0921
320.0122 through 320.0922
320.0134 through 320.0934
320.0138 through 320.0938
320.0145 through 320.0945
320.0149 through 320.0949
320.0154 through 320.0954
320.0157 through 320.0957
320.0163 through 320.0963
320.0166 through 320.0966
320.0177 through 320.0977
320.0180 through 320.0980
320.0198 through 320.0998
320.1034 through 320.1934
320.1045 through 320.1945
320.1063 through 320.1963
320.1071 through 320.1971
320.1077 through 320.1977
321.0134 through 321.0934
321.1071 through 321.1971
321.1077 through 321.1977
322.0162 through 322.0962
322.0163 through 322.0963
322.1006 through 322.1906
322.1015 through 322.1915

322.1025 through 322.1925
322.1034 through 322.1934
322.1036 through 322.1936
322.1037 through 322.1937
322.1045 through 322.1945
322.1047 through 322.1947
322.1048 through 322.1948
322.1050 through 322.1950
322.1051 through 322.1951
322.1052 through 322.1952
322.1053 through 322.1953
322.1055 through 322.1955
322.1056 through 322.1956
322.1065 through 322.1965
322.1066 through 322.1966
322.1068 through 322.1968
322.1071 through 322.1971
322.1075 through 322.1975
322.1077 through 322.1977
322.1079 through 322.1979
322.1081 through 322.1981
322.1084 through 322.1984
322.1085 through 322.1985
322.1086 through 322.1986
322.1088 through 322.1988
322.1089 through 322.1989
322.1090 through 322.1990
322.1091 through 322.1991
322.1095 through 322.1995
322.1097 through 322.1997
322.2016 through 322.2916
322.2023 through 322.2923
322.2069 through 322.2969
322.2073 through 322.2973
322.4003 through 322.4903
322.4021 through 322.4921
322.4022 through 322.4922
322.4038 through 322.4938
322.4042 through 322.4942
322.4049 through 322.4949
322.4054 through 322.4954
322.4057 through 322.4957
322.4072 through 322.4972
322.4080 through 322.4980
322.4098 through 322.4998
322.5014 through 322.5914
322.5015 through 322.5915
322.5016 through 322.5916
322.5017 through 322.5917
322.5023 through 322.5923
322.5069 through 322.5969
322.5073 through 322.5973
322.8016 through 322.8916
322.8023 through 322.8923
322.8069 through 322.8969
322.8073 through 322.8973
322.9003 through 322.9903
322.9021 through 322.9921
322.9022 through 322.9922
322.9038 through 322.9938
322.9042 through 322.9942
322.9049 through 322.9949
322.9054 through 322.9954
322.9057 through 322.9957
322.9072 through 322.9972
322.9080 through 322.9980
322.9098 through 322.9998
324.2022 through 324.2922
324.2024 through 324.2924
324.2031 through 324.2931
324.2038 through 324.2938
324.2042 through 324.2942
324.2049 through 324.2949
324.2054 through 324.2954
324.2057 through 324.2957
324.2072 through 324.2972
324.2080 through 324.2980
324.2098 through 324.2998
324.8072 through 324.8972
324.8074 through 324.8974
324.8080 through 324.8980
324.8098 through 324.8998
325.1051 through 325.1951
325.1052 through 325.1952
325.1085 through 325.1985
325.1089 through 325.1989
325.1091 through 325.1991
325.1095 through 325.1995
325.8022 through 325.8922
325.8024 through 325.8924
327.2021 through 327.2921
327.2022 through 327.2922
327.2031 through 327.2931
327.2038 through 327.2938
327.2042 through 327.2942
327.2049 through 327.2949
327.2054 through 327.2954
327.2057 through 327.2957
327.3003 through 327.3903
327.3021 through 327.3921
327.3022 through 327.3922
327.3038 through 327.3938
327.3049 through 327.3949
327.3054 through 327.3954
327.3057 through 327.3957
328.2003 through 328.2903
328.2021 through 328.2921
328.2022 through 328.2922
328.2031 through 328.2931
328.2038 through 328.2938
328.2049 through 328.2949
328.2054 through 328.2954
328.2057 through 328.2957
328.2072 through 328.2972
328.2080 through 328.2980
328.2098 through 328.2998
331.2022 through 331.2922
331.2024 through 331.2924
331.2031 through 331.2931
331.2038 through 331.2938
331.2049 through 331.2949
331.2054 through 331.2954
331.2057 through 331.2957
331.2072 through 331.2972
331.2074 through 331.2974
331.2080 through 331.2980
331.2098 through 331.2998

336.1540	338.5049	345.5575
336.6260	338.5051	345.5585
336.6270	338.5054	346.5850
336.6275	338.5055	346.6265
338.4004	338.5059	346.7000
338.5006	338.5060	347.6040
338.5007	338.5064	347.6800
338.5009	338.5065	348.0065
338.5010	338.5069	351.3000
338.5011	338.5073	351.5010
338.5013	338.5075	351.5060
338.5016	338.5076	351.6010
338.5021	338.5079	351.7060
338.5023	338.5080	351.8060
338.5024	338.5082	351.9060
338.5026	338.5084	352.2060
338.5027	338.5085	352.8010
338.5030	338.5087	352.8060
338.5031	338.5088	353.1000
338.5036	338.5092	353.5012
338.5037	338.5095	353.5052
338.5041	338.5098	355.1610
338.5043	339.1000	355.1620
338.5044	345.4000	355.1630
338.5045	345.5553	355.2510
338.5046	345.5555	355.2520
338.5048	345.5557	355.2530
355.2540	361.5420	364.2300
355.2550	361.5426	364.3000
355.2560	361.6000	365.5060
355.4530	361.7010	365.6615
355.8500	363.0510	365.6625
357.4500	363.0515	365.6665
357.7010	363.1020	365.8400
357.8060	363.1040	365.8700
358.0290	363.2000	365.8910
358.3500	363.2562	365.8920
358.5040	363.2564	365.8940
359.1010	363.2575	365.8970
359.1030	363.2583	365.8980
360.0600	363.2585	366.1720
360.1200	363.2587	366.2460
360.2500	363.2590	366.2480
360.4225	363.4505	366.4200
360.4335	363.4510	366.4600
360.4825	363.6040	366.4700
360.4835	363.6050	366.5100
360.7000	363.6540	366.7700
360.7800	363.8506	366.7925
360.8300	363.8509	366.7930
361.0530	363.8515	366.8400
361.0540	363.8525	367.3200
361.2410	363.8545	367.3300
361.4200	363.8550	367.6325
361.4500	363.8555	367.6340
361.4600	364.1300	367.6380
361.4800	364.2000	

Appendix B—Certain Textile Mill Products from Mexico

[C-201-405]

Harmonized Numbers for Duty Deposit Purposes

3918.10.32	3921.12.19	3921.13.19	3921.90.19
3921.90.21	4008.21.00	4010.10.10	5106.10.00
5106.20.00	5107.10.00	5107.20.00	5108.10.60
5108.20.60	5109.10.60	5109.90.60	5111.11.60
5111.19.20	5111.19.60	5111.20.60	5111.30.60
5112.19.60	5112.20.00	5112.30.00	5204.11.00
5204.19.00	5204.20.00	5205.11.10	5205.12.10
5205.12.20	5205.13.10	5205.13.20	5205.14.10
5205.22.00	5205.23.00	5205.24.00	5205.25.00
5205.31.00	5205.32.00	5205.33.00	5205.34.00
5205.42.00	5205.43.00	5205.44.00	5206.11.00
5206.12.00	5206.13.00	5206.14.00	5206.15.00
5206.31.00	5206.32.00	5206.33.00	5206.34.00
5206.35.00	5206.41.00	5206.42.00	5206.43.00
5206.44.00	5206.45.00	5207.10.00	5207.90.00
5208.11.20	5208.12.40	5208.13.00	5208.19.40
5208.21.20	5208.21.40	5208.22.40	5208.22.60
5208.23.00	5208.29.40	5208.29.60	5208.31.40
5208.31.60	5208.31.80	5208.32.30	5208.32.40
5208.32.50	5208.33.00	5208.39.20	5208.39.60
5208.39.80	5208.41.40	5208.41.60	5208.41.80
5208.42.30	5208.42.40	5208.42.50	5208.43.00
5208.49.40	5208.51.40	5208.51.60	5208.51.80
5208.52.30	5208.52.40	5208.52.50	5208.53.00
5208.59.20	5208.59.60	5208.59.80	5209.11.00
5209.19.00	5209.21.00	5209.29.00	5209.31.60
5209.32.00	5209.39.00	5209.41.60	5209.42.00
5209.43.00	5209.49.00	5209.51.60	5209.52.00
5209.59.00	5210.21.40	5210.21.60	5210.22.00
5210.29.40	5210.29.60	5210.31.40	5210.31.60
5210.32.00	5210.39.40	5210.39.60	5210.51.40
5210.51.60	5210.52.00	5210.59.40	5210.59.60
5211.31.00	5211.39.00	5211.51.00	5211.59.00
5212.21.60	5212.22.60	5212.23.60	5212.24.60
5212.25.60	5401.10.00	5401.20.00	5402.10.30
5402.20.30	5402.20.60	5402.31.30	5402.31.60
5402.32.30	5402.32.60	5402.33.30	5402.33.60
5402.39.30	5402.39.60	5402.41.00	5402.42.00
5402.43.00	5402.49.00	5402.51.00	5402.52.00
5402.59.00	5402.61.00	5402.62.00	5402.69.00
5403.10.30	5403.20.30	5403.20.60	5403.31.00

5403.32.00	5403.33.00	5403.39.00	5406.10.00
5406.20.00	5407.10.00	5407.41.00	5407.42.00
5407.43.20	5407.44.00	5407.52.20	5407.53.10
5407.53.20	5407.54.00	5407.60.05	5407.60.10
5407.60.20	5407.71.00	5407.72.00	5407.73.20
5407.74.00	5407.81.00	5407.82.00	5407.83.00
5407.84.00	5407.91.05	5407.91.20	5407.92.05
5407.92.20	5407.93.05	5407.93.20	5407.94.05
5407.94.20	5408.10.00	5408.21.00	5408.22.00
5408.23.20	5408.24.00	5408.31.05	5408.31.20
5408.32.05	5408.32.90	5408.33.05	5408.33.90
5408.34.05	5408.34.90	5508.10.00	5506.20.00
5509.12.00	5509.21.00	5509.22.00	5509.31.00
5509.32.00	5509.41.00	5509.51.30	5509.51.60
5509.53.00	5509.69.20	5509.69.40	5509.99.20
5509.99.40	5511.10.00	5511.20.00	5511.30.00
5512.11.00	5512.19.00	5512.21.00	5512.29.00
5512.91.00	5512.99.00	5513.11.00	5513.13.00
5513.19.00	5513.21.00	5513.23.00	5513.29.00
5513.33.00	5513.39.00	5513.41.00	5513.43.00
5513.49.00	5514.11.00	5514.19.00	5514.21.00
5514.29.00	5514.41.00	5514.49.00	5515.11.00
5515.12.00	5515.13.05	5515.19.00	5515.21.00
5515.29.00	5515.91.00	5515.99.00	5516.11.00
5516.12.00	5516.13.00	5516.14.00	5516.21.00
5516.22.00	5516.23.00	5516.24.00	5516.41.00
5516.42.00	5516.43.00	5516.44.00	5516.91.00
5516.92.00	5516.93.00	5516.94.00	5601.10.20
5601.22.00	5602.10.10	5602.10.90	5602.21.00
5602.90.30	5602.90.60	5602.90.90	5603.00.90
5604.20.00	5604.90.00	5606.00.00	5607.41.30
5607.49.15	5607.49.25	5607.49.30	5607.50.20
5607.50.40	5607.90.20	5608.11.00	5608.19.10
5701.10.16	5701.10.20	5701.90.20	5702.10.90
5702.31.10	5702.31.20	5702.32.10	5702.32.20
5702.39.20	5702.41.10	5702.41.20	5702.42.10
5702.42.20	5702.49.10	5702.51.20	5702.51.40
5702.52.00	5702.59.10	5702.59.20	5702.91.30
5702.91.40	5702.92.00	5702.99.10	5702.99.20
5703.10.00	5703.20.10	5703.20.20	5703.30.00
5704.10.00	5704.90.00	5705.00.20	5801.31.00
5801.33.00	5801.34.00	5801.35.00	5801.36.00
5802.30.00	5803.10.00	5803.90.30	5804.10.00
5804.21.00	5804.29.00	5804.30.00	5805.00.25
5805.00.30	5805.00.40	5806.31.00	5806.32.10
5806.40.00	5808.90.00	5810.10.00	5810.91.00
5810.92.00	5811.00.20	5901.10.20	5901.90.40
5902.10.00	5902.20.00	5902.90.00	5903.10.30
5903.20.30	5903.90.30	5905.00.90	5906.91.30
5906.99.30	5907.00.90	5910.00.10	5911.10.20
5911.20.10	5911.31.00	5911.32.00	5911.90.00
6001.10.20	6001.10.60	6001.22.00	6001.92.00
6002.10.80	6002.20.10	6002.20.30	6002.20.60
6002.30.20	6002.43.00	6002.93.00	6301.10.00
6301.20.00	6301.30.00	6301.40.00	6301.90.00
6302.10.00	6302.21.20	6302.22.10	6302.22.20
6302.29.00	6302.31.20	6302.32.10	6302.32.20
6302.39.00	6302.40.10	6302.40.20	6302.51.10
6302.51.20	6302.51.30	6302.51.40	6302.52.10
6302.52.20	6302.53.00	6302.59.00	6302.60.00
6302.91.00	6302.92.00	6302.93.20	6302.99.20
6303.12.00	6303.19.00	6303.92.00	6303.99.00
6304.11.10	6304.11.20	6304.11.30	6304.19.05
6304.19.15	6304.19.20	6304.19.30	6304.91.00
6304.92.00	6304.93.00	6304.99.15	6304.99.20
6304.99.60	6307.10.20	7019.20.10	9404.90.90

[FR Doc. 90-11492 Filed 5-16-90; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

South Atlantic Fishery Management Council; Gulf of Mexico Fishery Management Council; Public Hearings

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

ACTION: Notice of public hearings and request for comments.

SUMMARY: The South Atlantic Fishery Management Council (SAFMC) and the Gulf of Mexico Fishery Management Council (GMFMC) will hold public hearings and provide a comment period to solicit public input on proposed Amendment 1 to the Coral and Coral Reefs of the Gulf of Mexico and South Atlantic Fishery Management Plan (FMP). Amendment 1 to the FMP would add a definition of overfishing and address prohibitation of harvest of octocorals.

DATES: The SAFMC will hold a public hearing at 7 p.m., on Monday, June 11, 1990, and the GMFMC will hold a public hearing from 10:30 a.m., to 12 noon, on Monday, July 9, 1990. Written comments will be accepted by both Councils through August 8, 1990.

ADDRESSES: All written comments should be addressed to Rober K. Mahood, Executive Director, SAFMC, One Southpark Circle, Suite 306, Charleston, SC 29407-4699; or Wayne E. Swingle, Executive Director, GMFMC, 5401 West Kennedy Boulevard, Lincoln Center, Suite 881, Tampa, FL 33609.

The hearings are scheduled to be held at the following locations:

SAFMC:

June 11, 1990—Marriott Casa Marina Hotel, 1500 Reynolds Street, Key West, Florida

GMFMC:

July 9, 1990—Sheraton Royal Biscayne Hotel, 555 Ocean Drive, Key Biscayne, Florida

FOR FURTHER INFORMATION CONTACT: Roger Pugliese, SAFMC, (803) 571-4366; or Terry Leary, GMFMC, (813) 228-2815.

Dated: May 11, 1990.

Richard H. Schaefer,

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

[FR Doc. 90-11404 Filed 5-16-90; 8:45 am]

BILLING CODE 3510-22-M

[Modification No. 2 to Permit No. 680]

Marine Mammals, NMFS, Southwest Fisheries Center (P77#33)

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

ACTION: Notice of correction.

SUMMARY: This notice corrects Modification No. 2 to Permit No. 680 (P77#33) (notice document 90-7502) that was published in the **Federal Register** on April 2, 1990 (55 FR 12253). In the table in the second column on page 12253, under the heading "Maximum total take," "240" is corrected to read "60" for all species listed in the table.

Dated: May 10, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90-11417 Filed 5-16-90; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next meeting is scheduled for 17 May 1990 at 10 a.m. in the Commission's offices in the Pension building, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the Commission offices (202-504-2200) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, 9 May 1990.

Charles H. Atherton,

Secretary.

[FR Doc. 90-11418 Filed 5-16-90; 8:45 am]

BILLING CODE 6330-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Institute of Pathology Scientific Advisory Board; Meeting

In order to comply with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Armed Forces Institute of Pathology's Scientific Advisory Board, June 6 and 7, 1990, at 0830 hours in the Director's Conference Room, Armed Forces Institute of Pathology, Washington, DC 20306-6000. This meeting will be open to the public.

The proposed agenda will include professional discussion of the mission of the Armed Forces Institute of Pathology relating to consultation, education and research. The Executive Secretary from whom substantive program information may be obtained is Lieutenant Colonel James E. Voss, Acting Executive Officer, Armed Forces Institute of Pathology, Washington, DC 20306–6000, telephone (202)–576–2900.

Kenneth L. Denton,

Alternate Army Liaison Officer With the Federal Register.

[FR Doc. 90–11480 Filed 5–16–90; 8:45 am]

BILLING CODE 3710–08–M

Board of Visitors, United States Military Academy; Open Meeting

In accordance with section 10(a)(20) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following meeting.

Name of Committee: Board of Visitors, United States Military Academy.

Dates of Meeting: 21–22 July 1990.

Place of Meeting: West Point, New York.

Start Time of Meeting: 9 a.m., 21 July 1990.

Proposed Agenda: Agenda will include but not be limited to Briefings on: Development of Physical Plant at West Point; Impact of Force Reductions on USMA; Pay Scales for Civilian Faculty; Active Duty Service Obligation; Fellowship Program; Enrichment Program; Housing; Physical Development Program; Updates on Honor Commission, other topics as deemed appropriate by the Board.

All proceedings are open. For further information, contact Major Stephen R. Furr, United States Military Academy, West Point, NY 10996–5000, (914) 938–2626.

For the Chairman of the Board of Visitors:

Stephen R. Furr,

MAJ, GS, Executive Secretary, USMA Board of Visitors.

Kenneth L. Denton,

Alternate Army Liaison Officer With the Federal Register.

[FR Doc. 90–11461 Filed 5–16–90; 8:45 am]

BILLING CODE 3710–08–M

Military Traffic Management Command; Military Personal Property Symposium; Open Meeting

Announcement is made of meeting of the Military Personal Property Symposium. This meeting will be held on 21 June 1990, at the Sheraton Crystal City Hotel, Arlington, Virginia, and will convene at 0930 hours and adjourn at approximately 1600 hours.

Proposed Agenda: The purpose of the symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to the Personal Property Traffic Management Regulation, DOD 4500.34R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MTPP–M, at telephone number 756–1600, between 0800–1530 hours. Topics to be discussed should be received on or before 17 May 1990.

Kenneth L. Denton,

Alternate Army Liaison Officer With the Federal Register.

[FR Doc. 90–11482 Filed 5–16–90; 8:45 am]

BILLING CODE 3710–08–M

Defense Logistics Agency

Finding of No Significant Impact (FONSI) for Formation of Defense Contract Management Command

AGENCY: Defense Logistics Agency (DLA), Department of Defense (DoD).

ACTION: Notice.

SUMMARY: An environmental assessment (EA) on the Formation of the Defense Contract Management Command was prepared pursuant to the National Environmental Policy Act (NEPA) of 1969 as amended (42 U.S.C. 4321 *et seq.*) and the Council on Environmental Quality Guidelines (40 CFR part 1500–1508). The environmental assessment concluded that there will be no significant impact on the environment and that preparation of an Environmental Impact Statement will not be necessary. Interested parties may submit comments to the address listed below for a 30-day period from the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Robert P. Scott, DCMC–D, Cameron Station, Alexandria, VA 22304–6190, (202) 274–0821 or Autovon 284–0821.

SUPPLEMENTARY INFORMATION:

Description of the Action

In response to a 1989 directive from the President of the United States to " * * * develop a plan to improve the defense procurement process * * * " a Defense Management Review recommended that those functions involved in contract administration be consolidated into a separate organization whose mission would be the administration of DoD procurement contracts. A Task Force submitted their plan for this reorganization to the Under Secretary of Defense For Acquisition in September 1989. This Environmental Assessment (EA) has been prepared under the requirements of 40 CFR Parts 1500-1508 and DLA Regulation 1000.22 to examine the environmental consequences of the implementation plan of the Task Force.

Currently, more than 24,000 military and civilian personnel are employed by the Military Services and the Defense Logistics Agency (DLA) in contract administration. The proposed new organization would require major changes in the present structure under which these persons function. Potentially affected were nine regional headquarters offices of the Defense Contract Administration Services (in Los Angeles, Dallas, Atlanta, St. Louis, Chicago, Cleveland, Philadelphia, New York and Boston), the Air Force Contract Management Division (Albuquerque, NM), the Air Force Contract Maintenance Center (Dayton, OH), and in-plant representatives at approximately 50 locations who now report through Air Force, Army or Navy channels. Another 15,000+ DLA employees were not proposed to be affected in any way, and their situation was not further assessed.

The first phase of this EA focused on the decisions involved in selecting the basic form of the new organization, its reporting structure and the location of its national headquarters office. It was prepared in January 1990, and was used in decision making for these factors. Atlanta, Boston, Chicago, Los Angeles, Philadelphia were then proposed as locations for District Headquarters. The second phase examined, in greater detail, decision alternatives related to those cities and specific facilities where new District headquarters offices will be located.

Environmental Consequences

No identifiable effects on the biophysical environment were found in either phase. Some remodeling activities are already planned at Chicago, Atlanta and Philadelphia, and are not considered as caused by the action.

The most significant potential for adverse effects to the socioeconomic environment results from the requiremnt, in the new organization, to reduce the number of personnel in all present offices of the Defense Contract Mangement Regions (DCMRs), and to eliminate the now separate

administrative structure of the Air Force Contract Management Division, Albuquerque, NM. Such decreases are proposed for present DCMR offices in Dallas, St. Louis Cleveland and New York. When combined with other ongoing initiatives within DoD, there is the potential for the number of employees to be reduced by several thousand.

These decreases are, however, spread across scores of locations in many states. Only in Albuquerque is there any potential for such a decrease to result in measurable loss to the local economy. This effect might be, at maximum, 0.5% of local employment and earnings. Adverse personal consequences to individuals whose positions are transferred or eliminated are also identified. An extensive system of mitigation already wxists within DoD personnel procedures, and its prompt application is recommended as soon as individuals who cannot be placed in the new organization can be identified.

No potentially significant adverse effects which are not capable of being avoided or fully mitigated were identified in the EA process. Mitigations for all potentially significant effects were in place and their continuation is recommended. We find that this action will have no significant impact on the environment and thus an Environmental Impact need not be prepared.

An official public comment period regarding the EA will begin at the time of publication of this notice and will conclude 30 days following. Copies of Phase 1 and Phase 2 of the EA are available for inspection during normal business hours at the following locations:

Richard Nobles (DCMR ATL–LR), DCMR Atlanta, 805 Walker Street, room B125, Marietta, GA 30060–2789, Tel: 404–590–6416, Autovon: 697–6416.

Dan Hood (DCMR BOS–LB) DCMR Boston, 495 Summer Street, 8th floor, Boston, MA 02210–2184, Tel: 617–451–4298, Autovon: 955–4298.

Beverly James (DCMR CHI–DB), DCMR Chicago, O'Hare International Airport, 10166 W. Higgins Road, room 175, Chicago, IL 60666–0475, Tel: 312–694–6014, Autovon: 930–6014 or 6015.

Gay Maund (DCMR LA–DB), DCMR Los Angeles, 222 North Sepulveda Blvd. 11th floor, room 1109, El Segundo, CA 90245–4320, Tel: 213–335–4440, Autovon: 972–4440.

Ann Jensis-Dale (DCMR NY–DB), DCMR New York 201 Varick Street, room 1073, New York, NY 10014–4811, Tel: 212–807–3045, Autovon: 994–3045.

Alice Coghill (DCMR PHI–DB), DCMR Philadelphia, P.O. Box 7478, 2800 South 20th Street, Bldg. 6, 2nd floor, Pole 47–D Philadephia, PA 19101–7478, Tel: 215–952–5490, Autovon: 444–5490.

Ronald J. Seman (DCMR CLE–DB), DCMR Cleveland, Federal office Building, room 1887, 1240 East 9th Street, Cleveland, OH 44199–2063, Tel: 216–522–5055, Autovon: 580–5055.

James Thornberry (DCMR DAL–DB), DCMR Dallas, 1200 Main Street, Dallas, TX 75202–4399, Tel: 214–670–9208, Autovon: 940–1208.

Mike Tolle (DCMR STL–LB), DCMR St. Louis, 1222 Spruce Street, room 9.300 (9th floor), St. Louis, MO 63103–2811, Tel: 314–331–5004, Autovon: 555–5004.

Contract Management Division/Public Affairs (CMD–PA), ATTN: Ms. Kari Paseur, Building 20604, room 55B, Kirtland AFB, NM 87117–5000, Tel: 505–844–6644, (AV) 244–6644.

Dated: May 11, 1990.

William R. Andrews, Jr.,

Colonel, USA, Staff Director, Office of Installation Services and Environmental Protection.

[FR Doc. 90–11425 Filed 5–16–90; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF ENERGY

Noncompetitive Financial Assistance Award

AGENCY: Department of Energy (DOE), Albuquerque Operations Office (AL).

ACTION: Notice of Noncompetitive Financial Assistance Award to the Western Governors' Association (WGA).

SUMMARY: The DOE, AL, in accordance with 10 CFR 600.7(b)(2), gives notice of its plans to award a cooperative agreement concerning the safe interstate transportation of transuranic waste, to the WGA, Denver, Colorado, on a noncompetitive basis.

The objective of this award is to implement the recommendations of the July 1989 report, entitled "Transport of Transuranic Wastes to the Waste Isolation Pilot Plant: State Concerns and Proposed Solutions," presented by the WGA to formulate programs for safely shipping transuranic waste. Safety issues to be addressed and coordinated between the western states and DOE will include, but not be limited to: the development of uniform inspection standards necessary for a truck to cross the seven western states, parking requirements, procedures for avoiding bad weather, and other issues identified in the report. This activity reflects the "new culture" of openness and cooperation, recognizes safe transportation is a shared national responsibility, and recognizes the importance of States' input into the DOE decision-making process.

The DOE has determined that restriction to WGA is appropriate based on the following information:

- A discretionary award will be made on a noncompetitive basis pursuant to 10 CFR 600.6(a)(5). A general evaluation and a Determination of Noncompetitive Financial Assistance have been prepared pursuant to 10 CFR 600.7(b)(2)(i) and (ii). The proposed award satisfies criteria (A) and (D) identified in 10 CFR 600.7(b)(2)(i).
- The previously identified report was prepared at the request of Congress and through a cooperative agreement between the WGA and the U.S. Department of Transportation. The report summarizes the concerns of the western states regarding the transport of transuranic wastes from temporary storage facilities to a permanent repository.
- The activity to be funded is necessary to implement the recommendations of the report to Congress discussed herein, which was initially prepared at the request of Congress through a cooperative agreement between the U.S. Department of Transportation and the WGA. The WGA is the only organization qualified to continue with the effort, therefore, soliciting proposals from other organizations is not a possibility.
- The proposed effort is inappropriate for a competitive solicitation because the WGA is the only organization capable of fulfilling the requirements of this effort. The WGA is an organization representing the western states on various political, environmental, educational, and social affairs. The WGA has assembled a Task Force on Nuclear Waste Transportation which has made recommendations on the safe transportation of transuranic waste to the Waste Isolation Pilot Plant (WIPP). The WGA has in the past supported the WIPP Project Office in organizing and coordinating meetings with the western states to discuss issues revolving around the transportation of transuranic waste. The use of the WGA in performing this effort is appropriate because of their unique expertise, relationship with the western states, and the sensitivity to issues dealing with Transuranic Waste Transportation.

The total estimated cost of this project for the first year is $1,515,000. It is anticipated that the agreement will be funded annually for a total project period of five years. No cost sharing is anticipated. The distribution and

availability of funds is subject to budget limitations.

FOR FURTHER INFORMATION CONTACT: Susan L. Connor, U.S. Department of Energy, Albuquerque Operations Office, Contracts and Procurement Division, P.O. Box 5400, Albuquerque, NM 87115, Telephone: (505) 845–4345 or FTS 845–4345.

Issued in Albuquerque, NM, May 3, 1990.

Richard A. Marquez,

Acting Assistant Manager for Management and Administration.

[FR Doc. 90–11459 Filed 5–16–90; 8:45 am]

BILLING CODE 6450–01–M

Certification of the Radiological Condition of the University of Chicago, Chicago, IL

AGENCY: U.S. Department of Energy.

ACTION: Notice of certification of remedial action and release of properties from DOE FUSRAP Program.

SUMMARY: The U.S. Department of Energy (DOE), Office of Environmental Restoration and Waste Management, Decontamination and Decommissioning Division, has completed a remedial action project at three facilities at the University of Chicago, Chicago, Illinois (the site). This remedial action was taken as part of DOE's Formerly Utilized Sites Remedial Action Program (FUSRAP). The purpose of this notice is to provide certification that the University of Chicago properties are in compliance with DOE decontamination criteria and standards.

Radiological surveys and remedial action to decontaminate the George Hebert Jones Chemical Laboratory, Ryerson Physical Laboratory, and Eckhart Hall have been completed in accordance with DOE decontamination criteria and standards. The University of Chicago performed decontamination at the Kent Chemical Laboratory. The site was found to contain quantities of radioactive material remaining from research activities conducted at the site by the Manhattan Engineer District (MED) and the Atomic Energy Commission (AEC). DOE has determined that future use of the properties will result in no radiological exposure above current applicable radiological guidelines established to protect members of the general public or site occupants. Accordingly, the University of Chicago properties will be released from the DOE FUSRAP program.

A "Statement of Certification" appears below. The certification docket will be available for review between 9 a.m. and 4 p.m., Monday through Friday (except on Federal holidays), in the DOE Public Reading room located in room 1E–190 of the Forrestal Building, 1000 Independence Avenue SE., Washington, DC. Copies will also be available in the Public Document room, U.S. Department of Energy, Oak Ridge Operations Office, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: James J. Fiore, Acting Director, Decontamination and Decommissioning Division, Office of Environmental Restoration and Waste Management (EM–423), U.S. Department of Energy, Washington, DC 20545, 301–353–2802.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy, Office of Environmental Restoration and Waste Management, Decontamination and Decommissioning Division is responsible for implementation of DOE's FUSRAP program. The FUSRAP program was initiated by the United States Government in 1974 to identify, clean up, or otherwise control sites where residual radioactive material remains from the atomic energy program, or from commercial activities, were exposed to the environment.

The University of Chicago was involved in theoretical, radiochemical, and physical research associated with the first successful nuclear piole (CP–1) that was constructed and operated in the West Stands (racquet courts) under Stagg Field. Research conducted by the MED and by the AEC during the 1940s and 1950s included development of a process for producting high-purity uranium compounds, the testing of uranium metal, research associated with operation of the pile, and plutonium separation.

Historical records provided some indication that all buildings were decontaminated prior to release; however, some documentation was unavailable. During the perod of September 1976 to September 1977, radiological surveys were performed by Argonne National Laboratory (ANL) under FUSRAP. Survey results indicated widespread contamination throughout the laboratories, but, except for isolated small areas, at fairly low levels. Analyses of potential exposure conditions indicated that persons would not receive exposures exceeding current applicable radiological guidelines under present usage. However, remodeling or demolition activities could free fixed contamination, resulting in potential doses that could exceed guidelines. Analyses of soil samples taken outside the buildings indicated that contamination was confined to the buildings.

Remedial action of the accessible surface areas, under the direction of ANL, was completed during 1982 and 1983. Remedial action at the Ryerson, Eckhart, and Jones building was performed by ANL, while the University conducted the remedial work at Kent Chemical Laboratory. As the project management contractor for DOE, Bechtel, National, Inc. (BNI) cleaned and radiologically surveyed the 64 exhaust ducts in the Jones Laboratory in 1987. A survey of the ventilation systems and related surfaces was conducted by BNI.

The post-remedial action survey was conducted by an independent verification contractor. It demonstrated that radiological conditions at the affected buildings were in compliance with DOE decontamination criteria and standards and that future use of the property would result in no radiogical exposure above applicable radiological guidelines established to protect members of the general public or site occupants. These findings are supported by the DOE,"Certification Docket for the Remedial Action Performed at the University of Chicago, Chicago, Illinois, from Decembr 1982 to October 1987." Accordingly, this property is released from the Formerly Utilized Sites Remedial Action Program. The certification docket will be available for review between 9 a.m. and 4 p.m., Monday through Friday (except on Federal holidays), in the Department of Energy Public Reading room located in room 1E–190 of the Forrestal Building, 1000 Independence Avenue SW., Washington, DC. Copies will also be in the Public Document room, U.S. Department of Energy, Oak Ridge Operations Office, Oak Ridge, Tennessee.

The Department of Energy, through the Oak Ridge Operations Office, Technical Services Division, has issued the following statements.

Statement of Certification: University of Chicago, Chicago, Illinois

The Oak Ridge Operations Office, Technical Services Division, has reviewed the radiological data obtained following the remedial action at the subject properties. Based on this review, DOE has certified that the University of Chicago properties are in compliance with DOE decontamination criteria and standards. This certification of compliance provides assurance that future use of the properties will result in no radiological exposure above current applicable radiological guidelines established to protect members of the general public or site occupants. Accordingly, the University of Chicago

properties are released from the Formerly Utilized Sites Remedial Action Program.

Dated: April 20, 1990.

R.P. Whitfield,

Director, Office of Environmental Restoration.

[FR Doc. 90–11460 Filed 5–16–90; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. TQ90–4–63–001]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 11, 1990.

Take notice that Carnegie Natural Gas Company ("Carnegie") on April 26, 1990, as revised on April 5, 1990, tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Fourth Revised Sheet No. 8
Fourth Revised Sheet No. 9

On April 26, 1990, Carnegie filed:

Substitute Fourth Revised Sheet No. 9

Carnegie states that pursuant to the Purchased Gas Adjustment Provisions in Article 23 of its FERC Gas Tariff, it proposes an Out-of-Cycle Purchased Gas Adjustment to its rates. The instant filings reflect an overall decrease of $.4366/Dth in Carnegie's commodity sales rates from the rates which became effective on March 1, 1990. Because the filings reflect a decrease in rates, Carnegie requests that the proposed rates become effective on April 1, 1990. The actual "Current Adjustment" to the commodity sales rates as reflected in Substitute Fourth Revised Sheet No. 9 is a decrease of $.5939; the overall decrease of $.4366 results from the separately-stated "Standby" charges of $.1573 as authorized by the Commission to be passed through Carnegie's PGA.

Carnegie states that this reduction in gas costs is due to decreased purchases from Carnegie's pipeline supplier, Texas Eastern Transmission Corporation, and an increase in purchases of spot gas at prices lower than anticipated.

Carnegie states that copies of its filings were served on all of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street NW., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 16, 1990. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–11430 Filed 5–16–90; 8:45 pm]

BILLING CODE 6717–01–M

[Docket No. CP89–1554–003]

Colorado Interstate Gas Co.; Compliance Filing

May 11, 1990.

Take notice that Colorado Interstate Gas Company ("CIG"), on May 7, 1990, tendered for filing six copies of certain revised tariff sheets to Original Volume No. 3 of its FERC Gas Tariff.

It is stated that the revised tariff sheets correct certain errors that resulted from the merger of the Original Volume No. 3 as approved by Commission Order of March 15, 1990, in Docket No.CP89–1554 and the tariff sheets approved by Commission Order of November 16, 1989, in Docket No. RP90–12–*et al.*

CIG requests any necessary waiver of the Commission's rgulations to permit such tariff sheets to become effective as proposed.

CIG states that copies of the filing were served upon all of the parties listed on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Commission, 825 North Capitol Street NE., Washington, DC 20426 by May 18, 1990, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–11431 Filed 5–16–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ90–8–24–001]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

May 11, 1990.

Take Notice that Equitrans, Inc. (Equitrans) on May 9, 1990, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, effective July 1, 1990:

Sixth Revised Substitute Fourteenth Revised Sheet No. 10
Seventh Revised Sixth Revised Sheet No. 34

The purpose of this filing is to amend its Quarterly Purchased Gas Adjustment (PGA0 filing made on May 1, 1990 in Docket No. TQ90–8–24–000 to eliminate the Firm Transportation Adjustment from its PLS and ISS rate schedules.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989). All such protests should be filed on or before May 21, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–11433 Filed 5–16–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TO90-2-27-000]

North Penn Gas Co.; Proposed Changes in FERC Gas Tariff

May 11, 1990.

Take Notice that North Penn Gas Company (North Penn) on May 7, 1990, tendered for filing Ninety-Eighth Revised Sheet No. PGA-1 to its FERC Gas Tariff First Revised Volume No. 1.

The revised tariff sheet is being filed pursuant to section 14 (PGA Clause) of the General Terms and Conditions of North Penn's FERC Gas Tariff to reflect changes in the cost of gas for the period June 1, 1990 through August 31, 1990 and is proposed to be effective June 1, 1990. The proposed change reflects an increase in the average cost of gas for the G-1 Rate Schedule of 15.411¢ per Mcf.

North Penn respectfully requests waiver of the Commission's thirty-day filing requirement stating that it did not receive one of its supplier rate changes in time to make a timely filing.

While North Penn believes that no other waivers are necessary in order to permit this filing to become effective June 1, 1990, as proposed, North Penn respectfully requests waiver of any of the Commission's Rules and Regulations as may be required to permit this filing to become effective June 1, 1990, as proposed.

Copies of this letter of transmittal and all enclosures are being mailed to each of North Penn's jurisdictional customers and State Commissions shown on the attached service list.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 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 May 21, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-11432 Filed 5-16-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-84-001]

Texas Sea Rim Pipeline Company, Inc.; Compliance Filing

May 11, 1990.

Take notice that on April 30, 1990, Texas Sea Rim Pipeline Company, Inc. ("Texas Sea Rim"), 12450 Greenspoint Drive, Houston, Texas 77060-1991, filed, pursuant to the Commission's order in this docket issued March 30, 1990, the following documents:

Original Volume No. 2
First Revised Sheet Nos. 8-9, 20, 22 and 109
Original Sheet No. 109a

Copies of this filing were served on Texas Sea Rim's customers.

Any person desiring to protest said filing should file a protest with the Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989). All such protests should be filed on or before May 21, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-11431 Filed 5-16-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER90-346-000 et al.]

Tampa Electric Co.; et al; Electric Rate, Small Power Production, and Interlocking Directorate Filings

May 10, 1990.

Take notice that the following filings have been made with the Commission:

1. Tampa Electric Co.

[Docket No. ER90-345-000]

Take notice that on April 30, 1990, Tampa Electric Company (Tampa Electric) tendered for filing cost support schedules showing recalculation of the Committed Capacity and Short-Term Power Transmission Service rates under Tampa Electric's agreement to provide qualifying facility transmission service for Royster Company (Royster), designated as Tampa Electric's Rate schedule FERC No. 28. Tampa Electric states that the recalculated transmission service rates are based on 1989 Form No. 1 data, and are developed by the same method that was utilized in the cost support schedules accompanying the initial filing of the transmission service agreement and in prior annual revisions.

Tampa Electric proposes that the recalculated transmission service rates be made effective as of May 1, 1990, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served upon Royster and the Florida Public Service Commission.

Comment date: May 25, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Southern California Edison Co.

[Docket No. ER76-205-000]

Take notice that on May 7, 1990, Southern California Edison Company tendered for filing its compliance filing pursuant to the Commission's Opinion Nos. 284 and 284-A issued on March 8, 1990.

Comment date: May 25, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Pacific Gas and Electric Co.

[Docket No. ER90-355-000]

Take notice that on May 4, 1990, Pacific Gas and Electric Company (PG&E) tendered for filing proposed changes to Rate Schedule FERC No. 84 pursuant to section 205(c) of the Federal Power Act and § 35.13(a)(2)(ii) of the Federal Energy Regulatory Commission's (Commission) Regulations (18 CFR 35.13(2)(ii)).

The filing proposes to revise appendix A to the "Interconnection Agreement Between PG&E and Northern California Power Agency, City of Alameda, City of Biggs, City of Gridley, City of Healdsburg, City of Lodi, City of Lompoc, City of Palo Alto, City of Roseville, City of Ukiah, and Plumas Sierra Rural Electric Cooperative" (hereinafter referred to as the Interconnection Agreement"). PG&E proposed to modify the transmission rate methodology by 1) basing the Northern California Power Agency's (NCPA) rates for transmission service on aggregated transmission system costs under the "rolled-in rate" approach and 2) implementing a new, refined methodology for calculating the proper billing determinants upon which PG&E's transmission system costs will be allocated to NCPA on a "Base" and "Flexibility" usage.

Copies of this filing were served upon the California Public Utilities Commission and NCPA.

Comment date: May 25, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Idaho Power Co.

[Docket No. ER90-350-000]

Take notice that Idaho Power Company (IPC) on May 1, 1990 tendered for filing, pursuant to section 205 of the Federal Power Act, a Letter Agreement dated March 30, 1990, which extends the term of a Letter Agreement, dated October 5, 1989, under which Idaho Power provides transmission service to the Bonneville Power Administration for wholesale service to Oregon Trail Electric Consumers Cooperative. Pursuant to this extension, transmission service would be extended under existing terms and conditions effective December 31, 1989 and continue until the earlier of the signing of a Transmission Service Agreement of May 31, 1990.

IPC has requested waiver of the notice provisions of § 35.3 of the Commission's regulations in order to permit the Agreement to become effective December 31, 1989, in accordance with its terms.

Copies of the filing were served on all of IPC's affected transmission customers, and the state regulatory commissions of Idaho, Oregon, and Nevada.

Comment date: May 25, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Wisconsin Electric Power Co.

[Docket No. ER90-360-000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on May 8, 1990, tendered for filing a Settlement Agreement between itself and Wisconsin Public Power Inc. SYSTEM (WPPI). The Settlement Agreement provides for a compromise regarding interpretations of Articles III and IV of Wisconsin Electric's Rate Schedule No. 57 and amends the rate schedule to prevent future misunderstandings. The Settlement Agreement also updates WPPI's generating capability as a result of recent testing.

Wisconsin Electric respectfully requests waiver of the Commission's notice requirements to allow an effective date of June 1, 1990, coincident with the commencement of the next Contract Year. Wisconsin Electric is authorized to state that WPPI joins in the requested effective date.

Copies of the filing have been served on WPPI, the Cities of Kaukauna and Menasha, and the Public Service Commission of Wisconsin.

Comment date: May 25, 1990, in accordance with Standard Paragraph E at the end of this notice.

6. Tampa Electric Co.

[Docket No. ER90-347-000]

Take notice that on April 30, 1990, Tampa Electric Company (Tampa Electric) tendered for filing revised cost support schedules showing a change in the daily capacity charge for its scheduled interchange service provided under interchange agreements with Florida Power Corporation, Florida Power & Light Company, Florida Municipal Power Agency, Fort Pierce Utilities Authority, Jacksonville Electric Authority, Kissimmee Utility Authority, Orlando Utilities Commission, Reedy Creek Improvement District, St. Cloud Electric Utilities, Sebring Utilities Commission, Seminole Electric Cooperative, Inc., Utilities Commission of the City of New Smyrna Beach, Utility Board of the City of Key West, and the Cities of Gainesville, Lake Worth, Lakeland, Starke, Tallahassee, and Vero Beach, Florida. Tampa Electric states that the revised daily capacity charge is based on 1989 Form No. 1 data, and is derived by the same method that was utilized in the cost support schedules submitted with the interchange agreements and in all previous annual revisions.

Tampa Electric requests that the revised daily capacity charge be made effective as of May 1, 1990, and therefore requests waiver of the Commission's notice requirements.

Tampa Electric states that a copy of the filing has been served upon each of the above named parties to interchange agreements with Tampa Electric, as well as the Florida Public Service Commission.

Comment date: May 25, 1990, in accordance with Standard Paragraph E at the end of this notice.

7. Florida Power & Light Co.

[Docket No. ER90-354-000]

Take notice that on May 3, 1990, Florida Power & Light Company (FPL), tendered for filing a document entitled Amendment Number Fourteen to Revised Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and Jacksonville Electric Authority (Rate Schedule FERC No. 60).

FPL states that under Amendment Number Fourteen, FPL will transmit power and energy for Jacksonville Electric Authority as is required in the implementation of its interchange agreement with the City of Lakeland.

FPL requests that waiver of § 35.3 of the Commission's Regulations be granted and that the proposed Amendment be made effective May 15, 1990. FPL states that a copy of the filing was served on Jackonville Electric Authority.

Common date: May 25, 1990, in accordance with Standard Paragraph E at the end of this notice.

8. Pacific Gas and Electric Co.

[Docket No. ER90-268-000]

Take notice that on May 8, 1990, Pacific Gas and Electric Company (PG&E) tendered for filing, an amendment to its March 27, 1990 filed in this docket. PG&E states that it has filed the following:

1. Revised rate appendices for Firm System Sale Agreement with the Cities of Anaheim, Azusa, Banning, Colton and Riverside (Southern Cities).

2. A narrative explanation of the terms G-PC, G-COG and G-UEG as used in the Southern Cities rate appendices.

Copies of this filing have been served upon the Cities and the California Public Utilities Commission.

Comment date: May 25, 1990, in accordance with Standard paragraph E at the end of this notice.

9. Idaho Power Co.

[Docket No. ER90-353-000]

Take notice that on May 3, 1990, Idaho Power Company (IPC) tendered for filing, an Index of Purchasers under IPC's FERC Electric Tariff, Second Revised, Volume Number One. The Index of Purchasers lists those entities who signed a Service Agreement pursuant to IPC's Short-Term Capacity and/or Energy for Resale tariff.

IPC has requested waiver of the notice provisions of § 35.3 of the Commission's regulations in order to permit the Service Agreements to become effective on the dates indicated on the Index of Purchasers.

IPC states that copies of the filing were served on all purchasers listed on the Index of Purchasers.

Comment date: May 25, 1990, in accordance with Standard paragraph E at the end of this notice.

10. Tucson Electric Power Co.

[Docket No. ER90-357-000]

Take notice that on May 4, 1990, Tucson Electric Power Company (Tucson) tendered for filing a Notice of Cancellation of the Short-Term Power

Sale Agreement between Tucson and Southern California Edison Company, FERC Rate Schedule No. 78. Tucson requests an effective date of March 4, 1990.

Comment date: May 25, 1990, in accordance with Standard paragraph E at the end of this notice.

11. Cincinnati Gas & Electric Co.

[Docket No. ER90-343-000]

Take notice that on May 2, 1990, Cincinnati Gas & Electric Company (CG&E) tendered for filing modification of Rates Schedules A through E to the Interconnection Agreement between CG&E and East Kentucky (Rate Schedule FERC No. 43), which were inadvertently omitted from the April 30, 1990 filing in this docket.

Comment date: May 25, 1990, in accordance with Standard paragraph E at the end of this notice.

12. Minnesota Power & Light Co.

[Docket No. ER90-276-000]

Take notice that on May 7, 1990, Minnesota Power & Light Company (Minnesota Power) filed supplemental information concerning rate schedules for replacement capacity and energy (including emergency), and loss service supplied by Minnesota Power to Wisconsin Public Power Incorporated, SYSTEM (WPPI), all related to the sale by Minnesota Power to WPPI of a twenty percent (20%) undivided ownership share of the Clay Boswell Steam Electric Generation Station Unit No. 4 (Boswell 4).

Comment date: May 25, 1990, in accordance with Standard paragraph E at the end of this notice.

Standard Paragraphs:

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-11437 Filed 5-16-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8296-007; California]

Malacha Hydro Limited Partnership; Availability of Environmental Assessment

May 11, 1990.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application for amendment of license for the Muck Valley Hydroelectric Project to construct an offstream dam and reservoir, and an offstream afterbay reservoir. The project is located on the Pit River in Lassen County, California. The staff of OHL's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed action. In the EA, staff concludes that approval of the amendment of license would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's offices at 941 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 90-11435 Filed 5-16-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-1312-000, et al.]

United Gas Pipe Line Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Co.

[Docket No. CP90-1312-000]

May 7, 1990.

Take notice that on May 3, 1990, United Gas Pipe Line Company (United) P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-1312-000 a request pursuant to §§ 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon the authorized transportation relating to nonjurisdictional sales service and to remove the metering facilities serving B.F. Trappey & Sons, Inc., for use in their food processing plant located in Lafayette Parish, Louisiana, under the authorization issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United alleges that it installed the facilities to provide gas service to B.F. Trappey & Sons, Inc. (predecessor in interest to BFT Acquisition Corporation) pursuant to Docket No. G-232, 3 FPC 863. United indicates that it received authority in Docket No. CP87-220-000, 40 FERC ¶61,265, to provide interruptible transportation service of 900 Mcf per day (maximum daily quantity) to B.F. Trappey & Sons, Inc. United states that B.F. Trappey & Sons, Inc. has consented to this proposed abandonment request and that the removal of the metering facilities would be accomplished without detriment of disadvantage to any of United's existing customers. United contends that the proposed activity is in compliance with subpart F of part 157 of the Regulations, and that it has complied with the procedures in part 157, subpart F, appendix I, as they relate to environmental compliance.

Comment date: June 21, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP90-1303-000]

May 7, 1990.

Take notice that on April 30, 1990, Arkla Energy Resources, a division of Arkla, Inc. (AER), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP90-1303-000 a request pursuant to §§ 157.205, 157.211, 157.212, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, 157.212, and 157.216) for authorization to construct and operate certain jurisdictional facilities in Oklahoma and Louisiana and to abandon by transfer to Arkansas Louisiana Gas Company, a division of Arkla, Inc. (ALG), certain other facilities in Oklahoma, for the delivery of gas to ALG for resale to consumers, under AER's blanket certificate issued in Docket No. CP82-384-000, as amended in Docket No. CP82-384-001, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

AER specifically proposes (1) to construct and operate taps and related

facilities on its Lines 8 and 8–A–2 in Jackson County, Oklahoma, for the delivery of approximately 480 Mcf on a peak day and 36,000 Mcf of gas annually to ALG for resale to consumers to be served from ALG's new Rural Extension No. 1266; (2) to establish a new Sasakwa Town Border Station on its Line 634–1 in Seminole County, Oklahoma, and to abandon and transfer to ALG existing facilities downstream of the new town border station for continued use in the retail delivery of gas to consumers in Sasakwa, Oklahoma; and (3) to construct and operate a new town border station, to be known as the Plain Dealing #2 Town Border Station, in Bossier Parish, Louisiana, for the delivery of approximately 175 Mcf on a peak day and 40,000 Mcf annually to ALG for resale to consumers in Bolinger, Louisiana and environs.

AER estimates that the new facilities would cost $137,666. AER states that the gas would be delivered from its general system supply, which it is stated is adequate to provide the service.

Comment date: June 21, 1990, in accordance with Standard Paragraph G at the end of this notice.

3. Tennessee Gas Pipeline Co.

[Docket No. CP90–1259–000]

May 7, 1990.

Take notice that on April 27, 1990, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed an application with the Commission in Docket No. CP90–1259–000 pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon a firm transportation service performed by Tennessee,[1] *inter alia*, for Shell Offshore, Inc. (Shell Offshore),[2] all as more fully set forth in the application which is open to public inspection.

Tennessee states that the Commission order issued March 7, 1977, in Docket No. CP75–119 (Opinion 789—57 FPC 1,306) authorized Tennessee to provide a firm transportation service of up to 42,500 Mcf of natural gas per day from various receipt points in Louisiana, to the discharge side of the Yscloskey Plant in St. Bernard Parish, Louisiana, for Shell Offshore, *inter alia*. Tennessee, with Shell Offshore's consent, now proposes to abandon its firm transportation service pursuant to its FERC Rate Schedule T–45, effective July 1, 1990.

[1] Successor in interest to Tennessee Gas Transmission Company, a Division of Tenneco Inc.

[2] Successor in interest to Shell Oil Company.

Comment date: May 29, 1990, in accordance with Standard Paragraph F at the end of this notice.

4. Marathon Oil Co.

[Docket No. CP90–1311–000]

May 9, 1990.

Take notice that on May 2, 1990, Marathon Oil Company (Marathon), P.O. Box 3128, Houston, Texas 77253, filed in Docket No. CP90–1311–000 a petition for an order declaring that certain proposed natural gas pipeline facilities in Offshore Louisiana are gathering facilities pursuant to section 1(b) of the Natural Gas Act and therefore exempt from the Commission's certificate jurisdiction, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Marathon states that it, Amerada Hess Corporation and Louisiana Land & Exploration Company collectively own a federal lease covering West Delta block 143, Offshore Louisiana (WD 143). It is stated that each party owns 33⅓ percent working interest in the block. It is further stated that the working interest owners have drilled an exploratory well and have discovered natural gas in commercial quantities.

Marathon states that as operator of WD 143, it proposes to construct and operate a 6-inch diameter line from the platform on WD 143 (Platform A) to a subsea interconnection with Texas Eastern Transmission Company (TETCO) at WD 128. Marathon states that the proposed line will be 6.3 miles long and will be owned jointly by the working interest owners of WD 143 and operated by Marathon.

It is stated that the proposed line will only be designed to provide market access to all of the gas produced from WD 143 and will contain no taps for future connections. It is also stated that the gas produced from WD 143 will include casinghead gas so that interruption of flow will mean that some gas will be flared or oil production shut in. Marathon states that the line will have a capacity of 24 MMcf per day and a maximum allowable operating pressure of 1440 psig. It is stated that some compression of the gas on Platform A may be necessary to meet the existing conditions of TETCO's 20-inch line. It is also stated that a high pressure two phase separation facility will be located on Platform A, together with facilities for the processing of liquids and the recompression of flash gas. It is stated that dehydration facilities will not be needed on Platform A because TETCO's 20-inch line is wet.

Marathon states that after separation and possible compression on Platform A, the wet gas from WD 143 will be transported through the proposed line to the interconnection with TETCO in WD 128. It is stated that TETCO will then transport the gas to the Venice processing plant located onshore in Venice, Louisiana. Marathon states that the gas produced from WD 143 will ultimately be sold to or transported over Sonat Gas Supply, Columbia Gas Transmission Corporation, Tennessee Gas Pipeline Company, United Gas Pipe Line Company, and/or TETCO, all of which have interconnections at the tailgate of the Venice processing plant. Marathon maintains that production activities for the gas produced from WD 143 will be completed upon final processing at the Venice plant where the gas will be processed to pipeline transmission quality.

Marathon argues that the proposed line is non-jurisdictional because the diameter and length of the line are well within the parameters already determined by the Commission to be indicative of a gathering function, the compressors and processing equipment to be located on Platform A will perform functions consistent with the production of natural gas, the line will operate at a pressure only sufficient to allow the entry of the gas produced from WD 143 into TETCO's line, the processing facilities to be located on WD 143 are only those required to bring the gas to a quality sufficient to prevent the corrosion and blockage of TETCO's line, the line is nearly identical in configuration to the other pipelines found by the Commission to be nonjurisdictional, the line services only one producing area, does not traverse numerous blocks and producing areas and is directly connected to a producing well.

Comment date: May 30, 1990, in accordance with the first subparagraph of Standard paragraph F at the end of this notice.

5. Arkla Energy Resources a division of Arkla, Inc. Transcontinental Gas Pipe Line Corp., Southern Natural Gas Co.

[Docket Nos. CP90–1277–000, CP90–1278–000, CP90–1279–000; and CP90–1280–000]

May 9, 1990.

Take notice that on April 30, 1990, the above listed companies filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket

certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

[1] These prior notice requests are not consolidated.

A summary of each transportation service which includes the shippers identity, the peak day, average day and annual volumes, the receipt point(s), the delivery point(s), the applicable rate schedule, and the docket number and service commencement date of the 120-day automatic authorization under § 284.223 of the Commission's Regulations is provided in the attached appendix.

Comment date: June 25, 1990, in accordance with Standard paragraph G at the end of this notice.

Appendix

Docket No. (date filed)	Applicant	Shipper name	Peak day [1] avg, annual	Points of		Start up date rate schedule	Related [2] dockets
				Receipt	Delivery		
CP90-1277-000 (4-30-90)	Arkla Energy Resources.	Panda Resources.	20,000 20,000 7,300,000	Various	AR,LA	3-1-90 IT	CP88-820-000 ST90-2383-000
CP90-1278-000 (4-30-90)	Transcontinental Gas Pipe Line Corp.	Transco Energy Marketing Co.	10,000 3,000 3,650,000	Offshore La	Offshore La	3-1-90 IT	CP88-328-000 ST90-2592-000
CP90-1279-000 (4-30-90)	Southern Natural Gas Co.	Access Energy Corp.	100,000 100 36,500	Various	LA	3-3-90 IT	CP88-316-000 ST90-2265-000
CP90-1980-000 (4-30-90)	Southern Natural Gas Co..	Access Energy Corp..	100,000 100 36,500	Various	MS, AL	3-3-90 IT	CP88-316-000 ST90-2267-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

6. Alabama-Tennessee Natural Gas Company.

[Docket Nos. CP90-1313-000 and Docket No. CP90-1314-000]

May 9, 1990.

Take notice that on May 4, 1990, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), P.O. Box 918, Florence, Alabama 35631, filed requests with the Commission in Docket Nos. CP90-1313-000 and CP90-1314-000, pursuant to § 157.205 of the Commission's Regulation under the Natural Gas Act (NGA), for authorization to transport natural gas on behalf of Louis Dreyfus Energy Corporation (Louis Dreyfus) and Sonat Marketing Company (Sonat), respectively, under the blanket certificate issued in Docket No. CP89-2201-000 pursuant to section 7 of the NGA, all as more fully set forth in the requests which are open to public inspection.[2]

Alabama-Tennessee proposes an interruptible natural gas transportation service in Docket No. CP90-1313-000 of up to 75,000 dth on peak days, 20,000 dth on average days, and 27,375,000 dth annually for Louis Dreyfus, shipper. Alabama-Tennessee also proposes an interruptible natural gas transportation service in Docket No. CP90-1314-000 of up to 202,500 dth on peak days, 18,000 dth on average days, and 73,912,500 dth annually for Sonat, shipper. Alabama-Tennessee would transport gas for both shippers under its FERC Rate Schedule IT. Alabama-Tennessee has also provided other information applicable to each transaction, including receipt and delivery points; the service initiation dates; and the related docket numbers of the 120-day transactions under § 284.223(a) of the Regulations, as summarized in the attached appendix.

Comment date: June 25, 1990, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Appendix

Docket No.	Shipper	Volumes-dth (peak, average, annual)	ST docket start up date	Receipt points (state)	Delivery points (state)
CP-90-1313-000	Louis Dreyfus Energy Corp.	75,000 20,000 27,375,000	ST90-2557—3-22-90	AL, MS, TN	AL, TN
CP-90-1314-000	Sonat Marketing Co.	202,500 18,000 73,912,800	ST90-2556—3-10-90	AL, MS	AL, MS, TN

7. Northern Border Pipeline Co., Northern Border Pipeline Co., and Northern Border Pipeline Co.

[Docket No. CP90-1316-000, Docket No. CP90-1321-000, Docket No. CP90-1322-000]

May 10, 1990.

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[3]

[3] These prior notice requests are not consolidated.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under Section 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: June 25, 1990, in accordance with Standard Paragraph G at the end of this notice.

Appendix Page 1 of 1

Docket No. (date filed)	Applicant	Shipper name	Peak day[1] Avg, annual	Points of		Start up date schedule	Related[2] dockets
				Receipt	Delivery		
CP90-1316-000 (5-7-90)	Northern Border Pipeline Co..	Coastal Gas Marketing Co.	200,000 200,000 73,000,000	MT, ND	MN, IA, ND	4-4-90—IT-1	ST90-2762-000
CP90-1321-000 (5-7-90)	Northern Border Pipeline Co.	Coastal Gas Marketing Co.	100,000 100,000 36,500,000	MT, ND	MN, SD, IA, ND	4-4-90—IT-1	ST90-2764-000
CP90-1321-000 (5-7-90)	Northern Border Pipeline Co.	Chevron U.S.A, Inc..	100,000 100,000 36,500,000	OK, TX, KS, NM, WI, IA, MN, NE.	OK, TX, KS, WI, IA, MN, NE, IL.	3-1-90—IT-1	ST90-2316-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

8. Transwestern Pipeline Co., Texas Gas Transmission Corp.

[Docket No. CP90-1306-000, Docket No. CP90-1307-000, Docket No. CP90-1308-000, Docket No. CP90-1309-000, Docket No. CP90-1310-000]

May 9, 1990.

Take notice that on May 2, 1990, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, and Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in the respective dockets prior to notice requests pursuant §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under Transwestern's blanket certificate issued in Docket No. CP88-133-000 and Texas Gas' blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and opne to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Transwestern and Texas Gas and is summarized in the attached appendix.

Transwestern and Texas Gas state that each of the proposed services would be provided under an executed transportation agreement, and that Transwestern and Texas Gas would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: June 25, 1990, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Appendix

Docket No. (date filed)	Shipper name	Peak day[2] avg, annual	Points of		Start up date	Related[3] dockets
			Receipt	Delivery		
CP90-1306-000	BHP Gas Marketing Co....	50,000 37,500 18,250,000	Offshore Texas	Offshore Texas	4-1-90	ST90-2596
CP90-1307-000	Sun Operating Limited Partnership.	40,000 30,000 14,600,000	Multiple	Multiple	4-1-90	ST90-2598
CP90-1308-000	NGC Transportation Inc...	300,000 50,000 18,240,000	Offshore Texas	Offshore Texas	4-1-90	ST90-2561
CP90-1309-000	Polaris Pipeline Corp.	100,000 30,000 10,500,000	LA, KY, TX	AR, TN, LA, MS	4-2-90	ST90-2563
CP90-1310-000	Centran Corp.	50,000 26,000 7,300,000	LA, KY, TX, TN	LA	4-1-90	ST90-2564

[2] Quantities are shown in MMBtu equivalent.
[3] Transwestern and Texas Gas reported their 120-day transportation service in the referenced ST dockets.

9. East Tennessee Natural Gas Co.

[Docket No. CP90-1292-000]

May 9, 1990.

Take notice that on May 1, 1990, East Tennessee Natural Gas Company (Applicant), 8200 Kingston Pike, Knoxville, Tennessee 37939, filed an application pursuant to section 7(c) of the Natural Gas Act (NGA), and § 284.221 of the Commission's Regulations thereunder for authorization to provide transportation service for others, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant states that it is requesting a blanket certificate of public convenience and necessity to enable it to provide self-implementing transportation service for others and for pregranted abandonment of such self-implementing transportation services upon expiration of the contract term, in accord with § 284.221(d) of the Commission's Regulations. Applicant indicates that on May 1, 1990, it filed a rate filing in Docket No. RP90-111-000 which, *inter alia*, set forth the rates and terms and conditions of the requested blanket transportation services.

Applicant also requests that the Commission, pursuant to section 7(b) of the NGA, grant it the authority to abandon in the future firm sales service that Applicant's customers elect to convert to firm transportation pursuant to § 284.10 of the Commission's Regulation or other authorizations. Applicant avers that grant of this authority would give it the flexibility to realign its services without the expense and delay of filing individual application to abandon services which are no longer desired by the customers.

Applicant is also proposing under sections 7(c) and 7(b) of the NGA to remove barriers that prevent existing sales customers from transferring their firm service rights, temporarily or permanently, to other customers who desire increased firm sales service. Applicant states that under this proposal, any of Applicant's firm sales customers may notify Applicant at any time of its desire to be relieved of all or a portion of its firm obligation for one or more months. It is indicated that Applicant would then offer the contract demand to all other customers, who would submit requests for available contract demand within 30 days after said offer. It is then indicated that if Applicant is successful in finding new buyers for available contract demand it would execute amendments to the service agreements of the transferor and transferee. Applicant then indicates it would employ prior notice and procedures modeled after the procedures set forth in § 157.205 of the Commission's Regulations. Applicant then proposes that if no protest is filed within 15 days, the certificate and abandonment authority to effect the transfer would be deemed granted.

Applicant then indicates that the General Terms and Conditions of proposed Volume No. 1-A to its tariff includes a similar program for the non-discriminatory reassignment of firm transportation rights under its blanket firm transportation rate schedule on a first-come, first-served basis to requesters in the firm transportation queue. Applicant believes that the grant of the blanket certificate would provide the authority necessary to allow transfer of firm transportation rights before termination of the original agreements.

Comment date: May 30, 1990, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

FR Doc. 90-11438 Filed 5-16-90; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3778-8]

Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection Chemical Waste Management, Inc., Port Arthur, TX

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on petition.

SUMMARY: Notice is hereby given that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Chemical Waste Management, Inc., for the Class I injection well located at Port Arthur, Texas. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Chemical Waste Management, Inc., of the restricted hazardous waste specifically

identified in the petition, into the Class I hazardous waste injection well at the Port Arthur, Texas facility, for as long as the basis for granting an approval of the petition remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued February 16, 1990. A public hearing was held March 20, 1990, and a public comment period ended on April 2, 1990. All comments have been addressed and have been considered in the final decision. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is contingent on modification of Underground Injection Control permit WDW–160 to authorize disposal in the injection zone identified in the petition, i.e., an injection zone ranging in depth from 6,130 feet to 7,200 feet, and will not become effective until and unless said permit modification becomes effective.

ADDRESSES: Copies of the petition and all pertinent information relating thereto, including the Agency's response to comments, are on file at the following location: Environmental Protection Agency, Region 6, Water Management Division, Water Supply Branch (6W–SU), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Oscar Cabra, Jr., Chief Water Supply Branch, EPA—Region 6, telephone (214) 655–7150, (FTS) 255–7150.

Myron O. Knudson,

Director, Water Management Division (6W).

[FR Doc. 90–11512 Filed 5–16–90; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3778–7]

Underground Injection Control Program, Hazardous Waste Disposal Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; E. I. du Pont de Nemours & Co., Inc., LaPlace, LA

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on petition.

SUMMARY: Notice is hereby given that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Du Pont Pontchartrain Works, for the Class I injection well located at LaPlace, Louisiana. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Du Pont of the specific restricted hazardous waste identified in the petition, into the Class I hazardous waste injection well at the Pontchartrain Works facility in LaPlace, Louisiana, for as long as the basis for granting an approval of the petition remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued February 15, 1990. A public hearing was held March 27, 1990, and a public comment period ended on April 2, 1990. All comments have been addressed and have been considered in the final decision. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of My 7, 1990, for Well Nos. 3, 4, and 7 identified in Underground Injection Control Permit WD 85–5. This action for Well No. 8, identified in Underground Injection Control Permit WD 88–4, is contingent on modification of the permit to authorize disposal in the injection zone identified in the petition, i.e., an injection zone ranging in depth from 3,200 feet to 8,550 feet, and will not become effective until and unless said permit modification becomes effective.

ADDRESSES: Copies of the petition and all pertinent information relating thereto, including the Agency's response to comments, are on file at the following location: Environmental Protection Agency, Region 6, Water Management Division, Water Supply Branch (6W–SU), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Oscar Cabra, Jr., Chief, Water Supply Branch, EPA—Region 6, telephone (214) 655–7150, (FTS) 255–7150.

Myron O. Knudson,

Director, Water Management Division (6W).

[FR Doc. 90–11513 Filed 5–16–90; 8:45 am]

BILLING CODE 6560–50–M

Notice of Regulatory Interpretation

AGENCY: Environmental Protection Agency.

ACTION: Notice of regulatory interpretation.

SUMMARY: EPA is providing notice of its interpretation of its National Pollutant Discharge Elimination System (NPDES) regulations as they relate to log sortyard facilities. Log sortyard facilities, as defined in the regulations, are silvicultural point sources and, therefore, subject to the NPDES program. EPA is publishing this notice in partial fulfillment of a stipulation and settlement dated August 1, 1988 regarding a NPDES permit appeal of Shee Atika, Inc.

FOR FURTHER INFORMATION CONTACT: Kevin Smith; Office of Water Enforcement and Permits (EN–336); Environmental Protection Agency; 401 M Street, SW.; Washington, DC 20460; telephone 202/FTS 475–9516.

SUPPLEMENTARY INFORMATION: Clarification of applicability of NPDES regulations to log sortyard facilities.

On June 18, 1976, regulations were promulgated for application of the NPDES permit program to silvicultural activities. *See* 41 FR 24709, June 18, 1976. With respect to the coverage of point sources, these regulations provided, in part:

> (1) The term "silvicultural point source" means any discernible, confined and discrete conveyance related to rock crushing, gravel washing, log sorting or log storage facilities which are operated in connection with silvicultural activites and from which pollutants are discharge into navigable waters.

The regulations further provided that:

> (3) The term "log sorting and log storage facilities" means those facilities wherein discharges result from the holding of unprocessed wood, i.e., logs rounded with bark or after removal of bark in self-contained bodies of water (mill ponds or log ponds) or log storage where water is applied intentionally on the logs (wet decking).

41 FR at 24711, 40 CFR 124.85(a) (1) and (3) (1976) (currently codified, as amended, at 40 CFR 122.27(b) (1) and (3) (1988)).

In 1980, EPA made minor changes to these regulations, including substitution of the phrase "for example" for the word "i.e.," in the illustration given for "log sorting and log storage facilities." 45 FR at 33349, 3372, 33446–67, May 19, 1980.

EPA issued its first NPDES permit under these regulations in 1985. During the course of the related administrative challenge to this premit, the permittee suggested that EPA's regulations applied only to log sortyard facilities where water was applied intentionally on the logs (referred to as "wet deck" sortyard facilities), and that EPA otherwise lacked the authority to regulate "dry-deck" sortyard facilities, where the discharge is due primarily to storm water runoff. In other words, the permittee argued that the NPDES regulations limited the applicability of EPA's permit requirements to the two

types of facilities listed at 40 CFR 122.27(b)(3) *i.e.*, log ponds or wet-deck sortyards, and that discharges from dry deck sortyards were not point sources under the NPDES program.

The permittee has now entered into a stipulation with EPA, whereby it is agreed that its facilities holding unprocessed wood are subject to the requirements of the NPDES program, regardless of whether those facilities employ a dry or wet-decking process. The Sierra Club, intervenor in the permit appeal, requested that EPA publish a clarification in the **Federal Register** as part of the settlement to the NPDES permit appeal.

To prevent further confusion regarding the applicability of the silvicultural point source regulations, EPA is publishing this public notice to provide the following clarification and to fulfill part of its obligation under the settlement agreement signed August 1, 1988. Today's notice is designed to restate EPA's longstanding view regarding the application of its silvicultural point source regulations found at 40 CFR § 122.27. Today's notice imposes no new regulatory requirements on any discharge.

EPA's silvicultural point source regulations in 40 CFR § 122.27 distinguish point source activities in the silvicultural category from non-point source activities exempt from the NPDES program (e.g., runoff from orchards and and forest lands (40 CFR § 122.3(e))). When these regulations were promulgated in 1976, EPA concluded that discharges such as these (e.g., runoff from orchards and forest lands), although sometines channeled, were non-point source in nature. They were caused solely by natural processes, including precipitation and drainage, were not otherwise traceable to any single identifiable source, and were best treated by non-point source controls. Discharges which involved the intentional collection of contaminated runoff and its subsequent release from a discrete and identified point, on the other hand, were to be classified as point source discharges subject to the NPDES program.

In promulgating the 1976 regulations, the agency rejected a suggestion that the regulations limit the definition of silvicultural point source to those sources from which the discharge of pollutants results from the controlled application of water by any person. EPA determined that this distinction does not always apply, particularly where there are discharges of wood chips and bark regardless of any controlled application of water. 41 FR 24710, June 18, 1976. The 1980 wording changes to these regulations further reflect this determination that the intentional application of water is not the deciding factor.

EPA's use of wet decking facilities as an example of the term "log sorting and log storage facilities" is thus intended only as an illustration. The regulations are not intended to limit the NPDES program to facilities whose discharges are a result of the controlled application of water. Rather, any facility meeting the definition of a log sorting and log storage facility (a facility "wherein discharges result from the holding of unprocessed wood"), is a silvicultural point source and is subject to the permitting requirements of the NPDES program.

EPA has intended for its silvicultural point source regulations to be so read and will continue to interpret them in accordance with the above discussion.

Dated: April 16, 1990.

Robert H. Wayland III,

Acting Assistant Administrator.

[FR Doc. 90-11511 Filed 5-16-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3778-5]

Davis Farm Site; Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at Davis Farm Site, Gordon County, Georgia with the Tennessee Valley Authority, Letterkenny Army Depot, Anniston Army Depot, Naval Air Engineer Center, and Pittsburgh Energy Technology Center. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from the proposed settlement should such comments disclose facts or considerations which indicated the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Carolyn McCall, Waste Programs Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365, 404-347-5059.

Written comments may be submitted to the person above by 30 days from date of publication.

Dated: April 25, 1990.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 90-11514 Filed 5-16-90; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-62085A; FRL-3741-7]

Asbestos; Publication of Identifying Information; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In the **Federal Register** of February 13, 1990, EPA published summaries of the information submitted to EPA by manufacturers and processors of certain asbestos products in accordance with the Asbestos Information Act of 1988. This notice corrects several errors in the information included in the **Federal Register** notice of February 13, 1990.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, -Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 382-3949, -TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 13, 1990 (55 FR 5144), EPA published summaries of the information submitted to EPA by manufacturers and processors of certain asbestos products in accordance with the Asbestos Information Act of 1988, Pub. L. 100-577. As of April 30, 1990, EPA has received letters from five of the companies listed in the **Federal Register** of February 13, 1990, Armstrong World Industries, Inc., Georgia-Pacific Corporation, Kaiser Cement Corporation, Keene Corporation, and United States Gypsum Company, which request that certain errors in the **Federal Register** notice be corrected. These errors are corrected below in Unit II.

II. Corrections

On page 5144, column 3, item 2(a), in the sixth line from the bottom of the page, EPA incorrectly lists Forms + Surfaces, Inc. and The W.W. Henry Company as predecessors of Armstrong World Industries, Inc. Armstrong contends that both Forms + Surfaces, Inc. and The W.W. Henry Company were its wholly-owned subsidiaries, not its predecessors.

On page 5150, column 1, item 11(d), EPA indicates that the components of the product, Textures, were approximately 2 to 12% asbestos. Georgia-Pacific Corporation contends that these numbers are incorrect due to a typographical error in its October 5, 1989, submission to EPA. The correct percentages are 2 to 15%.

On page 5150, column 3, item 13(d), EPA incorrectly lists Nebraska, rather than Nevada, as a State where Kaiser Permanente Plastic Gun Cement was sold. –

On page 5151, column 2, item 15(a), EPA incorrectly lists Keene Corporation as a former manufacturer of certain asbestos products. Keene Corporation's actual submission to EPA on October 5, 1989 states:

> Keene has never mined asbestos, nor manufactured, processed, fabricated, sold, distributed, or otherwise placed into commerce thermal insulation or acoustical products containing asbestos. A former subsidiary of Keene, Keene Building Products Corporation ("KBPC"), and KBPC's corporate predecessors, Baldwin-Ehret-Hill, Inc. ("BEH"), a Pennsylvania corporation, Ehret Magnesia Manufacturing Company ("Ehret"), a Pennsylvania corporation, and Baldwin-Hill Company ("B-H"), a New Jersey corporation, did at one time manufacture and sell thermal insulation or acoustical products containing asbestos. Keene expressly denies that it is the successor to the unknown and unforeseen contingent tort, contractual, or other liabilities of KBPC, BEH, and BEH's corporate predecessors.

On page 5158, column 3, item 27(d), EPA inadvertently excludes information regarding four acoustical plaster products that were included in the United States Gypsum Company's October 5, 1989, submission to EPA. These products are SABINITE Acoustical Plaster, authorized for production with asbestos from 1930 to 1964; RED TOP Acoustical Plaster, authorized for production with asbestos from 1951 to 1953; HI LITE Acoustical Plaster, authorized for production with asbestos from 1953 to 1972; and AUDICOTE Acoustical Plaster, authorized for production with asbestos from 1954 to 1975.

To obtain additional information about the submissions of these companies or other companies listed in the February 13, 1990 **Federal Register** notice, interested individuals should contact: ATLIS Federal Services, Inc., – EPA/AIA Program, 6011 Executive Blvd., Rockville, MD 20852, (301) 816–0873.

Dated: May 9, 1990.———

Joseph S. Carra,

Acting Director, Office of Toxic Substances.

[FR Doc.90–11517 Filed 5–16–90; 8:45 a.m.]

BILLING CODE 6560–50–D

[FRL–3778–6]

Decisions Pursuant to the Clean Water Act

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of re-opening of public comment and petition period.

SUMMARY: On 9 June 1989, EPA, Region 9, published in the **Federal Register** (54 FR 24748) notice that it had issued its decision on the lists of waters, point sources, and pollutants submitted by the State of California pursuant to section 304(1) of the Clean Water Act. By that notice, EPA informed the public that it would be accepting comments from interested parties on its decisions on the lists submitted by the State until 13 October 1989, and would be accepting petitions from the public to list additional waters until 13 October 1989.

This notice is to advise the public that EPA, Region 9, has decided to re-open the public comment and petition period. EPA will accept and consider comments and petitions received between 13 October 1989 and the close of business on 1 June 1990.

EPA is re-opening the public comment and petition period in order to consider the State of California's 1990 Water Quality Assessment (the "Water Quality Assessment"), which was not available prior to the close of the original public comment and petition period. EPA wants to fully consider the Water Quality Assessment and its supporting documentation before issuing its final decision. In addition, EPA received verbal requests from several interested persons to re-open the public comment and petition period to enable them to submit additional comments and petitions.

ADDRESSES: Comments and petitions should be mailed to the following address: Harry Seraydarian, Director, Water Management Division (W–1), U.S. EPA Region 9, 1235 Mission Street, San Francisco, CA 94103.

FOR FURTHER INFORMATION CONTACT: Douglas Eberhardt, 304(1) Coordinator (W–3–2), U.S. EPA Region 9, 1235 Mission Street, San Francisco, CA 94103, Telephone (415) 705–2176.

Dated: May 8, 1990.

Loretta Barsamian,

Acting Director, Water Management Division, U.S. EPA Region 9.

[FR Doc. 90–11515 Filed 5–16–90; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

May 9, 1990.

The Federal Communications Commission has submitted the following information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501–3520).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on this information collection should contact Eyvette Lynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3785. Copies of these comments should also be sent to the Commission. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632–7513.

OMB Number: 3060–0126.

Title: Section 73.1820, Station log.

Action: Extension.

Respondents: Businesses (including small businesses) and non-profit institutions.

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 12,107 recordkeepers; 11,744 hours total annual burden; 0.97 hours average burden per recordkeeper.

Needs and Uses: Section 73.1820 requires licensees of AM, FM, or TV broadcast stations to maintain station logs accurately reflecting station operations. Data is used by FCC staff to ensure licensee is operating in accordance with technical requirements of the rules and that Emergency Broadcast System is operating properly.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 90–11401 Filed 5–16–90; 8:45 pm]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for renewal of license of noncommercial station WLYX(FM), Memphis, Tennessee, and for a new noncommercial FM station at Memphis, Tennessee.

Applicant	City/State	File No.	MM docket No.
A. Rhodes College WLYX(FM)	Memphis, TN	BRED-890331VB	90-204
B. Cossitt Library d/b/a Memphis/Shelby County Public Library and Information Center.	Memphis, TN	BPED-890628MH	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each issue has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name above is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant(s)
1. Comparative-Noncommercial Educational FM.	A, B
2. Ultimate	A, B

3. If there is any non standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC 20554. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 90-11463 Filed 5-16-90; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing

The Commission has before it the following groups of mutually exclusive applications for seven new FM stations:

Applicant, City/State	File No.	MM docket No.
I.		
A. Carol Sue Spraker Vinton, VA.	BPH-880406MH	90-172
B. Joseph B. Prater and Joseph B. Durham, A Partnership, d/b/a Prater and Durham Vinton, VA.	BPH-880406MJ	
C. Heart of Virginia Broadcasting Vinton, VA.	BPH-880407ND	
D. I.L. Ward, Jr. Inc. Vinton, VA.	BPH-880407NE	
Issue heading and Applicants 1. Financial, B 2. See Appendix, C 3. See Appendix, D 4. See Appendix, D 5. See Appendix, D 6. Air Hazard, D 7. Comparative, All 8. Ultimate, All		
II.		
A. Lina M. Parish; Graceville, FL.	BPH-880505MB	90-171
B. Graceville Panhandle Broadcasting, Ltd.; Graceville, FL.	BPH-880505NP	
Issue heading and Applicants 1. Comparative, Both applicants 2. Ultimate, Both applicants		
III.		
A. Lt/Colonel Cyrus V. Edwards; Shawnee, OK.	BPH-851024MB	90-168
B. Lenn R. Pruitt and George E. Owen, Jr.; Shawnee, OK.	BPH-851025MF	
C. Bott Communications, Inc.; Shawnee, OK.	BPH-851028MG	
D. James E. Miller; Shawnee, OK.	BPH-851028MH [Dismissed Previously].	
Issue heading and Applicants 1. Site Availability, A 2. Air Hazard, A 3. Comparative, All 4. Ultimate, All		
IV.		
A. John Spencer Robinson; Edgewater, FL.	BPH-880406MB	90-167
B. DeHaro Radio, Ltd.; Edgewater, FL.	BPH-880406MI	
C. Yolanda Juarez Naismith; Edgewater, FL.	BPH-880407MC	
D. Allard FM, Inc.; Edgewater, FL.	BPH-880407MK	
E. Edgewater Communications, Inc.; Edgewater, FL.	BPH-880407MN	
F. Rosalie Van Zandt; Edgewater, FL.	BPH-880407MZ	
G. Ronald & Bennie Jo Hill, General Partners in Hill and Hill, Ltd.; Edgewater, FL.	BPH-880407NB	
Issue heading and Applicants 1. See Appendix, D 2. See Appendix, D 3. See Appendix, D 4. Air Hazard, B,D,E 5. Comparative, A-G 6. Ultimate, A-G		
V.		
A. Tracy A. Moore d/b/a Gifford Orion Broadcasting, Ltd.; Gifford, FL.	BPH-880308MK	90-170
B. Media One, Inc.; Gifford, FL.	BPH-880309MB	
C. John E. Morris and Laurence Baker d/b/a Morbak Communications; Gifford, FL.	BPH-880309ME	
D. Ameriwave, Inc.; Gifford, FL.	BPH-880309MF	
E. Gonzo Communications, Limited Partnership; Gifford, FL.	BPH-880310MD	
F. Jiant Broadcasting, Inc.; Gifford, FL.	BPH-880310ME	

Applicant, City/State	File No.	MM docket No.
G. Press Broadcasting Company, Gifford, FL.	BPH-880310MK	
H. Molly Beard Broadcasting Ltd.; Gifford, FL.	BPH-880310MS	
I. Ana R. Avello; Gifford, FL.	BPH-880310NG	
J. Triple H Broadcasting, Inc.; Gifford, FL.	BPH-880310NJ	
K. Harlan Communications, Gifford, FL.	BPH-880310NK	
L. Ronnie L. Mayes; Gifford, FL.	BPH-880310NL	
M. Ronald Crider; Gifford, FL.	BPH-880310NT	
N. Gwendolyn G. Rowland; Gifford, FL.	BPH-880310NH (Dismissed herein).	
Issue heading and Applicants 1. Environmental, D 2. See Appendix, J 3. See Appendix, J 4. See Appendix, J 5. See Appendix, J 6. Air Hazard, C,D,F,I,L 7. Comparative, A-M 8. Ultimate, A-M		
VI.		
A. John Eves; Homer, NY.	BPH-880406MG	90-166
B. Upstate Communications, Ltd.; Homer, NY.	BPH-880407MA	
C. Romar Communications, Inc.; Homer, NY.	BPH-880407MV	
D. Grover H. Hubbell d/b/a Seven Valley Broadcasting, Homer, NY.	BPH-880407NC	
Issue heading and Applicants 1. Air Hazard, C 2. Comparative, A,B,C,D 3. Ultimate, A,B,C,D		
VII.		
A. Louisiana Radio Limited Partnership; Haughton, LA.	BPH-871022MI	90-165
B. Cary D. Camp; Haughton, LA.	BPH-871022MO	
C. Simcott Broadcasting, Inc.; Haughton, LA.	BPH-871022MP	
Issue heading and Applicants 1. Comparative, A, B, C 2. Utlimate, A, B, C		

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix (Vinton, Virginia)

2. To determine whether C (Heart) apprised the Commission of changes in the media interests of its principals in accordance with 47 CFR § 1.65.

3. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of D (Ward).

4. To determine whether D's (Ward's) organizational structure is a sham.

5. To determine, from the evidence adduced pursuant to Issues 3 and 4 above, whether D (Ward) possesses the basic qualifications to be a licensee of the facilities sought herein.

Appendix (Edgewater, Florida)

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of D (Allard).

2. To detrmine whether D's (Allard) organizational structure is a sham.

3. To determine, from the evidence adduced pursuant to Issues 1 and 2 above, whether D (Allard) possesses the basic qualifications to be a licensee of the facilities sought herein.

Appendix (Gifford, Florida)

2. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of J (Triple H).

3. To determine whether J (Triple H's) organizational structure is a sham.

4. To determine whether J (Triple H) violated § 1.65 of the Commission's Rules, and/or lacked candor, by failing to report the designation of character issues against other applicants in which one or more of its partners has an ownership interest and/or the dismissal of such ownership interest and/or the dismissal of such applications with unresolved character issues pending.

5. To determine, from the evidence adduced pursuant to issues 2 through 4 above, whether J (triple H) possesses the basic qualifications to be a licensee of the facilities sought herein.

[FR Doc 90-11462 Filed 5-16-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 202-007680-077.

Title: American West African Freight Conference.

Parties: America-Africa Europe Line GMBH, Barber West Africa Line, Farrell Lines, Inc., Maersk Line, Societe Ivoirienne de Transport Maritime, SITRAM, Torm West Africa Line, Westwind Africa Line.

Synopsis: The proposed amendment would provide for a waiver of the admission fee payable by a carrier admitted to membership in the conference if, within 90 days after joining the conference, such carrier enters into a joint service agreement with another conference member, and as a result, together with such other conference member, has one vote on all conference matters. It would also transfer the last sentence in Article 7.4 to the last sentence in Article 7.2.

By Order of the Federal Maritime Commission.

Dated: May 11, 1990.
Joseph C. Polking,
Secretary.
[FR Doc. 90–11412 Filed 5–16–90; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Eastern Bank Corporation, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the Offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 5, 1990.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Eastern Bank Corporation,* Lynn, Massachusetts; to acquire 6.90 percent of the voting shares of Family Bancorp, Haverhill, Massachusetts, and thereby indirectly acquire The Family Mutual Savings Bank, Haverhill, Massachusetts, which engages in Massachusetts Savings Bank Life Insurance activities.

B. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Northern Jersey Financial Corp.,* Roxbury Township, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of Northern Jersey State Bank, Roxbury Township, New Jersey, a *de novo* bank.

2. *Vista Bancorp, Inc.,* Phillipsburg, New Jersey; to acquire 100 percent of the voting shares of Twin Rivers Community Bank, Easton, Pennsylvania, a *de novo* bank.

C. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *The Bank of Southside Virginia Corporation,* Carson, Virginia; to acquire 19.2 percent of the voting shares of The Bank of McKenney, Incorporated, McKenney, Virginia.

D. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Gaylord Bancorporation, Ltd.,* Gaylord, Minnesota; to acquire 79.75 percent of the voting shares of Nicollet State Bank, Nicollet, Minnesota.

Board of Governors of the Federal Reserve System, May 11, 1990.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 90–11472 Filed 5–16–90; 8:45 am]
BILLING CODE 6210–01–M

Vincent J. Land et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 31, 1990.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Vincent J. Land,* Laurel, Maryland; to acquire an additional .03 percent of the voting shares of Phoenix Bancorp, Inc., Minersville, Pennsylvania, for a total of 13.7 percent, and thereby indirectly acquire Minersville Safe Deposit Bank and Trust Co., Minersville, Pennsylvania.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Vernon Dudley Smith,* Fort Pierce, Florida; to acquire an additional 10.70 percent of the voting shares of Indian River Banking Company, Vero Beach, Florida, for a total of 20.0 percent, and thereby indirectly acquire Indian River National Bank, Vero Beach, Florida.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *F.E. Hickman,* Midwest City, Oklahoma, to acquire an additional 3.6 percent of the voting shares of the Midwest National Bancshares, Inc. ("Midwest"), Midwest City, Oklahoma, for a total of 12.0 percent; F.E. Hickman, D.D.S., Inc., Retirement Plan, to acquire an additional 2.2 percent of the voting shares of Midwest for a total of 4.0 percent; F.E. Hickman, D.D.S. Orthodontics, Inc., Profit Sharing Plan, to acquire an additional 10.1 percent for a total of 17.6 percent of the voting shares of Midwest, each notificant will thereby indirectly acquire Midwest National Bank, Midwest City, Oklahoma.

2. *David C. Maysey,* and Oneida Sue Maysey, both of Canute, Oklahoma; to acquire an additional 53.23 percent of the voting shares of Canute Bancshares, Inc., Clinton, Oklahoma, for a total of 78.36 percent and thereby indirectly acquire First State Bank of Canute, Canute, Oklahoma.

Board of Governors of the Federal Reserve System, May 11, 1990.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 90–11474 Filed 5–16–90; 8:45 am]
BILLING CODE 6210–01–M

MNC Financial, Inc.; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 5, 1990.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *MNC Financial, Inc.*, Baltimore, Maryland; to engage *de novo* through its subsidiary, Security Trust Company of Virginia, National Association, Vienna, Virginia, in trust company activities by providing the following services to its trust customers: personal trust services; estate settlement services, employee benefit plan and pension/profit sharing plan administration services; investment management services; custodian services; and corporate trust services pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 11, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 11473 Filed 5–16–90; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Privacy Act of 1974; Establishment of a New System of Records

AGENCY: Federal Trade Commission (FTC).

ACTION: Advance notice with request for comments; publication of proposed system notice for a new system of records.

SUMMARY: The FTC is establishing a new system of records under the Privacy Act to consist of the investigatory files of the FTC's Office of the Inspector General (OIG). The publication of this proposed system notice is one of the steps required to establish the new system. The new system of records facilitates the OIG's ability to collect, maintain, use, and disclose information pertaining to individuals, thus helping to ensure that the OIG may efficiently and effectively perform its investigations and other authorized duties and activities.

EFFECTIVE DATE: Comments must be received on or before June 16, 1990. Unless changes are made in response to comments received from the public, this act is effective upon final publication of the amendment of FTC Rule of Practice 4.13(m); the amendment is set forth in proposed form elsewhere in today's issue of the **Federal Register.** The effective date may be extended if the Director of the Office of Management and Budget (OMB) declines, in whole or in part, the FTC's request to waive the 60-day period prescribed by OMB for advance notice to OMB and Congress. *See* OMB Circular No. A–130, app. I, at section 4(b)(4).

ADDRESSES: Forward comments to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580. Comments will be placed on the public record and made available for inspection during regular Commission business hours.

FOR FURTHER INFORMATION CONTACT: Alex Tang, Attorney, Office of the General Counsel (OGC), FTC, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580, (202) 326–2447.

SUPPLEMENTARY INFORMATION: As required by 5 U.S.C. 552a(e) (4) and (11), the FTC is notifying the public of the establishment of a new system of records in the FTC's Office of the Inspector General (OIG). This system is being established as part of the formal creation of an OIG within the Commission by action dated May 23, 1989, and the appointment of the FTC's Inspector General on July 30, 1989, under the authority of the 1988 amendments to the Inspector General Act of 1978. *See* Pub. L. No. 100–504, amending Public Law No. 95–452; 5 U.S.C. app. Among the OIG's statutory duties are the prevention and detection of fraud, waste, and abuse relating to the agency's programs and operations, through the conduct of audits and investigations and the preparation of reports to the agency's Chairman and to Congress.

The system of records being established consists of investigatory files compiled and maintained by the OIG. Due to the law enforcement nature of these records, the proposed system is exempt from certain provisions of the Privacy Act, including disclosure to individuals who are the subject of a record in the system. *See* 5 U.S.C. 552a (j)(2) and (k)(2). The exempt status of the system is the subject of a companion notice of proposed rulemaking to amend FTC Rule of Practice 4.13(m), 16 CFR 4.13(m), which specifies the FTC systems of records that are exempt from certain provisions of the Privacy Act. That notice is published elsewhere in today's issue of the **Federal Register,** as mentioned earlier. Pursuant to 5 U.S.C. 552a(o) and OMB Circular No. A–130, *supra,* the FTC has submitted its report on the proposed establishment of this system of records to both Houses of Congress and to OMB.

Accordingly, the FTC proposes to establish the following system of records:

FTC I–7

SYSTEM NAME:

Inspector General Investigative Files—FTC

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Office of the Inspector General (OIG), Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subjects of OIG investigations relating to the programs and operations of the Federal Trade Commission. Subject individuals include, but are not limited to, current and former employees; agents or employees of contractors or subcontractors, as well as contractors and subcontractors in their personal capacity, where applicable; and other individuals whose actions affect the Commission, its programs or operations. Businesses, proprietorships, or corporations are not covered by this system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence relating to the investigation; internal staff memoranda; copies of subpoenas issued during the investigation, affidavits, statements from witnesses, transcripts of testimony

taken in the investigation, and accompanying exhibits; documents, records, or copies obtained during the investigation; interview notes, investigative notes, staff working papers, draft materials, and other documents and records relating to the investigation; opening reports, progress reports, and closing reports; and other investigatory information or data relating to alleged or suspected criminal, civil, or administrative violations or similar wrongdoing by subject individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act Amendments of 1988, Pub. L. No. 100–504, amending the Inspector General Act of 1978, Pub. L. 95–452, 5 U.S.C. app.

PURPOSE(S):

To document the conduct and outcome of investigations; to report results of investigations to other components of the Commission or other agencies and authorities for their use in evaluating their programs and imposition of criminal, civil, or administrative sanctions; to report the results of investigations to other agencies or other regulatory bodies for any action deemed appropriate, and for retaining sufficient information to fulfill reporting requirements; and to maintain records related to the activities of the Office of the Inspector General.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), these records or information in these records may specifically be disclosed pursuant to 5 U.S.C. 552a(b)(3) as follows, provided that no routine use specified herein shall be construed to limit or waive any other routine use specified herein:

(1) To other agencies, offices, establishments, and authorities, whether federal, state, local, foreign, or self-regulatory (including, but not limited to, organizations such as professional associations or licensing boards), authorized or with the responsibility to investigate, litigate, prosecute, enforce, or implement a statute, rule, regulation, or order, where the record or information, by itself or in connection with other records or information.

(a) Indicates a violation or potential violation of law, whether criminal, civil, administrative, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, or

(b) Indicates a violation or potential violation of a professional, licensing, or similar regulation, rule, or order, or otherwise reflects on the qualifications or fitness of an individual who is licensed or seeking to be licensed;

(2) To any source, private or governmental, to the extent necessary to secure from such source information relevant to and sought in furtherance of a legitimate investigation or audit;

(3) To agencies, offices, or establishments of the executive, legislative, or judicial branches of the federal or state government.

(a) Where such agency, office, or establishment has an interest in the individual for employment purposes, including a security clearance or determination as to access to classified information, and needs to evaluate the individual's qualifications, suitability, and loyalty to the United States Government, or

(b) Where such agency, office, or establishment conducts an investigation of the individual for purposes of granting a security clearance, or for making a determination of qualifications, suitability, or loyalty to the United States Government, or access to classified information or restricted areas, or

(c) Where the records or information in those records are relevant and necessary to a decision with regard to the hiring or retention of an employee or disciplinary or other administrative action concerning an employee, or

(d) Where disclosure is requested in connection with the award of a contract or other determination relating to a government procurement, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter, including, but not limited to, disclosure to any Federal agency responsible for considering suspension or debarment actions where such record would be germane to a determination of the propriety or necessity of such action, or disclosure to the United States General Accounting Office, the General Services Administration Board of Contract Appeals, or any other Federal contract board of appeals in cases relating to an agency procurement;

(4) To the Office of Personnel Management, the Office of Government Ethics, the Merit Systems Protection Board, the Office of the Special Counsel, the Equal Employment Opportunity Commission, or the Federal Labor Relations Authority or its General Counsel, of records or portions thereof relevant and necessary to carrying out their authorized functions, such as, but not limited to, rendering advice requested by the OIG, investigations of alleged or prohibited personnel practices (including unfair labor or discriminatory practices), appeals before official agencies, offices, panels or boards, and authorized studies or reviews of civil service or merit systems or affirmative action programs;

(5) To independent auditors or other private firms with which the Office of Inspector General has contracted to carry out an independent audit or investigation, or to analyze, collate, aggregate or otherwise refine data collected in the system of records, subject to the requirement that such contractors shall maintain Privacy Act safeguards with respect to such records;

(6) To any authorized agency component of the Federal Trade Commission, the Department of Justice, or other law enforcement authorities, and for disclosure by such parties

(a) To the extent relevent and necessary in connection with litigation in proceedings before a court or other adjudicative body, where (i) the United States is a party to or has an interest in the litigation, including where the agency, or an agency component, or an agency official or employee in his or here official capacity, or an individual agency official or employee whom the Department of Justice has agreed to represent, is or may likely become a party, and (ii) the litigation is likely to affect the agency or any component thereof, or

(b) For purposes of obtaining advice, including advice concerning the accessibility of a record or information under the Privacy Act or the Freedom of Information Act;

(7) To the National Archives and Records Administration for records management inspections conducted under authority of 44 U.S.C. 2904 and 2906;

(8) To a Congressional office from the record of a subject individual in response to an inquiry from the Congressional office made at the request of the individual, but only to the extent that the record would be legally accessible to that individual;

(9) To any direct recipient of federal funds, such as a contractor, where such record reflects serious inadequancies with a recipient's personnel and disclosure of the record is for purposes of permitting a recipient to take corrective action beneficial to the Government;

(10) To debt collection contractors for the purpose of collecting debts owed to the Government, as authorized under

the Debt Collection Act of 1982, 31 U.S.C. 3718, and subject to applicable Privacy Act safeguards;

(11) To a grand jury agent pursuant either to a federal or state grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury, where subpoena or request has been specificially approved by a court; or

(12) To the Office of Management and Budget (OMB) for the purpose of obtaining advice regarding agency obligations under the Privacy Act, or in connection with the review of private relief legislation pursuant to OMB Circular A–19.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

The OIG Investigative Files consist of paper records maintained in file folders and data maintained on computer diskettes. The folders and diskettes are stored in file cabinets in the OIG.

RETRIEVABILITY:

The records are retrieved by the name of the subject of the investigation or by a unique control number assigned to each investigation.

SAFEGUARDS:

Records are maintained in lockable metal file cabinets in lockable rooms. Access is restricted to individuals whose duties require access to the records. File cabinets and rooms are locked during non-duty hours.

RETENTION AND DISPOSAL:

The OIG Investigative Files are kept indefinitely.

SYSTEM MANAGER AND ADDRESS:

Inspector General, Federal Trade Commission, 6th Street & Pennsylvania Ave., NW., Washington, DC 20580.

NOTIFICATION PROCEDURE:

By mailing or delivering a written request bearing the individual's name, return address, and signature, addressed as follows: Privacy Act Request, Deputy Executive Director for Planning and Information, Federal Trade Commission, 6th Street & Pennsylvania Ave., NW., Washington, D.C. 20580.

RECORD ACCESS PROCEDURE:

Same as above.

CONTESTING RECORD PROCEDURE.

Same as above.

RECORD SOURCE CATEGORIES:

Employees or other individuals on whom the record is maintained, non-target witnesses, Commission and non-Commission records, to the extent necessary to carry out OIG investigations authorized by 5 U.S.C. app.

SYSTEM(S) EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

Pursuant to 5 U.S.C. 552a(j)(2), records in this system are exempt from the provisions of 5 U.S.C. § 552a, except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i), and corresponding provisions of 16 CFR 4.13, to the extent the system of records relates in any way to the enforcement of criminal laws.

Pursuant to 5 U.S.C. 552a(k)(2), the system is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f), and the corresponding provisions of 16 CFR 4.13, to the extent the system of records consists of investigatory material compiled for law enforcement purpose, other than material within the scope of the exemption at 5 U.S.C. 552a(j)(2).

See FTC Rules of Practice § 4.13(m), 16 CFR 4.13(m), as amended.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 90–11397 Filed 5–16–90; 8:45 am]

BILLING CODE 6750–01–M

[Docket No. C–3288]

Import Image Inc. et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a New York wholesaler of women's clothing from falsely or deceptively labeling, invoicing, or advertising its textile fiber products as to name or amount of constituent fibers; failing to affix, or removing, labels containing the information required by the Textile Fiber Products Identification Act; and misrepresenting or failing to disclose the country of origin of its products.

DATES: Complaint and Order issued May 1, 1990.[1]

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Katharine Alphin, Atlanta Regional Office, Federal Trade Commission, 1718 Peachtree St., NW., Room 1000, Atlanta, GA 30367, (404) 257–7520.

SUPPLEMENTARY INFORMATION: On Tuesday, February 13, 1990, there was published in the **Federal Register**, 55 FR 5069, a proposed consent agreement with analysis In the Matter of Import Image Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 72 Stat. 1717; 15 U.S.C. 45, 70)

Donald S. Clark,

Secretary.

[FR Doc. 90–11399 Filed 5–16–90; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

International Conference on Eosinophilia Myalgia Syndrome; Meeting

The Center for Environmental Health and Injury Control (CEHIC) of the Centers for Disease Control (CDC) announces the following meeting.

Name: International Conference on Eosinophilia Myalgia Syndrome (E.M.S.).

Time and date: 8 a.m.–5 p.m., June 12, 1990. 8 a.m.–4 p.m., June 13, 1990.

Place: J. Robert Oppenheimer Study Center (TA–3, SM207), Los Alamos National Laboratory, Los Alamos, New Mexico 87545.

Status: Open to the public, limited only by the space available. The main meeting room accommodates approximately 150 people. Seats will be available on a first-come, first-served basis. An adjacent overflow room with video hookup will be available for approximately 50 people. Each session has a discussion period for questions from the public.

Supplementary information: This meeting is being co-sponsored by the Los Alamos National Laboratory, the New Mexico Health and Environment

Department, the Centers for Disease Control, the Food and Drug Administration, and the National Institutes of Health to provide an opportunity for an exchange of current information on E.M.S.

Matters to be considered: The meeting is being convened to provide a comprehensive update on epidemiologic and medical aspects of E.M.S.

Contact person for more information: Additional information concerning the meeting may be obtained from Mr. James Rifenburg, Division of Environmental Hazards and Health Effects, CEHIC, CDC, Mailstop F28, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 404/488–4682, (FTS) 236–4682.

Dated: May 9, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 90–11469 Filed 5–16–90; 8:45 am]

BILLING CODE 4160–18–M

Immunization Practices Advisory Committee; Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), the Centers for Disease Control (CDC) announces the following Committee meeting:

Name: Immunization Practices Advisory Committee.

Time and date: June 5, 1990, 8:30 a.m.–5 p.m.; June 6, 1990, 8:30 a.m.–1 p.m.

Place: Conference room 207, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Status: Open.

Purpose: The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents.

Matters to be discussed: The Committee will discuss draft recommendations for ACIP statements on adult immunization and rubella; measles; mumps; polio; *Haemophilus influenzae* type b; and will consider other matters of relevance among the Committee's objectives. Agenda items are subject to change as priorities dictate.

Contact person for more information: Cheryl Counts, Staff Specialist, Centers for Disease Control (1–B46), 1600 Clifton Road, NE., Mailstop A20, Atlanta, Georgia 30333, Telephone: FTS: 236–3851; Commercial: (404) 639–3851.

Dated: May 9, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 90–11467 Filed 5–16–90; 8:45 am]

BILLING CODE 4160–18–M

National Committee on Vital and Health Statistics; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the National Committee on Vital and Health Statistics established pursuant to 42 U.S.C. 242k, section 306(k)(2), of the Public Health Service Act, as amended, announces the following meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Time and Date: 1 p.m.—5 p.m., June 6, 1990.; 9 a.m.—5 p.m., June 7, 1990.; 9 a.m.—1:30 p.m., June 8, 1990.

Place: Room 703A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201

Status: Open.

Purpose: The purpose of this meeting is for the Committee to receive and consider reports from each of its subcommittees and to address new business as appropriate.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of Committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, room 2–12, Center Building, 3700 East West Highway, Hyattsville, Maryland 20782, telephone number (301) 436–7050.

Dated: May 9, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control

[FR Doc. 90–11466 Filed 5–16–90; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 90N–0178]

Drug Export; Vironostika® HTLV–1 Microelisa System

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Organon Teknika Corp., has filed an application requesting approval for the export of the biological product Vironostika® HLTV–1 Microelisa System to Belgium, Denmark, Federal Republic of Germany, Finland, The Netherlands, and Norway.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, room 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Inspections and Surveillance Staff (HFB–120), Center for Biologics Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, (301) 295–8191.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Organon Teknika Corp., 100 Akzo Avenue, Durham, NC 27704, has filed an application requesting approval for the export of the biological product Vironostika® HTLV–1 Microelisa System to Belgium, Denmark, Federal Republic of Germany, Finland, The Netherlands, and Norway. Vironostika®HTLV–1 Microelisa System is an enzyme-linked immunosorbent assay (ELISA) for the qualitative determination of antibody to HTLV–1 in human serum or plasma. The application was received and filed in the Center for Biologics Evaluation and Research on April 16, 1990, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by May 29, 1990, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate

consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated under 21 CFR 5.44.

Dated: May 1, 1990.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 90-11406 Filed 5-16-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90N-0177]

Drug Export; Antihemophilic Factor (Human), Solvent/Detergent Treated

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Alpha Therapeutic Corp., Los Angeles, CA 90032, has filed an application requesting approval for the export of the biological product Antihemophilic Factor, (Human), solvent/detergent treated, to the United Kingdom.

ADDRESSES: Relevant Information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Center for Biologics Evaluation and Research (HFB-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8191.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Alpha Therapeutic Corp., 5555 Valley Blvd., Los Angeles, CA 90032, has filed an application requesting approval for the export of the biological product Antihemophilic Factor (Human), solvent/detergent treated, to The United Kingdom. Antihemophilic Factor (Human), solvent/detergent treated is indicated solely for the prevention and control of bleeding in patients with moderate or severe Factor VIII deficiency due to hemophilia A or acquired Factor VII deficiency. The application was received and filed in the Center for Biologics Evaluation and Research on April 16, 1990, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by May 29, 1990 and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated under 21 CFR 5.44.

Dated: May 4, 1990.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 90-11405 Filed 5-16-90; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS

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:

Orthopedic and Rehabilitation Devices Panel

Date, time, and place. June 1, 1990, 8 a.m., Conference Rms. G and H, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9:15 a.m., unless public participation does not last that long; open committee discussion, 9:15 a.m. to 10:30 a.m.; closed presentation of data, 10:30 a.m. to 10:40 a.m.; open committee discussion, 10:40 a.m. to 12:10 p.m.; closed presentation of data, 12:10 p.m. to 12:20 p.m.; L. John Parkhurst, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1036.

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 May 25, 1990, 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 (PMA) application for a rotating bearing porous metal-coated knee prosthesis.

Closed presentation of data. The committee may discuss trade secret and/or confidential commerical information regarding the above PMA application. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Ophthalmic Devices Panel

Date, time, and place. June 14, 1990, 9 a.m., Auditorium, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washignton, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 5 p.m.; Daniel W.C. Brown, Center for Devices

and Radiological Health (HFZ–460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1080.

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 June 1, 1990, 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 general issues relating to approvals of premarket approval applications (PMA's) for intraocular lenses (IOL's) and other class III surgical or diagnostic devices, and may discuss specific PMA's for these devices.

Closed committee deliberations. The committee may discuss trade secret and/or confidential commercial information relevant to PMA's for IOL's, surgical or diagnostic devices, contact lenses, or other ophthalmic devices. These portions of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Circulatory System Devices Panel

Date, time, and place. June 15, 1990, 8:30 a.m., First Floor Conference Room, Piccard Bldg., 1390 Piccard Dr., Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 2:30 p.m.; closed committee deliberations, 2:30 p.m. to 4 p.m.; Jeanette M. Scheppan, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1205.

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 May 25, 1990, 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 premarket approval applications (PMA's) for a pulse generator system and possibly one or two mechanical angioplasty devices.

Close committee deliberations. The committee will discuss trade secret and/or confidential commercial information regarding the PMA's listed above. This portion of the meeting will be closed to permit discussion of this informtion (5 U.S.C. 552b(c)(4)).

Peripheral and Central Nervous System Drugs Advisory Committee

Date, time, and place. June 22, 1990, 8 a.m., Parklawn Bldg., Conference Rm. G, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; closed presentation of data, 9 a.m. to conclusion; Robbin M. Nighswander, Center for Drug Evaluation and Research HFD–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3504.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs 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. Those desiring to make formal presentations should notify the contact person before June 8, 1990, 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.

Closed presentation of data. The committee will hear trade secret and/or confidential commercial information relevant to pending investigational new drug applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Anesthesiology and Respiratory Therapy Devices Panel

Date, time, and place. June 26, 1990, 10 a.m., Rm. 100, Piccard Bldg., 1390 Piccard Dr., Rockville, MD.

Type of meeting and contact person. Open committee discussion, 10 a.m. to 10:15 a.m.; open public hearing, 10:15 a.m. to 11:15 a.m., unless public participation does not last that long; open committee discussion, 11:15 a.m. to 12 p.m.; closed presentation of data, 12 p.m. to 1:30 p.m.; closed committee deliberations, 1:20 p.m. to 2 p.m.; Michael S. Gluck, Center for Devices and Radiological Health (HFZ–430), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1044.

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 June 12, 1990, 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 (PMA) application for an infant high frequency ventilator.

Closed presentation of data. The committee may discuss trade secret and/or confidential commercial information regarding the above PMA application. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed committee deliberations. The committee may discuss trade secret and/or confidential commercial information regarding the above PMA application. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separate 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 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. The dates and times reserved for the separate 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 chairperson 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 for 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 chairperson'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.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 29857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: May 14, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90–11631 Filed 5–16–90; 8:45 am]

BILLING CODE 4160–01–M

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent part at 52 FR 6393, March 3, 1987 and 48 FR 54128, November 30, 1983) is amended to reflect the transfer of functions within the Center for Devices and Radiological Health (CDRH), Food and Drug Administration (FDA).

FDA is proposing to transfer the Foreign Visitors Program from the Office of Management Services (OMS), CDRH, to the Office of Standards and Regulations, CDRH. The transfer of this fucntion will allow CDRH to handle international activities in a more efficient and effective manner.

The second proposal involves the transfer of CDRH's conference management function from the Office of Training and Assistance to OMS. OMS is the Center's contract with the Division of Contracts and Grants Management, Office of Management and Operations, carries out similar coordination functions within CDRH, and has the expertise to successfully carry out conference management functions activities as well. No changes are required to the Office of Training and Assistance functional statements.

The CDRH revised statements are reflected below.

Section HF–B Organization and Functions is amended as follows:

1. Delete subparagraph (o–1–i)Office of Management Services (HFW11) and insert a new (o–1–i) Office of Management Services to read as follows:

(o–1–i) Office of Management Services (HFW11). Advises the Center Director in regard to all administrative management matters.

Plans, develops, and implements Center management policies and programs concerning equal employment opportunity, manpower management, financial management, personnel

management, contracts and grants management, conference management, employee development and training, occupational safety, organization, management analysis, and general office services support.

Develops and implements the Center's long-range, strategic, and operational plans.

Develops and applies evaluation techniques to measure the effectiveness of Center programs.

Provides general information and technical publication services to the Center.

Plans, conducts, and coordinates Center committee management activities.

2. Delete subparagraph (o–1–iv) Office of Standards and Regulations (HFW14) and insert a new (o–1–iv) Office of Standards Regulations to read as follows:

(o–1–iv) Office of Standards and Regulations (HFW14). Advises the Center Director and other Agency officials and is the Center focal point for liaison with the Office of the General Counsel and appropriate agency components on FDA regulation development responsibilites relating to medical devices and radiological health activities.

Coordinates the development, review, and modification of all regulations and legislative proposals under Center authority and the review of criteria, performance standards, guides, and documents related to the Center's mission and/or proposed by foreign, national or State agencies or voluntary standards-setting groups.

Coordinates the development, review, and submission of Federal Register publications for the Center. Prepares position statements for the Center on the standards promulgated by other organizations.

Coordinates liaison with other standards-setting organizations and prepares reports and maintains files on all committees representing national and international standards-setting organizations; maintains liaison with trade associations and other special interest groups.

Coordinates the Center's preparation of problem definition studies, economic problem analyses for regulations, published policies, and other significant Center actions, and prepares economic assessment and impact statements as required under current Executive Orders and legislation.

Coordinates the review and analysis of comments received on proposed regulations and petitions submitted for Center action.

Coordinates requests and Center activities pertaining to the Freedom of Information and Privacy Acts.

Provides the Executive Secretariat for the Technical Electronic Product Radiation Safety Standards Committee.

Coordinates and supports the Center's cooperative activities with foreign government counterparts and international health organizations.

Dated: May 2, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90–11416 Filed 5–16–90; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

Notice of Hearing; Reconsideration of Disapproval of Iowa State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of Hearing.

SUMMARY: This notice announces an administrative hearing on June 28, 1990 in Room 215, New Federal Office Building, 601 East 12th Street, Kansas City, Missouri to reconsider our decision to disapprove Iowa State Plan Amendment 89–11.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk on or before June 1, 1990.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 966–4471.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Iowa State Plan amendment (SPA) number 89–11.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Iowa SPA 89–11 proposes covering several services under the rehabilitative services benefit at 42 CFR 440.130(d). HCFA approved the amendment with respect to nursing services, speech/language therapy, occupational therapy and physical therapy. However, HCFA disapproved the portion of the amendment pertaining to behavior management and developmental skills training.

The issues in this matter are whether: (1) The services the State proposes to offer are medical assistance as defined in section 1905(a) of the Act; and (2) the services constitute rehabilitative services as provided for under section 1905(a)(13) of the Act and Federal regulations at 42 CFR 440.130(d).

HCFA disapproved the portion of the amendment pertaining to developmental skills training and behavior management because the State is attempting to offer services that are not medical assistance as defined in section 1905(a) of the Act. The State wishes to cover developmental skills training and behavior management in day rehabilitation centers. As defined by the State, developmental skills training includes "activities that focus on but are not limited to, general health maintenance; personal hygiene; self-care; and daily living, communication, socialization, and mobility skills." HCFA believes that, as thus defined, these services do not fit within any category of medical assistance as provided under section 1905(a) of the Act and regulations. More specifically, HCFA believes they do not constitute rehabilitative services as provided for under section 1905(a)(13) of the Act and 42 CFR 440.130(d). Therefore, HCFA has determined they are not covered under Medicaid. Likewise, the material provided by the State does not establish that behavior management services fall within the definition of medical assistance under section 1905(a) and implementing rules, as the State has not clearly defined or otherwise described these services.

The notice to Iowa announcing an administrative hearing to reconsider the disapproval of its State plan amendment reads as follows:

Mr. Charles M. Palmer, Director, Iowa Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319–0114.

Dear Mr. Palmer: I am responding to your request for reconsideration of the decision to partially disapprove Iowa State Plan Amendment (SPA) 89–11. It was received on April 12, 1990. Iowa SPA 89–11 proposes covering several services under the rehabilitative services benefit at 42 CFR 440.130(d). HCFA approved the amendment with respect to nursing services, speech/language therapy, occupational therapy and physical therapy. However, HCFA disapproved the portion of the amendment pertaining to behavior management and developmental skills training.

The issues in this matter are whether: (1) the services the State is attempting to offer are medical assistance as defined in section 1905(a) of the Social Security Act (the Act); and (2) the services constitute rehabilitative services as provided under section 1905(a)(13) of the Act and at 42 CFR 440.130(d).

I am scheduling a hearing on your request to be held on June 28, 1990, at 10:00 a.m. in Room 215, New Federal Office Building, 601 East 12th Street, Kansas City, Missouri. If this date is not acceptable, we would be glad to set another date that is mutually ageeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR Part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 966–4471.

Sincerely,

Gail R. Wilensky, Ph.D.

(Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: May 11, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 90–11414 Filed 5–16–90; 8:45 am]

BILLING CODE 4120–03–M

Health Resources and Services Administration

Availability of Funds for Grants To Provide for the Delivery of AIDS/HIV Services Within Community Health Facilities; Extension of Due Date

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of extension of application due date.

SUMMARY: This notice extends the due date previously published in the **Federal Register** April 18, 1990, (55 FR 14477) for applications to provide for the delivery of AIDS/HIV services within community health facilities. The new due date is June 25, 1990. All other information remains unchanged.

Dated: May 10, 1990.

Robert G. Harmon,

Administrator.

[FR Doc. 90–11407 Filed 5–16–90; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–050–4212–08]

Intent To Prepare Planning Amendment; Royal Gorge Management Framework Plan, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a planning amendment to the Royal Gorge Management Framework Plan, Colorado.

SUMMARY: A total of 1,252.62 acres of public land in 3 separate blocks will be considered for availability for disposal by exchange. They are located west of Colorado State Highway 115, ten miles northeast of Penrose, Colorado. They lie near Table Mountain and Patton Canyon. The public land under consideration is described as follows:

Sixth Principal Meridian

T. 17 S., R. 68 W.,
Section 11: SE¼SW¼, SW¼SE¼
Section 21: NW¼SE¼
Section 27: SW¼
Section 28: NE¼SE¼
Section 34: W½,SE¼
T. 18 S., R. 68 W.,
Section 3: Lots 3–7 inclusive, S½NW¼, NW¼SW¼
Section 4: NE¼SE¼
Section 10: N½NW¼

DATES: Interested parties may submit comments until June 25, 1990.

ADDRESSES: District Manager, Bureau of Land Management, P.O. Box 2200, Canon City, Colorado 81215–2200.

FOR FURTHER INFORMATION CONTACT: David Hallock, BLM, 3170 East Main Street, Canon City, Colorado 81212 at (719) 275–0631.

SUPPLEMENTARY INFORMATION: The areas described aggregate 1,252.62 acres. They are legally inaccessible to the general public and no critical values are known to be present at this time. An environmental analysis shall be prepared to amend the Royal Gorge Framework Plan to allow consideration for disposal by exchange when the public interest is served by such action.

Donnie R. Sparks,

District Manager.

[FR Doc. 90–11486 Filed 5–16–90; 8:45 am]

BILLING CODE 4310–JB–M

Bureau of Land Management

[AA–660–00–4120–02]

Federal Coal and Other Solid Mineral Leases; Clarification to Notice of Final Action; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of final action; clarification; correction.

SUMMARY: This notice corrects a typographical error in the clarification document published in the **Federal Register** on May 2, 1990 (55 FR 18401). In the last sentence, contained in quotation marks, of the first full paragraph in the first column on page 18403, the number "180" is corrected to read "120". The result will be that the original Notice of final action published on February 27, 1990 (55 FR 6841), is correctly amended to read "For approved royalty rate reductions under category 5, the lessee is required to submit a request for recertification no later than 120 days prior to the second anniversary of the effective date of an existing reduction, and every 2 years thereafter so long as the royalty rate reduction is in effect."

FOR FURTHER INFORMATION CONTACT: Paul W. Politzer or Phillip C. Perlewitz, (202) 208–7722.

Dated: May 9, 1990.

James M. Hughes,

Deputy Assistant Secretary of the Interior.

[FR Doc. 90–11525 Filed 5–16–90; 8:45 am]

BILLING CODE 4310–84–M

[ES–030–00–4212–14; WIES 041392]

Realty Action; Sale of Public Land in Oneida County, Wisconsin; Modified; Competitive sale WIES 041392A and WIES 041392B

AGENCY: Bureau of Land Management, Interior.

ACTION: Sale of Public Lands in Oneida County, Wisconsin—Modified—Competitive Sale, Tracts WIES–041392A and WIES–041392B.

SUMMARY: The following public land has been examined and determined to be suitable for sale under section 203(a)(1)

of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750; 43 U.S.C. 1713), at no less than the appraised fair market value shown below; Neither tract has legal access. The appraised fair market value reflects the lack of legal access. The sale also includes conveyance of the mineral estate under the authority of section 209(b)(1)(1) of FLPMA.

Fourth Principal Meridian, Wisconsin

T. 37 N., R. 9 E., Section 5, Town of Pine Lake
Tract A—Govt. Lot 6 (22.26 acres)—
Appraised Fair Market Value is $8,703.24
Tract B—Govt. Lot 7 (35.18 acres)—
Appraised Fair Market Value is $13,755.38

Date of Sale: August 5, 1990 at 2 p.m.
Place of Sale: Milwaukee District Office, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201–0631.

Minimum Bid and Requirements: The minimum bid is the appraised fair market value. Potential purchasers are required to submit 20 percent of their bid as down payment. The bid and deposit for each tract must be enclosed in a sealed envelope clearly marked "Public Sale WIES–041392—Tract A" or "Public Sale WIES–041392—Tract B" on the left hand side of the envelope. The successful high bidder will be allowed 180 days to submit the remainder of the bid price. If the remainder of the bid price has not been received from the successful high bidder within the specified time period, the bid deposit will be forfeited. If for any reason the land remains unsold after the specified date, the land will remain available for sale over the counter until sold.

The lands do not contain any known mineral values. Therefore, it is required that you submit a $50.00 filing fee along with your bid.

Example: If your bid for Tract A is $8,703.24, you must submit 20 percent ($1,740.65) plus a $50.00 filing fee for a total of $1,790.65. If your bid for Tract B is $13,755.38, you must submit 20 percent ($2,751.08) plus a $50.00 filing fee for a total of $2,801.08. Please state that the $50.00 filing fee to acquire the mineral estate is included in your bid.

Bidder Qualifications: Purchasers must be citizens of the United States, 18 years of age or over, a corporation; State; State instrumentality or political subdivision; or other legal entity, subject to the laws of any State or the United States.

The lands are being offered for sale subject to a preference consideration to allow Mr. Bradley Hoffman (Tracts A and B) and Mr. Michael Cahill (Tract A), adjacent landowners, to meet the high bid. The sale will be conducted by modified competitive bidding procedures (sealed bid envelope). An apparent high bidder will be declared. The apparent high bidder and the designated bidders (Mr. Hoffman and Mr. Cahill) will be notified by mail.

Publication of this notice will segregate the land from all appropriation, including the mining laws, for 270 days, or until issuance of patent, whichever occurs first. For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Milwaukee, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning these sales is available at the Milwaukee District Office, Bureau of Land Management, 310 West Wisconsin Avenue, suite 225, Milwaukee, Wisconsin 53203; or by calling Paulette Francis at 414–297–4416.

Chris Hanson,

Acting District Manager.

[FR Doc. 90–11509 Filed 5–16–90; 8:45 am]

BILLING CODE 4310–GJ–M

[CO–942–90–4730–12]

Colorado; Filing of Plats of Survey

May 7, 1990.

The plat of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., May 7, 1990.

This plat (in 2 sheets) representing the dependent resurvey of a portion of the south boundary, T. 8 S., R. 88 W., portions of the south boundary, subdivisional lines, and Mineral Survey Nos. 5443 A and B, Carbonate lode and mill site, the subdivision of certain sections, a metes-and-bounds survey of Parcel A in section 21, and an informative traverse of the right and left banks of the Crystal River in a portion of section 21, Fractional T. 9 S., R. 88 W., Sixth Principal Meridian, Colorado, Group No. 832, was accepted April 5, 1990.

This survey was executed to meet certain administrative needs of the Forest Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

Darryl A. Wilson,

Acting Chief, Cadastral Surveyor for Colorado.

[FR Doc. 90–11476 Filed 5–16–90; 8:45 am]

BILLING CODE 4310–JB–M

[OR–942–00–4730–12: GPO–217]

Filing of Plats of Survey; Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 29 S., R. 4 W., accepted 4/20/90
T. 30 S., R. 6 W., accepted 3/30/90
T. 21 S., R. 9 W., accepted 4/6/90
T. 10 S., R. 5 E., accepted 4/20/90

Washington

T. 7 N., R. 12 E., accepted 4/6/90
T. 8 N., R. 13 E., accepted 4/20/90

If protests against a survey, as shown on any of the above plats, are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plats will be placed in the open files of the Oregon State Office, Bureau of Land Management, 825 NE Multnomah, Portland, Oregon 97208, and will be available to the public as a matter of information only. Copies of the plats may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 N.E. Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

Dated: April 27, 1990.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 90–11478 Filed 5–16–90; 8:45 am]

BILLING CODE 4310–33–M

[ID-943-90-4214-11; IDI-05280]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that a withdrawal of 1,317.07 acres for recreation and administrative sites in the Payette National Forest continue for the period of years shown below. The lands are now being used for recreation and administrative sites. The lands would remain closed to surface entry and mining, but have been and would remain open to mineral leasing.

DATES: Comments should be received on or before August 15, 1990.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208–334–1720.

The U.S. Forest Service proposes that the existing land withdrawal made by Public Land Order No. 1374 be continued for the period of years shown below pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The lands are described as follows:

To be continued for 10 years:

Brownlee Campground Recreation Area (formerly Brownlee Campground).
T. 16 N., R. 4 W.,
Sec. 10, NE¼SW¼NW¼, NE¼NW¼SW¼NW¼, S½NW¼SW¼NW¼, N½SW¼SW¼NW¼, NW¼SE¼SW¼NW¼, and W½NW¼SE¼NW¼.

To be continued for 20 years:

Buck Park Administrative Site.
Corrected Description.
T. 17 N., R. 3 W.,
Sec. 30, E½SE¼SW¼NE¼, SE¼NE¼SW¼NE¼, SW¼NW¼SE¼NE¼, and W½SW¼SE¼NE¼.
Price Valley Ranger Station Administrative Site.
T. 20 N., R. 1 W.,
Sec. 34, SE¼SE¼;
Sec. 35, SW¼SW¼.
Big Flat Recreation Area.
T. 14 N., R. 2 E.,
Sec. 31, S½NW¼SW¼SE¼ and N½SW¼SW¼SE¼.
Goose Lake Recreation Area.
Corrected Description.
T. 20 N., R. 2 E.,
Sec. 13, S½NW¼SW¼ and N½SW¼SW¼;
Sec. 14, E½SE¼NE¼SE¼ and E½NE¼SE¼SE¼.
Kennally Creek Recreation Area.
Corrected Description.
T. 17 N., R. 5 E.,
Sec. 29, S½SW¼NE¼ and N½NW¼SE¼.
Upper Payette Lake Recreation Area.
T. 21 N., R. 3 E.,
Sec. 25, Lots 2 and 3.
Hornet Ranger Station Administrative Site.
T. 17 N., R. 2 W.,
Sec. 6, S½SE¼NW¼.
Black Lee Creek Recreation Area.
T. 19 N., R. 4 E.,
Sec. 15, E½SE¼NW¼.
Justrite and Paradise Campground Recreation Area (formerly Justrite and Paradise Campgrounds).
Corrected Description.
T. 14 N., R. 5 W.,
Sec. 16, E½SE¼SW¼SW¼ and W½SW¼SE¼SW¼;
Sec. 21, W½NW¼NE¼NW¼ and E½NE¼NW¼NW¼.
Paddy Flat Recreation Area.
T. 17 N., R. 4 E.,
Sec. 26, SW¼SW¼SW¼.
Spring Creek Campground Recreation Area (formerly Spring Creek Campground).
Corrected Description.
T. 14 N., R. 5 W.,
Sec. 4, W½W¼E¼E¼ and S½SW¼SE¼;
Sec. 9, W½NW¼NE¼NE¼, N½NW¼NE¼, N½S½NW¼NE¼, and NW¼SW¼NE¼NE¼.
4th of July and Kiwanis Campground Recreation Area (formerly Fourth of July and Kiwanis Campground).
T. 14 N., R. 5 W.,
Sec. 33, W½NW¼NE¼NW¼, E½NE¼NW¼NW¼, and NE¼SE¼NW¼NW¼.
Hazard Lake Recreation Area.
T. 22 N., R. 3 E., unsurveyed,
Sec. 31, W½SW¼NE¼, NW¼, N½SW¼, and NW¼NW¼SE¼.

To be continued for 30 years:

Last Chance Recreation Area.
T. 19 N., R. 2 E.,
Sec. 14, W½NW¼NW¼ and NW¼SW¼NW¼;
Sec. 15, SE¼NE¼NE¼ and NE¼SE¼NE¼.
Ponderosa Recreation Area.
T. 20 N., R. 6 E.,
Sec. 20, W½NW¼NW¼ and N½SW¼NW¼.
Brundage Lookout Administrative Site.
T. 19 N., R. 3 E.,
Sec. 7, W½SE¼NW¼NE¼, E½SW¼NW¼NE¼, E½NW¼SW¼NE¼, and W½NE¼SW¼NE¼.
Carey Dome Lookout Administrative Site.
T. 24 N., R. 4 E.,
Sec. 24, E¼NE¼SW¼SE¼ and W½NW¼SE¼SE¼.
Horse Mountain Administrative Site.
T. 21 N., R. 3 W.,
Sec. 26, S½SE¼SE¼SW¼.
Bear Creek Substitute Administrative Site.
T. 20 N., R. 3 W.,
Sec. 13, S½NE¼NE¼.
Huckleberry Campground.
T. 20 N., R. 2 E.,
Sec. 8, NW¼NW¼SW¼.
Hard Creek Administrative Site.
Corrected Description.
T. 21 N., R. 2 E.,
Sec. 11, SE¼NE¼NE¼NE¼ and NE¼SE¼NE¼NE¼;
Sec. 12, N½SW¼,NW¼NW¼.
Poverty Flat Recreation Area and Salmon Spawning Ground (formerly Poverty Flat Administrative Site and Poverty Flat Recreation Area).
T. 17 N., R. 6 E.,
Sec. 2, SW¼SW¼SW¼;
Sec. 11, W½W½NW¼, NW¼SW¼, and N½N½SW¼SW¼.
Buckhorn Bar Recreation Area.
T. 19 N., R. 6 E.,
Sec. 32, E½SE¼SE¼;
Sec. 33, NW¼SW¼SW¼ and W½NW¼SW¼.
Granite Mountain Administrative Site.
T. 20 N., R. 2 E.,
Sec. 3, S½SW¼SW¼SW¼;
Sec. 10, N½NW¼NW¼NW¼.
Hershey Point Administrative Site.
T. 23 N., R. 3 E.,
Sec. 20, S½S½SW¼SW¼.
Indian Mountain Administrative Site.
T. 15 N., R. 2 E.,
Sec. 32, NW¼NW¼NW¼.
Lick Creek Lookout Administrative Site.
T. 20 N., R. 1 W.,
Sec. 6, W½NW¼ of lot 2 and E½NE¼ of lot 3.
Miners Peak Administrative Site.
T. 18 N., R. 6 E.,
Sec. 30, NE¼ of lot 3 and NW¼NE¼SW¼.
Pollock Lookout Administrative Site.
T. 21 N., R. 1 W.,
Sec. 1, NW¼SW¼NW¼.
Smith Mountain Administrative Site.
T. 21 N., R. 2 W.,
Sec. 28, NW¼NE¼NE¼.
Sturgill Lookout Administrative Site.
T. 15 N., R. 5 W.,
Sec. 21, W½W½NE¼SE¼.
Williams Peak Administrative Site.
Corrected Description.
T. 19 N., R. 6 E.,
Sec. 1, lots 1 and 2 by metes and bounds.
Kinney Point Recreation Area.
T. 21 N., R. 3 W.,
Sec. 11, SW¼SE¼.

To be continued for 40 years:

Krassel Administrative Site.
T. 19 N., R. 6 E.,
Sec. 21, W½W½NE¼, E½NW¼, N½NE¼SW¼, and NW¼NW¼SE¼.

The areas described aggregate 1,317.07 acres in Adams, Idaho, Valley, and Washington Counties.

The withdrawal is essential for protection of capital improvements on the recreational and administrative sites. The withdrawal closed the land to surface entry and mining, but not to mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposal withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for

consideration by the Secretary of the Interior, the President, and Congress, who will determined whether or not the withdrawal will be continued; and if so, for how long. The final determination of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: May 10, 1990.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 90–11484 Filed 5–16–90; 8:45 am]

BILLING CODE 4310–66–M

[ID–943–90–4214–11; IDI–010804, et al.]

Proposed Continuation of Withdrawals; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that the withdrawals of 781.28 acres in the Payette and Sawtooth National Forests continue for the periods of years shown below. The lands are now being used for six recreation sites and six administrative sites. The lands would remain closed to surface entry and mining, but have been and would remain open to mineral leasing.

DATES: Comments should be received within 90 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208–334–1720.

The U.S. Forest Service proposes that the existing land withdrawals made by public land orders and secretarial orders as shown below be continued for the period of years shown below pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The lands are described as follows:

Boise Meridian

To be continued for 5 years:

IDI–14964 (SO 11/11/08).

Rush Creek Administrative Site.
T 16 N., R. 3 W.,
Sec. 27, W½SW¼SW¼;
Sec. 27, SE¼NE¼SE¼ and E½SE¼SE¼.

To be continued for 20 years:

IDI–14912 (SO 12/7/07).

Lake Fork Administrative Site Addition.
T. 18 N., R. 4 E.,
Sec. 3, NE¼SW¼SE¼ and N½SE¼SW¼ SE¼.

IDI–27308 (SO 4/9/08).

Thorn Creek Adminstrative Site.
T. 19 N., R. 2 E.,
Secs. 23 and 24, by metes and bounds.

To be continued for 30 years:

IDI–010804 (PLO 2712)

Harrington Fork Picnic Area.
T. 13 S., R. 19 E.,
Sec. 17, NE¼NW¼ (that portion lying east of the centerline of the Rock Creek Road).
Penstemon Picnic Area.
T. 14 S., R. 18 E.,
Sec. 24, SW¼SW¼SE¼NE¼ and W½ NW¼NE¼SE¼.
Pettit Campground.
T. 14 S., R. 18 E.,
Sec. 25, E½SW¼NE¼NE¼, SE¼NE¼ NE¼ (that portion lying west of the centerline of the Rock Creek Road), and NE¼SE¼NE¼.
(A portion of the above lands were originally withdrawn as the Rock Creek Administrative Site, listed below.
Rock Creek Administrative Site
T. 14 S., R. 18 E.,
Sec. 25, NW¼NW¼NE¼NE¼.
Magic Mountain Recreation Area.
T. 14 S., R. 18 E.,
Sec. 24, E½SW¼, W½SE¼, SE¼SE¼;
Sec. 25, NE¼NE¼NE¼, NE¼NW¼NE¼ NE¼, SE¼NE¼NE¼ (that portion lying east of the Rock Creek Road), W½NW¼ NE¼, and NE¼NW¼.
T. 14 S., R. 19 E.,
Sec. 19, lot 4 and SE¼SW¼;
Sec. 30, N½ of lot 1.
(A portion of the above lands were originally withdrawn as the Rock Creek Administrative Site, listed above.)
Bear Gulch Picnic Area.
T. 14 S., R. 18 E.,
Sec. 7, E½NE¼NE¼ and E½SW¼NE¼.
Porcupine Spring Campground and Picnic Area.
T. 14 S., R. 19 E.,
Sec. 31, N½SE¼NE¼ and N½S½SE¼ NE¼;
Sec. 32, N½SW¼NW¼.

IDI–14912 (SO 12/7/07).

Garfield Administrative Site.
T. 3 N., R. 21 E.,
Secs. 2, 3, 10, and 11, by metes and bounds.

To be continued for 40 years:

IDI–1172 (PLO 4444)

Krassel Administrative Site.
T. 19 N., R. 6 E.,
Sec. 21, E½SW¼NE¼ and NE¼NW¼ SE¼.

The areas described aggregate 781.28 acres in Adams, Blaine, Cassia, Twin Falls, Valley, and Washington Counties.

The withdrawals are essential for protection of substantial capital improvements on the sites and future development of improvements. The withdrawals closed the land to surface entry and mining, but not to mineral leasing. No changes in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued; if so, for how long. The final determination of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: May 9, 1990.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 90–11508 Filed 5–16–90; 8:45 am]

BILLING CODE 4310–GG–M

[ID–943–90–4214–11; IDI–010061, et al]

Proposed Continuation of Withdrawals; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that the withdrawal of 323.00 acres of National Forest land for recreation and administrative sites continue for the period of years shown below. The lands are still being used for recreation and administrative sites. The lands would remain closed to surface entry and mining, but have been and would remain open to mineral leasing.

DATES: Comments should be received within 90 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 308–334–1720.

The U.S. Forest Service proposes that the existing land withdrawals made by Public Land Order Nos. 2575, 2882, 3090, 3225, 3355, 4552, and 4743 be continued for the period of years shown below pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The lands are described as follows:

Boise Meridian

To be continued for 20 years:

IDI–1960 (PLO 4552)

Salzer Bar Recreation Area.

T. 26 N., R. 20 E.,
Sec. 36, by metes and bounds.

To be continued for 30 years:

IDI–010061 (PLO 3090)

Big Flat Creek Public Service Site.
T. 22 N., R. 7 E., unsurveyed,
Sec. 24, by metes and bounds.

IDI–011736 (PLO 2575)

Indian Recreation Area.
Corrected Description.
T. 19 N., R. 6 E.,
Sec. 3, SW¼SW¼NW¼, N½NW¼NW¼SW¼, and E½SW¼NW¼.
Paddy Flat Administrative Site.
T. 17 N., R. 4 E.,
Sec. 27, W½W½SE¼SE¼ and SE¼SE¼SE¼.
Mann Creek Administrative Site.
T. 13 N., R. 5 W.,
Sec. 33, W½SW¼SW¼SE¼, SW¼NW¼SW¼SE¼, E½NE¼SE¼SW¼, and E½SE¼SE¼SW¼.

IDI–013189 (PLO 2882)

Brownlee Forest Camp (formerly Brownlee Forest Camp Administrative Site).
T. 16 N., R. 4 W.,
Sec. 3, by metes and bounds;
Sec. 10, NE¼NW¼.

IDI–014119 (PLO 3225)

Chinook Campground Recreation Area.
T. 22 N., R. 5 E.,
Sec. 26, SE¼NE¼SE¼SW¼, E½SW¼NE¼SE¼SW¼, and N½NE¼SE¼SW¼.

IDI–014120 (PLO 3355)

Steelhead Flats Public Service Site.
T. 18 N., R. 6 E.,
Sec.27, by metes and bounds.
Kinney Point Overlook and Picnic Area.
T. 21 N., R. 3 W.,
Sec. 11, SW¼NW¼SE¼SE¼ and NW¼SW¼SE¼SE¼.
Sheep Rock Overlook and Picnic Area.
T. 21 N., R. 3 W.,
Sec. 2, S½NE¼ of lot 5, N½SE¼ of lot 5, S½NW¼ of lot 6, N½SW¼ of lot 6, and SE¼ of lot 6.

IDI–1960 (PLO 4552)

Warren Landing Field.
T. 22 N., R. 6 E.,
Sec. 2, by metes and bounds.

IDI–2969 (PLO 4743)

Evergreen Campground (formerly Evergreen Campground Enlargement).
T. 18 N., R. 1 E.,
Sec. 18, E½ of lot 4.

To be continued for 100 years:

IDI–011736 (PLO 2575)

Camp Creek Seed Production Area.
T. 18 N., R. 6 E.,
Sec. 15, SE¼SE¼SW¼SE¼, S½NE¼SE¼SE¼, and S½SE¼SE¼;
Sec. 22, N½N½NE¼NE¼.
Circle C Seed Production Area.
T. 20 N., R. 2 E.,
Sec. 19, lots 2 and 3 by metes and bounds.

The areas described aggregate 323.00 acres in Adams, Idaho, Lemhi, Valley, and Washington Counties.

The withdrawals are essential for protection of capital improvements on the recreation and administrative sites. The withdrawals closed the lands to surface entry and mining, but not to mineral leasing. No change in the segregative effect or use of the lands is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued; and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: May 9, 1990.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 90–11507 Filed 5–16–90; 8:45 am]

BILLING CODE 4310–GG–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31667]

Exemption; Missouri Pacific Railroad Co.—Trackage Rights Renewal Exemption

Dallas Area Rapid Transit (DART) has agreed to grant exclusive local and non-exclusive overhead trackage rights to Missouri Pacific Railroad Company (MP) over a 39.6-mile line of railroad extending between milepost 611.9, at Purina Junction in Fort Worth, TX, and milepost 646.1, at North Tower in Dallas, TX, including: (1) The Dallas Right-of-Way District and both legs of the wye, yard, and industry tracks at Irving, TX, and extending approximately 5 miles to the Delta Steel Building Company and the Highland industrial area; (2) Dorothy Spur connecting with the Great Southwest Railroad, Inc.; and (3) track between Purina Junction and Tower 55 in Fort Worth and that segment between Dalwor Junction and 6th Street Junction.

MP's predecessor-in-interest had conveyed to the Cities of Dallas and Fort Worth its interest in an easement for rail freight operations over the line, and the Cities had conveyed back to the predecessor certain rail operating rights. MP now has agreed to assign certain of its interests to DART, and the Cities and DART have agreed to an arrangement that permits MP to continue operations over the line, subject to certain existing trackage rights of Burlington Northern Railroad Company. The involved trackage rights will be effective on or as soon as possible after May 31, 1990.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Joseph D. Anthofer, 1416 Dodge Street, Omaha, NE 68179.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: May 11, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90–11453 Filed 5–16–90; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–3 (Sub-No. 92X)]

Exemption; Missouri Pacific Railroad Co.—Abandonment Exemption—In Ellis County, TX

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon its 10.50-mile line of railroad between milepost 802.6, near Nena, and milepost 813.1, near Italy, Ellis County, TX.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected

under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on June 16, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by May 29, 1990.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by June 6, 1990, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Joseph D. Anthofer, Missouri Pacific Railroad Company, Room 830, 1416 Dodge Street, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by May 22, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: May 11, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-11455 Filed 5-16-90; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[Docket No. AB-290 (Sub-No. 83X)]

Exemption; Norfolk and Western Railway Co.—Discontinuance Exemption in Mercer County, WV

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments and Discontinuances* to discontinue service over its 31.8-mile line of railroad in Mercer County, WV: (1) Between milepost B-0.0, at Bluestone, and milepose B-17.6, at Weyanoke; (2) between milepost BA-16.7, at Giatto, and milepost BA-22.2, at Arista; (3) between milepost BE-8.6, at Montcalm, and milepost BE-13.9, at McComas; (4) between milepost BB-17.8, at Big Branch Junction, and milepost BB-19.8, at Widemouth; and (5) between milepost BW-20.1, at Wenonah Spur Junction, and milepost BW-21.5, at Wenonah.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on June 16, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by May 29, 1990. Petitions for reconsideration must be filed by June 6, 1990, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Richard W. Kienle, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this discontinuance.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by May 22, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental conditions will be imposed, where appropriate, in a subsequent decision.

Decided: May 11, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-11456 Filed 5-16-90; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-No. 85X)]

Norfolk and Western Railway Co.; Discontinuance Exemption—

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and*

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

Discontinuances to discontinue service over its 33.1-mile line of railroad between milepost WB–0.0, at Wayne, and milepost WB–8.1, at East Lynn, and between milepost N–543.0, at Wayne, and milepost N–568.0, at Kenova, Wayne County, WV.

Applicant has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on June 16, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by May 29, 1990. Petitions for reconsideration must be filed by June 6, 1990, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Richard W. Kienle, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987).

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this discontinuance.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by May 22, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental conditions will be imposed, where appropriate, in a subsequent decision.

Decided: May 11, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90–11457 Filed 5–16–90; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–33 (Sub-No. 66X)]

Union Pacific Railroad Co.; Abandonment Exemption

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exemption Abandonments* to abandon its 0.43-mile line of railroad between milepost 48.63 and the end of the line at milepost 49.06, near Norfolk, Madison County, NE.

Applicant has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agecny has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on June 16, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by May 29, 1990.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by June 6, 1990, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Joseph D. Anthofer, Union Pacific Railroad Company, Room 830, 1416 Dodge Street, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by May 22, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: May 11, 1990.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).*

[3] The Commission will accept a late-filed trial use statement so long as it retains jurisdiction to do so.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-11458 Filed 5-16-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 90-22; Exemption Application No. D-7938 et al.]

Grant of Individual Exemptions; BT Securities Corp., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

BT Securities Corporation (BT Securities), Located in New York, New York

[Prohibited Transaction Exemption 90-22; Exemption Application No. D-7938]

Exemption

I. Transactions

A. Effective December 29, 1988, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[1]

B. Effective December 29, 1988, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[2] For purposes of this paragraph B (1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect adquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1) (i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

C. Effective December 29, 1988, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code,

[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3-21(c).

[2] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

shall not apply to transactions in connection with the servicing, management and operation of a trust; provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[3]

Nothwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective December 29, 1988, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps, Inc. (D&P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not a affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents nor more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) Such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. *Certificate* means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by and is an obligation of a trust;

with respect to certificates defined in (1) and (2) for which BT Securities or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. *Trust* means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property, (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

[3] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

(e) *Guaranteed governmental mortgage pool certificates*, as defined in 29 CFR 2510.3–101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) Property which had secured any of the obligations described in section B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in section B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D & P or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. *Underwriter* means:

(1) BT Securities;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with BT Securities; or

(3) Any member of an underwriting syndicate or selling group of which BT Securities or a person described in (2) is a manager or co-manager with respect to the certificates.

D. *Sponsor* means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. *Master Servicer* means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. *Subservicer* means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. *Servicer* means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. *Trustee* means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. *Insurer* means the insurer or guarantor of, or provider of other credit support for, a trust.

Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. *Obligor* means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. *Excluded Plan* means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. *Restricted Group* with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. *Affiliate* of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. *Sale* includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. *Forward delivery commitment* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificate from, the other party).

R. *Reasonable compensation* has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. *Qualified Administrative Fee* means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligtions;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. *Qualified Equipment Note Secured By A Lease* means an equipment note:

(a) Which is secured by equipment which is leased;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. *Qualified Motor Vehicle Lease* means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at least as proctective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. *Pooling and Servicing Agreement* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 20, 1990 at 55 FR 5922.

EFFECTIVE DATE: This exemption is effective as of December 29, 1988.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

J.P. Morgan Securities, Inc. (JPMS), Located in New York, New York

[Prohibited Transaction Exemption 90–23; Exemption Application No. D–7989]

Exemption

I. Transactions

A. Effective December 29, 1988, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing and interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[4]

B. Effective December 29, 1988, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discrentionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[5] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1) (i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan purusant to subsection I.B. (1) or (2).

C. Effective December 29, 1988, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust; provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[6]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective December 29, 1988, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a

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[4] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[5] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[6] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H), or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating a the time of such acquisition that is in one of the the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps, Inc. (D & P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority of renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) Such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a respresentation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. "Certificate" means:

(1) a certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by and is an obligation of a trust;

with respect to certificates defined in (1) and (2) for which JPMS or any of its affiliates is either (1) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. *Trust* means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property, (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) *Guaranteed governmental mortgage pool certificates*, as defined in 29 CFR 2510.3–101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) Property which had secured any of the obligations described in section B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in section B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) Certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D & P or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) Certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. *Underwriter* means:

D. (1) JPMS;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with JPMS; or

(3) Any member of an underwriting syndicate or selling group of which JPMS or a person described in (2) is a manager or co-manager with respect to the certificates.

D. *Sponsor* means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. *Master Servicer* means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. *Subservicer* means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. *Servicer* means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. *Trustee* means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. *Insurer* means the insurer or guarantor of, or provider of other credit support for, a trust.

Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. *Obligor* means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. *Excluded Plan* means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. *Restricted Group* with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any olbigor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. *Affiliate* of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. *Sales* includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. *Forward delivery commitment* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificate from, the other party).

R. *Reasonable compensation* has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. *Qualified Administrative Fee* means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. *Qualified Equipment Note Secured By A Lease* means an equipment note:

(a) Which is secured by equipment which is leased;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have it the equipment note were secured only by the equipment and not the lease.

U. *Qualified Motor Vehicle Lease* means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. *Pooling and Servicing Agreement* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 20, 1990 at 55 FR 5906.

EFFECTIVE DATE: This exemption is effective as of December 29, 1988.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Morgan Stanley & Co., Incorporated (Morgan), Located in New York, New York

[Prohibited Transaction Exemption 90-24; Exemption Application No. D-8019]

Proposed Exemption

I. Transaction

A. Effective December 29, 1988, the restrictions of section 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[7]

B. Effective December 29, 1988, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[8] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1) (i), (iii), and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

C. Effective December 29, 1988, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust; provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[9]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective December 29, 1988, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D & P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affilitate of any member of the Restricted Group. However, the trustee shall not be

[7] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3-21(c).

[8] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[9] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the service pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) Such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. "Certificate" means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by and is an obligation of a trust;

with respect to certificates defined in (1) and (2) for which Morgan or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. *Trust* means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property, (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) *Guaranteed governmental mortgage pool certificates,* as defined in 29 CFR 2510.3–101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) Property which had secured any of the obligations described in section B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in section B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D & P or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (ii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this examption.

C. *Underwriter* means:

(1) Morgan;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Morgan; or

(3) Any member of an underwriting syndicate or selling group of which Morgan or a person described in (2) is a manager or co-manager with respect to the certificates.

D. *Sponsor* means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. *Master Servicer* means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. *Subservicer* means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. *Servicer* means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. *Trustee* means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. *Insurer* means the insurer or guarantor of, or provider of other credit support for, a trust.

Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. *Obligor* means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. *Excluded Plan* means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. *Restricted Group* with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. *Affiliate* of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. *Sale* includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. *Forward delivery commitment* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificate from, the other party).

R. *Reasonable compensation* has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. *Qualified Administrative Fee* means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. *Qualified Equipment Note Secured By A Lease* means an equipment note:

(a) Which is secured by equipment which is leased;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. *Qualified Motor Vehicle Lease* means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. *Pooling and Servicing Agreement* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 21, 1990 at 55 FR 6090.

EFFECTIVE DATE: This exemption will be effective for transactions occurring on or after December 29, 1988.

FOR FURTHER INFORMATION CONTACT: Mrs. B.S. Scott of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is subject to the exemption.

Signed at Washington, DC, this 11th day of May, 1990.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 90-11398 Filed 5-16-90; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 90-32]

NASA Advisory Council (NAC), Space Station Science and Applications Advisory Subcommittee (SSSAAS); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Station Science and Applications Advisory Subcommittee.

DATES: June 11, 1990, 8:30 a.m. to 5:30 p.m.; June 12, 1990; 8:30 a.m. to 10:30 p.m.; June 13, 1990, 8:30 a.m. to 10:30 p.m.; June 14, 1990, 8:30 a.m. to 5:30 p.m.; and June 15, 1990, 10 a.m. to 12:30 p.m.

ADDRESSES: National Academy of Sciences, Woods Hole Study Center, 314 Quissett Avenue, Woods Hole, MA 02543.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. Rhome, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1425).

SUPPLEMENTARY INFORMATION: The Space Station Science and Applications Advisory Subcommittee reports to the Space Science and Applications Advisory Committee (SSAAC) and consults with and advises the NASA Office of Space Science and Applications (OSSA) on the new capabilities to be made available by the Space Station program and how these may be most effectively utilized. It also advises the NASA Space Station Freedom Office on how the Space Station program may most effectively support potential science and applications users. The Subcommittee will meet to discuss the Space Station Freedom Program Status, Space Station Utilization Planning, Space Science Research and Experiment Physical Accommodations, Science Experiment Interaction, and Science Operations Concepts. The group is chaired by Dr. Robert J. Bayuzick and is composed of 20 members. The meeting will be open to the public up to the seating capacity of the room (approximately 75 people including the members of the Subcommittee). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Type of meeting: Open.

Agenda:

Monday, June 11

8:30 a.m.—General Workshop Orientation and 1990 Program Updates.
1:30 p.m.—Space Station Utilization Planning.
3:15 p.m.—Splinter Group Organizing Sessions.
5:30 p.m.—Adjourn.

Tuesday, June 12

8:30 a.m.—Concurrent Sessions: Life Sciences and Materials, Fluid and Combustion Sciences; and Observing and Sensing Sciences.
12 noon—Break.
7 p.m.—Reconvene: Splinter Group Sessions—Life Sciences; Materials, Fluid and Combustion Sciences; and Observing and Sensing Sciences.
10:30 p.m.—Adjourn.

Wednesday, June 13

8:30 a.m.—Space Station Freedom (SSF) On-Board Data Systems.
10 a.m.—The Station to Ground Link.
11 a.m.—Ground Data Handling and Distribution.
1:30 p.m.—Space Station Procedure for Protection of Intellectual Property and Proprietary Data.
2:30 p.m.—Splinter Group Sessions.
7 p.m.—Payload Operations and Integration Center (POIC) Status and Operations Approach.
7:30 p.m.—Integrated Science Operations Center (ISOC) Status and Operations Approach.
10:30 p.m.—Adjourn.

Thursday, June 14

8:30 a.m.—The Role of the Principal Investigator in the Spacelab Era.
9:15 a.m.—Characterization of SSF Operations.
9:30 a.m.—Principal Investigators and Investigator Working Group (IWG).
11:30 a.m.—Office of Space Science and Applications (OSSA) Concept Options for SSF Investigator Working Group.
1:30 p.m.—Splinter Group Sessions.
3:30 p.m.—Investigator Working Groups.
5:30 p.m.—Adjourn.

Friday, June 15

10 a.m.—Workshop Discussion, Conclusions and Recommendations.
12:30 p.m.—Adjourn.

Dated: May 10, 1990.

John W. Gaff,

Advisory Committee Management Officer, National Areonautics and Space Administration.

[FR Doc. 90-11521 Filed 5-16-90; 8:45 am]

BILLING CODE 7510-01-M

[Notice 90-31]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee.

DATES: May 30, 1990, 8:30 a.m. to 5:30 p.m.; May 31, 1990, 8:30 a.m. to 5:30 p.m.; and June 1, 1990, 8:30 a.m. to 3 p.m.

ADDRESSES: NASA Headquarters, room 226A, 600 Independence Avenue SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph K. Alexander, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1430).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Committee will meet to discuss the NASA Program Status, Fiscal Year 1991-92 appropriations outlook, manpower and funding trends, and new start presentations. The Committee is chaired by Dr. Berrien Moore and is composed of 27 members. The meeting will be closed on Thursday, May 31, 1990, at 4:45 p.m. to discuss and evaluate qualifications of candidates being considered for membership on the Committee. Such discussions would invade the privacy of the individuals involved. Since this session will be concerned with matters listed in 5 U.S.C.

552(c)(6), it has been determined that the meeting will be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the capacity of the room (approximately 45 including Committee members).

Type of meeting: Open—except for a closed session as noted in the agenda below.

Agenda: Wednesday, May 30.

8:30 a.m.—Committee Business.

8:45 a.m.—Office of Space Science and Applications (OSSA) Program Status and Fiscal Year (FY) 1992 Outlook.

10:15 a.m.—Committee Discussion.

11 a.m.—FY 1991–92 Appropriations Outlook.

11:45 a.m.—Committee Discussion.

1:30 p.m.—Panel Discussion of Research Base Issues.

3:15 p.m.—Manpower Trends and Research Base Implications.

4:15 p.m.—Committee Discussion.

5:30 p.m.—Adjourn.

Thursday, May 31.

8:30 a.m.—Committee Business.

8:45 a.m.—New Start Presentations: Orbiting Solar Laboratory, Lunar Orbiter, Lifesat, Astromag, Cosmic Dust Collection Facility, and Stratospheric Observatory for Infrared Astronomy (SOFIA).

1:30 p.m.—Discipline Subcommittee Reports.

3:45 p.m.—Committee Discussion.

4:45 p.m.—Closed Session on Committee Membership.

5:30 p.m.—Adjourn.

Friday, June 1.

8:30 a.m.—Committee Business.

8:45 a.m.—Writing Group Work Session.

11 a.m.—Discussion with OSSA Associate Administrator.

1:15 p.m.—Committee Work Session.

3 p.m.—Adjourn.

Dated: May 10, 1990.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 90–11520 Filed 5–16–90; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMISSION ON CHILDREN

Background

The National Commission on Children was created by Public Law 100–203, December 22, 1987 as an amendment to the Social Security Act. The purpose of the law is to establish a nonpartisan Commission directed to study the problems of children in the areas of health, education, social services, income security, and tax policy.

The powers of the Commission are vested in Commissioners consisting of 36 voting members as follows:

1. Twelve members appointed by the President
2. Twelve members appointed by the Speaker of the House of Representatives
3. Twelve members appointed by the President pro tempore of the Senate.

This notice announces a Roundtable of the National Commission on Children to be held in New Haven, CT.

Time: 1:00 p.m.–3:30 p.m., Monday, May 21, 1990

Place: Yale School of Organization and Management, 135 Prospect Street, Room A–8774, New Haven, Connecticut

Status: 1:00 p.m.–3:30 p.m., Open to the public

Agenda: Roundtable on "Children In Between: The Middle Childhood Years"

Contact: Jeannine Atalay, (202) 254–3800

Dated: May 15, 1990.

John D. Rockefeller IV,

Chairman, National Commission on Children.

[FR Doc. 90–11635 Filed 5–16–90; 8:45 am]

BILLING CODE 6820-37-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Catherine Wolhowe, Advisory Committee Management Officer, (Alternate) National Endowment for the Humanities, Washington, DC 20506; telephone 202/786–0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commerical or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

1. *Date:* June 1, 1990.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review Texts-Publication Subvention applications in Art, Music, Drama and Philosophy, submitted to the Division of Research, for projects beginning after October 1, 1990.

2. *Date:* June 1, 1990.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review Biennial applications submitted by the state humanities councils to the Division of State Programs, for projects beginning after November 1, 1990.

3. *Date:* June 4, 1990.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review Biennial applications submitted by state humanities councils to the Division of State Programs, for projects beginning after November 1, 1990.

4. *Date:* June 8, 1990.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review Biennial applications submitted by state humanities councils to the Division of State, for projects beginning after November 1990.

5. *Date:* June 11, 1990.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review Biennial applications submitted by state humanities councils to the Division of State Programs, for projects beginning after November 1, 1990.

6. *Date:* June 11–12, 1990.
Time: 8:30 a.m. to 5 p.m.
Room: M–14.
Program: This meeting will review applications for National Heritage Preservation Program, submitted to the Office of Preservation, for projects beginning after October 1, 1990.

7. *Date:* June 12, 1990.

Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Elementary and Secondary Education, submitted to the Division of Education, for projects beginning after December 1, 1990.

8. *Date:* June 14, 1990.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Elementary and Secondary Education, submitted to the Division of Education, for projects beginning after December 1, 1990.

9. *Date:* June 14–15, 1990.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for National Heritage Preservation Program, submitted to the Office of Preservation Program, for projects beginning after October 1, 1990.

10. *Date:* June 18, 1990.
Time: 9:00 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Elementary and Secondary Education, submitted to the Division of Education, for projects beginning after December 1, 1990.

11. *Date:* June 18–19, 1990.
Time: 8:30 a.m. to 5 p.m.
Room: 714.
Program: This meeting will review applications for National Heritage Preservation Program, submitted to the Office of Preservation Program, for projects beginning after October 1, 1990.

12. *Date:* June 19, 1990.
Time: 8:30 a.m. to 6 p.m.
Room: 415.
Program: This meeting will review applications for Undergraduate Education Program, submitted to the Office of Challenge Grants, for projects beginning after December 1, 1990.

13. *Date:* June 21, 1990.
Time: 9 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review applications for Elementary and Secondary Education Program, submitted to the Division of Education, for projects beginning after December 1, 1990.

14. *Date:* June 21, 1990.
Time: 8:30 a.m. to 6 p.m.
Room: 415.
Program: This meeting will review applications on Museums and Historical Organizations, submitted to the Office of Challenge Grants, for projects beginning after December 1, 1990.

Catherine Wolhowe,
Advisory Committee, Management Officer (Alternative).

[FR Doc. 90–11408 Filed 5–16–90; 8:45]
BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Meeting

Name: Task Force on Persons with Disabilities.
Place: National Science Foundation, 1800 G Street, NW., Washington, DC 20550.
Date: June 6, 1990.
Time/room: 9 a.m.–5 p.m., room 540.
Type of meeting: Open.
Contact: Brenda M. Brush, Executive Secretary of the Task Force, National Science Foundation, room 546. Telephone Number: 202–357–5012; TDD: 357–9867.
Purpose of meeting: A working session to discuss first draft recommendations, by outside expert members of the Task Force, for Foundation action to catalyze removal of barriers to participation in science and engineering careers for persons with disabilities.
Minutes: May be obtained from the Executive Secretary at the above address.
Agenda: Recommendations for Foundation actions in three areas will be discussed: overcoming obstacles to preparing for and pursuing science and engineering careers in the (1) Pre-college, (2) undergraduate through postgraduate, and (3) academic and other careers in science and engineering among the various types of disabilities as they impact progress through the pipeline. In addition, the task force will consider what the Foundation's overall strategy should be in acomplishing its objectives.
Accommodation: If you plan to attend the meeting and require any kind of accommodation, please notify the Executive Secretary.

Dated: May 14, 1990.
M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 90–11523 Filed 5–16–90; 8:45 am]
BILLING CODE 7555–01–M

Advisory Panel for Research in Teaching and Learning; Meeting

The National Science Foundation announces the following meeting:
Name: Advisory Panel for Research in Teaching and Learning.
Date and time: June 07 and 08, 1990, from 8 a.m. to 5 p.m. on Thrusday and from 8 a.m. to 2:30 p.m. on Friday.
Place: State Plaza Hotel, 2117 E Street, NW., Ambassador room, Washington, DC 20037.
Type of meeting: Closed.
Contact person: Beverly C. Hunter, Program Director, Research in Teaching and Learning, room 635. Phone: (202) 357–7071.
Purpose of meeting: To provide advice and recommendations concerning support for research.
Agenda: To review and evaluate research proposals as part of the selection process for 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.

Dated: May 14, 1990.
M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 90–11524 Filed 5–16–90; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–312; License No. DPR–54]

Sacramento Municipal Utility District, Rancho Seco Nuclear Generating Station; Confirmatory Order Modifying License (Effective Immediately)

I

Sacramento Municipal Utility District (SMUD, the licensee) is the holder of Facility Operating License No. DPR–54 issued by the Nuclear Regulatory Commission (the NRC) pursuant to 10 CFR part 50 on August 16, 1974. The license authorizes the operation of the Rancho Seco Nuclear Generating Station (the facility) at steady-state power levels not in excess of 2772 megawatts thermal. The facility consists of a pressurized water reactor (PWR) and supporting systems located at the licensee's site in Sacramento County, California.

II

On June 6, 1989, a public vote on an advisory ballot measure concerning the continued operation of the Rancho Seco Nuclear Generating Station by SMUD was held. The result of that vote was 46.6 percent in favor of continued operation of Rancho Seco and 53.4 percent against continued operation. Pursuant to the resolution of the SMUD Board of Directors to abide by this public decision, Rancho Seco ceased power operations on June 7, 1989. Defueling activities began on November 28, 1989, and the movement of all fuel elements to the spent fuel pool was

completed on December 8, 1989. Since the vote, SMUD has been in the process of reducing its operating and support staff. Although SMUD has assured the NRC that it would ensure adequate staffing to conform to the requirements of its license for the shutdown condition, staffing is currently below that which would be needed to permit the plant to return to any mode of power operation. In addition, SMUD is proceeding with its plan to discontinue customary maintenance on equipment necessary to support operation other than that needed for the safe storage of fuel in the spent fuel pool.

III

The NRC has determined that the public health and safety require that the licensee not return fuel to the reactor vessel for the following reasons: (1) The reduction in the onsite support staff below that necessary for power operations, and (2) the absence of procedures for returning to an operational status systems and equipment that the licensee has decided to place in a preserved, inactive condition, including such systems as the reactor coolant system, reactor protection systems, and emergency power systems.

On November 29, 1989, the licensee submitted a letter in which it requested that a condition be placed in the license that prohibits the movement of new or spent fuel into the reactor building without prior NRC approval. At a meeting between the licensee and NRC staff on January 24, 1990, the licensee again stated its intent not to move any new or spent fuel into the reactor building. I find the licensee's commitment as set forth in its letter of November 29, 1989, and as stated by the licensee during the meeting of January 24, 1990, is acceptable and necessary and conclude that with this commitment, the plant's safety is reasonably assured.

In view of the foregoing, I have determined that the public health and safety require that the licensee's commitment not to move new or spent fuel into the reactor building without prior NRC approval, be confirmed by this Order. Pursuant to 10 CFR 2.204, I have also determined that the public health and safety require that this order be effective immediately. This Confirmatory Order in no way relieves the licensee of the terms and conditions of its operating license.

IV

Accordingly, pursuant to sections 103, 161b, and 161i of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR part 50, *it is hereby ordered*, effective immediately, That Facility Operating License No. DPR–54 is modified as follows: The licensee is prohibited from placing any nuclear fuel into the Rancho Seco reactor building without prior approval from the NRC.

V

Any person adversely affected by this Confirmatory Order may request a hearing within 20 days of its issuance. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Docketing and Service Section. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Regional Administrator, NRC Region V, at 1450 Maria Lane, suite 210, Walnut Creek, California 94596. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this order and shall address the criteria set forth in 10 CFR 2.714(a). A request for hearing shall not stay the immediate effectiveness of this Confirmatory Order.

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 2nd day of May, 1990.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 90–11506 Filed 5–16–90; 8:45 am]

BILLING CODE 7590–01–M

POSTAL SERVICE

Privacy Act of 1974; Computer Matching Program—Postal Service/Colorado Bureau of Investigation; System of Records

AGENCY: Postal Service.

ACTION: Notice of Computer Matching Program—United States Postal Service/Colorado Bureau of Investigation; and Notice of Records System change.

SUMMARY: The Postal Service plans to conduct a continuing matching program to identify any current or recently terminated postal employees living or working in Colorado who have been arrested by local or State law enforcement officials for violations which potentially relate to postal offenses or suitability for employment. The Colorado Bureau of Investigation (CBI) will act as the matching agency and will compare its CBI arrest and fugitive records against payroll records of postal employees who either live or work in Colorado.

This document also gives notice of the Postal Service's addition of a new routine use No. 26 to its Privacy Act System of Records USPS 050.020, Finance Records—Payroll System. The routine use will permit disclosure of limited payroll record information about current or recently terminated employees, to the Colorado Bureau of Investigation.

DATES: The addition of new routine use No. 26 to USPS 050.020, Finance Records—Payroll System, shall become effective without further notice on [insert date 30 days after publication in the **Federal Register**] unless comments are received on or before that date which would result in a contrary determination. The matching program to be conducted pursuant to routine use No. 26 will begin as stated in paragraph "e. Dates of the Matching Program" in the "Report of Computer Matching Program" section of this notice.

ADDRESSES: Comments may be mailed to USPS Records Officer, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 10670, Washington, DC 20260–5010, or delivered to room 10670 at the above address between 8:15 a.m. and 4:45 p.m. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m. Monday through Friday at this address.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, USPS Records Office, (202) 268–5161.

SUPPLEMENTARY INFORMATION: Published standards of conduct for Postal Service employees prohibit any employee from engaging in criminal, dishonest, or similar conduct prejudicial to the Postal Service. The Postal Service is proposing a new routine use for USPS 050.020, Finance Records—Payroll System, in connection with its plans to participate as the source agency in a computer match of current or recently terminated postal employees who either live or work in Colorado with CBI arrest and fugitive records, to investigate whether reported charges potentially relate to postal offenses or impact on an individual's suitability for employment. The match is planned on a continuing biannual basis.

Set forth below is the information required by OMB Bulletin No. 89–22, Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public, dated September 20, 1989.

Report of Computer Matching Program

a. *Participating Agencies:* United States Postal Service (USPS) and Colorado Bureau of Investigation (CBI).

b. *Purpose of the Match/Description:* The purpose of the match is to identify any current or recently terminated postal employees who have been arrested by local or State law enforcement officials for violations which potentially relate to postal offenses, e.g., possession of stolen property when said property was stolen from the United States mail or off-duty thefts that might indicate an employee's inclination towards internal thefts; and/or to determine whether reported charges represent potential postal or State violations that may impact on an individual's suitability for employment, e.g., carrying concealed weapons, sale or distribution of narcotics.

The United States Postal Service (USPS) will submit a file containing the names, social security numbers, and dates of birth of current or recently terminated postal employees who either live or work in Colorado, to the Colorado Bureau of Investigation (CBI). CBI will compare that data with its arrest and fugitive records and provide to the Postal Service the arrest history (date of arrest, arresting agency, violation and disposition) of each individual common to both files ("hits"). Postal Inspectors will review the match report in order to verify the identity of the postal employee with the person arrested and, if the alleged offense is a felony or relevant misdemeanor, will determine the disposition of the allegation upon which the arrest was based. In the event that the arrest has resulted in a conviction or that prosecution is still pending, an Inspector will determine the relevant facts from information furnished by the arresting agency. The Inspector will then prepare an investigative memorandum which will be sent to the individual employee's facility head and could result in administrative disciplinary action. A second possibility is that an employee may be found to be a fugitive wanted by a State or local agency. In that case the latter agency will be notified of the employee's whereabouts so that it, and not the Inspection Service, can effect the arrest. Investigative case files may be established, when necessary, within the parameters of Privacy Act system USPS 080.010, Inspection Requirements Investigative File System (last published in 54 FR 43675 of October 26, 1989).

This match is planned on a continuing basis and is expected to be performed twice each year.

c. *Authority for Conducting the Matching Program:* 39 U.S.C. 401, 404 (Postal Reorganization Act).

d. *Categories of Records and Individuals Covered:* Each match under this program will compare records extracted from the USPS payroll system file (USPS 050.020, Finance Records—Payroll System, most recently published in 54 FR 43667 of October 26, 1989, and modified by this notice with the addition of new routine use No. 26 which authorizes disclosure of this information).

e. *Dates of the Matching Program:* The matching program is expected to begin in June 1990 and to continue in effect for 18 months unless terminated earlier by either party, provided no comments are received which result in a contrary determination. Matching activity under this program will begin no sooner than 30 days after the last to occur of the following: (1) Publication of this notice; (2) transmittal of the matching agreement to Congress; or (3) report of the matching program to OMB and to Congress.

f. *Address for Receipt of Public Comments or Inquiries:* USPS Records Officer, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 10670, Washington, DC 20260–5010.

g. *Other Comments:* No adverse actions affecting any employee will be taken solely on the basis of a hit or the records provided in connection with this program.

System Modification To Add New Routine Use

On a continuing semi-annual basis, the United States Postal Service (USPS) will disclose a limited amount of information from the payroll records of postal employees who live or work in Colorado to the Colorado Bureau of Investigation (CBI), acting as the matching agency, for comparison with their CBI arrest and fugitive records. This information will be used to identify postal employees who hve been arrested by local or State law enforcement officials for violations which potentially relate to postal offenses, e.g., possession of stolen property when said property was stolen from the United States mail or off-duty thefts that might indicate an employee's inclination towards internal thefts, and/or to determine whether reported charges represent potential postal or State violations that impact on an individual's suitability for employment, e.g., carrying concealed weapons, sale or distribution of narcotics.

Disclosure for the above stated purpose is compatible with the Postal Service's personnel management responsibility for oversight of its employees' conduct, particularly with regard to the expectation that employees not engage in criminal or other conduct prejudicial to the Postal Service.

Accordingly, USPS 050.020, Finance Records—Payroll System, is modified to add a new routine use to allow this disclosure as follows:

USPS 050.020

System Name: Finance Records—Payroll System, 050.020.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES

* * * * *

26. Disclosure of information about current or recently terminated postal employees who live or work in Colorado may be made to the Colorado Bureau of Investigation under an approved computer matching program. Disclosure will be limited to only those data elements which the Postal Service considers necessary for identifying current or recently terminated employees who have been arrested for violations of law which relate to postal offenses and/or suitability for continued employment, or who are fugitives and for assisting State or local agents to apprehend fugitives.

* * * * *

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 90–11461 Filed 5–16–90; 8:45 am]

BILLING CODE 7710–12–M

PRESIDENTIAL COMMISSION ON CATASTROPHIC NUCLEAR ACCIDENTS

Meeting

The Presidential Commission on Catastrophic Nuclear Accidents, pursuant to its authority under subsection 170 (1), of Public Law 100–408, the Price-Anderson Amendments Act of 1988, will meet on June 5, 1990, through June 8, 1990, and on June 14 and 15 to discuss the preliminary draft of its report. The Commission was created to conduct a comprehensive study of

appropriate means of fully compensating victims of a catastrophic nuclear accident and to submit a final report to Congress no later than August 20, 1990.

The meeting on June 5 will be from 10 a.m.–5 p.m. and meetings on June 6 and 7 will be from 9 a.m. to 5 p.m. The June 8 meeting will be from 9 a.m. to 12 p.m. The Commission will meet on June 14 from 10 a.m. to 5 p.m. and on June 15 will be from 9 a.m. to 12 p.m. All sessions will be held at the Commission offices, 600 E St., NW., Washington, DC.

The public is permitted to attend all meetings and there will be time during each session for brief statements. Minutes of the Commission meetings and copies of the draft report will be available during the meetings at the Commission office.

For further information, contact Jerome Saltzman at 600 E St., NW., room 660, Washington, DC 20004, (202) 272–5695. Members of the public planning to attend the Commission meeting should contact Mr. Saltzman at (202) 272–5695 at least two days before the meeting dates.

Dated: May 14, 1990.

Jerome Saltzman,

Executive Director, Presidential Commission on Catastrophic Nuclear Accidents.

[FR Doc. 90–11519 Filed 5–16–90; 8:45 am]

BILLING CODE 6820–SP–M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

[RFP 03–90–ProPAC]

Examination of Winners and Losers Under Medicare's Prospective Payment System

Category: H (Expert and Consultant Services)

The Prospective Payment Assessment Commission (ProPAC) is seeking a contractor to examine why certain hospitals do well and others do poorly under Medicare's Prospective Payment System (PPS). Using case studies, the examination will focus on: (1) The specific strategies winning and losing hospitals use to maintain or improve their financial condition; (2) an identification of factors related to performance; (3) the role of PPS and its incentives in shaping hospital performance; (4) the broader environmental/community factors which influence hospital performance; and (5) the degree to which hospital performance is within a hospital's control. A single contractor is being sought to complete this project under a cost-plus-fixed-fee contract for a period of 16 months. The contractor selected will have demonstrated knowledge of PPS and its incentives, hospital operations and management, and the broad health care environment currently facing hospitals. The contractor will have experience in conducting case studies and in assessing hospital performance using a variety of indicators, including first hand observation of hospital operations. RFP 03–90–ProPAC will be issued on or about May 25, 1990. Interested sources must submit a written request for a copy of this RFP.

Jeannette A. Younes,

Executive Officer.

[FR Doc. 90–11413 Filed 5–16–90; 8:45 am]

BILLING CODE 6820–BW–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; City of Alexandria, VA, et al.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Alexandria, Virginia, Prince George's County, Maryland, and the District of Columbia.

FOR FURTHER INFORMATION CONTACT: Robert E. Gatz, Director, Office of Planning and Program Development, Federal Highway Administration, 31 Hopkins Plaza, Baltimore, Maryland 21201, Telephone: (301) 962–3742.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Maryland and Virginia Departments of Transportation and the District of Columbia Department of Public Works, will prepare an environmental impact statement (EIS) for a proposal to improve the Woodrow Wilson Bridge and the I–95 approach roadway network between Telegraph Road in Virginia, and Indian Head Highway in Maryland, a distance of approximately five miles. Improvements to the bridge and roadways are considered necessary to provide for the existing and projected traffic demand.

Alternatives under consideration include: (1) Taking no action (no build), (2) mass transit, (3) Transportation Systems Management (improving present systems) and (4) build alternatives based on upgrading the existing facility and construction on a new alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, state, and local agencies. The previously established scoping process will continue through the project. The Draft EIS will be available for public and agency review and comment. Following publication of the Draft EIS, a public hearing will be held. Public notice will be given of the time and place of the hearing.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and the EIS should be sent to the FHWA at the address provided above.

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities apply to this program.

Issued on: April 30, 1990.

Robert E. Gatz,

Director, Office of Planning and Program Development, Baltimore, Maryland.

[FR Doc. 90–11487 Filed 5–16–90; 8:45 am]

BILLING CODE 4910–22–M

Maritime Administration

[Docket No. R–111]

Essential Trade Routes

SUMMARY: This Notice reaffirms determinations of essentiality of the eight trade routes described in Docket R–111, dated May 7, 1987, published in the Federal Register of May 12, 1987 (52 FR 17879–17884), and promulgates a Revised Appendix 1.

FOR FURTHER INFORMATION CONTACT: Edmond J. Fitzgerald, Director, Office of Trade Analysis and Insurance, room 8117, 400 Seventh Street SW., Washington, DC 20590, Tel. (202) 366–2400.

Essentiality of the Eight Trade Routes

Pursuant to the authority granted in section 211 of the Merchant Marine Act, 1936, as amended, the Maritime Administrator hereby reaffirms determinations of essentiality of the eight trade routes described in Docket R–111, as published in the Federal Register of May 12, 1987 (52 FR 17879–17884), including a revised Appendix 1.

Revised Appendix 1

A detailed description of each area is set forth in the following revised Appendix 1:

Appendix 1

TR and general description	Trade routes,* Bureau of Census schedule R-based description **
Between the United States (the contiguous United States plus Alaska, Hawaii, U.S. Territories and Possessions) and:	
1—Europe and Mediterranean	United Kingdom of Great Britain and Northern Ireland (including England, Scotland, Wales, Northern Ireland, the Channel Islands, the Isles of Wight and Man, the Scilly Islands, the Hebrides Orkney and Shetland Islands), and Ireland (Eire). Greenland, Iceland, Sweden, Norway, Finland (including the Aland Islands) and Denmark (including the Island of Bornholm and Faroe Islands), Baltic coast of West Germany, Baltic coast of East Germany, Estonia, Latvia, Lithuania, Poland, and Baltic and European Arctic coasts of the U.S.S.R Netherlands and Belgium. Western and northern coasts of France fronting on the Bay of Biscay, Atlantic Ocean, and English Channel. North Sea coast of West Germany. Northern coast of Spain on the Bay of Biscay and the Atlantic, southern coast of Spain west of Gibraltar. Portugal. Mediterranean coast of France, Black Sea coast of U.S.S.R.; Azores; Mediterranean coast of Spain northeast of Gibraltar, including the Balearic Islands; Gibraltar, Malta and Gozo, Italy, Yugoslavia, Albania, Greece (including Crete, Rhodes, Dodecanese and Aegean Islands), Romania, Bulgaria, Turkey (in Europe and Asia), Cyprus, Syria, Lebanon, Israel (Mediterranean region), Morocco north of 35th parallel (Mediterranean region including region including Tangier, Ceuta, Tetuan, and Melilla), Algeria, Tunisia, Libya, and the north coast of Egypt fronting on the Mediterranean.
2—Far East	Thailand, Vietnam, Cambodia (Khmer Republic), Philippines, and Macao (Portuguese Territory), China (Mainland) ports south of the 30th parallel; Hong Kong (including Kowloon) and Republic of China (Taiwan). The Siberian and Eastern Province of the U.S.S.R. fronting on the Arctic Ocean, Bering Sea, Pacific Ocean, Sea of Okhotsk and the Sea of Japan; China (Mainland) ports above the 30th parallel and Manchuria (including Kwantung Peninsula and Lüshun (Port Arthur)); North Korea, Republic of Korea, Japan, and Marshall Islands.
3—East Coast of Central and South America (including Caribbean).	East coast of Guatemala; Belize, east coast of Honduras, east coast of Nicaragua, east coast of Costa Rica, north (Caribbean) coast of Panama, Bermuda, Bahamas, Cuba, Jamaica, Turks and Caicos Islands, Haiti, Dominican Republic, Barbados, Trinidad and Tobago, Netherlands Antilles (including Leeward and Windward Islands and Aruba), French West Indies (including Guadeloupe and Martinique), and northern coast of Colombia fronting on the Caribbean, Venezuela, French Guiana, Guyana, Suriname. Colombia Amazon Region, Brazil, Paraguay, Uruguay, Argentina, the Falkland Islands (including Sandwich Islands, South Georgia, South Orkneys and South Shetlands).
4—West Coast of Central and South America	East coast of Mexico. West coast of Colombia fronting on the Pacific; Ecuador, Peru, and Chile. West coast of Mexico, west coast of Guatemala; El Salvador, west coast of Honduras, west coast of Nicaragua, west coast of Costa Rica, south (Pacific) coast of Panama, islands in the Pacific eastward of longitude 120° West.
5—South and East Africa	St. Helena (including the Islands of St. Helena and Ascension), eastern region of Somalia; Kenya, Seychelles and Dependencies, Tanzania, Mauritius and Dependencies, Mozambique, Malagasy Republic (inlcuding Madagascar and Dependencies), Comoros, French Indian Ocean Areas (including Reunion and related island, and French Southern and Antarctic Lands), Republic of South Africa, and Namibia.
6—West Coast of Africa	Morocco south of 35th parallel. Canary Islands, Western Sahara, Equatorial Guinea (including Bioko), Mauritania, Republic of Cameroon, Senegal, Guinea, Sierra Leone, Côte d'Ivoire, Ghana, The Gambia, Togo, Nigeria, Gabon, Madeira Islands, Benin, Angola, Congo, Liberia, Zaire, and western Africa, n.e.c. (including Cape Verde Islands, Guinea-Bissau and São Tomé e Príncipe).
7—Australasia (including Australia and Pacific islands).	Australia (including Tasmania), Papua New Guinea, New Zealand (including Cook Islands, and Niue Islands), Western Samoa, southern Pacific Islands (including Christmas, Fanning, Ellice, Gilbert, Washington, and Southern Solomon Islands), French Pacific Islands (including New Caledonia, Society Islands, Makatea, and Marquesas Islands), Caroline Islands, and other South Pacific Islands westward of longitude 120° West n.e.c. (including Fiji, Nauru, and Tonga Islands).
8—Middle East and South Asia	Iran, Iraq, Israel (Red Sea area), Jordan (Aqaba), Kuwait, Saudi Arabia, Qatar, United Arab Emirtes, Yemen Arab Republic, People's Democratic Republic of Yemen, Oman, Bahrain, India, Pakisan, Bangladesh, Sri Lanka (Ceylon), burma, eastern coast of Egypt bordering on the Red Sea, Sudan, northern region of Somalia, Ethiopia, and Djibouti. Malaysia (including the mainland Malay states, Sarawak, and Sabah), Singapore, Indonesia (including Bali, Kalimantan, Irian Jaya, Sulawesi, Java, the Maluku, Timor, Sumatra), Brunei, and southern Asia n.e.c. (including the Maldive Islands).

* For further information see Bureau of the Census, U.S. Foreign Trade Statistics, Classifications and Cross Classifications, 1980, Section 15, Schedule R—Code Classification and Definitions of Foreign Trade Areas.

** The above list of countries merely designates the geographic scope of the trade area consolidation scheme. The ability of U.S.-flag carriers to participate in trade with any of these countries (i.e. North Korea, Vietnam, Cambodia) may in fact be restricted by other government regulations.

By Order of the Maritime Administrator.

Dated: May 14, 1990.

Joel C. Richard,

Assistant Secretary, Maritime Administration.

[FR Doc. 90–11475 Filed 5–16–90; 8:45 am]

BILLING CODE 9410–81–M

DEPARTMENT OF THE TREASURY

Customs Service

Public Meetings on Pre-Entry Classification Program

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of public meetings.

SUMMARY: The pre-entry classification program, effective since January 1989, enables importers to obtain advice on the classification of their merchandise prior to importation. It promotes voluntary compliance, uniformity, and accuracy with regard to processing merchandise. In an effort to expand participation of the trade in the program, Customs will conduct open meetings at various field locations to discuss all aspects of pre-entry classification.

DATES, LOCATIONS AND TIMES OF MEETINGS

Location	Date and time	Address
Seattle	May 22, 1990 1 p.m.–4 p.m.	Old Federal Building, 909 First Avenue, room 2135, Seattle, WA 98174.
San Francisco.	May 24, 1990 9 a.m.–12 noon.	Federal Building, 450 Golden Gate Avenue, room 2007, San Francisco, CA 94102.
Los Angeles.	May 25, 1990 1 p.m.–4 p.m.	Port Administration Building, 925 Harbor Plaza, Long Beach Board room, 6th Floor, Long Beach, CA 90802.
Boston	May 31, 1990 1 p.m.–4 p.m.	Tip O'Neill Building, First Floor Auditorium, 10 Causeway Street, Boston, MA 02222.
Houston	June 5, 1990 9 a.m.–12 noon.	World Trade Building, Rotunda, Ground Floor, 1520 Texas Street, Houston, TX 77002.
New Orleans.	June 6, 1990 1 p.m.–4 p.m.	U.S. Customs, room 223, 423 Canal Street, New Orleans, LA 70130.
Miami	June 8, 1990 9 a.m.–noon	Cargo Clearance Center, 6601 NW 25th Street, Miami, FL 33122.

FOR FURTHER INFORMATION CONTACT: Richard Dunkel, Quality Assurance Branch (202) 377–9239.

SUPPLEMENTARY INFORMATION: Effective January 1, 1989, the Customs Service instituted, on a limited test basis, the Pre-Entry ("line review") Classification Program. This program provides reliable classification advice prior to importation, provides importers with more certain classification advice, and enhances uniformity in classification decisions. Pre-entry classification is specifically designed to render binding classification advice on larger volumes of commodities. The decisions are effective at all ports of entry. The program promotes voluntary compliance, uniformity, and accuracy with regards to processing merchandise.

Based on the success of the program, Customs is looking to expand participation in Pre-entry Classification. To that end, open meetings will be held at various field locations to discuss the program with the trade and brokerage communities. A representative from Customs Headquarters and New York will be present at all these meetings.

Dates and locations for New York and the Chicago Region will be forthcoming in a future **Federal Register** Notice

Dated: May 15, 1990

Richard R. Rosettie,

Acting Assistant Commissioner, Commercial Operations.

[FR Doc. 90–11566 Filed 5–15–90; 9:36 am]

BILLING CODE 4820–02–M

Office of Thrift Supervision

[AC–22; OTS No. 6671]

Garibaldi Federal Savings Bank, Baltimore, Maryland; Final Action Approval of Conversion Application

Date: May 10, 1990.

Notice is hereby given that on May 4, 1990, the designee of the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him, approved the application of Garibaldi Federal Savings Bank, Baltimore, Maryland, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision, Atlanta District Office, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–11445 Filed 5–16–90; 8:45 am]

BILLING CODE 6720–01–M

[AC–21; OTS No. 2330]

Lock Haven Savings Assoc., Lock Haven, Pennsylvania; Final Action Approval of Conversion Application

Date: May 10, 1990.

Notice is hereby given that on May 4, 1990, the designee of the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority designated to him, approved the application of Lock Haven Savings Association, Lock Haven, Pennsylvania for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552 and District Director, Office of Thrift Supervision, Pittsburgh District Office, One Riverfront Center, 20 Stanwix Street, Pittsburgh, Pennsylvania 15222–4893.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–11446 Filed 5–16–90; 8:45 am]

BILLING CODE 6720–01–M

UNITED STATES INSTITUTE OF PEACE

Grant Applications; Procedures and Deadlines

AGENCY: United States Institute of Peace.

ACTION: Notice of change in grant application deadlines.

SUMMARY: This notice succeeds Federal Register announcement 54 FR 6055 of February 7, 1989 (Procedures and Deadlines for Grant Applications). The United States Institute of Peace hereby announces the elimination of the June cycle of Unsolicited Grant competition. Applications submitted against the June 1, 1990 deadline will be considered in the October 1, 1990 cycle. Henceforth, there will be two annual review cycles in the Unsolicited program, with deadlines of October 1 and April 1. The deadline for submission of Solicited Grant applications will be moved to January 1. Solicited Grant topics will now be announced in September of each year.

DATES: Please see in summary above.

ADDRESSES: United States Institute of Peace; 1550 M Street NW., suite 700FR, Washington DC 20005–1708.

FOR FURTHER INFORMATION CONTACT: Dr. Hrach Gregorian, Director, Grant Program; telephone (202) 457–1700.

Dated: May 14, 1990.

Bernice Carney,

Director of Administration.

[FR Doc. 90–11528 Filed 5–16–90; 8:45 am]

BILLING CODE 3155–01–M

DEPARTMENT OF VETERANS AFFAIRS

Medical Care Reimbursement Rates for FY 1990

AGENCY: Veterans Affairs Department.

ACTION: Notice.

SUMMARY: In accordance with provisions of OMB Circular A–11 section 13.5(a), revised reimbursement rates have been established by the Department of Veterans Affairs for inpatient and outpatient medical care furnished to beneficiaries of other Federal agencies during FY 1990. These rates will be charged for such medical care provided at health care facilities under the direct jurisdiction of the Secretary on and after December 1, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Alline Norman, Acting Director, Medical Administration Service (136), Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2180.

SUPPLEMENTARY INFORMATION: The Interagency billing rates for FY 1990 are as follows:

Medicine	$478
Surgery	$683
Spinal Cord Injury	$526
Blind Rehabilitation	$485
Neurology	$433
Rehabilitation Medicine	$353
General Psychiatry	$234
Intermediate Medicine	$201
Nursing Home Care	$144
Alcohol—Drug	$204
Prescription—Refill	$15
Outpatient*	$101
Dental Outpatient	$70

* Rate includes Dialysis Treatment

Prescription refill charges in lieu of the outpatient visit rate will be charged when the patient receives no service other than the Pharmacy outpatient service. These charges apply if the patient receives the prescription refills in person or by mail.

When medical services for beneficiaries of other Federal agencies are obtained by the Department of Veterans Affairs from private sources, the charges to the other Federal agencies will be the actual amounts paid by the Department of Veterans Affairs for such medical services.

Inpatient charges to other Federal agencies will be at the current interagency per diem rate for the type of bed section or discrete treatment unit providing the care.

Dated: May 1, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 90–11420 Filed 5–16–90; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 96
Thursday, May 17, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION .

"FEDERAL REGISTER" NUMBER: 90–11034.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, May 17, 1990, 10:00 a.m.

THIS MEETING WILL BE OPEN TO THE PUBLIC.

The following Item has been added to the agenda:

Final Audit Report on the LaRouche Democratic Campaign

DATE AND TIME: Tuesday, May 22, 1990, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, May 24, 1990, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

By direction of the Federal Election Commission, the above meeting has been cancelled.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376–3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 90–11575 Filed 5–15–90; 10:36 am]
BILLING CODE 6715–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

May 14, 1990.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 55, No. , May , 1990.

PREVIOUSLY ANNOUNCED TIME AND DATE: 10:00 a.m., Thursday, May 17, 1990.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Open.

CHANGES IN THE MEETING: The time and status of the following has been changed:

1. *Paula Price v. Monterey Coal Company,* Docket No. LAKE 86–45–D. (Issues include whether the judge erred in sustaining Price's complaint of discrimination filed pursuant to section 105(c) of the Mine Act. 30 U.S.C. § 815(c).)

The time has been changed to 10:00 a.m., Thursday, May 24, 1990 and will be considered in closed session. [Pursuant to 5 U.S.C. 552b(c)(10)].

It was determined by a unanimous vote of Commissioners that these changes be made and no earlier notice of the changes was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5620/(202) 708–9300 for TDD Relay 1–800–877–8339 (Toll Free).

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 90–11649 Filed 5–15–90; 3:52 pm]
BILLING CODE 6735–01–M

NEIGHBORHOOD REINVESTMENT CORPORATION

Twelfth Annual Meeting of the Board of Directors

TIME AND DATE: 9:00 a.m., Tuesday, May 22, 1990.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street NW., Eighth Floor—Board Room, Washington, DC 20005

STATUS: Closed/Open.

CONTACT PERSON FOR MORE INFORMATION: Martha A. Diaz-Ortiz, Assistant Secretary, 376–2400.

AGENDA:

I. Personnel Items*
II. Approval of Minutes
III. Appointment of Committees
IV. Election of Officers
V. Reappointment of Internal Audit Director
VI. Reappointment of Assistant Secretary
VII. Executive Director's Activity Report
VIII. FY 1990 Budget Revisions
IX. FY1989 Outside Audit Report
X. Treasurer's Report

Special Note: *Agenda Item I will be closed to the public, II–X will be open.

Martha A. Diaz-Ortiz,
Assistant Secretary.

[FR Doc. 90–11625 Filed 5–15–90; 1:49 pm]
BILLING CODE 7570–01–M

UNITED STATES INSTITUTE OF PEACE

DATE: May 18–20, 1990.

TIME: 7:30 a.m. to 10:30 p.m.

PLACE: Wye Plantation, Queenstown, Maryland.

STATUS: Open session.—(portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. (98–525).

AGENDA: (Tentative):

Sessions I: Overall review and discussion of Institute programs. Board discussion of priorities among program areas for early 1990's.
Session II: Review of program areas and key program issues.
Session III: Operational and Budgetary Considerations.
Session IV: U.S. and Soviet roles in regional conflict.
Session V: Long-range planning; New project possibilities and priorities; Future program directions.

CONTACT: Mr. Gregory McCarthy, Director, Public Affairs, telephone (202) 457–1700.

Dated: May 15, 1990.

Ms. Bernice J. Carney,
Director of Administration, The United States Institute of Peace.

[FR Doc. 90–11595 Filed 5–15–90; 12:01 pm]
BILLING CODE 3155–01–M

federal register

Thursday
May 17, 1990

Part II

Department of Health and Human Services

Public Health Services

Family Planning Service Grants; Announcement of Availability of Funds; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Announcement of Availability of Funds for Family Planning Service Grants

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: For Fiscal Year (FY) 1991, approximately $130 million will be provided to fund family planning services grants under Title X of the Public Health Service Act (42 U.S.C. 300 *et seq.*). The Office of Population Affairs is announcing the availability of approximately 20 percent of this amount for competitive grants. The remaining 80 percent of these funds will be used for funding existing grants.

OMB Catalog of Federal Domestic Assistance: 13.217.

DATES: Application due dates vary. See Supplementary Information below.

ADDRESSEES: Additional information may be obtained from and completed applications should be sent to the appropriate Regional Health Administrator at the address below:

Region I

(Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont): DHHS/PHS Region I, John F. Kennedy Federal Building, Government Center, Room 1400, Boston, MA 02203

Region II

(New Jersey, New York, Puerto Rico, Virgin Islands): DHHS/PHS Region II, 26 Federal Plaza, Room 3337, New York, NY 10278

Region III

(Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, W. Virginia): DHHS/PHS Region III, 3535 Market Street, Philadelphia, PA 19101

Region IV

(Alabama, Florida, Georgia, Kentucky, Mississippi, N. Carolina, S. Carolina, Tennessee): DHHS/PHS Region IV, 101 Marietta Tower, Suite 1106, Atlanta, GA 30323

Region V

(Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin): DHHS/PHS Region V, 101 West Adams Street, 17th Floor, Chicago, IL 60603

Region VI

(Arkansas, Louisiana, New Mexico, Oklahoma, Texas): DHHS/PHS Region VI, 1200 Main Tower Building, Room 1800, Dallas, TX 75202

Region VII

(Iowa, Kansas, Missouri, Nebraska): DHHS/PHS Region VII, 601 East 12th Street, 5th Fl. W., Kansas City, MO 64106

Region VIII

(Colorado, Montana, N. Dakota, S. Dakota, Utah, Wyoming): DHHS/PHS Region VIII, 1961 Stout Street, Denver, CO 80294

Region IX

(Arizona, California, Hawaii, Nevada, Commonwealth of the Northern Mariana Islands, American Samoa, Guam, Republic of Palau, Federated States of Micronesia, Republic of the Marshall Islands): DHHS/PHS Region IX, 50 United Nations Plaza, Room 327, San Francisco, CA 94102

Region X

(Alaska, Idaho, Oregon, Washington): DHHS/PHS Region X, Blanchard Plaza, 2201 Sixth Avenue, M/S RX-20, Seattle, WA 98121

FOR FURTHER INFORMATION CONTACT: Grants Management Officers, Region I: Mary O'Brien—617/565-1482; Region II: Thomas Butler—212/264-4496; Region III: Richard Dovalovsky—215/596-6653; Region IV: Wayne Cutchins—404/331-2597; Region V: Lawrence Poole—312/353-8700; Region VI: Frank Cantu—214/767-3879; Region VII: Hollis Hensley—816/426-2924; Region VIII: Jerry F. Wheeler—303/844-6163; Region IX: Alan Harris—415/556-5810; Region X: J. O'Neal Adams—206/442-7997.

Program Officers, Region I: James Sliker—617/565-1452; Region II: Eileen Connolly—212/264-2571; Region III: Joe Healey—215/596-6686; Region IV: Joseph Coon—404/331-5655; Region V: George Hockenberry—312/353-1700; Region VI: Paul Smith—214/767-3072; Region VII: Will Marshall—816/426-2924; Region VIII: John J. McCarthy, Jr.—303/844-5955; Region IX: James Hauser—415/556-7117; Region X: Vivian Lee—206/442-1020.

Staff are available to answer questions and provide limited technical assistance in the preparation of grant applications.

SUPPLEMENTARY INFORMATION: Title X of the Public Health Service Act, 42 U.S.C. 300 *et seq.*, authorizes the Secretary of Health and Human Services to award grants and enter into contracts with public or private nonprofit entities to assist in the establishment and operation of voluntary family planning projects to provide a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents). To the extent practicable, entities shall encourage family participation. No funds may be used in programs where abortion is a method of family planning. Implementing regulations have been published at 42 CFR part 59 subpart A. At 53 FR 2922, (February 2, 1988), the Department of Health and Human Services promulgated rules revising the requirements for compliance by grantees and applicants for grants with the statutory provision relating to abortion. Since promulgation of the revised rules, suits have been filed in four jurisdictions challenging the rules, and the February 1988 rules have been enjoined in whole or in part in three of the jurisdictions. Consequently, portions of the regulations currently appearing at 42 CFR part 59 subpart A are effective at present for certain organizations and not with respect to others. Users or organizations with questions as to whether the rules issued on February 2, 1988 apply to them should contact the appropriate program officer at the telephone number listed above.

Approximately $130 million nationwide is available in funding for Title X services grants, which are normally awarded for 3 years. Approximately $100 million of these funds will be used to fund existing continuation grants throughout the nation. The entire $130 million is allocated among the 10 departmental regions, and will in turn be awarded to public and private non-profit agencies located within the regions. Each regional office is responsible for evaluating applications, establishing priorities, and setting funding levels according to criteria in statute part 59, subpart A, § 59.7.

This notice announces the availability of approximately $30,000,000 to provide services in 16 States. This notice includes those projects for which the application due date has not passed at the time of publication. Applications are invited for the following areas:

Area(s) to be served	No. of grants to be awarded	Approx. funding level	Application due date	Grant funding date
REGION III				
West Virginia	1	$1,178,000	12/1/90	4/1/91
Southeastern Pa	1	2,203,000	3/1/91	7/1/91
Washington, D.C	1	488,000	8/1/90	12/1/90
Western Pennsylvania	1	1,905,000	3/1/91	7/1/91
Central Pennsylvania	1	1,416,000	3/1/91	7/1/91
Virginia	1	2,591,000	3/1/91	7/1/91
Northeastern Pa	1	880,000	3/1/90	7/1/91
Delaware	1	480,000	12/1/91	4/1/91
Maryland	1	2,230,000	3/1/91	7/1/91
REGION V				
Illinois	1	3,900,000	9/1/90	1/1/91
Ohio—55 mainly rural counties	1	2,900,000	11/1/90	3/1/91
Summit, Portage, and Medina Counties, OH	1	520,000	3/1/91	7/1/91
REGION VI				
New Mexico	1	1,160,000	9/1/90	1/1/91
Louisiana	1	2,489,000	3/1/91	7/1/91
REGION VII				
Missouri	1	2,802,000	12/1/90	4/1/91
Nebraska	1	945,000	2/1/91	6/1/91
REGION VIII				
South Dakota	1	345,000	3/1/91	7/1/91
REGION IX				
Commonwealth of Northern Mariana Islands	1	45,000	9/1/90	1/1/91
REGION X				
Seattle, Washington	1	140,000	7/1/91	10/1/91
Oregon	1	1,181,000	4/1/91	7/1/91
Total	21	29,798,000		

Applications must be postmarked or received at the appropriate Grants Management Office no later than close of business on application due dates listed above and received in time for orderly processing. Private metered postmarks will not be acceptable as proof of timely mailing. Applications which are postmarked or delivered to the appropriate Grants Management Office later than the application due date will be judged late and will not be accepted for review. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service.) Applications which do not conform to the requirements of this program announcement or do not meet the assurances for project requirements in regulation 42 CFR part 59, subpart A will not be accepted for review. Applicants will be so notified, and the applications will be returned.

Applicants will be evaluated on the following criteria:

(1) The number of patients and, in particular, the number of low-income patients to be served;

(2) The extent to which family planning services are needed locally;

(3) The relative need of the applicant;

(4) The capacity of the applicant to make rapid and effective use of the Federal assistance;

(5) The adequacy of the applicant's facilities and staff;

(6) The relative availability of non-Federal resources within the community to be served and the degree to which those resources are committed to the project; and

(7) The degree to which the project plan adequately provides for the requirements set forth in the title X regulations.

Application Requirements

Application kits, including the application form, PHS 5161, and technical assistance for preparing proposals are available from the respective regional office. An application must contain: 1) a narrative description of the project and the manner in which the applicant intends to conduct it in order to carry out the requirements of the law and regulations; 2) a budget that includes an estimate of project income and costs, with justification for the amount of grant funds requested; 3) a description of the standards and qualifications that will be required for all personnel and facilities to be used by the project; and 4) such other pertinent information as may be required by the Secretary and specified in the application kit. In preparing an application, applicants should respond to all applicable regulatory requirements. (The information collections contained in this notice have been approved by the Office of Management and Budget and assigned control number 0937–0189.)

Application Review and Evaluation

Each regional office is responsible for establishing its own review process. Applications must be submitted to the appropriate regional office at the address listed above. Applications not meeting the due dates above will not be accepted for review.

Grant Awards

Grants are generally awarded for 3 years with an annual non-competitive review of a continuation application to continue support. Non-competing continuation awards are subject to the project making satisfactory progress and the availability of funds. In all cases, continuation awards require a determination by HHS that continued funding is in the best interest of the Federal Government.

Review Under Executive Order 12372

Applicants under this announcement are subject to the review requirements of Executive Order 12372, State Review applications for Federal Financial Assistance, as implemented by 45 CFR part 100. As soon as possible, the applicant should discuss the project with the State Single Point of Contact

(SPOC) for each State to be served. The application kit contains the currently available listing of the SPOCs which have elected to be informed of the submission of applications. For those States not represented on the listing, further inquiries should be made by the applicant regarding the submission to the Grants Management Office of the appropriate region. State Single Point of Contact comments must be received by the regional office 30 days prior to the funding date to be considered.

When final funding decisions have been made, each applicant will be notified by letter of the outcome of their application. The official document notifying an applicant that a project application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purposes of the grant, and terms and conditions of the grant award.

Dated: March 13, 1990.

Nabers Cabaniss,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 90–11415 Filed 5–16–90; 8:45 am]

BILLING CODE 4160–17–M

federal register

Thursday
May 17, 1990

Part III

Department of Education

National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for a Rehabilitation Research and Training Center for Fiscal Year 1990

DEPARTMENT OF EDUCATION

[CFDA No. 84.133B]

National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for a New Award for a Rehabilitation Research and Training Center for Fiscal Year 1990

AGENCY: Department of Education.

Purpose of Program: This program provides financial assistance to institutions of higher education and public and private organizations, including Indian tribes and tribal organizations, collaborating with universities to conduct coordinated programs of advanced rehabilitation research and provide training—including undergraduate, graduate, and in-service training—to research and other rehabilitation personnel, and to assist individuals to more effectively provide rehabilitation services.

Deadline for Transmittal of Applications: June 29, 1990.

Applications Available: May 17, 1990.

Available Funds: $600,000.

Estimated Number of Awards: One.

Estimated Average Award: $600,000.

Project Period: Up to 60 months.

Note: The Department of Education is not bound by any estimates in this notice, except as otherwise provided by statute.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), in 34 CFR parts 74, 75, 77, 80, 81, 82, and 85, and (b) The regulations for this program in 34 CFR parts 350 and 352.

It is the policy of the Department of Education not to solicit applications before the publication of final priorities. However, in this case it is essential to solicit applications on the basis of the notice of proposed priority because the Department must initiate the request for awards at this time in order for an award to be made in fiscal year 1990.

The Secretary has carefully reviewed the public comments received on the notice of proposed priority, and the Secretary does not expect to make any changes to the proposed priority based on those comments that would affect applications for awards. Most of the comments that the Department received were supportive of the proposed priority. One commenter requested that additional activities be required; however, these activities are not precluded by the priority as written and could easily be accomplished under the proposed priority. Therefore, applicants should prepare their applications based on the notice of proposed priority that was published in the **Federal Register** on March 23, 1990 at 55 FR 10984. If any changes are made in the final priority, applicants will be allowed to amend or resubmit their applications.

FOR APPLICATIONS CONTACT: National Institute on Disability and Rehabilitation Research, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–2601, Attention: Peer Review Unit. Telephone: (202) 732–1141; deaf and hearing-impaired individuals may call (202) 732–1198 for TDD services.

FOR FURTHER INFORMATION CONTACT: Deno Reed, National Institute on Disability and Rehabilitation Research, (202) 732–1193.

Program Authority: 29 U.S.C. 762.

Dated: May 11, 1990.

Robert R. Davila,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 90–11447 Filed 5–16–90; 8:45 am]

BILLING CODE 4000–01–M

federal register

Thursday
May 17, 1990

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 878

General and Plastic Surgery Devices; Effective Date of Requirement for Premarket Approval of Silicone Gel-Filled Breast Prosthesis; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 878

[Docket No. 88N-0244]

General and Plastic Surgery Devices; Effective Date of Requirement for Premarket Approval of Silicone Gel-filled Breast Prosthesis

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; opportunity to request a change in classification.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require the filing of a premarket approval application (PMA) or a notice of completion of product development protocol (PDP) for the silicone gel-filled breast prosthesis, a medical device. The agency is also summarizing its proposed findings regarding the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the statute's approval requirements, and the benefits to the public from the use of the device. In addition, FDA is announcing an opportunity for interested persons to request that the agency change the classification of the device based on new information. This action is a followup to FDA's notice of intent of January 6, 1989 (54 FR 550).

DATES: Comments by July 16, 1990; requests for a change in classification by June 1, 1990. FDA intends that if a final rule is issued, based on this proposed rule, PMA's will be required to be submitted by August 15, 1990.

ADDRESSES: Written comments or requests for a change in classification to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Palmer, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1090.

SUPPLEMENTARY INFORMATION:

I. Background

Section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c) requires the classification of medical devices into one of three regulatory classes: Class I (general controls), class II (performance standards), and class III (premarket approval). Generally, devices that were on the market before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295), and devices marketed on or after that date that are substantially equivalent to such devices, have been classified by FDA. For the sake of convenience, this preamble refers to both the devices that were on the market before May 28, 1976, and the substantially equivalent devices that were marketed on or after that date as "preamendments devices."

Section 515(b)(1) of the act (21 U.S.C. 360e(b)(1)) establishes the requirement that a preamendments device that FDA has classified into class III is subject to premarket approval. A preamendments class III device may be commercially distributed without an approved premarket approval application (PMA) or notice of completion of a product development protocol (PDP) until 90 days after FDA's promulgation of a final rule requiring premarket approval for the device, or 30 months after final classification of the device under section 513 of the act (21 U.S.C. 360c), whichever is later. Also, a preamendments device is not required to have an approved investigational device exemption (IDE) (21 CFR part 812) contemporaneous with its interstate distribution until the date identified by FDA in the final rule requiring the submission of a premarket approval application for the device.

Section 515(b)(2)(A) of the act provides that a proceeding to promulgate a final rule to require premarket approval shall be initiated by publication of a notice of proposed rulemaking containing: (1) The proposed rule; (2) proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA or a declared completed PDP and the benefit to the public from the use of the device; (3) an opportunity for the submission of comments on the proposed rule and the proposed findings; and (4) an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device.

Section 515(b)(2)(B) of the act provides that if FDA receives a request for a change in the classification of the device within 15 days of the publication of the notice, FDA shall, within 60 days of the publication of the notice, consult with the appropriate FDA advisory committee and publish a notice denying the request for change of classification or announcing its intent to initiate a proceeding to reclassify the device under section 513(e) of the act. If FDA does not initiate such a proceeding, section 515(b)(3) of the act provides that FDA shall, after the close of the comment period on the proposed rule and consideration of any comments received, promulgate a final rule to require premarket approval, or publish a notice terminating the proceeding. If FDA terminates the proceeding, FDA is required to initiate reclassification of the device under section 513(e) of the act, unless the reason for termination is that the device is a banned device under section 516 of the act (21 U.S.C. 360f).

If a proposed rule to require premarket approval for a preamendments device is made final, section 501(f)(2)(A) of the act requires that a PMA or a notice of completion of a PDP for any such device be filed within 90 days of the date of promulgation of the final rule or 30 months after final classification of the device under section 513 of the act, whichever is later. If a PMA or a notice of completion of a PDP is not filed by the later of the two dates, commercial distribution of the device is required to cease. The device may, however, be distributed for investigational use if the manufacturer, importer, or other sponsor of the device complies with the IDE regulations. If a PMA or a notice of completion of a PDP is not filed by the later of the two dates, and no IDE is in effect, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the act, and subject to seizure and condemnation under section 304 of the act (21 U.S.C. 334) if its distribution continues. Shipment of the device in interstate commerce will be subject to injunction under section 302 of the act (21 U.S.C. 332), and the individuals responsible for such shipment will be subject to prosecution under section 303 of the act (21 U.S.C. 333).

The act does not permit an extension of the 90-day period after promulgation of a final rule within which an application or a notice is required to be filed. The House Report on the amendments states that "the thirty month 'grace period' afforded after classification of a device into class III * * * is sufficient time for manufacturers and importers to develop the data and conduct the investigations necessary to support an application for premarket approval." H. Rept. 94-853, 94th Cong., 2d Sess. 42 (1976).

A. Classification of the Silicone Gel-filled Breast Prosthesis

In the **Federal Register** of June 24, 1988 (53 FR 23874), FDA issued a final rule (21 CFR 878.3540) classifying the silicone gel-filled breast prosthesis into class III. The preamble to the proposal to classify

the device (47 FR 2820; January 19, 1982) included the recommendation of the General and Plastic Surgery Devices Panel (the Panel), an FDA advisory committee, which met on March 24 and July 6, 1978, regarding the classification of the device. The Panel recommended that the device be in class II, but identified certain risks to health presented by the device. FDA disagreed with the Panel's recommendation and proposed that the silicone gel-filled breast prosthesis be classified into class III. The proposal stated that the agency believed that insufficient information existed to determine that general controls would provide reasonable assurance of the safety and effectiveness of the device, or establish a performance standard to provide this assurance. The proposal stated that premarket approval is necessary for this device because it presents a potential unreasonable risk of injury due to: (1) possible migration of silicone gel from the interior of the prosthesis to adjacent tissue (with or without rupture of the silicone rubber shell); (2) contraction of the fibrous tissue capsule that forms around the implanted prosthesis that can lead to marked asymmetry in breast contour, hardness, and pain; and (3) possible long-term toxic effects of the silicone polymers from which the prosthesis is fabricated. In support of its proposal to strengthen regulatory surveillance of the device, FDA cited numerous references supporting the proposed classification and identified ongoing scientific debates on the safety of breast prostheses.

The preamble to the final rule classifying the device advised that the earliest date by which PMA's for the device could be required was December 31, 1990, or 90 days after promulgation of a rule requiring premarket approval for the device, whichever occurs later.

In the Federal Register of January 6, 1989 (54 FR 550), FDA published a notice of intent to initiate proceedings to require premarket approval of 31 preamendments class III devices assigned a high priority by FDA for the application of premarket approval requirements. Among other things, the notice describes the factors FDA takes into account in establishing priorities for proceedings under section 515(b) of the act for promulgating final rules requiring that preamendments class III devices have approved PMA's or declared completed PDP's. Using those factors, FDA has determined that the silicone gel-filled breast prosthesis identified in § 878.3540 has a high priority for initiating a proceeding to require premarket approval. Accordingly, FDA is commencing a proceeding under section 515(b) of the act to require that the silicone gel-filled breast prosthesis has an approved PMA or a PDP that has been declared completed.

B. Dates New Requirements Apply

In accordance with section 515(b) of the act, FDA is proposing to require that a PMA or a notice of completion of a PDP be filed with the agency for the silicone gel-filled breast prosthesis on or before December 31, 1990, or within 90 days after promulgation of any final rule based on this proposal, whichever is later. An applicant whose device was in commercial distribution before May 28, 1976, or has been found by FDA to be substantially equivalent to such a device, will be permitted to continue marketing the silicone gel-filled breast prosthesis during FDA's review of the PMA or notice of completion of the PDP. FDA intends to review any PMA for the device within 180 days, and any notice of completion of a PDP for the device within 90 days of the date of filing. FDA cautions that under section 515(d)(1)(B)(i) of the act, FDA may not enter into an agreement to extend the review period for a PMA unless the agency finds that "* * * the continued availability of the device is necessary for the public health".

FDA intends that, under 21 CFR 812.2(d), the preamble to any final rule based on this proposal will state that, as of the date on which a PMA or a notice of completion of a PDP is required to be filed, the exemptions in 21 CFR 812.2(c)(1) and (2) from the requirements of the IDE regulations for preamendments class III devices will cease to apply to any silicone gel-filled breast prosthesis which is: (1) not legally on the market on or before that date, or (2) legally on the market on or before that date but for which a PMA or notice of completion of a PDP is not filed by that date, or for which PMA approval has been denied or withdrawn.

If a PMA or a notice of completion of a PDP for the silicone gel-filled breast prosthesis is not filed with FDA on or before December 31, 1990, or within 90 days after the date of promulgation of any final rule requiring premarket approval for the device, whichever is later, commercial distribution of the device must cease. The device may be distributed for investigational use only if the requirements of the IDE regulations regarding significant risk devices are met. The requirements for significant risk devices include submitting an application to FDA for its review and approval. An approved IDE is required to be in effect before an investigation of the device may be initiated or continued. FDA, therefore, cautions that IDE applications should be submitted to FDA at least 30 days before the end of the 90-day period to avoid interrupting investigations.

C. Description of Device

1. *Single-lumen silicone gel-filled breast prosthesis.* A single-lumen silicone gel-filled breast prosthesis is a silicone rubber shell made of polysiloxane(s), such as polydimethylsiloxane and polydiphenylsiloxane. The shell either contains a fixed amount of cross-linked polymerized silicone gel, fillers, and stabilizers or is filled to the desired size with injectable silicone gel at the time of implantation. The device is intended to be implanted to augment or reconstruct the female breast.

2. *Double-lumen silicone gel-filled breast prosthesis.* A double-lumen silicone gel-filled breast prosthesis is a silicone rubber inner shell and a silicone rubber outer shell, both shells made of polysiloxane(s), such as polydimethylsiloxane and polydiphenylsiloxane. The inner shell contains fixed amounts of cross-linked polymerized silicone gel, fillers, and stabilizers. The outer shell is inflated to the desired size with sterile isotonic saline before or after implantation. The device is intended to be implanted to augment or reconstruct the female breast.

3. *Polyurethane-covered silicone gel-filled breast prosthesis.* A polyurethane covered silicone gel-filled breast prosthesis is an inner silicone rubber shell made of polysiloxane(s), such as polydimethylsiloxane and polydiphenylsiloxane, with an outer silicone adhesive layer and an outer covering of polyurethane. Contained within the inner shell is a fixed amount of cross-linked polymerized silicone gel, fillers, and stabilizers and an inert support structure compartmentalizing the silicone gel. The device is intended to be implanted to augment or reconstruct the female breast.

The proposed rule to require premarket approval of silicone gel-filled breast prostheses applies only to the silicone gel-filled breast prostheses identified above that were being commercially distributed before May 28, 1976, and to devices introduced into commercial distribution since that date that have been found to be substantially equivalent to such silicone gel-filled breast prostheses.

D. Proposed Findings With Respect to Risks and Benefits

As required by section 515(b) of the act, FDA is publishing its proposed findings regarding (1) the degree of risk of illness or injury designed to be eliminated or reduced by requiring the silicone gel-filled breast prosthesis to have an approved PMA or a declared completed PDP and (2) the benefits to the public from the use of the device.

E. Degree of Risk

On January 26 and 27, 1983, the Panel met to review and consider all comments that were submitted to FDA on the proposed regulation to classify silicone gel-filled breast implants into class III, including those comments submitted by the American Society of Plastic and Reconstructive Surgeons (ASPRS) and breast prosthesis manufacturers. The Panel also reviewed additional manufacturing data which had been requested by FDA from all manufacturers of breast prostheses. At the portion of the meeting that was open to the public, FDA presented to the Panel an overview of its reasons for issuing the proposed regulations. Members of ASPRS and representatives of Dow Corning Corp. (Dow Corning) also made presentations. The Panel also met in closed session to review confidential documents on silicone, including data furnished by Dow Corning. During this meeting, the Panel unanimously recommended that FDA classify the silicone gel-filled breast prosthesis into class III as proposed.

The Panel met on November 22, 1988, and recommended that from that date until 1990, FDA and ASPRS should conduct a review of all existing national and international registries of breast implants to gather long-term data on all known clinical and preclinical risks related to mammary implants including carcinogenesis/teratogenesis and immune disorders. Moreover, they recommended that a national mandatory informed consent program should be implemented to educate prospective patients about the risks associated with augmentation mammaplasty. Based on all the recommendations, FDA has evaluated the risks associated with the implantation of silicone gel-filled breast prostheses. FDA now believes that the following are significant risks associated with the use of the silicone gel-filled breast prosthesis:

1. *Fibrous capsular contracture.* Fibrous capsular contracture—the formation of a constricting fibrous layer around the prosthesis—is the most common risk associated with breast augmentation and reconstruction. Capsular contracture may result in excessive breast firmness, discomfort, pain, disfigurement, displacement of the implant, and psychological trauma (Refs. 1 through 17). This condition occurs most commonly within the first few months following surgery; once the condition exists, it tends to recur with additional procedures. Degrees of capsular contracture have not been quantifiably defined and accordingly, reported incidence rates have ranged from 0 percent (Ref. 11) to over 50 percent (Ref. 1). Burkhart (Ref. 6) suggests that the rate of clinically significant contracture is between 30 and 50 percent.

Although the cause of capsular contracture is unknown, several etiological factors have been suggested (Ref. 19), including: (1) foreign body reaction (Refs. 26 and 31); (2) hematoma (Ref. 4); (3) leakage of silicone found in the surrounding fibrous sheath (Ref. 5); and (4) infection (Refs. 2 and 6).

2. *Silicone gel leakage and migration.* Silicone gel leakage and migration from the silicone elastomer envelope, either from rupture of the envelope or by leaking of the gel through the envelope (gel "bleed"), are also significant risks of silicone gel-filled breast prostheses. Rupture of the envelope with gel leakage and subsequent migration may be secondary to: severe capsular contracture; external (closed) capsulotomy; other mechanical stresses such as routine manual massage, trauma, folds in the envelope, and wear on the envelope; surgical technique; and choice of implant site. In addition to the above, silicone gel-filled implants are reported to "bleed" micro amounts of silicone through the intact silicone elastomer shell into surrounding tissues (Refs. 7, 9, 24, 25, 29, 31 through 37, 118 and 120). The diffused silicone may react locally forming a fibrous capsule (Ref. 32), or migrate to distant locations over time (5 to 20 years), with subsequent development of silicone granulomas and/or lymphadenopathy (Refs. 20, 27, 28, 42, 53, 56, 57, and 69).

3. *Infection.* Infection, a risk of any surgical implant procedure, is associated with the use of silicone gel-filled breast implants (Refs. 99 and 110). As in any implantation procedure, compromised device sterility and surgical techniques may be major contributing factors to this risk. Other factors specifically related to breast implants have been identified which may increase the risk of infection associated with this device. Burkhardt et al. have concluded from their studies that Staphyloccus epidermidis, which has been cultured from uinfected breast glands, may cause subclinical infections of the periprosthetic area if the ductal system is disrupted during the surgical procedure. It has been suggested that this may also contribute to the early development of capsular contracture (Refs. 6, and 13 through 16).

4. *Interference with early tumor detection.* Several reports have suggested that the presence of silicone gel-filled breast implants may interfere with standard mammography procedures used to screen patients for breast cancer, since the presence of the implant produces a shadow on the radiograph that obscures visualization of a significant portion of the breast (Refs. 43 through 45). In addition, the presence of the implant compresses overlying breast tissue, particularly fat, creating a homogeneously dense organ, radiographically devoid of contrast. Compression obliterates the fine trabecular pattern of the breast, making architectural distortions difficult to see in a radiograph (Refs. 43 through 49).

The risk of interference with early tumor detection potentially would affect a large number of patients, because most recent predictions indicate that approximately 10 percent of women in the United States will develop breast cancer during their lifetime.

In a recent study of 753 patients with breast cancer, Silverstein et al. reported that when augmented patients with breast cancer were first examined by a physician, they had more advanced disease compared to nonaugmented patients at first examination. They also had a higher percentage of invasive lesions and positive axillary nodes, resulting in a worsened prognosis, compared to nonaugmented patients (Ref. 43).

5. *Degradation of polyurethane foam covered breast prostheses.* The polyurethane material used on foam covered silicone gel-filled prostheses is known to degrade over time with a potential breakdown product of 2,4 diamino toluene (TDA), a known carcinogen in animals (Refs. 104–109). The fate of the degraded product in vivo is unknown to date (Refs. 70 through 72, 76, and 103). Case reports indicate that there is greater difficulty with the removal of this type of prosthesis due to a fragmented polyurethane shell and/or capsular tissue ingrowth Refs. 70 through 76). Fragmentation, disappearance of the polyurethane coating, and a marked foreign body response (capsular contracture, infection, fever, pain, extreme fatigue, and arthritic-like symptoms) have been identified with polyurethane foam covered mammary prostheses in humans

(Refs. 70 through 76 and 110 through 114).

6. *Human carcinogenicity.* Carcinogenicity has been a widely discussed topic related to the injection of silicone fluid in augmentation mammaplasty since the early 1950's (Refs. 30, 38, 56, 60, 62, 63, 69, and 86). Although relatively purer medical grade silicone is now produced for use in silicone gel-filled breast prostheses, the potential for developing cancer as a long-term complication related to silicone migration remains a potential risk associated with these implants. Some clinicians have reported malignant lymphomas (Refs. 53 and 55) and metastatic carcinoma (Refs. 54, 56 through 59, 121, and 122) concurrently with silicone granulomas.

In lifetime bioassays, silicone and other polymers (polyurethane, polytetrafluoroethylene) have been reported to induce from 0 to 50 percent incidences of cancer, predominantly sarcoma, at implant sites following subcutaneous implantation in rats and mice (Refs. 50, 52, 61, 77 through 85, 97, and 99). It is not clear whether sarcoma production is solely due to the physical state ("solid" state effect) as previously believed, or if it may be associated with the chemical composition of silicone itself (Refs. 80 through 85, 98, and 102).

In August of 1987, FDA was presented with the results of a 2-year rat bioassay conducted by Dow Corning. Two gels used to fill breast implants were tested to assess the long-term biocompatibility of silicone. The dose used in the rat study was adjusted to be equivalent per relative body weight, to the amount of gel used in humans who undergo an augmentation mammaplasty. The data from the study indicated that the silicone gels implanted subcutaneously in rats induced pronounced increases in the incidence of fibrosarcoma at the implant site, compared to the control. Of additional concern was the fact that metastasis was recorded in a number of these animals.

In summary, sarcoma has been reported to be associated with polyurethane, and as previously mentioned, TDA (a breakdown product of polyurethane) is a known carcinogen in animals. (Refs. 71, 77, 78, 82, and 83). Further, other silicone implants such as bone plates and screws, plastic plombage in the lungs, vascular grafts, and injected silicone have been documented to produce sarcoma and other forms of carcinoma in humans (Refs. 51, 64 through 68, and 123) and animals (mice, rats, rabbits, and dogs), (Refs. 50, 51, 77 through 85, and 97).

7. *Human teratogenicity.* Teratogenesis includes the origin or mode of production of a malformed fetus and the disturbed growth processes involved in the production of a malformed fetus. Although the question of human teratogenicity in association with the prolonged use of silicone gel-filled mammary prostheses in women has been raised by many investigators, the teratogenic effect of silicone and its components remains unknown in humans. Studies in animals have been minimal, and yield contradictory and inconclusive results (Refs. 86, 115, and 116).

8. *Autoimmune disease—immunological sensitization.* Immunological sensitization may be a serious risk associated with the implantation of a silicone gel-filled breast prosthesis. Several published reports have raised questions about the relationship between silicone and various autoimmune diseases, such as "human adjuvant disease" and connective tissue syndromes, including scleroderma (Refs. 39 through 41). Heggers et al. conducted a study from which they concluded that "although apparently inert, silicone is capable of eliciting a cellular immune response demonstrated by the migration inhibition technique. This response is comparable to that elicited by purified protein derivative and may indicate that silicone acts as a hapten-like incomplete antigen." (Ref. 124). Silicone gel-filled breast implants also contain silica as a filler in the device envelopes and gels (Refs. 7, 97, 98, and 101). Silica is immunologically active, and may potentiate the development of autoimmune diseases induced by mycobacterial or other antigens present in resident microorganisms (Refs. 96). An association of tuberculosis, silicone implants, and the subsequent development of connective tissue disease has been reported, and closely corresponds to an animal model of "adjuvant disease" (Ref. 96).

9. *Calcification.* Calcification of the fibrous capsule surrounding the implant involves the deposition of mineral salts in the capsule, and may contribute to capsular contracture and/or interference with interpretation of mammographic films (Refs. 18, 24, 93 through 95, 99, 100, and 125).

F. Benefits of the Device

Silicone gel-filled breast prostheses are intended to reconstruct or augment the female breast. Whether performed for reconstruction or augmentation purposes, breast implantation is a discretionary surgical procedure performed for psychological, rather than medical reasons.

Reconstructive breast implantation most often follows cancer surgery. In addition to the burden of knowing that they have cancer, it is reported that women facing mastectomy may experience depression that accompanies any degenerative change in body image. Shame and feelings of inadequacy are common as well as anxiety and fear of sexual rejection (Refs. 88 and 92). Reconstruction of the breast may help to alleviate such feelings as well as provide these women with a more hopeful outlook toward their disease (Ref. 92).

Some studies have shown that women seeking breast enlargement are individuals who feel physically inadequate, with doubts concerning femininity and desirability (Refs. 89 and 90). Inner concerns about lowered self esteem and a poor self concept are expressed as depression, lack of self confidence, and some degree of sexual inhibition (Refs. 89 and 90). Changes in outlook, personality, and behavior are observed following breast augmentation (Refs. 87, 91, and 92). Published studies of augmentation mammaplasty show psychological improvement in the majority of patients (Refs. 86 through 92, and 126 through 128). One study, which involved an in depth psychiatric study of 10 patients and a questionnaire completed by 132 patients, showed enhancement of self image, improved self esteem, and a high level of satisfaction with the end result of the implant procedure experienced by all 10 patients evaluated psychiatrically, and by most of the group of 132 patients (Ref. 91).

G. Need For Information For Risk/Benefit Assessment of the Device

As the above sections indicate, there is reasonable knowledge for the risks and benefits associated with the silicone gel-filled breast prosthesis. There is, however, insufficient valid scientific data to permit FDA to perform a risk/benefit analysis. Therefore, FDA is now seeking further information on the following safety and effectiveness issues associated with the silicone gel-filled breast prosthesis:

(1) The incidence of fibrous capsular contracture, and the role of various etiological factors, which may include foreign body reaction (Refs. 26 and 31), the presence of hematomas (Ref. 4), the presence of droplets of silicone gel in the surrounding fibrous sheath (Ref. 19), and the presence of infection (Refs. 2 and 6), must be clarified. Attempted methods in the prevention and treatment of capsular contracture have included: use of various implant types,

submuscular positioning of the implant, use of local steroids or antibiotics, use of manual compression exercises, external capsulotomy, and open capsulotomy or capsulectomy. It is not clear how these approaches may reduce risks associated with use of this device.

(2) The potential risks associated with silicone gel leakage and its subsequent migration need further clarification. This should include consideration of external capsulotomy (Refs. 21 through 23), gel cohesiveness, envelope thickness/strength (Ref. 21), diffusion of the gel through the envelope (gel "bleed") (Refs. 7, 9, 24, 25, 29, 32 through 37, and 86), and the role that physical, mechanical, and chemical characteristics of silicone elastomers and gels play in the immediate or long-term rupture of breast implants.

(3) The potential long-term adverse effects of silicone gel-filled breast implants, such as cancer, autoimmune disease, calcification, degradation of polyurethane, and teratogenicity are unknown. The agency notes that neither the chemical forms of silicones which leach into breast tissue nor their metabolic fates are known (Refs. 98 and 117). Furthermore, no satisfactory independent study has thoroughly evaluated the chronic long-term toxicology of cross-linked silicone polymers of different molecular sizes. Because young women are the recipients of a significant percentage of these implants, information regarding the chronic toxic effects or possible teratogenic effects of silicone could be of substantial importance in determining the risk to these patients.

(4) Long term effectiveness data for the device is needed. The incidence of implant failure and attendant causes, as well as the incidence of reoperations required have not been clearly identified. This information is necessary in order to perform an appropriate risk/benefit analysis.

(5) The psychological benefits of the device in terms of such factors as patient satisfaction, improved self-image, and improved outlook need to be further clarified.

FDA believes, therefore, that the silicone gel-filled breast prosthesis should undergo premarket approval to determine whether the risks of using the device are adequately balanced by its benefits.

II. PMA Requirements

Any PMA for the device must include the information required by section 515(c)(1) of the act. Such a PMA should also include a detailed discussion, with results of preclinical and clinical studies of the risks identified above, and the effectiveness of the device of which premarket approval is sought. In addition, the PMA should include all data and information on: (1) Any risks known to the applicant that have not been identified in this document, (2) the effectiveness of the specific silicone gel-filled breast prosthesis that is the subject of the application, and (3) summaries of all existing preclinical and clinical data from investigations on the safety and effectiveness of the device for which premarket approval is sought.

1. *Preclinical data.* All physical and chemical properties of the device must be completely characterized. These should include but are not necessarily limited to tensile, fatigue, and shear strengths, elastic modulus, cohesiveness, viscosity, and chemical composition of the finished device. All trace amounts of additives, contaminants, plasticizers, catalysts, and antioxidants, as well as low molecular weight oligomers and monomers and any degradation products should be analyzed and described in detail using state of the art methods. Laboratory test methods and animal experiments used in the characterization of the physical, chemical and mechanical properties of the device should simulate the intended use of the device in humans. Data relevant to the distribution and metabolic fate of silicone and/or polyurethane used in the manufacturing of the envelope and gel must be supplied. The biological characteristics of silicone migration should be well described. Of special concern are questions regarding the ultimate fate, quantities, sites/organs of deposition, routes of excretion, and potential clinical significance of silicone retention and migration. Toxicological effects (e.g., cytotoxicity, mutagenicity, suppression of the immune system, steroid adsorption, allergenicity, and reproductive and development organ damage) should be identified. Acute, subchronic and chronic toxicity in vitro and in vivo studies should be provided. Chronic animal studies should be provided in the evaluation of long-term biocompatibility of the device, including dose response and time to response as well as histopathological findings in tissues both surrounding implants and distal to implant sites (lymph nodes, liver, kidney, lungs, etc.). Lifetime rat bioassays of silicones (gels and elastomers) and polyurethane foam (where applicable) must be performed to address the carcinogenic risk to humans, even though the full cancer risk may not be evident until sufficient time of exposure has occurred in the human population. These studies should include a separate assessment of the carcinogenic risk for each individual substance or material contained in the implant. Studies should be performed in accordance with the guidelines issued by the National Toxicology Program for all aspects of conducting the assay. Appropriately conducted studies have been described in several publications (e.g., Guidance Document for the Preparation of Investigational Device Exemption Applications for Intra-Articular Prosthetic Knee Ligament Devices 1987). Teratology/reproductive testing of silicone gel(s) (and polyurethane if applicable) should be performed in commonly used species, such as the rabbit.

Due to the lack of preclinical and clinical data on the polyurethane foam covered prostheses, the agency recommends that studies be performed on: (1) the degradation of polyurethane foam in vivo and the kinetics of the end products generated; (2) the frequency and incidence of infection and complication of retrieval of the implant by surgeons using both polyurethane-coated and regular silicone gel-filled prostheses in a retrospective cohort study; and (3) neoplasticity of the material as well as its general toxicity, including neurological, physiological, biochemical, and hematological effects, and pathology following prolonged and repeated exposure of polyurethane-covered silicone gel-filled mammary prostheses.

FDA believes that in vivo implant studies must be performed to identify and determine the bioabsorption, distribution, and elimination of the polyesterurethane-covered silicone gel-filled mammary prosthesis in experimental animals. It is also important to identify and determine the mechanism, rate of degradation, and quantity of TDI and TDA generated by the breakdown of polyesterurethane foam-covered mammary prostheses after prolonged exposure under physiological conditions in animals. Additionally, the agency recommends that retrospective epidemiological and prospective clinical studies be designed to assess the potential of cancer and other long-term complications related to polyurethane mammary prostheses in humans. The agency suggests that these preclinical and epidemiological studies be conducted as a separate subset of silicone gel-filled mammary implant safety studies.

More detailed guidance on the conduct of above tests will be available upon request from Kenneth A. Palmer, Center for Devices and Radiological Health (HFZ-410), Food and Drug

Administration, 1390 Piccard Dr., Rockville, MD 20850.

2. *Clinical data.* Valid scientific evidence should include well-controlled clinical studies, with detailed long-term followup, in order to provide reasonable assurance of the safety and effectiveness of the silicone gel-filled breast prosthesis (with and without polyurethane foam coating). Such studies should include data on: (1) The incidence and outcome of the development of fibrous capsular contracture, using a well-defined system for grading degrees of contracture through the entire followup period; (2) incidence and outcome of implant rapture with subsequent silicone gel leakage, as well as complications related to this type of device failure; (3) any other type of device failure; (4) infection rates; (5) effects on mammographic visualization of breast tissue, as well as effects on palpation of breast tissue (clinical parameters for this data should include stage of cancer at diagnosis, involvement of multiple or repeated mammographic examination, etc.; (6) incidence of complications associated with retrieval of polyurethane implants, as well as the clinical effect of the degradation of the polyurethane foam (for the foam covered prostheses); (7) incidence and outcome of calcification of the fibrous capsule; and (8) incidence of all adverse immunological and allergic phenomena possibly associated with each type of the device. The diagnostic criteria for each type of immunological and allergic phenomenon should be defined at the beginning of the study and cases should be well documented utilizing these criteria.

Additional information can be obtained from a carefully designed clinical study requiring pre- and post-treatment immunohematologic laboratory tests such as the determination of erythrocyte sedimentation rate (ESR), immunoglobulin levels (IgG, A, E, M), complement C_3 and C_4 levels, fluorescent antinuclear antibodies (FANA), and rheumatoid factor. Results of such an ongoing study would be subject to postapproval followup. (Animal model studies may also be useful in the assessment of possible delayed hypersensitivity and autoimmune diseases, including scleroderma, that might occur following the use of silicone implants.)

Epidemiological studies designed to determine the risk of such occurrences must contain enough subjects to detect a small but significant increase in one or more connective tissue diseases (especially scleroderma) that may be associated with the use of the device. These studies should also investigate the effects of a history of tuberculosis, other chronic infections (especially mycobacterial), and tuberculin positivity in patients receiving the device.

The agency believes that insufficient time has elapsed to permit a direct evaluation of the risk of cancer posed by the presence of silicone in the human body and that sufficient epidemiological data or experimental animal data is not available to make a reasonable and fair judgment. Therefore, the agency will require long-term post-approval followup for any silicone gel-filled breast prosthesis permitted to continue in commercial distribution. Well-designed clinical prospective studies with long-term followup together with experimental animal studies will be considered as essential in the determination of safety and effectiveness of the device. Further, well-designed retrospective and prospective clinical studies to collect long-term data on teratogenic/reproductive effects of the device must be initiated.

FDA recognizes that the primary benefit of silicone breast implants is cosmetic in nature. The effectiveness of the device is probably the maintenance or enhancement of a woman's psychological well-being which can be balanced against any illness or injury from the use of the device (Ref. 86). FDA understands that evaluation of the degree of benefit involves an assessment of patient satisfaction and psychological well-being, particularly in light of the function of the device. Such evaluation includes subjective factors, relates to patient expectations, and may be transient in nature.

The level of the device's benefit may depend on whether breast implants are used for augmentation mammaplasty, correction of congenital breast anomalies, or reconstruction after tumor ablation. The evaluation parameters for this portion of the clinical study, therefore, must be structured for an objective and standardized recording/measurement of the psychological benefit of the device. FDA strongly recommends that the following criteria be included in the study: (1) an untreated control population; (2) stratification of data according to augmentation versus reconstruction mammaplasty; (3) quantitative assessment of the level and duration for each of the various parameters evaluated (for example, a numerical score should be assigned to evaluate the level and duration of the pre-operative and post-operative satisfaction and psychological improvement of treated compared to untreated control patients); (4) baseline level for each psychological parameter evaluated; (5) correlation of the psychological data with the physical outcomes of the implant procedure; and (6) followup time of at least 5 years. The benefit assessment (as with the entire PMA) must rely on valid scientific evidence as defined in 21 CFR 860.7(c)(2) and well-controlled studies as described in 21 CFR 860.7(f) in order to provide reasonable assurance of the safety and effectiveness of the silicone breast implants in reconstruction and augmentation mammaplasty.

Applicants should submit any PMA in accordance with FDA's "Guideline for the Arrangement and Content of a PMA Application." The guideline is available upon request from Document Control, Center for Devices and Radiological Health, Food and Drug Administration, 1390 Piccard Dr., Rockville MD 20850.

III. Request for Comments With Data

FDA is providing a 60-day period for interested persons to submit to the Dockets Management Branch (address above) written comments regarding this proposal and its findings. Two copies of any comments are to be submitted, except that individuals may submit one copy.

Comments are encouraged to discuss all aspects of the proposed findings regarding the: (1) Degree of risk, illness or injury associated with the use of the silicone gel-filled mammary prosthesis, (2) experimental, animal, and human studies required in a PMA or a PDP of the device in order to assess its safety and effectiveness, (3) feasibility of these studies within the time permitted by the act, etc., and (4) benefits to the public from the use of the device.

The comments must discuss the reasons in detail, for example, why important new information on the safety and effectiveness of the device could not be feasibly submitted, within the time permitted, or why animal studies may not be available to assess long-term illness such as connective tissue disorders, or that carefully designed epidemiological studies may not be available to evaluate long-term silicone-related illnesses, etc.

CDRH staff are available to provide guidance to manufacturers on any proposed animal and epidemiological studies needed in a PMA or PDP.

IV. Silicone Inflatable Breast Prosthesis

The silicone inflatable breast prosthesis (§ 878.3530) is not subject to this proposed rule. FDA will publish a

separate document proposing to establish the effective date of the requirement for premarket approval for the silicone-inflatable (saline-filled) breast prosthesis.

V. Opportunity to Request a Change in Classification

Before requiring the filing of a PMA or a notice of completion of a PDP for a device, FDA is required by section 515(b)(2)(A)(i) through (iv) of the act and 21 CFR 860.132 to provide an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. Any proceeding to reclassify the device will be under the authority of section 513(e) of the act.

A request for a change in the classification of the silicone gel-filled breast prosthesis is to be in the form of a reclassification petition containing the information required by § 860.123, including new information relevant to the classification of the device, and shall, under section 515(b)(2)(B) of the act, be submitted by June 1, 1990.

The agency advises that to assure timely filing of any such petition, any request should be submitted to the Dockets Management Branch (address above) and not to the address provided in § 860.123(b)(1). If a timely request for a change in the classification of the silicone gel-filled breast prosthesis is submitted, the agency will, by July 16, 1990, after consultation with the appropriate FDA advisory committee and by an order published in the **Federal Register**, either deny the request or give notice of its intent to initiate a change in the classification of the device in accordance with section 513(e) of the act and § 860.130 of the regulatons.

V. References

The following information has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

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VI. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Economic Impact

FDA has examined the economic consequences of this proposed rule in accordance with the criteria in section 1(b) of Executive Order 12291 and finds that this proposal would not be a major rule as specified in the Order. The agency believes that only a shall number of firms will be affected by this proposed rule, and the agency certifies under the Regulatory Flexibility Act (Pub. L. 96–354) that the proposed rule will not have a significant economic impact on a substantial number of small entities. An assessment of the economic impact of any final rule based on this proposal has been placed on file in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Comments

Interested persons may, on or before July 16, 1990, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Interested persons may, on or before June 1, 1990, submit to the Dockets Management Branch a written request to change the classification of the silicone gel-filled breast prosthesis. Two copies of any requests are to be submitted, except that individuals may submit one copy. Comments or requests are to be identified with the docket number found in brackets in the heading of this document. Received comments and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 878

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 878 be amended as follows:

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

1. The authority citation for 21 CFR part 878 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. Section 878.3540 is amended by revising paragraph (c) to read as follows:

§ 878.3540 Silicone gel-filled breast prosthesis.

* * * * *

(c) *Date premarket approval application (PMA) or notice of completion of product protocol (PDP) is*

required. A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (December 31, 1990, or a date 90 days after date of publication in the **Federal Register** of a final rule based on this proposed rule, whichever is later), for any silicone gel-filled breast prosthesis that was in commercial distribution before May 28, 1976, or that has on or before (the later of the two dates above), been found to be substantially equivalent to the silicone gel-filled breast prosthesis that was in commercial distribution before May 28, 1976. Any other silicone gel-filled breast prosthesis shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

Dated: March 31, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90-11471 Filed 5-16-90; 8:45 am]

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federal register

Thursday,
May 17, 1990

Part V

Department of Labor

Occupational Safety and Health Administration

Hazard Communication; Notice

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. H-022G]

Hazard Communication

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comments and information.

SUMMARY: OSHA is requesting comments and information from the public regarding suggestions for improving the presentation and quality of chemical hazard information transmitted under its Hazard Communication Standard (HCS).

The HCS provides workers exposed to hazardous chemicals with the right to know about their identities, hazards, and ways to prevent exposure. It requires chemical manufacturers and importers to evaluate the hazards of the chemicals they produce or import, and to develop labels and material safety data sheets regarding those hazards and associated protective measures. These written sources of information are to be provided to employers using the products.

All employers using hazardous chemicals are required to have a hazard communication program for their workers. The program must include employee access to labels and material safety data sheets, as well as a training program to ensure employees understand the information available to them. Effective implementation of the HCS reduces risks to workers handling hazardous chemicals by providing them with information they have both a right and a need to know.

This notice asks a series of questions to elicit information from both preparers and users of labels and material safety data sheets regarding their experiences in implementing the rule, and suggestions for improving the quality of the information provided. Possible development of a standardized format or order of information is raised as an issue. In addition, comments are requested regarding other communication factors, such as the language skills needed to understand the information presented; suggestions for compliance assistance activities, particularly for small businesses; and issues related to the practice of providing information regarding chemicals that are not covered under the rule.

The notice also requests comments on how the standard should deal with chemicals that pose little or no risk to workers either because of lack of inherent hazards or negligible exposures.

Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986, administered by the Environmental Protection Agency (EPA), has requirements for emergency planning and response, and community right-to-know, that rely on material safety data sheet information. EPA is also interested in improving the effectiveness of chemical information transmittal, and worked with OSHA in preparing this notice. The information submitted to OSHA will be shared with EPA for their use in implementation of the SARA requirements.

DATES: Comments and information should be submitted in quadruplicate, and must be received by August 15, 1990.

ADDRESSES: Comments and information should be submitted to the Docket Office, Docket H-022G, OSHA, room N2625, 200 Constitution Avenue, NW., Washington, DC., 20210; (202) 523-7894.

FOR FURTHER INFORMATION CONTACT: James F. Foster, Office of Information and Consumer Affairs, OSHA, room N3647, 200 Constitution Avenue, NW., Washington, DC 20210; (202) 523-8151.

SUPPLEMENTARY INFORMATION:

The HCS was initially promulgated on November 25, 1983 (48 FR 53280; codified at 29 CFR 1910.1200). The original rule, effective November 25, 1985, applied to the manufacturing sector of industry, and provided protections for about 14 million workers in over 300,000 establishments. On August 24, 1987, the rule was expanded to cover all workers exposed to hazardous chemicals (52 FR 31852; codified at 29 CFR 1910.1200, 1915.99, 1917.28, 1918.90, and 1926.59). (OSHA has estimated that approximately half of the exposed workers in private sector non-manufacturing industries were covered by existing State right-to-know or hazard communication laws at the time the Federal standard was expanded. It should be noted that employees in States which administer OSHA-approved State Plans continue to be protected under state requirements, which may be different than the Federal rule but must be at least as effective.)

All provisions of the rule have been enforced in every industry covered by OSHA since March 17, 1989. *See, e.g.*, § 1910.1200(j); 54 FR 6886 (Feb. 15, 1989); 53 FR 27679 (July 22, 1988). The rule's protections now apply to over 30 million workers in approximately 3.5 million establishments where chemicals are used.

OSHA believes that the comprehensive approach adopted in the rule—requiring labels, material safety data sheets (MSDSs), and training to protect workers from hazardous chemicals—is sound. However, experience gained in implementation of the rule, recent research activities, and other developments in this area suggest that modifications of the rule or additional guidance may result in more effective transmittal of chemical hazard information to employers and employees. The purpose of this notice is to solicit input from the public regarding areas of concern, such as standardization of the MSDS and label format or the order in which information is presented, and communicability of the information conveyed. Comments are also requested regarding provision of labels and MSDSs for chemicals that are not covered by the rule, and suggestions for compliance assistance materials, particularly for small businesses. This input will then be used to determine an appropriate course of action for the Agency to pursue.

The primary issues of concern involve the requirements for MSDs and labels. When the HCS was promulgated in 1983, the public record strongly supported adoption of performance-oriented requirements with regard to MSDSs and labels. *See, e.g.*, 48 FR 53300-05 (labels), 53305-10 (MSDSs). Many chemical manufacturers and importers were already providing such information voluntarily and, in the absence of specific requirements, had developed their own formats and approaches. The record indicated that a performance-oriented approach would reduce the need for chemical manufacturers and importers to revise these existing documents to comply, thus reducing the cost impact of the standard. Hazard evaluation and preparation of labels and material safety data sheets are the most burdensome provisions of the standard, and, with few exceptions, the manufacturing sector bears that burden. In recognition of the work that had been voluntarily completed, OSHA decided to allow MSDSs and labels to be presented in any format desired, as long as the minimal information requirements listed in the standard were met. (*See* paragraph (f) for label requirements; paragraph (g) for MSDS requirements).

It has been brought to OSHA's attention that some users of chemicals would prefer specific requirements for the presentation of information on these materials, particularly with regard to the MSDSs. Given the extensive use of chemicals, and the large number of users involved in the workplace, it

appears that a standardized format or agreed-upon order of information would make the information easier to find on the MSDSs, facilitate automation in data retrieval systems, and reduce the burden of training workers to use the MSDSs.

In addition to the concerns regarding standardization of approach, comments have also been made about the type of language used to present the information. MSDSs are intended to convey technical information to multiple audiences. Within the workplace, MSDSs are used by employers, workers, worker representatives, and safety and health professionals responsible for designing protective programs for exposed workers. The needs of these groups may differ in terms of the technical information presented. Proper training helps to ensure that those using the information understand it, but many believe that more attention must be given to addressing the type of language used to convey information on the MSDS.

This issue is further complicated by the use of MSDSs outside the workplace. Under title III of SARA, Congress mandated that MSDSs be made available to State Emergency Response Commissions, Local Emergency Planning Committees, and fire departments, to support emergency planning and emergency response, as well as to provide the general public with information about chemicals for right-to-know purposes. The organizations responsible for implementation of SARA have raised concerns about the MSDSs providing information appropriate for their purposes.

OSHA is also aware that some companies have reviewed the effectiveness of their own MSDSs since the initial compliance date of the rule, and made changes to improve them. Many of the studies or analyses on which these companies have based their decisions are not publicly available, but would be helpful in determining whether changes are needed to improve the MSDSs and labels. Similarly, the Chemical Manufacturers Association has also been involved in developing guidelines for the preparation of MSDSs in order to address some of the issues raised by users of the information. These guidelines have not yet been issued in final form, but drafts have been circulated to interested parties for review and comment.

International requirements for labels and MSDSs have also led to increased emphasis on the issue of standardization. Differing national requirements for classification of chemicals by hazard, and for labels and MSDSs, have resulted in potential barriers to trade among affected countries. As more countries and organizations adopt such requirements, it has become increasingly evident that an internationally harmonized approach would help to ensure that useful and consistent information is received when a chemical is imported. Given the extensive international trade in hazardous chemicals, this type of approach will be necessary to protect American workers and other users of MSDSs. Questions specific to the international harmonization issue were published in a separate notice in the **Federal Register** (55 FR 2166; January 22, 1990). In particular, OSHA published proposed conclusions of the International Labor Organization with regard to chemical safety, and requested public comments and information on those conclusions in order to assist the Agency in participating in international discussions on these issues. The sixty day comment period closed on March 23, 1990. About fifty (50) comments were received.

The purpose of this notice is to solicit substantive information from the public about current practices and implementation experience for the issues of concern. The questions regarding MSDSs and labels have been divided to separate those which deal with the experiences of organizations preparing MSDSs and labels from those which use MSDSs and labels prepared by others. Obviously, some organizations would be included in both of these categories. OSHA would appreciate a substantive explanation in all answers, and documentation where possible. Copies of studies or other information regarding these issues would be very helpful. In order to ensure that the information submitted can be analyzed efficiently, please address your responses to the specific questions listed.

Issues Related to the Preparation of Material Safety Data Sheets and Labels

As noted above, MSDSs and labels were often available prior to the promulgation of the HCS. MSDSs have been circulated for many years, and were required by law in the maritime industries as early as 1968. A number of state right-to-know laws required MSDSs prior to the promulgation of the Federal standard, which also resulted in their increased availability. Nevertheless, implementation of the HCS has resulted in much more extensive use of the information.

It is clear, however, that there is still room for further improvement. The quality of the information presented varies considerably among MSDS preparers, and the presentation of the information also differs significantly in many respects. OSHA made a non-mandatory MSDS format available in 1985 (OSHA Form 174), but few preparers have chosen to use it. We assume that the format did not satisfy their needs in the preparation of MSDSs, and would like to obtain further information regarding the factors that influenced their decisions regarding an alternative format.

OSHA would also like to obtain more information about the preparation of MSDSs, particularly with regard to considerations of issues of communicability, including possible standardization of the format or order of information and consideration of the language skills needed for the information presented. The original rulemaking focused on what information needed to be made available. The issues regarding what constitutes effective communication have evolved as the use of MSDSs has been broadened to include all exposed workers, as well as parties outside the workplace.

Suggestions have been made that OSHA standardize the format for MSDSs and labels. While this would involve extensive changes in current practices for chemical manufacturers and importers in the short-term, it may improve the effectiveness of the information transmitted to users. OSHA is aware that some preparers of MSDSs and labels have performed in-house evaluations of their MSDSs and labels. Information about what these evaluations showed and what changes, if any, were made would be very useful to OSHA in determining what actions may be necessary in this regard. OSHA would like to receive responses to the following questions:

(1) Do you use OSHA's non-mandatory Form 174 for your MSDSs, or have you created your own format? If you have created your own format, please submit a copy of it with your response.

(2) If you are not using the Form 174, why did you choose to use an alternative format? Did you conduct any studies regarding the effectiveness of the format you are using? If so, please submit a copy of the study results with your response.

(3) Do you get feedback from the users of your products or other users of the MSDSs (such as emergency responders) regarding the format or presentation of information on your MSDSs? Have users ever questioned the accuracy or adequacy of the information? If so, how do you resolve such concerns? What

educational or experiential background do your MSDS and label preparers have?

(4) In preparing your MSDSs and labels, have you considered the needs of the multiple audiences that will be using them? Have you reviewed the language used in these documents to determine what grade level reading comprehension would be needed to understand the information? Have you adjusted the reading level for the different sections of the MSDS, *i.e.*, is some of the information presented in simple summary fashion while other information remains technically oriented? What information has been included in the simplified summary? If you have adjusted the reading level, what level have you selected and why? If you have any guidelines or study results regarding the appropriate levels to use, please include them with your response.

(5) Are you aware that some word processing programs can automatically calculate the reading grade level of the text that's been typed? If you have such a program, have you used it with regard to the preparation of chemical information on MSDSs and labels? Do you believe such programs are useful in the preparation of the MSDSs and labels?

(6) Have you considered established document design principles in the development of your MSDSs? For example, are you aware that some studies indicate that printing the information in all capital letters reduces comprehension? If you have any guidelines regarding document design that could be followed to improve the comprehensibility of the information, please submit a copy with your comments.

(7) Have you developed or designed a label format? What guidelines did you use in the design of this format? Do you follow industry guidelines or voluntary consensus standards when preparing your labels for shipped containers (for example, the American National Standards Institute (ANSI) standard for precautionary labeling, Z129.1)? If so, which ones do you use? What type of guidance do you find helpful? Have you conducted any studies to determine whether the labels convey the information effectively? If so, please submit a copy of the study and the results with your comments.

(8) Do you translate your MSDSs and labels into any languages in addition to English? If so, what languages? How do you make them available to users?

(9) Do you sell your products directly to customers who will use the products, or do you transmit them through distributors? If you use a distributor, do you provide multiple copies of the applicable MSDSs, or do you merely provide one as required by the rule? Has your distributor requested multiple copies? Have the ultimate purchasers of your product ever contacted you to request an MSDS, indicating that they were not able to obtain the MSDS from your distributors? How did you respond in this situation?

(10) Do you store or transmit your MSDSs electronically? If you do not transmit them electronically now, is the system you are using capable of generating a tape or some other method of transmitting the MSDSs in other than hard copy?

(11) Are you subject to community right-to-know reporting requirements under sections 311 and 312 of SARA? If so, have you reported the presence of hazardous chemicals in your workplace by providing MSDSs to the local authorities, or simply the chemical inventory lists? Have you added information to your MSDSs to facilitate SARA reporting for yourself and/or downstream users (*e.g.*, the EPA hazard categories)?

(12) What additional information would make it easier for you to prepare appropriate MSDSs? Would guidelines help? What type of information would be needed in the guidelines? Would a standardized format or order of information be of assistance? Do you have any specific suggestions for standardizing the format or order?

Issues Related to the Effective Use of Material Safety Data Sheet and Label Information.

The HCS is designed to communicate information in three ways. Labels are to provide a brief summary of the essential hazard information. They are not intended to be the sole source of information, or the primary source. Long, complicated labels do not effectively communicate information. MSDSs are the detailed source of information under the HCS. They are intended to convey technical information, and serve as a reference source, for a broad spectrum of concerned parties, from exposed workers to employers, physicians providing medical treatment, and industrial hygienists monitoring the workplace. The workers are also trained under the requirements of the HCS. This training includes learning to use labels and MSDSs to obtain more detailed information about the chemicals.

As noted previously, MSDSs are now being used by emergency responders and members of the community, although this was not the purpose of the MSDSs when the HCS was promulgated. As these documents must satisfy the needs of a number of affected parties, they are becoming increasingly complex and lengthy.

Some of the users are concerned that the MSDSs are not appropriate for their needs. For example, some emergency responders have criticized the lack of a standard format. Other users have suggested that the information is too technical or detailed, or that the language skills needed to comprehend the information are too advanced for some of the members of the intended audience.

OSHA believes that as a result of the experiences gained by the Agency, employers, and others while implementing the various right-to-know laws, there is more information available today regarding the appropriate approaches to take than was available when the rule was promulgated in 1983. The focus of these questions is to elicit comments regarding ways to improve the communication of information:

(13) In what capacity do you use or have access to MSDSs and labels (*e.g.*, as an exposed worker; as a medical professional providing services to exposed workers)? How do you use the information (*e.g.*, to ensure proper protective measures are used)? Is there any information that is currently not included on the MSDSs and labels that you believe would help you? Please explain what that information is, and how you would use it.

(14) Have you been able to obtain the MSDSs and labels for the chemicals you are interested in? If not, who did not provide them when required to do so—the chemical manufacturer or importer, distributor, employer, or state or local government agency?

(15) Can you generally understand those parts of the MSDSs that are of interest to you? If not, which are difficult for you? Does the difficulty relate to the language used or the location of the information on the MSDS? Have you been trained to understand and use the MSDSs and labels? Did the training provide sufficient information for your purposes? If not, what would you like to see included in the training? Is it repeated periodically? How often? Are there reference materials (such as a glossary of terms used on MSDSs and labels) readily available to help use the MSDSs? If not, would this be of assistance to you? How could the training be improved?

(16) What do you think could be done to improve the information on MSDSs and the way it is presented? Would a standardized format or order of

information help? Would inclusion of a simple summary of the most pertinent information be useful? What information would you consider to be most pertinent for inclusion in such a summary?

(17) Have you ever returned an inadequate MSDS to a supplier? If yes, why and under what circumstances? What was the response? Have you ever discussed the communicability of the information with your supplier? What was the response? Have you found that MSDSs for the same product from different manufacturers have conflicting information? What type of information conflicted? What did you do about it?

(18) Has your organization re-formatted MSDSs received to use a standard format? If yes, why? How was the format selected? Please submit a copy of the format with your response, as well as the results of any studies related to the effectiveness of that approach.

(19) What do you think could be done to improve the information on labels and the way it is presented? Would a standardized format or order of information help? What information do you think would be helpful to include on labels?

(20) Does your organization re-label containers received? If yes, why? How was the label format selected? Please submit a copy of the format with your response, as well as the results of any studies related to the effectiveness of that approach.

(21) Are you subject to community right-to-know reporting requirements under sections 311 and 312 of SARA? If so, have you reported by providing MSDSs to the local authorities, or simply the chemical inventory lists? What additional information on MSDSs would facilitate SARA reporting (*e.g.*, the EPA hazard categories)?

Issues Related to Exemption of Chemicals

As described above, the HCS is intended to provide workers exposed to hazardous chemicals with the right-to-know the hazards and identities of the products. The scope of the rule is intentionally broad in this respect to ensure that workers are well advised about their chemical exposures. Nevertheless, the HCS includes a number of provisions which limit the application of the rule in various circumstances.

The HCS only applies to chemicals for which there is existing scientific evidence that they are hazardous. (paragraph (b)). The responsibility for identifying and evaluating this evidence is placed on the chemical manufacturer or importer of the product. (paragraphs (a), (d)). The rule includes definitions of hazards, and criteria for evaluation, that must be used in this hazard determination process. (paragraphs (c), (d); appendices A, B). The standard does not apply to chemicals for which there is no evidence that they are hazardous.

The hazard determination process involves an assessment of the intrinsic properties of a chemical substance. Chemical manufacturers and importers may also include pertinent risk information on the MSDS to assist downstream employers in designing appropriate protective programs. They may not, however, choose to exclude any well-substantiated evidence regarding hazard potential. Such suppliers do not know the specific exposure situations in each workplace where the product is used, and thus cannot accurately determine the specific risk potential. All hazard information must be transmitted when there is a potential for exposure to a hazardous chemical. Employers are responsible for relating the hazard information provided by suppliers to the specific workplace situation. This information is provided to workers in training, particularly in reference to the types of control measures used in the workplace.

The vast majority of chemicals used in the workplace are actually mixtures of substances, rather than individual chemicals. If the mixture has been tested to determine its hazardous properties, and is not found to be hazardous, the mixture is exempted from the rule. The standard also permits chemical manufacturers and importers to exclude hazardous chemicals that constitute a small proportion of the mixture. (paragraph (d)(5)). Chemicals which are found to be carcinogens, but are present in the mixture in concentrations of less than one tenth of one percent of the total composition, are exempt. Similarly, chemicals which present other types of health hazards are exempt if present in the mixture in concentrations of less than one percent. Even when the hazardous chemical comprises less than one percent (or one tenth of one percent for carcinogens) of the mixture, this exclusion is inapplicable in cases where: (1) Releases from the mixture could exceed established exposure limits; or (2) there is evidence that otherwise indicates the chemical still presents a risk to exposed workers.

There must be a potential for worker exposure to the hazardous chemical for the standard to be applied. (paragraph (b)). Mere presence of the chemical in the workplace does not result in coverage—it must be available for exposure. For example, equipment being used in the workplace may be composed of hazardous metals such as chromium or nickel. However, if the chromium and nickel are bound in the product in such a way that employees cannot be exposed to the chemicals during use, they are not covered. Similarly, employees may be using a liquid mixture that includes a hazardous powder or dust. If the product is only used as a liquid in the workplace, and the dry powder or dust cannot become airborne, and thus available for exposure, as it is inextricably bound in the liquid, it is not covered under the rule.

The standard also limits or exempts from coverage certain types of hazardous products that are regulated by other Federal agencies. For example, hazardous waste that is regulated by the Environmental Protection Agency (EPA) is completely exempted from the HCS in order to avoid duplicate coverage. (paragraph (b)(6)(i)). Similarly, other products that are labeled in accordance with the requirements of other Federal agencies are exempted from additional labeling under the HCS. (paragraph (b)(5)). These would include chemicals such as pesticides labeled in accordance with EPA requirements, or drugs labeled in accordance with the requirements of the Food and Drug Administration.

The HCS also considers the manner in which chemicals are used in the workplace, and exempts certain work operations where the exposure potential is limited. For example, where employees handle chemicals only in sealed containers, the HCS requirements are limited and focus primarily on training to deal with spills and leaks. (paragraph (b)(4)). Similarly, food, drugs, cosmetics, and alcoholic beverages are exempted when packaged for sale to consumers in a retail establishment. (paragraph (b)(6)(v)). Thus warehouse operations, retail stores, and other such facilities have limited requirements under the rule since the potential for exposure is less in these types of operations than, for example, in the manufacturing processes for the same products.

Some of these exclusions are also related to the type of product. Consumer products, for example, are only covered when they are used in a manner that is different than consumer use, or where the chemical is used in such a way that the duration or frequency of exposure is greater than that which would be experienced by consumer. (paragraph (b)(6)(vii)).

For those chemicals that are not addressed under one of these exclusions, information on their hazards and associated protective measures

must be available to exposed workers on labels and MSDSs. The particular exposure situations for each of these chemicals, and thus the specific workplace risks, are to be addressed by employers in the protective programs they develop to prevent the occurrence of adverse effects, and should be explained to workers in employee training programs. Training programs are generally best designed to address all types of hazards present, and the protective programs being implemented in the workplace. While employees must be trained to use and understand labels and MSDSs, it is not expected that training will involve a detailed discussion of each label and MSDS for every chemical in the workplace. Unless there are very few chemicals present, training on each hazardous chemical will generally not be an effective training approach.

While the standard includes a number of limitations and exclusions with regard to the scope of chemicals covered, comments have been received by OSHA that suggest the rule should include an exclusion for "de minimis" or "trivial" exposures. It should be noted that neither of these terms are used in the HCS. OSHA proposed a modification to the "article" definition in a notice of proposed rulemaking (NPRM) published on August 8, 1988 (53 FR 29822, 29828–33, 29852). The proposed modification clarifies the definition in accordance with OSHA's enforcement policy to indicate that releases of very small quantities of a hazardous chemical from manufactured items, that do not present a health risk or physical hazard to exposed employees, are not covered by the rule. Written comments and oral testimony have been received on that proposed modification, as well as on other specific alternatives that have been suggested by other interested parties. OSHA will address the comments received on this subject when it issues a final determination on the NPRM.

In addition to exemptions for low concentrations of hazardous ingredients in mixtures and for articles, OSHA also solicits comments on whether *de minimis* considerations should be established for hazardous chemical exposure in general.

(22) Should the HCS have a *de minimis* threshold to define what level of exposure to a hazardous chemical would trigger a need for MSDSs and labels?

(23) Should OSHA set a *de minimis* level for chemicals that have an OSHA PEL or ACGIH TLV?

(24) What criteria could OSHA use to set *de minimis* thresholds for chemicals for which specific regulated levels have not been established?

(25) If OSHA does not set a *de minimis* level should employers be allowed to do this?

(26) What criteria could employers use to set *de minimis* thresholds where specific regulated levels have not been established?

(27) Is the HCS now being interpreted and applied to chemicals which pose little or no risk to workers?

(28) Is there sufficient information on labels and MSDSs for employers to adequately distinguish between high-risk and low-risk chemicals?

(29) Is it sufficient for the preparer to state on the labels and MSDSs only that a hazard exists?

(30) Should the MSDS and label provide specific information on exposure levels at which the chemical poses a risk?

(31) What would you recommend as a safe level of risk for a chemical to be exempt from the HCS?

OSHA is aware that there are many MSDSs being distributed for products that are not covered by the HCS. As described herein, there are a number of chemicals or products containing chemicals that are exempt from the rule under various provisions. However, many chemical manufacturers and importers still distribute MSDSs for these products. In some cases, they do so because their customers request MSDSs with all purchases, not just those which involve hazardous chemicals. The customers can then be assured that a hazard evaluation has been done. Absence of an MSDS might be as a result of an oversight in distribution, rather than a finding of no hazard, and many downstream employers consider an MSDS indicating that the product is not hazardous to be an important part of their program. Chemical manufacturers and importers thus distribute the MSDSs to satisfy these customers.

It appears that another reason MSDSs are available for products for which the HCS does not require them is that some chemical manufacturers and importers are concerned about the product liability due to failure to provide these sheets and adequate warnings. Such employers use MSDSs and labels to provide warnings regarding their products, regardless of whether or not the HCS requires an MSDS.

OSHA does not believe it has the authority to prohibit chemical manufacturers and importers from providing MSDSs for products that are not covered under the HCS. Furthermore, even if OSHA did have such authority, availability of the information is often useful in the context of a safety and health program, and the Agency would not want to prevent the distribution of such data.

On the other hand, we are concerned that users of the products be able to differentiate between MSDSs for products covered by the HCS, and those which are not. OSHA is aware that some chemical manufacturers and importers mark MSDSs with statements that indicate that the product is not covered under the HCS. It appears that such a statement would make it easier for downstream users to decide how to handle the material and the MSDS.

With regard to this issue, OSHA would like responses to the following questions. For preparers of labels and MSDSs:

(32) Do you provide labels and MSDSs for chemicals or products that are not covered by the HCS? If so, why?

(33) Do you mark the labels and MSDSs to indicate that the chemicals are not covered by the HCS? If so, what type of statement do you use to indicate this?

(34) Do you have any other suggestions for ways OSHA could address the concerns of users of your products about receiving MSDSs for products that are covered by the HCS?

For users of labels and MSDSs:

(35) Do you request labels and MSDSs for all chemicals, regardless of whether they are covered under the HCS or not?

(36) Do you automatically consider a chemical to be hazardous when you receive a label or MSDS? Have you received such information for chemicals you do not believe to be hazardous? How did you determine they were not covered by the rule if the preparer did not include a statement to that effect on the label or MSDS?

(37) Would a statement on the label or MSDS indicating that the product is not covered by the HCS be helpful to you in implementing your hazard communication program?

(38) Do you have any other suggestions for ways OSHA could address concerns regarding information transmitted on products not covered by the HCS?

Issues Related to Compliance Assistance or Outreach Activities

OSHA officially notifies the public of regulatory requirements through publication in the **Federal Register**, and subsequent printings in the Code of Federal Regulations (CFR). When such documents are published, the Agency prepares a press release regarding the rules, and provides copies of the release to approximately 6,000 interested organizations. These organizations

include, for example, newspapers, trade journals, and trade associations. Further information is provided to these organizations upon request.

To aid employers' efforts to comply with HCS, OSHA has undertaken a number of other outreach activities. Following publication of the 1983 final rule, OSHA prepared a booklet which provided a simple summary of the requirements (OSHA 3084). This booklet has been updated periodically to reflect changes to the rule, and to indicate contacts for additional information. It has also been translated into Spanish (OSHA 3117). In August 1988, OSHA published in the **Federal Register** a non-mandatory appendix to the rule which provided employer guidance for compliance (53 FR 29852). This compliance assistance was subsequently published as a separate booklet (OSHA 3111), and was also translated into Spanish (OSHA 3116). OSHA made copies of these booklets available to the Small Business Administration (SBA) to help them respond to requests for information through their hotline. A single copy of these four booklets may be obtained without charge from OSHA's Publications Office, room N3101 at the above address; telephone (202) 523–9667, or from one of the OSHA Regional Offices throughout the country.

The Agency also prepared a compliance kit to assist employers, and made it available through the Government Printing Office (GPO). The kit is a step-by-step guide, and includes other information, such as a glossary of terms used on MSDSs. It is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; telephone (202) 783–3238; GPO Order No. 929–022–00000–9; $18—domestic; $22.50—foreign.

As with any OSHA rule, employers may contact their local OSHA Area Offices to obtain information regarding requirements, and the Agency has established Hazard Communication Coordinators in each Regional Office to respond to questions. OSHA representatives have also given hundreds of speeches and presentations regarding the HCS since it was promulgated. The 25 states that administer their own OSHA programs have similarly provided information about their hazard communication rules to employers within their jurisdictions. In addition, consultation services funded by OSHA have responded to thousands of requests from employers to assist them in complying.

Some employer representatives, particularly for small businesses, maintain that many employers they represent are still not yet fully aware of their safety and health responsibilities under the HCS and other standards. Therefore, OSHA wishes to obtain further information regarding the usual sources consulted by such employers to determine applicable regulatory requirements, and the type of outreach these employers would find to be helpful to them.

(39) How did you learn about the requirements of the HCS? When did you find out about these requirements?

(40) Do you belong to a trade association? Does the trade association provide information to its members about regulatory requirements? Do you subscribe to trade journals? Do they provide information about OSHA's regulatory requirements?

(41) Do you belong to professional organizations related to your business? Do they provide information regarding OSHA's regulatory requirements?

(42) Have you obtained copies of any of the booklets OSHA has made available regarding the HCS? If so, how did you learn they were available? Have you found them to be useful? What suggestions do you have for additional information to be included in these booklets that would be helpful to you?

(43) Have you obtained a copy of the compliance kit? If so, how did you learn it was available? Have you found it to be useful in helping you to comply with the rule? Do you have any suggestions for additional information to be included in the compliance kit to make it more helpful to you?

(44) If you have not obtained copies of the booklets or kit, were you aware that they were available? If yes, how did you learn about their availability? Where do you normally go to learn about publication/services offered by government agencies?

(45) Have you used OSHA's free on-site consultation services to assist you in complying with the HCS or other OSHA rules? If so, did you find this service to be helpful in determining what you needed to do to comply?

(46) Have you obtained compliance assistance materials from other than government sources? What types of materials did you obtain or use? From whom? At what cost? What information or services did you find to be helpful?

(47) What specific outreach products or activities do you suggest the government should employ to inform small business employers in your industry?

Other Information

(48) In addition to responding to these specific requests for information, please feel free to add further suggestions or comments to improve the effectiveness of the information transmitted under the HCS.

Signature and Authority

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary for Occupational Safety and Health, under authority of sections 4, 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655 and 657), section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333), and Secretary of Labor Order No. 1–90 (55 FR 9033).

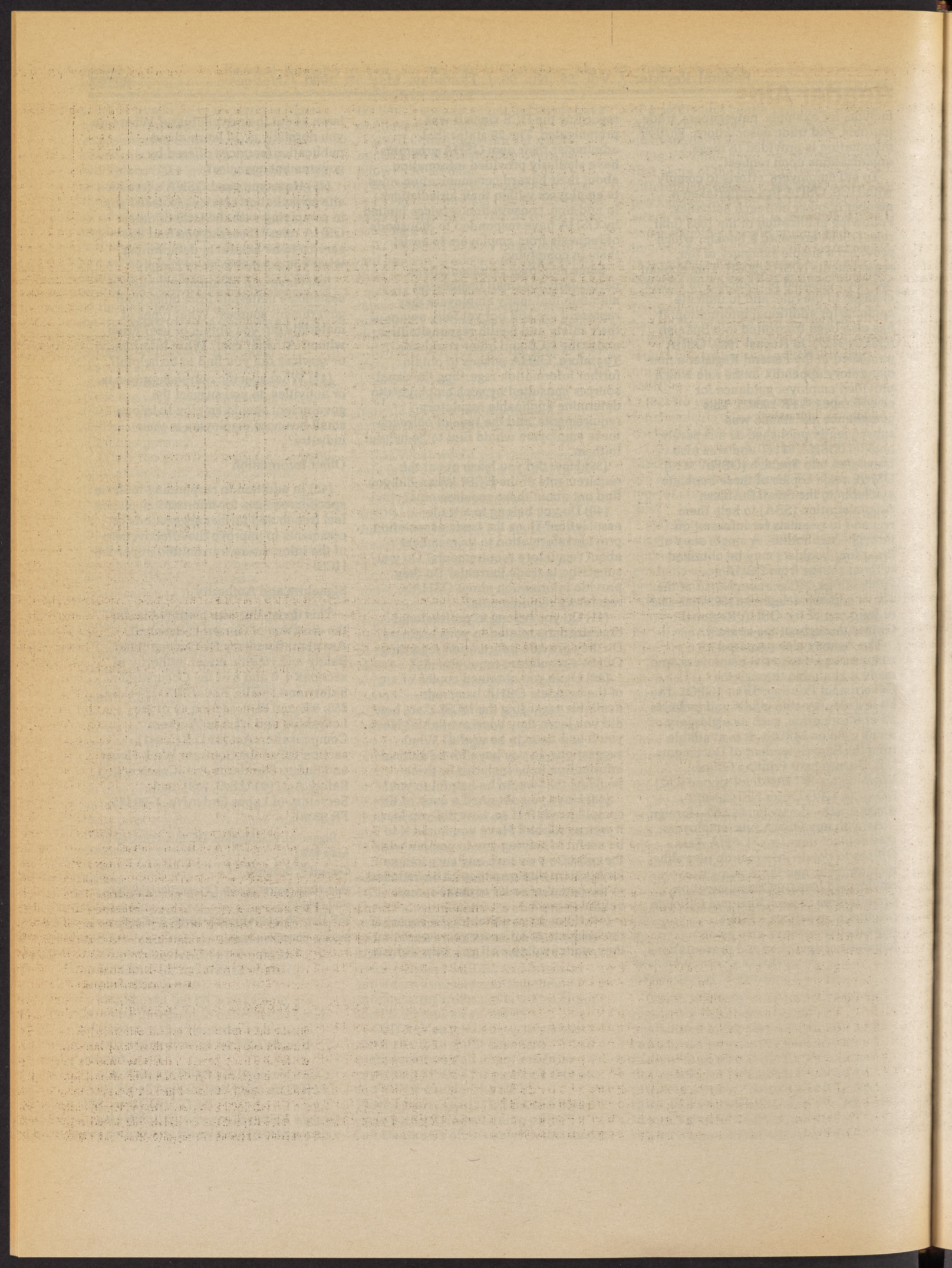
Signed at Washington, DC this 11th day of May 1990.

Gerard F. Scannell,

Assistant Secretary for Occupational Safety and Health.

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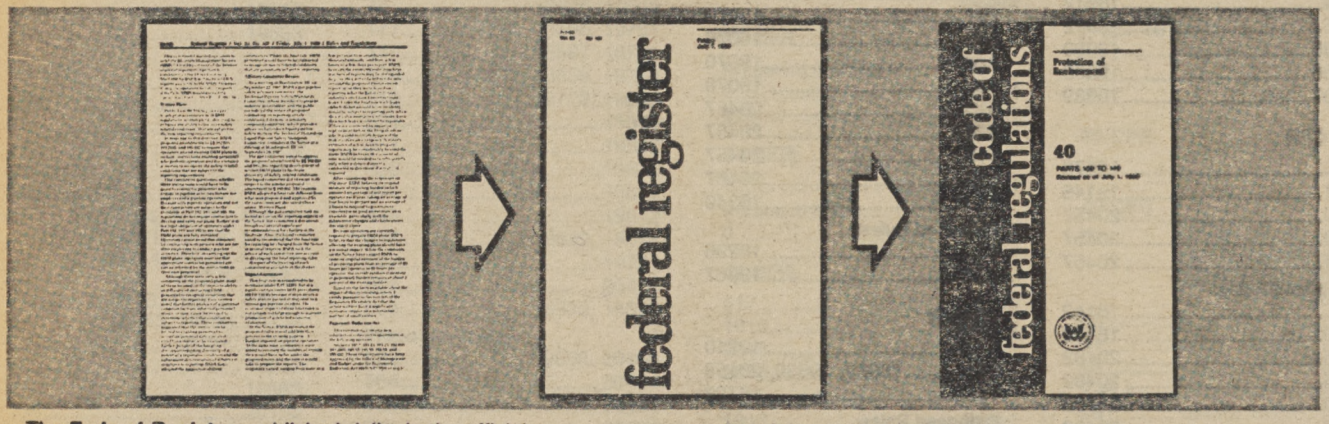
LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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