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CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 62, No. 108
Thursday, June 5, 1997

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96–063–4]

Imported Fire Ant; Approved Treatments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the imported fire ant regulations to lengthen the certification period for containerized nursery stock treated with a 10 parts per million dosage of the insecticide tefluthrin in its granular formulation and to remove the 15 parts per million dosage rate for granular tefluthrin. These changes are based on research showing that a 10 parts per million dosage of granular tefluthrin is efficacious for 18 months, which is 12 months longer than the original certification period for that dosage and 6 months longer than the original certification period for a 15 parts per million dosage. Lengthening the certification period for the 10 parts per million dosage and removing the 15 parts per million dosage will reduce the amount of insecticide used, which will reduce the costs incurred by persons moving containerized nursery stock interstate from areas quarantined for the imported fire ant.

EFFECTIVE DATE: July 7, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald P. Milberg, Operations Officer, Program Support, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–5255; or E-mail: rmilberg@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Imported fire ants, *Solenopsis invicta* Buren and *Solenopsis richteri* Forel, are aggressive, stinging insects that, in large numbers, can seriously injure or even kill livestock, pets, and humans. The imported fire ant feeds on crops and builds large, hard mounds that damage farm and field machinery.

The regulations in ''Subpart—Imported Fire Ant'' (7 CFR 301.81 through 301.81–10, referred to below as the regulations) quarantine infested States or infested areas within States and impose restrictions on the interstate movement of certain regulated articles from those quarantined States or areas for the purpose of preventing the artificial spread of the imported fire ant.

Sections 301.81–4 and 301.81–5 of the regulations provide, among other things, that regulated articles requiring treatment prior to interstate movement must be treated in accordance with the methods and procedures prescribed in the appendix to the subpart, which sets forth the treatment provisions of the ''Imported Fire Ant Program Manual.''

In a proposed rule published in the **Federal Register** on January 31, 1997 (62 FR 4664–4666, Docket No. 96–063–3), we proposed to amend the regulations to lengthen the certification period for containerized nursery stock treated with a 10 parts per million (ppm) dosage of the insecticide tefluthrin in its granular formulation and to remove the 15 ppm dosage for granular tefluthrin.

We solicited comments concerning the proposed rule for 45 days ending March 17, 1997. We received 3 comments by that date. The comments we received were from a State agricultural agency, a nursery and landscape industry trade organization, and an agricultural products manufacturer. One commenter strongly supported the proposed rule, while the two remaining commenters questioned the accuracy and validity of the statistical analysis used to support the proposed lengthening of the certification period for a 10 ppm dosage of granular tefluthrin.

One of the two commenters who opposed an 18-month certification period for a 10 ppm dosage of granular tefluthrin stated that his own statistical analysis of the raw data led him to conclude that a 10 ppm dosage rate can be expected to provide protection from fire ant infestation for only 13.4 months, rather than the 18 months cited by the Animal and Plant Health Inspection Service (APHIS). The second commenter stated that APHIS had utilized a flawed regression equation and that data had been inappropriately omitted from the regression analysis; this commenter suggested that a second analysis be conducted that included data points for a 0 ppm dosage and a regression of the square root of the dependent variable (months) on the log of the dose (ppm).

We continue to believe that the testing and analysis conducted by APHIS at its Imported Fire Ant Methods Development Station (IFAMDS) in Gulfport, MS, were properly conducted and support our conclusion that granular tefluthrin incorporated at a dosage rate of 10 ppm into soil or potting media for containerized nursery stock is efficacious for 18 months. IFAMDS researchers used regression analysis (SPSS Inc., ''SPSS/PC+™ Base System User's Guide: Version 6,'' Chicago, IL, 1992) of all valid data points from dozens of different field trials of tefluthrin conducted between 1988 and 1995. That regression analysis indicated that, on average, 18 months of residual activity could be expected from tefluthrin at a dose rate of 10 ppm based on dry weight bulk density of the potting media.

However, because two of the commenters disputed the validity of the regression analysis used to support the proposed rule, researchers at IFAMDS sought to corroborate the results of the regression analysis by reevaluating the data from the tefluthrin field trials using the exact same method that was used to obtain the variable dose rate schedule for granular bifenthrin, another insecticidal formulation currently approved for use in the imported fire ant program.

Specifically, the IFAMDS researchers used simple arithmetic means of various data points from a variety of trials to determine the average residual activity of tefluthrin at various dose rates, then averaged all data from the trials that included a 10 ppm dose rate. A compilation of the data collected in those trials yielded six valid data points—12, 16, 16, 17, 20, and 31 months—that were used to arrive at an average residual activity of 18.6 months

for granular tefluthrin incorporated in potting media at a 10 ppm dosage rate.

Both our original regression analysis and the subsequent arithmetic means analysis indicated that, on average, 18 months of residual activity could be expected from tefluthrin at a dose rate of 10 ppm. We recognize that the 18-month certification period is based on an average and, as is the case with any average, there may be instances in which tefluthrin incorporated at 10 ppm may not provide a full 18 months of residual activity. We believe, however, that any increased risk that may be present in such instances is mitigated by the certification requirements and movement restrictions of the regulations. Additionally, granular tefluthrin is approved for use only for the treatment of containerized nursery stock, and most persons moving containerized nursery stock out of the regulated areas do so as participants in the Imported-Fire-Ant-Free Nursery program, which combines the control aspect of insecticidal formulations with detection, exclusion, and enforcement provisions in order to prevent the artificial spread of the imported fire ant.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule without change.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This rule amends the regulations by lengthening the certification period for containerized nursery stock treated with a 10 ppm dosage of granular tefluthrin and by removing the 15 ppm dosage rate for granular tefluthrin. Lengthening the certification period for the 10 ppm dosage and removing the 15 ppm dosage will reduce the amount of insecticide used, which will reduce the costs incurred by persons moving containerized nursery stock interstate from areas quarantined for the imported fire ant.

The number of current users of granular tefluthrin—and the number of potential new users that may result from this rule change—is not known, but most are assumed to be small entities (wholesalers of nursery stock having fewer than 100 employees, and retail nurseries having less than $5 million in annual revenue). Several thousand nursery wholesalers and retailers have signed compliance agreements under the imported fire ant regulations, but not all of them are necessarily shipping restricted products out of the regulated areas that require the application of granular tefluthrin or alternative chemicals. Moreover, most nurseries under compliance agreements currently use treatments other than tefluthrin. Therefore, it is difficult to estimate how many small entities will be affected by this rule change, but they may number in the hundreds.

Costs for most users of granular tefluthrin will be reduced because of the increased period of certification. Because the regulations had required a dose rate of 15 ppm for a certification period of 0—12 months and a dose rate of 25 ppm for a certification period greater than 12 months, the 18-month certification period for the 10 ppm dose rate will result in a cost savings of from 33 to 60 percent for purchasers of granular tefluthrin who ship their products out of the restricted areas between 12 and 18 months after treatment. The current retail price of granular tefluthrin is about $4.00 per pound, but prices can vary considerably depending upon whether or not it is purchased in bulk. A 33 to 60 percent cost savings realized by applying tefluthrin at a 10 ppm dose rate rather than a 15 or 25 ppm dose rate is expected to result in a savings of about $1.33 to $2.40 in the application of one pound of granular tefluthrin.

We do not anticipate that there will be a significant economic impact on small entities that distribute agricultural chemicals. Distributors of agricultural chemicals are diversified businesses that sell a wide variety of chemicals, fertilizers, and other farm and nursery supplies. We also do not expect any significant economic impact on any other small entities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In part 301, Subpart—Imported Fire Ant, in the appendix to the subpart, paragraph III.C.3.c. is amended by revising the dosage table to read as follows:

Subpart—Imported Fire Ant

* * * * *

Appendix to Subpart ''Imported Fire Ant''—Portion of ''Imported Fire Ant Program Manual'' [8]

III. Regulatory Procedures

* * * * *

C. *Approved Treatments.*

* * * * *

3. Plants—Balled or in Containers

* * * * *

c. Tefluthrin: Granular Formulation.

* * * * *

Dosage: * * *

Granular tefluthrin dosage (parts per million)	Certification period (months after treatment)
10 ppm	0–18 months.
25 ppm	Continuous.

* * * * *

[8] A copy of the entire ''Imported Fire Ant Program Manual'' may be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737–1236.

Done in Washington, DC, this 30th day of May 1997.

Donald W. Luchsinger,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–14725 Filed 6–4–97; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 285

[Docket No. 960816226–7124–03; I.D. 111396A]

RIN 0648–AJ04

Atlantic Tuna Fisheries; Regulatory Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS amends the regulations governing the Atlantic tuna fisheries to: Divide the large school-small medium size class quota and the large medium-giant quotas of Atlantic bluefin tuna (ABT) Angling category into north and south regional subquotas; establish a new tuna permit program to provide for category changes, annual renewals, and the collection of fees; require self-reporting for ABT landed under the Angling category; prohibit the retention of ABT less than the large medium size class by vessels permitted in the General category; and prohibit fishing for ABT by persons aboard vessels permitted in the General category on designated restricted-fishing days. The regulatory amendments are necessary to achieve domestic management objectives for the Atlantic tuna fisheries.

DATES: Effective June 16, 1997.

ADDRESSES: Copies of supporting documents, including an Environmental Assessment and Regulatory Impact Review (EA/RIR), are available from, Rebecca Lent, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3282.

Comments regarding the collection-of-information requirement contained in this rule should be sent to Rebecca Lent, Chief, Highly Migratory Species Division and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: John Kelly, 301–713–2347.

SUPPLEMENTARY INFORMATION: The Atlantic tuna fisheries are managed under the authority of the Atlantic Tunas Convention Act (ATCA). ATCA authorizes the Secretary of Commerce (Secretary) to implement regulations as may be necessary to carry out the recommendations of the International Commission for the Conservation of Atlantic tunas (ICCAT). The authority to implement ICCAT recommendations has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

Background information about the need for revisions to Atlantic tunas fishery regulations was provided in the preamble to the proposed rule (62 FR 9726, March 4, 1997) and is not repeated here. These regulatory changes will improve NMFS' ability to achieve domestic management objectives for the Atlantic tuna fisheries.

Relation to Proposed Consolidation

The regulatory amendments contained in this final rule were originally written to be consistent with a proposed rule consolidating all regulations pertaining to Atlantic HMS under 50 CFR part 630 (61 FR 57361, November 6, 1996). A final rule consolidating the regulations has not yet been issued. Thus, for the Atlantic tunas regulations contained in this final rule to be effective prior to the consolidation, they must be written to conform with existing text at 50 CFR part 285. The regulatory amendments contained in this final rule will eventually be incorporated into the final consolidated regulations at 50 CFR part 630. Copies of the proposed consolidation rule may be obtained by writing (see **ADDRESSES**) or calling the contact person (see **FOR FURTHER INFORMATION CONTACT**).

Angling Category

In this final rule, the large school-small medium and large medium-giant ABT Angling category quotas are subdivided, allocating 53 percent of landings to the northern region and 47 percent to the southern region. Subdividing the quotas serves to minimize impacts on northern fisheries and increases the temporal and geographic scope of scientific monitoring. The effect of this measure has been included in the proposed ABT 1997 quota specifications (62 FR 19296, April 21, 1997).

General Category

This final rule prohibits persons aboard vessels permitted in the General category from retaining ABT less than the large medium size class. This action effectively separates the commercial and recreational fisheries, with the exception of charter/headboats. Anglers aboard vessels permitted in the Charter/Headboat category may collectively fish under either the daily Angling category limits or the daily General category limit as applicable on that day. The size category of the first ABT retained or possessed will determine the fishing category of the vessel, and the applicable catch limits, for that day. This action will not be effective until 1998 to provide time for all vessel owners to change permit categories.

Additionally, this rule prohibits persons aboard vessels permitted in the General category from fishing for, catching, retaining, or landing large medium or giant ABT on designated restricted-fishing days. As explained below, the prohibition has been modified from the proposed rule, which would have prohibited all fishing for any fish species on restricted fishing days. Fee-paying anglers aboard vessels permitted in the Charter/Headboat category may fish only under the Angling category rules on designated restricted-fishing days.

Permits and Catch Reporting

This rule revises the Atlantic tunas permit and reporting program to provide for annual permit renewals, collection of fees, and mandatory reporting for ABT landed under the Angling category. Under the new permit system, reissued 1997 tuna permits are required for all permit holders, regardless of the date of expiration indicated on current permits. Vessel owners holding valid Atlantic Tunas permits issued prior to January 1, 1997 must obtain a renewal permit through the automated system by September 1, 1997 and may fish under the old permit only until that date.

Beginning in calendar year 1997, a fee is assessed to recover the administrative costs of permit issuance. The permit fee has been established according to the NOAA schedule for recovery of administrative costs. All new permit applications, renewals and requests for category changes must be made under the automated system. Recorded information and instructions on the automated permit system can be obtained by phone (toll-free, 1–888–USA–TUNA) or over the internet (http://www.usatuna.com).

The automated system implemented for the permit program will also provide

for automated catch reporting by telephone. Angling, Charter/Headboat, and General category permit holders will be notified of applicable reporting procedures for 1997. Additional reporting procedures under consideration in cooperation with individual states may involve catch reports by tagging fish, using punch cards or requiring fish to be reported at designated check-in stations. Improvements in quota monitoring are necessary to meet ICCAT obligations and domestic management objectives.

Finally, this rule revises the provisions for tag and release fishing for ABT. Current regulations allow for catch and release fishing for ABT after fishery closures provided that fish are tagged and that NMFS-approved tagging kits are on board the participating vessel. This rule would restrict such catch-and-release activity to persons aboard vessels permitted in the Atlantic tuna fisheries. Requiring vessel permits in addition to tagging kits recognizes that these situations are in fact directed fisheries for ABT, and facilitates enforcement of ABT regulations and collection of catch and effort information.

Changes From the Proposed Rule

Based on consideration of comments received, several changes were made to the proposed rule. The prohibition on fishing by persons aboard vessels permitted in the General category on designated restricted-fishing days has been redefined to prohibit fishing for ABT only, as opposed to restricting all fishing activity for any species. Because a considerable number of General category permit holders have already renewed permits that expired in the first quarter of 1997, and a significant number of these vessel owners may elect to switch to the Angling category under the new catch limit rules, the prohibition on retaining small ABT by General category vessels is delayed until January 1, 1998. However, this delay in effectiveness does not apply to the prohibition on fishing for or retention of ABT by persons aboard General category vessels on restricted-fishing days. Finally, the proposed prohibition on the use of aircraft to assist fishing vessel operators in the location and capture of ABT, with the exception of purse seine vessels, is still under consideration by NMFS and is not addressed by this action.

NMFS issued an interim final rule (62 FR 27518, May 20, 1997) to suspend, for 1997 only, the deadline for Atlantic tunas permit category changes in order to provide vessel owners the opportunity to consider changes after the effective dates of the 1997 final rules and quota specifications. Vessel owners will be notified of the last date to effect permit category changes after all relevant final rules are issued.

Comments and Responses

NMFS conducted four public hearings on the proposed rule and received written and oral comments over a 30-day comment period. Responses to major comments are provided below.

North and South Regional Subquotas

Comment: Many fishery participants expressed concern that further division of the Angling category size classes amounts to the creation of a ''new'' fishery (the Hatteras winter ABT fishery).

Response: ABT catch has been occurring off North Carolina for many years, although more intensely over the past few years, and the fishery provides an excellent opportunity for expanding the scientific monitoring of ABT through intensive tagging and sampling programs. Subdividing the quota serves to minimize impacts on northern fisheries and increases the scope of scientific monitoring both in time and location.

Comment: North Carolina charterboat operators requested that a portion of the Angling quota be set aside for the Hatteras fishery.

Response: Due to the difficulty of monitoring small area subquotas in a precise and timely manner, and the problem of accounting for underharvest or overharvest if initial catch projections are later found to be inaccurate, NMFS rejected the option of separate quotas for each state or small area. Instead, NMFS has divided the large school-small medium and large medium-giant size class Angling category quotas into North and South regional subquotas as was done in 1992 for school bluefin.

New Permit Program

Comment: Some commenters opposed annual permitting and the requirement to renew old permits that have not yet expired.

Response: Annual permitting is a key element in improving the monitoring of the ABT recreational fishery as well as the commercial component. An accurate permit database is an integral part of NMFS' commitment to improve ABT catch monitoring.

Comment: Numerous comments were received in opposition to the permit fee. Some stated that the money should be used to fund tuna management as is done with other fish and wildlife permit fees.

Response: Administrative cost recovery is NOAA policy and the fee is calculated to recover the costs of the automated permit and reporting system. Under current law, these funds cannot be dedicated to NMFS programs but must be deposited into the General Fund of the United States Treasury.

Comment: The Director of the New Jersey Division of Fish, Game, and Wildlife submitted a comment questioning NMFS' authority to require an $18 license for recreational Atlantic tuna fishing on the basis that this action would preclude state efforts to implement a license system in territorial waters.

Response: NMFS is authorized to charge fees for permits issued to participants in fisheries conducted in the U.S. exclusive economic zone. Following the procedures set forth under section 971g(d) of ATCA, the Assistant Administrator (AA) determined that provisions of 50 CFR part 285 apply within the territorial sea of Atlantic coast and Gulf of Mexico States, including New Jersey (§ 285.1(d)). Each State was notified of this determination and afforded the opportunity for a public hearing. Should any State implement a permit system that adequately provides for ABT quota monitoring, NMFS could consider exempting those licensees from the federal permit requirement.

Self-Reporting

Comment: Several commenters expressed reservations on the effectiveness of self-reporting systems. Others stated that it is redundant with the current Large Pelagic Survey (LPS) and charter/headboat logbooks. Some commenters believe that there will be no incentive for anglers to report their catch.

Response: A call-in system is a logical extension of the new automated permitting system and redundancy with the LPS (estimated at 20 percent overlap) is necessary for validation of catch reports. Duplication with logbooks is unavoidable, since those reporting requirements are derived from other FMPs and are not universal or timely relative to tuna catch monitoring. NMFS is currently working with the states under the Atlantic Coast Cooperative Statistics Program to reduce duplication of reporting programs.

Comment: While the recreational constituency has expressed support for self-reporting systems, some are concerned that other methods (e.g., tags, cards, check-in stations) are not being tested and that without pilot studies a ''buy-in'' by rank-and-file anglers will be impossible.

Response: In responding to constituent concerns regarding the accuracy of ABT catch monitoring and premature closures, the telephone reporting system is the most expedient solution for 1997. NMFS, in consultation with the Atlantic Tunas Advisory Panel to be formed under the requirements of the Magnuson-Stevens Fishery Conservation and Management Act, may consider other options based on the results of the 1997 fishing season telephone reports.

General Category Prohibitions

Comment: Opposition to the no-fishing definition of a restricted day was nearly universal. Many General category tuna permit holders participate in other commercial fisheries, and it was argued that this proposal would have a significant adverse economic impact when considering effort controls already in effect for other commercial fisheries.

Response: NMFS agrees that the proposal to prohibit all fishing would preclude fishing for other species on restricted-fishing days. Therefore, the regulation has been modified to allow fishing on other species from General category vessels on restricted days, but to prohibit catch-and-release fishing for ABT or the retention of ABT on restricted days. This absolute prohibition on retention of ABT is necessary to effectively enforce restricted-fishing days as well as closures.

Comment: Some fishery participants, particularly those from the Mid-Atlantic area, objected to the prohibition on retention of small ABT by General category vessels. Fishermen in some areas alternately target large or small ABT depending on weather conditions and availability of fish.

Response: Allowing fishing for school ABT makes enforcement of General category rules, particularly restricted-fishing days and daily catch limits, more difficult and has diminished the effectiveness of the effort controls. In addition, it is difficult to monitor the Angling category quota when General category vessels are included in the sample frame for the telephone and dockside surveys. Separation of the two fishing categories is necessary to address these concerns about quota monitoring and effective effort controls. Giant ABT could still be landed by Angling category vessels under the trophy fish subquota, though these fish cannot be sold. Additionally, Charter/Headboat operators will be allowed to target either school ABT or commercial size classes, reflecting the particular needs of these enterprises. Due to concern for vessel owners who may have already renewed permits for 1997 but would consider a different category under these rules, the effective date of this measure will be delayed until 1998.

Classification

Under NOAA Administrative Order 205–11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated authority to sign material for publication in the **Federal Register** to the AA.

This rule is published under the authority of ATCA, 16 U.S.C. 971 *et seq.* The AA has determined that the regulations in this final rule are necessary for management of the Atlantic tuna fisheries.

NMFS prepared an EA for this final rule with a finding of no significant impact on the human environment. In addition, an RIR was prepared with a finding of no significant impact. The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The division of the Angling category ABT quota into regional subquotas, changes in the Atlantic tunas permitting program, establishment of an Angling category self-reporting system, and prohibition on fishing for ABT and on retention of ABT under 73 inches by vessels permitted in the General category, as established by this final rule, are measures that will not have a significant economic impact on a substantial number of businesses. No comments were received that changed the basis for the certification. Therefore, no Regulatory Flexibility Analysis was prepared.

This final rule has been determined to be not significant for purposes of E.O. 12866.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget Control Number.

This final rule implements new collections and restates or revises existing collection-of-information requirements subject to OMB review under the PRA. Atlantic tuna vessel permits required under § 285.21(a) had previously been approved under OMB Control Number 0648–0202 and were estimated at 30 minutes per permit action. Vessel reporting and recordkeeping requirements for commercial vessels under § 285.54 are currently approved for swordfish and shark vessels under OMB Control Number 0648–0016 and are estimated at 15 minutes per logbook entry and 16 minutes for the attachment of tally sheets. Vessel reporting requirements for Atlantic tuna vessels permitted in the Angling category are currently approved as a voluntary collection under OMB Control Number 0648–0052 and are estimated at 8 minutes per telephone interview and 5 minutes per dockside interview.

Although these permitting and reporting requirements have been approved by OMB for the indicated fisheries, this rule modifies or extends these information collections. First, the new annual permit system would require reissuance of all vessel permits. NMFS estimates that up to 20,000 permit holders may be affected at an estimated 6 minutes per phone call. The new annual permit program has been approved by OMB under Control Number 0648–0327. Second, commercial tuna vessel operators who do not otherwise submit logbooks under swordfish or shark fishery requirements could be selected for the pelagic logbook reporting program under OMB Control Number 0648–0016. Purse seine, harpoon or handgear vessels could be affected, but NMFS must first develop a statistical sampling program. NMFS would request OMB approval prior to selecting vessels from these categories. Finally, ABT catch reporting by recreational anglers will be conducted by direct phone call rather than by interview. Catch reports are estimated at 5 minutes per toll-free phone call. While automated catch reporting may reduce the burden to individual respondents, the direct reporting program, when fully implemented, will increase the number of respondents. The direct reporting program has been approved by OMB under Control Number 0648–0328.

NMFS has determined that there is good cause to waive partially the 30-day delay in the effective date normally required by section 553(d) of the Administrative Procedure Act. Since the Angling category fishery is underway, early implementation of the annual permitting program will ensure effective implementation of the mandatory reporting system, enabling NMFS to monitor the ABT Angling category catch and effect a fair distribution of fishing opportunities. Implementation of the division of the large school-small medium and the large medium-giant size class quotas of ABT will improve scientific data collection over all regions

and the entire fishing season. Given NMFS' ability to rapidly communicate these rule changes to fishing interests through the FAX network and NOAA weather radio, a 14 day notice is deemed sufficient.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 285

Fisheries, Fishing, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: May 30, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX and 50 CFR chapter II are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, paragraph (b), the table, is amended by removing in the left column under 50 CFR, the entries ''285.21,'' ''285.29,'' ''285.53,'' and ''285.54'' and in the right column, in corresponding positions, the control numbers ''–0202,'' ''–0239,'' ''0168,'' and ''–0239'', and by adding, in numerical order, the following entries to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * *	
50 CFR	
* * * * *	
285.21	–0327.
* * * * *	
285.29	–0239 and –0328.
* * * * *	
285.54	–0016.
* * * * *	
50 CFR Chapter II	

PART 285—ATLANTIC TUNA FISHERIES

3. The authority citation for part 285 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*

4. In § 285.2, the definition for ''Restricted-fishing day'' is added to read as follows:

§ 285.2 Definitions.

* * * * *

Restricted-fishing day means a date, beginning at 0001 hours and ending at 2400 hours, after the commencement date of the General category fishing season and before the effective date of fishery closure on attaining the annual or subperiod quota, designated by the Director under § 285.24(a) upon which no fishing for, possession or retention of Atlantic bluefin tuna may be conducted by persons aboard vessels permitted in the Atlantic tunas General category.

* * * * *

5. In § 285.21, paragraphs (c), (d), (e), (g), (k) and (l) are revised to read as follows:

§ 285.21 Vessel permits.

* * * * *

(c) *Application procedure.* A vessel owner applying for a permit under this section must submit a completed permit application as indicated in the application instructions at least 30 days before the date on which the applicant desires to have the permit made effective.

(1) Applicants must provide all information concerning vessel, gear used, fishing areas, and fisheries participation, including sworn statements relative to income requirements and permit conditions, as indicated in the instructions on the application form.

(2) Applicants must also submit a copy of the official state registration or United States Coast Guard documentation, charter/headboat license, and, if a boat is owned by a corporation or partnership, the corporate or partnership documents (copy of Certificate of Incorporation and Articles of Association or Incorporation), along with the names of all shareholders owning 5 percent or more of the corporation's stock.

(3) NMFS may require the applicant to provide documentation supporting any sworn statements required under this section before a permit is issued or to substantiate why such permit should not be revoked or otherwise sanctioned under paragraph (j) of this section.

(4) Applicants must also submit any other information that may be necessary for the issuance or administration of the permit, as requested by NMFS.

(d) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, a permit shall be issued within 30 days of receipt of a completed application. An application is complete when all requested forms, reports, information, sworn statements and supporting documentation have been received.

(2) The applicant will be notified of any deficiency in the application. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

(e) *Duration.* A permit issued under this section remains valid until it expires or is suspended, revoked, or modified pursuant to subpart D of 15 CFR part 904. Permits expire on the date indicated on the permit or when any of the information previously submitted on the application changes. Permits must be renewed upon expiration. Renewal of permits must be initiated at least 30 days before the expiration date to avoid a lapse in validity.

* * * * *

(g) *Replacement.* Replacement permits will be issued when requested by the owner or authorized representative. A request for a replacement permit will not be considered a new application. An appropriate fee, consistent with paragraph (k) of this section, may be charged for issuance of the replacement permit.

* * * * *

(k) *Fees.* NMFS may charge a fee to recover the administrative expenses of permit issuance. The amount of the fee shall be determined, at least biannually, in accordance with the procedures of the NOAA Finance Handbook, available from the Director, for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified with application or renewal instructions. The required fee must accompany each application or renewal. Failure to pay the fee will preclude issuance of the permit.

(l) *Change in application information.* Within 15 days after any change in the information contained in an application submitted under this section, the vessel owner must report the change by phone (1–888–USA–TUNA) or internet (http://www.usatuna.com). In such case, a new permit will be issued to incorporate the new information. For certain informational changes, NMFS may require supporting documentation before a new permit will be issued or may require payment of an additional

fee. Permittees will be notified of such requirements, if applicable, when reporting changes. In case of failure to report changes, the permit shall be void as of the sixteenth day after a change in the permit information should have been reported as found in an action under 15 CFR part 904.

* * * * *

6. In § 285.24, paragraph (a)(1) is revised, the phrase ''For calendar year 1997,'' is added at the beginning of paragraph (a)(4), and paragraph (e) is revised to read as follows:

§ 285.24 Catch limits.

(a) *General category.* (1) From the start of each fishing year, except on designated restricted-fishing days, only one large medium or giant Atlantic bluefin tuna may be caught and landed per day from a vessel for which a General category permit has been issued under this part. On designated restricted-fishing days, persons aboard such vessels may not fish for, possess or retain Atlantic bluefin tuna. NMFS will publish in the **Federal Register** a schedule of designated restricted-fishing days applicable for that fishing season.

* * * * *

(4) For calendar year 1997, * * *

* * * * *

(e) *Charter/Headboat category.* (1) Persons aboard vessels for which a Charter/Headboat category permit has been issued under this part are subject to the daily catch limit in effect on that day for school, large school, and small medium ABT applicable to the Angling category or the daily catch limit in effect on that day for large medium and giant ABT applicable to the General category. The size category of the first ABT retained or possessed shall determine the fishing category applicable to the vessel that day. Persons aboard the vessel may possess ABT in an amount not to exceed a single day's catch, regardless of the length of the trip, as allowed by the daily catch limit in effect on that day for the Angling or General category, as applicable. School, large school, and small medium ABT landed by persons aboard Charter/Headboat category vessels are counted against the Angling category quota. Large medium and giant ABT landed by persons aboard Charter/Headboat category vessels are counted against the General category quota if landed under paragraph (a)(1) of this section, or the Angling category quota, if landed under paragraph (d)(2) of this section.

(2) When commercial fishing by vessels for which General category permits have been issued under this part is authorized, except when fishing in the Gulf of Mexico, operators of vessels for which a Charter/Headboat category permit has been issued under this part are subject to the daily catch limit in effect for the General category for large medium or giant Atlantic bluefin tuna as specified in paragraph (a)(1) of this section. Once the applicable catch limit for large medium or giant bluefin tuna is possessed or retained on authorized commercial fishing days, persons aboard vessels for which Charter/Headboat category permits have been issued under this part must cease fishing and the vessel must proceed to port. Large medium or giant ABT landed under this paragraph (e)(2) may be sold.

(3) When the General category fishery is closed, except when fishing in the Gulf of Mexico, operators of vessels for which a Charter/Headboat category permit has been issued under this part are subject to the annual vessel limit and reporting requirement for non-commercial take of large medium or giant Atlantic bluefin tuna as specified in paragraph (d)(2) of this section. Once the applicable catch limit for large medium or giant bluefin tuna is possessed or retained under the Angling category quota, fishing by persons aboard Charter/Headboat category vessels must cease and the vessel must proceed to port.

(4) At any time when fishing in the Gulf of Mexico, operators of vessels for which Charter/Headboat category permits have been issued under this part may not fish for, catch, retain or possess bluefin tuna except that large medium and giant Atlantic bluefin tuna taken incidental to fishing for other species may be retained subject to the annual vessel limit and reporting requirement for non-commercial take of large medium or giant Atlantic bluefin tuna as specified in paragraph (d)(2) of this section. Once the applicable catch limit for large medium or giant bluefin tuna is possessed or retained under the Angling category quota, fishing by persons aboard Charter/Headboat category vessels must cease and the vessel must proceed to port.

7. In § 285.27, the first sentence of paragraph (a) is revised to read as follows:

§ 285.27 Tag and release program.

(a) Notwithstanding other provisions of this part, a person aboard a vessel permitted under this part, other than a person aboard a vessel permitted in the General category on a designated restricted-fishing day, may fish for Atlantic bluefin tuna under a tag and release program, provided the person tags all Atlantic bluefin tuna so caught with tags issued or approved by NMFS under this section, and releases and returns such fish to the sea immediately after tagging and with a minimum of injury. * * *

* * * * *

8. In § 285.29, the heading is revised, the introductory text is removed, the phrase ''Any person issued a dealer permit under § 285.28'' is added at the beginning of paragraphs (a), (b) introductory text, (c) and (d), and paragraph (f) is added, to read as follows:

§ 285.29 Recordkeeping and reporting.

(a) Any person issued a dealer permit under § 285.28 * * *

(b) Any person issued a dealer permit under § 285.28 * * *

(c) Any person issued a dealer permit under § 285.28 * * *

(d) Any person issued a dealer permit under § 285.28 * * *

* * * * *

(f) Beginning July 1, 1997 anglers are required to report directly to NMFS all ABT landed under the Angling category quota. Permittees will be notified by the Director of the applicable reporting requirements and procedures. Alternative reporting procedures may be established by the Director in cooperation with the states and may include telephone, dockside or mail surveys, mail-in or phone-in reports, tagging programs, or mandatory ABT check-in stations. A statistically-based sample of the Angling category permittees may be selected for these alternative reporting programs.

9. In § 285.31, paragraphs (a)(4) and (a)(37) are revised and paragraph (a)(39) is added to read as follows:

§ 285.31 Prohibitions.

* * * * *

(a) * * *

(4) Fish for, catch, or possess or retain Atlantic bluefin tuna in excess of the catch limits specified in § 285.24, except that fish may be caught and released under the provisions of § 285.27.

* * * * *

(37) Fish for, catch, possess, or retain any Atlantic bluefin tuna less than the large medium size class from a vessel other than one issued a permit for the Angling or Charter/Headboat categories under § 285.21, or a permit for the Purse Seine category under § 285.21 as authorized under § 285.23(d), or, for calendar year 1997, a permit for the General category under § 285.21.

* * * * *

(39) For owners or operators of General category permitted vessels, and persons aboard vessels permitted in the

General category under § 285.21, to fish for, catch, possess, or retain, or to attempt to fish for, catch, possess, or retain Atlantic bluefin tuna on designated restricted-fishing days.

* * * * *

10. In § 285.54, the heading and paragraph (a) are revised to read as follows:

§ 285.54 Vessel recordkeeping and reporting.

(a)(1) *Logbooks.* If selected and so notified in writing by the Director, the owner and/or operator of a vessel for which a permit has been issued under § 285.21 or § 285.53, must ensure that a daily logbook form is maintained of the vessel's fishing effort, catch, and disposition on forms available from the Science and Research Director. Such forms must be submitted to the Science and Research Director postmarked not later than the seventh day after sale of the fish offloaded from a trip. If no fishing occurred during a month, a report so stating must be submitted in accordance with instructions provided with the forms.

(2) *Tally sheets.* The owner and/or operator of a vessel for which a permit has been issued under § 285.21 or § 285.53, and who is required to submit a logbook under paragraph (a)(1) of this section, must ensure that copies of tally sheets are submitted for all fish offloaded and sold after a fishing trip. Each tally sheet must show the dealer to whom the fish were transferred, the date they were transferred, and the carcass weight of each fish for which individual carcass weights are normally recorded. For species not individually weighed, tally sheets must record total weights by market category. Copies of tally sheets must be submitted with the logbook forms required under paragraph (a)(1) of this section.

* * * * *

[FR Doc. 97–14630 Filed 6–2–97; 11:42 am]
BILLING CODE 3510–22–W

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Regulations No. 4]

RIN 0960–AE70

Federal Old-Age, Survivors and Disability Insurance; Determining Disability and Blindness; Extension of Expiration Dates for Several Body System Listings

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: The Social Security Administration (SSA) adjudicates claims at the third step of its sequential process for evaluating disability using the Listing of Impairments (the listings) under the Social Security and supplemental security income (SSI) programs. This rule extends the dates on which several body system listings will no longer be effective and makes two related nonsubstantive technical changes. We have made no revisions to the medical criteria in these listings; they remain the same as they now appear in the Code of Federal Regulations. These extensions will ensure that we continue to have medical evaluation criteria in the listings to adjudicate claims for disability based on impairments in these body systems at step three of our sequential evaluation process.

EFFECTIVE DATE: This regulation is effective June 5, 1997.

FOR FURTHER INFORMATION CONTACT: Regarding this **Federal Register** document—Richard M. Bresnick, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1758; regarding eligibility or filing for benefits—our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION: We use the listings in Appendix 1 (Listing of Impairments) to subpart P of part 404 at the third step of the sequential evaluation process to evaluate claims filed by adults and individuals under age 18 for benefits based on disability under the Social Security and SSI programs. The listings are divided into parts A and B. We use the criteria in part A to evaluate impairments of adults. We use the criteria in part B first to evaluate impairments of individuals under age 18. If those criteria do not apply, then the medical criteria in part A will be used.

When we published revised listings in 1985 and subsequently, we indicated that medical advances in disability evaluation and treatment and program experience would require that the listings be periodically reviewed and updated. Accordingly, we established dates ranging from 3 to 8 years on which the various body system listings would no longer be effective unless extended by the Secretary of Health and Human Services or revised and promulgated again. Effective March 31, 1995, the authority to issue regulations was transferred to the Commissioner of Social Security by section 102 of Public Law 103–296, the Social Security Independence and Program Improvements Act of 1994.

In this final rule we are extending the dates on which several body system listings will no longer be effective as follows:

June 7, 1999: Musculoskeletal System (1.00 and 101.00); Hemic and Lymphatic System (7.00 and 107.00); Skin (8.00); Endocrine System and Obesity (9.00) and Endocrine System (109.00); and Neoplastic Diseases, Malignant (13.00 and 113.00).

August 27, 1999: Mental Disorders (12.00 and 112.00).

December 6, 1999: Digestive System (5.00 and 105.00) and Genito-Urinary System (6.00 and 106.00).

We are making the expiration date for the adult and childhood mental disorders listings the same. For several years, the mental disorders listings have been the only body system listings to have different expiration dates for parts A and B. We are now making this body system listing consistent with all the others.

We last extended the dates on which these body system listings would no longer be effective in final rules published as follows:

December 6, 1993 (58 FR 64121): Digestive System; Genito-Urinary System; Skin; and Endocrine System and Obesity and Endocrine System.

August 23, 1995 (60 FR 43709): Mental Disorders (12.00 only).

December 6, 1995 (60 FR 62329): Hemic and Lymphatic System; Mental Disorders (112.00 only); and Neoplastic Diseases, Malignant.

June 4, 1996 (61 FR 28046): Musculoskeletal System.

We believe that the requirements in these listings are still valid for our program purposes. Specifically, if we find that an individual has an impairment that meets the statutory duration requirement and also meets or is medically or functionally equivalent in severity to an impairment in the listings, we will find that the individual is disabled at the third step of the sequential evaluation process.

We also are making two nonsubstantive technical changes in the listings. First, we are removing the introductory paragraph at the beginning of 12.00 Mental Disorders because it merely repeats, in narrative form, the same expiration date information contained in the list at the beginning of appendix 1. No other body system listing contains such a paragraph.

Second, in the list of body system listings at the beginning of part B of appendix 1, we are correcting the entry for ''112.00 Mental and Emotional Disorders'' to ''112.00 Mental

Disorders.'' The body system listing name was changed in the final rule published on December 12, 1990 (55 FR 51208), but the name was not corrected in this list.

Regulatory Procedures

Pursuant to section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), as amended by section 102 of Public Law 103–296, SSA follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures in this case. Good cause exists because this regulation only extends the dates on which these body system listings will no longer be effective and makes two related nonsubstantive technical changes. It makes no substantive changes to the listings. The current regulations expressly provide that the listings may be extended, as well as revised and promulgated again. Therefore, opportunity for prior comment is unnecessary, and we are issuing this regulation as a final rule.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d). As explained above, we are not making any substantive changes in these body system listings. However, without an extension of the expiration dates for these listings, we will lack regulatory guidelines for assessing impairments in these body systems at the third step of the sequential evaluation processes after the current expiration dates of the listings. In order to ensure that we continue to have regulatory criteria for assessing these impairments under the listings, we find that it is in the public interest to make this rule effective upon publication.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this rule does not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, it was not subject to OMB review.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

This regulation imposes no reporting/recordkeeping requirements necessitating clearance by OMB.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: May 29, 1997.

John J. Callahan,

Acting Commissioner of Social Security.

For the reasons set forth in the preamble, part 404, subpart P, chapter III of title 20 of the Code of Federal Regulations is amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P—[Amended]

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205 (a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405 (a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

2. Appendix 1 to subpart P is amended by removing item 14 of the introductory text before part A, renumbering items 15 and 16 as items 14 and 15, and revising items 2, 6 through 10, 13, and the renumbered item 14 to read as follows:

Appendix 1 to Subpart P—Listing of Impairments

* * * * *

2. Musculoskeletal System (1.00 and 101.00): June 7, 1999.

* * * * *

6. Digestive System (5.00 and 105.00): December 6, 1999.

7. Genito-Urinary System (6.00 and 106.00): December 6, 1999.

8. Hemic and Lymphatic System (7.00 and 107.00): June 7, 1999.

9. Skin (8.00): June 7, 1999.

10. Endocrine System and Obesity (9.00) and Endocrine System (109.00): June 7, 1999.

* * * * *

13. Mental Disorders (12.00 and 112.00): August 27, 1999.

14. Neoplastic Diseases, Malignant (13.00 and 113.00): June 7, 1999.

* * * * *

3. Part A of Appendix 1 to subpart P is amended by removing the introductory paragraph of 12.00 Mental Disorders.

4. Part B of Appendix 1 to subpart P is amended by revising the entry for 112.00 in the list at the beginning of part B to read as follows:

* * * * *

§ 112.00 Mental Disorders

* * * * *

[FR Doc. 97–14613 Filed 6–4–97; 8:45 am]

BILLING CODE 4190–29–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Regulations No. 16]

RIN 0960–AD65

Supplemental Security Income for the Aged, Blind, and Disabled; Reliable Information Which Is Currently Available for Determining Benefit Amounts in the Supplemental Security Income Program

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: The Social Security Act (the Act) provides that if the Commissioner of Social Security determines that reliable information is currently available concerning the income of an individual, the Commissioner may use that information to determine an individual's current month's supplemental security income (SSI) benefit amount. This method of determining SSI benefit amounts is an exception to the use of income from a prior month, known as retrospective monthly accounting (RMA). These rules provide that the Commissioner, in exercising his or her discretionary authority, has determined that no reliable information exists which is currently available for determining SSI benefit amounts for a current month using any method other than RMA.

EFFECTIVE DATE: These rules are effective July 7, 1997.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965–1762 for information about

these rules. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION: In accordance with the orders of the United States District Court for the Central District of California in the case of *Newman, et al.* v. *Shalala,* No. CV 89–04028 SVW (October 20, 1993), and the United States Court of Appeals for the Ninth Circuit in *Newman* v. *Chater,* 87 F.3d 358 (1996), we are providing rules concerning reliable information for determining benefits in the SSI program pursuant to section 1611(c)(4) of the Act. A different district court, in *Gould* v. *Sullivan,* 819 F. Supp. 685 (S.D. Ohio 1992), ordered us to propose a rule concerning section 1611(c)(4) of the Act. On March 16, 1993, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** (58 FR 14191) with a correction notice published in the **Federal Register** (58 FR 26383) on May 3, 1993. The NPRM provided 60 days in which the public could comment on the proposed rules. The district court in *Newman* also ordered us to propose a rule concerning section 1611(c)(4) with a 60-day comment period. The *Newman* district court found that the NPRM we published in March 1993 complied with this aspect of the order. Further, the *Newman* district court directed us to publish in the **Federal Register** a final rule concerning 1611(c)(4). In these cases, the Commissioner had argued that unless he identified reliable information which is currently available and which he intended to use as an exception to the usual RMA rules, the publication of regulations is not necessary. This position was upheld on July 27, 1994 by the United States Court of Appeals for the Sixth Circuit in *Gould* v. *Shalala,* 30 F.3d 714 (1994) when the district court's decision was reversed. The circuit court agreed that the publication of regulations is not necessary under section 1611(c)(4) of the Act. However, on June 25, 1996, the United States Court of Appeals for the Ninth Circuit in *Newman* v. *Chater,* 87 F.3d 358 (1996), affirmed the district court decision directing us to publish a final rule in the **Federal Register**. In light of the directive in *Newman* to publish a final rule, we are publishing these rules explaining that we have determined that no reliable information exists for determining SSI benefits. The NPRM which was published pursuant to the district court's decision in *Gould* provided 60 days in which the public could comment on the proposed rules. That period has run, and we have received public comments to which we will now respond.

Previously, we published final regulations on November 26, 1985 (50 FR 48563), implementing various provisions in section 1611(c) of the Act. Section 1611(c)(1) of the Act, the RMA provision, provides that an individual's eligibility for SSI benefits is to be determined based on income, resources, and other relevant characteristics from the current month. The SSI benefit amount for a month is to be determined on the basis of income and other characteristics in the first or, if the Commissioner so chooses, the second month preceding the month of eligibility. The final regulations provided that generally the income and other characteristics in the second month preceding the month of eligibility are to be used for determining the amount of SSI benefits.

Section 1611(c)(3) of the Act provides that an increase in Social Security (title II) benefits over the amount payable for the first preceding month, or at the Commissioner's election, the second preceding month, will be counted in determining the amount of an SSI benefit for the first month or, at the Commissioner's election, the second month in which there is an SSI benefit increase due to a cost-of-living adjustment (COLA) made under section 1617 of the Act. The final regulations, published November 26, 1985 (50 FR 48563), provided for counting an increase from a COLA or recomputation in Social Security benefits for January and February as income in the month received to determine the SSI benefit amounts for January and February.

Section 1611(c)(4)(A) of the Act provides that if the Commissioner determines, at his or her discretion, that reliable information is currently available about an individual's income and other circumstances for a month, the Commissioner, at his or her discretion, may determine the SSI benefit amount for that month on the basis of that information rather than based on income and other characteristics from the first or second prior month as required under RMA pursuant to section 1611(c)(1) of the Act. This is known as the ''reliable information exception'' to the RMA provision. If the Commissioner determines that reliable information is currently available and he or she further determines that he or she may use it to affect the current SSI benefit amount, section 1611(c)(4)(B) requires the Commissioner to issue regulations prescribing the circumstances in which the information may be used to determine the SSI benefit amount. However, under section 1611(c)(4), the Commissioner, at his or her discretion, may continue to use RMA even if he or she identifies reliable information which is currently available.

With respect to recipients, the optional computation under section 1611(c)(4)(A) of the Act would, in comparison to RMA, be advantageous in some circumstances and disadvantageous in others. Consider, for illustrative purposes only, what would happen if the Commissioner were to determine that all title II income information is reliable and currently available and is to be used to determine the current month's benefit.

Title II income above $20 serves to reduce the SSI benefit dollar-for-dollar. A reduction in the ongoing title II benefit amount will result in an increase in the SSI benefit, and, conversely, an increase in the title II benefit will result in a reduction in the SSI benefit. Under RMA, the effects of changes in title II income other than COLA or recomputation increases are generally delayed 2 months. For example, an SSI recipient who is receiving title II mother's benefits and whose benefits terminate because she no longer has a child in her care would continue to receive a reduced SSI benefit for 2 months after the termination of the title II income. Conversely, an SSI recipient who becomes entitled to a title II mother's benefit will continue to receive an unreduced SSI benefit for 2 months after the title II benefit begins, and her SSI benefit would not be reduced until the third month following title II entitlement.

Under the current month accounting approach, title II income would affect the SSI benefit as of the month the income is received. The mother whose title II benefit terminates would receive increased SSI in the month following termination. The SSI recipient who subsequently becomes entitled to a title II benefit would have her SSI benefit reduced effective with the month she begins receiving the title II benefit.

Statistically valid sample data indicate that using current month accounting for title II income would be disadvantageous to more SSI recipients than it would be advantageous. Of the approximately 99,400 recipients whose title II income started or stopped in the 12 months ending with June 1996 and who continued to receive SSI benefits, 78.3 percent would have received less in total SSI benefits under current month accounting and 21.7 percent would have received more. Of the approximately 131,000 recipients whose countable title II income increased or decreased in those 12 months and who

continued to receive SSI benefits, 71.3 percent would have received less in total SSI benefits using current month accounting, while 28.7 percent would have received more.

For purposes of RMA, we are defining ''reliable information'' in these final regulations as payment information maintained on a computer system of records by the government agency determining the payments (e.g., Department of Veterans Affairs, the Office of Personnel Management for Federal civil service information, and the Railroad Retirement Board). Because this is actual payment information which is verified by the custodial agency, it is correct virtually all the time. We define the term ''currently available information'' as information that is available to the Commissioner within the time required for us to compute and issue a correct SSI benefit for the month the information is pertinent.

When we published the regulations on November 26, 1985 (50 FR 48563), to reflect various provisions of section 1611(c) of the Act, we discussed the section 1611(c)(4) exception (50 FR 48565) using the following language:

> These regulations do not include a rule to determine a current month's benefit based on reliable information which is currently available. The Secretary has this matter under consideration, and is not exercising this authority at this time.

After publication of the final rules, we examined information regarding other Federal and State benefit programs to determine whether these sources could provide us reliable information which is currently available to be used for determining SSI benefit amounts. The following explains what we determined as a result of this examination.

We maintain computer interfaces only with some Federal agencies, such as the Department of Veterans Affairs, the Office of Personnel Management for Federal civil service information, and the Railroad Retirement Board. We receive this benefit information through computer interface after these other agencies prepare their payment tapes for the Treasury Department to use in issuing benefit checks or making electronic deposits. These interfaces provide us with information with respect to income and other circumstances. We use this information to maintain and update the SSI records for eligible individuals.

The Privacy Act, 5 U.S.C. 552a(p), requires that if the computer match data would cause SSA to take an adverse action against an individual (i.e., to reduce, suspend, terminate or deny payments), SSA must notify the individual of our findings, including the data and their source, and defer the adverse action until the expiration of any time period established for the program by statute or regulation for the individual to respond to the notice (10 days in the SSI program) to give the individual the opportunity to challenge the accuracy of the data. Because of the time required for the receipt of the data and individual notification and appeal rights, data we receive from these other agencies in January, for example, cannot adversely affect an individual's payment until March at the earliest. Thus, based on our definition, we cannot consider even timely computer interface information from other agencies to be currently available for determining the SSI benefit amount.

In addition to the computer interfaces with other agencies, we maintain a computer interface with title II records within SSA. The title II interface does not require special electronic matching and is not subject to the Privacy Act requirements discussed above. Pursuant to sections 1611(c)(2) and 1611(c)(3), we determine the SSI benefit amount for a month based on certain income received in that month.

However, our regulations provide, based on Goldberg versus Kelly, 397 U.S. 254 (1970), that before SSA can reduce, suspend or terminate an SSI payment, we must issue a written notice to the individual informing him or her of the event and providing the opportunity to appeal. If an adverse change is posted on an SSI claimant's record after the 10th day of the month, due to computer system constraints, we are unable to reduce the SSI payment for the next month. This creates an overpayment for the individual. Because of the advance notice requirements and systems limitations, only changes posted to the SSI record by the 10th of the month before the payment month affect the payment. Because of the various increases and decreases in title II benefits occurring throughout the month, approximately one-half of the changes are posted by the 10th of the month before the payment month. For the other one-half of the cases involving changes, the information is not currently available for SSA's system to make timely changes in order to avoid causing an overpayment or an underpayment. It would be inequitable to treat title II income differently in the computation of an SSI payment based on when in the month the income was received because such differing treatment could lead to different SSI benefit amounts for two individuals with identical title II income in a particular month.

Based on the foregoing review and examination of computer interface information, the Commissioner has determined that no information exists which is reliable and currently available to use in computing SSI benefit amounts pursuant to section 1611(c)(4). Therefore, the regulations explain that the Commissioner is exercising his or her discretion by declining to determine the SSI benefit amount for a current month using a method other than RMA, as allowed under section 1611(c)(4) of the Act.

We are amending § 416.420 to define the terms ''reliable information'' and ''currently available information'' and to state that the Commissioner has determined that there exists no reliable information which is currently available to use for determining SSI benefit amounts under section 1611(c)(4).

As noted above, these regulations were published in the **Federal Register** (58 FR 14191) on March 16, 1993, as an NPRM with a correction notice published in the **Federal Register** (58 FR 26383) on May 3, 1993. Interested individuals were given 60 days to submit comments. Comments were received from three attorneys in response to the NPRM.

Discussion of Comments

A summary of the comments and our responses follow. For ease of reference, we have grouped the comments according to the issues raised.

Comment: Two commenters disagreed with our definition of reliable, which limits reliable information to benefit payment information maintained on a computer-based system of records by the government agency determining the payments. One commenter stated that in other areas we make determinations based on information provided by the recipients. Another commenter stated that SSA should have conducted studies to compare the accuracy of data received by electronic tapes, telephone, or paper.

Response: These commenters ignore the crucial distinction between the way information is used under normal RMA processing and the way its use is contemplated under this exception to RMA. Under RMA, SSA generally has two months' lead time to verify and process reported changes in income, including information provided by recipients and claimants *before* such changes affect the payment. We are required to verify this information by section 1631(e) of the Act. Under the exception which provides for current month accounting, such changes would

affect the payment immediately, with no opportunity for prior verification. Therefore, application of more stringent criteria to ensure the reliability of that information is appropriate.

Because the data would be applied immediately to the computation of benefit amounts without additional verification, necessary components of ''reliability'' are that the data be obtained from the original source agency and that it be obtained in such a way that the Commissioner can be confident that no alteration has taken place. Also, given the number of SSI recipients for which we must calculate benefit amounts monthly, and the potential for frequent fluctuation of benefit payment information, a computerized system of information is the most accurate, accessible and efficient system for purposes of large numbers of calculations. These considerations buttress the definition of ''reliable'' contained in the NPRM and demonstrate its reasonable, not arbitrary, nature.

Comment: Two commenters stated that our definition of ''currently available'' is flawed because it ignores the ''reality'' of how benefit computations are made. The commenters correctly note that many SSI benefit computations, particularly those which result from a recent application for SSI, are made for payment months in the past as well as current payment months. Therefore, the commenters state, reliable information is currently available, and should be used, when these retroactive benefit calculations are made.

Response: Were we to adopt this approach, we would then have two different sets of computation rules depending upon whether we were computing current or retroactive payments. Consequently, it would be possible for two individuals with identical income in the same months to be due different benefit amounts, depending on when their payments were calculated. Such an approach would be inequitable.

Comment: Addressing specifically the question of AFDC income (which was processed under RMA rules from 1982 until April 1988, at which time Congress, under section 9106 of Pub. L. 100–203, specifically mandated current month accounting for this income), one commenter states ''. . . the Commissioner is aware that the AFDC income ceases as a matter of law when the recipient becomes eligible for SSI.''

Response: Local procedures developed in various States and counties to meet local needs and conditions govern the interactions of local SSA field offices and the State AFDC agency in communicating when SSI is to begin and AFDC is to terminate. The State AFDC agency must tell SSA when the AFDC terminates. This may be accomplished via written or telephone communication. This is not a fail-safe process, and periodic reminder items have been issued to field offices when we become aware of errors. Therefore, we believe that this information does not fit our definition of ''reliable'' or ''currently available'' for purposes of a procedure of current month accounting that would rely upon fast, accurate transmission of data.

Comment: One commenter asserts that the proposed rule is inconsistent with SSA's other practices, that the terms ''reliable'' and ''currently available'' are not used elsewhere in the regulations, and that we have used an unreasonably constricted sense of the concepts which the terms represent.

Response: Because section 1611(c)(4) provides an exception to the usual method of calculating SSI benefit amounts, the terminology is unique to that provision. Therefore, these terms would not be used in our regulations other than in a regulation concerning the section 1611(c)(4) exception to RMA. We do not find an inconsistency between the proposed rule and SSA's other practices as the reliable information exception to RMA is not addressed elsewhere in our regulations. Finally, for the reasons we explained in responses to comments discussed previously, we do not believe we have used an unreasonably constricted sense of the concepts of ''reliable'' and ''current available'' information.

Comment: One commenter also questions why, if current month accounting is not possible, the Commissioner does not implement one-month retrospective accounting under section 1611(c)(4).

Response: The Commissioner has discretion to use one-month retrospective accounting under section 1611(c)(1) and would not need to implement section 1611(c)(4) to do so.

Comment: One commenter discusses the statistical data presented in the proposed rule as it pertains to the reliable information exception. The commenter states that this information was not produced during the course of litigation, including cases in Ohio and California, regarding section 1611(c)(4).

Response: While the statistical data was not requested by any of the plaintiffs in the various lawsuits, it was presented by the Government in the *Newman* case. Moreover, this statistical data is relevant to the regulations process. The data in the proposed rule, as well as the updated data in these final rules, indicates the treatment of title II income information as an exception to RMA would be disadvantageous to more SSI recipients than it would be advantageous. Under RMA, changes in the SSI benefit due to changes in countable income are delayed for two months (except for cost-of-living increases). It is far more likely that an SSI recipient will begin receiving, or have an increase in, his or her Social Security benefit (and consequently would receive an advantage under RMA rather than under current month accounting), than it is that his or her Social Security benefit will terminate or be reduced.

Comment: One commenter states that SSA, by not implementing this exception to RMA, is missing an opportunity to improve the accounting system's responsiveness to current need.

Response: Congress' intent in instituting RMA was to reduce the number of incorrect payments which were being made under the previous method of quarterly prospective accounting. RMA allows for income changes that are reported promptly to be taken into account in determining subsequent payments rather than requiring SSI benefit amounts to be determined on the basis of income anticipated by the recipient in the payment month under a current month accounting method. Because the current month's payment is computed based on income from two months ago, if that income changes there is obviously a lag in adjustment of the SSI benefit to the new income level, but this benefit calculation process generally is less prone to error. If Congress had intended instantaneous benefit adjustments in any substantial manner rather than as a limited discretionary exception, Congress would have enacted current month accounting.

For the reasons discussed above, we are adopting these rules essentially as proposed.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they are not subject to OMB review.

Paperwork Reduction Act

These regulations impose no new reporting or recordkeeping requirements subject to OMB clearance.

Regulatory Flexibility Act

We certify that these rules will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: May 27, 1997.

John J. Callahan,

Acting Commissioner of Social Security.

Subpart D of part 416 of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation for subpart D of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611(a), (b), (c), and (e), 1612, 1617, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382(a), (b), (c), and (e), 1382a, 1382f, and 1383).

2. Section 416.420 is amended by revising paragraph (a) and redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

§ 416.420 Determination of benefits; general.

* * * * *

(a) *General rule.* We use the amount of your countable income in the second month prior to the current month to determine how much your benefit amount will be for the current month. We have determined that no reliable information exists which is currently available to compute benefits on a current basis as is explained in paragraph (c) of this section. However, if you have been receiving an SSI benefit and receiving a Social Security insurance benefit and the latter is increased on the basis of the cost-of-living adjustment or because your benefit is recomputed, we will compute the amount of your SSI benefit for January, the month of an SSI benefit increase, by including in your income the amount by which your Social Security benefit in January exceeds the amount of your Social Security benefit in November. Similarly, we will compute the amount of your SSI benefit for February by including in your income the amount by which your Social Security benefit in February exceeds the amount of your Social Security benefit in December.

Example 1. Mrs. X's benefit amount is being determined for September (the current month). Mrs. X's countable income in July is used to determine the benefit amount for September.

Example 2. Mr. Y's SSI benefit amount is being determined for January (the current month). Mr. Y has Social Security income of $100 in November, $100 in December, and $105 in January. We find the amount by which his Social Security income in January exceeds his Social Security income in November ($5) and add that to his income in November to determine the SSI benefit amount for January.

* * * * *

(c) *Reliable information which is currently available for determining benefits.* The Commissioner has determined that no reliable information exists which is currently available to use in determining benefit amounts.

(1) *Reliable information.* For purposes of this section ''reliable information'' means payment information that is maintained on a computer system of records by the government agency determining the payments (e.g., Department of Veterans Affairs, Office of Personnel Management for Federal civil service information and the Railroad Retirement Board).

(2) *Currently available information.* For purposes of this section ''currently available information'' means information that is available at such time that it permits us to compute and issue a correct benefit for the month the information is pertinent.

* * * * *

[FR Doc. 97–14614 Filed 6–4–97; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 86G–0289]

Substances Affirmed as Generally Recognized as Safe: Menhaden Oil

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that menhaden oil is generally recognized as safe (GRAS) as a direct human food ingredient with specific limitations. The agency is also affirming that partially hydrogenated menhaden oil with an iodine number between 86 and 119 is GRAS as a direct human food ingredient with no limitation other than current good manufacturing practice. These actions complete the agency's response to a petition filed by the National Fish Meal and Oil Association.

DATES: Effective June 5, 1997. The Director of the Office of the Federal Register approves the incorporation by reference, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, of certain publications in 21 CFR 184.1472(a)(2), effective June 5, 1997.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Lin, Center for Food Safety and Applied Nutrition (HFS–206), 200 C St. SW., Washington, DC 20204, 202–418–3103.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 170.35, the National Fish Meal and Oil Association, 2000 M St. NW., suite 580, Washington, DC 20036 (current address: 1525 Wilson Blvd., suite 500, Arlington, VA 22209), submitted a petition (GRASP 6G0316) seeking affirmation that menhaden oil and partially hydrogenated menhaden oil are GRAS for use as direct human food ingredients. The petition included information about the identity of, and manufacturing processes for, menhaden oil and partially hydrogenated menhaden oil; final reports and published articles of long-term animal feeding studies with partially hydrogenated menhaden oil; information about the history of human food use of partially hydrogenated menhaden oil; and the results of an extensive search of the published scientific literature (encompassing over 2,600 articles) with respect to the safety of fish oils in general.

FDA published a notice of filing of this petition in the **Federal Register** of July 31, 1986 (51 FR 27461), and gave interested persons an opportunity to submit comments to FDA's Dockets Management Branch. FDA received three comments, two from manufacturers and one from a government agency. All of the comments supported the affirmation of GRAS status for use of the oils in food.

FDA affirmed that partially hydrogenated menhaden oil (with an iodine number not more than 85) and fully hydrogenated menhaden oil are GRAS in the **Federal Register** of September 15, 1989 (54 FR 38219). These oils were affirmed as GRAS based on the chemical similarity between these oils and partially hydrogenated common edible vegetable oils, and on the established history of use in Europe

of these oils in margarine and shortening (54 FR 38219 at 38222).

Pending further evaluation, the agency deferred its decision on menhaden oil that has not been hydrogenated, because this oil contains high levels of the *omega-3* polyunsaturated fatty acids eicosapentaenoic acid (EPA) and docosahexaenoic acid (DHA), which are known to have physiologic effects, for example, effects on blood clotting (54 FR 38219). The agency's evaluation is now complete.

I. Basis for GRAS Status

Under section 201(s) of the act (21 U.S.C. 321(s)) and § 170.30 (21 CFR 170.30), general recognition of safety may be based only on the views of experts qualified by scientific training and experience to evaluate the safety of substances added to food. The basis of such views may be either: (1) Scientific procedures or, (2) in the case of a substance used in food prior to January 1, 1958, experience based on common use in food. General recognition of safety based upon scientific procedures requires the same quantity and quality of scientific evidence as is required to obtain approval of a food additive and ordinarily is to be based upon published studies, which may be corroborated by unpublished studies and other data and information (§ 170.30(b)). The petitioner relies upon scientific procedures to establish that menhaden oil is GRAS, because the oil has no history of common use as a food ingredient prior to 1958.

II. Identity

Menhaden oil is a refined marine oil that is derived from menhaden fish (*Brevoortia* species). It consists primarily of triglycerides, with small amounts of monoglycerides and diglycerides. The triglycerides are esters of glycerol and fatty acids with chains of 14 to 22 carbon atoms. Menhaden oil differs from edible vegetable oils and animal fats in its high proportion of polyunsaturated fatty acids with 4, 5 and 6 double bonds (about 25 percent). The mean percentages for these polyunsaturated fatty acids in menhaden oil are C18:4 (2.3 percent), C20:4 (2.0 percent), C20:5 (13.1 percent), C22:5 (2.5 percent) and C22:6 (6.7 percent).[1] C20:5 and C22:6 are EPA and DHA, respectively, and are the major source of *omega*-3 fatty acids from fish oil. (*Omega*-3 fatty acids refer to fatty acids with the first double bond occurring at the third carbon from the methyl (or omega) end of the fatty acid.) Menhaden oil also contains about 33 percent saturated fatty acids and about 31 percent monounsaturated fatty acids.

[1] The first number refers to the total number of carbon atoms in the fatty acid; the second number refers to the total number of double bonds.

III. Manufacturing Process

Menhaden, a plankton-feeding fish, is harvested commercially from the Gulf of Mexico and northward along the Atlantic coast of the United States. The fish is less than 12 inches long and less than a pound in weight. To produce menhaden oil, the fish is cooked whole at about 96 °C for 8 to 10 minutes to coagulate the protein and rupture the fat cells. The cooked fish is then pressed and the liquid is centrifuged to separate the oil and aqueous phases. Crude oil is then shipped to food companies for further processing, which may include storage (winterization), degumming, neutralization, bleaching, deodorization, and hydrogenation.

IV. Previous Evaluations

Data in the petition indicate that ingestion of EPA and DHA from fish oils can have a significant effect on bleeding time (the time taken for bleeding from a standardized skin wound to cease) and other physiological effects, as discussed below. Because of the potential safety concerns raised by these effects, and because there are no food oils in the food supply containing significant amounts of EPA and DHA, the agency contracted with the Mitre Corp. to perform an independent analysis of the scientific literature on the safety of menhaden oil. The Mitre Corp. issued, in April 1989, a report entitled, ''Health Effects of Refined Menhaden Oil.'' (Copies are available from the National Technical Information Service, Order No. PB89–182398, price code A08.)

The report stated that:

> [a]n increase in bleeding time is the only prominent health effect observed in humans that has been firmly established as a consequence of fish oil ingestion. This effect has been reported anecdotally in the Eskimo population and consistently observed in studies of healthy human subjects with a daily intake of 3 g [grams] of omega-3 fatty acids. The magnitude of the effect at this low dose is not a cause for alarm, but a lack of systematic dose-response data precludes prediction of the severity of the effect at higher daily intakes.

(Pages 7–1 and 7–2 of the report.)

In addition, the Nutrition Labeling and Education Act of 1990 required FDA to evaluate health claims for 10 nutrient-disease relationships, including the relationship of *omega*-3 fatty acids and heart disease. The agency evaluated the claim that consumption of *omega*-3 fatty acids is associated with a decreased risk of coronary heart disease under the standard set forth in section 403(r)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(r)(3)): Whether, based on the totality of publicly available scientific evidence, there is significant scientific agreement, among experts qualified by scientific training and experience, that the claim for the diet-disease relationship is supported by the evidence. In the **Federal Register** of January 6, 1993 (58 FR 2682), FDA issued a final rule announcing its decision not to authorize a health claim relating to an association between *omega*-3 fatty acids and a decreased risk of coronary heart disease because it had concluded that there was not significant scientific agreement among experts that the totality of the scientific evidence supported the claim. Because the focus of that evaluation was a review of evidence concerning a possible beneficial effect of *omega*-3 fatty acids on the heart, a comprehensive review of the safety of *omega*-3 fatty acids from fish oils or other sources was not conducted. However, in the health claim final rule the agency did discuss, in addition to the potential health benefit, concerns over possible adverse effects of fish oils on bleeding time, glycemic control, and low-density lipoprotein (LDL) cholesterol. These issues are discussed below.

V. Safety Information

A. Bleeding Time

Increased bleeding time has been reported in many studies with humans whose diets were supplemented with fish oils. FDA stated in the health claim final rule that the importance of the increase in bleeding time reported in many studies with supplemental fish oils or with increased fish consumption is not clear (58 FR 2682 at 2699). Further, increases in bleeding time do not correlate with clinically significant bleeding, and there are debates regarding the clinical significance of the increase in bleeding time (Ref. 1). However, FDA considers excessive bleeding to be a safety concern, and has examined the scientific literature for evidence that consumption of fish oils may contribute to excessive bleeding.

There are more than 50 reports in the scientific literature on fish oils that include data on bleeding time. Several reports described the absence of changes in bleeding time, but did not provide data. A few studies involving substantial numbers of healthy human subjects indicated that there was no statistically significant increase in bleeding time after supplemental intakes of EPA and DHA from fish oils

in daily amounts of 3.0 g or less (Refs. 3 through 6). Other studies with fewer human subjects, but in which the total diet was carefully controlled, also revealed that daily intakes of 3.0 g or less of EPA and DHA in fish oils did not increase bleeding time (Refs. 7 and 8).

However, two studies described increases in bleeding time that were reported to be statistically significant. Subjects in the studies consumed about 3.0 g per person per day (/p/d) EPA and DHA from fish oils. Mortensen et al. (Ref. 9), in a crossover, double-blind, placebo-controlled study among 20 normal, healthy males, showed that consumption of slightly more than 3.0 g/d of EPA and DHA in fish oil capsules for 4 weeks produced a small but statistically significant increase (16 percent) in median bleeding time; however, both the mean and 75th percentile bleeding times were well within the normal range. Harris and Windsor (Ref. 10) reported that consumption of fish oil containing 2.2 g/d of EPA and DHA also produced a small (15 percent) but statistically significant increase in bleeding time, but this increase was also within the normal range.

Studies in which greater daily amounts (higher than 3.0 g/p/d) of fish oils were fed often reported statistically significant increases in bleeding time (Refs. 11 through 22). In some of those studies, use of fish oils resulted in substantial prolongation of bleeding time outside the normal range, as indicated by the standard deviations reported (Refs. 8, 12, 18, 21, and 22). However, the pre-treatment bleeding times in those studies were also beyond the normal range, making it difficult to evaluate the effect of fish oils on bleeding time. In other studies, the increase in bleeding time after daily intakes of more than 3.0 g of EPA and DHA is difficult to interpret meaningfully because of the small number of subjects tested (Refs. 23 through 27).

Studies have also been carried out with subjects who had evidence of coronary heart disease or risk factors for coronary heart disease. After intake of 3.2–6.0 g/p/d of EPA and DHA in fish oils, many of these subjects showed increased bleeding time (Refs. 20, and 28 through 33). However, none of the studies reported evidence that the prolonged bleeding time was clinically significant. In those cases where the effect of fish oils in angioplasty or bypass surgery patients (a total of 520 patients fed supplemental fish oil) was studied, excessive bleeding was not reported even though acetylsalicylic acid (aspirin), which itself greatly prolongs bleeding time, was used concurrently (Refs. 34 through 40). One large study that used a dose of 6 g/p/d EPA and DHA in fish oils did report four cases of increased bleeding in the fish oil group (of 124 treated) versus none in the placebo group, but the difference in rates of occurrences between the two groups was not statistically significant (Ref. 40).

In summary, the totality of the scientific evidence demonstrates that when consumption of fish oils is limited to 3 g/p/d or less of EPA and DHA, there is no significant risk for increased bleeding time beyond the normal range. A report from an industry-sponsored roundtable discussion on the topic of fish oils and bleeding time (Ref. 2) also supports the conclusion that EPA and DHA are safe at intake levels at or below 3 g/p/d. On the other hand, amounts of fish oils providing more than 3 g/d of EPA and DHA have generally been found to produce increases in bleeding time that are statistically significant. At this time, there are insufficient data to evaluate the clinical significance of this finding. Because of the lack of data and because of the potential risk of excessive bleeding in some individuals with intakes at higher levels, FDA concludes that the safety of menhaden oil is generally recognized only at levels that limit intake of EPA and DHA to 3 g/p/d.

B. Glycemic Control

Some studies on non-insulin-dependent diabetics have reported increased glucose levels when large amounts of fish oils (4.5 to 8.0 g/p/d) were used in the diet. In the health claim final rule, FDA discussed the possible adverse effects of fish oil consumption on glycemic control among diabetics and stated that such effects were a safety concern (58 FR 2682 at 2704 through 2705). FDA concluded in that document that the effects of fish oils on blood glucose appear to depend on the amount of fish oils fed, based on review of a number of studies (58 FR 2682 at 2705). One study found no change in fasting blood glucose levels among type-II [non-insulin-dependent] diabetics treated with 3.0 g/d EPA plus DHA for 2 weeks (Ref. 41). Two other studies that used 3 g/d EPA plus DHA for 6 weeks (Ref. 42) and 2.7 g/d EPA plus DHA for 8 weeks (Ref. 43) found only transient increases in blood glucose halfway through their respective supplementation periods. Another study (Ref. 44) that used 3.0 g/d EPA plus DHA for 3 weeks found comparable increases in fasting blood glucose when either fish oil or safflower oil was fed, so the increase cannot be attributed specifically to *omega*-3 fatty acids. A study that compared the effects of fish oil and olive oil (Ref. 45) fed 3 g/d of EPA plus DHA and did not find a difference in fasting glucose or glycosylated hemoglobin after fish oil supplementation compared to baseline; they did find a significant difference compared to the olive oil treatment, which produced changes in the opposite direction from fish oil. Studies on type II diabetics that reported increased glucose used higher amounts (4.5 to 8 g/d) of *omega*-3 fatty acids (Refs. 46 through 49).

Based on the available information, FDA concludes that consumption of EPA and DHA in fish oils at 3 g/p/d by diabetics has no clinically significant effect on glycemic control, although higher amounts of EPA and DHA (4.5 g/p/d and above) remain of concern. Therefore, FDA concludes that 3 g/p/d of EPA and DHA is a safe level with respect to glycemic control.

C. LDL Cholesterol

In the health claim final rule, FDA noted that many studies on hypertriglyceridemic or hypercholesterolemic subjects, and some studies on normal subjects, reported an increase in LDL cholesterol or apo B (apolipoprotein B, a principal component of LDL) following fish oil supplementation (58 FR 2682 at 2705). Because increases in LDL cholesterol predict increased risk of coronary heart disease, FDA recently reevaluated those studies, as well as newer studies published since the health claim final rule, to address the question of whether 3 g/p/d of EPA and DHA derived from menhaden oil is generally recognized as a safe level with respect to its effect on LDL cholesterol. The agency considered the reported effects of fish oil on LDL cholesterol levels in healthy persons with normal cholesterol levels, as well as in persons with diabetes mellitus, hypertension, abnormal blood lipid levels, and cardiovascular disease.

As a result of its reevaluation, FDA found that although reported study results are variable, there appears to be a trend toward increased LDL cholesterol values with increased fish oil consumption in all population subgroups, with the magnitude of the increase appearing greater and more consistent in populations with abnormal blood lipid levels, hypertension, diabetes, and cardiovascular disease.

In the health claims final rule, FDA noted that because most reports of increased LDL were in studies where large amounts of fish oils were given (i.e., 5 g or more per day of EPA plus DHA), any safety concern relating to

changes in LDL cholesterol might be suitably addressed by restricting the intake of DHA and EPA (58 FR 2682 at 2705). As discussed below, the petitioner has suggested maximum use levels of menhaden oil for each food category in which menhaden oil can be used. Based on these levels, FDA has determined that the mean intake of menhaden oil, if menhaden oil were to be used at the maximum allowable level in all permitted food categories, would be less than 3 g of DHA and EPA per day. Further, menhaden oil would substitute for other dietary fats, some of which have similar effects on LDL cholesterol. Based on its evaluation, the agency concludes that the petitioned levels of menhaden oil are safe with respect to the effect on LDL cholesterol.

VI. Consumer Exposure

In September 1993, the petitioner amended the petition to include maximum use levels for menhaden oil in various food categories. Based on these levels, FDA estimated that the mean exposure to EPA and DHA from the use of menhaden oil in all food categories would be 2.8 g/p/d (Ref. 50). Although the petition originally included all potential food uses of menhaden oil, the petitioner subsequently requested that the use of menhaden oil in infant formula be withdrawn from consideration. Therefore, the exposure estimate does not include this potential use of menhaden oil.

VII. Iodine Numbers of Oils from Menhaden

When FDA affirmed hydrogenated and partially hydrogenated menhaden oils as GRAS based on their pre-1958 history of safe use in food, the agency included in the regulation a specification that the iodine number for partially hydrogenated menhaden oil be no more than 85. (Iodine number is a measure of the unsaturation of fats and oils, expressed in terms of centigrams of iodine absorbed per gram of sample.) The iodine number limit of 85 was chosen then because menhaden oil with an iodine number greater than 85 is not considered hardened, and only hardened oil had a documented history of common use in food before 1958 (54 FR 38219 at 38222). Moreover, corroborative toxicological studies submitted in the petition used oil with an iodine number no more than 85 (54 FR 38219 at 38222). The iodine number limit of 85 also ensured that the partially hydrogenated menhaden oil affirmed as GRAS at that time would contain no more than traces of EPA and DHA, and thus would not significantly increase the dietary intake of these substances, pending completion of the agency's evaluation of the safety of DHA and EPA as part of its review of the GRAS status of menhaden oil. By specifying this upper limit, the agency deferred its decision on the GRAS status of partially hydrogenated menhaden oil with an iodine number above 85.

The agency now concludes (as stated below), based on scientific procedures, that menhaden oil is GRAS, provided that daily intakes of EPA and DHA from menhaden oil do not exceed 3 g/p/d. The petitioner has provided information demonstrating that partially hydrogenated menhaden oil may have an iodine number up to 119. The agency finds that the use of partially hydrogenated menhaden oil with an iodine number up to 119 under conditions specified in current 21 CFR 184.1472 will not cause the total exposure to EPA and DHA from all types of menhaden oil to exceed 3 g/p/d (Ref. 50). Therefore, FDA concludes that partially hydrogenated menhaden oil with an iodine number between 86 and 119 is GRAS based on scientific procedures, and is raising the iodine number limit in the regulation for partially hydrogenated menhaden oil to 119. With this change, the iodine number range for partially hydrogenated menhaden oil will be 11 through 119 instead of 11 through 85.

The effect of the change in the iodine number range for partially hydrogenated menhaden oil will be to affirm as GRAS a substance that was not previously affirmed as GRAS (i.e., partially hydrogenated menhaden oil with an iodine number between 86 and 119), rather than to amend the specifications for a substance already affirmed as GRAS. Even if the change in the iodine number range is characterized as an amendment, however, the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) permits an agency to amend a regulation without notice and comment procedures when the agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest. Because notice of the filing of a petition seeking GRAS affirmation of menhaden oil and partially hydrogenated menhaden oil was given (51 FR 27461), and an opportunity for public comment on all issues relating to the petition, including iodine number ranges, was provided at that time, FDA finds that separate, additional notice and comment procedures on the specific issue of the iodine number range for partially hydrogenated menhaden oil are unnecessary. Therefore, the agency finds that there is good cause to proceed to final action without an opportunity for additional public comment on this issue.

VIII. Conclusions

FDA has evaluated the information in the petition and many published articles in scientific journals, along with other relevant information. Based on this evaluation, the agency finds that the use of menhaden oil as a direct food ingredient is safe, provided that daily intakes of EPA and DHA from menhaden oil do not exceed 3 g/p/d. As noted in section VI of this document, the petitioned uses of menhaden oil incorporate maximum use levels for menhaden oil in specific food categories to ensure that daily intakes of EPA and DHA from menhaden oil do not exceed 3 g/p/d. FDA has further determined that the many pertinent published human clinical studies provide an adequate basis to conclude that the safety of the petitioned uses of menhaden oil is generally recognized among the community of experts qualified by scientific training and experience to evaluate the safety of food ingredients. Therefore, the agency is affirming that the use of menhaden oil as a direct human food ingredient is GRAS with specific limitations (21 CFR 184.1(b)(2)). This GRAS affirmation is based on scientific procedures (21 CFR 170.30(b)). To ensure that only food-grade menhaden oil is used in food, FDA is including appropriate specifications in the regulation.

FDA further concludes, based on scientific procedures, that partially hydrogenated menhaden oil with an iodine number between 86 and 119 is GRAS with no limitation other than current good manufacturing practice. Therefore, the agency is increasing the iodine number limit for partially hydrogenated menhaden oil to 119.

IX. Environmental Impact

The agency is affirming that menhaden oil is generally recognized as safe (GRAS) as a direct human food ingredient with specific limitations. The agency is also affirming that partially hydrogenated menhaden oil with an iodine number between 86 and 119 is GRAS as a direct human food ingredient with no limitation other than current good manufacturing practice.

The agency has carefully considered the potential environmental effects of these actions. FDA has concluded that these actions will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an

environmental assessment, may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

X. Analysis of Impacts

FDA has examined the economic implications of the final rule as required by Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select the regulatory approach that maximizes net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize the economic impact of that rule on small entities.

FDA finds that this final rule is not a significant rule as defined by Executive Order 12866. This final rule recognizes the applicability of a statutory exemption. The impact of the rule is to remove uncertainty about the regulatory status of the petitioned substance. Accordingly, under the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commissioner of Food and Drugs certifies that this final rule will not have a significant economic impact on a substantial number of small entities (Ref. 51).

XI. Effective Date

As this rule recognizes an exemption from the food additive definition in the Federal Food, Drug, and Cosmetic Act, and from the approval requirements applicable to food additives, no delay in effective date is required by the Administrative Procedure Act (5 U.S.C. 553(d)). The rule will therefore be effective immediately (5 U.S.C. 553(d)(1)).

XII. References

The following information has been placed on display with 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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51. Memorandum, May 16, 1997, William Hubbard, Associate Commissioner for Policy Coordination, FDA, Rockville, MD to Lawrence Lin, FDA, Washington, DC.

List of Subjects in 21 CFR Part 184

Food additives, Food ingredients, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 184 is amended as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR part 184 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

2. Section 184.1472 is revised to read as follows:

§ 184.1472 Menhaden oil.

(a) *Menhaden oil.* (1) Menhaden oil is prepared from fish of the genus *Brevoortia*, commonly known as menhaden, by cooking and pressing. The resulting crude oil is then refined using the following steps: Storage (winterization), degumming (optional), neutralization, bleaching, and deodorization. Winterization may separate the oil and produce a solid fraction.

(2) Menhaden oil meets the following specifications:

(i) *Color and state.* Yellow liquid to white solid.

(ii) *Odor.* Odorless to slightly fishy.

(iii) *Saponification value.* Between 180 and 200 as determined by the American Oil Chemists' Society Official Method Cd 3–25—''Saponification Value'' (reapproved 1989), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication are available from the Office of Premarket Approval, Center for Food Safety and Applied Nutrition (HFS–200), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 200 C St. SW., rm. 3321, Washington DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(iv) *Iodine number.* Not less than 120 as determined by the American Oil Chemists' Society Recommended Practice Cd 1d–92—''Iodine Value of Fats and Oils, Cyclohexane—Acetic Acid Method,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (a) (2) (iii) of this section.

(v) *Unsaponifiable matter.* Not more than 1.5 percent as determined by the American Oil Chemists' Society Official Method Ca 6b–53—''Unsaponifiable Matter'' (reapproved 1989), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (a) (2) (iii) of this section.

(vi) *Free fatty acids.* Not more than 0.1 percent as determined by the American Oil Chemists' Society Official Method Ca 5a–40—''Free Fatty Acids''

(reapproved 1989), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (a) (2) (iii) of this section.

(vii) *Peroxide value*. Not more than 5 milliequivalents per kilogram of oil as determined by the American Oil Chemists' Society Official Method Cd 8–53—''Peroxide Value, Acetic Acid—Chloroform Method'' (updated 1992) or Recommended Practice Cd 8b–90—''Peroxide Value, Acetic Acid—Isooctane Method'' (updated 1992), which are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (a)(2)(iii) of this section.

(viii) *Lead*. Not more than 0.1 part per million as determined by the American Oil Chemists' Society Official Method Ca 18c–91—''Determination of Lead by Direct Graphite Furnace Atomic Absorption Spectrometry'' (revised 1992), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (a)(2)(iii) of this section.

(ix) *Mercury*. Not more than 0.5 part per million as determined by the method entitled ''Biomedical Test Materials Program: Analytical Methods for the Quality Assurance of Fish Oil,'' published in the ''NOAA Technical Memorandum NMFS–SEFC–211,'' F. M. Van Dolah and S. B. Galloway, editors, National Marine Fisheries Service, U. S. Department of Commerce, pages 71–88, November, 1988, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (a)(2)(iii) of this section.

(3) In accordance with § 184.1(b)(2), the ingredient may be used in food only within the following specific limitations:

Category of food	Maximum level of use in food (as served)
Cookies, crackers, § 170.3(n)(1) of this chapter.	5.0 percent
Breads, rolls (white & dark), § 170.3(n)(1) of this chapter.	1.0 percent
Fruit pies, custard pies, § 170.3(n)(1) of this chapter.	7.0 percent
Cakes, § 170.3(n)(1) of this chapter.	10.0 percent
Cereals, § 170.3(n)(4) of this chapter.	4.0 percent
Fats, oils, § 170.3(n)(12) of this chapter, but not in infant formula.	20.0 percent
Yogurt, § 170.3(n)(31) of this chapter.	4.0 percent
Cheese products, § 170.3(n)(5) of this chapter.	5.0 percent
Frozen dairy products, § 170.3(n)(20) of this chapter.	5.0 percent
Meat products, § 170.3(n)(29) of this chapter.	10.0 percent
Egg products, § 170.3(n)(11) of this chapter.	5.0 percent
Fish products, § 170.3(n)(13) of this chapter.	20.0 percent
Condiments, § 170.3(n)(8) of this chapter.	5.0 percent
Soup mixes, § 170.3(n)(40) of this chapter.	3.0 percent
Snack foods, § 170.3(n)(37) of this chapter.	5.0 percent
Nut products, § 170.3(n)(32) of this chapter.	5.0 percent
Gravies, sauces, § 170.3(n)(24) of this chapter.	5.0 percent

(b) *Hydrogenated and partially hydrogenated menhaden oils*. (1) Partially hydrogenated and hydrogenated menhaden oils are prepared by feeding hydrogen gas under pressure to a converter containing crude menhaden oil and a nickel catalyst. The reaction is begun at 150 to 160 °C and after 1 hour the temperature is raised to 180 °C until the desired degree of hydrogenation is reached. Hydrogenated menhaden oil is fully hydrogenated.

(2) Partially hydrogenated and hydrogenated menhaden oils meet the following specifications:

(i) *Color*. Opaque white solid.

(ii) *Odor*. Odorless.

(iii) *Saponification value*. Between 180 and 200.

(iv) *Iodine number*. Not more than 119 for partially hydrogenated menhaden oil and not more than 10 for fully hydrogenated menhaden oil.

(v) *Unsaponifiable matter*. Not more than 1.5 percent.

(vi) *Free fatty acids*. Not more than 0.1 percent.

(vii) *Peroxide value*. Not more than 5 milliequivalents per kilogram of oil.

(viii) *Nickel*. Not more than 0.5 part per million.

(ix) *Mercury*. Not more than 0.5 part per million.

(x) *Arsenic* (*as As*). Not more than 0.1 part per million.

(xi) *Lead*. Not more than 0.1 part per million.

(3) Partially hydrogenated and hydrogenated menhaden oils are used as edible fats or oils, as defined in § 170.3(n)(12) of this chapter, in food at levels not to exceed current good manufacturing practice.

(4) If the fat or oil is fully hydrogenated, the name to be used on the label of a product containing it shall include the term ''hydrogenated,'' or if it is partially hydrogenated, the name shall include the term ''partially hydrogenated,'' in accordance with § 101.4(b)(14) of this chapter.

Dated: May 22, 1997.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–14683 Filed 6–4–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. 96–12]

RIN 2125–AEO4

Truck Size and Weight; National Network; North Carolina

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA has modified the National Network for commercial motor vehicles by adding a route in North Carolina. The National Network was

established by a final rule on truck size and weight published at 49 FR 23302 on June 5, 1984. This rulemaking adds one segment to the National Network as requested by the State of North Carolina.

EFFECTIVE DATE: July 7, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Klimek, Offices of Motor Carrier Information Analysis (202–366-2976), or Mr. Charles Medalen, Office of Chief Counsel(202–366–1354), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The National Network of Interstate highways and federally-designated routes, on which commercial vehicles with the dimensions authorized by the Surface Transportation Assistance Act (STAA) of 1982, 49 U.S.C. 31111, 31113–31114, may operate, was established by the final rule published in the **Federal Register** on June 5, 1984 (49 FR 23302). These highways are located in each State, the District of Columbia, and Puerto Rico. Routes on the National Network are listed in appendix A of Part 658.

Procedures, for the addition and deletion of routes listed in appendix A are outlined in 23 CFR 658.11.

In accordance with these procedures the State of North Carolina, under authority of the Governor, requested the addition of one segment to the National Network. The segment was reviewed by State and FHWA offices for general adherence to the criteria of 23 CFR 658.9 and found to provide for the safe operation of larger commercial vehicles and for the needs of interstate commerce. A notice of proposed rulemaking (NPRM) listing North Carolina's proposed change to the National Network was published on October 21, 1996 [61 FR 54588].

The segment requested is generally described as: US 74 between alternate US 74 near Forest City and I–26 exit 36, approximately 20 miles. With this change the FHWA is adding the segment requested to the existing route descriptions for North Carolina.

Rulemaking Analyses and Notices

Two comments were received, one from a motor carrier and one from a household movers association. Both commentors supported the inclusion of the 20 mile segment for safety and convenience.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action does not constitute a significant regulatory action, within the meaning of E.O. 12866, nor is it considered significant under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking will be minimal. This rulemaking proposes technical amendments to 23 CFR 658, adding a certain highway segment in accordance with statutory provisions. This segment represents a very small portion of the National Network and has a negligible impact on the prior system. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), FHWA has evaluated the effects of this proposal on small entities. As stated in the preceding paragraph, the rulemaking proposes technical amendments to 23 CFR 658, adding a highway segment in accordance with statutory provisions. This segment represents a very small portion of the National Network and have a negligible impact on the prior system. This rulemaking would, however, allow motor carriers, including small carriers, access to highways not available to them at the present time.

Based on its evaluation of this proposal, the FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

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

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The Regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities do not apply to this program.

Paperwork Reduction Act

The proposal in this document does not contain information collection requirements [44 U.S.C. 3501 *et seq.*]

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environment Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 658

Grants programs—transportation, Highway and roads, Motor carrier—size and weight.

Issued on: May 22, 1997.

Jane Garvey,

Acting Administrator, Federal Highway Administration.

In consideration of the foregoing, the FHWA amends title 23, Code of Federal Regulations, chapter 1, appendix A to part 658 for the State of North Carolina, as set forth below:

PART 658—TRUCK SIZE AND WEIGHT, ROUTE DESIGNATIONS— LENGTH, WIDTH AND WEIGHT LIMITATIONS

1. The authority citation for 23 CFR part 658 continues to read as follows:

Authority: 23 U.S.C. 127 and 315; 49 U.S.C. 31111–31115; 49 CFR 1.48 (b)(19) and (c)(19).

2. Appendix A to Part 658 is amended for the State of North Carolina by inserting the route listing after the listing for US 74, I–277 Charlotte, US 17 W. Int. Wilmington to read as follows:

Appendix A to Part 658—National Network—Federally-Designated Routes

NORTH CAROLINA

Route	From	To
*	* * *	* *
US 74	I–26 EXIT 36	US 74 ALT: near Forest City
*	* * *	* *

[FR Doc. 97–14606 Filed 6–4–97; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD–11–97–005]

RIN 2115–AE46

Special Local Regulations; Coronado 4th of July Demonstration, Rehearsals and Fireworks

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This document implements 33 CFR 100.1101, ''Southern California Annual marine events,'' for the Coronado 4th of July Demonstration, Fireworks and Rehearsals. The Coronado 4th of July Citizens Committee annually sponsors the 4th of July Demonstration in Glorietta Bay, Coronado, California. This event consists of fireworks and U.S. Navy water, parachute, and helicopter operations.

These regulations will be effective in the navigable waters of the Pacific Ocean near the Glorietta Bay marina off the coast of Coronado, California. Vessels desiring to transit the regulated area during the event, or any rehearsals prior to the event, may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

Implementation of 33 CFR 100.1101 is necessary to control vessel traffic in the regulated areas to ensure the safety of participants and spectators. Pursuant to 33 CFR 100.1101(b)(3), Commanding Officer, U.S. Coast Guard Activities, San Diego, is designated the Patrol Commander for this event; he has the authority to delegate this responsibility to any commissioned, warrant, or petty officer of the Coast Guard.

DATES: Section 33 CFR 100.1101 becomes effective from 1 pm to 4:30 pm on 28 June, 1 July, and 3 July 1997 for the rehearsals; and from 1 pm to 4:30 pm and 8 pm to 10 pm on 4 July 1997 for the event, unless canceled earlier by the Patrol Commander .

FOR FURTHER INFORMATION CONTACT: QMC Michael Claeys, U.S. Coast Guard Activities, San Diego, California; Tel: (619) 683–6309.

Discussion of Notice

The Coronado 4th of July Demonstration is scheduled to occur on July 4, 1997, with rehearsals scheduled to occur on June 28, 1997, July 1, 1997, and July 3, 1997. These Special Local Regulations permit Coast Guard control of vessel traffic in order to ensure the safety of spectators and participant vessels. In accordance with the regulations in 33 CFR 100.1101, no spectators shall anchor, block, loiter in, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for such entry by or through an official patrol vessel.

Dated: May 14, 1997.

F. L. Ames,

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

[FR Doc. 97–14740 Filed 6–4–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Huntington 97–002]

RIN 2115–AA97

Safety Zone; Big Sandy River, Mile 2.1 to Mile 3.1

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Big Sandy River between miles 2.1 and 3.1. This regulation is needed to control vessel traffic in the regulated area to prevent potential safety hazards for vessels transiting the area resulting from a bridge removal and replacement project on the I–64 Dual Highway Bridges at mile 2.6, Big Sandy River, Kenova, WV. This regulation prohibits navigation in the regulated area during periods of periodic closures without the express permission of the Captain of the Port Huntington for the safety of vessel traffic and the protection of life and property along the river. Periods of closure will be announced via normally scheduled Coast Guard Broadcast Notice to Mariners or by Coast Guard personnel on scene.

EFFECTIVE DATE: This regulation is effective on June 16, 1997, at 7 a.m. EDT, and terminates on October 31, 1997 at 11:59 p.m. EST.

FOR FURTHER INFORMATION CONTACT: Lt Sean Moon, Chief of the Port Operations Department, Captain of the Port, Huntington, West Virginia at (304) 529–5524.

SUPPLEMENTARY INFORMATION:

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures will be impracticable. Specifically, the nature of the removal and replacement work affecting river navigation makes river closures impossible to predict and schedule with reasonable certainty. Only certain periods of the project will represent a potential hazard to navigation, life, and property. These periodic closures are dependent upon project progress and weather. The Coast Guard deems it to be in the public's best interest to issue a regulation immediately.

Background and Purpose

The activity requiring this regulation is a bridge removal and reconstruction project being done under West Virginia Division of Highways Federal Project IM–0641 (164), dated February 28, 1997. The C.J. Mahan Construction Company of Grove City, Ohio, working under contract for the State of West Virginia, began demolition operations on April 14, 1997 with operations to continue through November of 1998. Two major phases are involved in the project: Removal and reconstruction of the up river, east-bound bridge (scheduled to occur over the summer of 1997) and removal and reconstruction of the down river, west-bound bridge (scheduled to occur over the summer of 1998). Landside dismantling operations of the I–64 Dual Highway Bridges at mile 2.6, Big Sandy River, Kenova, West Virginia continue with waterside demolition operations, involving the use of crane barges, floating work plants and construction tugs to begin in the near future. Bridge spans will be removed from the dual bridges in sections, one at a time, over a period of several months. The regular presence of a crane barge, floating work plants and construction tugs will pose an obstructive hazard to river traffic operating in the vicinity of the project work site. In order to provide for the safety of vessel traffic and the general public, the Captain of the Port Huntington intends to regulate vessel traffic in that portion of the Big Sandy River where removal of steel and subsequent reconstruction of the dual bridges will be taking place until the hazard is mitigated. During critical phases of the project, the affected portions of the Big Sandy River will be subject to periodic closures. No vessels will be allowed to transit when removal or replacement operations will affect safe navigation.

Notification of river closures will be made via Broadcast Notice to Mariners

or by Coast Guard personnel on scene. Notifications will be via VHF radio channel 16. Requests by the contractor to temporarily block the river will be submitted to the Coast Guard for approval and coordination with the Captain of the Port Huntington. Sufficient lead time (15 days) will be provided to allow for adequate review and proper notification of marine interests. The maximum allowable time for a river closure will be 24 consecutive hours and there will be 24 hours between planned river closure events. Notification of reopening of the river will be via VHF radio channel 16.

The establishment of this safety zone regulation ensures that vessels will not transit the Big Sandy River in the vicinity of the demolition and replacement work when the main channel is obstructed by hazards associated with the project. The safety zone also ensures that communications is established between the contractor's vessel and vessels transiting the waters within the safety zone during the non-critical phases of the project. With proper communication between parties, the contractor is assured of having ample time to comply with any request to relocate work boats temporarily to allow a vessel to navigate through the safety zone.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary, due to the limited duration of the river closure.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism Assessment

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 12612 and has determined that it does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this regulation and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B (as revised by 59 FR 38654, July 29, 1994) this regulation is categorically excluded from further environmental documentation as an action required to protect public safety.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Records and recordkeeping requirements, Security measures, Waterways.

Temporary Regulation

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

PART 165—[AMENDED]

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

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

2. A temporary § 165.T08–030 is added, to read as follows:

§ 165.T08–030 Safety Zone: Big Sandy River.

(a) *Location.* The Big Sandy River between miles 2.1 and 3.1 is established as a safety zone.

(b) *Effective dates.* This section becomes effective on June 16, 1997, at 7 a.m. EDT. It terminates on October 31, 1997 at 11:59 p.m. EST.

(c) *Regulations.*

(1) Except with the permission of the Captain of the Port Huntington, all vessels must:

(i) Remain outside the safety zone during all periods of closure, as announced by Coast Guard Broadcast Notice to Mariners and as enforced on scene by personnel from the Coast Guard Marine Safety Office Huntington, WV.

(ii) Communicate with the on-scene contract vessel on channel 16 VHF–FM to arrange for safe passage through the safety zone at all other times, providing at least (20) minutes advance notice prior to transiting through the regulated area. As the specific contract vessel to be on-scene may change over the period of the project, the vessel will answer a hail for ''C. J. Mahan Construction.''

(iii) Provide the on-scene contract vessel at least (20) minutes advance notice to move/suspend operations in any case where the transiting vessel operator believes the safe passage of any vessel or tow is jeopardized by the presence/operation of the crane barge, floating work plants, or construction tugs during operations not involving river closure.

(2) The Captain of the Port may direct the movement of any vessel within the safety zone as appropriate to ensure the safe navigation of vessels through the safety zone.

Dated: May 14, 3:30 pm EDT.

F. A. Nyhuis,

Commander, U.S. Coast Guard, Captain of the Port/Huntington, WV.

[FR Doc. 97–14741 Filed 6–4–97; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN40–02–6988; FRL–5834–8]

Approval and Promulgation of State Implementation Plan; Minnesota; Enhanced Monitoring

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule; withdrawal.

SUMMARY: On April 9, 1997 (62 FR 17081), the United States Environmental Protection Agency (USEPA) approved the State of Minnesota's Enhanced Monitoring rule through a direct final rule procedure. The USEPA is withdrawing this direct final rule due to adverse comments received on this action. In a subsequent final rule USEPA will summarize and respond to the comments received and announce final rulemaking action on this requested program delegation.

DATES: The direct final rule published at 62 FR 17081 is withdrawn effective June 5, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 5, Regulation Development Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Regulation Development Section 2, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone: (312) 353–6960.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 20, 1997.

Gail C. Ginsberg,

Acting Regional Administrator.

[FR Doc. 97–14718 Filed 6–4–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL–5835–9]

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Application for Approval of Alternate Test Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; change in address.

SUMMARY: By this action, the Environmental Protection Agency (EPA) announces an internal transfer of administrative responsibilities for the evaluation of alternate test procedures under Clean Water Act section 304(h). EPA has transferred responsibilities from the Environmental Monitoring Systems Laboratory in Cincinnati (EMSL–Ci), now called the National Exposure Research Laboratory (NERL), in the Office of Research and Development (ORD) to the Office of Science and Technology in the Office of Water (OW). This action officially announces the change in internal delegation of responsibility for administering the alternate test procedure (ATP) program (from the EMSL–Ci laboratory to the Headquarters office in Washington, D.C.) and revises the address in those sections of title 40 of the Code of Federal Regulations (CFR) which describe the process for submission of ATP applications to the Agency.

DATES: Effective on June 5, 1997.

ADDRESSES: Applications for alternate test procedures should be sent to the Director, Analytical Methods Staff, Office of Science and Technology (4303), Office of Water, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Ben J. Honaker, Analytical Methods Staff, Office of Science and Technology (4303), USEPA, 401 M Street, SW., Washington, DC 20460; phone: (202) 260–2272.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those who seek EPA approval of analytical technologies for monitoring under the provisions of the Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA). Entities potentially regulated by this action are listed in the table below. These entities potentially include consensus methods organizations that publish compendia of analytical methods for water, and equipment manufacturers, instrument manufacturers and laboratories that modify compliance methods or seek approval of new methods for compliance monitoring.

Category	Examples of regulated entities
Public ...	Government laboratories that develop analytical methods for compliance with the CWA and the SDWA.
Private ..	Commercial laboratories, consensus methods organizations, instrument manufacturers, vendors, and other entities that develop or publish analytical methods for compliance with the CWA and the SDWA.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability criteria in section 136.1 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Authority

The Clean Water Act requires the EPA Administrator to promulgate effluent limitations guidelines for specified categories and classes of point sources. Section 301 of the CWA prohibits the discharge of any pollutant into navigable waters unless the discharge complies with the National Pollutant Discharge Elimination System (NPDES) permit issued under section 402 of the CWA. Section 307 requires the EPA Administrator to publish regulations establishing pretreatment standards for introduction of pollutants into publicly owned treatment works (POTWs). Section 401 requires certification for the construction or operation of facilities which may result in any discharge into navigable waters.

Section 304(h) of the Clean Water Act requires the EPA Administrator to promulgate guidelines establishing test procedures for the analysis of pollutants. EPA's approval of analytical methods is authorized under section 304(h) of the CWA, as well as the general rulemaking authority in section 501(a) of the Act. EPA uses these test procedures to support the development of effluent limitations guidelines, to establish compliance with NPDES permits, for implementation of pretreatment standards, and for section 401 certifications.

The section 304(h) test procedures (analytical methods) are specified in part 136 of title 40 of the Code of Federal Regulations (CFR). The test procedures prescribed in part 136 are used for the applications indicated above unless an alternate test procedure (ATP) has been specifically approved by the EPA Administrator or the Regional Administrator. The ATP application and approval process for new methods and method modifications is specified at 40 CFR 136.4 and 136.5.

II. Purpose

The purpose of today's notice is to announce the change in the internal EPA delegation of responsibility for the wastewater ATP program within EPA and to revise the address published in the CFR for submitting ATP applications to the Agency. Prior to today's action, the Administrator had delegated responsibility for processing ATP applications to the Environmental Monitoring Systems Laboratory in Cincinnati (EMSL–Ci), for both wastewater and drinking water ATP applications. Thus, the regulations at 40 CFR 136.4 and 136.5 directed those applications to be sent to the EMSL–Ci address. To ''streamline'' Agency processes for action on analytical methods, EPA shifted the internal delegation of responsibility from the office in Cincinnati to the Headquarters EPA office in Washington, DC. To expedite processing of all wastewater and drinking water ATP applications, applicants should send them to the

Headquarters EPA office in Washington, DC rather than to Cincinnati.

EPA proposed revisions to these regulations in the March 28, 1997 **Federal Register** (62 FR 14976). The proposed action would streamline the Office of Water's methods approval programs and would significantly change the current ATP process if finalized. At the present time, however, the ATP process for wastewater methods described at 40 CFR 136.4 and 136.5 remains in effect.

III. Administrative Procedure Act

EPA considers this notice of change in address to be exempt from the requirement for prior notice and opportunity to comment under section 553(b)(A) of the Administrative Procedure Act, 5 U.S.C. 553(b)(A). This notice merely informs the public of a change of Agency organization, procedure, or practice. EPA also finds, for good cause, that the opportunity for public comment is unnecessary because the EPA personnel in Cincinnati no longer administer the CWA program for review of alternate test procedures; so the change is ministerial and there is no substantive issue for comment. For the same reasons, today's notice is not subject to the delayed effective date provisions of APA section 553(d). Any unnecessary delay caused by the need to forward applications from Cincinnati to Washington, DC also impedes the expeditious processing of alternative test method applications.

IV. Regulatory Analysis

A. Executive Order 12866

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires EPA and other agencies to prepare a final regulatory flexibility analysis for regulations that have a significant impact on a substantial number of small entities. This regulatory action does not have any adverse impact on either small or large entities. Therefore, a regulatory flexibility analysis is not required. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. In addition, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This rulemaking merely announces a change in address for applications for alternate test procedures under the Clean Water Act and Safe Drinking Water Act. Therefore, today's rule is not subject to the requirements of sections 202, 203 and 205 of the UMRA.

D. Paperwork Reduction Act

This rule contains no information collection requirements and consequently is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

E. Submission to Congress and the General Accounting Office Under the Small Business Regulatory Enforcement and Fairness Act (SBREFA)

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 136

Environmental protection, Laboratories, Reporting and recordkeeping requirements, Water pollution control.

Dated: May 29, 1997.

Robert Perciasepe

Assistant Administrator for Water.

For the reason set out in the preamble, part 136 of title 40 of the Code of Federal Regulations is amended as set forth below:

PART 136—GUIDELINES ESTABLISHING TEST PROCEDURES FOR THE ANALYSIS OF POLLUTANTS

1. The authority citation for 40 CFR part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307 and 501(a), Pub. L. 95–217, 91 Stat. 1566, *et seq.* (33 U.S.C. 1251, *et seq.*) (the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977).

* * * * *

2. Section 136.4 is amended by revising paragraph (d) introductory text to read as follows:

§ 136.4 Application for alternate test procedures.

* * * * *

(d) An application for approval of an alternate test procedure for nationwide use may be made by letter in triplicate to the Director, Analytical Methods Staff, Office of Science and Technology (4303), Office of Water, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Any application for an alternate test procedure under this paragraph (d) shall:

* * * * *

3. Section 136.5 is amended by revising paragraphs (b) through (d), (e)(1), and (e)(2) to read as follows:

§ 136.5 Approval of alternate test procedures.

(a) * * *

(b) Within thirty days of receipt of an application, the Director will forward such application proposed by the responsible person or firm making the discharge, together with his recommendations, to the Regional Administrator. Where the Director recommends rejection of the application for scientific and technical reasons which he provides, the Regional Administrator shall deny the application, and shall forward a copy of the rejected application and his decision to the Director of the State Permit Program and to the Director of the Analytical Methods Staff, Washington, DC.

(c) Before approving any application for an alternate test procedure proposed by the responsible person or firm making the discharge, the Regional Administrator shall forward a copy of the application to the Director of the Analytical Methods Staff, Washington, DC.

(d) Within ninety days of receipt by the Regional Administrator of an application for an alternate test procedure, proposed by the responsible person or firm making the discharge, the Regional Administrator shall notify the applicant and the appropriate State agency of approval or rejection, or shall specify the additional information which is required to determine whether to approve the proposed test procedure. Prior to the expiration of such ninety day period, a recommendation providing the scientific and other technical basis for acceptance or rejection will be forwarded to the Regional Administrator by the Director of the Analytical Methods Staff, Washington, DC. A copy of all approval and rejection notifications will be forwarded to the Director, Analytical Methods Staff, Washington, DC, for the purposes of national coordination.

(e) Approval for nationwide use. (1) Within sixty days of receipt by the Director of the Analytical Methods Staff, Washington, DC, of an application for an alternate test procedure for nationwide use, the Director of the Analytical Methods Staff shall notify the applicant in writing whether the application is complete. If the application is incomplete, the applicant shall be informed of the information necessary to make the application complete.

(2) Within ninety days of the receipt of a complete package, the Analytical Methods Staff shall perform any analysis necessary to determine whether the alternate method satisfies the applicable requirements of this part, and the Director of the Analytical Methods Staff shall recommend to the Administrator that he/she approve or reject the application and shall also notify the applicant of such recommendation.

* * * * *

[FR Doc. 97–14720 Filed 6–4–97; 8:45 am]

BILLING CODE 6560–50–P

LEGAL SERVICES CORPORATION

45 CFR Part 1639

Welfare Reform

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule implements a provision in the Legal Services Corporation's (''Corporation'' or ''LSC'') FY 1996 appropriations act which restricts recipients from initiating legal representation or challenging or participating in litigation, lobbying or rulemaking involving an effort to reform a Federal or State welfare system. The rule also clarifies when recipients may engage in representation on behalf of an individual client seeking specific relief from a welfare agency and under what circumstances recipients may use funds from sources other than the Corporation to comment on public rulemaking or respond to requests from legislative or administrative officials involving a reform of a Federal or State welfare system.

EFFECTIVE DATE: This final rule is effective on July 7, 1997.

FOR FURTHER INFORMATION CONTACT: Office of the General Counsel, (202) 336–8817.

SUPPLEMENTARY INFORMATION: On May 19, 1996, the Operations and Regulations Committee (''Committee'') of the LSC Board of Directors (''Board'') requested the LSC staff to prepare an interim rule to implement section 504(a)(16) of the Corporation's FY 1996 appropriations act, Pub. L. 104–134, 110 Stat. 1321 (1996), which restricts recipients of LSC funds from initiating legal representation or participating in any other way in efforts to reform a Federal or State welfare system. The Committee held hearings on July 10 and 19, 1996, and the Board adopted an interim rule on July 20 which was published in the **Federal Register** on August 29, 1996, with a request for comments.

Subsequent to the adoption of the interim rule by the Board, Congress enacted and the President signed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 110 Stat. 2105 (1996) (''Personal Responsibility Act''). After receiving four timely comments on the interim rule, the Committee held public hearings on the rule on December 13, 1996, but, because of the enactment of the Personal Responsibility Act, did not adopt a final rule. The Committee met again on March 7, 1997, and adopted proposed revisions to the definitions in the interim rule to include most provisions of the Personal Responsibility Act and requested that the proposed revisions be published for public comment. See 62 FR 14382 (March 26, 1997). The Corporation received seventeen timely comments on the proposed rule, including a comment from the Center for Law and Social Policy (''CLASP''), submitted on behalf of the Project Advisory Group and the National Legal Aid and Defender Association; two from bar associations (American Bar Association and the Colorado Bar Association), four from State or County agencies, and 10 from legal services grantees. The Committee held public hearings on the rule on May 9 and the Board adopted this final rule on May 10, 1997.

The Corporation's FY 1997 appropriations act became effective on October 1, 1996, see Pub. L. 104–208, 110 Stat. 3009. It incorporated by reference the section 504 restriction on welfare reform included in the FY 1996 appropriations. Accordingly, the

preamble and text of this rule continue to refer to the applicable section number of the FY 1996 appropriations act.

This final rule revises the proposed rule's definitions of ''Federal or State welfare system'' and ''reform'' by merging the two definitions into a new definition of ''an effort to reform a Federal or State welfare system.'' This rule retains the proposed rule's exception for the Child Support Enforcement provisions in the Personal Responsibility Act and retains the proposed rule's inclusion of regulations in the definition of ''existing law.''

A section-by-section discussion of this final rule is provided below.

Section 1639.1 Purpose

The purpose of this rule is to ensure that LSC recipients do not initiate litigation or participate in litigation, lobbying or rulemaking involving an effort to reform a Federal or State welfare system. In addition, the rule clarifies when recipients can engage in legal representation of a client seeking specific relief from a welfare agency and incorporates section 504(e) of 110 Stat. 1321, which permits recipients to use non-LSC funds to comment on public rulemaking or respond to requests from legislative or administrative officials.

Section 1639.2 Definitions

The proposed rule would have revised the definition of ''Federal or State welfare system'' to include all provisions of the Personal Responsibility Act, except for the Child Support Enforcement provisions in Title III. The earlier interim rule had included only Federal and State Aid to Families with Dependent Children (''AFDC'') programs under Title IV–A of the Social Security Act, 42 U.S.C. 601 *et seq.*, and State General Assistance, or similar State means-tested programs for basic subsistence, which operate with State funding or under State mandate.

Most of the comments opposed the expanded reach of the proposed definition. The comments stated that the legislative history of the Corporation's welfare reform restriction mentioned only the AFDC and General Assistance programs. The comments also asserted that certain distinctions among the programs included in the Personal Responsibility Act take most of the programs therein outside of what is commonly understood to be welfare. For example, the comments stated that the Social Security Income (''SSI'') provisions of Title II are not welfare, because the program is operated by the Social Security Administration, which is not a welfare agency. They also said that the Food Stamp Program, amended by Title VIII, is not ''welfare,'' because it is ''a safety net program'' administered by the United States Department of Agriculture and is intended to ensure that low-income households, including the working poor, have adequate nutrition. The comments also contended that including most of the provisions in the Personal Responsibility Act could adversely affect the ability of programs to represent clients in the area of public benefits, because they would first need to determine which parts of each welfare program have undergone welfare reform and which parts have not been revised.

Most of the comments agreed with the proposed exclusion of the Child Support Enforcement provisions from the definition, agreeing with the Corporation that the Child Support Enforcement program is a law enforcement program, not a welfare program. The comments pointed out that the Child Support Enforcement program establishes and enforces legal obligations between parents, and the funds collected and distributed are private, not public, funds. Moreover, receipt of services is not limited to persons on public assistance, but is available to anyone who applies.

However, with one exception, the comments from State or local agencies expressed an opposite view. The comments approved of the proposed rule's broader definition, but also urged the Corporation to include the Child Support Enforcement provisions, arguing that these are a critical component of welfare reform, because they are intricately linked with the welfare system and are monitored by the United States Department of Health and Human Services (''HHS'').

The Board decided to include all of the provisions of the Personal Responsibility Act, except for the Child Support Enforcement provisions in Title III, based on its determination that Congress intended the Personal Responsibility Act, in large measure, to constitute an effort to reform the Federal and State welfare systems. It is true that the legislative history of the Corporation's welfare reform restriction used examples based on prior AFDC and General Assistance litigation. However, the Board did not consider the examples in the legislative history of the LSC welfare reform restriction as dispositive. During the same time it was considering the welfare reform restriction, Congress was working on, and soon thereafter enacted, the Personal Responsibility Act, which was characterized by Congress as a sweeping reform of a variety of Federal and State welfare systems. In summarizing the agreement that became law, the conference report of the Personal Responsibility Act provided that:

> **The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 puts in place the most fundamental reform of welfare since the program's inception**. * * * It takes the historic step of eliminating a Federal entitlement program—Aid to Families with Dependent Children—and replacing it with a block grant that restores the states' fundamental role in assisting needy families. It makes substantial reforms in the Food Stamp Program, cracking down on fraud and abuse and applying tough work standards. It reforms the Supplemental Security Income (SSI) disability program to strengthen eligibility requirements. * * * It makes sweeping reforms relating to noncitizens, strengthening the principle that immigrants come to America to work, not to collect welfare benefits.
>
> Conf. Rep. No. 725, 104th Cong., 2d Sess. (1996) (emphasis added).

Except for the arguments made regarding the Child Support Enforcement provisions, the Board was unconvinced by most of the distinctions set forth in the comments as to why particular titles of or programs amended by the Personal Responsibility Act should be exempt from the ''welfare reform'' restriction. Neither the text of the Personal Responsibility Act nor its legislative history limited ''welfare reform'' to only Title I. The Board retained the proposed rule's exclusion of the Child Support Enforcement provisions in Title III because, unlike most of the other programs amended by the Personal Responsibility Act, Child Support Enforcement (Title IV–D of the Social Security Act) establishes and enforces legal support obligations between parents. The support payments collected and distributed are private funds, not public funds, and Title IV–D services are available to any parent who applies for them, rather than being limited to families on public assistance or even those in poverty. Indeed, the majority of cases handled and nearly 75 percent of all funds collected involve families not on public assistance. Although the Title IV–A program contains provisions linking eligibility and benefits for AFDC and Food Stamps with cooperation by parents with the Title IV–D agency, this connection alone does not transform the Title IV–D program into a welfare program.

Because the Board determined that the Personal Responsibility Act constitutes an effort to reform Federal and State welfare systems, the Board decided to merge the definitions of ''Federal or State welfare system'' and ''reform'' into a new definition of ''an effort to reform a Federal or State

welfare system.'' This more adequately tracks the language in the statutory restriction and applies it to current welfare reform legislation. The definition still includes State efforts to replace or modify key components of their General Assistance programs, because the legislative history of the welfare reform restriction identified such programs as being within the restriction. The definition also includes language which anticipates future reforms. The definition uses the term ''key components'' of a Federal or State welfare system when referring to future efforts to reform a welfare system, because the statute references a ''welfare system,'' as distinguished from any particular provision of a welfare program. A change to a ''key component'' is intended to mean a fundamental restructuring of a welfare program, such as the transformation of an entitlement program into a block grant program. Finally, several conforming revisions have also been made to other provisions of the rule to be consistent with the revised definition.

This rule's final definition of ''existing law'' has been revised from the interim rule to clarify three points. ''Existing law'' is used in the statutory **limitation** on the **exception** to the welfare reform restriction. The exception permits recipients to represent individual eligible clients to seek specific relief from a welfare agency ''if such relief does not involve an effort to amend or otherwise challenge **existing law** in effect on the date of the initiation of the representation'' (emphasis added).

The first clarification made by the definition, which was included in the proposed rule, is that ''existing law'' is limited to laws enacted to reform a Federal or State welfare system. A broader meaning would eviscerate the exception, because the type of law in the limitation on the exception would be broader than the type of law in the restriction itself. The comments generally approved of this change.

The second clarification made in the final definition, which was also included in the proposed rule, is that ''existing law'' includes properly promulgated regulations. Most of the comments disapproved of this revision. One comment stated that because ''existing law'' is defined to mean law enacted to reform a Federal or State welfare system, it should not include regulations, which do not reform existing welfare law; rather they implement Federal and State legislative efforts that reform welfare law. The comments also gave examples of the detrimental effect of including regulations in the definition. For example, the comments alleged that including regulations in the definition would prevent representation in some cases allowed under the exception clause, because the rules of professional responsibility preclude an attorney from representing a client if the attorney's other obligations are likely to materially restrict avenues of relief that would otherwise be available to the client. In essence, the comments argued that including regulations in the definition would greatly undermine the exception clause, because, when representing clients before agencies, legal aid attorneys must often either challenge the agency's interpretation of the law or at least lay the foundation for such a challenge, should an effort to win benefits for the client under the agency's regulations fail.

The Board decided to retain regulations in the definition of ''existing law'' largely because the statutory restriction uses the term ''existing law'' without qualification. It is beyond cavil that properly adopted regulations constitute law. Regulations not only implement the express language of statutes, they also fill in the statutory gaps and create substantive law. For this reason, Federal and State administrative procedure acts require public notice and comment before such rules are adopted. The Board also disagreed that the inclusion of regulations in the definition eviscerates the exception. The exception allows representation to seek relief that is available under the existing law, whether statutory or regulatory, but does not allow representation that would challenge or amend existing law. The comments appear to be opposed not so much to the inclusion of regulations as to the limitation clause itself, which prohibits representation that would challenge or amend existing law. A point made by many comments was that, in order to represent clients properly in public benefits cases, an attorney must be able to challenge existing law. Although the Corporation is sympathetic to the concerns raised, it is not convinced that this definition will lead to the alleged consequences. Regardless, the statutory restriction prohibits any efforts to reform a Federal or State welfare system or to provide representation that would challenge or seek to amend existing ''welfare reform'' law and the Corporation believes including regulations within the definition is necessary to implement that restriction.

To clarify that the definition applies to regulations that indeed ''make law,'' a third revision clarifies that the definition includes only regulations ''that have been formally promulgated pursuant to public notice and comment procedures.'' This change responds in part to the comment from Atlanta Legal Aid, which stated that the legal basis of Georgia regulations is unclear, in part because they are not formally promulgated. One comment stated that the uncertainty of the status of regulations and whether they implement welfare reform legislation or un-reformed welfare law would cause an enforcement problem. Auditors would not know if certain representation was improper unless they are fully versed in a particular jurisdiction's welfare law and in the legal status of any applicable regulations. The proposed rule used the qualifying clause ''having the force and effect of law,'' but because comments found such language ambiguous, the Board replaced it with language clarifying that ''existing law'' includes only regulations that are promulgated pursuant to public notice and comment procedures. This change should preclude any confusion auditors might have experienced over the proposed rule's language.

In summary, the definition of ''existing law'' in this final rule does not include regulations that have not been formally promulgated under notice and comment procedures or that have not been issued to implement reform of a Federal or State welfare system.

Section 1639.3 Prohibition

This section generally prohibits litigation, lobbying and rulemaking activities involving an effort to reform a Federal or State welfare system. The prohibition includes litigation challenging laws or regulations enacted as part of a reform of a Federal or State welfare system; participating in rulemaking involving proposals that are being considered as part of a reform of a Federal or State welfare system; and lobbying before legislative or administrative bodies involving pending or proposed legislation that is part of a reform of a Federal or State welfare system.

Section 1639.4 Permissible Representation of Eligible Clients

This section implements the statutory exception in section 504(a)(16) which permits a recipient to represent ''an individual eligible client who is seeking specific relief from a welfare agency, if such relief does not involve an effort to amend or otherwise challenge existing law in effect on the date of the initiation of the representation.'' Pursuant to this provision, an action to enforce existing

law would not be proscribed. Thus, for example, when representing an eligible client seeking individual relief from the actions of an agency taken under a welfare reform law or regulation, a recipient may challenge an agency policy on the basis that it violates an agency regulation or State or Federal law or challenge the application of an agency's regulation, or the law on which it is based, to the individual seeking relief.

Section 1639.5 Exceptions for Public Rulemaking and Responding to Requests With Non-LSC Funds

The 1996 appropriations act includes a provision, section 504(e) of 110 Stat. 1321, which provides that nothing in section 504

> shall be construed to prohibit a recipient from using funds derived from a source other than the Legal Services Corporation to comment on public rulemaking or to respond to a written request for information or testimony from a Federal, State or local agency, legislative body or committee, or a member of such an agency, body or committee, so long as the response is made only to the parties that make the request and the recipient does not arrange for the request to be made.

This exception applies to the prohibition on welfare reform lobbying and rulemaking in section 504(a)(16). Therefore, recipients may use non-LSC funds to make oral or written comments in a public rulemaking proceeding involving an effort to reform a Federal or State welfare system. Recipients may also use non-LSC funds to respond to a written request from a government agency or official thereof, elected official, legislative body, committee or member thereof, made to the employee or to a recipient to testify or provide information regarding an effort to reform a State or Federal welfare system, provided that the response by the recipient is made only to the party making the request and the recipient does not arrange for the request to be made.

Section 1639.6 Recipient Policies and Procedures

In order to ensure that the recipient's staff is fully aware of the restriction on welfare reform activity and to ensure that staff receive appropriate guidance, this section requires that recipients adopt written policies and procedures to guide its staff in complying with this part.

Transition Guidance

Recipients must take immediate steps to withdraw from pending cases that were permitted by the interim regulation but which are now prohibited by the final regulation. Such steps should be documented by written notice to the client and written pleadings to the courts or administrative agencies involved. However, where a court or agency will not permit withdrawal in spite of a recipient's best efforts, the Corporation will determine on a case-by-case basis whether continued representation violates the regulation. During the period in which the recipient is seeking alternative counsel or other proper ways to conclude its involvement in such representation, it may file such motions as are necessary to preserve its client's rights in the matter on which representation is being provided.

List of Subjects in 45 CFR Part 1639

Grant programs, Legal services, Welfare reform.

For reasons set forth in the preamble, 45 CFR part 1639 is revised to read as follows:

PART 1639—WELFARE REFORM

Sec.

Authority: 42 U.S.C. 2996g(e); Pub. L. 104–208, 110 Stat. 3009; Pub. L. 104–134, 110 Stat. 1321.

§ 1639.1 Purpose.

The purpose of this rule is to ensure that LSC recipients do not initiate litigation involving, or challenge or participate in, efforts to reform a Federal or State welfare system. The rule also clarifies when recipients may engage in representation on behalf of an individual client seeking specific relief from a welfare agency and under what circumstances recipients may use funds from sources other than the Corporation to comment on public rulemaking or respond to requests from legislative or administrative officials involving a reform of a Federal or State welfare system.

§ 1639.2 Definitions.

(a) *An effort to reform a Federal or State welfare system* includes all of the provisions, except for the Child Support Enforcement provisions of Title III, of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Personal Responsibility Act), 110 Stat. 2105 (1996), and subsequent legislation enacted by Congress or the States to implement, replace or modify key components of the provisions of the Personal Responsibility Act or by States to replace or modify key components of their General Assistance or similar means-tested programs conducted by States or by counties with State funding or under State mandates.

(b) *Existing law* as used in this part means Federal, State or local statutory laws or ordinances which are enacted as an effort to reform a Federal or State welfare system and regulations issued pursuant thereto that have been formally promulgated pursuant to public notice and comment procedures.

§ 1639.3 Prohibition.

Except as provided in §§ 1639.4 and 1639.5, recipients may not initiate legal representation, or participate in any other way in litigation, lobbying or rulemaking, involving an effort to reform a Federal or State welfare system. Prohibited activities include participation in:

(a) Litigation challenging laws or regulations enacted as part of an effort to reform a Federal or State welfare system.

(b) Rulemaking involving proposals that are being considered to implement an effort to reform a Federal or State welfare system.

(c) Lobbying before legislative or administrative bodies undertaken directly or through grassroots efforts involving pending or proposed legislation that is part of an effort to reform a Federal or State welfare system.

§ 1639.4 Permissible representation of eligible clients.

Recipients may represent an individual eligible client who is seeking specific relief from a welfare agency, if such relief does not involve an effort to amend or otherwise challenge existing law in effect on the date of the initiation of the representation.

§ 1639.5 Exceptions for public rulemaking and responding to requests with non-LSC funds.

Consistent with the provisions of 45 CFR 1612.6 (a) through (e), recipients may use non-LSC funds to comment in a public rulemaking proceeding or respond to a written request for information or testimony from a Federal, State or local agency, legislative body, or committee, or a member thereof, regarding an effort to reform a Federal or State welfare system.

§ 1639.6 Recipient policies and procedures.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part.

Dated: May 30, 1997.

Victor M. Fortuno,

General Counsel.

[FR Doc. 97–14608 Filed 6–4–97; 8:45 am]

BILLING CODE 7050–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, and 172

[Docket No. HM–224A]

RIN 2137–AD02

Hazardous Materials: Shipping Description and Packaging of Oxygen Generators

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

ACTION: Final rule.

SUMMARY: RSPA is amending the Hazardous Materials Regulations to add a specific shipping description to the Hazardous Materials Table for chemical oxygen generators and to require approval of a chemical oxygen generator, and its packaging, when the chemical oxygen generator is to be transported with its means of initiation attached. Oxygen generators currently are transported under several different shipping descriptions which identify chemical constituents but do not identify that the packaged articles are oxygen generators. These changes will facilitate the identification of oxygen generators in transportation, making it easier to comply with and enforce existing prohibitions against the carriage of chemical oxygen generators on passenger aircraft and in inaccessible locations on cargo aircraft, and enhance packaging requirements.

DATES: Effective: The effective date of these amendments is July 7, 1997. The provisions of § 172.101(l)(1)(ii), which otherwise would allow up to one year after a change in the Hazardous Materials Table to use up stocks of preprinted shipping papers and to ship packages that were marked prior to the change, do not apply to these amendments.

FOR FURTHER INFORMATION CONTACT: Diane LaValle, Office of Hazardous Materials Standards, 202–366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

Following the May 11, 1996 crash of ValuJet flight 592 into the Florida Everglades, where chemical oxygen generators carried as cargo may have caused or contributed to the severity of the accident, RSPA published an interim final rule in the **Federal Register** (61 FR 26418) on May 24, 1996, followed by a final rule on December 30, 1996 (61 FR 68952) prohibiting the transportation of chemical oxygen generators as cargo on passenger-carrying aircraft. This prohibition is responsive to a May 31, 1996 recommendation of the National Transportation Safety Board (NTSB) that RSPA:

> In cooperation with the Federal Aviation Administration, permanently prohibit the transportation of chemical oxygen generators as cargo on board any passenger or cargo aircraft when the generators have passed their expiration dates, and the chemical core has not been depleted. (Class I, Urgent Action) (A–96–29).

On December 30, 1996, RSPA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (61 FR 68955)that proposed, in relevant part, several additional changes with respect to chemical oxygen generators: (1) adding a shipping description for ''Oxygen generator, chemical, 5.1, UN 3353, PG-I and PG-II,'' consistent with the recent adoption of this shipping description by the International Civil Aviation Organization (ICAO); (2) indicating in §§ 172.101 (the Hazardous Materials Table), §§ 171.11 and 175.85 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) that chemical oxygen generators may not be transported aboard passenger-carrying aircraft or in inaccessible cargo compartments in cargo aircraft; (3) indicating in §§ 171.11, 171.12, and 171.12a that there are no exceptions from HMR requirements for classification, approval and description of oxygen generators; and (4) specifying packaging requirements for shipment of chemical oxygen generators.

This final rule adopts these proposals from the December 30, 1996 NPRM concerning oxygen generators with minor changes. In §§ 171.11, 171.12 and 171.12a, proposed new paragraphs (d)(14), (b)(17) and (b)(16) have been adopted as new paragraphs (d)(15), (b)(18) and (b)(17), respectively. Additionally, paragraph (d)(15) does not reference the exception in § 175.10 because it is redundant as a result of the entry for ''Oxygen generator, chemical'' and the corresponding special provision.

RSPA's December 30, 1996 NPRM also proposed to prohibit the transportation of oxidizers, including compressed oxygen, on passenger-carrying aircraft (which would also limit oxidizers that are allowed on cargo aircraft only to cargo locations that are accessible to crew members during flight; § 175.85(b)). Docket No. HM–224A, 61 FR 68955. This proposed amendment to the Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180, is consistent with the NTSB recommendation that RSPA:

> In cooperation with the Federal Aviation Administration, prohibit the transportation of oxidizers and oxidizing materials (e.g., nitric acid) in cargo compartments that do not have fire or smoke detection systems. (Class I, Urgent Action) (A–96–30).

In the December 30, 1996 NPRM, RSPA expressed its intent to issue a supplemental NPRM to more fully address proposals pertaining to a prohibition against oxidizers on passenger aircraft and in inaccessible locations on cargo aircraft. RSPA expects to publish the supplemental NPRM in the near future.

RSPA received several requests to extend the comment period on the December 30, 1996 NPRM for either 60 or 90 days. The requests for an extension of time to comment did not relate to the proposals in the December 30, 1996 NPRM concerning the shipping description and packaging of chemical oxygen generators.

II. Oxygen Generators

The international shipment of hazardous materials by air is governed by the International Civil Aviation Organization (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions). The HMR allow the use of the ICAO Technical Instructions as an alternative to corresponding hazard communication and packaging requirements of the HMR (see 49 CFR 171.11). As explained in the NPRM, ICAO recently adopted a shipping description, ''Oxygen generator, chemical, 5.1, UN 3353, II,'' for chemical oxygen generators. RSPA proposed this description in the NPRM to make it easier to identify chemical oxygen generators and for consistency with the ICAO provisions.

RSPA also explained in the December 30, 1996 NPRM its proposals to require special packaging for a chemical oxygen generator that is shipped with its means of initiation attached. RSPA proposed

to: (1) clarify that oxygen generators must be classed and approved by the Associate Administrator for Hazardous Material Safety (which may include packaging requirements); (2) require oxygen generators to incorporate no less than two safety features that will prevent unintentional activation of the generator; and (3) require that, when transported on a cargo-only aircraft, a generator must be contained in a packaging prepared and originally offered for transportation by the approval holder. Moreover, each offeror of an approved oxygen generator must have a copy of the approval, and the approval number must be marked on the outside of the package.

RSPA received six comments on the proposals dealing with oxygen generators. All of the commenters supported the addition of the new shipping description for chemical oxygen generators. Therefore, RSPA is adding the shipping description ''Oxygen generator, chemical, 5.1, UN 3353, PG–I and PG–II,'' for chemical oxygen generators.

Two commenters suggested that shipping papers for oxygen generators also contain: (1) a certification that safety caps were inspected prior to packaging and were in place when packed; and (2) a statement as to what type of fire extinguisher is effective on the canisters. RSPA notes that § 172.204 currently requires certification as to compliance with packaging requirements by the offeror and subpart G of part 172 has requirements for providing and maintaining emergency response information. Neither of the suggested changes was proposed in the NPRM and RSPA does not believe that the commenters have provided sufficient justification to warrant changing the regulations. However, these suggestions may be considered in a future rulemaking proceeding if either or both of these commenters petition for rulemaking in accordance with 49 CFR 106.31. Section 106.31 requires, in pertinent part, that a petitioner provide information and arguments that support the proposed action, including relevant technical, scientific or other data as available to the petitioner.

One commenter who agreed with the proposal to add Special Provision 57 (adopted as Special Provision 60), which would require an oxygen generator to be shipped with two safety features that will prevent unintentional activation, requested that RSPA clarify the means of compliance with this provision. This commenter also requested RSPA specifically allow the use of protective packaging and insulation as a means of meeting this requirement. Another commenter stated that the proposed language does not make it clear whether the ''two safety features'' are intended to be additional to the existing device on the generator which prevents activation. Two other commenters requested that safety caps be installed on all chemical oxygen generators, and that the approved packagings be designed to prevent its movement.

RSPA is revising special provision 60, for clarity and consistency with the ICAO Technical Instructions, to require that oxygen generators that are shipped with their means of initiation attached incorporate at least ''two positive means of preventing unintentional actuation'' rather than ''two safety features that will prevent unintentional activation.'' Activation mechanisms for oxygen generators are not identical in design or operation. It is not possible to specify detailed methods of preventing activation without an examination of each design. Manufacturers are advised that in order to be approved, current designs must be adapted to provide for two independent means or systems for prevention of activation and that future designs should incorporate this capability. Each means or system must be independent of the other. For example, two hammer retainers or one retainer and a protective cap. Systems which use two features on one preventive system (one hammer pin with a retainer on the pin) or use packaging and insulation to substitute for one system are not acceptable.

RSPA received two comments on the proposal to require approval by the Associate Administrator for Hazardous Materials Safety (AAHMS) for the transportation of chemical oxygen generators. The National Transportation Safety Board (NTSB) stated that ''the Safety Board supports RSPA's proposal to require special approval for chemical oxygen generators to determine if these generators, which have actuators attached, can be safely packaged to prevent initiation during shipping, and to establish a standard for compliance.'' NTSB also stated that it ''understands that Title 49 CFR currently requires chemical oxygen generators to have an RSPA approval, or a previously authorized Bureau of Explosives approval, to be transported because the generators contain an explosive actuator.'' Another commenter stated that the use of device-specific approval is needlessly burdensome and in many respects is a step backwards to the era of specification, rather than performance-oriented, requirements.

As noted by NTSB, the HMR already require a chemical oxygen generator, or any other device, that contains an explosive to be approved by the AAHMS. The addition of the approval requirement into Special Provision 60 clarifies that chemical oxygen generators that are shipped with their means of initiation attached must be approved by the AAHMS. The approval provision also would apply to non-explosive means of ignition, if employed. RSPA disagrees that device-specific approval is needlessly burdensome, believing that the degree of hazard posed by chemical oxygen generators with means of ignition attached warrants individual approval. Therefore, Special Provision 60 (originally proposed as Special Provision 57), requiring that an oxygen generator that is shipped with its means of initiation attached must be approved by the AAHMS, is adopted in this final rule.

RSPA received one comment on the proposal to require, for transportation by cargo-only aircraft, that an oxygen generator must be contained in a packaging prepared and originally offered for transportation by the approval holder. The commenter stated that adoption of this requirement, and the proposal that each offerer of an approved oxygen generator must have a copy of the approval, will needlessly impede shipments. The commenter stated that these provisions will delay shipments of these ''lifesaving devices'' and have little, if any, impact on transportation safety.

In order to assure their safe transport aboard cargo aircraft, RSPA believes that chemical oxygen generators may only be transported in a packaging prepared and originally offered for transportation by an approval holder. RSPA believes that by requiring a generator to be packaged by the approval holder, the level of safety for the transportation of oxygen generators aboard cargo aircraft will be increased because the approval holder, the party most knowledgeable about the shipment, can be confident that the packaging is in compliance with the approval. RSPA also believes that, by requiring each offerer of an approved generator to have a copy of the approval, the offerer will be assured that: (1) The generator has been approved; (2) the shipping description is correct; and (3) the offerer has knowledge of all relevant packaging requirements. RSPA does not believe that a shipper can be aware of all these things without a copy of the approval. Therefore, RSPA is adopting in this final rule requirements that: (1) For transportation by cargo aircraft, an oxygen generator must be contained in a packaging prepared and originally offered for transportation by the

approval holder; (2) each offerer of an approved oxygen generator must have a copy of the approval for that generator; and (3) that the approval number must be marked on the outside of the package. Although originally proposed as part of Special Provision 60, the requirement that an oxygen generator must be contained in a packaging prepared and originally offered for transportation by the approval holder is moved to Special Provision A51. Language is added to clarify that the oxygen generator must conform to the provisions of the approval. Special Provision A51 effectively precludes the shipment by aircraft of an oxygen generator unless it is repacked in its original packaging. For example, an oxygen generator which is removed from an aircraft by a repair facility because the generator is beyond its service life could not be transported by cargo aircraft unless the repair facility has approved procedures for repackaging the generator.

The provisions being adopted into the HMR for oxygen generators generally are consistent with those provisions in the ICAO Technical Instructions for the shipment of oxygen generators. However, ICAO has also adopted additional provisions which require: (a) A 1.8 meter drop test on an unpackaged oxygen generator; and (b) that an oxygen generator be transported in a package that, when one generator in the package is actuated, the other generators will not actuate, the packaging material will not ignite, and the outside surface temperature of the completed package will not exceed 100 degrees C. Though these provisions have not been adopted into this final rule, RSPA may propose to add them in a future rulemaking.

III. Costs and Benefits

A preliminary regulatory evaluation for the December 30, 1996 NPRM, addressing the proposed prohibition of oxidizers in Class D cargo compartments, is available for review in the public docket. It estimates costs of $25 million ($17 million, discounted), in 1995 dollars, over the next ten years to aircraft operators. The potential safety benefits for the NPRM, i.e., the added assurance that an accident does not take place as the result of oxidizers enhancing a cargo compartment fire that would result in the loss of life or property damage, are estimated to exceed costs if the proposed rule prevents 9 accidental deaths or approximately 150 injuries over that ten year period. RSPA anticipates revising the preliminary regulatory evaluation prior to issuing a supplemental NPRM under Docket HM–224A and issuing a final regulatory evaluation when a final rule is issued on the prohibition of oxidizers aboard passenger aircraft.

RSPA does not believe it to be necessary to separate the costs and benefits in this final rule concerning shipping descriptions and packagings for chemical oxygen generators from the total costs and benefits estimated in the preliminary regulatory evaluation. On a qualitative basis, the rule enhances safety by ensuring that chemical oxygen generators are properly packaged and identified in transportation, thus reducing the risks posed by them. Also, the costs of this rulemaking are minimal: Chemical oxygen generators already are subject to RSPA approval provisions; minimal added costs will be incurred by a small number of shippers for changing package markings and shipping paper descriptions for relatively small numbers of shipments of oxygen generators.

IV. Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034). The economic impact of this rule is so minimal that the preparation of a regulatory evaluation is not warranted.

Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''). The Federal hazardous materials transportation law (49 U.S.C. 5101–5127) contains an express preemption provision that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) the designation, description, and classification of hazardous material;

(ii) the packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(iii) the preparation, execution, and use of shipping documents pertaining to hazardous material and requirements respecting the number, content, and placement of such documents;

(iv) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(v) the design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

This final rule concerns the classification, shipping description and packaging of chemical oxygen generators. RSPA lacks discretion in the preemptive nature of this final rule, and preparation of a federalism assessment is not warranted.

Title 49 U.S.C. 5125(b)(2) provides that DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements will be September 3, 1997.

Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule applies to persons who transport chemical oxygen generators and who offer these generators for transportation, most of whom are not small entities.

Paperwork Reduction Act

This final rule does not propose any additional information collection burdens. Information collection requirements contained in Special Provision 60 in this final rule are currently approved under OMB control number 2137–0557 with regard to approvals for new explosives under 49 CFR 173.56. A reference to Special Provision 60 will be included in the next revision of the OMB approval. Shipping paper requirements are currently approved under OMB control number 2137–0037. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda. The amendments adopted in this final rule were originally proposed in the December 30, 1996, NPRM with RIN 2137–AC92.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Marking, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Parts 171, and 172 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 171.11, paragraph (d)(15) is added to read as follows:

§ 171.11 Use of ICAO Technical Instructions.

* * * * *

(d) * * *

(15) An oxygen generator (chemical) must be classed, approved, and described in accordance with the requirements of this subchapter.

3. In § 171.12, paragraph (b)(18) is added to read as follows:

§ 171.12 Import and export shipments.

* * * * *

(b) * * *

(18) An oxygen generator (chemical) must be classed, approved, and described in accordance with the requirements of this subchapter.

* * * * *

4. In § 171.12a, paragraph (b)(17) is added to read as follows:

§ 171.12a Canadian shipments and packagings.

* * * * *

(b) * * *

(17) An oxygen generator (chemical) must be classed, approved, and described in accordance with the requirements of this subchapter.

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

5. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 172.101 [Amended]

6. In the § 172.101 Hazardous Materials Table, the following entry is added in appropriate alphabetical order:

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging authorizations (§173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or rail-car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	* *		*		*	*		*		*			
	Oxygen generator, chemical	5.1	UN3353	I	5.1	60, A51	None	211	None	Forbidden.	15 kg	(1)	56, 58, 69, 106
				II	5.1	60, A51	None	212	None	Forbidden.	25 kg	(1)	56, 58, 69, 106
	* *		*		*	*		*		*			

7. In 172.102, in paragraph (c)(1), Special Provision 60 is added, and in paragraph (c)(2), Special Provision A51 is added to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

* * * * *

60 An oxygen generator, chemical, that is shipped with its means of initiation attached must incorporate at least two positive means of preventing unintentional actuation of the generator, and be classed and approved by the Associate Administrator for Hazardous Materials Safety. Each person who offers an oxygen generator for transportation shall: (1) ensure that the shipment conforms to the conditions of the approval; (2) maintain a copy of the approval at each facility where an oxygen generator is prepared for transportation, and (3) mark the approval number on the outside of the package.

* * * * *

(2) * * *

A51 When transported by cargo-only aircraft, an oxygen generator must conform to the provisions of an approval issued under Special Provision 60 and be contained in a packaging prepared and originally offered for transportation by the approval holder.

* * * * *

Issued in Washington, DC on May 30, 1997, under the authority delegated in 49 CFR part 1.

Kelley S. Coyner,

Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 97–14739 Filed 6–4–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE10

Endangered and Threatened Wildlife and Plants; Change in Listing Status of Steller Sea Lion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (FWS) is reclassifying the Steller sea lion (*Eumetopias jubatus*) population segment west of 144° W. longitude (a line near Cape Suckling, AK) as endangered and the remainder of the Steller sea lion population will remain threatened on the List of Endangered and Threatened Wildlife. This measure, authorized by the Endangered Species Act of 1973 (Act), corresponds with a determination to reclassify this species based on biological information indicating that there are two distinct population segments, as authorized under the Act, by the National Marine Fisheries Service (NMFS) which has jurisdiction for this species.

DATES: Effective June 4, 1997.

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, (703/358–2171).

SUPPLEMENTARY INFORMATION: In accordance with Reorganization Plan No. 4 of 1970, the NMFS, National Oceanic and Atmospheric Administration, Department of Commerce, is responsible for the decisions regarding the Steller sea lion under the Act. Under section 4(a)(2) of the Act, NMFS must decide whether a species under its jurisdiction should be classified as endangered or threatened. The FWS is responsible for the actual addition of a species and changes in reclassification to the List of Endangered and Threatened Wildlife in 50 CFR 17.11(h).

The NMFS published its determination for a reclassification of the Steller sea lion on May 5, 1997 (62 FR 24345). Accordingly, the FWS is now making this change to the List of Endangered and Threatened Wildlife. This change is effective as of June 4, 1997, as indicated in the NMFS's determination. Because this action of the FWS is nondiscretionary, and in view of the public comment period provided by NMFS on the proposed listing (October 4, 1995; 60 FR 51968), the FWS finds that good cause exists to omit the notice and public comment procedures of 5 U.S.C. 553(b).

National Environmental Policy Act

The FWS has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act, as amended. A notice outlining the FWS's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by removing the existing entry for Sea-lion, Stellar (=northern) and by adding the following entries, in alphabetical order under MAMMALS, to the List of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Sea-lion, Steller (=northern).	*Eumetopias jubatus.*	U.S.A. (AK, CA, OR, WA), Canada, Russia, North Pacific Ocean.	Entire, except the population segment west of 144° W. Long.	T	384E, 408, 614	226.12	227.12

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	.....do	.....do	Population segment west of 144° W. Long..	E	384E, 408, 614	226.12	NA
*	*	*	*	*	*		*

Dated: January 27, 1997.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 97–14530 Filed 6–4–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 24

RIN 1018–AD97

Endangered and Threatened Wildlife and Plants; Designated Ports for Listed Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) hereby amends the regulations that establish designated ports for the importation, exportation, and reexportation of plants by adding the U.S. Department of Agriculture (USDA) ports at Laredo, Texas; and Fort Lauderdale (=Port Everglades), Jacksonville, and Panama City, Florida, as designated ports for the importation of logs and lumber from trees listed as endangered or threatened under the Endangered Species Act of 1973, as amended (the Act), or listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The Service also amends these same regulations by adding the USDA port at Port Huron, Michigan, as a port for the importation from Canada and exportation or reexportation to Canada of plants listed as endangered or threatened under the Act, or listed under CITES. The USDA has adequate facilities and personnel at these ports to qualify the ports as designated ports for the importation, exportation, and reexportation of plants under the terms of the Act and CITES. The addition of these ports to the list of designated ports will facilitate trade and the enforcement of the Act and CITES.

Additionally, the Service amends the regulations that establish designated ports for the importation, exportation, and reexportation of plants by removing Laredo, Texas, from the list of ports designated for the importation, exportation, or reexportation of plants listed as endangered or threatened under the Act, or listed under CITES. The USDA no longer operates Laredo as a plant inspection station and has proposed to remove it from the list of plant inspection stations in its regulations. Because the Laredo plant inspection station has closed, it no longer is used as a designated port for the importation, exportation, or reexportation of plants listed as endangered or threatened under the Act, or listed under CITES. However, the USDA has sufficient staff in place in Laredo for the Service to add it instead as a designated port for the importation of logs and lumber from trees listed as endangered or threatened under the Act, or listed under CITES, as discussed in the above paragraph.

EFFECTIVE DATE: June 5, 1997.

FOR FURTHER INFORMATION CONTACT: Kenneth B. Stansell, Chief, Office of Management Authority, U.S. Fish and Wildlife Service, telephone (703) 358–2093.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended (the Act), requires, among other things, that plants be imported, exported, or reexported only at designated ports or, under certain limited circumstances, at nondesignated ports. Section 9(f) of the Act (16 U.S.C. 1538[f]) provides for the designation of ports. Under section 9(f)(1), the Secretary of the Interior (Secretary) has the authority to establish designated ports based on a finding that such an action would facilitate enforcement of the Act and reduce the costs of that enforcement. The United States Department of Agriculture (USDA) and the Secretary are responsible for enforcing provisions of the Act and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) relating to the importation, exportation, and reexportation of plants listed as endangered or threatened under the Act or listed under CITES.

The regulations in 50 CFR part 24, ''Importation and Exportation of Plants,'' are for the purpose of establishing ports for the importation, exportation, and reexportation of plants. Plants listed as endangered or threatened in 50 CFR 17.12 or in the appendices to CITES in 50 CFR 23.23 are required to be accompanied by documentation and may be imported, exported, or reexported only at one of the USDA ports listed in section 24.12(a) of the regulations. Certain other USDA ports are designated for the importation, exportation, or reexportation of specific listed plants. Section 24.12(g) of the regulations contains a list of USDA ports that are, for the purposes of the Act and CITES, designated ports for the importation, exportation, and reexportation of plants that are not listed as endangered or threatened. (The USDA regulations in 7 CFR 319.37 contain additional prohibitions and restrictions governing the importation of plants through those ports.) In a January 16, 1997, **Federal Register** notice (62 FR 2354), the U.S. Fish and Wildlife Service (Service) proposed that the USDA ports at Laredo, Texas; and Fort Lauderdale, Jacksonville, and Panama City, Florida, be listed as designated ports for the importation of saw-logs, sawn wood, and veneers from trees listed as endangered or threatened under the Act, or listed under CITES. The Service further proposed to designate the USDA port at Port Huron, Michigan, as a port for the importation from Canada and exportation or reexportation to Canada of plants listed as endangered or threatened under the Act, or listed under CITES. Finally, the Service proposed to remove Laredo, Texas, from the list of ports designated for the importation, exportation, or reexportation of plants listed as endangered or threatened under the Act, or listed under CITES.

Comments Submitted

The Service's January 16, 1997, notice invited the submission of written comments regarding the proposal for a 60-day comment period ending on March 17, 1997. One comment was

received by that date, from the International Wood Products Association (IHPA). The IHPA suggested that it be clearly noted in the final rule that the USDA port of Fort Lauderdale, Florida and the USDA port called Port Everglades are one-in-the-same. The IHPA indicated that this notation would clarify confusion that currently exists within the lumber industry as to whether these two port names are for the same port or not. The IHPA also pointed out a possible problem with regard to the Service's proposal to replace the term ''logs and lumber'' in section 24.12(e) with the term ''saw-logs, sawn wood, and veneers.'' The Service proposed this change in order to be consistent with the language used in the CITES listings and in 50 CFR part 23. The IHPA pointed out that, in the joint U.S./Bolivia CITES proposal to list certain parts and products of the neotropical populations of bigleaf mahogany (*Swietenia macrophylla*) on CITES Appendix II, the language for the listed parts and products includes plywood, in addition to saw-logs, sawn wood, and veneers. This CITES proposal was submitted for consideration at the tenth meeting of the Conference of the Parties to CITES on June 9–20, 1997, in Harare, Zimbabwe. The IHPA claimed that the inclusion of bigleaf mahogany plywood on CITES Appendix II would create a situation where, if the term ''saw-logs, sawn wood, and veneers'' replaced the term ''logs and lumber'' in section 24.12(e), then bigleaf mahogany plywood would not be among the lumber parts and products which would be allowed to be imported through the ports listed in section 24.12(e).

The Service has consulted with the USDA regarding the comments and suggestions provided by the IHPA. As a result of those consultations, the Service has made the following changes to the language from the proposed rule (in the January 16, 1997, notice) in this final rule: reference to the USDA port of Fort Lauderdale, Florida, in the proposed rule has been changed to the USDA port of Fort Lauderdale (=Port Everglades), Florida; and the Service's proposal to amend section 24.12(e) of the regulations by replacing the term ''logs and lumber'' with the term ''saw-logs, sawn wood, and veneers'' has been removed. The original language of ''logs and lumber'' is retained in this final rule. This will facilitate imports of lumber products of any future CITES listed species without pre-supposing any future specific annotations. The term ''logs and lumber'' encompasses saw-logs, sawn wood, veneer sheets, plywood and other types of lumber.

Requests for Public Hearing

Section 9(f)(1) of the Act provides that any person may request an opportunity to comment at a public hearing before the Secretary of the Interior confers designated port status on any port. Accordingly, the Service's January 16, 1997, notice invited public hearing requests, which were required to be received by the Service on or before March 3, 1997. No such requests were received.

Treasury Department Approval To Designate Proposed Ports

Section 9(f)(1) of the Act also provides, in part, that:

> For the purpose of facilitating enforcement of this chapter and reducing costs thereof, the Secretary of the Interior, with approval of the Secretary of the Treasury and after notice and opportunity for public hearing, may, by regulation, designate ports and change such designations.

Approval from the Secretary of the Treasury was obtained in accordance with these provisions.

Therefore, based on the rationale set forth in the proposed rule, the Service is adopting the provisions of the proposal as a final rule.

Effective Date

The principal effect of this rule is to grant an exemption from 16 U.S.C. 1538(f), which generally prohibits importation of wildlife and plants except at such ports as may be designated. Accordingly, it may be given immediate effect under 5 U.S.C. 553(d)(1), which permits a rule that ''grants or recognizes an exemption or relieves a restriction'' to be given immediate effect. Furthermore, good cause exists to give immediate effect to that part of the final rule that deletes Laredo, Texas from the list of designated ports in section 24.12(a) because the USDA no longer maintains a plant inspection station in Laredo and an immediate correction to the codified list is needed to eliminate confusion for the general public.

Economic Effects

The USDA ports at Laredo, Texas; and Fort Lauderdale (=Port Everglades), Jacksonville, and Panama City, Florida, are established primary ports of entry for bigleaf mahogany logs and lumber imported into the United States. Since saw-logs, sawn wood, and veneers of bigleaf mahogany now are listed in the appendices to CITES, the addition of these four ports to the list of ports designated for the importation of logs and lumber from trees listed as endangered or threatened under the Act, or listed under CITES, will avoid disrupting an established pattern of legitimate trade by allowing operations at those ports related to the importation of bigleaf mahogany saw-logs, sawn wood, and veneers to continue with only minor procedural changes. Adding these ports will not have a significant economic impact on any private entities, nor on local or State governments. Also, adding these ports will not have a significant economic impact on the Federal Government, since the USDA already has adequate facilities and personnel at these ports to qualify them as designated ports.

However, without these ports being designated, the established legitimate trade in bigleaf mahogany saw-logs, sawn wood, and veneers through these ports would cease. This would increase shipping costs on importers in the United States who have been using Laredo, Fort Lauderdale (=Port Everglades), Jacksonville, and Panama City as ports of import for bigleaf mahogany saw-logs, sawn wood, and veneers, by forcing these importers to travel out of their way to one of the current designated ports in order to legally import their bigleaf mahogany. The closest designated Mexican border port to the port of Laredo is Brownsville, Texas, about 150 miles away; the closest designated port to the port of Fort Lauderdale is Miami, Florida, about 30 miles away; the closest designated port to the port of Jacksonville is Orlando, Florida, about 125 miles away; and the closest designated port to the port of Panama City is Mobile, Alabama, about 150 miles away.

Adding the USDA port at Port Huron, Michigan, as a designated port for the importation from Canada and exportation or reexportation to Canada of plants listed as endangered or threatened under the Act, or listed under CITES, likewise will not have a significant economic impact on any private entities, nor on local or State governments. Also, adding this port will not have a significant economic impact on the Federal Government, since the USDA already has adequate facilities and personnel at the port to qualify it as a designated port. Adding Port Huron as a designated port will facilitate trade by making an additional port of entry available to importers of artificially propagated plants listed as endangered or threatened under the Act, or listed under CITES, from Canada. Currently, the USDA ports at Detroit, Michigan; Buffalo and Rouses Point, New York; and Blaine, Washington, are the only ports specifically designated for those purposes. However, Port Huron's

designation is not expected to result in a significant increase in the importation of such plants from Canada.

Therefore, the Service has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rulemaking will not have a significant effect on a substantial number of small entities, which include certain businesses, organizations, or governmental jurisdictions. This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866.

This rulemaking will not have any direct effects on the States, in their relationship with the Federal Government, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rulemaking will not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

The Service has determined and certifies pursuant to the Unfunded Mandates Act (2 U.S.C. 1502 *et seq.*) that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities.

The Department of the Interior has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

The Service has determined that this rule is categorically excluded from further National Environmental Policy Act requirements. Part 516 of the Departmental Manual, Chapter 6, Appendix I, section 1.4(A)(1), categorically excludes changes or amendments to an approved action when such changes have no potential for causing substantial environmental impact.

Paperwork Reduction Act

The Service has examined this final rule under the Paperwork Reduction Act of 1995, and found it to contain no information collection requirements.

List of Subjects in 50 CFR Part 24

Endangered and threatened species, Exports, Harbors, Imports, Plants.

Accordingly, the Department of the Interior amends Title 50, part 24 of the Code of Federal Regulations as follows:

PART 24—[AMENDED]

1. The authority citation for part 24 continues to read as follows:

Authority: Secs. 9(f)(1), 11(f), Pub. L. 93–205, 87 Stat. 893, 897 (16 U.S.C. 1538(f)(1), 1540(f)).

2. Section 24.12 is amended by:

a. Removing ''Laredo, Texas'' from paragraph (a),

b. Adding the words ''and Port Huron'' immediately following ''Detroit'' in paragraph (d), and

c. Revising paragraph (e) to read as follows:

§ 24.12 Designated ports.

* * * * *

(e) The U.S. Department of Agriculture ports at Mobile, Alabama; Fort Lauderdale (=Port Everglades), Jacksonville, and Panama City, Florida; Savannah, Georgia; Baltimore, Maryland; Gulfport, Mississippi; Wilmington and Morehead City, North Carolina; Portland, Oregon; Philadelphia, Pennsylvania; Charleston, South Carolina; Laredo, Texas; Norfolk, Virginia; and Vancouver, Washington, are designated ports for the importation of logs and lumber from trees which are listed in the appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) or in 50 CFR 17.12 or 23.23 and which are required to be accompanied by documentation under 50 CFR part 17 or 23.

* * * * *

Dated: May 24, 1997.

Donald J. Barry,

Acting Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 97–14633 Filed 6–4–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 960314073–7129–04; I.D. 112696C]

RIN 0648-AI23

Atlantic Swordfish Fishery; Extension of Drift Gillnet Emergency Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correction and extension of fishery closure.

SUMMARY: On December 5, 1996, NMFS published an emergency rule that closed the drift gillnet fishery for swordfish in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, from December 1, 1996, through May 29, 1997, and announced that it had reinitiated consultation under the Endangered Species Act (ESA) for Atlantic swordfish fisheries. On May 29, 1997, NMFS issued a biological opinion (BO) that concluded that the swordfish, shark, and tuna driftnet fishery segments of the Atlantic pelagic fishery are likely to jeopardize the continued existence of the North Atlantic right whale. Two alternatives that would avoid the likelihood of jeopardy were set forth in the BO, although NMFS has not identified a preferred alternative at this time. This action extends the emergency closure for the swordfish drift gillnet fishery for a second period of 180 days until November 26, 1997, or until a preferred option to avoid the likelihood of jeopardy is identified and implemented. This action also corrects the effective date language of the initial emergency closure that was published on December 5, 1996, because it inadvertently added the codified text of the temporary rule on a permanent basis.

DATES: The correction is effective December 1, 1996. The emergency closure extension and the amendment to part 630 are effective from May 30, 1997, through 2400 hours local time November 26, 1997.

FOR FURTHER INFORMATION CONTACT: John Kelly, 301-713-2347 or Mark Murray-Brown, 508–281–9260.

SUPPLEMENTARY INFORMATION: On September 25, 1996, NMFS reinitiated consultation under section 7(a) of the ESA on the Atlantic swordfish fisheries. While this consultation was underway, an emergency fishery closure covering the semiannual subquota period of December 1, 1996, through May 29, 1997, was published on December 5, 1996 (61 FR 64486), to ensure that no irreversible and irretrievable commitment of resources was made that would have the effect of foreclosing the formulation or implementation of any prudent and reasonable alternative measures while the consultation was pending.

On May 29, 1997, NMFS issued the BO that concluded that the swordfish, tunas, and shark driftnet fishery segments of the Atlantic pelagic fishery are likely to jeopardize the continued existence of the North Atlantic right whale. NMFS has identified two alternatives for these segments of the fishery that would avoid the likelihood of jeopardy:

1. Prohibit the use of driftnet gear in Highly Migratory Species (HMS) fisheries, and

2. Implement actions to allow the restricted use of driftnet gear, including general gear restrictions and/or implementation of the Atlantic large whale and offshore cetacean take reduction plans.

The emergency closure must remain in effect to avoid the likelihood of jeopardy until a preferred option is identified and implemented.

In order to implement one of these options, a rulemaking will have to be initiated. Although NMFS has proposed changes to the shark driftnet segment of the fishery (April 7, 1997, 62 FR 16519), rulemaking has not yet been initiated on the swordfish and tuna driftnet segments. As the original emergency rule only closed the swordfish drift gillnet fishery, this extension will also only apply to the swordfish driftnet component of the fishery. Actions affecting the shark and tuna components of the drift gillnet fishery are being considered separately.

The Atlantic Offshore Cetacean Take Reduction Team (AOCTRT) submitted a draft take reduction plan to NMFS, on November 25, 1996, which included recommended measures to reduce incidental takes of strategic marine mammal stocks to below their Potential Biological Removal level within 6 months of implementation. The AOCTRT's draft plan is complex, requires substantial review, and has significant implications for fishery management actions and the drift gillnet fishery in particular. Final approval and implementation of the AOCTRT plan by NMFS, as well as the pending Large Whale Take Reduction Plan, will provide guidance on necessary drift gillnet modifications to avoid the likelihood of jeopardy.

However, the existing emergency closure for the swordfish drift gillnet fishery expires on May 29, 1997, and final action on the above initiatives will not occur before this date. Therefore, NMFS is extending the emergency closure of the drift gillnet swordfish fishery for a second period of 180 days through 2400 hours November 26, 1997, to ensure that this component of the fishery does not cause jeopardy.

Pursuant to this emergency closure: (1) No one aboard a vessel using or having on board a drift gillnet may fish for swordfish from the North Atlantic swordfish stock; and (2) no more than two swordfish per trip may be possessed on board a vessel using or having on board a drift gillnet in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. lat., or landed in an Atlantic, Gulf of Mexico, or Caribbean coastal state.

A request for comments on the original emergency closure was published in the **Federal Register** on May 14, 1997 (62 FR 26427). Comments and responses are summarized below.

Comments and Responses

Comment: One written and several telephone comments expressed support for implementing the AOCTRT plan to eliminate the drift gillnet derby fishery.

Response: NMFS agrees that rulemaking needs to be undertaken to address these issues and will consider the AOCTRT plan as one of the alternatives for reducing the likelihood of jeopardy.

Comment: One commenter expressed support for an extension of the emergency closure due to the gear's adverse effect on marine mammals and endangered species. Furthermore, the commenter expressed belief that the gear should be retired permanently as it is non-discriminatory and has a bycatch of non-targeted HMS species.

Response: NMFS is extending the emergency closure for an additional 180 days. The management of the drift gillnet segment of the pelagics fishery will be determined following review and implementation of necessary measures to avoid the likelihood of jeopardy.

Correction

This action also corrects the effective date language of the initial emergency closure that was published on December 5, 1996 (61 FR 64486). As published, the rule inadvertently added the codified text of the temporary rule on a permanent basis.

Accordingly, the publication on December 5, 1996, of the emergency closure (I.D. 112696C) that was the subject of FR Doc. 96–30932 is corrected as follows:

On page 64486, in the third column, the **EFFECTIVE DATES** section is corrected to read as follows:

DATES: The closure and the amendments to part 630 will be effective from December 1, 1996, through 2400 hours local time, May 29, 1996.

Classification

This action extends an emergency rule issued under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1855(c). In order to ensure that no irreversible and irretrievable commitment of resources is made that has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures while consultation under section 7(a) of ESA takes place on this fishery, the Assistant Administrator for Fisheries, NOAA, under authority at 5 U.S.C. 553(d)(3), for good cause found that this rule can be made effective immediately. This action is exempt from review under E.O. 12866.

Dated: May 30, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 630 is amended as follows:

PART 630—ATLANTIC SWORDFISH FISHERY

1. The authority citation for part 630 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

2. In § 630.7, paragraph (aa) is added to read as follows:

§ 630.7 Prohibitions.

* * * * *

(aa) Notwithstanding any other provision of part 630:

(1) No one aboard a vessel using or having on board a drift gillnet may fish for swordfish from the North Atlantic swordfish stock.

(2) No more than two swordfish per trip may be possessed on board a vessel using or having on board a drift gillnet in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. lat.

(3) No more than two swordfish per trip may be landed from a vessel using or having on board a drift gillnet in an Atlantic, Gulf of Mexico, or Caribbean coastal state.

[FR Doc. 97–14631 Filed 5-30-97; 4:51 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 970403076–7114–02; I.D. 053097A]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Whiting Closure for the Mothership Sector

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces the end of the 1997 mothership fishery for whiting at 3 p.m. (local time) June 1, 1997, because the allocation for the mothership sector should be reached by

that time. This action is authorized by regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California. This action is intended to prevent the harvest of whiting for the mothership sector from exceeding its 1997 allocation level of 49,700 mt.

DATES: Effective from 3 p.m. (local time) June 1, 1997, until the start of the 1998 primary season for the mothership sector, unless modified, superseded or rescinded, which will be published in the **Federal Register**. Comments will be accepted through June 20, 1997.

ADDRESSES: Submit comment to William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; or William Hogarth, Acting Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140 or Rodney McInnis at 562–980–4040.

SUPPLEMENTARY INFORMATION: The regulations at 50 CFR 660.323(a)(4) (62 FR 27519, May 20, 1997) established separate allocations for the catcher/processor, mothership, and shore-based sectors of the whiting fishery. Each allocation is a harvest guideline, which, when reached, results in the end of the primary season for that sector. The catcher/processor sector is composed of catcher/processors, which are vessels that harvest and process whiting. The mothership sector is composed of motherships and catcher vessels that harvest whiting for delivery to motherships. Motherships are vessels that process, but do not harvest, whiting. The shoreside sector is composed of vessels that harvest whiting for delivery to shore-based processors. The allocations, which are based on the 1997 commercial harvest guideline for whiting of 207,000 metric tons (mt), are: 70,400 mt (34 percent) for the catcher/processor sector; 49,700 mt (24 percent) for the mothership sector; and 86,900 mt (42 percent) for the shoreside sector.

The best available information on May 29, 1997, indicates that 36,072 mt of whiting had been taken by the mothership sector through May 27, 1997, and that the 49,700–mt mothership allocation would be reached by 3 p.m. June 1, 1997. Accordingly, the primary season for the mothership sector ends at 3 p.m. (local time) June 1, 1997, at which time further at-sea processing and receipt of whiting by a mothership, or taking and retaining, possessing or landing of whiting by a catcher boat in the mothership sector, are prohibited. The regulations at 50 CFR 600.323(a)(3)(i) describe the primary season for vessels delivering to motherships as the period(s) when at-sea processing is allowed and the fishery is open for the mothership sector.)

Attainment of the catcher/processor and shore-based sector allocations is not announced at this time.

NMFS Action

For the reasons stated above, and in accordance with the regulations at 50 CFR 660.323(a)(4)(iii)(B), NMFS herein announces:

Effective 3 p.m. (local time) June 1, 1997—(1) Further receiving or at-sea processing of whiting by a mothership is prohibited. No additional unprocessed whiting may be brought on board after at-sea processing is prohibited, but a mothership may continue to process whiting that was on board before at-sea processing was prohibited; and (2) whiting may not be taken and retained, possessed, or landed by a catcher vessel participating in the mothership sector.

Classification

This action is authorized by the regulations implementing the FMP. The determination to take this action is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection a the Office of the Regional Administrator (see **ADDRESSES**) during business hours. This action is taken under the authority of 50 CFR 660.323(a)(4)(iii)(B) and is exempt from review under E.O. 12866.

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

Dated: May 30, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–14632 Filed 5–30–97; 4:52 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 108
Thursday, June 5, 1997

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 338

RIN 3206–AH85

Qualification Requirements (General)

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations concerning the use of qualification standards. The proposed regulations clarify the use of OPM's Operating Manual: Qualification Standards for General Schedule Positions when considering experience in making competitive service appointments.

DATES: Written comments will be considered if received on or before July 7, 1997.

ADDRESSES: Send or deliver written comments to Mary Lou Lindholm, Associate Director for Employment, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Christina Gonzales Vay, 202–606–0830, FAX 202–606–2329, or TDD 202–606–0023.

SUPPLEMENTARY INFORMATION: The proposed regulations are part of OPM's response to the requirements in section 17 of the Lobbying Disclosure Act of 1995 (Public Law 104–65, December 19, 1995). OPM is required to promulgate regulations concerning the consideration of experience of applicants who are being considered for positions in the competitive service. We are adding a statement to part 338 to clarify that experience is considered as outlined in OPM's Operating Manual: Qualification Standards for General Schedule Positions. The Operating Manual is available to the public for review at agency personnel offices and Federal depository libraries, and for purchase from the Government Printing Office.

In addition, section 17 requires OPM to conduct a study on excepted service considerations when making appointments in the competitive service. The purpose is to determine how the experience of candidates is evaluated. As part of this proposed rulemaking, we are soliciting suggestions from agencies as to what types of information should be gathered and evaluated by such a study.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

List of Subjects in 5 CFR Part 338

Government employees.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is proposing to amend part 338 of title 5, Code of Federal Regulations, as follows:

PART 338—QUALIFICATION STANDARDS (GENERAL)

1. The authority citation for part 338 is revised to read as follows:

Authority: 5 U.S.C. 3301, 3302, 3304; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

2. Subpart C is added to read as follows:

Subpart C—Consideration for Appointment

§ 338.301 Competitive Service Appointment.

Agencies must ensure that employees who are given competitive service appointments meet the requirements included in the Office of Personnel Management's Operating Manual: Qualification Standards for General Schedule Positions. The Operating Manual is available to the public for review at agency personnel offices and Federal depository libraries, and for purchase from the Government Printing Office.

[FR Doc. 97–14621 Filed 6–4–97; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 575

[97–51]

RIN 1550–AB00

Mutual Holding Companies

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing to amend its mutual holding company regulations to permit mutual holding companies (MHCs) to establish a subsidiary stock holding company that would hold all of the stock of a savings association subsidiary. This Notice of Proposed Rulemaking (NPR) follows a review of the comments received in response to an advance notice of proposed rulemaking. The OTS proposes to permit the establishment of intermediate stock holding companies (SHCs) that will be subject to restrictions that are substantially similar to those currently applicable to MHCs.

DATES: Comments must be received on or before August 4, 1997.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 97–51. These submissions may be hand-delivered to 1700 G Street, NW., from 9:00 a.m. to 5:00 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755 or by e-mail: public info@ots.treas.gov. Those commenting by e-mail should include their name and phone number. Comments will be available for inspection at 1700 G Street, NW., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: James H. Underwood, Special Counsel (202/906–7354), Dwight C. Smith, Deputy Chief Counsel (202/906–6990), Business Transactions Division, Chief Counsel's Office; Gary Masters, Financial Analyst (202/906–6729) Corporate Activities Division; Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

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I. Background of the Proposal

In response to inquiries from MHCs and mutual savings associations concerning the formation of a second-tier stock holding company to hold the stock of a MHC's savings association subsidiary, the OTS issued an Advance Notice of Proposed Rulemaking (ANPR)[1] soliciting comment on issues raised by the existence of SHCs. Under current 12 CFR part 575, a mutual savings association may reorganize into a MHC structure in which the MHC owns at least a majority of the stock of a subsidiary savings association. Depositors of the mutual savings association continue to maintain a depositor-creditor relationship with the stock savings association subsidiary, while retaining their other indicia of ownership, *e. g.*, voting and liquidation rights, with the MHC. Under this structure, the balance of the shares (up to 49.9%) of the stock savings association subsidiary may be sold to the public in one or more offerings when the MHC is formed or later.

The proposed holding company structure would permit the MHC to form a SHC to hold the shares of the stock savings association subsidiary. The SHC, like the stock savings association subsidiary in the traditional model, would be required to issue at least a majority of its shares to the MHC and could issue up to 49.9% of its shares to the public. The SHC will be required to hold 100% of the shares of the savings association subsidiary.

The ANPR solicited comments on seven specific issues involving the formation of SHCs. The OTS received fifteen comments on the proposal from three MHCs, four savings associations, three trade associations, two law firms, two investment banking firms and an individual investor. All but one of the commenters generally supported the concept of SHCs. Most of the commenters also indicated their support for the SHC to have the full powers of a unitary savings and loan holding company. The comments are discussed in further detail in the description of the proposed revisions to 12 CFR Part 575 set forth below.

[1] 61 FR 58144 (November 13, 1996).

II. Notice of Proposed Rulemaking

A. Summary and Purpose

The OTS proposes to amend its MHC regulations to permit the formation of federally chartered SHCs. By permitting the formation and operation of SHCs, the MHC structure will be enhanced. For example, a MHC will be able to form a subsidiary that can engage in a stock repurchase program without adverse tax consequences. Currently, savings association subsidiaries of MHCs do not repurchase minority stock due to adverse tax consequences related to bad debt reserves recapture provisions. Moreover, SHCs will enhance the organizational flexibility of the MHC structure and enable MHCs to compete more effectively in the marketplace.

The proposed rule does not authorize SHCs to act as unitary savings and loan holding companies. As discussed below, the OTS believes that the proposed rule should follow the current statutory framework and not authorize unitary savings and loan holding company powers as part of the MHC structure. The proposed rule contemplates that the SHC will ''stand in the shoes'' of the parent MHC or, in certain instances, the subsidiary savings association. Thus, generally, the SHC should be subject to the same restrictions and limitations that are currently applicable to a MHC and its savings association subsidiary. The proposed rule also provides that the SHC structure may not be utilized as a means to evade or frustrate the purposes of 12 CFR part 575 or related provisions of 12 CFR part 563b which governs mutual to stock conversions by savings associations.

B. Stock Holding Company Powers

In the ANPR, the OTS solicited comments on whether the SHC should be limited to the activities of the parent MHC[2] or be treated as a unitary savings and loan holding company. Most of the commenters argued in favor of treating the SHC as a unitary savings and loan holding company. This would grant the SHC a broader range of powers and investment authority than are currently available to a MHC. Several of the commenters stated that they did not perceive any policy reasons, such as safety and soundness concerns, that support a different treatment for SHCs simply because they are controlled by a MHC.

After careful review of the comments and the statute, the OTS does not believe that it is appropriate to treat SHCs as unitary savings and loan holding companies under the mutual holding company statute. When Congress authorized MHCs as part of the Competitive Equality Banking Act of 1987 (CEBA), it clearly chose to limit the activities of MHCs to those permitted for multiple savings and loan holding companies and bank holding companies. Although the legislative history of CEBA does not indicate why Congress made this choice, it is reasonable to assume that Congress was aware of the unique nature of mutual institutions and their relationship with these newly authorized holding companies and wished to limit their activities to those more closely related to banking.[3]

As noted by one commenter who opposed unitary powers for SHCs, Congress is currently reviewing the issue of charter powers and permissible affiliations between insured financial institutions and commercial firms and several bills are pending before Congress that address these issues. While some commenters argued that a SHC should be treated as a unitary savings and loan holding company, the OTS believes that the proposed rule appropriately tracks the statute on this issue. Therefore, the proposed rule does not expand the powers of the SHC beyond those of a MHC.

The OTS notes, however, that a SHC, like the MHC parent, may utilize its authority under 12 U.S.C. 1467a(o)(5) and 12 CFR 575.10(a)(6) to acquire a controlling or non-controlling interest in corporations whose stock may be purchased by a federal savings association under 12 CFR part 559 or by a state savings association under the law of any state where a savings association subsidiary of the SHC has its home office. Although the permissible activities of these types of subsidiaries are more limited than those of a unitary savings and loan holding company, they are more extensive than those permitted to the parent MHC.

[2] *See* 12 U.S.C. 1467a(o)(5) and 12 CFR 575.11(a) for a description of MHC activities restrictions.

[3] Under 12 U.S.C. 1467a(o)(6), a MHC may acquire another holding company but such company must divest any assets and cease any activities not permissible for a MHC within the two year period following such acquisition.

C. Regulatory Restrictions on Stock Pledges, Dividend Waivers, Indemnification and Employment Contracts

Under 12 CFR part 575, a MHC and its savings association subsidiary are subject to various restrictions on their activities and operations. In the ANPR, the OTS solicited comment on whether some or all of these restrictions should be applicable to the SHC. The comments on these issues are addressed below.

(1) Pledges of Subsidiary Savings Association Stock

Commenters were divided as to whether the SHC should be subject to the same restrictions as a MHC on pledges of stock of the savings association subsidiary. It is clear that 12 U.S.C. 1467a(o)(8), which authorizes stock pledges by MHCs, requires that the transaction increase the capital of the savings association subsidiary. Thus, the implementing regulation, § 575.11(b) requires that the proceeds of any loan secured by the savings association's stock be infused into the savings association.

The OTS believes that the reasons supporting the restrictions on a MHC are also applicable to a SHC. Application of this rule to the SHC is consistent with the statute and will ensure that any borrowing using the savings association subsidiary's stock or the SHC's stock as collateral will directly benefit the savings association. Some commenters argued that the SHC should be subject only to restrictions that are applicable to other savings and loan holding companies. The OTS does not find this argument persuasive. The intention of this proposal, as stated above, is to increase the flexibility of the MHC structure without diminishing the safeguards imposed by Congress in adopting the MHC statute.

(2) Dividend Waivers

Commenters also were divided as to whether dividend waiver restrictions should be imposed on the SHC. Commenters supporting the dividend waiver restriction generally acknowledged that the policy reasons supporting dividend waiver restrictions should apply to dividends declared by the SHC. Commenters opposed to the dividend waiver restrictions argued that the SHC should be treated like any other stock holding company. The OTS does not believe that there are sound policy reasons to differentiate between dividends paid to a MHC parent by a savings association subsidiary and a SHC subsidiary. Thus, the proposed rule requires that the MHC follow the procedures set forth at 12 CFR 575.11(d) with respect to waiving any dividends declared by the SHC. The intent of this section is to ensure that the waiver of dividends payable to the MHC is subject to regulatory review and is consistent with the directors' fiduciary duties to its mutual members.

The OTS intends to continue to review dividend waivers in connection with the mutual to stock conversion of a MHC pursuant to the ''fair and reasonable'' exchange standard set forth at 12 CFR 575.12(a)(2). The formation of a SHC by an existing MHC with minority stockholders will not generally result in different treatment of the minority stockholders under § 575.12(a)(2) in the event of a conversion of the MHC to stock form.

(3) Indemnification and Employment Contracts

Under 12 CFR 575.11(f)–(g), MHCs are subject to the same restrictions regarding indemnification and employment contracts as mutual savings associations.[4] With one exception, all of the commenters responding to this issue were opposed to the imposition of these restrictions on a SHC. The commenters assumed that a SHC, unlike the MHC, would not be chartered by the OTS and that the OTS should not preempt state law policies in these areas. The commenters also stated that state-chartered stock savings and loan holding companies are not subject to these restrictions and that SHCs should be treated similarly. As discussed below, the OTS is proposing that the SHC be federally chartered and thus subject to OTS policies.

The OTS concludes that there are valid reasons for imposing these restrictions on the SHC. As noted above, the SHC should not be utilized to evade requirements imposed on the MHC. The OTS has determined that because of the unique nature of the MHC structure, *i.e.*, the combining of mutual and stock interests in one corporate structure, it is appropriate to impose greater oversight on the MHC than is imposed on stock holding companies. Since the SHC is, in essence, ''standing in the shoes'' of the MHC, the proposed rule will require that the SHC be subject to the same restrictions.

D. SHC Charter and Bylaw Requirements

Most of the commenters opposed any requirement that a SHC's charter and bylaws (and amendments) be subject to OTS review and approval. The commenters assumed that the SHC would be a state-chartered corporation and would be able to utilize the corporate governance procedures that are available under state law. The OTS has determined to require that the SHC be federally chartered. This will help ensure consistent treatment for the various entities in the mutual holding company structure and eliminate any confusion about the treatment of the SHC under 12 U.S.C. 1467a(o)(9), which addresses insolvency and liquidation issues of MHCs, in the event of a default of the SHC. The OTS anticipates that in the event of the default by the MHC, the SHC or the savings association subsidiary, the OTS would have the right to file a petition seeking the appointment of a bankruptcy trustee for the purpose of liquidating the MHC and the SHC.

The OTS also believes that its authority to regulate the corporate governance aspects of the subsidiary holding company is clearer if the subsidiary holding company is federally chartered. The MHC statute clearly contemplates that the reorganized savings association will be a directly owned subsidiary of a federally chartered entity. Requiring that the subsidiary holding company be federally chartered ensures that the savings association remains a direct subsidiary of a federally chartered entity. Finally, requiring the subsidiary holding company to be federally chartered is consistent with the provision of the OTS regulations that preempts state law with regard to the creation of and regulation of MHCs.

The federal charter and bylaw requirements for the SHC are modeled after the charter and bylaw requirements for federal stock savings associations. The OTS believes that the recent amendments to the OTS charter and bylaw requirements provide greater corporate flexibility for federally chartered stock savings associations and will enable federally chartered SHCs to utilize many of the corporate law provisions available to state-chartered corporations. The OTS, however, will reserve the right to object to any provision of the SHC's charter or bylaws that is contrary to the requirements of 12 CFR part 575.

E. SHC Stock Issuances, Stock Repurchases, and Conversion of the MHC

The proposed rule will apply the current restrictions on the issuance of securities by a savings association subsidiary set forth at 12 CFR 575.7 and 575.8 to the SHC. Most of the commenters generally supported this concept. However, several commenters

[4] *See* 12 CFR 545.121 and 563.39, respectively.

suggested that the SHC be permitted to issue stock in some cases without complying with the requirement that priority subscription rights be issued to the mutual members. The OTS concludes that 575.7 and 575.8 should apply to securities issuances by the SHC. This is consistent with the fact that the SHC, and not the savings association subsidiary, will be issuing stock to minority stockholders. Thus, it follows that all current stock issuance restrictions should apply to the SHC.

The OTS does not agree that the SHC should be able to issue shares to the public without first offering them to the mutual members. Mutual members have first priority to subscription rights in a conversion. To permit a stock offering without first offering the shares to the mutual members would, in essence, permit a partial conversion of the mutual institution in a manner that conflicts with 12 CFR part 563b. One of the fundamental principles underlying the mutual holding company regulations is that the mutual members' rights, including their rights under part 563b, should not be diminished or eliminated merely because the mutual institution is reorganized into a MHC. For that reason, the OTS will not permit a SHC to issue stock to the public, whether by way of merger or otherwise, without affording the mutual members a priority subscription right to purchase the stock.

Although this results in the MHC structure having less flexibility than a stock holding company structure, this is consistent with the fact that a MHC structure is a hybrid corporate entity that is part mutual and part stock. This unique structure has both advantages and disadvantages and can create potential conflicts of interest that require more restrictions on the operation of MHCs.

The proposed rule will require that all stock [5] issuances by the SHC receive prior approval of the OTS. This restriction currently applies to a MHC's savings association subsidiary, and it is consistent to require that any stock issued by the SHC also be subject to this requirement.

The proposed rule will also require that if a SHC is established by a MHC, the SHC must hold 100% of the stock of the resulting savings association subsidiary. This will restrict the savings association subsidiary from issuing stock to persons other than the SHC. Permitting minority stockholders at the SHC level and the subsidiary savings association level will result in potential conflicts of interests and create difficult valuation problems if the MHC decides to convert to stock form.

A primary motivation for the establishment of a SHC is that it will permit the SHC, assuming it has issued stock to the public, to engage in stock repurchase programs without the adverse tax consequences that may occur if such repurchases are made directly by the savings association subsidiary. The proposed rule will permit SHCs to engage in stock repurchase programs provided that the SHC complies with the requirements of 12 CFR 575.11(c). One commenter inquired how the three-year period set forth in § 575.11(c) that limits stock repurchases would be applied in the case of a SHC formed after minority shares have been issued by a savings association subsidiary. Absent unusual circumstances, the OTS generally will permit the SHC to ''tack'' on or include the period that the shares initially issued by the savings association were outstanding. Thus, if minority shares have been outstanding for a period of two years at the time the SHC is formed, the SHC will be subject to the repurchase restriction for a one-year period.

In the event the MHC decides to convert to stock form, the proposed rule contemplates that the minority stockholders of the SHC would be able to exchange their shares for shares of the converted MHC in the same manner that minority stockholders of the savings association subsidiary currently do. The OTS will continue to use the ''fair and reasonable'' standard set forth at 12 CFR 575.12(a) in evaluating such exchange offers.

F. Miscellaneous

The proposed rule also makes a number of clarifying changes to 12 CFR Part 575 to ensure that the regulations will be consistent for a MHC with or without a SHC subsidiary.

III. Request for Comments

OTS invites comment on all aspects of the proposal as well as specific comments on the proposed changes.

IV. Paperwork Reduction Act of 1995

The OTS invites comments on:

(1) Whether the proposed collection of information contained in this notice of proposed rulemaking is necessary for the proper performance of the agency's functions, including whether the information has practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed information collection;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the information collection including the use of automated collection techniques or other forms of information technology.

(5) Estimates of capital and startup costs of operation, maintenance and purchases of services to provide information.

Respondents/recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number.

The reporting and recordkeeping requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on all aspects of this information collection should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503 with copies to the OTS, 1700 G Street, NW., Washington, DC 20552.

The reporting/recordkeeping requirements contained in this notice of proposed rulemaking are found at 12 CFR part 575. The information is needed by the OTS in order to supervise savings associations and mutual holding companies and develop regulatory policy. The likely respondents/recordkeepers are OTS-regulated savings associations and mutual holding companies. The information collection currently approved under OMB Control No. 1550–0072 will be amended to include the burden under this regulation.

Estimated number of respondents/recordkeepers: 20.

Estimated average annual burden hours per recordkeeper/respondent: 343.70.

Estimated total annual reporting/recordkeeping burden: 6,874 hours.

Start-up costs to respondents/recordkeepers: None.

Records are to be maintained in accordance with normal and customary business practices as recommended by private counsel, accountants, etc., but no less than three years.

V. Executive Order 12866

The Director of OTS has determined that this proposed rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

[5] Stock is defined at 12 CFR 575.2 (n) to mean common or preferred stock, or any other type of equity security, including securities that are convertible into common or preferred stock.

VI. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that this proposed rule will not have a significant impact on a substantial number of small entities. The proposal will create additional organizational flexibility for all savings associations that create mutual holding company structures.

VII. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS has determined that the proposed rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

List of Subjects in 12 CFR Part 575

Administrative practice and procedure, Capital, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby proposes to amend chapter V, title 12, Code of Federal Regulations, as follows:

PART 575—MUTUAL HOLDING COMPANIES

1. The authority citation for part 575 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828, 2901.

2. Section 575.2 is amended by revising paragraphs (h) and (o) and adding paragraph (q) to read as follows:

§ 575.2 Definitions.

* * * * *

(h) The term *mutual holding company* means a mutual holding company organized under this part, and unless otherwise indicated, a subsidiary holding company controlled by a mutual holding company, organized under this part.

* * * * *

(o) The term *Stock Issuance Plan* means a plan providing for the issuance of stock by:

(1) A savings association subsidiary of a mutual holding company; or

(2) A subsidiary holding company submitted pursuant to § 575.7 and containing the information required by § 575.8.

* * * * *

(q) The term *subsidiary holding company* means a federally chartered stock holding company, controlled by a mutual holding company, that owns the stock of a savings association whose depositors have membership rights in the parent mutual holding company.

3. Section 575.6 is amended by redesignating paragraphs (c) through (i) as paragraphs (d) through (j) and adding a new paragraph (c) to read as follows:

§ 575.6 Contents of Reorganization Plans.

* * * * *

(c) If the reorganizing association proposes to form a subsidiary holding company, provide for the organization of a subsidiary holding company and attach and incorporate the proposed charter and bylaws of such subsidiary holding company.

* * * * *

4. Section 575.10 is amended by:

a. Removing, in the introductory text of paragraph (a)(2), the phrase ''the holding company'', and by adding in lieu thereof the phrase ''the parent mutual holding company'';

b. Revising the first sentence of paragraph (a)(3);

c. Revising the first sentence of paragraph (a)(4);

d. Revising paragraph (a)(6)(i)(B); and

e. Revising the first sentence of paragraph (b)(1).

The revisions read as follows:

§ 575.10 Acquisition and disposition of savings associations, savings and loan holding companies, and other corporations by mutual holding companies.

(a) * * *

(3) *Mutual holding companies.* A mutual holding company that is not a subsidiary holding company may acquire control of another mutual holding company, including a subsidiary holding company, by merging with or into such company, provided the necessary approvals are obtained from the OTS, including (without limitation) approval pursuant to part 574 of this chapter. * * *

(4) *Stock holding companies.* A mutual holding company may acquire control of a savings and loan holding company in the stock form that is not a subsidiary holding company, provided the necessary approvals are obtained from the OTS, including (without limitation) approval pursuant to part 574 of this chapter. * * *

* * * * *

(6) * * *

(i) * * *

(B) It is lawful for the stock of such corporation to be purchased by a federal savings association under Part 559 of this chapter or by a state savings association under the law of any state where any subsidiary savings association of the mutual holding company has its home office; and

* * * * *

(b) *Dispositions.* (1) A mutual holding company shall provide written notice to the OTS at least 30 days prior to the effective date of any direct or indirect transfer of any of the stock that it holds in a subsidiary holding company, a resulting association, an acquiree association, or any subsidiary savings association that was in the mutual form when acquired by the mutual holding company, including stock transferred in connection with a pledge pursuant to § 575.11(b) or any transfer of all or a substantial portion of the assets or liabilities of any such subsidiary holding company or association. * * *

* * * * *

5. Section 575.11 is amended by:

a. Revising paragraph (b)(1) introductory text, redesignating existing paragraph (b)(1)(ii) as paragraph (b)(1)(iii), and adding a new paragraph (b)(1)(ii);

b. Revising paragraph (b)(2);

c. Revising the introductory text of paragraph (c) and paragraphs (c)(1) and (c)(3); and

d. Revising paragraph (e).

The revisions read as follows:

§ 575.11 Operating restrictions.

* * * * *

(b) *Pledging stock.* (1) No mutual holding company may pledge the stock of its resulting association, an acquiree association, or any subsidiary savings association that was in the mutual form when acquired by the mutual holding company (or its parent mutual holding company), unless the proceeds of the loan secured by the pledge are infused into the association whose stock is pledged. No mutual holding company may pledge the stock of its subsidiary holding company unless the proceeds of the loan secured by the pledge are infused into any savings association subsidiary of the subsidiary holding company that is a resulting association, an acquiree association, or a subsidiary savings association that was in the mutual form when acquired by the subsidiary holding company (or its

parent mutual holding company). In the event the subsidiary holding company has more than one savings association subsidiary, the loan proceeds shall, unless otherwise approved by the OTS, be infused in equal amounts to each savings association subsidiary. Any amount of the stock of such association or subsidiary holding company may be pledged for these purposes. Nothing in this paragraph (b)(1) shall be deemed to prohibit:

* * * * *

(ii) The payment of dividends from a subsidiary holding company to its mutual holding company parent to the extent otherwise permissible; or

* * * * *

(2) Within ten days after its pledge of stock pursuant to paragraph (b)(1) of this section, a mutual holding company shall provide written notice to the OTS regarding the terms of the transaction (including the amount of principal and interest, repayment terms, maturity date, the nature and amount of collateral, and the terms governing seizure of the collateral) and shall include in such notice a certification that the proceeds of the loan have been transferred to the subsidiary savings association whose stock (or the stock of its parent subsidiary holding company) has been pledged.

* * * * *

(c) *Restrictions on stock repurchases.* No subsidiary savings association of a mutual holding company that has any stockholders other than the association's mutual holding company and no subsidiary holding company that has any stockholders other than its parent mutual holding company shall repurchase any share of stock within three years of its date of issuance, unless the repurchase: (1) Is part of a general repurchase made on a pro rata basis pursuant to an offer approved by the OTS and made to all stockholders of the association or subsidiary holding company (except that the parent mutual holding company may be excluded from the repurchase with the OTS' approval);

* * * * *

(3) Is purchased in the open market by a tax-qualified or non-tax-qualified employee stock benefit plan of the association or subsidiary holding company in an amount reasonable and appropriate to fund such plan.

* * * * *

(e) *Restrictions on issuance of stock to insiders.* A subsidiary of a mutual holding company that is not a savings association or subsidiary holding company may issue stock to any insider, associate of an insider or tax-qualified or non-tax-qualified employee stock benefit plan of the mutual holding company or any subsidiary of the mutual holding company, provided that such persons or plans provide written notice to the OTS at least 30 days prior to the stock issuance. Subsidiary savings associations and subsidiary holding companies may issue stock to such persons only in accordance with § 575.7.

* * * * *

6. Section 575.12 is amended by:

a. Revising paragraph (a)(2);

b. Revising paragraphs (b)(1)(ii) and (iii); and

c. Revising paragraph (b)(2).

The revisions read as follows:

§ 575.12 Conversion or liquidation of mutual holding companies.

(a) * * *

(2) *Exchange of savings association stock.* Any stock issued pursuant to § 575.7 by a subsidiary savings association or subsidiary holding company of a mutual holding company to persons other than the parent mutual holding company may be exchanged for the stock issued by the parent mutual holding company in connection with the conversion of the parent mutual holding company to stock form. The parent mutual holding company and the subsidiary holding company or savings association must demonstrate to the satisfaction of the OTS that the basis for the exchange is fair and reasonable.

* * * * *

(b) * * * (1) * * *

(ii) The default of the parent mutual holding company or its subsidiary holding company; or

(iii) Foreclosure on any pledge by the mutual holding company of subsidiary savings association or subsidiary holding company stock pursuant to § 575.11(b).

(2) Except as provided in paragraph (b)(3) of this section, the net proceeds of any liquidation of any mutual holding company shall be transferred to the members of the mutual holding company or the stock holders of the subsidiary holding company in accordance with the charter of the mutual holding company or subsidiary holding company.

* * * * *

7. Section 575.14 is added to read as follows:

§ 575.14 Subsidiary holding companies.

(a) *Subsidiary holding companies.* A mutual holding company may establish a subsidiary holding company as a direct subsidiary to hold 100% of the stock of its savings association subsidiary. The formation and operation of the subsidiary holding company may not be utilized as a means to evade or frustrate the purposes of this part 575 or part 563b of this chapter. The subsidiary holding company may be established either at the time of the initial mutual holding company reorganization or at a subsequent date, subject to the approval of the OTS.

(b) *Stock issuances.* For purposes of §§ 575.7 and 575.8, the subsidiary holding company shall be treated as a savings association issuing stock and shall be subject to the requirements of those sections. In the case of a stock issuance by a subsidiary holding company, the aggregate amount of outstanding common stock of the association owned or controlled by persons other than the subsidiary holding company's mutual holding company parent at the close of the proposed issuance shall be less than 50% of the subsidiary holding company's total outstanding common stock.

(c) *Charters and bylaws for subsidiary holding companies*—(1) *Charters.* The charter of a subsidiary holding company shall be in the form set forth in this paragraph (c)(1) and may include any of the additional provisions permitted pursuant to paragraph (c)(2) of this section. The form of the charter is as follows:

Federal MHC Subsidiary Holding Company Charter

Section 1. Corporate title. The full corporate title of the MHC subsidiary holding company is XXX.

Section 2. Domicile. The domicile of the MHC subsidiary holding company shall be in the city of _____, in the state of _____.

Section 3. Duration. The duration of the MHC subsidiary holding company is perpetual.

Section 4. Purpose and powers. The purpose of the MHC subsidiary holding company is to pursue any or all of the lawful objectives of a federal mutual holding company chartered under section 10(o) of the Home Owners' Loan Act, 12 U.S.C. 1467a(o), and to exercise all of the express, implied, and incidental powers conferred thereby and by all acts amendatory thereof and supplemental thereto, subject to the Constitution and laws of the United States as they are now in effect, or as they may hereafter be amended, and subject to all lawful and applicable rules, regulations, and orders of the Office of Thrift Supervision (''Office'').

Section 5. Capital stock. The total number of shares of all classes of the capital stock that the MHC subsidiary holding company has the authority to issue is _____, all of which shall be common stock of par [or if no par is specified then shares shall have a stated] value of _____ per share. The shares may be issued from time to time as authorized by the board of directors without the approval of its

shareholders, except as otherwise provided in this section 5 or to the extent that such approval is required by governing law, rule, or regulation. The consideration for the issuance of the shares shall be paid in full before their issuance and shall not be less than the par [or stated] value. Neither promissory notes nor future services shall constitute payment or part payment for the issuance of shares of the MHC subsidiary holding company. The consideration for the shares shall be cash, tangible or intangible property (to the extent direct investment in such property would be permitted to the MHC subsidiary holding company), labor, or services actually performed for the MHC subsidiary holding company, or any combination of the foregoing. In the absence of actual fraud in the transaction, the value of such property, labor, or services, as determined by the board of directors of the MHC subsidiary holding company, shall be conclusive. Upon payment of such consideration, such shares shall be deemed to be fully paid and nonassessable. In the case of a stock dividend, that part of the retained earnings of the MHC subsidiary holding company that is transferred to common stock or paid-in capital accounts upon the issuance of shares as a stock dividend shall be deemed to be the consideration for their issuance.

Except for shares issued in the initial organization of the MHC subsidiary holding company, no shares of capital stock (including shares issuable upon conversion, exchange, or exercise of other securities) shall be issued, directly or indirectly, to officers, directors, or controlling persons (except for shares issued to the parent mutual holding company) of the MHC subsidiary holding company other than as part of a general public offering or as qualifying shares to a director, unless the issuance or the plan under which they would be issued has been approved by a majority of the total votes eligible to be cast at a legal meeting.

The holders of the common stock shall exclusively possess all voting power. Each holder of shares of common stock shall be entitled to one vote for each share held by such holder, except as to the cumulation of votes for the election of directors, unless the charter provides that there shall be no such cumulative voting. Subject to any provision for a liquidation account, in the event of any liquidation, dissolution, or winding up of the MHC subsidiary holding company, the holders of the common stock shall be entitled, after payment or provision for payment of all debts and liabilities of the MHC subsidiary holding company, to receive the remaining assets of the MHC subsidiary holding company available for distribution, in cash or in kind. Each share of common stock shall have the same relative rights as and be identical in all respects with all the other shares of common stock.

Section 6. Preemptive rights. Holders of the capital stock of the MHC subsidiary holding company shall not be entitled to preemptive rights with respect to any shares of the MHC subsidiary holding company which may be issued.

Section 7. Directors. The MHC subsidiary holding company shall be under the direction of a board of directors. The authorized number of directors, as stated in the MHC subsidiary holding company's bylaws, shall not be fewer than five nor more than fifteen except when a greater or lesser number is approved by the Director of the Office, or his or her delegate.

Section 8. Amendment of charter. Except as provided in Section 5, no amendment, addition, alteration, change or repeal of this charter shall be made, unless such is proposed by the board of directors of the MHC subsidiary holding company, approved by the shareholders by a majority of the votes eligible to be cast at a legal meeting, unless a higher vote is otherwise required, and approved or preapproved by the Office

Attest: _____
Secretary of the Subsidiary Holding Company

By: _____
President or Chief Executive Officer of the Subsidiary Holding Company

Attest: _____
Secretary of the Office of Thrift Supervision

By: _____
Director of the Office of Thrift Supervision

Effective Date: _____

(2) *Charter amendments.* The rules and regulations set forth in § 552.4 of this chapter regarding charter amendments and reissuances of charters (including delegations and filing instructions) shall be applicable to subsidiary holding companies to the same extent as if the subsidiary holding companies were Federal stock savings associations, except that, with respect to the pre-approved charter amendments set forth in § 552.4 of this chapter, the reference to home office in § 552.4(b)(2) of this chapter shall be deemed to refer to the domicile of the subsidiary holding company and the requirements of § 545.95 of this chapter shall not apply to subsidiary holding companies.

(3) *Bylaws.* The rules and regulations set forth in § 552.5 of this chapter regarding bylaws (including their content, any amendments thereto, delegations, and filing instructions) shall be applicable to subsidiary holding companies to the same extent as if subsidiary holding companies were federal stock savings associations. The model bylaws for Federal stock savings associations set forth in the OTS Applications Processing Handbook shall also serve as the model bylaws for subsidiary holding companies, except that the term ''association'' each time it appears therein shall be replaced with the term ''Subsidiary Holding Company.''

(4) *Annual reports and books and records.* The rules and regulations set forth in §§ 552.10 and 552.11 of this chapter regarding annual reports to stockholders and maintaining books and records shall be applicable to subsidiary holding companies to the same extent as if subsidiary holding companies were federal stock savings associations.

Dated: May 16, 1997.

By the Office of Thrift Supervision.

Nicolas P. Retsinas,

Director.

[FR Doc. 97–14616 Filed 6–4–97; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–9]

Proposed Amendment of Class E Airspace; Spencer, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E airspace at Spencer, Iowa. Recent initiation of Part 135 air carrier operations have occurred at Spencer Municipal Airport. Controlled airspace extending upward from the surface is needed to contain these aircraft executing instrument approach procedures. The intended affect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before July 3, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, ACE–530, Federal Aviation Administration, Docket No. 97–ACE–9, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the office of the Manager, Operations Branch, Air Traffic Division, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Operations Branch. ACE–530C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–ACE–9.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3481. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Spencer Municipal Airport. This proposal would provide adequate Class E airspace for operators executing instrument flight procedures at Spencer Municipal Airport. Controlled airspace extending upward from the surface is needed to contain aircraft executing the instrument approach procedures. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area, continue to operate under VFR to and from the airport, or otherwise comply with IFR procedures. Class E airspace designations for airspace areas designated as a surface area for an airport are published in paragraph 6002 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9d, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ACE IA E2—Spencer, IA [Amended]

Spencer Municipal Airport, IA
(lat. 43°09′56″ N., long. 95°12′10″ W.)

Within a 4.1-mile radius of the Spencer Municipal Airport.

* * * * *

Issued in Kansas City, MO, on May 8, 1997.

Jack L. Skelton,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 97–14657 Filed 6–4–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–252487–96]

RIN 1545–AU90

Inbound Grantor Trusts With Foreign Grantors

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations implementing section 672(f) of the Internal Revenue Code, as amended by the Small Business Job Protection Act of 1996, which relates to the application of the grantor trust rules to certain trusts established by foreign persons. The proposed regulations affect primarily United States persons who are beneficiaries of trusts established by foreign persons. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by August 4, 1997. Requests to speak (with outlines of oral comments) to be discussed at the public hearing scheduled for August 27, 1997, at 10 a.m. must be submitted by August 6, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–252487–96), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station,

Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-252487–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax__regs/comments.html.

The public hearing will be held in room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning § 1.671–2(e), James Quinn (202) 622–3060; concerning the remainder of these regulations, M. Grace Fleeman (202) 622–3850; concerning submissions and the hearing, Michael Slaughter (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 1904 of the Small Business Job Protection Act of 1996 (the Act), Public Law 104–188, 110 Stat. 1755 (August 20, 1996), amended section 672(f) and certain other sections of the Internal Revenue Code (Code). The amendments affect the application of sections 671 through 679 of the Code (the grantor trust rules) to certain trusts created by foreign persons.

1. Prior Law

Under prior law, a grantor of a trust generally was treated as the owner of any portion of the trust over which he retained any of the powers or interests described in sections 673 through 677 without regard to whether he was a domestic or foreign person. A special rule contained in prior section 672(f) generally provided that, if a U.S. beneficiary of a trust created by a foreign person transferred property to the foreign person by gift, the U.S. beneficiary was treated as the grantor of the trust to the extent of the transfer.

Under the prior rules, if a foreign person created a trust with one or more U.S. beneficiaries that was treated as a grantor trust with the foreign person as the grantor, a distribution of income from the trust to a U.S. beneficiary was treated as a gift and was not subject to U.S. income tax in the hands of the beneficiary. See Rev. Rul. 69–70 (1969–1 C.B. 182). If the income of the trust was not taxable to the foreign grantor under section 871 and also not taxable to either the grantor or the trust by either the grantor's country of residence or another foreign country, the income of the trust was, thus, not subject to tax by any jurisdiction.

A special rule contained in section 665(c) provided generally that intermediaries or nominees interposed between certain foreign trusts and their U.S. beneficiaries could be disregarded. However, that rule applied only to trusts created by U.S. persons.

2. Overview of Changes

The changes made by section 1904 of the Act are designed to ensure that U.S. persons who benefit from offshore trusts created by foreign persons (inbound trusts) pay an appropriate amount of U.S. tax. Generally, the grantor trust rules now cause a person to be treated as the owner of a trust only to the extent such application results, directly or indirectly, in an amount being currently taken into account in computing the income of a U.S. citizen or resident or a domestic corporation. Exceptions are provided for certain revocable trusts, for trusts from which the only amounts distributable during the lifetime of the grantor are to the grantor or the grantor's spouse, and for certain compensatory trusts. There also are grandfather rules for certain trusts that were in existence on September 19, 1995.

As a result of the changes, many inbound trusts that were grantor trusts under prior law are now nongrantor trusts. Distributions of trust income to the U.S. beneficiaries of such trusts are now taxable to U.S. beneficiaries and may be subject to an interest charge on accumulation distributions.

Section 1904 of the Act also includes some special rules. Section 643(h), which replaces former section 665(c), treats any amount paid to a U.S. person that is derived directly or indirectly from a foreign trust of which the payor is not the grantor as if the amount is paid by the foreign trust directly to the U.S. person. Section 672(f)(4) allows the IRS to recharacterize a purported gift or bequest from a partnership or foreign corporation when necessary to prevent the avoidance of the purpose of section 672(f). Section 672(f)(5), which is an expansion of prior section 672(f), generally provides that if a U.S. beneficiary of a trust created by a foreign person transfers property to the foreign person, the U.S. beneficiary is treated as the grantor of the trust to the extent of the transfer.

Explanation of Provisions

1. Section 1.643(h)–1: Distributions by Certain Foreign Trusts Through Intermediaries

The proposed regulations describe the circumstances under which an amount of property that is derived, directly or indirectly, by a U.S. person from a foreign trust through an intermediary will be deemed to have been paid directly by the foreign trust to the U.S. person. This rule does not apply if the intermediary is the grantor of the portion of the trust from which the amount is distributed. The amount will be deemed to have been paid directly by the foreign trust if any one of the following conditions is satisfied: (1) The intermediary is related (as defined in the regulations) to either the U.S. person or the foreign trust and the intermediary transfers to the U.S. person either property that the intermediary received from the trust or proceeds from the property that the intermediary received from the trust; (2) the intermediary would not have transferred the property to the U.S. person (or would not have transferred the property on substantially the same terms) but for the fact the intermediary received property from the foreign trust; or (3) the intermediary received the property from the foreign trust pursuant to a plan one of the principal purposes of which was the avoidance of U.S. tax.

The proposed regulations describe the effect of disregarding the intermediary. If the intermediary is an agent of either the foreign trust or the U.S. person under generally applicable agency principles (under the standards set forth in *Commissioner* v. *Bollinger,* 485 U.S. 340 (1988)), the amount is treated as paid by the foreign trust to the U.S. person in the year it would be so treated under the general principles. Thus, if the intermediary is an agent of the foreign trust, the amount is treated as paid to the U.S. person in the year it is paid by the intermediary to the U.S. person. If, however, the intermediary is an agent of the U.S. person, the amount is treated as paid to the U.S. person in the year it is paid by the foreign trust to the intermediary.

If the intermediary is not an agent of either the foreign trust or the U.S. person under generally applicable agency principles, the intermediary generally will be treated as an agent of the foreign trust, and the amount will be treated as paid by the foreign trust to the U.S. person in the year the amount is paid by the intermediary to the U.S. person. However, the district director may determine, based on all the relevant facts and circumstances, that the

intermediary should be treated as the agent of the U.S. person.

The regulations provide a de minimis rule for distributions that do not exceed in the aggregate $10,000.

2. Section 1.671–2(e): Definition of Grantor

The proposed regulations provide a definition of grantor that applies for purposes of the grantor trust rules generally. A grantor is any individual, corporation, or other person to the extent such person (i) creates a trust or (ii) directly or indirectly makes a gratuitous transfer to a trust. For purposes of the proposed regulations, a gratuitous transfer is any transfer other than a transfer for fair market value, or a corporate or partnership distribution. Treasury and the IRS request comments regarding the appropriate scope of gratuitous transfers.

A grantor includes a person who acquires an interest in a trust in a nongratuitous transfer from a person who is a grantor of the trust. A grantor also includes an investor who acquires an interest in a fixed investment trust from a person who had acquired his interest through a direct investment in the trust. Treasury and the IRS request comments on the appropriate scope of these rules as they affect fixed investment trusts.

If a person creates or funds any portion of a trust primarily as an accommodation for another person, the other person will be treated as a grantor with respect to such portion of the trust. See, e.g., *Stern* v. *Commissioner,* 77 T.C. 614 (1981), rev'd on other grounds, 747 F.2d 555 (9th Cir. 1984).

These regulations are not intended to change the result of existing law with respect to trusts used for business purposes. See § 301.7701–4(e) (environmental remediation trusts); Rev. Rul. 87–127, 1987–2 C.B. 156 (pre-need funeral trusts); Rev. Proc. 92–64, 1992–2 C.B. 422 (rabbi trusts). Treasury and the IRS request comments on the application of these new rules to trusts used for business purposes.

A grantor of a trust may or may not be treated as an owner of the trust under sections 671 through 677 and 679. A person other than a grantor of a trust may be treated as an owner of the trust under section 678.

3. Section 1.672(f)–1: Foreign Persons Not Treated as Owners

The proposed regulations prescribe a two-step analysis for implementing the general rule of section 672(f). First, the grantor trust rules other than section 672(f) (the basic grantor trust rules) are applied to determine the worldwide amount and the U.S. amount. Then, the trust is treated as partially or wholly owned by a foreign person based on an annual year-end comparison of the worldwide amount and the U.S. amount.

The worldwide amount is defined as the net amount of income, gains, deductions, and losses that would be taken into account for the current year under the basic grantor trust rules in computing the worldwide taxable income of any person, whether or not such person is a U.S. taxpayer (as defined in the regulation). The worldwide amount is determined in accordance with U.S. principles of income taxation, and includes amounts that would be attributable to foreign persons, without regard to whether such amounts are subject to U.S. income taxation.

The U.S. amount is defined as the net amount of income, gains, deductions, and losses that would be taken into account for the current year under the basic grantor trust rules (directly or through one or more entities) in computing the taxable income of a U.S. taxpayer. The U.S. amount includes amounts such as interest on state or local bonds that are not includible in gross income.

A U.S. taxpayer is defined as any person who is a U.S. citizen, a resident alien individual, a domestic corporation, a U.S. person who is treated as the owner of a trust under section 679, or a domestic trust to the extent such trust actually pays U.S. tax with respect to the income, gains, deductions, and losses.

If the worldwide amount and the U.S. amount are the same, the basic grantor trust rules continue to apply without the limitation of section 672(f). If the worldwide amount is greater than the U.S. amount, section 672(f) prevents the basic grantor trust rules from treating a person as the owner of that portion of the trust attributable to the excess of the worldwide amount over the U.S. amount.

4. Section 1.672(f)–2: Trusts Created by Certain Foreign Corporations

Section 672(f)(3) provides in part that, except as otherwise provided in regulations, a controlled foreign corporation (CFC) shall be treated as a domestic corporation for purposes of section 672(f)(1). Under the proposed regulations, a CFC that creates and funds a trust will be treated as a domestic corporation to the extent that, if the basic grantor trust rules were applied, income earned by the trust for the taxable year would be subpart F income to the CFC that would be currently taken into account in computing the gross income of a U.S. citizen or resident or a domestic corporation. However, the CFC will not be treated as a domestic corporation to the extent the income of the trust would not be subpart F income or to the extent it would be subpart F income but would not be taken into account in computing the gross income of a U.S. citizen or resident or a domestic corporation (e.g., the CFC had no overall earnings and profits).

The proposed regulations include similar rules for trusts created by passive foreign investment companies (PFICs) or foreign personal holding companies.

Section 672(f)(3) also provides that the general rule of section 672(f)(1) shall not apply for purposes of section 1296. The proposed regulations implement this rule by providing that, for purposes of determining whether a foreign corporation is a PFIC, the grantor trust rules shall be applied as if section 672(f) had not come into effect. Consequently, a foreign corporation cannot avoid PFIC status by transferring passive assets to a trust that would be treated as a nongrantor trust if section 672(f) were applied.

5. Section 1.672(f)–3: Exceptions to General Rule

A. Certain Revocable Trusts

The proposed regulations provide that the general rule of § 1.672(f)-1 does not apply to any portion of a trust if the power to revest in the grantor title to such portion is exercisable solely by the grantor without the approval or consent of any other person. If the grantor can exercise the power only with the approval of a related or subordinate party who is subservient to the grantor, such power will be treated as exercisable solely by the grantor.

The exception will not apply unless the power to revest is exercisable for a period or periods aggregating 183 days or more during the taxable year of the trust. This rule is intended to provide a bright line rule for the benefit of both taxpayers and IRS examiners that addresses potentially abusive situations in which a power to revest is so limited that it is not likely to be exercised. The 183 days need not be consecutive; thus, a power to revest that is exercisable each year from January 1 through May 31 and again from September 1 through December 31 would be eligible for the exception.

Consistent with the statute, the proposed regulations provide a grandfather rule for a trust that was treated as owned by the grantor under

section 676 on September 19, 1995. As long as such a trust would continue to be so treated under the basic grantor trust rules, the trust will be exempt from the general rule of section 672(f), except with respect to any portion of the trust attributable to transfers to the trust after September 19, 1995. Under the proposed regulations, separate accounting is required for amounts transferred to the trust after September 19, 1995, together with all income and gains thereof, as well as losses and distributions therefrom.

B. Certain Other Trusts

The proposed regulations provide that the general rule does not apply to any trust (or portion of a trust) if the only amounts distributable (whether income or corpus) from such trust (or portion of a trust) during the lifetime of the grantor are amounts distributable to the grantor or the grantor's spouse. For this purpose, payments of reasonable nongratuitous amounts, such as reasonable administrative expenses, are not considered to be amounts distributable from the trust.

The proposed regulations clarify that amounts distributable in discharge of a legal obligation of the grantor or the grantor's spouse will generally be treated as amounts distributable to the grantor or the grantor's spouse. Thus, it is expected that a reinsurance trust that would have been a grantor trust under prior law generally will continue to be a grantor trust. (No inference is intended as to whether a reinsurance trust constitutes a trust under regulation § 301.7701–4.) However, a legal obligation will not include an obligation to a person who is related (as defined in the regulations) to the grantor or the grantor's spouse, unless the obligation was entered into for adequate and full consideration in money or money's worth. Trusts from which distributions are taxable as compensation for services rendered generally will be covered by the exception for compensatory trusts, described below.

Amounts distributable to support a family member will be treated as amounts distributable to the grantor or the grantor's spouse only if certain requirements are satisfied. Although different jurisdictions have different requirements for support obligations, administrative simplicity is served by providing one uniform rule on this point. Under the proposed regulations, the family member must be an individual who would be treated as a dependent of the grantor or the grantor's spouse under sections 152(a)(1) through (8), without regard to the requirement that half of the individual's support be received from the grantor or the grantor's spouse. In addition, the family member must be either permanently and totally disabled (within the meaning of section 22(e)(3)) or, in the case of a son, daughter, stepson, or stepdaughter, less than 24 years old.

Consistent with the statute, the proposed regulations provide a grandfather rule for a trust that was treated as owned by the grantor under section 677 (other than subsection (a)(3) thereof) on September 19, 1995. As long as such a trust would continue to be so treated under the basic grantor trust rules, the trust will be exempt from the general rule, except with respect to any portion of the trust attributable to transfers to the trust after September 19, 1995. Under the proposed regulations, separate accounting is required for amounts transferred to the trust after September 19, 1995, together with all income and gains thereof, as well as losses and distributions therefrom.

C. Compensatory Trusts

The proposed regulations implement section 672(f)(2)(B), which provides that, except as provided in regulations, the general rule shall not apply to any portion of a trust from which distributions are taxable as compensation for services rendered. Tracking the language of the statute, the proposed regulations list categories of trusts that constitute compensatory trusts, without regard to whether they could be treated as grantor trusts under the basic grantor trust rules. This list is intended to be an exclusive list. However, the proposed regulations also provide that additional categories of compensatory trusts may be designated later in guidance published in the Internal Revenue Bulletin.

The following categories of trusts are classified as compensatory trusts: (i) qualified trusts described in section 401(a), (ii) trusts described in section 457(g), (iii) nonexempt employees' trusts described in section 402(b), (iv) individual retirement account (IRA) trusts that are either simplified employee pensions described in section 408(k) or simple retirement accounts described in section 408(p), (v) IRA trusts to which the only contributions are rollover contributions listed in section 408(a)(1), (vi) certain so-called rabbi trusts (see Rev. Proc. 92–64 (1992–2 C.B. 422)), and (vii) trusts that are welfare benefit funds described in section 419(e) (without regard to whether they provide taxable benefits).

The IRS and Treasury contemplate that the nonexempt employees' trusts listed in category (iii) above will be treated as grantor trusts only to the extent provided in proposed regulations § 1.671–1(g) and § 1.671–1(h), which were published in the **Federal Register** (61 FR 50778) on September 27, 1996.

IRAs that are excluded from the list of compensatory trusts because they are funded by individuals, rather than employers, are expected to be covered by one or both of the exceptions for revocable trusts or for trusts from which the only amounts distributable during the lifetime of the grantor are to the grantor or the grantor's spouse.

6. Section 1.672(f)–4: Recharacterization of Purported Gifts

The proposed regulations implement the purported gift rule of section 672(f)(4), which was enacted as a backstop to section 672(f). See Staff of the Joint Committee on Taxation, 104th Cong., 2nd Sess., General Explanation of the Tax Legislation Enacted in the 104th Congress, at 271 (1996). The purported gift rule prevents taxpayers from avoiding the general rule of section 672(f) by using a partnership or a foreign corporation as a substitute for a trust.

As a general rule, if a U.S. donee receives a purported gift or bequest directly or indirectly from a partnership, the purported gift or bequest must be included in the U.S. donee's income as ordinary income. If a U.S. donee receives a purported gift or bequest directly or indirectly from a foreign corporation, the purported gift or bequest generally must be included in the U.S. donee's gross income as a distribution from the foreign corporation. In the latter case, the U.S. donee will not be treated as having basis in the foreign corporation, and the U.S. donee will be treated as having a holding period in the foreign corporation equal to the average holding period (using a weighted average) of the actual interest holders.

However, the gift or bequest will not be recharacterized if the donee can establish that a U.S. citizen or resident alien who directly or indirectly holds an interest in the partnership or foreign corporation treated the purported gift as a distribution from the partnership or foreign corporation and a subsequent gift to the donee. There also is an exception for charitable contributions to donees described in section 170(c).

The proposed regulations provide rules for gratuitous transfers to U.S. donees from trusts created by partnerships or foreign corporations. As a result, a partnership or foreign corporation cannot avoid the purported gift rule by creating a nongrantor trust that makes an immediate nontaxable distribution of trust corpus to a U.S.

donee. Under the proposed regulations, if the partnership or foreign corporation is not treated under the grantor trust rules as the owner of the portion of the trust from which property is distributed to a U.S. donee in a gratuitous transfer, the distribution will be characterized as a distribution from the partnership or foreign corporation if such characterization results in a higher U.S. tax liability.

Notwithstanding any other provision, the proposed regulations provide that the district director may recharacterize a transfer that is subject to the rules of section 672(f)(4) to prevent the avoidance of U.S. tax or clearly to reflect income. For example, the district director may determine, based upon the facts and circumstances, that a distribution from a partnership or foreign corporation is more properly treated as a distribution from a trust.

The proposed regulations provide a de minimis rule for purported gifts or bequests that do not exceed in the aggregate $10,000.

7. Section 1.672(f)–5: Special Rules

A. Transfers by Certain Beneficiaries to Foreign Settlor

The proposed regulations provide that if, but for section 672(f)(5), a foreign person would be treated as the owner of any portion of a trust, any U.S. beneficiary of the trust will be treated as the owner of a portion of the trust to the extent the U.S. beneficiary directly or indirectly made transfers of property to such foreign person in excess of transfers to the U.S. beneficiary from the foreign person. (Such a transfer may also constitute an indirect transfer from a U.S. person to a foreign trust for purposes of section 679.) The U.S. beneficiary need not have been a U.S. person at the time of the transfer.

The proposed regulations do not specify a time period within which a transfer must have been made to trigger this rule. However, they do provide that the rule will not apply to the extent the U.S. beneficiary can demonstrate that the transfer was wholly unrelated to any transaction involving the trust. In addition, consistent with the statute, the proposed regulations provide that a transfer of property does not include either a nongratuitous transfer or a gift that would be excluded from taxable gifts under section 2503(b).

B. Different Taxable Years

The proposed regulations provide that if a person has a different taxable year from the taxable year of the trust, an amount is currently taken into account in computing the income of such person for purposes of the general rule if the amount is taken into account for the taxable year of such person that includes the last day of the taxable year of the trust.

C. Entity Characterization

The proposed regulations provide that entities generally will be characterized under U.S. income tax principles. See regulations §§ 301.7701–1 through 301.7701–4. However, an entity having a single owner could avoid the purported gift rule if it could elect to be disregarded as a separate entity, because the purported gift or bequest would then be received from the owner of the entity, rather than from the entity itself. Therefore, the proposed regulations provide that, for purposes of section 672(f)(4), a wholly owned business entity must be treated as a corporation, separate from its single owner.

8. Section 301.7701–2(c)(2)(iii): Special Rule for Business Entities That Make Purported Gifts

As explained above, an entity having a single owner could avoid the purported gift rule if it elected to be disregarded as a separate entity under the existing entity classification regulations. Therefore, the proposed regulations add a new sentence to the existing regulations to provide that, for purposes of section 672(f)(4), a wholly owned business entity must be treated as a corporation, separate from its owner.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for August 27, 1997, at 10 a.m., in room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by August 4, 1997, and submit an outline of the topics to be discussed and the time to be devoted to each topic (preferably a signed original and eight (8) copies) by August 6, 1997.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is M. Grace Fleeman of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, ncome taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.643(h)–1 also issued under 26 U.S.C. 643(a)(7).

Section 1.671–2(e) also issued under 26 U.S.C. 643(a)(7) and 672(f)(6).

Section 1.672(f)–1 also issued under 26 U.S.C. 643(a)(7) and 672(f)(6).

Section 1.672(f)–2 also issued under 26 U.S.C. 643(a)(7), 72(f) (3) and (6).

Section 1.672(f)–3 also issued under 26 U.S.C. 643(a)(7), 72(f) (2) and (6).

Section 1.672(f)–4 also issued under 26 U.S.C. 643(a)(7), 72(f)(4) and (6).

Section 1.672(f)–5 also issued under 26 U.S.C. 643(a)(7) and 672(f)(6). * * *

Par. 2. Section 1.643(h)–1 is added to read as follows:

§ 1.643(h)–1 Distributions by certain foreign trusts through intermediaries.

(a) *In general.* For purposes of sections 641 through 683, any amount of property that is derived, directly or indirectly, by a United States person from a foreign trust through another person (an intermediary) shall be deemed to have been paid directly by the foreign trust to the United States person if any one of the following conditions is satisfied—

(1) The intermediary is related (within the meaning of paragraph (e) of this section) to either the United States person or the foreign trust and the intermediary transfers to the United States person either property that the intermediary received from the foreign trust or proceeds from the property that the intermediary received from the foreign trust;

(2) The intermediary would not have transferred the property to the United States person (or would not have transferred the property to the United States person on substantially the same terms) but for the fact that the intermediary received property from the foreign trust; or

(3) The intermediary received the property from the foreign trust pursuant to a plan one of the principal purposes of which was the avoidance of U.S. tax.

(b) *Exception for grantor as intermediary.* Paragraph (a) of this section shall not apply if the intermediary is the grantor of the portion of the trust from which the amount is derived. For the definition of *grantor,* see § 1.671–2(e).

(c) *Effect of disregarding intermediary.* If an amount is treated as paid directly by the foreign trust to a United States person pursuant to this section, one of the following rules shall apply:

(1) *Intermediary is agent under general principles.* If the intermediary is an agent of the foreign trust or the United States person under generally applicable agency principles, the payment shall be treated as paid by the foreign trust to the United States person in the year it would be so treated under such principles. Thus, if the intermediary is an agent of the foreign trust, the payment shall be treated as paid to the United States person in the year the amount is paid by the intermediary to the United States person. If, however, the intermediary is an agent of the United States person, the payment shall be treated as paid to the United States person in the year the amount is paid by the foreign trust to the intermediary.

(2) *Intermediary is not agent under general principles*—(i) *Agent of foreign trust.* Except as provided in paragraph (c)(2)(ii) of this section, if the intermediary is not an agent of the foreign trust or the United States person under generally applicable agency principles—

(A) The intermediary shall be treated as an agent of the foreign trust; and

(B) The payment shall be treated as paid by the foreign trust to the United States person in the year the amount is paid by the intermediary to the United States person.

(ii) *Agent of United States person.* The district director may determine, based on all the relevant facts and circumstances, that the intermediary should be treated as the agent of the United States person. If the intermediary is treated as the agent of the United States person pursuant to this paragraph (c)(2)(ii), the payment shall be treated as paid to the United States person in the year the intermediary receives the payment from the foreign trust.

(d) *De minimis exception.* This section shall not apply if, during the taxable year of the United States person, the aggregate amount that is transferred to such person from all foreign trusts through one or more intermediaries does not exceed $10,000.

(e) *Related parties.* For purposes of this section, an intermediary shall be treated as related to a United States person or foreign trust if the intermediary and the United States person or foreign trust are related within the meaning of section 643(i)(2)(B), with the following modifications:

(1) For purposes of applying section 267 (other than section 267(f)) and section 707(b)(1), ''at least 10 percent'' shall be substituted for ''more than 50 percent'' each place it appears;

(2) The principles of section 267(b)(10), substituting ''at least 10 percent'' for ''more than 50 percent,'' shall apply to determine whether two corporations are related; and

(3) The principles applicable to trusts shall apply to determine whether an estate is related to another person.

(f) *Examples.* The following examples illustrate the rules of this section. In each example, FT is an irrevocable foreign trust that is not treated as owned by any other person. The examples follow:

Example 1. Related intermediary. I, a nonresident alien who is not the grantor of FT, receives a distribution of stock from FT in the year 2001. In the year 2002, I sells the stock to an unrelated party for its fair market value of 100X and gives the 100X to his daughter, B, who is a U.S. resident. I is not an agent of either FT or B under generally applicable agency principles. Under paragraphs (a)(1) and (c)(2)(i) of this section, FT is deemed to have distributed 100X directly to B in the year 2002.

Example 2. ''But for'' condition. I, a foreign bank that is unrelated to any of the parties in these transactions, received a deposit of 500X from FT in the year 2001. In the year 2002, I transfers 400X to B, a United States person, in a transfer that it would not have made but for the fact that I had received 500X from FT. I is not an agent of either FT or B under generally applicable agency principles. Under paragraphs (a)(2) and (c)(2)(i) of this section, FT is deemed to have distributed 400X directly to B in the year 2002.

Example 3. Tax avoidance purpose. FT was created in 1980 by A, a nonresident alien. In the year 2001, FT's trustee, T, determines that 1000X of accumulated income should be distributed to A's U.S. granddaughter, B. Pursuant to a plan with a principal purpose of avoiding the interest charge that would be imposed by section 668, T causes FT to distribute 1000X to I, an unrelated foreign person. I subsequently transfers 1000X to B in the year 2001. Under paragraph (a)(3) of this section, B is deemed to have received an accumulation distribution from FT in the year 2001.

Example 4. Amount not derived from foreign trust. W and her husband, H, are both nonresident aliens. W's son, S, is a U.S. resident. W receives annual income of 5000X from her own investments. Several years ago, H created and funded FT using his separate property. At the beginning of the year 2001, W receives a distribution of 100X from FT. There is no plan with a principal purpose of avoiding U.S. tax. At the end of the year 2001, W gives 100X of her investment income to S. None of the conditions in paragraph (a) of this section is satisfied. The transfer to S is treated as a nontaxable gift from W and not as an amount derived directly or indirectly from FT.

(g) *Effective date.* The rules of this section are applicable for transfers made by foreign trusts on or after August 20, 1996.

Par. 3. In § 1.671–2, paragraph (e) is revised to read as follows:

§ 1.671–2 Applicable principles.

* * * * *

(e)(1) For purposes of subchapter J of the Internal Revenue Code, a grantor includes any person to the extent such person either creates a trust, or directly or indirectly makes a gratuitous transfer (within the meaning of paragraph (e)(4)(i) of this section) of property to a trust.

(2) A grantor includes a person who acquires an interest in a trust from a grantor of the trust if either—

(i) The transfer is nongratuitous (within the meaning of paragraph (e)(4)(ii) of this section); or

(ii) The transfer is of an interest in a fixed investment trust.

(3) If one person creates or funds a trust (or portion of a trust) primarily as an accommodation for another person, the other person shall be treated as a grantor of the trust (or portion of the trust).

(4)(i) A gratuitous transfer is any transfer other than a transfer for fair market value, or a corporate or partnership distribution. A transfer of property to a trust may be considered a gratuitous transfer without regard to whether the transfer is a gift for gift tax purposes (see chapter 12 of subtitle B of the Internal Revenue Code).

(A) For purposes of this paragraph (e), a transfer for fair market value includes only transfers in consideration for property received from the trust, services rendered by the trust, or the right to use property of the trust. A transfer is for fair market value only to the extent that the value of the property received, services rendered, or the right to use property is equal to at least the fair market value of the property transferred. For example, rents, royalties, and compensation paid to a trust are transfers for fair market value only if the payments reflect an arm's length price for the use of the property of, or services rendered by, the trust. For purposes of this determination, if a person contributes property to a trust (or to another entity that subsequently transfers the property (or proceeds therefrom) to a trust) in exchange for any type of interest in the trust (or other entity), such interest in the trust (or other entity) shall be disregarded in determining whether fair market value has been received. In addition, a person shall not be treated as making a transfer for fair market value merely because the transferor recognizes gain on the transaction. For example, if a taxpayer elects to treat a transfer of appreciated property to a foreign trust as a deemed sale under section 1057, such a transfer will not be treated as a transfer for fair market value because the transferor did not receive actual fair market value consideration pursuant to the deemed sale.

(B) For purposes of this paragraph (e), a transfer to a trust is a corporate distribution, and therefore not a gratuitous transfer, only if it is a distribution described in section 301, 302, 305, 355 or 356. Similarly, for purposes of this paragraph (e), a transfer to a trust is a partnership distribution, and therefore not a gratuitous transfer, only if it is described in section 731. A distribution from one trust to another trust that is a beneficiary of the first trust is a gratuitous transfer.

(C) Notwithstanding any other provision of this paragraph (e), the district director may determine, based upon the facts and circumstances, that a direct or indirect transfer to a trust is more properly characterized as a gratuitous transfer if the transfer was structured with a principal purpose of avoiding U.S. tax. See, e.g., sections 643(a)(7) and 679(d).

(ii) For purposes of this paragraph (e), any transfer other than a gratuitous transfer is a nongratuitous transfer.

(5) The following examples illustrate the rules of this paragraph (e):

Example 1. A creates and funds a trust, T, for the benefit of her children. Under paragraph (e)(1) of the section, A is a grantor of T.

Example 2. A makes an investment in a fixed investment trust, T, that is classified as a trust under § 301.7701–4(c)(1) of this chapter. B subsequently acquires A's entire interest in T for fair market value. Under paragraph (e)(2) of this section, B is a grantor of T with respect to such interest.

Example 3. A, an attorney, creates a trust, T, for the benefit of his client, B, and B's children. The trust instrument names A as the grantor. A funds T with a nominal contribution out of his own funds. A views the contribution as an investment in the generation of fees for future legal services. Under paragraph (e)(3) of this section, B is a grantor of T.

Example 4. A, a U.S. citizen, creates and funds a trust, T, for the benefit of B. B holds an unrestricted power to withdraw any amount contributed to the trust for a period of 60 days after the contribution is made. B is treated as an owner of T under section 678 as a result of the withdrawal power. However, B is not a grantor of T under paragraph (e)(1) of this section as a result of the withdrawal power, because B neither created T nor made a gratuitous transfer to T.

Example 5. A contributes cash to a trust, T, through a broker, in exchange for units in T. The value of the units in T is disregarded in determining whether A has received fair market value under paragraph (e)(4)(i)(A) of this section. Therefore, A has made a gratuitous transfer to T, and, under paragraph (e)(1) of this section, A is a grantor of T.

Example 6. A borrows cash from T, an unrelated trust. Arm's-length interest payments by A to T will not be treated as gratuitous transfers under paragraph (e)(4)(i)(A) of this section. Therefore, under paragraph (e)(1) of this section, A is not a grantor of T with respect to the interest payments.

Example 7. A creates and funds a domestic trust, DT. After A's death, DT distributes cash to a foreign trust, FT, that is a beneficiary of DT. Under paragraph (e)(4)(i)(B) of this section, the trust distribution by DT is a gratuitous transfer. Therefore, under paragraph (e)(1) of this section, DT is a grantor of FT with respect to such transfer.

Example 8. A creates and funds a trust, T. T owns stock of C, a publicly traded company, that pays a dividend to its shareholders, including T. The dividend paid by C is a nongratuitous transfer under paragraph (e)(4)(i)(B) of this section. Therefore, C is not a grantor under paragraph (e)(1) of this section with respect to the dividend.

Example 9. A, a nonresident alien, creates a trust, T, for the benefit of her spouse, B, who is a U.S. citizen. T is not treated as owned by any other person. A sells property worth $1,000,000 to T in exchange for $100,000 in cash. Under paragraph (e)(4)(i)(A) of this section, the $900,000 excess is a gratuitous transfer by A. Therefore, A is a grantor of T under paragraph (e)(1) of this section with respect to such transfer.

(6) The rules of this paragraph (e) are applicable as of August 20, 1996.

Par. 4. Sections 1.672(f)–1, 1.672(f)–2, 1.672(f)–3, 1.672(f)–4, and 1.672(f)–5 are added to read as follows:

§ 1.672(f)–1 Foreign persons not treated as owners.

(a) *General rule.* Section 672(f)(1) provides that sections 671 through 679 (the grantor trust rules) shall cause a person to be treated as the owner of any portion of a trust only to the extent such application results in an amount (if any) being currently taken into account (directly or through one or more entities) in computing the income of a citizen or resident of the United States or a domestic corporation. Section 672(f)(1) may apply only to a trust that would be treated as owned, in whole or in part, by a foreign person under the grantor trust rules without regard to section 672(f). For rules describing the application of this section, see paragraph (b) of this section. For definitions regarding the rules of this section, see paragraph (c) of this section. For examples illustrating the application of this section, see paragraph (d) of this section. For the effective date of the rules of this section, see paragraph (e) of this section.

(b) *Application of general rule*—(1) *Initial determination.* To determine whether a trust is treated as owned by a foreign person, the taxpayer should first apply the grantor trust rules without regard to section 672(f) (the basic grantor trust rules) to determine the worldwide amount (as defined in paragraph (c)(1) of this section) and the U.S. amount (as defined in paragraph (c)(2) of this section).

(2) *Result.* The trust is treated as owned by a foreign person based on an annual comparison at the end of the trust's taxable year of the worldwide amount and the U.S. amount. If there is a worldwide amount and such amount is greater than the U.S. amount, under

section 672(f) the foreign person shall not be treated as the owner of the portion of the trust attributable to the excess of the worldwide amount over the U.S. amount. Otherwise, the basic grantor trust rules shall apply without the limitation of section 672(f). For examples, see paragraph (d) of this section.

(c) *Definitions*—(1) *Worldwide amount.* The worldwide amount is the net amount of income, gains, deductions, and losses that would be taken into account for the current year under the basic grantor trust rules in computing the worldwide taxable income of any person, whether or not such person is a U.S. taxpayer (as defined in paragraph (c)(3) of this section). The worldwide amount is computed in accordance with U.S. principles of income taxation and includes amounts that would be attributable to foreign persons, without regard to whether such amounts are subject to U.S. income tax.

(2) *U.S. amount.* The U.S. amount is the net amount of income, gains, deductions, and losses that would be taken into account for the current year under the basic grantor trust rules (directly or through one or more entities) in computing the taxable income of a U.S. taxpayer (as defined in paragraph (c)(3) of this section). The U.S. amount includes amounts that would be attributable to the U.S. taxpayer even if the amount would not be includible in gross income (e.g., tax-exempt interest described in section 103(a)).

(3) *U.S. taxpayer.* A U.S. taxpayer is any person who is a U.S. citizen, a resident alien individual, a domestic corporation, a U.S. person who is treated as the owner of a trust under section 679, or a domestic trust to the extent such trust actually pays U.S. tax with respect to its income, gains, deductions, and losses.

(d) *Examples.* The following examples illustrate the rules of this section:

Example 1. U.S. amount equals worldwide amount. A, a citizen of the United States, creates and funds an irrevocable foreign trust, FT, for the benefit of his U.S. son, B. Under the basic grantor trust rules (see section 679), A would be treated as the owner of FT. For the taxable year ending December 31, 1999, FT has ordinary income of 100X, long-term capital gain of 200X, deductions of 20X, and short-term capital losses of 15X. Under paragraph (c)(1) of this section, the worldwide amount is 265X (100X+200X − 20X − 15X). Under paragraph (c)(2) of this section, the U.S. amount also is 265X. Consequently, under paragraph (b)(2) of this section, because the worldwide amount is equal to the U.S. amount, the basic grantor trust rules apply without the limitation of section 672(f) to treat A as the owner of FT.

Example 2. No U.S. amount. A, a nonresident alien, funds an irrevocable domestic trust, DT, for the benefit of his U.S. son, B.A has a reversionary interest within the meaning of section 673. If the basic grantor trust rules were applied, A would be treated as the owner of DT, and any distributions to B would be considered nontaxable gifts from A to B. Under paragraph (c)(2) of this section, there is no U.S. amount, because no amount is taken into account for the current year under the basic grantor trust rules in computing the taxable income of a U.S. taxpayer. Under paragraph (c)(1) of this section, the worldwide amount is equal to DT's net income. Under paragraph (b)(2) of this section, A is not treated as the owner of any portion of DT. Consequently, DT is a separate taxable entity, and distributions from DT to B must be taken into account in computing B's income.

Example 3. U.S. amount less than worldwide amount. FP is a foreign partnership for U.S. income tax purposes. FP has two partners: C, a nonresident alien, and D, a U.S. citizen. The partnership agreement provides that all income, gains, losses, deductions, and credits are allocated 50 percent to each partner. FP contributed cash to an irrevocable foreign trust, FT, primarily for the benefit of E, D's U.S. brother. FP can control the beneficial enjoyment of the trust assets within the meaning of section 674. If the basic grantor trust rules were applied, FT would be treated as the owner of FP. Because D's 50 percent distributive share of FP's income would be currently taken into account in computing the income of a U.S. citizen, the U.S. amount computed under paragraph (c)(2) of this section is equal to one half of the worldwide amount computed under paragraph (c)(1) of this section. Therefore, under paragraph (b)(2) of this section, FP is not treated as the owner of the portion of FT attributable to C's interest in FP. Such portion of FT will be treated as a separate taxable entity, and distributions by FT to E with respect to that portion of the trust will be considered distributions to E under section 662 and may be subject to the section 668 interest charge on accumulation distributions. (In addition, distributions from FP to E may be subject to recharacterization as purported gifts under § 1.672(f)–4.)

Example 4. No worldwide amount. USC is a U.S. corporation with a wholly owned foreign subsidiary, FC. USC funds an irrevocable foreign trust, FT, that cannot benefit any U.S. person. USC retains no power or interest that would cause it to be treated as the owner of FT under the basic grantor trust rules. However, FC is given a power of appointment such that FC would be treated as the owner of FT under section 678. FT acquires a note issued by FC. FT has no items of income, deduction, losses, or credit other than income from the note. Under U.S. income tax principles, if the basic grantor trust rules were applied, FC would be treated as the owner of FT. Thus, FC would be treated as both the debtor and the creditor with respect to the note, and the note would be disregarded. Under paragraph (c)(1) of this section, there is no worldwide amount. Under paragraph (c)(2) of this section, there is no U.S. amount. Consequently, under paragraph (b)(2) of this section, the basic grantor trust rules apply without the limitation of section 672(f) to treat FC as the owner of FT.

Example 5. Deemed contribution on effective date. Assume the same facts as in *Example 2.* DT was created in 1990. On August 20, 1996, DT held accumulated income. Prior to August 20, 1996, A was treated as the owner of DT. A is deemed to have contributed the assets that were held in DT on August 20, 1996 to a new trust on that date.

(e) *Effective date.* The rules of this section are applicable as of August 20, 1996.

§ 1.672(f)–2 Trusts created by certain foreign corporations.

(a) *Controlled foreign corporations.* A controlled foreign corporation (as defined in section 957) that creates and funds a trust shall be treated as a domestic corporation for purposes of §§ 1.672(f)–1 through 1.672(f)–5 to the extent that, if the grantor trust rules without regard to section 672(f) (the basic grantor trust rules) were applied, income earned by the trust for the taxable year would be currently taken into account pursuant to section 951 in computing the gross income of a citizen or resident of the United States or a domestic corporation.

(b) *Passive foreign investment companies*—(1) *In general.* A passive foreign investment company (as defined in section 1296) that creates and funds a trust shall be treated as a domestic corporation for purposes of §§ 1.672(f)–1 through 1.672(f)–5 to the extent that, if the basic grantor trust rules were applied, income earned by the trust for the taxable year would be currently taken into account pursuant to section 1293 in computing the gross income of a citizen or resident of the United States or a domestic corporation.

(2) *Application of section 1296.* For purposes of determining whether a foreign corporation is a passive foreign investment company as defined in section 1296, the grantor trust rules shall be applied as if section 672(f) had not come into effect.

(c) *Foreign personal holding companies.* A foreign personal holding company (as defined in section 552) that creates and funds a trust shall be treated as a domestic corporation for purposes of §§ 1.672(f)–1 through 1.672(f)–5 to the extent that, if the basic grantor trust rules were applied, income earned by the trust for the taxable year would be currently taken into account pursuant to section 551 in computing the gross

income of a citizen or resident of the United States or a domestic corporation.

(d) *Examples.* The following examples illustrate the rules of this section. In each example, FT is an irrevocable foreign trust, and CFC is a controlled foreign corporation. The examples follow:

Example 1. Controlled foreign corporation without ultimate U.S. ownership. Two nonresident aliens, A and B, create a domestic partnership, DP. DP's only asset is all the stock of CFC. CFC creates and funds FT to benefit A's U.S. daughter, C. CFC retains an administrative power over the trust as described in section 675. Thus, if the basic grantor trust rules were applied, CFC would be treated as the owner of FT, and distributions from FT to C would not be taxed as distributions under section 662. However, under paragraph (a) of this section, CFC is not treated as a domestic corporation for purposes of § 1.672(f)–1. Although CFC is a controlled foreign corporation (because CFC is owned by DP, a domestic person), no income earned by CFC will be included in the income of a U.S. taxpayer. Consequently, there is no U.S. amount under § 1.672(f)–1(c)(2). Under § 1.672(f)–1(b)(2), the basic grantor trust rules do not apply to treat CFC as the owner of FT. Transfers from FT to C are considered to be distributions to C under section 662 and may be subject to the section 668 interest charge on accumulation distributions. (In addition, distributions to C from DP, CFC, or FT may be subject to recharacterization as purported gifts under § 1.672(f)–4.)

Example 2. Trust income is all subpart F income. CFC is wholly owned by USC, a domestic corporation. CFC creates and funds FT for the benefit of USC. CFC can control the beneficial enjoyment of the trust assets within the meaning of section 674. All of FT's income is of the type that is subpart F income (as defined in section 952). FT does not distribute any income. Without regard to income earned by FT, CFC has a significant amount of earnings and profits. If the basic grantor trust rules were applied, CFC would be treated as the owner of FT, and all items of income of FT would be currently taken into account in computing the income of USC, a domestic corporation. Consequently, under paragraph (a) of this section, CFC is treated as a domestic corporation for purposes of § 1.672(f)–1. Under § 1.672(f)–1(b)(2), the basic grantor trust rules apply without the limitation of section 672(f) to treat CFC as the owner of FT. Distributions from FT to USC are treated as distributions from CFC to USC.

Example 3. Portion of trust income is subpart F income. Assume the same facts as in *Example 2*, except that FT also owns all of the stock of S, a corporation that is incorporated in the same country as CFC and that uses a substantial part of its assets in a trade or business in such country. Thus, dividends from S are not subpart F income. In the taxable year ending December 31, 1999, FT's only income is subpart F income of 200X and dividends from S of 50X. FT has no deductions or losses for 199X. Under paragraph (a) of this section, CFC is treated as a domestic corporation for purposes of computing the U.S. amount under § 1.672(f)–1(c)(2) only to the extent FT's income is of the type that is subpart F income. Consequently, the U.S. amount is 200X. Under § 1.672(f)–1(c)(1), the worldwide amount is 250X. Under § 1.672(f)–1(b)(2), CFC is not treated as the owner of the portion of FT attributable to the excess of the worldwide amount over the U.S. amount. Such portion of FT will be treated as a separate taxable entity. Distributions to USP with respect to such portion of FT will be included in USP's income under section 662 and may be subject to the section 668 interest charge on accumulation distributions.

Example 4. Reduction in portion of trust treated as nongrantor trust. Assume the same facts as in *Example 3*. For each of the years 2001 through 2010, FT receives dividend income of 2X from S, none of which is distributed. In the year 2011, at a time when FT's basis in the stock of S is 80X, S sells its business and invests the proceeds in assets that generate subpart F income. CFC will now be treated as the owner of the portion of FT that had previously been treated as a separate taxable entity. FT will be deemed to have distributed 80X (the stock of S) to CFC. CFC will be required to include 20X of undistributed net income (2X a year for 10 years) in its income.

(d) *Effective date.* The rules of this section are applicable as of August 20, 1996.

§ 1.672(f)–3 Exceptions to general rule.

(a) *Certain revocable trusts*—(1) *In general.* The general rule of § 1.672(f)–1(a) shall not apply to any portion of a trust if the power to revest absolutely in the grantor title to such portion is exercisable solely by the grantor without the approval or consent of any other person. If the grantor can exercise such power only with the approval of a related or subordinate party who is subservient to the grantor, such power will be treated as exercisable solely by the grantor. The grantor will be treated as having a power to revest only if the grantor has such power for a period or periods aggregating 183 days or more during the taxable year of the trust. See section 643(a)(7). For the definition of *grantor*, see § 1.671–2(e). For the definition of *related or subordinate party*, see § 1.672(c)–1. For purposes of this paragraph (a), a related or subordinate party is subservient to the grantor unless the presumption in the last sentence of § 1.672(c)–1 is rebutted by a preponderance of the evidence.

(2) *Grandfather rule*—(i) *In general.* The general rule of § 1.672(f)–1 shall not apply to a trust that was treated as owned by the grantor under section 676 on September 19, 1995, as long as the trust would continue to be so treated under the basic grantor trust rules. However, such a trust will be subject to the general rule of § 1.672(f)–1 with respect to any portion of the trust attributable to transfers to the trust after September 19, 1995.

(ii) *Separate accounting for transfers after September 19, 1995.* In the case of a revocable trust that contains both amounts held in the trust on September 19, 1995, and amounts that were transferred to the trust after September 19, 1995, paragraph (a)(2)(i) of this section shall apply only if the amounts that were held in the trust on September 19, 1995, together with all income, gains, and losses derived therefrom (less all post-September 19, 1995, distributions therefrom) are separately accounted for from the amounts that were transferred to the trust after September 19, 1995, together with all income, gains, and losses derived therefrom (less all distributions therefrom). If there is no separate accounting, the general rule of § 1.672(f)–1 shall apply to the trust. If there is separate accounting, the general rule of § 1.672(f)–1 shall not apply to the portion of the trust that is attributable to amounts that were held in the trust on September 19, 1995.

(3) *Examples.* The following examples illustrate the rules of this paragraph (a):

Example 1. Owner is grantor. After September 19, 1995, FP1, a foreign person, creates and funds a revocable trust, T, for the benefit of FP1's children, who are U.S. residents. The trustee is a foreign bank, FB, that is owned and controlled by FP1 and FP2, who is FP1's brother. The power to revoke T and revest absolutely in FP1 title to the trust property is exercisable by FP1, but only with the approval or consent of FB. There are no facts that would suggest that FB is not subservient to FP1. Therefore, under paragraph (a)(1) of this section, T is not subject to the general rule of § 1.672(f)–1. FP1 is treated as the owner of T.

Example 2. Owner not grantor. Assume the same facts as in *Example 1*, except that FP1 dies. After FP1's death, FP2 has the power to withdraw the assets of T, but only with the approval of FB. There are no facts that would suggest that FB is not subservient to FP2. However, under paragraph (a)(1) of this section, T is now subject to the general rule of § 1.672(f)–1, because FP2 is not a grantor of T. FP2 is not treated as the owner of T.

Example 3. Trustee not related or subordinate party. Assume the same facts as in *Example 1*, except that neither FP1 nor any member of his family has any substantial ownership interest or other connection with FB. FP1 can remove and replace FB at any time for any reason. Although FP1 can replace FB if FB refuses to approve or consent to FP1's decision to revest the trust property in himself, FB is not a related or subordinate party. Therefore, under paragraph (a)(1) of this section, T is subject to the general rule of § 1.672(f)–1. FP1 will not be treated as the owner of T.

Example 4. Unrelated trustee will consent to revocation. FP, a foreign person, creates

and funds an irrevocable trust, T. The trustee is a foreign bank, FB, that is not a related or subordinate party within the meaning of § 1.672(c)–1. FB has the discretion to distribute trust income or corpus to any person, including FP. Even if FB would in fact distribute all the trust property to FP if requested to do so by FP, under paragraph (a)(1) of this section, T is subject to the general rule of § 1.672(f)–1, because FP does not have the power to revoke T. FP will not be treated as the owner of T.

Example 5. Husband treated as holding power held by wife. H and his wife, W, both nonresident aliens, create and fund a trust, T, using community property. The power to revoke T and revest absolutely in H and W title to the trust property is exercisable either by W acting alone or by H with the consent of W. W has advised H that she will not consent to any decision by H to revoke T. Although W is a related or subordinate party to H within the meaning of § 1.672(c)–1, the presumption that W is subservient to H is rebutted by a preponderance of the evidence. However, pursuant to section 672(e), H is treated as holding the power to revest that is held by W. Therefore, under paragraph (a)(1) of this section, T is not subject to the general rule of § 1.672(f)–1. H and W are treated as the owners of T.

Example 6. U.S. grantor of trust revocable by foreign person. A, a nonresident alien, creates a revocable foreign trust, FT, and funds FT with $5,000 cash. The only possible beneficiary of FT is a foreign person. B, a U.S. citizen, contributes $1,000,000 of appreciated property to FT. B retains no powers that would cause B to be treated as an owner of any portion of FT under the grantor trust rules. Although A has the power to revest absolutely in itself title to the appreciated property, A is not a grantor of FT with respect to the appreciated property. See § 1.671–2(e). Therefore, under paragraph (a)(1) of this section, the portion of FT that is attributable to the appreciated property is subject to the general rule of § 1.672(f)–1. A is not treated as the owner of such portion.

(b) *Certain other trusts*—(1) *In general.* The general rule of § 1.672(f)–1(a) shall not apply to any trust (or portion of a trust) during the lifetime of the grantor if the only amounts distributable (whether income or corpus) from such trust (or portion of a trust) during the lifetime of the grantor are amounts distributable to the grantor or the spouse of the grantor. This paragraph (b) shall not apply to that portion of a trust from which, at any time after October 20, 1996, any amounts are distributable to any person other than the grantor or the spouse of the grantor. For purposes of this paragraph (b), payments of nongratuitous amounts (within the meaning of § 1.671–2(e)(4)(ii)) will not be considered amounts distributable. For the definition of *grantor*, see § 1.671–2(e).

(2) *Amounts distributable in discharge of legal obligation*—(i) *In general.* Subject to the provisions of paragraph (b)(2)(ii) of this section, amounts that are distributable from a portion of a trust in discharge of a legal obligation of the grantor or the spouse of the grantor shall be treated as amounts distributable to the grantor or the spouse of the grantor for purposes of paragraph (b)(1) of this section. For this purpose, an obligation is considered a legal obligation if it is enforceable under the local law of the jurisdiction in which the grantor (or the spouse of the grantor) resides.

(ii) *Legal obligation to related person.* For purposes of paragraph (b)(2)(i) of this section, the term *legal obligation* does not include an obligation to a related person except to the extent the obligation was contracted bona fide and for adequate and full consideration in money or money's worth (see § 20.2043–1 of this chapter). For this purpose, a related person is a person described in § 1.643(h)–1(e).

(3) *Amounts distributable in discharge of support obligation.* Amounts that are distributable from a portion of a trust in discharge of the grantor's or the grantor's spouse's obligation to support a family member shall be treated as amounts distributable to the grantor or the spouse of the grantor only if the family member is an individual who would be treated as a dependent of the grantor or the grantor's spouse under sections 152(a) (1) through (8), without regard to the requirement that half of the individual's support be received from the grantor or the grantor's spouse, and the family member is either—

(i) Permanently and totally disabled (within the meaning of section 22(e)(3)); or

(ii) In the case of a son, daughter, stepson, or stepdaughter, less than 24 years old.

(4) *Grandfather rule*—(i) *In general.* The general rule of § 1.672(f)–1 shall not apply to a trust that was treated as owned by the grantor under section 677 (other than section 677(a)(3)) on September 19, 1995, as long as the trust would continue to be so treated under the basic grantor trust rules. However, such a trust will be subject to the general rule of § 1.672(f)–1 with respect to any portion of the trust attributable to transfers to the trust after September 19, 1995.

(ii) *Separate accounting for transfers after September 19, 1995.* In the case of a trust that contains both amounts held in the trust on September 19, 1995, and amounts that were transferred to the trust after September 19, 1995, paragraph (b)(4)(i) of this section shall apply only if the amounts that were held in the trust on September 19, 1995, together with all income, gains, and losses derived therefrom (less all post-September 19, 1995, distributions therefrom) are separately accounted for from the amounts that were transferred to the trust after September 19, 1995, together with all income, gains, and losses derived therefrom (less all distributions therefrom). If there is no separate accounting, the general rule of § 1.672(f)–1 shall apply to the trust. If there is separate accounting, the general rule of § 1.672(f)–1 shall not apply to the portion of the trust that is attributable to amounts that were held in the trust on September 19, 1995.

(5) *Examples.* The following examples illustrate the rules of this paragraph (b):

Example 1. Amounts distributable only to grantor or grantor's spouse. H and his wife, W, are both nonresident aliens. H and W have a child, C, who is a U.S. resident. H creates and funds an irrevocable trust, FT, using only his separate property. The only amounts distributable (whether income or corpus) from FT as long as either H or W are alive are amounts distributable to H or W. Upon the death of both H and W, C may receive distributions from FT. Under paragraph (b)(1) of this section, FT is not subject to the general rule of § 1.672(f)–1 during H's lifetime. H is treated as the owner of FT.

Example 2. Amounts temporarily distributable to person other than grantor or grantor's spouse. Assume the same facts as in *Example 1*, except that C is a 30-year old law student at the time FT is created, FT is created after October 20, 1996, and the trust instrument provides that as long as C is in law school amounts may be distributed from FT to pay C's expenses. Thereafter, the only amounts distributable from FT as long as either H or W are alive will be amounts distributable to H or W. C's expenses are not treated as legal obligations of H or W under paragraph (b)(2)(ii) of this section or as support obligations under paragraph (b)(3) of this section. Therefore, under paragraph (b)(1) of this section, FT is subject to the general rule of § 1.672(f)–1(a). H is not treated as the owner of FT. After C graduates from law school, the general rule of § 1.672(f)–1 still will be applicable, and H still will not be treated as the owner of FT.

Example 3. Grantor predeceases spouse. Assume the same facts as in *Example 1.* H predeceases W. Under paragraph (b)(1) of this section, FT will become subject to the general rule of § 1.672(f)–1 upon H's death, because W is not a grantor. Accordingly, FT will be treated as a separate taxable entity upon H's death.

Example 4. Effect of divorce. H creates and funds a trust, FT, from which the only amounts distributable are amounts distributable to himself and A. At the time FT is created, A is H's wife. However, the trust document refers to A only by her name. H and A divorce. Under paragraph (b)(1) of this section, FT will be subject to the general rule of § 1.672(f)–1 after the divorce, because amounts will still be distributable to A, and

A will no longer be the spouse of the grantor. After the divorce, FT will be treated as a separate taxable entity.

Example 5. Fixed investment trust. FC, a foreign corporation, invests in a domestic fixed investment trust, DT, that is classified as a trust under § 301.7701–4(c)(1) of this chapter. The only amounts that are distributable from the portion of DT that is owned by FC are amounts distributable to FC. Under paragraph (b)(1) of this section, such portion of DT is exempt from the general rule of § 1.672(f)–1. FC is treated as the owner of its portion of DT.

Example 6. Reinsurance trust. A domestic insurance company, I, reinsures a portion of its business with a foreign insurance company, FI. FI creates and funds an irrevocable domestic trust, DT, in the United States as security for its obligations under the reinsurance agreement. The trust funds are held by a U.S. bank and may be used only to pay claims arising out of the reinsurance policies. On the termination of DT, any assets remaining will revert to FI. The only amounts that are distributable from DT are distributable in discharge of FI's legal obligation. Therefore, under paragraph (b)(1) of this section, DT is exempt from the general rule of § 1.672(f)–1. FI is treated as the owner of DT.

Example 7. Asset securitization trust. A foreign corporation, FC, borrows money from a bank, B, to finance the purchase of an airplane. FC creates a foreign trust, FT, to hold the airplane as security for the loan from B. The only amounts that are distributable from FT are amounts distributable to B in the event that FC defaults on its loan from B. Thus, the only amounts distributable from FT are in discharge of FC's legal obligation to B. When FC repays the loan, the trust assets will revert to FC. Under paragraph (b)(1) of this section, FT is exempt from the general rule of § 1.672(f)–1. FC is treated as the owner of FT.

(c) *Compensatory trusts*—(1) *In general.* Except as provided in paragraph (c)(4) of this section, § 1.672(f)–1 does not apply to any portion of a trust distributions from which are taxable as compensation for services rendered. A trust described in this paragraph (c)(1) is referred to in this section as a compensatory trust.

(2) *Trusts classified as compensatory trusts.* The following types of trusts are the only types of trusts that shall be classified as compensatory trusts within the meaning of paragraph (c)(1) of this section—

(i) A qualified trust described in section 401(a) (but see § 1.641(a)–0(a));

(ii) A trust described in section 457(g);

(iii) A nonexempt employees' trust described in section 402(b) (see § 1.671–1(g) and (h));

(iv) A trust that is an individual retirement account described in section 408(k) or 408(p);

(v) A trust that is an individual retirement account the only contributions to which are rollover contributions listed in section 408(a)(1);

(vi) A trust that would be a nonexempt employees' trust described in section 402(b) but for the fact that the trust's assets are not set aside from the claims of creditors of the actual or deemed transferor within the meaning of § 1.83–3(e); and

(vii) A trust that is a welfare benefit fund described in section 419(e).

(3) *Other individual retirement accounts.* For rules that apply to individual retirement accounts (within the meaning of section 408(a)) that are not compensatory trusts within the meaning of paragraph (c)(1) of this section, see paragraphs (a) and (b) of this section.

(4) *Exceptions.* The Commissioner may, in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*)), designate categories of compensatory trusts to which the general rule of paragraph (c)(1) of this section does not apply.

(d) *Effective date.* Except as provided in paragraph (b)(1) of this section, the rules of this section are applicable as of August 20, 1996.

§ 1.672(f)-4 Recharacterization of purported gifts.

(a) *In general*—(1) *Purported gifts from partnerships.*

Except as provided in paragraphs (b) and (f) of this section, and without regard to the existence of any trust, if a United States person (U.S. donee) directly or indirectly receives a purported gift or bequest (as defined in paragraph (d) of this section) from a partnership, the purported gift or bequest must be included in the U.S. donee's gross income as ordinary income.

(2) *Purported gifts from foreign corporations.* Except as provided in paragraphs (b) and (f) of this section, and without regard to the existence of any trust, if a U.S. donee directly or indirectly receives a purported gift or bequest (as defined in paragraph (d) of this section) from a foreign corporation, the purported gift or bequest must be included in the U.S. donee's gross income as if it were a distribution from the foreign corporation. For purposes of section 1012, the U.S. donee will not be treated as having basis in the foreign corporation. However, for purposes of section 1223, the U.S. donee will be treated as having a holding period in the foreign corporation on the date of the deemed distribution equal to the weighted average of the holding periods of the actual interest holders.

(b) *Exceptions*—(1) *U.S. partner or shareholder treats transfer as distribution and gift.* Paragraph (a) of this section shall not apply if the U.S. donee can establish that a U.S. citizen or resident alien who directly or indirectly holds an interest in the partnership or foreign corporation treated the purported gift as a distribution to the U.S. partner or shareholder and a subsequent gift to the U.S. donee.

(2) *Charitable contributions.* Paragraph (a) of this section shall not apply to U.S. donees that are described in section 170(c).

(c) *Certain distributions from trusts created by partnerships or foreign corporations.* If a partnership or foreign corporation is treated as the owner, under sections 671 through 679, of a portion of a trust from which property is distributed to a U.S. donee in a gratuitous transfer, the U.S. donee must treat the amount as a distribution from the partnership or foreign corporation. If a partnership or foreign corporation is not treated as the owner, under sections 671 through 679, of the portion of a trust from which property is distributed to a U.S. donee in a gratuitous transfer, the U.S. donee shall be taxable in the manner provided in paragraph (a) of this section only if the U.S. tax computed under that section exceeds the U.S. tax that would be due if the U.S. donee treats the amount as a distribution from the trust.

(d) *Definition of purported gift or bequest.* For purposes of this section, a purported gift or bequest is any transfer by a partnership or foreign corporation (other than a transfer for fair market value) to a person who is not a partner in the partnership or shareholder of the foreign corporation.

(e) *Effect on U.S. partner or shareholder.* This section applies only to computations of the U.S. donee's gross income. This section does not affect the U.S. tax treatment of a U.S. partner in the partnership or a U.S. shareholder of the foreign corporation.

(f) *Recharacterization by district director.* Notwithstanding any other provision in this section, if a U.S. donee receives a transfer that is subject to the rules of this section, the district director may recharacterize such transfer to prevent the avoidance of U.S. tax or clearly to reflect income. For example, the district director may determine, based upon the facts and circumstances, that a distribution from a partnership or foreign corporation is more properly characterized as a distribution from a trust.

(g) *De minimis exception.* This section shall not apply if, during the taxable year of a U.S. donee, the aggregate amount of purported gifts or bequests that is transferred to such U.S. donee

directly or indirectly from a partnership or foreign corporation does not exceed $10,000. The aggregate amount must include gifts or bequests from persons that the U.S. donee knows or has reason to know are related to the partnership or foreign corporation (within the meaning of section 643(i)).

(h) *Examples.* The following examples illustrate the rules of this section:

Example 1. FC is a foreign corporation that is wholly owned by A, a nonresident alien. FC distributes property directly to A's U.S. daughter, B, purportedly as a gift. Under paragraph (a)(2) of this section, B must treat the distribution as a dividend from FC. (However, if B can establish that the distribution exceeded FC's earnings and profits, B must treat such excess as an amount received in excess of basis under section 301(c)(3).) If FC is a passive foreign investment company, B must treat the amount as a distribution under section 1291. B will be treated as having the same holding period as A.

Example 2. FC is a foreign corporation that is wholly owned by A, a nonresident alien. FC creates and funds a revocable foreign trust, FT, from which a gratuitous transfer is made immediately to A's U.S. daughter, B. Thus, the transfer is out of trust corpus. FC is not treated as the owner of FT under sections 671 through 679. Under paragraph (c) of this section, B must treat the transfer as a dividend from FC, rather than a distribution from FT, if such treatment results in a higher U.S. tax liability.

(i) *Effective date.* The rules of this section are applicable for any transfer by a partnership or foreign corporation on or after August 20, 1996.

§ 1.672(f)–5 Special rules.

(a) *Transfers by certain beneficiaries to foreign settlor—(1) In general.* If, but for section 672(f)(5), a foreign person would be treated as the owner of any portion of a trust, any U.S. beneficiary of such trust shall be treated as the owner of a portion of the trust to the extent the U.S. beneficiary directly or indirectly made transfers of property to such foreign person (without regard to whether the U.S. beneficiary was a U.S. beneficiary at the time of any transfer) in excess of transfers to the U.S. beneficiary from the foreign person. The rule of this paragraph will not apply to the extent the U.S. beneficiary can demonstrate to the satisfaction of the district director that the transfer by the U.S. beneficiary to the foreign person was wholly unrelated to any transaction involving the trust. For purposes of this paragraph, a transfer of property does not include a nongratuitous transfer. See § 671–2(e)(4)(ii). In addition, a gift shall not be taken into account to the extent such gift would not be characterized as a taxable gift under section 2503(b). For a definition of *U.S. beneficiary*, see section 679.

(2) *Examples.* The following examples illustrate the rules of this section:

Example 1. A, a nonresident alien, contributes property to FC, a foreign corporation that is wholly owned by A. FC creates a foreign trust, FT, for the benefit of A and his children. FT is revocable by FC without the approval or consent of any other person. FC funds FT with the property received from A. A and his family move to the United States. Under paragraph (a)(1) of this section, A is treated as the owner of FT.

Example 2. B, a U.S. citizen, makes a gratuitous transfer of $1 million to his uncle, C, a nonresident alien. C creates a foreign trust, FT, for the benefit of B and his children. FT is revocable by C without the approval or consent of any other person. C funds FT with the property received from B. Under paragraph (a)(1) of this section, B is treated as the owner of FT. (B also would be treated as the owner of FT as a result of section 679.)

(b) *Different taxable years.* If a person has a different taxable year (as defined in section 7701(a)(23)) from the taxable year of the trust, an amount is currently taken into account in computing the income of such person for purposes of § 1.672(f)–1 if the amount is taken into account for the taxable year of such person that includes the last day of the taxable year of the trust.

(c) *Entity characterization.* Entities generally shall be characterized under U.S. income tax principles. See §§ 301.7701–1 through 301.7701–4 of this chapter. However, for purposes of § 1.672(f)–4, a transferor that is a wholly owned business entity shall be treated as a corporation, separate from its single owner. See § 301.7701–2(c)(2)(iii) of this chapter.

(d) *Effective date.* The rules of this section are generally applicable as of August 20, 1996. However, the rules in paragraph (c) of this section shall not be applicable until [date of publication as a final regulation in the **Federal Register**].

PART 301—PROCEDURE AND ADMINISTRATION

Par. 5. The authority citation for part 301 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.7701–2(c)(2)(iii) also issued under 26 U.S.C. 643(a)(7), 672(f)(4) and (6).

Par. 6. Section 301.7701–2 is amended by adding paragraph (c)(2)(iii) to read as follows:

§ 301.7701–2 Business entities; definitions.

* * * * *

(c) * * *

(2) * * *

(iii) *Special rule for foreign business entities that make purported gifts.* For the purposes of applying the rules of section 672(f)(4), a wholly owned business entity shall be treated as a corporation, separate from its single owner.

* * * * *

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 97–14735 Filed 6–4–97; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–251703–96]

RIN 1545–AU74

Residence of Trusts and Estates—7701

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations providing guidance relating to the definition of a trust as a United States person (domestic trust) or foreign trust. The proposed regulations reflect changes to the law made by the Small Business Job Protection Act of 1996 and affect the determination of the residency of trusts for federal tax purposes. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by August 4, 1997. Requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for September 16, 1997, at 10 a.m. must be submitted by August 26, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–251703–96), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–251703–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax—regs/comments.html.

The public hearing will be held in the Internal Revenue Service Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, James A. Quinn or Eliana Dolgoff, (202) 622–3060; concerning submissions and the hearing, Evangelista Lee, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 1907 of the Small Business Job Protection Act of 1996 (the Act), Public Law 104–188, 110 Stat. 1755 (August 20, 1996) amended sections 7701(a)(30) and (31) to provide a new rule for determining whether a trust is domestic or foreign (the new rule does not apply to estates), effective for tax years beginning after December 31, 1996, or at the election of the trustee of a trust to tax years ending after August 20, 1996. Section 7701(a)(30)(E) provides that the term *United States person* means any trust if (i) a court within the United States is able to exercise primary supervision over the administration of the trust (court test), and (ii) one or more United States fiduciaries have the authority to control all substantial decisions of the trust (control test). Section 7701(a)(31)(B) provides that the term *foreign trust* means any trust other than a trust described in section 7701(a)(30)(E).

Prior to the Act, section 7701(a)(31) provided that *foreign estate* and *foreign trust* mean an estate or trust, as the case may be, the income of which, from sources without the United States, which is not effectively connected with the conduct of a trade or business within the United States, is not includible in gross income under subtitle A. Accordingly, whether a trust was domestic or foreign depended on whether the trust was more comparable to a resident or nonresident alien individual. Thus, it was necessary to consider and weigh various factors such as the location of the assets, the country under whose laws the trust was created, the residence of the fiduciary, the nationality of the decedent or settlor, the nationality of the beneficiaries, and the location of the administration of the trust. See Rev. Rul. 60–181 (1960–1 C.B. 257), citing *B.W. Jones Trust* v. *Commissioner,* 46 B.T.A. 531 (1942), aff'd, 132 F.2d 914 (4th Cir. 1943).

The Act made a number of procedural and substantive changes to the tax treatment of foreign trusts that were designed to improve tax compliance and administration. In making these overall changes, Congress believed that it would be appropriate to have an objective test for determining whether a trust is foreign or domestic. Consequently, it enacted the two-part test set forth above.

Explanation of Provisions

The proposed regulations provide that a foreign trust is taxed in the same manner as a nonresident alien. Thus, once a trust is determined to be a foreign trust, the residency of the fiduciary of the trust is not relevant in determining the residence of the trust. Additionally, section 7701(b) does not apply to determine whether a trust is a resident of the United States, and a foreign trust is not present in the United States for purposes of section 871(a)(2).

The proposed regulations require that the terms of the trust instrument and applicable law be applied to determine whether the court test and the control test are met. The residency of a trust may change if the result of the court test or control test changes.

The Safe Harbor

The IRS and Treasury Department were concerned that the lack of authority construing trust law in many states would make it difficult for taxpayers to determine whether a trust is domestic or foreign under the court and control tests. Specifically, it may be difficult to determine whether the court of a particular state would assert primary supervision over the administration of a trust if that trust had never appeared before a court. Therefore, the proposed regulations provide a safe harbor based upon the principle that when the administration of a trust is conducted entirely within a particular locality, the local courts will exercise primary supervision over the trust. Restatement (2d) of Conflicts of Laws § 267. The safe harbor provides that a trust is a domestic trust if, pursuant to the terms of a trust instrument, the trust has only United States fiduciaries, such fiduciaries are administering the trust exclusively in the United States, and the trust is not subject to an automatic migration provision. The IRS and Treasury Department request comments on whether this special rule is sufficient to address the lack of a well-developed body of local law.

The Court Test

The proposed regulations define the relevant terms for purposes of the court test. The term *court* includes any federal, state, or local court.

The term the *United States includes* only the States and the District of Columbia. Accordingly, a court within a territory or possession of the United States or within a foreign country is not a court within the United States and a trust subject to the primary supervision of such a court fails to meet the court test. The IRS and Treasury Department request comments on the conclusion that the term *the United States* is used in its geographical sense and therefore excludes territories and possessions.

The term *is able to exercise* means that if petitioned, a court has or would have the authority under applicable law to render orders or judgments resolving issues concerning administration of the trust.

The term *primary supervision* means that a court has or would have the authority to determine substantially all issues regarding the administration of the trust. Simply having jurisdiction over the trustee, a beneficiary, or trust property is not primary supervision.

The term *administration* of the trust means the carrying out of the duties imposed on a fiduciary by the terms of the trust instrument and applicable law.

In order to provide certainty to taxpayers, the proposed regulations provide some bright-line rules for satisfying the court test. A trust meets the court test if an authorized fiduciary registers the trust in a court within the United States under a state statute that has provisions substantially similar to Article VII, *Trust Administration,* of the Uniform Probate Code.

In the case of a testamentary trust established under a will probated within the United States, if all fiduciaries of the trust have been qualified as trustees of the trust by a court within the United States, the trust meets the court test.

In the case of an inter vivos trust, if the fiduciaries or beneficiaries take steps with a court within the United States (such as the filing of a written request with the court) that cause the administration of the trust to be subject to the primary supervision of the court, the trust meets the court test.

The proposed regulations clarify that if both a United States court and a foreign court are able to exercise primary supervision over the administration of the trust, the trust will be considered to meet the court test.

The proposed regulations contain rules addressing automatic migration clauses, also known as ''flee clauses.'' The proposed regulations provide that the court test is not met if a United States court's attempt to assert jurisdiction or otherwise supervise the administration of the trust directly or indirectly would cause the trust to migrate from the United States.

The Control Test

The control test requires that one or more United States fiduciaries have the authority to control all substantial decisions of the trust. Under the proposed regulations, the term fiduciary refers to any person described in section 7701(a)(6) and § 301.7701–6(b). For purposes of the control test, any other person that has the power to control substantial decisions of the trust, for example a trust protector, will also be treated as a fiduciary. The proposed regulations treat such persons as fiduciaries because they are exercising powers traditionally held by fiduciaries or because they can effectively exercise control over the fiduciaries.

Substantial decisions are those decisions that persons are authorized or required to make under the terms of the trust instrument and applicable law and that are not ministerial. Included in the proposed regulations is a nonexclusive list of substantial decisions. Substantial decisions do not include decisions exercisable by a grantor that is not a fiduciary of the trust, or decisions exercisable by a beneficiary that affect only the beneficiary's interest in the trust.

In accordance with the legislative history, the proposed regulations provide that United States fiduciaries have the authority to control all substantial decisions of the trust when they have the power by vote or otherwise to make all of the substantial decisions of the trust and no foreign fiduciary has the power to veto the substantial decisions of the United States fiduciaries.

The proposed regulations contain rules addressing automatic migration clauses, also known as ''flee clauses.'' The proposed regulations provide that the control test is not met if an attempt by any governmental agency or creditor to collect information from or assert a claim against the trust would cause one or more substantial decisions of the trust to no longer be controlled by United States fiduciaries.

The proposed regulations are proposed to apply to trusts for taxable years beginning after December 31, 1996, and to a trust whose trustee has elected to apply sections 7701(a)(30) and (31) to the trust for taxable years ending after August 20, 1996, under section 1907(a)(3)(B) of the Act. Notice 96–65 (1996–52 I.R.B. 28) grants trusts that meet the conditions specified in that notice additional time to comply with the new domestic trust criteria contained in the Act and allows such trusts to continue to file as domestic trusts during the period specified in that notice. Notice 96–65 also addresses the time and manner for making the election provided by the Act to apply the new domestic trust criteria retroactively for taxable years of the trust ending after August 20, 1996. Notice 96–65 remains in effect and should be consulted for these purposes.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for September 16, 1997, at 10 a.m. in the Internal Revenue Service Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by August 4, 1997, and submit an outline of the topics to be discussed and the time to be devoted to each topic (preferably a signed original and eight (8) copies) by August 26, 1997.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information: The principal authors of these regulations are James A. Quinn and Eliana Dolgoff of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 301.7701–5 [Amended]

Par. 2. The last sentence of section 301.7701–5 is removed.

Par. 3. Section 301.7701–7 is added to read as follows:

§ 301.7701–7 Trusts—domestic and foreign.

(a) *In general.* (1) A trust is a United States person if—

(i) A court within the United States is able to exercise primary supervision over the administration of the trust (court test); and

(ii) One or more United States fiduciaries have the authority to control all substantial decisions of the trust (control test).

(2) A trust is a United States person for purposes of the Internal Revenue Code at any time that the trust meets both the court test and the control test. For purposes of the regulations in this chapter, the term *domestic trust* means a trust that is a United States person. The term *foreign trust* means any trust other than a domestic trust.

(3) Except as otherwise provided in part I, subchapter J, chapter 1 of the Code, the taxable income of a foreign trust is computed in the same manner as the taxable income of a nonresident alien. Thus, section 7701(b) does not apply to determine whether a foreign trust is a resident alien. In addition, a foreign trust is not considered to be present in the United States for purposes of section 871(a)(2).

(b) *Applicable law.* The terms of the trust instrument and applicable law must be applied to determine whether the court test and the control test are met.

(c) *In general*—(1) *Safe harbor.* A trust is a domestic trust if the trust has only United States fiduciaries, as defined in paragraph (e) of this section, the trust is administered exclusively in the United States pursuant to the terms of a trust instrument, and the trust is not subject to an automatic migration provision described in paragraph (d)(2)(v) or (e)(3) of this section.

(2) *Example.* The following example illustrates the rule of paragraph (c)(1) of this section:

Example. A executes a trust instrument for the equal benefit of *A*'s two children, *B* and *C.* The trust instrument provides that *DC,* a State *Y* corporation, is the only trustee of the trust. Pursuant to the terms of the trust instrument, the trust is administered in State *Y,* a state within the United States. The trust is not subject to an automatic migration provision described in paragraph (d)(2)(v) or (e)(3) of this section. No person other than *DC* has any power over the trust. The trust satisfies the safe harbor of paragraph (c)(1) and is a domestic trust.

(d) *The court test*—(1) *Definitions.* The following definitions apply for purposes of the court test:

(i) *Court.* The term *court* includes any federal, state, or local court.

(ii) *The United States.* The term the United States is used in this section in a geographical sense. Thus, for purposes of the court test, the United States includes only the States and the District of Columbia. See section 7701(a)(9). Accordingly, a court within a territory or possession of the United States or within a foreign country is not a court within the United States.

(iii) *Is able to exercise.* The term is *able to exercise* means that a court has or would have the authority under applicable law to render orders or judgments resolving issues concerning administration of the trust.

(iv) *Primary supervision.* The term *primary supervision* means that a court has or would have the authority to determine substantially all issues regarding the administration of the entire trust. A court may have primary supervision even if another court has jurisdiction over a trustee, a beneficiary, or trust property.

(v) *Administration.* The term *administration* of the trust means the carrying out of the duties imposed on a fiduciary by the terms of the trust instrument and applicable law, including maintaining the books and records of the trust, filing tax returns, defending the trust from suits by creditors, and determining the amount and timing of distributions.

(2) *Situations that meet the court test*—(i) *Uniform Probate Code.* A trust meets the court test if a trust is registered by an authorized fiduciary in a court within the United States under a state statute that has provisions substantially similar to Article VII, *Trust Administration,* of the Uniform Probate Code, 8 Uniform Laws Annotated 1 (West Supp. 1997), available from the National Conference of Commissioners on Uniform State Laws, 676 North St. Clair Street, Suite 1700, Chicago, Illinois 60611.

(ii) *Testamentary trust.* In the case of a trust created pursuant to the terms of a will probated within the United States (other than an ancillary probate), if all fiduciaries of the trust have been qualified as trustees of the trust by a court within the United States, the trust meets the court test.

(iii) *Inter vivos trust.* In the case of a trust other than a testamentary trust, if the fiduciaries and/or beneficiaries take steps with a court within the United States that cause the administration of the trust to be subject to the primary supervision of the court, the trust meets the court test.

(iv) *A United States and a foreign court are able to exercise primary supervision over the administration of the trust.* If both a United States court and a foreign court are able to exercise primary supervision over the administration of the trust, the trust meets the court test.

(v) *Automatic migration provisions.* Notwithstanding any other provision in this section, a court within the United States is not considered to have primary supervision over the administration of the trust if the trust instrument provides that a United States court's attempt to assert jurisdiction or otherwise supervise the administration of the trust directly or indirectly would cause the trust to migrate from the United States.

(3) *Examples.* The following examples illustrate the rules of this paragraph (d):

Example 1. A, a United States citizen, executes a trust instrument for the equal benefit of *A*'s two United States children. The trust instrument provides that *DC,* a domestic corporation, is to act as trustee of the trust and that the trust is to be administered in Country *X,* a foreign country. The trust instrument provides that the law of State *Y,* a state within the United States, is to govern the trust. Under the law of Country *X,* a court within Country *X* is able to exercise primary supervision over the administration of the trust but, as required by the trust instrument, applies the law of State *Y* to the trust. No court within the United States is able to exercise primary supervision over the administration of the trust. The trust fails to satisfy the court test and therefore is a foreign trust.

Example 2. Trust *T* owns a single asset, an interest in land located in State *Y,* a state within the United States. Under the law of State *Y,* a trust owning solely real property within the state is subject to the primary supervision over the administration of the trust by a court within State *Y.* The trust satisfies the court test.

Example 3. A, a United States citizen, executes a trust instrument for his own benefit and the benefit of *B,* his United States spouse. The trust instrument provides that the trust is to be administered in State *Y,* a state within the United States, by *DC,* a State *Y* corporation. The trust instrument further provides that in the event that a creditor sues the trustee in a United States court, the trust will migrate from State *Y* to Country *Z,* a foreign jurisdiction, so that no United States court will have jurisdiction over the trust. A court within the United States is not able to exercise primary supervision over the administration of the trust because the United States court's jurisdiction over the administration of the trust is automatically terminated in the event the court attempts to assert jurisdiction. Therefore, the trust fails to satisfy the court test from the time of its creation and is a foreign trust.

(e) *Control test*—(1) *Definitions*—(i) *United States fiduciary.* The term *fiduciary* includes any person described in section 7701(a)(6) and § 301.7701–6(b). In addition, for purposes of this section, any other person who has the power to control one or more substantial decisions of the trust (and therefore has a power ordinarily held by a fiduciary) will be treated as a fiduciary. A person may be treated as a fiduciary even if the trust instrument provides for the person to be relieved of personal liability for violation of duties. A United States fiduciary is a fiduciary that is a United States person within the meaning of section 7701(a)(30). For example, a fiduciary which is a United States corporation owned by a nonresident alien is a United States fiduciary.

(ii) *Substantial decisions.* (A) The term *substantial decisions* means those decisions (other than those described in paragraph (e)(1)(ii)(B) of this section) that persons are authorized or required to make under the terms of the trust instrument and applicable law and that are not ministerial. Substantial decisions include, but are not limited to—

(*1*) Whether and when to distribute income or corpus;

(*2*) The amount of any distributions;

(*3*) The selection of a beneficiary;

(*4*) The power to make investment decisions;

(*5*) Whether a receipt is allocable to income or principal;

(*6*) Whether to terminate the trust;

(*7*) Whether to compromise, arbitrate, or abandon claims of the trust;

(*8*) Whether to sue on behalf of the trust or to defend suits against the trust; and

(*9*) Whether to remove, add, or replace a trustee.

(B) Substantial decisions do not include decisions exercisable by a grantor, unless the grantor is acting as a fiduciary under section 7701(a)(6) and § 301.7701–6(b). In addition, substantial decisions do not include decisions exercisable by a beneficiary, unless the beneficiary is acting as a fiduciary under section 7701(a)(6) and § 301.7701–6(b), that affect solely the portion of the trust in which the beneficiary has an interest. Decisions that are ministerial include decisions regarding details such as the bookkeeping, the collection of rents, and the execution of investment decisions made by the fiduciaries.

(iii) *Control.* Control means having the power, by vote or otherwise, to make all of the substantial decisions of the trust, with no other person having the power to veto the substantial decisions. However, the ability of a grantor (other than a grantor acting as a fiduciary under section 7701(a)(6) and § 301.7701–6(b)) to veto another person's substantial decision does not cause such person to fail to control that substantial decision. In addition, the ability of a beneficiary (other than a beneficiary acting as a fiduciary under section 7701(a)(6) and § 301.7701–6(b)) to veto another person's substantial decision that affects solely the portion of the trust in which the beneficiary has an interest does not cause such person to fail to control that substantial decision.

(2) *Replacement of a fiduciary.* In the event of an inadvertent change in the fiduciaries that would cause a change in the residency of a trust, the trust is allowed six months from the date of the change in the fiduciaries to adjust either the fiduciaries or the residence of the fiduciaries so as to avoid a change in the residence of the trust. Inadvertent changes in the fiduciaries include the death of a fiduciary or the abrupt resignation of a fiduciary. If the adjustment is made within six months, the trust is treated as retaining its pre-change residence during the six-month period. If the adjustment is not made within six months, the trust residence changes as of the date of the inadvertent change.

(3) *Automatic migration provisions.* Notwithstanding any other provision in this section, United States fiduciaries are not considered to control all substantial decisions of the trust if an attempt by any governmental agency or creditor to collect information from or assert a claim against the trust would cause one or more substantial decisions of the trust to no longer be controlled by United States fiduciaries.

(4) *Examples.* The following examples illustrate the rules of this paragraph (e):

Example 1. A is a nonresident alien individual. *A* is the grantor and beneficiary of an individual retirement account (IRA) and has the exclusive power to make decisions regarding withdrawals from the IRA and to direct its investments. *A* is not a fiduciary as defined in paragraph (e)(1)(i) of this section. The IRA has a single United States trustee and no foreign trustees. The United States trustee has the power to control all decisions of the trust other than withdrawal and investment decisions. In this case, decisions regarding withdrawals and the trust's investments are not substantial decisions because these decisions are solely exercisable by the grantor. Therefore, the control test is satisfied because the United States fiduciary controls all substantial decisions.

Example 2. A is a nonresident alien individual. *A* is the grantor of a trust and has the power to revoke the trust, in whole or in part and revest assets in *A*. *A* is the owner of the trust under section 676. *A* is not a fiduciary as defined in paragraph (e)(1)(i) of this section. The trust has two trustees, *B*, a United States person and *C*, a nonresident alien. *C*'s only power is the power to make distributions from the trust and *C* can exercise this power without authorization from *B*. In this case, decisions exercisable by *A* to have trust assets distributed to *A* are not substantial decisions because these decisions are exercisable by the grantor. However, distribution decisions exercisable by *C* are substantial decisions. Therefore, the trust is a foreign trust because *B* does not control all substantial decisions of the trust.

Example 3. Trust has three fiduciaries, *A*, *B*, and *C*. *A* and *B* are United States citizens and *C* is a nonresident alien. The trust instrument directs that *C* is to make all of the trust's investment decisions, but that *A* and *B* may veto *C*'s investment decisions. *A* and *B* cannot act to make the investment decisions on their own. The control test is not satisfied because the United States fiduciaries, *A* and *B*, do not have the power to make all of the substantial decisions of the trust.

Example 4. Trust has two fiduciaries, *A* and *B*, both of whom are United States citizens. The trust instrument provides that *C*, a foreign corporation, will serve as an advisor and recommend investments to *A* and *B*. *A* and *B* may accept or reject *C*'s recommendations and can make investments that *C* has not recommended. *A* and *B* control all other decisions of the trust. *A* and *B* delegate to *C* the authority to execute the investment decisions approved by *A* and *B*. The control test is satisfied because the United States fiduciaries control all substantial decisions of the trust.

Example 5. Trust has three fiduciaries, *A*, *B*, and *C*. *A* and *B* are United States citizens and *C* is a nonresident alien. The trust instrument provides that no substantial decisions of the trust can be made unless there is unanimity among the fiduciaries. The control test is not satisfied because the United States fiduciaries do not control all the substantial decisions of the trust. No substantial decisions can be made without *C*'s agreement.

Example 6. (i) A trust that satisfies the court test has three fiduciaries, *A*, *B*, and *C*. *A* and *B* are United States citizens and *C* is a nonresident alien. Decisions are made by majority vote of the fiduciaries. The trust instrument provides that upon the death or resignation of any of the fiduciaries, *D*, a nonresident alien, is the successor fiduciary. *A* dies and *D* becomes a fiduciary of the trust. Two months after *A* dies, *E*, a United States person, replaces *D* as a fiduciary of the trust. During the period after *A*'s death and before *E* begins to serve, the trust satisfies the control test and remains a domestic trust.

(ii) Assume the same facts as in paragraph (i) of this *Example 6* except that at the end of the six-month period after *A*'s death, *D* has not been replaced and remains a fiduciary of the trust. The trust became a foreign trust on the date *A* died.

Example 7. Trust has three beneficiaries, *A*, *B* and *C*, all of whom are nonresident aliens. Each beneficiary has the right to receive all of the income from his or her share of the trust for life. Each beneficiary also has a limited power of appointment over his or her respective share of the trust. The trust has only one fiduciary, *D*, a United States citizen. The trust meets the control test because the United States fiduciary controls all substantial decisions of the trust notwithstanding the beneficiaries' powers of appointment over their respective interests.

(f) *Effective date.* This section is applicable to trusts for taxable years beginning after December 31, 1996, and to trusts whose trustee has elected to apply sections 7701(a)(30) and (31) to the trust for taxable years ending after August 20, 1996, under section 1907(a)(3)(B) of the Small Business Job Protection Act of 1996, Public Law 104–188, 110 Stat. 1755 (26 U.S.C. 7701 note).

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 97–14736 Filed 6–4–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[SPATS No. ND–036–FOR; State Program Amendment No. XVIV]

North Dakota Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the North Dakota regulatory program (hereinafter, the

''North Dakota program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of repealing statutes pertaining to the Reclamation Research Advisory Committee. The amendment is intended to revise the North Dakota program to improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m. m.d.t. July 7, 1997. If requested, a public hearing on the proposed amendment will be held on June 30, 1997. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t. on June 20, 1997.

ADDRESSES: Written comments should be mailed or hand delivered to the Field Office Director's name and address listed below. Mr. Guy Padgett, Director, Casper Field Office, U.S. Office of Surface Mining, 100 East ''B'' Street, Room 2128, Casper, Wyoming 82601–1918.

Copies of the North Dakota program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Mr. Guy Padgett, Director, Casper Field Office, U.S. Office of Surface Mining Reclamation and Enforcement, 100 East ''B'' Street, Room 2128, Casper, Wyoming 82601–1918

Mr. James R. Deutsch, Director, Reclamation Division, Public Service Commission, State Capitol—600 E. Boulevard, Bismarck, North Dakota 58505–0480, Telephone: 701/328–2400.

FOR FURTHER INFORMATION CONTACT: Mr. Guy Padgett, Telephone: 307/261–6550.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program. General background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval of the North Dakota program can be found in the December 15, 1980 **Federal Register** (45 FR 82214). Subsequent actions concerning North Dakota's program and program amendments can be found at 30 CFR 934.15, 934.16, and 934.30.

II. Proposed Amendment

By letter dated May 2, 1997, North Dakota submitted a proposed amendment to its program pursuant to SMCRA (Amendment number XXIV), administrative record No. ND–Y–01, 30 U.S.C. 1201 *et seq.*). North Dakota submitted the proposed amendment on its own initiative. The provisions of the North Dakota Century Code that North Dakota proposed to delete were: NDCC 38–14.1–04.1, Reclamation research advisory committee; NDCC 38–14.1–04.2, Advisory Committee responsibilities; NDCC 38–14.1–04.3, Reclamation research objective.

Specifically, North Dakota proposed to repeal the provisions in its law that set up its Reclamation Research Advisory Committee since this committee is no longer necessary.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the North Dakota program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.d.t. on June 20, 1997. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meeting will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program

provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

6. Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 29, 1997.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 97–14728 Filed 6–4–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 2 and 3

[Docket No. 970428100–7100–01]

RIN 0651–AA87

Miscellaneous Changes to Trademark Trial and Appeal Board Rules

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office (PTO) proposes to amend its rules governing practice before the Trademark Trial and Appeal Board (Board) to expedite inter partes proceedings. These proposed changes enlarge the time periods for discovery, testimony, and response to motions, and concomitantly limit the circumstances in which extensions may be obtained. In addition, they impose strict limitations on the number of written discovery requests which one party may serve upon another party in a proceeding. Other proposed inter partes rule amendments clarify the rules, conform the rules to current practice, simplify practice, and correct cross-references. Finally the PTO proposes to amend 37 CFR 2.76(a), 2.76(g), and 2.76(h), which affect practice in ex parte appeals to the Board, to conform these rules to current practice.

DATES: Written comments must be received on or before August 4, 1997 to ensure consideration. An oral hearing will not be conducted.

ADDRESSES: Written comments may be sent by mail addressed to Assistant Commissioner for Trademarks, Box TTAB—No Fee, 2900 Crystal Drive, Arlington, Virginia 22202–3513, marked to the attention of Ellen J. Seeherman. Written comments may also be sent by facsimile transmission to (703) 308–9333, marked to the attention of Ellen J. Seeherman. Written comments will be available for public inspection in Suite 900, on the 9th Floor of the South Tower Building, 2900 Crystal Drive, Arlington, Virginia 22202–3513.

FOR FURTHER INFORMATION CONTACT: Ellen J. Seeherman, Administrative Trademark Judge, Trademark Trial and Appeal Board, by telephone at (703) 308–9300, extension 206, or by mail marked to her attention and addressed to Assistant Commissioner for Trademarks, Box TTAB—No Fee, 2900 Crystal Drive, Arlington, Virginia 22202–3513 or by facsimile transmission marked to her attention and sent to (703) 308–9333.

SUPPLEMENTARY INFORMATION: This notice of proposed rulemaking is designed to improve practice and expedite proceedings in inter partes cases before the Trademark Trial and Appeal Board (Board). In addition, the proposed amendments codify and clarify certain practices of the Board and correct certain references to citations of the Trademark Act and the Code of Federal Regulations.

The proposed amendments, and the reasons for the amendments, are discussed below.

The Board's workload has increased dramatically in the last several years because of a rapid growth in the number of inter partes and ex parte proceedings filed with the Board. Along with this increase in the number of proceedings, there has been a marked increase in the number of motions and other papers filed in each inter partes case. It appears to the Board that this proliferation of papers has been due, in large part, to the fact that in recent years, many attorneys practicing before the Board in inter partes cases have taken an increasingly aggressive approach by filing every possible motion that may be filed and by responding to every paper filed to the point of sur-reply and sur-sur-reply briefs. It also appears that some of the papers filed are part of a strategy to bury the adverse party with paper, so that it becomes too expensive for that party to proceed with the case, and the party is forced to settle or capitulate. Whatever the reason, in many cases the number of papers filed goes far beyond what is reasonably needed for a Board proceeding. The filing of these papers causes needless work and expense for the parties and the Board. Moreover, the rapid growth in the number of papers filed has caused substantial delays in all phases of the Board's work, including the resolution of motions and the final determination of proceedings.

A number of the rule amendments proposed in this notice, namely, the proposed amendments to §§ 2.120(a), 2.120(d)(1), 2.120(d)(2), 2.120(e), 2.120(h), 2.121(a)(1), 2.121(c), 2.127(a), 2.127(b), 2.127(d), and 2.127(e)(1), are designed to address these problems by changing certain Board practices relating to discovery, testimony periods, and motions. In addition, § 2.120(a) is proposed to be amended to clarify Board discovery practice in the wake of the December 1, 1993 amendments to the Federal Rules of Civil Procedure.

Other amendments proposed in this notice serve to clarify the rules, conform the rules to current Board practice, simplify practice, and correct certain cross-references in the rules. The rules affected by these proposed amendments are §§ 2.76(a), 2.76(g), 2.76(h), 2.85(e), 2.87(c), 2.101(d)(1), 2.102(d), 2.111(b), 2.111(c)(1), 2.117(a), 2.117(b), 2.119(d), 2.120(g)(1), 2.121(d), 2.122(b)(1), 2.122(d)(1), 2.123(b), 2.123(f), 2.125(c), 2.127(f), 2.134(a), and 2.146(e)(1).

Proposed Amendments Relating to Discovery

It is the experience of the Board that a large number of motions and requests are filed in connection with discovery. Many of these filings relate to repeated requests for extensions of time,

specifically, extensions of the discovery period and the time to respond to discovery requests.

Moreover, at present, the Board sets the closing date for the taking of discovery, with the date set being 90 days after the date of the initial trial order. However, discovery in Board proceedings opens at the times specified in Rules 30, 33, 34, and 36 of the Federal Rules of Civil Procedure as they read prior to the December 1, 1993 amendments to those rules. *See* ''Effect of December 1, 1993 Amendments to the Federal Rules of Civil Procedure on Trademark Trial and Appeal Board Inter Partes Proceedings,'' 1159 TMOG 14 (February 1, 1994). Thus, interrogatories, requests for production of documents and things, and requests for admission may be served upon the plaintiff after the proceeding commences (i.e., after the notice of opposition or petition for cancellation is filed in an opposition proceeding, and after the mailing by the Board of the notice of institution in an interference or concurrent use proceeding), and upon the defendant with or after service of the complaint by the Board. Discovery depositions generally may be taken by any party after commencement of the proceeding, except that the Board's permission must be obtained first in certain specified situations. Further, the Board still follows the practice embodied in Rules 33(a), 34(b), and 36(a) of the Federal Rules of Civil Procedure, as they read prior to the December 1, 1993 amendments, that a defendant may serve responses to interrogatories, requests for production of documents and things, and requests for admission either within 30 days after service of a discovery request (35 days if service of the request for discovery is made by first-class mail, ''Express Mail,'' or overnight courier—*see* § 2.119(c)), or within 45 days after service of the complaint upon it by the Board, whichever is later. These practices relating to the opening of discovery and the time for the service of discovery responses by the defendant are complicated, and unpopular with practitioners.

In order to simplify the opening of discovery, and reduce the number of motions to extend the discovery period and the time to respond to discovery requests, it is proposed to amend § 2.120(a) to provide that the Board will specify the opening and closing dates for the taking of discovery, and that the discovery period will be set for a period of 180 days. The section is also proposed to be amended to include a provision that responses to interrogatories, requests for production of documents and things, and requests for admission must be served within 40 days from the date of service of such discovery requests.

Because of the proposed enlargements of the discovery and response periods, it is also proposed to limit the circumstances in which extensions will be granted. Specifically, § 2.120(a) is proposed to be amended to provide that extensions of the discovery period will be granted only upon stipulation of the parties approved by the Board, while the time to respond to interrogatories, requests for production of documents and things, and requests for admission may be extended only upon stipulation of the parties or upon motion showing extraordinary circumstances granted by the Board. (The Board, of course, retains its inherent power to sua sponte reset, and thereby extend, the discovery period and response times.) In addition, the section is proposed to be amended to include a provision (now found, in somewhat different form, in § 2.121(a)(1)), that the resetting of a party's time to respond to an outstanding request for discovery will not result in the automatic rescheduling of the discovery and/or testimony periods, and that ''the discovery period will be rescheduled only upon stipulation of the parties approved by the Board, and testimony periods will be rescheduled only upon stipulation of the parties approved by the Board, or upon motion showing extraordinary circumstances approved by the Board.'' The quoted portion is somewhat different from its counterpart in present § 2.121(a), but is consistent with the provisions of § 2.121(a)(1) as proposed to be amended. Because of the proposed amendment of § 2.120(a) to include provisions governing discovery response periods and extensions thereof, it is believed that § 2.120(a), rather than § 2.121(a)(1), which governs the scheduling and rescheduling of testimony periods, is the most logical place for the provision now proposed to be moved.

The enlargement of the discovery period and of the time to respond to discovery requests, and the concomitant limitations on the situations in which extensions of these times will be granted, will reduce the number of extension requests filed, reduce delays in the service of discovery responses, and expedite proceedings before the Board.

Another proposed change to § 2.120(a) clarifies Board discovery practice in the wake of the December 1, 1993 amendments to the Federal Rules of Civil Procedure. Section 2.116(a) provides that, except as otherwise provided, and wherever applicable and appropriate, procedure and practice in Board inter partes proceedings shall be governed by the Federal Rules of Civil Procedure. Section 2.120(a) provides, in part, that the provisions of the Federal Rules of Civil Procedure relating to discovery shall apply in opposition, cancellation, interference, and concurrent use registration proceedings except as otherwise provided in § 2.120; and that the opening of discovery is governed by the Federal Rules of Civil Procedure. Thus, where the Board has its own rule concerning a particular matter of practice or procedure, that rule governs; if there is no Board rule concerning the matter, the Federal Rules of Civil Procedure apply, where applicable and appropriate.

The December 1, 1993 amendments to the Federal Rules of Civil Procedure substantially changed discovery procedures in civil actions. The amended rules included provisions which, inter alia, mandated automatic disclosure, scheduling conferences, conferences to discuss settlement and to develop a plan for discovery, and transmission to the court of a written report outlining the discovery plan. Moreover, under the amended Federal Rules, the commencement of discovery hinged upon completion of the mandated discovery plan conference. The PTO concluded that the application of these provisions in inter partes proceedings before the Board would increase the complexity and cost of the proceedings and be unduly burdensome to the parties and the Board. Therefore, in a notice published in the *Official Gazette*, the Commissioner stated that these provisions were not appropriate for, and would not be applicable in, Board proceedings. *See* ''Effect of December 1, 1993 Amendments to the Federal Rules of Civil Procedure on Trademark Trial and Appeal Board Inter Partes Proceedings,'' 1159 TMOG 14 (February 1, 1994). The Commissioner also stated that the PTO would, in due course, publish a notice of proposed rulemaking to amend, as might be necessary, the trademark rules governing practice and procedure in inter partes proceedings before the Board. Accordingly, § 2.120(a) is proposed to be amended to specify that the provisions of the Federal Rules relating to automatic disclosure, scheduling conferences, conferences to discuss settlement and to develop a discovery plan, and transmission to the court of a written report outlining the discovery plan, do not apply to Board proceedings, and that the Board will specify the opening and closing dates

for the taking of discovery. In addition, the first sentence of the section, which specifies that the provisions of the Federal Rules of Civil Procedure shall apply in opposition, cancellation, interference, and concurrent use registration proceedings, except as otherwise provided in § 2.120, is proposed to be amended to include the prefatory words ''Wherever appropriate.'' The proposed amendment is consistent with an analogous provision in § 2.116(a), and makes it clear that even when there is no provision in § 2.120 relating to a particular discovery matter, the provisions of the Federal Rules of Civil Procedure relating to that matter apply only if they are appropriate for Board proceedings.

Another of the proposed amendments to § 2.120(a) would require that interrogatories, requests for production of documents and things, and requests for admission be served in sufficient time for responses to fall due prior to the close of the discovery period, and that discovery depositions be noticed and taken prior to the close of the discovery period. It is believed that the proposed 180-day discovery period will allow more than sufficient time for the service of discovery requests to be made early enough in the discovery period so that responses to such requests will fall due prior to the close of discovery. Moreover, as indicated hereafter, § 2.120(e) is proposed to be amended to provide that a motion to compel discovery must be filed within 30 days after the close of the discovery period, as originally set or as reset. The proposed requirement that discovery requests be served in sufficient time for responses to fall due prior to the close of discovery will enable the propounding party to file a motion to compel, if such a motion is deemed necessary, within 30 days after the close of the discovery period. Litigants should note that if they agree to an extension of time to respond to discovery requests, such that the responses would be due shortly before or after the due date for any motion to compel, then they should also stipulate to reschedule the closing date of the discovery period, if the propounding party wishes to preserve its time to file a motion to compel.

The Board has observed that parties misuse the discovery process for purposes of harassing their adversaries, resulting in numerous motions to compel and motions for protective orders. Section 2.120(d) was amended effective November 16, 1989, to restrict to 75 (counting subparts) the total number of interrogatories a party may serve, in a proceeding, upon another party. The final rule notice was published in the **Federal Register** on August 22, 1989, at 54 FR 34886 and in the *Patent and Trademark Office Official Gazette* of September 12, 1989, at 1106 TMOG 26. It is the Board's experience that, despite that limitation, parties continue to serve interrogatories, as well as other written discovery requests, which are irrelevant, unnecessary, and/or harassing. In view thereof, and given the restricted scope of Board proceedings, and the availability of the discovery deposition as an alternate and/or additional discovery device, it is the Board's belief that the total number of discovery requests which one party may serve upon another party in a proceeding should be limited to 25 interrogatories (counting subparts), 15 requests for production of documents and things (counting subparts), and 25 requests for admission (counting subparts). Sections 2.120(d)(1), 2.120(d)(2), and 2.120(h) are proposed to be amended to state such limitations. Moreover, because it is believed that 25 interrogatories are an adequate number for a proceeding before the Board, the motion procedure for obtaining leave to serve interrogatories in excess of the limit set forth in § 2.120(d)(1) is proposed to be deleted. Similarly, no such procedure is proposed to be provided for requests for production of documents and things and requests for admission. The provisions proposed to be added to §§ 2.120(d)(2) and 2.120(f), including provisions governing the action which may be taken by a party served with discovery requests which it believes to be excessive in number, parallel those of § 2.120(d)(1), as proposed to be amended. It is believed that the proposed limitations on the number of interrogatories, document production requests, and requests for admission that may be served will reduce the number of motions to compel filed, since the parties presumably will use the more limited number of discovery requests for only relevant and appropriate inquiries, and not for purposes of harassment. A reduction in the number of motions to compel filed will serve to expedite proceedings.

The first sentence of § 2.120(h), which provides that requests for admission shall be governed by Rule 36 of the Federal Rules of Civil Procedure, except that the Board does not have authority to award any expenses to any party, is proposed to be deleted. The sentence suggests that the only provision in Federal Rule 36 which does not apply in Board proceedings is that pertaining to the awarding of expenses. However, there are also other provisions in Rule 36 which do not apply in Board proceedings. For example, the provision of Rule 36(a), that without leave of court or written stipulation, requests for admission may not be served before the time specified in Rule 26(d) of the Federal Rules of Civil Procedure, is not applicable in Board proceedings. *See* ''Effect of December 1, 1993 Amendments to the Federal Rules of Civil Procedure in Trademark Trial and Appeal Board Inter Partes Proceedings,'' *supra*. Moreover, § 2.120(a), as proposed to be amended, specifies that wherever appropriate, the provisions of the Federal Rules of Civil Procedure relating to discovery shall apply in opposition, cancellation, interference, and concurrent use registration proceedings, except as otherwise provided in § 2.120. Further, §§ 2.120(g)(1) and 2.127(f), as proposed to be amended, provide that the Board will not hold any person in contempt or award any expenses to any party. Accordingly, the first sentence of § 2.120(h) is proposed to be deleted because it is redundant and confusing.

Section 2.120(h) is also proposed to be amended to provide that a motion to test the sufficiency of an answer or objection to a request for admission must be filed within 30 days after the close of the discovery period, as originally set or as reset. In addition, the section is proposed to be amended to specify that when a party files a motion to test the sufficiency of an answer or objection to a request for admission, the case will be suspended by the Board with respect to all matters not germane to the motion, and no party should file any paper which is not germane to the motion, except as otherwise specified in the Board's suspension order. These proposed provisions correspond to similar provisions proposed to be added to § 2.120(e), which governs motions to compel discovery. It is the intention of the Board, when setting trial dates in cases arising under these rules as proposed to be amended, to schedule an interval of 60 days between the closing date of the discovery period and the opening date of the first testimony period. The motion to compel and the motion to test the sufficiency of an answer or objection to a request for admission deal with pre-trial matters and should, therefore, be filed and determined prior to trial. The proposed provisions governing the time for filing these motions and the suspension of proceedings pending the determination thereof, coupled with the Board's intention to schedule an interval of 60 days between the close of the discovery period and the opening of the first

testimony period, will provide for a more orderly administration of the proceeding and allow parties more certainty in scheduling testimony. Moreover, the proposed amendment to § 2.120(a) to set the discovery period for 180 days, and to require that discovery requests be served in sufficient time for responses to the requests to fall due prior to the close of the discovery period, will enable the propounding party to file a motion to compel or a motion to test the sufficiency of an answer or objection to a request for admission, if such a motion is deemed necessary, within 30 days after the close of the discovery period.

Section 2.120(h) is proposed to be further amended to provide that the filing of a motion to determine the sufficiency of an answer or objection to a request for admission shall not toll the time for a party to respond to any outstanding discovery requests or to appear for any noticed deposition. The proposed provision corresponds to similar provisions proposed to be added to § 2.120(e), with respect to motions to compel, and to § 2.127(d), with respect to motions for summary judgment, and is explained in greater detail in our discussion of the proposed amendments to the latter rule.

Finally, because of the length and complexity of § 2.120(h), as proposed to be amended, the present paragraph is proposed to be redesignated as (h)(2) and revised; the provisions governing the proposed limitation on the number of requests for admission which may be served by one party upon another are proposed to be included in a new paragraph designated (h)(1); and the proposed provisions relating to the suspension of proceedings when a motion to test the sufficiency of an answer or objection to a request for admission is filed are proposed to be included in a new paragraph designated (h)(3).

Section 2.120(e) is proposed to be amended to provide that a motion to compel discovery must be filed within 30 days after the close of the discovery period, as originally set or as reset; that when a party files a motion to compel discovery, the case will be suspended by the Board with respect to all matters not germane to the motion and no party should file any paper which is not germane to the motion, except as otherwise specified in the Board's suspension order; and that the filing of a motion to compel shall not toll the time for a party to respond to any outstanding discovery requests or to appear for any noticed discovery deposition. These proposed provisions correspond to similar provisions proposed to be added to § 2.120(h). The latter proposed provision also corresponds to a similar provision proposed to be added to § 2.127(d) and is explained in greater detail in our discussion of the proposed amendments to that rule.

Proposed Amendments Relating to Testimony Periods

It has come to the attention of the Board that trial is sometimes delayed because an adverse party feels compelled to stipulate to reschedule or extend testimony periods, knowing that to oppose such a request and await the Board's decision on the contested motion will create a greater delay than if the party were to consent to the rescheduling or extension. In order to remedy this problem, the third sentences in §§ 2.121(a)(1) and 2.121(c) are proposed to be amended to provide that testimony periods may be rescheduled (§ 2.121(a)(1)), or extended (§ 2.121(c)), only by stipulation of the parties approved by the Board, or upon motion showing extraordinary circumstances granted by the Board, and that if such a motion is denied, the testimony periods will remain as set. At the same time, § 2.121(c) is proposed to be amended to lengthen the testimony period for the plaintiff and defendant to present their cases in chief from 30 to 60 days, and to lengthen the period for the plaintiff to present evidence in rebuttal from 15 to 30 days. The enlargement of testimony periods should, in general, eliminate the number of extension requests filed by parties and expedite the disposition of proceedings. Moreover, the enlargement of the testimony periods should lessen any inconvenience to the parties from the elimination of the ''good cause'' standard for obtaining extensions of time.

Those portions of §§ 2.121(a)(1) and 2.121(c) which refer to the rescheduling or extension of testimony periods ''by order of the Board'' are proposed to be deleted to clarify that a party may not simply make a motion that the Board order the resetting of testimony periods. That is, parties may move to reschedule or extend testimony periods only upon consent, or upon motion showing extraordinary circumstances. The Board still retains its authority to sua sponte reschedule or extend testimony periods.

As indicated above, under the heading ''Proposed Amendments Relating to Discovery,'' the last sentence of § 2.121(a)(1), which now provides that the resetting of a party's time to respond to an outstanding request for discovery will not result in the automatic rescheduling of the discovery and/or testimony periods, and that such dates will be rescheduled only upon stipulation of the parties approved by the Board, or upon motion granted by the Board, or by order of the Board, is proposed to be moved to the end of § 2.120(a), as proposed to be amended. It is believed that § 2.120(a), as proposed to be amended, is the most logical place for this sentence. In addition, the latter part of the sentence is proposed to be revised to read ''the discovery period will be rescheduled only upon stipulation of the parties approved by the Board, and testimony periods will be rescheduled only upon stipulation of the parties approved by the Board, or upon motion showing extraordinary circumstances granted by the Board.'' The proposed revision of the latter part of the sentence is consistent with the third sentence of § 2.121(a)(1), as proposed to be amended.

Proposed Amendments Relating to Motion Practice

Section 2.127(a) is proposed to be amended to clarify Board practice with respect to the filing of reply briefs and additional papers in support of or in opposition to motions. The rule as now written makes no reference to such papers. As a result, parties often file reply briefs on motions, sur-reply briefs, responses to sur-reply briefs, and motions for leave to file, as well as motions to strike, such papers. It has been the Board's experience that reply briefs may be helpful in deciding a motion, but that additional papers generally consist of reargument. Moreover, the filing of such additional papers often escalates as each party wishes to have the last word. The result is needless expense to the parties, additional work for the Board, and delays in rendering decisions. Accordingly, the rule is proposed to be amended to provide for the filing of a reply brief, if desired, within 15 days from the date of service of the brief in response to the motion; and to specify that the time for filing a reply brief will not be extended, and that additional papers in support of or in opposition to a motion will be given no consideration. The proposed time limit for the filing of a reply brief on a motion applies to all types of motions except motions for summary judgment. Section 2.127(e)(1), which governs the time for filing a motion for summary judgment, is proposed to be amended, as indicated hereafter, to allow 30 days for this purpose in the case of a reply brief on a motion for summary judgment.

Section 2.127(a) is also proposed to be amended to enlarge the time for responding to a motion from 15 to 30

days. The proposed time limit applies to all types of motions except motions for summary judgment. Section 2.127(e)(1) is proposed to be amended to allow 60 days for the filing of a brief in response to a motion for summary judgment.

Concomitantly, § 2.127(a) is proposed to be amended to provide that extensions of time for filing a brief in opposition to a motion will be granted only upon stipulation of the parties approved by the Board, or upon motion showing extraordinary circumstances granted by the Board, and that, ''if such a motion for an extension is denied, the time for responding to the motion remains as specified under this section.'' A similar provision is proposed to be included in § 2.127(e)(1) regarding extensions of time for filing a brief in opposition to a motion for summary judgment. It is believed that 30 days (or 60 days in the case of a summary judgment motion) is a sufficient time to respond to a motion. Moreover, this enlargement of the response time, coupled with the requirement that extension requests be made with consent or show extraordinary circumstances, and the accompanying provision leaving the time for responding to a motion unchanged if a motion to extend is denied, will reduce the number of extension requests filed, expedite the disposition of proceedings, and prevent parties from using the delays inherent in the filing and deciding of motions to enlarge their time to respond to motions.

Section 2.127(a) is proposed to be further amended to impose a page limit for briefs and reply briefs on motions, namely, 25 pages for briefs in support of and in opposition to motions, and 10 pages for reply briefs, and to specify form requirements for such briefs. It is believed that the proposed page limitations are more than sufficient for parties to adequately argue motions in proceedings before the Board.

Section 2.127(b) is proposed to be amended to change the specification of the time period for filing a request for reconsideration or modification of an order or decision on a motion from ''thirty days'' to ''one month.'' The proposed amendment conforms the time period with that specified in § 2.129(c), which governs requests for reconsideration or modification of a decision after final hearing.

Certain modifications are proposed to be made to the rules governing summary judgment motions. It appears that in some cases, parties that have been served with discovery requests, and know that it is Board policy to suspend proceedings once a summary judgment motion has been filed, move for summary judgment in an effort to avoid having to make timely response to the discovery requests. Accordingly, the PTO proposes to amend § 2.127(d), which concerns suspension of proceedings when a potentially dispositive motion has been filed, to specify that the filing of a summary judgment motion shall not toll the time for the moving party to respond to any outstanding discovery requests or to appear at a noticed discovery deposition, but that it shall toll the time for the nonmoving party to respond to outstanding discovery requests or to appear at a noticed deposition. The nonmoving party's time to respond is proposed to be tolled because a party which files a motion for summary judgment is, by its motion, asserting that it needs no further evidence to demonstrate that it is entitled to judgment. The proposed amendment will eliminate the noted abuse of the summary judgment procedure. Moreover, it may also reduce the number of motions for discovery filed pursuant to Rule 56(f) of the Federal Rules of Civil Procedure because parties opposing motions for summary judgment will be able to receive responses to outstanding discovery requests prior to the time for responding to the summary judgment motion.

The first sentence of § 2.127(d), which provides, in essence, that when any party files a potentially dispositive motion, the case will be suspended by the Board with respect to all matters not germane to the motion, and no party should file any paper which is not germane thereto, is proposed to be amended by adding to the end thereof the phrase ''except as otherwise specified in the Board's suspension order.'' The proposed amendment clarifies the rule.

Section 2.127(e)(1), which governs the time for filing a motion for summary judgment, is proposed to be amended to specify that a motion for summary judgment may not be filed until notification of the proceeding has been sent to the parties by the Board. This proposed amendment codifies current Board practice, as set forth in *Nabisco Brands Inc.* v. *Keebler Co.*, 28 USPQ2d 1237 (TTAB 1993). In Board opposition and cancellation proceedings, as under the Federal Rules, the proceeding commences with the filing of the complaint, i.e., the notice of opposition or the petition for cancellation. *See* §§ 2.101(a) and 2.111(a). However, in Board proceedings, formal service of the complaint upon the defendant is made by the Board, not by the plaintiff. Further, the Board does not serve the complaint upon the defendant until after the Board has first examined the complaint to determine whether it has been filed in proper form, with the required fee, and, then, if so, has (1) obtained the application or registration file which is the subject of the proceeding, (2) set up a proceeding file with an assigned proceeding number, and (3) entered information concerning the proceeding in the electronic records of the PTO. Thus, there is a time gap between the filing of a notice of opposition or petition for cancellation and the issuance of the Board's action notifying the defendant of the filing of the proceeding, notifying both parties of the institution of the proceeding, and forwarding a copy of the complaint to defendant. Although a plaintiff may send a courtesy copy of the complaint to the defendant, the defendant does not know that the complaint has been filed in proper form, and that the proceeding has been instituted by the Board, unless and until it receives from the Board the notice of institution along with a copy of the complaint. Accordingly, the Board considers a motion for summary judgment filed prior to the issuance of the notice of institution to be premature. Moreover, the filing of a motion for summary judgment prior to the Board's formal institution of the proceeding may cause administrative difficulties for the Board, particularly where the Board has not yet assigned a proceeding number to the case.

Section 2.127(e)(1) is proposed to be further amended to add new provisions governing the time for filing papers in response to a motion for summary judgment, as well as the time for filing a reply brief thereon. Specifically, the section is proposed to be amended to provide that a motion under Rule 56(f) of the Federal Rules of Civil Procedure (that is, a motion by the nonmoving party for discovery necessary to enable it to respond to the motion for summary judgment), if filed, shall be filed within 30 days from the date of service of the motion for summary judgment; that the time for filing a Rule 56(f) motion will not be extended; that if no Rule 56(f) motion is filed, a brief in response to the motion for summary judgment shall be filed within 60 days from the date of service of the motion, unless the time is extended by stipulation of the parties approved by the Board, or upon motion showing extraordinary circumstances granted by the Board; that, if such a motion for an extension is denied, the time for responding to the motion for summary judgment will remain as specified in the section; that a reply brief, if filed, shall be filed within 30

days from the date of service of the brief in response to the motion; that the time for filing a reply brief will not be extended; and that no further papers in support of or in opposition to a motion for summary judgment will be considered by the Board. With two exceptions, these proposed provisions parallel certain of the provisions of § 2.127(a), as proposed to be amended. The first exception is the provision relating to a Rule 56(f) motion. No parallel provision is proposed to be included in § 2.127(a) because a Rule 56(f) motion may be filed only in response to a motion for summary judgment, and § 2.127(a) contains provisions relating to the filing of motions in general. The second exception is the length of time proposed to be allowed for filing a brief in response to a motion for summary judgment, and for filing a reply brief. These proposed times are 60 days and 30 days, respectively. In the case of other types of motions, the times proposed in § 2.127(a) are 30 days and 15 days. The additional time is proposed to be allowed in the case of summary judgment motions because the gathering of evidence to respond to such a motion, or to support a reply brief, is time-consuming, and because the summary judgment motion is potentially dispositive in nature. It is believed that 60 days is a sufficient time to respond to a motion for summary judgment, and that this enlargement of the response time, coupled with the requirement that extension requests be made with consent or show extraordinary circumstances, and the accompanying provision leaving the time for responding to the summary judgment motion unchanged if a motion to extend is denied, will reduce the number of extension requests filed, and expedite the disposition of proceedings.

Corrections of Cross-References

Sections 2.101(d)(1), 2.111(c)(1), 2.122(d)(1) and 3.41, as now written, all contain cross-references to subsections of § 2.6. Subsections of § 2.6 were renumbered by a notice of final rulemaking published in the **Federal Register** on December 24, 1991, at 56 FR 66670 (amended at 57 FR 38196, August 21, 1992) and in the *Official Gazette* on December 24, 1991, at 1133 TMOG 61 (amended at 1141 TMOG 40, August 18, 1992). Accordingly, these sections are proposed to be amended to correct the cross-references to subsections of § 2.6.

Section 2.111(b) is proposed to be amended to correct cross-references to subsections of Section 14 of the Trademark Act, 15 U.S.C. 1064. The subsections were renumbered by the Trademark Law Revision Act of 1988 (Title 1 of Pub. L. 100–667, 102 Stat. 3935 (15 U.S.C. 1051)).

Section 2.119(d), which governs the appointment of domestic representatives by foreign parties involved in inter partes proceedings before the Board, provides, in pertinent part, that the mere designation of a domestic representative does not authorize the person designated to prosecute the proceeding ''unless qualified under § 10.14(a), or qualified under paragraph (b) or (c) of § 10.14 and authorized under § 2.17(b).'' The section is proposed to be amended to delete the reference to domestic representatives who are qualified under § 10.14(c). As indicated in § 2.119(d), a domestic representative must be a person ''resident in the United States.'' Persons who are qualified under § 10.14(c) are not residents of the United States and therefore cannot be domestic representatives.

Section 2.134(a) is proposed to be amended to correct the cross-reference to Section 7(d) of the Act of 1946. That section of the Act was renumbered as ''7(e)'' by the Trademark Law Revision Act of 1988.

Other Proposed Amendments

Section 2.76(a) now provides, in pertinent part, that an application under § 1(b) of the Act (i.e., an intent-to-use application) may be amended to allege use of the mark in commerce under § 1(c) of the Act at any time between the filing of the application and the date the examiner approves the mark for publication or the date of expiration of the six-month period after issuance of a final action; and that thereafter, an allegation of use may be submitted only as a statement of use after issuance of a notice of allowance. The section is proposed to be amended to eliminate the time limit for filing an amendment to allege use after issuance of a final action.

The purpose of the time limit for filing an amendment to allege use after issuance of a final action was to avoid the submission of extraneous papers which would disrupt the appeal process. However, the time limit had a detrimental effect not foreseen by the PTO. In many instances, where an intent-to-use application was on appeal from a final refusal on the ground of mere descriptiveness, for example, and no acceptable amendment to allege use had yet been filed, the owner of the application would seek, after the expiration of the six-month period following issuance of the final refusal, to overcome the refusal to register by amending its application to the Supplemental Register. However, an intent-to-use application cannot be amended to the Supplemental Register until an acceptable amendment to allege use or a statement of use has been filed. See 37 CFR § 2.75(b). Thus, although an amendment to the Supplemental Register might have obviated the refusal of registration, such an amendment could not be approved because the intent-to-use applicant was prohibited by the time limit of § 2.76(a) from contemporaneously filing an amendment to allege use.

In order to remedy the situation, the Assistant Commissioner for Trademarks, by notice published in the *Official Gazette,* waived the portion of § 2.76(a) which prohibited the filing of an amendment to allege use more than six months after issuance of a final refusal. *See* ''Waiver of Trademark Rule 2.76(a),'' 1156 TMOG 12 (November 2, 1993). The proposed rule change merely incorporates in the rule the more liberal practice set forth in the *Official Gazette* notice.

Similarly, § 2.76(g), which concerns the correction of an amendment to allege use which does not meet the minimum requirements for such an amendment, and § 2.76(h), which concerns withdrawal of an amendment to allege use, are proposed to be amended to delete the ''expiration of the six-month response period after issuance of a final action'' time limit.

Section 2.85(e) specifies the consequences for the payment of an insufficient fee, with respect to an application or registration having multiple classes, for certain types of filings, including a petition for cancellation. The section is proposed to be amended to delete the reference to an insufficient fee for a petition for cancellation, because this situation is covered, in greater detail, by § 2.111(c)(1). Further, in view of this proposed amendment, § 2.111(c)(1) is proposed to be amended to delete the cross-reference to § 2.85(e).

Section 2.87(c), which now provides, in pertinent part, that a request to divide an application may be filed during an opposition, upon motion granted by the Board, is proposed to be amended to also specify that a request to divide may be filed during a concurrent use or an interference proceeding, upon motion granted by the Board. The proposed change corrects an oversight in the rule and codifies current Office practice.

Section 2.102(d) now provides that a party filing a request for an extension of time to oppose must submit an original plus two copies. The section is proposed to be amended to eliminate the requirement for the filing of the

''original'' and two copies, and substitute a requirement that the request be submitted in triplicate. The Board has no need for an original, and the proposed change codifies current Office practice.

Section 2.117(a), as now written, provides that, when parties to a case pending before the Board are engaged in a civil action which may be dispositive of the case, proceedings before the Board may be suspended until termination of the civil action. The section is proposed to be amended to codify the Board's current policy of suspending proceedings whenever either or both of the parties are involved in a civil action or Board proceeding which may have a bearing on the proceeding.

Section 2.117(b) now provides that when there is pending, at the time when the question of suspension of proceedings is raised, a motion which is potentially dispositive of the case, the motion may be decided before the question of suspension is considered. The section is proposed to be amended to clarify that the Board may decide the potentially dispositive motion before the question of suspension is considered, regardless of the order in which they were raised. The proposed change codifies current Office practice.

Section 2.120(g)(1), which governs the imposition of sanctions when a party fails to comply with an order of the Board relating to discovery, now includes the phrase ''the Board does not have authority to hold any person in contempt or to award any expenses to any party.'' The phrase is proposed to be amended to read ''the Board will not hold any person in contempt or award any expenses to any party.'' The Board has long taken the position that it does not have authority to award expenses or attorney fees. *See MacMillan Bloedel Ltd.* v. *Arrow-M Corp.*, 203 USPQ 952, 954 (TTAB 1979); *Fisons Ltd.* v. *Capability Brown Ltd.*, 209 USPQ 167, 171 (TTAB 1980); *Anheuser-Busch, Inc.* v. *Major Mud & Chemical Co.*, 221 USPQ 1191, 1195 n. 9 (TTAB 1984); *Luehrmann* v. *Kwik Kopy Corp.*, 2 USPQ2d 1303, 1305 n.4 (TTAB 1987); *Fort Howard Paper Co.* v. *G.V. Gambina Inc.*, 4 USPQ2d 1552, 1554 (TTAB 1987); *Nabisco Brands Inc.* v. *Keebler Co.*, 28 USPQ2d 1237, 1238 (TTAB 1993). *Cf. Driscoll* v. *Cebalo*, 5 USPQ2d 1477, 1481 (Bd. Pat. Int. 1982), *aff'd in part, rev'd in part*, 731 F.2d 878, 221 USPQ 745 (Fed. Cir. 1984); *Clevenger* v. Martin, 1 USPQ2d 1793, 1797 (Bd. Pat. App. & Int. 1986). However, in 1995 the PTO, by final rule notice published in the **Federal Register** of March 17, 1995, at 60 FR 14488, and in the *Official Gazette* of April 11, 1995, at 1173 TMOG 36, amended Patent Rule 1.616, 37 CFR § 1.616, which concerns the imposition of sanctions in proceedings before the Board of Patent Appeals and Interferences (Patent Board), to provide for the imposition of a sanction in the form of compensatory expenses and/or compensatory attorney fees. 37 CFR 1.616(a)(5) and 1.616(b). The notice of final rulemaking acknowledged the foregoing decisions but concluded, based on a detailed analysis of the Commissioner's authority to issue regulations imposing sanctions, that the Commissioner has the authority to promulgate a rule authorizing imposition of compensatory monetary sanctions. It is believed that the adoption of a rule authorizing the Board to impose a sanction in the form of compensatory expenses and/or compensatory attorney fees would result in an increase in the number of papers and motions filed in proceedings before the Board. In view thereof, and in order to harmonize § 2.120(g)(1) with § 1.616, § 2.120(g)(1) is proposed to be amended to substitute a statement that the Board ''will not'' hold any person in contempt or award any expenses to any party, for the statement that the Board ''does not have authority'' to hold any person in contempt or award any expenses to any party. Section 2.127(f), which now states in pertinent part that the Board ''does not have authority to hold any person in contempt, or to award attorneys' fees or other expenses to any party,'' is proposed to be amended in the same manner.

Section 2.121(d), which now requires that a stipulation or consented motion for the rescheduling of testimony periods or of the closing date for discovery be submitted in one original and as many photocopies as there are parties, is proposed to be amended to eliminate the requirement that parties file the ''original'' as well as copies of stipulations and consented motions. Instead, the proposed rule requires that the stipulation or consented motion be submitted in a number of copies equal to the number of parties to the proceeding plus one copy for the Board. The Board has no need for an original, and the proposed change codifies current Office practice.

Section 2.122(b)(1), which now provides, in pertinent part, that the file of each application or registration specified in ''a declaration of interference'' forms part of the record of the proceeding without any action by the parties, is proposed to be amended to clarify the rule by substituting the word ''notice'' for the word ''declaration.'' A declaration of an interference is issued by the Commissioner upon the granting of a petition filed pursuant to § 2.91. An interference proceeding declared by the Commissioner does not commence until the Examining Attorney has determined that all of the subject marks are registrable; all of the marks have been published in the *Official Gazette* for opposition; and the Board mails a ''notice of interference'' notifying the parties that the interference proceeding is thereby instituted. In the interim between the Commissioner's declaration of an interference and the institution of the proceeding by the Board, some of the applications mentioned in the declaration of interference may become abandoned for one reason or another. When the Board institutes the proceeding, it is only the surviving applications which are specified in the notice of interference, and it is only those application files which form part of the record of the proceeding without any action by the parties.

Section 2.123(b) now provides, in pertinent part, that by agreement of the parties, the testimony of any witness may be submitted in the form of an affidavit by that witness, and that the parties may stipulate what a particular witness would testify to if called, or may stipulate the facts in the case. The section is proposed to be amended to clarify that such agreement or stipulation must be in writing.

Section 2.123(f) now provides, in pertinent part, that the officer certifying a testimony deposition shall, without delay, forward the evidence, notices, and paper exhibits to the Commissioner of Patents and Trademarks. This section is proposed to be amended to state that either the officer or the party taking the testimony deposition, or its attorney or other authorized representative, should forward this material to the Commissioner. The proposed amendment makes it clear that once the officer has certified the deposition, sealed the evidence in an envelope or package, and inscribed thereon a certificate giving the number and title of the case, the name of each witness, and the date of sealing, either the officer or the party taking the deposition, or its attorney or other authorized representative, may file the deposition. That is, if the officer sends the envelope or package to the party taking the deposition, or to its attorney or other authorized representative, the party, or its attorney or other authorized representative, need not return the envelope or package to the officer for filing with the PTO, but rather may send it directly to the PTO. Concomitant with this proposed amendment, the title of

§ 2.123(f), which now reads ''Certification and filing by officer,'' is proposed to be amended to read ''Certification and filing of deposition.''

Section 2.123(f) is proposed to be further amended to eliminate the present requirement that the material be forwarded to the Commissioner of Patents and Trademarks ''without delay.'' The proposed amendment conforms the section to current Board practice. While the Board prefers that testimony depositions be submitted promptly, and such depositions are normally filed with the Board at the same time that they are served on the adverse party or parties to the proceeding, it is Board practice to accept transcripts of testimony depositions at any time prior to the rendering of a final decision on the case. The proposed amendment does not affect the requirement of § 2.125(a) that one copy of the testimony transcript, together with copies of documentary exhibits and duplicates or photographs of physical exhibits, be served on each adverse party within thirty days after completion of the taking of that testimony.

Similarly, § 2.125(c), which now provides that certified transcripts of testimony depositions, and exhibits thereto, are to be filed promptly with the Board, is proposed to be amended to delete the requirement for prompt filing with the Board. The proposed amendment conforms the section to current Board practice.

Section 2.127(f) now provides, in part, that the Board ''does not have authority'' to hold any person in contempt, or to award attorneys' fees or other expenses to any party. The rule is proposed to be amended to provide instead that the Board ''will not'' hold any person in contempt, or award attorneys' fees or other expenses to any party. This proposed provision corresponds to a similar provision in § 2.120(g)(1), as proposed to be amended, and is explained in more detail in our discussion of § 2.120(g)(1) above, under this same heading.

Section 2.146(e)(1), as now written, provides for the filing of a petition to the Commissioner from the denial of a request for an extension of time to file a notice of opposition. This section is proposed to be amended to provide also that an applicant may petition the Commissioner from a decision granting such a request. The proposed amendment codifies current practice and clarifies the rule.

Discussion of Specific Rules

Section 2.76(a) now provides, in relevant part, that an amendment to allege use may be filed in an application under Section 1(b) of the Act ''at any time between the filing of the application and the date the examiner approves the mark for publication or the date of expiration of the six-month response period after issuance of a final action.'' The section is proposed to be amended to delete the phrase ''or the date of expiration of the six-month response period after issuance of a final action.'' The proposed amendment reflects current practice, as stated in ''Waiver of Trademark Rule 2.76(a),'' 1156 TMOG 12 (November 2, 1993).

Section 2.76(g) provides, in relevant part, that if an amendment to allege use does not meet the minimum requirements specified in § 2.76(e), the deficiency may be corrected provided the mark has not been approved for publication or the six-month response period after issuance of a final action has not expired; and that if an acceptable amendment to correct the deficiency is not filed prior to approval of the mark for publication or prior to expiration of the six-month response period after issuance of a final action, the amendment will not be examined. The section is proposed to be amended to delete the phrases ''or the six-month response period after issuance of a final action has not expired'' and ''or prior to the expiration of the six-month response period after issuance of a final action.'' The proposed amendment reflects current practice.

Section 2.76(h), which provides that an amendment to allege use may be withdrawn for any reason prior to approval of a mark for publication or expiration of the six-month response period after issuance of a final action, is proposed to be amended to delete the phrase ''or expiration of the six-month response period after issuance of a final action.'' The proposed amendment reflects current practice.

Section 2.85(e) pertains to the filing of certain specified papers, including a petition for cancellation, with a fee which is insufficient because multiple classes in an application or registration are involved. The section is proposed to be amended to delete the references to a petition for cancellation, because the matter of an insufficient fee for a petition to cancel a registration having multiple classes is covered, in greater detail, in § 2.111(c)(1).

Section 2.87(c), which specifies that a request to divide an application may be filed, inter alia, ''during an opposition, upon motion granted by the Trademark Trial and Appeal Board,'' is proposed to be amended to insert, after the words ''during an opposition,'' the additional words ''or concurrent use or interference proceeding.'' The proposed amendment codifies current practice and corrects an oversight in the rule.

Section 2.101(d)(1), which now includes a cross-reference to ''§ 2.6(1),'' is proposed to be amended to correct the cross-reference to ''§ 2.6(a)(17).''

Section 2.102(d), which now provides that every request to extend the time for filing a notice of opposition should be submitted ''in triplicate (original plus two copies),'' is proposed to be amended to delete the words ''(original plus two copies).'' The proposed amendment eliminates the requirement to file ''original'' extension of time requests. The Board has no need for the original.

Section 2.111(b), which now includes a cross-reference to ''section 14(c) or (e)'' of the Act, is proposed to be amended to correct the cross-reference to ''section 14(3) or (5)''. The subsections of Section 14 of the Act were renumbered by the Trademark Law Revision Act of 1988.

Section 2.111(c)(1), which now includes a cross-reference to ''§ § 2.6(1) and 2.85(e),'' is proposed to be amended to correct the first cross-reference to § 2.6(a)(16) and to delete the cross-reference to § 2.85(e).

Section 2.117(a) now provides that whenever it shall come to the attention of the Board ''that parties to a pending case are engaged in a civil action which may be dispositive of the case, proceedings before the Board may be suspended until termination of the civil action.'' The section is proposed to be amended to insert the words ''a party or'' before the word ''parties,'' insert the words ''or a Board proceeding'' after the first appearance of the words ''civil action,'' and substitute the words ''have a bearing on'' for the words ''be dispositive of.'' The proposed amendments clarify the rule and codify current practice.

Section 2.117(b) now provides that ''Whenever there is pending, at the time when the question of the suspension of proceedings is raised, a motion which is potentially dispositive of the case, the motion may be decided before the question of suspension is considered.'' The section is proposed to be amended to read ''Whenever there is pending before the Board both a motion to suspend and a motion which is potentially dispositive of the case, the potentially dispositive motion may be decided before the question of suspension is considered, regardless of the order in which the motions were filed.'' The proposed amendment clarifies the rule and codifies current practice.

Section 2.119(d) provides, in pertinent part, that the mere designation of a domestic representative does not authorize the person designated to prosecute the proceeding unless qualified under § 10.14(a), or qualified under paragraphs (b) or (c) of § 10.14(c) and authorized under § 2.17(b). The section is proposed to be amended to delete the reference to § 10.14(c). That section refers to nonresidents, who cannot be domestic representatives. The proposed amendment corrects an inadvertent error in the rule.

Section 2.120(a) now provides that the provisions of the Federal Rules of Civil Procedure relating to discovery shall apply in opposition, cancellation, interference, and concurrent use registration proceedings except as otherwise provided in § 2.120; that the Board will specify the closing date for the taking of discovery; and that the opening of discovery is governed by the Federal Rules of Civil Procedure. The section is proposed to be amended to (1) preface the first sentence with the qualifying words ''Wherever appropriate, the''; (2) include a new sentence stating that the provisions of the Federal Rules of Civil Procedure relating to automatic disclosure scheduling conferences, conferences to discuss settlement and to develop a discovery plan, and transmission to the court of a written report outlining the discovery plan, are not applicable to Board proceedings; (3) state that the Board will specify the opening (as well as the closing) date for the taking of discovery; (4) delete the provision that the opening of discovery is governed by the Federal Rules of Civil Procedure; (5) specify that the discovery period will be set for a period of 180 days; (6) provide that interrogatories, requests for production of documents and things, and requests for admission must be served in sufficient time that responses will fall due prior to the close of the discovery period, and that discovery depositions must be noticed and taken prior to the close of the discovery period; (7) specify that extensions of the discovery period will be granted only upon stipulation of the parties approved by the Board, and that the parties may stipulate to a shortening of the discovery period; (8) provide that responses to interrogatories, requests for production of documents and things, and requests for admission must be served within 40 days from the date of service of such discovery requests; (9) specify that the time to respond may be extended upon stipulation of the parties, or upon motion showing extraordinary circumstances approved by the Board; and (10) provide that the resetting of a party's time to respond to an outstanding request for discovery will not result in the automatic rescheduling of the discovery and/or testimony periods, and that the discovery period will be rescheduled only upon stipulation of the parties approved by the Board, and testimony periods will be rescheduled only upon stipulation of the parties approved by the Board, or upon motion showing extraordinary circumstances granted by the Board.

Section 2.120(d)(1) now provides, in pertinent part, that the total number of written interrogatories which a party may serve upon another party pursuant to Rule 33 of the Federal Rules of Civil Procedure, in a proceeding, shall not exceed 75, counting subparts, except that the Board, in its discretion, may allow additional interrogatories upon motion showing good cause, or upon stipulation of the parties; and that a motion for leave to file additional interrogatories must be filed and granted prior to the service of the proposed additional interrogatories, and must be accompanied by a copy of the interrogatories, if any, which have already been served by the moving party, and by a copy of the interrogatories proposed to be served. The section is proposed to be amended to lower the interrogatory number limit from 75, counting subparts, to 25, counting subparts, and to delete the references to a motion for leave to serve additional interrogatories. However, the provision allowing additional interrogatories upon stipulation of the parties is proposed to be retained.

Section 2.120(d)(2), which now includes only a provision concerning the place for production of documents and things, is proposed to be amended to limit the number of requests for production of documents and things which a party may serve upon another party, in a proceeding, to 15, counting subparts. Specifically, the section is proposed to be amended to include new sentences providing that the total number of requests for production of documents and things which a party may serve upon another party pursuant to Rule 34 of the Federal Rules of Civil Procedure, in a proceeding, shall not exceed 15, counting subparts, except upon stipulation of the parties; that if a party upon which requests for production of documents and things have been served believes that the number of requests served exceeds the limitation specified in the paragraph, and is not willing to waive this basis for objection, the party shall, within the time for (and instead of) serving answers and specific objections to the requests, serve a general objection on the ground of their excessive number; and that if the inquiring party, in turn, files a motion to compel discovery, the motion must be accompanied by a copy of the set(s) of requests which together are said to exceed the limitation, and must otherwise comply with the requirements of § 2.120(e). These proposed provisions parallel the provisions of § 2.120(d)(1), which limit the number of interrogatories which a party may serve upon another party in a proceeding.

Section 2.120(e), which governs motions to compel discovery, is proposed to be amended by redesignating the present paragraph as (e)(1), and amending that paragraph to insert, after the first sentence, a new sentence specifying that a motion to compel must be filed within 30 days after the close of the discovery period, as originally set or as reset. In addition, § 2.120(e) is proposed to be amended to include a new paragraph, designated (e)(2), specifying that when a party files a motion for an order to compel discovery, the case will be suspended by the Board with respect to all matters not germane to the motion, and no party should file any paper which is not germane to the motion, except as otherwise specified in the Board's suspension letter. The proposed new paragraph also provides that the filing of a motion to compel shall not toll the time for a party to respond to any outstanding discovery requests or to appear for any noticed discovery deposition.

Section 2.120(g)(1), which now states, in pertinent part, that ''the Board does not have authority to hold any person in contempt or to award any expenses to any party,'' is proposed to be amended to state that ''the Board will not hold any person in contempt or award any expenses to any party.''

Section 2.120(h), which concerns requests for admission, is proposed to be amended to redesignate the present paragraph as (h)(2); delete the first sentence, which reads ''Requests for admissions shall be governed by Rule 36 of the Federal Rules of Civil Procedure except that the Trademark Trial and Appeal Board does not have authority to award any expenses to any party.''; add to the beginning a new sentence reading ''Any motion by a party to determine the sufficiency of an answer or objection to a request made by that party for an admission must be filed within 30 days after the close of the discovery period, as originally set or as reset.''; and revise the beginning of the second sentence, which now reads, ''A motion by a party to determine the sufficiency of an answer or objection to a request made

by that party for an admission shall * * *,'' to read ''The motion shall * * *.'' The section is proposed to be further amended to add a new paragraph, designated (h)(1), limiting the number of requests for admission which a party may serve upon another party, in a proceeding, to 25, counting subparts. Specifically, the proposed new paragraph provides that the total number of requests for admission which a party may serve upon another party pursuant to Rule 36 of the Federal Rules of Civil Procedure, in a proceeding, shall not exceed 25, counting subparts, except upon stipulation of the parties; that if a party upon which requests for admission have been served believes that the number of requests served exceeds the limitation specified in the paragraph, and is not willing to waive this basis for objection, the party shall, within the time for (and instead of) serving answers and specific objections to the requests, serve a general objection on the ground of their excessive number; and that if the inquiring party, in turn, files a motion to determine the sufficiency of the objection, the motion must be accompanied by a copy of the set(s) of requests for admission which together are said to exceed the limitation, and must otherwise comply with the requirements of paragraph (h)(2) of the section. The proposed provisions parallel the provisions of § 2.120(d)(1), which limit the number of interrogatories which a party may serve upon another party in a proceeding. Finally, § 2.120(h) is proposed to be amended to add another new paragraph, designated (h)(3), which provides for the suspension of proceedings when a motion to determine the sufficiency of an answer or objection to a request for admission is filed. Specifically, the proposed new paragraph provides that when a party files a motion to determine the sufficiency of an answer or objection to a request made by that party for an admission, the case will be suspended by the Board with respect to all matters not germane to the motion, and no party should file any paper which is not germane to the motion, except as otherwise specified in the Board's suspension order. The proposed new paragraph also provides that the filing of a motion to determine the sufficiency of an answer or objection to a request for admission shall not toll the time for a party to respond to any outstanding discovery requests or to appear for any noticed discovery deposition. The provisions of proposed new § 2.120(h)(3) parallel the provisions of proposed new § 2.120(e) and § 2.127(d), as proposed to be amended.

Section 2.121(a)(1) is proposed to be amended by revising the third sentence, which now provides that testimony periods may be rescheduled ''by stipulation of the parties approved by the Board, or upon motion granted by the Board, or by order of the Board,'' to provide that testimony periods may be rescheduled ''by stipulation of the parties approved by the Board, or upon motion showing extraordinary circumstances granted by the Board.'' The sentence is proposed to be further amended to specify that ''if such a motion is denied, the testimony periods will remain as set.'' In addition, the last sentence of the section, which now reads ''The resetting of a party's time to respond to an outstanding request for discovery will not result in the automatic rescheduling of the discovery and/or testimony periods; such dates will be rescheduled only upon stipulation of the parties approved by the Board, or upon motion granted by the Board, or by order of the Board,'' is proposed to be deleted. The sentence is proposed to be added to § 2.120(a), with the latter part of the sentence being modified to read ''the discovery period will be rescheduled only upon stipulation of the parties approved by the Board, and testimony periods will be rescheduled only upon stipulation of the parties approved by the Board, or upon motion showing extraordinary circumstances granted by the Board.'' The proposed modification is consistent with the third sentence of § 2.121(a)(1), as proposed to be amended.

Section 2.121(c), which governs the length of the testimony periods, is proposed to be amended to enlarge the rebuttal testimony period from 15 to 30 days, and to enlarge all other testimony periods from 30 to 60 days. In addition, the last sentence of the section, which now provides that the periods may be extended ''by stipulation of the parties approved by the Trademark Trial and Appeal Board, or upon motion granted by the Board, or by order of the Board,'' is proposed to be amended to provide that the periods may be extended ''by stipulation of the parties approved by the Trademark Trial and Appeal Board, or upon motion showing extraordinary circumstances granted by the Board.'' The sentence is proposed to be further amended to specify that ''if such a motion is denied, the testimony periods will remain as set.'' The proposed amendments to this sentence parallel the proposed amendment to the third sentence of § 2.121(a)(1).

Section 2.121(d) now provides, in pertinent part, that when parties stipulate to the rescheduling of testimony periods or to the rescheduling of the closing date for discovery and the rescheduling of testimony periods, a stipulation ''submitted in one original plus as many photocopies as there are parties'' will, if approved, be so stamped, signed, and dated, and the copies will be promptly returned to the parties. The section is proposed to be amended by revising the quoted section to read ''submitted in a number of copies equal to the number of parties to the proceeding plus one copy for the Board.''

Section 2.122(b)(1), which now provides, in pertinent part, that each application or registration file specified in a declaration of interference forms part of the record of the proceeding without any action by the parties, is proposed to be amended by substituting the word ''notice'' for the word ''declaration.''

Section 2.122(d)(1), which now includes a cross-reference to ''§ 2.6(n),'' is proposed to be amended to correct the cross-reference to ''§ 2.6(b)(4).''

Section 2.123(b) now provides, in its second sentence, that by agreement of the parties, the testimony of any witness or witnesses of any party may be submitted in the form of an affidavit by such witness or witnesses. The sentence is proposed to be amended by inserting the word ''written'' between the words ''by'' and ''agreement.'' The third sentence of the section now provides that the parties may stipulate what a particular witness would testify to if called, or the facts in the case of any party may be stipulated. The sentence is proposed to be amended by inserting the words ''in writing'' after the word ''stipulate'' and after the word ''stipulated.''

Section 2.123(f) pertains to the certification and filing of a deposition by the officer before whom the deposition was taken. The third sentence of the second paragraph of the section now reads, ''Unless waived on the record by an agreement, he shall then, without delay, securely seal in an envelope all the evidence, notices, and paper exhibits, inscribe upon the envelope a certificate giving the number and title of the case, the name of each witness, and the date of sealing, address the package, and forward the same to the Commissioner of Patents and Trademarks.'' The sentence is proposed to be amended to delete the words ''without delay,'' to put a period after the word ''sealing,'' and to convert the remainder of the present sentence into a new sentence which reads, ''The officer or the party taking the deposition, or its attorney or other authorized representative, shall then

address the package and forward the same to the Commissioner of Patents and Trademarks.'' The fourth sentence of the paragraph now reads, ''If the weight or bulk of an exhibit shall exclude it from the envelope, it shall, unless waived on the record by agreement of all parties, be authenticated by the officer and transmitted in a separate package marked and addressed as provided in this section.'' The sentence is proposed to be amended to insert, after the word ''transmitted,'' the phrase ''by the officer or the party taking the deposition, or its attorney or other authorized representative.'' Finally, in view of the proposed amendments to the third and fourth sentences, the title of the section, which now reads ''Certification and filing by officer,'' is proposed to be amended to read ''Certification and filing of deposition.''

Section 2.125(c), which now provides that one certified transcript (of a testimony deposition) and exhibits shall be filed ''promptly,'' with the Board, is proposed to be amended to delete the word ''promptly.''

Section 2.127(a), which governs the filing of briefs on motions, is proposed to be amended to (1) enlarge the time for filing a brief in response to a motion from 15 days to 30 days, and preface the time provision with the phrase ''Except as provided in paragraph (e)(1) of this section, a''; (2) delete, from the second sentence, a provision for extension of this time by ''order of the Board on motion for good cause'' and substitute a provision for an extension by ''stipulation of the parties approved by the Board, or upon motion showing extraordinary circumstances granted by the Board,'' with the added provision that, ''if such a motion for an extension is denied, the time for responding to the motion remains as specified under this section''; (3) add a new provision to specify that a reply brief, if filed, shall be filed within 15 days from the date of service of the brief in response to the motion, and preface this new provision with the phrase ''Except as provided in paragraph (e)(1) of this section, a''; (4) specify that the time for filing a reply brief will not be extended, and that no further papers in support of or in opposition to a motion will be considered by the Board; (5) add form requirements for briefs, i.e., that they shall be submitted in typewritten or printed form, double spaced, in at least pica or eleven-point type, on letter-size paper; (6) add a page limitation for briefs, namely, 25 pages for a brief in support of or in response to a motion and 10 pages for a reply brief; and (7) specify that exhibits submitted in support of or in opposition to a motion shall not be deemed to be part of the brief for purposes of determining the length of the brief.

Section 2.127(b), which now provides, in pertinent part, that any request for reconsideration or modification of an order or decision issued on a motion must be filed within thirty days from the date thereof, is proposed to be amended to change the specification of the time period for requesting reconsideration or modification from ''thirty days'' to ''one month.''

Section 2.127(d) provides, in its first sentence, that when any party files a motion which is potentially dispositive of a proceeding, the case will be suspended by the Board with respect to all matters not germane to the motion, and no party should file any paper which is not germane to the motion. The sentence is proposed to be amended to add to the end of the sentence the phrase ''except as otherwise specified in the Board's suspension order.'' The section is proposed to be further amended to add, immediately after the first sentence, a new sentence providing that filing a summary judgment motion shall not toll the time for the moving party to respond to any outstanding discovery requests or to appear at a noticed discovery deposition, but it shall toll the time for the nonmoving party to serve such responses or to appear for such deposition.

Section 2.127(e)(1), which governs the time for filing a motion for summary judgment, is proposed to be amended to add, at the beginning of the section, a provision that a motion for summary judgment may not be filed until notification of the proceeding has been sent to the parties by the Board. In addition, the section is proposed to be amended to add to the end thereof provisions specifying that (1) a motion under Rule 56(f) of the Federal Rules of Civil Procedure, if filed in response to a motion for summary judgment, shall be filed within 30 days from the date of service of the summary judgment motion; (2) the time for filing a motion under Rule 56(f) will not be extended; (3) if no motion under Rule 56(f) is filed, a brief in response to the motion for summary judgment shall be filed within 60 days from the date of service of the motion unless the time is extended by stipulation of the parties approved by the Board, or upon motion showing extraordinary circumstances granted by the Board and that, if such a motion for an extension is denied, the time for responding to the motion for summary judgment remains as specified under this section; (4) a reply brief, if filed, shall be filed within 30 days from the date of service of the brief in response to the motion; (5) the time for filing a reply brief will not be extended; and (6) no further papers in support of or in opposition to a motion for summary judgment will be considered by the Board.

Section 2.127(f), which now states that ''The Board does not have authority to hold any person in contempt, or to award attorneys' fees or other expenses to any party,'' is proposed to be amended to state instead that ''The Board will not hold any person in contempt, or award attorneys'' fees or other expenses to any party.''

Section 2.134(a), which now includes a cross-reference to ''section 7(d)'' of the Act of 1946, is proposed to be amended to correct the cross-reference to ''section 7(e).''

Section 2.146(e)(1), which now provides for filing a petition to the Commissioner from the denial of a request for an extension of time to file a notice of opposition, is proposed to be amended to provide also for filing a petition from the grant of such a request. Specifically, the first sentence of the section now provides that a petition from the denial of a request for an extension of time to file a notice of opposition shall be filed within fifteen days from the date of mailing of the denial of the request and shall be served on the attorney or other authorized representative of the applicant, if any, or on the applicant. The sentence is proposed to be revised to read, ''A petition from the grant or denial of a request for an extension of time to file a notice of opposition shall be filed within fifteen days from the date of mailing of the grant or denial of the request. A petition from the grant of a request shall be served on the attorney or other authorized representative of the potential opposer, if any, or on the potential opposer. A petition from the denial of a request shall be served on the attorney or other authorized representative of the applicant, if any, or on the applicant.'' In addition, the present third sentence of the section, which provides, in pertinent part, that the applicant may file a response within fifteen days from the date of service of the petition and shall serve a copy of the response on the petitioner, is proposed to be amended by revising the beginning of the sentence to read, ''The potential opposer or the applicant, as the case may be, may file a response within fifteen days * * *.''

Section 3.41, which now includes a cross-reference to ''§ 2.6(q),'' is proposed to be amended to correct the cross-reference to ''§ 2.6(b)(6).''

Environmental, Energy, and Other Considerations

The proposed rule changes are in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), Executive Order 12612, and the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.). The proposed changes have been determined to be not significant for purposes of Executive Order 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule changes will not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The principal effect of this rule change is to improve practice and expedite proceedings in inter partes cases before the Board.

The PTO has determined that the proposed rule changes have no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

This rule involves the Petition to Cancel requirement which has not been previously approved by the OMB under the PRA. A request to collect this information has been submitted to OMB for review and approval. The reporting burden for this collection of information is estimated to be 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments are invited on: (a) whether the collection of information is necessary for proper performance of the functions of the agency; (b) the accuracy of the agency's estimate of the burden; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information to respondents. This rule also involves information requirements associated with filing an Opposition to the Registration of a Mark, Amendment to Allege Use, and dividing an application. These requirements have been previously approved by the OMB under control number 0651–0009. Send comments regarding the burden estimate or any other aspects of the information requirements, including suggestions for reducing the burden, to the Assistant Commissioner for Trademarks, Box TTAB—No Fee, 2900 Crystal Drive, Arlington, VA 22202–3513, marked to the attention of Ellen J. Seeherman, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: PTO Desk Officer).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

List of Subjects

37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

37 CFR Part 3

Administrative practice and procedure, Patents, Trademarks.

For the reasons given in the preamble and pursuant to the authority contained in § 41 of the Trademark Act of July 5, 1946, as amended, the Patent and Trademark Office proposes to amend Part 2 and Part 3 of Title 37 of the Code of Federal Regulations by amending or revising §§ 2.76, 2.85, 2.87, 2.101, 2.102, 2.111, 2.117, 2.119, 2.120, 2.121, 2.122, 2.123, 2.125, 2.127, 2.134, 2.146 and 3.41, as set forth below. Additions are indicated by arrows and deletions by brackets.

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

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

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

1a. Section 2.76 is proposed to be amended by revising paragraphs (a), (g), and (h) to read as follows:

§ 2.76 Amendment to allege use.

(a) An application under section 1(b) of the Act may be amended to allege use of the mark in commerce under section 1(c) of the Act at any time between the filing of the application and the date the examiner approves the mark for publication [or the date of expiration of the six-month response period after issuance of a final action]. Thereafter, an allegation of use may be submitted only as a statement of use under § 2.88 after the issuance of a notice of allowance under section 13(b)(2) of the Act. If an amendment to allege use is filed outside the time period specified in this paragraph, it will be returned to the applicant.

* * * * *

(g) If the amendment to allege use is filed within the permitted time period but does not meet the minimum requirements specified in paragraph (e) of this section, applicant will be notified of the deficiency. The deficiency may be corrected provided the mark has not been approved for publication [or the six-month response period after issuance of a final action has not expired]. If an acceptable amendment to correct the deficiency is not filed prior to approval of the mark for publication [or prior to the expiration of the six-month response period after issuance of a final action], the amendment will not be examined.

(h) An amendment to allege use may be withdrawn for any reason prior to approval of a mark for publication [or expiration of the six-month response period after issuance of a final action].

2. Section 2.85 is proposed to be amended by revising paragraph (e) to read as follows:

§ 2.85 Classification schedules.

* * * * *

(e) Where the amount of the fee received on filing an appeal in connection with an application or on an application for renewal [or in connection with a petition for cancellation] is sufficient for at least one class of goods or services but is less than the required amount because multiple classes in an application or registration are involved, the appeal or renewal application [or petition for cancellation] will not be refused on the ground that the amount of the fee was insufficient if the required additional amount of the fee is received in the Patent and Trademark Office within the time limit set forth in the notification of this defect by the Office, or if action is sought only for the number of classes equal to the number of fees submitted.

* * * * *

3. Section 2.87 is proposed to be amended by revising paragraph (c) to read as follows:

§ 2.87 Dividing an application.

* * * * *

(c) A request to divide an application may be filed at any time between the filing of the application and the date the Trademark Examining Attorney approves the mark for publication or the date of expiration of the six-month response period after issuance of a final action; or during an opposition >or concurrent use or interference proceeding<, upon motion granted by the Trademark Trial and Appeal Board.

Additionally, a request to divide an application under section 1(b) of the Act may be filed with a statement of use under § 2.88 or at any time between the filing of a statement of use and the date the Trademark Examining Attorney approves the mark for registration or the date of expiration of the six-month response period after issuance of a final action.

* * * * *

4. Section 2.101 is proposed to be amended by revising paragraph (d)(1) to read as follows:

§ 2.101 Filing an opposition.

* * * * *

(d)(1) The opposition must be accompanied by the required fee for each party joined as opposer for each class in the application for which registration is opposed (see § >2.6(a)(17)< [2.6(1)]. If no fee, or a fee insufficient to pay for one person to oppose the registration of a mark in at least one class, is submitted within thirty days after publication of the mark to be opposed or within an extension of time for filing an opposition, the opposition will not be refused if the required fee(s) is submitted to the Patent and Trademark Office within the time limit set in the notification of this defect by the Office.

* * * * *

5. Section 2.102 is proposed to be amended by revising paragraph (d) to read as follows:

§ 2.102 Extension of time for filing an opposition.

* * * * *

(d) Every request to extend the time for filing a notice of opposition should be submitted in triplicate [(original plus two copies)].

6. Section 2.111 is proposed to be amended by revising paragraphs (b) and (c)(1) to read as follows:

§ 2.111 Filing petition for cancellation.

* * * * *

(b) Any entity which believes that it is or will be damaged by a registration may file a petition, which should be addressed to the Trademark Trial and Appeal Board, to cancel the registration in whole or in part. The petition need not be verified, and may be signed by the petitioner or the petitioner's attorney or other authorized representative. The petition may be filed at any time in the case of registrations on the Supplemental Register or under the Act of 1920, or registrations under the Act of 1881 or the Act of 1905 which have not been published under section 12(c) of the Act, or on any ground specified in section 14>(3)< [(c)] or >(5)< [(e)] of the Act. In all other cases the petition and the required fee must be filed within five years from the date of registration of the mark under the Act or from the date of publication under section 12(c) of the Act.

(c)(1) The petition must be accompanied by the required fee for each class in the registration for which cancellation is sought (see § [§] >2.6(a)(16)< [2.6(1) and 2.85(e)]). If the fees submitted are insufficient for a cancellation against all of the classes in the registration, and the particular class or classes against which the cancellation is filed are not specified, the Office will issue a written notice allowing petitioner until a set time in which to submit the required fee(s) (provided that the five-year period, if applicable, has not expired) or to specify the class or classes sought to be cancelled. If the required fee(s) is not submitted, or the specification made, within the time set in the notice, the cancellation will be presumed to be against the class or classes in ascending order, beginning with the lowest numbered class, and including the number of classes in the registration for which the fees submitted are sufficient to pay the fee due for each class.

* * * * *

7. Section 2.117 is proposed to be amended by revising paragraphs (a) and (b) to read as follows:

§ 2.117 Suspension of proceedings.

(a) Whenever it shall come to the attention of the Trademark Trial and Appeal Board that >a party or< parties to a pending case are engaged in a civil action >or a Board proceeding< which may >have a bearing on< [be dispositive of] the case, proceedings before the Board may be suspended until termination of the civil action.

(b) Whenever there is pending >before the Board both a motion to suspend and< [, at the time when the question of the suspension of proceedings is raised,] a motion which is potentially dispositive of the case, the >potentially dispositive< motion may be decided before the question of suspension is considered >regardless of the order in which the motions were filed<.

* * * * *

8. Section 2.119 is proposed to be amended by revising paragraph (d) to read as follows:

2.119 Service and signing of papers.

* * * * *

(d) If a party to an inter partes proceeding is not domiciled in the United States and is not represented by an attorney or other authorized representative located in the United States, the party must designate by written document filed in the Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in the proceeding. In such cases, official communications of the Patent and Trademark Office will be addressed to the domestic representative unless the proceeding is being prosecuted by an attorney at law or other qualified person duly authorized under § 10.14(c) of this subchapter. The mere designation of a domestic representative does not authorize the person designated to prosecute the proceeding unless qualified under § 10.14(a), or qualified under [paragraph (b) or (c) of] § 10.14>(b)< and authorized under § 2.17(b).

* * * * *

9. Section 2.120 is proposed to be amended by redesignating current paragraphs (e) and (h) as (e)(1) and (h)(2), respectively; adding new paragraphs (e)(2), (h)(1), and (h)(3); and revising paragraphs (a), (d), and (g)(1) and redesignated paragraphs (e)(1) and (h)(2) to read as follows:

§ 2.120 Discovery.

(a) *In general.* >Wherever appropriate, the< [The] provisions of the Federal Rules of Civil Procedure relating to discovery shall apply in opposition, cancellation, interference and concurrent use registration proceedings except as otherwise provided in this section. >The provisions of the Federal Rules of Civil Procedure relating to automatic disclosure, scheduling conferences, conferences to discuss settlement and to develop a discovery plan, and transmission to the court of a written report outlining the discovery plan, are not applicable to Board proceedings.< The Trademark Trial and Appeal Board will specify the >opening and< closing date>s for< the taking of discovery. >The discovery period will be set for a period of 180 days. Interrogatories, requests for production of documents and things, and requests for admission must be served in sufficient time that responses will fall due prior to the close of the discovery period. Discovery depositions must be noticed and taken prior to the close of the discovery period. Extensions of the discovery period will be granted only upon stipulation of the parties approved by the Board. The parties may stipulate to a shortening of the discovery period. Responses to interrogatories, requests for production of documents and things, and requests for admission must be served within 40 days from the date of service of such discovery requests. The

time to respond may be extended upon stipulation of the parties, or upon motion showing extraordinary circumstances granted by the Board. The resetting of a party's time to respond to an outstanding request for discovery will not result in the automatic rescheduling of the discovery and/or testimony periods; the discovery period will be rescheduled only upon stipulation of the parties approved by the Board, and testimony periods will be rescheduled only upon stipulation of the parties approved by the Board, or upon motion showing extraordinary circumstances granted by the Board.< [The opening of discovery is governed by the Federal Rules of Civil Procedure.]

* * * * *

(d) *Interrogatories; request for production.* (1) The total number of written interrogatories which a party may serve upon another party pursuant to Rule 33 of the Federal Rules of Civil Procedure, in a proceeding, shall not exceed >25< [seventy-five], counting subparts, except [that the Trademark Trial and Appeal Board, in its discretion, may allow additional interrogatories upon motion therefor showing good cause, or] upon stipulation of the parties. [A motion for leave to serve additional interrogatories must be filed and granted prior to the service of the proposed additional interrogatories; and must be accompanied by a copy of the interrogatories, if any, which have already been served by the moving party, and by a copy of the interrogatories proposed to be served.] If a party upon which interrogatories have been served believes that the number of interrogatories served exceed>s< the limitation specified in this paragraph, and is not willing to waive this basis for objection, the party shall, within the time for (and instead of) serving answers and specific objections to the interrogatories, serve a general objection on the ground of their excessive number. If the inquiring party, in turn, files a motion to compel discovery, the motion must be accompanied by a copy of the set(s) of interrogatories which together are said to exceed the limitation, and must otherwise comply with the requirements of paragraph (e) of this section.

(2) >The total number of requests for production of documents and things which a party may serve upon another party pursuant to Rule 34 of the Federal Rules of Civil Procedure, in a proceeding, shall not exceed 15, counting subparts, except upon stipulation of the parties. If a party upon which requests for production of documents and things have been served believes that the number of requests served exceeds the limitation specified in this paragraph, and is not willing to waive this basis for objection, the party shall, within the time for (and instead of) serving answers and specific objections to the requests, serve a general objection on the ground of their excessive number. If the inquiring party, in turn, files a motion to compel discovery, the motion must be accompanied by a copy of the set(s) of requests which together are said to exceed the limitation, and must otherwise comply with the requirements of paragraph (e) of this section.< The production of documents and things under the provisions of Rule 34 of the Federal Rules of Civil Procedure will be made at the place where the documents and things are usually kept, or where the parties agree, or where and in the manner which the Trademark Trial and Appeal Board, upon motion, orders.

(e) *Motion for an order to compel discovery.* >(1)< If a party fails to designate a person pursuant to Rule 30(b)(6) or Rule 31(a) of the Federal Rules of Civil Procedure, or if a party or such designated person, or an officer, director or managing agent of a party fails to attend a deposition or fails to answer any question propounded in a discovery deposition, or any interrogatory, or fails to produce and permit the inspection and copying of any document or thing, the party seeking discovery may file a motion before the Trademark Trial and Appeal Board for an order to compel a designation, or attendance at a deposition, or an answer, or production and an opportunity to inspect and copy. >The motion must be filed within 30 days after the close of the discovery period, as originally set or as reset.< The motion shall include a copy of the request for designation or of the relevant portion of the discovery deposition; or a copy of the interrogatory with any answer or objection that was made; or a copy of the request for production, any proffer of production or objection to production in response to the request, and a list and brief description of the documents or things that were not produced for inspection and the documents or things that were not produced for inspection and copying. The motion must be supported by a written statement from the moving party that such party or the attorney therefor has made a good faith effort, by conference or correspondence, to resolve with the other party or the attorney therefor the issues presented in the motion and has been unable to reach agreement. If issues raised in the motion are subsequently resolved by agreement of the parties, the moving party should inform the Board in writing of the issues in the motion which no longer require adjudication.

>(2) When a party files a motion for an order to compel discovery, the case will be suspended by the Trademark Trial and Appeal Board with respect to all matters not germane to the motion, and no party should file any paper which is not germane to the motion, except as otherwise specified in the Board's suspension order. The filing of a motion to compel shall not toll the time for a party to respond to any outstanding discovery requests or to appear for any noticed discovery deposition.<

* * * * *

(g) *Sanctions.* (1) If a party fails to comply with an order of the Trademark Trial and Appeal Board relating to discovery, including a protective order, the Board may make any appropriate order, including any of the orders provided in Rule 37(b)(2) of the Federal Rules of Civil Procedure, except that the Board [does not have authority to] >will not< hold any person in contempt or [to] award any expenses to any party. The Board may impose against a party any of the sanctions provided by this subsection in the event that said party or any attorney, agent, or designated witness of that party fails to comply with a protective order made pursuant to Rule 26(c) of the Federal Rules of Civil Procedure.

* * * * *

(h) *Request>s< for admission[s].* >(1)< [Requests for admissions shall be governed by Rule 36 of the Federal Rules of Civil Procedure except that the Trademark Trial and Appeal Board does not have authority to award any expenses to any party.] >The total number of requests for admission which a party may serve upon another party, pursuant to Rule 36 of the Federal Rules of Civil Procedure, in a proceeding, shall not exceed 25, counting subparts, except upon stipulation of the parties. If a party upon which requests for admission have been served believes that the number of requests served exceeds the limitation specified in this paragraph, and is not willing to waive this basis for objection, the party shall, within the time for (and instead of) serving answers and specific objections to the requests, serve a general objection on the ground of their excessive number. If the inquiring party, in turn, files a motion to determine the sufficiency of the objection, the motion must be accompanied by a copy of the

set(s) of requests for admission which together are said to exceed the limitation, and must otherwise comply with the requirements of paragraph (h)(2) of this section.

(2) Any < [A] motion by a party to determine the sufficiency of an answer or objection to a request made by that party for an admission >must be filed within 30 days after the close of the discovery period, as originally set or as reset. The motion< shall include a copy of the request for admission and any exhibits thereto and of the answer or objection. The motion must be supported by a written statement from the moving party that such party or the attorney therefor has made a good faith effort, by conference or correspondence, to resolve with the other party or the attorney therefor the issues presented in the motion and has been unable to reach agreement. If issues raised in the motion are subsequently resolved by agreement of the parties, the moving party should inform the Board in writing of the issues in the motion which no longer require adjudication.

>(3) When a party files a motion to determine the sufficiency of an answer or objection to a request made by that party for an admission, the case will be suspended by the Trademark Trial and Appeal Board with respect to all matters not germane to the motion, and no party should file any paper which is not germane to the motion, except as otherwise specified in the Board's suspension order. The filing of a motion to determine the sufficiency of an answer or objection to a request for admission shall not toll the time for a party to respond to any outstanding discovery requests or to appear for any noticed discovery deposition.<

* * * * *

10. Section 2.121 is proposed to be amended by revising paragraphs (a)(1), (c) and (d) to read as follows:

§ 2.121 Assignment of times for taking testimony.

(a)(1) The Trademark Trial and Appeal Board will issue a trial order assigning to each party the time for taking testimony. No testimony shall be taken except during the times assigned, unless by stipulation of the parties approved by the Board, or, upon motion, by order of the Board. Testimony periods may be rescheduled by stipulation of the parties approved by the Board, or upon motion >showing extraordinary circumstances< granted by the Board; >if such a motion is denied, the testimony periods will remain as set< [, or by order of the Board]. The resetting of the closing date for discovery will result in the rescheduling of the testimony periods without action by any party. [The resetting of a party's time to respond to an outstanding request for discovery will not result in the automatic rescheduling of the discovery and/or testimony periods; such dates will be rescheduled only upon stipulation of the parties approved by the Board, or upon motion granted by the Board, or by order of the Board.]

* * * * *

(c) A testimony period which is solely for rebuttal will be set for >30< [fifteen] days. All other testimony periods will be set for >60< [thirty] days. The periods may be extended by stipulation of the parties approved by the Trademark Trial and Appeal Board, or upon motion >showing extraordinary circumstances< granted by the Board; >if such a motion is denied, the testimony periods will remain as set< [, or by order of the Board].

(d) When parties stipulate to the rescheduling of testimony periods or to the rescheduling of the closing date for discovery and the rescheduling of testimony periods, a stipulation presented in the form used in a trial order, signed by the parties, or a motion in said form signed by one party and including a statement that every other party has agreed thereto, and submitted >in a number of copies equal to the number of parties to the proceeding plus one copy for the Board< [in one original plus as many photocopies as there are parties], will, if approved, be so stamped, signed, and dated, and >a copy< [the copies] will be promptly returned to >each of< the parties.

11. Section 2.122 is proposed to be amended by revising paragraphs (b)(1) and (d)(1) to read as follows:

§ 2.122 Matters in evidence.

* * * * *

(b) *Application files.* (1) The file of each application or registration specified in a >notice< [declaration] of interference, of each application or registration specified in the notice of a concurrent use registration proceeding, of the application against which a notice of opposition is filed, or of each registration against which a petition or counterclaim for cancellation is filed forms part of the record of the proceeding without any action by the parties and reference may be made to the file for any relevant and competent purpose.

* * * * *

(d) *Registrations.* (1) A registration of the opposer or petitioner pleaded in an opposition or petition to cancel will be received in evidence and made part of the record if the opposition or petition is accompanied by two copies of the registration prepared and issued by the Patent and Trademark Office showing both the current status of and current title to the registration. For the cost of a copy of a registration showing status and title, see >§ 2.6(b)(4)< [§ 2.6(n)].

* * * * *

12. Section 2.123 is proposed to be amended by revising paragraphs (b) and (f) as follows:

§ 2.123 Trial testimony in inter partes cases.

* * * * *

(b) *Stipulations.* If the parties so stipulate in writing, depositions may be taken before any person authorized to administer oaths, at any place, upon any notice, and in any manner, and when so taken may be used like other depositions. By >written< agreement of the parties, the testimony of any witness or witnesses of any party, may be submitted in the form of an affidavit by such witness or witnesses. The parties may stipulate >in writing< what a particular witness would testify to if called, or the facts in the case of any party may be stipulated >in writing<.

* * * * *

(f) *Certification and filing >of deposition< [by officer].* The officer shall annex to the deposition his certificate showing:

(1) Due administration of the oath by the officer to the witness before the commencement of his deposition;

(2) The name of the person by whom the deposition was taken down, and whether, if not taken down by the officer, it was taken down in his presence;

(3) The presence or absence of the adverse party;

(4) The place, day, and hour of commencing and taking the deposition;

(5) The fact that the officer was not disqualified as specified in Rule 28 of the Federal Rules of Civil Procedure.

If any of the foregoing requirements are waived, the certificate shall so state. The officer shall sign the certificate and affix thereto his seal of office, if he has such a seal. Unless waived on the record by an agreement, he shall then [, without delay,] securely seal in an envelope all the evidence, notices, and paper exhibits, inscribe upon the envelope a certificate giving the number and title of the case, the name of each witness, and the date of sealing>. The officer or the party taking the deposition, or its attorney or other authorized representative, shall then< [,] address the package, and forward the same to the Commissioner of Patents and Trademarks. If the weight or bulk of

an exhibit shall exclude it from the envelope, it shall, unless waived on the record by agreement of all parties, be authenticated by the officer and transmitted >by the officer or the party taking the deposition, or its attorney or other authorized representative< in a separate package marked and addressed as provided in this section.

* * * * *

13. Section 2.125 is proposed to be amended by revising paragraph (c) to read as follows:

§ 2.125 Filing and service of testimony.

* * * * *

(c) One certified transcript and exhibits shall be filed [promptly] with the Trademark Trial and Appeal Board. Notice of such filing shall be served on each adverse party and a copy of each notice shall be filed with the Board.

* * * * *

14. Section 2.127 is proposed to be amended by revising paragraphs (a), (b), (d), (e)(1) and (f) to read as follows:

§ 2.127 Motions.

(a) Every motion shall be made in writing, shall contain a full statement of the grounds, and shall embody or be accompanied by a brief. >Except as provided in paragraph (e)(1) of this section a< [A] brief in response to a motion shall be filed within >30< [fifteen] days from the date of service of the motion unless another time is specified by the Trademark Trial and Appeal Board or the time is extended by >stipulation of the parties approved by the Board, or upon motion showing extraordinary circumstances granted by the Board; if such a motion for an extension is denied, the time for responding to the motion remains as specified under this section< [order of the Board on motion for good cause]. >Except as provided in paragraph (e)(1) of this section, a reply brief, if filed, shall be filed within 15 days from the date of service of the brief in response to the motion. The time for filing a reply brief will not be extended. No further papers in support of or in opposition to a motion will be considered by the Board. Briefs shall be submitted in typewritten or printed form, double spaced, in at least pica or eleven-point type, on letter-size paper. The brief in support of the motion and the brief in response to the motion shall not exceed 25 pages in length; and a reply brief shall not exceed 10 pages in length. Exhibits submitted in support of or in opposition to the motion shall not be deemed to be part of the brief for purposes of determining the length of the brief. When a party fails to file a brief in response to a motion, the Board may treat the motion as conceded. An oral hearing will not be held on a motion except on order by the Board.

(b) Any request for reconsideration or modification of an order or decision issued on a motion must be filed within >one month< [thirty days] from the date thereof. A brief in response must be filed within >15< [fifteen] days from the date of service of the request.

* * * * *

(d) When any party files a motion to dismiss, or a motion for judgment on the pleadings, or a motion for summary judgment, or any other motion which is potentially dispositive of a proceeding, the case will be suspended by the Trademark Trial and Appeal Board with respect to all matters not germane to the motion and no party should file any paper which is not germane to the motion >except as otherwise specified in the Board's suspension order. The filing of a summary judgment motion shall not toll the time for the moving party to respond to any outstanding discovery requests or to appear for any noticed discovery deposition, but it shall toll the time for the nonmoving party to serve such responses or to appear for such deposition<. If the case is not disposed of as a result of the motion, proceedings will be resumed pursuant to an order of the Board when the motion is decided.

(e)(1) >A motion for summary judgment may not be filed until notification of the proceeding has been sent to the parties by the Trademark Trial and Appeal Board.< A motion for summary judgment>, if filed,< should be filed prior to the commencement of the first testimony period, as originally set or as reset, and the Board, in its discretion, may deny as untimely any motion for summary judgment filed thereafter. >A motion under Rule 56(f) of the Federal Rules of Civil Procedure, if filed in response to a motion for summary judgment, shall be filed within 30 days from the date of service of the summary judgment motion. The time for filing a motion under Rule 56(f) will not be extended. If no motion under Rule 56(f) is filed, a brief in response to the motion for summary judgment shall be filed within 60 days from the date of service of the motion unless the time is extended by stipulation of the parties approved by the Board, or upon motion showing extraordinary circumstances granted by the Board; if such a motion for an extension is denied, the time for responding to the motion for summary judgment remains as specified under this section. A reply brief, if filed, shall be filed within 30 days from the date of service of the brief in response to the motion. The time for filing a reply brief will not be extended. No further papers in support of or in opposition to a motion for summary judgment will be considered by the Board.<

* * * * *

(f) The Board [does not have authority to] >will not< hold any person in contempt, or [to] award attorneys' fees or other expenses to any party.

15. Section 2.134 is proposed to be amended by revising paragraph (a) to read as follows:

§ 2.134 Surrender or voluntary cancellation of registration.

(a) After the commencement of a cancellation proceeding, if the respondent applies for cancellation of the involved registration under section >7(e)< [7(d)] of the Act of 1946 without the written consent of every adverse party to the proceeding, judgment shall be entered against the respondent. The written consent of an adverse party may be signed by the adverse party or by the adverse party's attorney or other authorized representative.

* * * * *

16. Section 2.146 is proposed to be amended by revising paragraph (e)(1) to read as follows:

§ 2.146 Petitions to the Commissioner.

* * * * *

(e)(1) A petition from the >grant or< denial of a request for an extension of time to file a notice of opposition shall be filed within fifteen days from the date of mailing of the >grant or< denial of the request>. A petition from the grant of a request< [and] shall be served on the >attorney or other authorized representative of the potential opposer, if any, or on the potential opposer. A petition from the denial of a request shall be served on the< attorney or other authorized representative of the applicant, if any, or on the applicant. Proof of service of the petition shall be made as provided by § 2.119(a). The >potential opposer or< the applicant>, as the case may be,< may file a response within fifteen days from the date of service of the petition and shall serve a copy of the response on the petitioner, with proof of service as provided by § 2.119(a). No further paper relating to the petition shall be filed.

* * * * *

PART 3—ASSIGNMENT, RECORDING AND RIGHTS OF ASSIGNEE

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

Authority: 15 U.S.C. 1123; 35 U.S.C. 6.

17a. Section 3.41 is proposed to be revised to read as follows:

§ 3.41 Recording fees.

All requests to record documents must be accompanied by the appropriate fee. A fee is required for each application, patent and registration against which the document is recorded as identified in the cover sheet. The recording fee is set in § 1.21(h) of this chapter for patents and in >§ 2.6(b)(6)< [§ 2.6(q)] of this chapter for trademarks.

Dated: May 30, 1997.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 97–14711 Filed 6–4–97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD 038–3009; FRL–5835–3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; 15% Rate-of-Progress Plan and Contingency Measures—Cecil County Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland for the Cecil County ozone nonattainment area to meet the 15 Percent Reasonable Further Progress Plan (RFP, or 15% plan), also known as rate-of-progress (ROP) requirements, of the Clean Air Act (CAA). EPA is proposing to approve Maryland's 15% plan for Cecil County because it meets the 15% plan requirements under the CAA, and is consistent with EPA policy and guidance. Emission reductions realized by Maryland's 15% plan for Cecil County are sufficient to fulfill Maryland's contingency measure obligation for the County. Therefore, EPA is also proposing approval of contingency measures for Cecil County, Maryland.

DATES: Comments on this proposed action must be postmarked by July 7, 1997.

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M. Street, SW., Washington, D.C. 20460; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Carolyn M. Donahue, (215) 566–2095, at the EPA Region III address above. Information may also be requested via e-mail at the following address: donahue.carolyn@epamail.epa.gov. Please note that while information may be requested via e-mail, only written comments can be accepted for inclusion in the docket.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(b)(1) of the CAA, as amended in 1990, requires ozone nonattainment areas classified as moderate and above to develop plans to reduce area-wide volatile organic compound (VOC) emissions by 15% from a 1990 baseline. These ''15% plans'' were to be submitted to EPA by November 15, 1993, with the reductions to occur by November 15, 1996. The CAA also sets limitations on the creditability of certain control measures towards the ROP requirements. Specifically, states cannot take credit for reductions achieved by Federal Motor Vehicle Control Program (FMVCP) measures (i.e., new car emissions standards) promulgated prior to 1990; or for reductions resulting from regulations promulgated prior to 1990 to lower the volatility (i.e., Reid vapor pressure (RVP)) of gasoline. Furthermore, the CAA does not allow credit towards RFP for post-1990 corrections to vehicle inspection and maintenance programs (I/M) or corrections to Reasonably Available Control Technology (RACT) rules, as these programs were required to be in place prior to 1990.

In addition, section 172(c)(9) of the CAA requires that contingency measures be included in the 15% plan, to be implemented if reasonable further progress is not achieved, or if the National Ambient Air Quality Standard (NAAQS) is not attained by the deadlines set forth in the CAA.

II. Maryland SIP Submittal for Cecil County

In Maryland, three nonattainment areas are subject to the CAA's 15% ROP requirements. These are the Baltimore nonattainment area, the Maryland portion of the Metropolitan Washington, DC nonattainment area, and Cecil County, which is part of the Philadelphia-Wilmington-Trenton nonattainment area. The Maryland Department of the Environment (MDE) submitted revisions to its SIP for all three nonattainment area, which EPA received on July 12, 1995. EPA is taking action today only on Maryland's 15% plan submittal and contingency measures for Cecil County. The 15% plan submittals for the Maryland portion of the Metropolitan Washington, DC nonattainment area and the Baltimore nonattainment area will be the subjects of other rulemaking notices.

III. Analysis of SIP Revision

Table 1 presents the calculations of the required reductions for the Cecil County nonattainment area 15% ROP plan.

TABLE 1.—CALCULATION OF REQUIRED REDUCTIONS FOR MARYLAND'S 15% PLAN FOR THE CECIL COUNTY NONATTAINMENT AREA

[Tons per day]

(1) 1990 Base Year Inventory	19.0
(2) Adjustments for FMVCP/RVP	2.4
(3) 1990 Adjusted Base Year Inventory [(1)–(2)]	16.6
(4) 15% Reduction Requirement [0.15×(3)]	2.49
(5) Expected Emissions Growth 1990–1996	0.7
(6) 3% Contingency Measures [0.03×(3)]	0.49
(7) Total Emissions Reductions Required [(4)+(5)+(6)]	3.68
(8) Total Reduction Claimed by Maryland from Creditable Measures	4.72

A. 1990 Base Year Emissions Inventory

The baseline from which states must determine the required reductions for 15% planning is the 1990 VOC base year emissions inventory. The inventory is broken down into several emissions source categories: stationary, area, on-road mobile sources, and off-road mobile sources. This emissions total is the basis for calculating emissions growth and the required 15% emissions reduction from the adjusted base year inventory. The 1990 adjusted base year inventory is derived from the 1990 base year inventory minus FMVCP/RVP reductions, RACT corrections and I/M corrections. Pursuant to the CAA, Maryland did not take credit for post-1990 RACT corrections or post-1990 I/M corrections because these programs were to be in place prior to 1990. Maryland submitted a formal SIP revision containing their official 1990 base year emission inventory on March

21, 1994. EPA approved this inventory in a notice published in the **Federal Register** on September 27, 1996 (61 FR 50715).

In its 15% plan for Cecil County, the State of Maryland submitted a 1990 base year inventory totaling 18.9 TPD. However, the approved 1990 base year inventory for Cecil County, Maryland, is 19.0 TPD. This discrepancy is not critical to the rest of Maryland's 15% plan calculations because it is not large enough to significantly change the 15% required emissions reduction calculated for the area (a difference of 0.015 TPD). EPA believes that this discrepancy arose due to rounding differences in Maryland's 15% plan and base year emissions inventory calculations. EPA will continue using the approved total of 19.0 TPD as the 1990 base year inventory for Cecil County throughout this action.

B. Growth in Emissions Between 1990 and 1996

EPA has interpreted the CAA (57 FR 13507, April 16, 1992) to require that RFP towards attainment of the ozone standard must be obtained after offsetting any growth expected to occur during that period. Therefore, to meet the 15% requirement, a state must implement measures achieving sufficient emissions reductions to offset projected growth in emissions, in addition to a 15% reduction of VOC emissions. Thus, an estimate of VOC emissions growth from 1990 to 1996 is necessary for demonstrating RFP. Growth is calculated by multiplying the 1990 base year inventory by acceptable forecasting indicators. Growth must be determined separately for each source, or by source category, since different source categories typically grow at different rates. EPA's inventory preparation guidance recommends the following indicators in order of preference: Product output, value added, earnings, and employment. Population can also serve as a surrogate indicator.

Maryland's 15% plan for Cecil County contains growth projections for point, area, on-road mobile, and non-road mobile source categories. Maryland determined the growth projection for Cecil County using the U.S. Department of Commerce Bureau of Economic Analysis (BEA) growth factors and industrial earnings as an indicator. EPA has determined that the growth projections for each of the categories in Cecil County is approvable. For a detailed description of the growth methodologies used by the State, please refer to EPA's Technical Support Document (TSD) prepared for this action.

C. Creditable Emission Control Strategies in the 15% Plan

The specific measures adopted (either through state or federal rules) for the Cecil County nonattainment area are addressed, in detail, in the State's 15% plan for Cecil County. The control measures described below are creditable towards the 15% requirements of the CAA. EPA agrees with the emission reductions projected in the state submittal for the following measures:

1. Seasonal Open Burning Ban

Maryland submitted amendments to its open burning regulation,

COMAR 26.11.07, on July 12, 1995. These amendments institute a ban, during the peak ozone season, on the practice of burning for the disposal of brush and yard waste as a method of land clearing. On January 31, 1997, EPA's direct final approval of these revisions into the Maryland SIP was signed.

This ban on open burning, affecting Cecil County (part of the Philadelphia-Wilmington-Trenton severe nonattainment area), will result in a reduction of VOC emissions. The State of Maryland claimed 4.4 tons VOC per day (TPD) emissions reductions from the seasonal open burning ban in Cecil County. Maryland assumed 100% rule effectiveness to attain this emission reduction. However, the State did not submit any documentation substantiating why the default value of 80% rule effectiveness should not be applied to this measure.

Rule effectiveness is an estimate of how effectively a rule is implemented, and is used as a percentage of total available reductions from a control measure. Pursuant to EPA guidance, control measures are subject to a rule effectiveness adjustment, unless clearly documented reasons as to why they should not be subjected are included in the submittal. Therefore, the State of Maryland can claim 3.52 TPD emissions reductions from the seasonal open burning ban in Cecil County (80% of 4.4 TPD).

2. Consumer and Commercial Products National Rule

Section 183(e) of the Act required EPA to conduct a study of VOC emissions from consumer and commercial products and to compile a regulatory priority list. EPA is then required to regulate those categories that account for 80% of the consumer product emissions in ozone nonattainment areas. Group I of EPA's regulatory schedule lists 24 categories of consumer products to be regulated by national rule, including personal, household, and automotive products. EPA intends to issue a final rule covering these products in the near future. EPA policy allows states to claim up to a 20% reduction of total consumer product emissions towards the ROP requirement. Maryland claimed a 20% reduction or the equivalent reduction of 0.1 TPD from their 1996 projected uncontrolled consumer and commercial products emissions in its 15% plan for Cecil County. EPA has determined that this 0.1 TPD reduction is creditable in the 15% plan.

3. Stage I

Stage I Vapor Recovery is a measure that controls gasoline vapor emissions at gasoline dispensing facilities that result from unloading gasoline from a delivery vessel (tank truck) into a stationary storage vessel (storage tank). The vapors displaced in the storage tank by the liquid gasoline are retrieved into the tank truck and transported back to the refinery. EPA has approved Maryland's Stage I regulation into the Maryland SIP (60 FR 2018). From this type of control measure, Maryland claimed 0.8 TPD emission reductions in the 15% plan for Cecil County. EPA has determined that these 0.8 TPD are creditable toward the 15% plan.

4. Autobody Refinishing

EPA is in the process of adopting a national rule to control emissions from coatings used in auto body refinishing operations.

These coatings are typically used by industry and small businesses, or by vehicle owners. VOC emissions emanate from the evaporation of solvents used in the coating process. Although there are various avenues of VOC control in the autobody finishing process, the national rule targets the formulation of the surface coatings. In a November 24, 1994 memo, EPA set forth policy on the creditable reductions to be assumed from the national rule for autobody refinishing. That memo stipulated that a 37% reduction from current emissions, and allowed for the assumption of 100% rule effectiveness (presuming the coating application instructions were being followed). Rule penetration is also assumed to be 100%. Thus, a 37% emission reduction claimed by Maryland is allowable.

Maryland claimed a 45% emission reduction from autobody refinishing in the Cecil County 15% plan from a state autobody refinishing regulation. However, this rule has yet to be approved into the SIP. Therefore, only

a 37% reduction, or 0.14 TPD, from autobody refinishing is allowable in the Maryland 15% plan for Cecil County.

5. Architectural and Industrial Maintenance (AIM) Coatings Reformulation

EPA is required to promulgate, by March 1997, a national rule for reducing emissions from architectural coatings—including interior and exterior paints, etc. In a policy memo dated March 22, 1995, EPA provided guidance on expected reductions and creditability from the national architectural coatings rule (61 FR 32729). Cecil County claims an emissions reduction of 0.2 TPD from AIM reformulation. However, EPA cannot allow 0.2 TPD because rule effectiveness was not applied to this control measure. Therefore, only 0.16 TPD (0.2 TPD x 80% rule effectiveness) can be credited to Cecil County's 15% plan.

As shown above, the 15% required reductions (2.49 TPD) and the expected emissions growth from 1990 to 1996 (0.7 TPD) for Cecil County are realized by the 4.72 TPD total emission reductions from open burning, stage I, consumer and commercial products, autobody refinishing, and AIM coatings.

D. Contingency Measures

Ozone areas classified as moderate or above must include in their submittal, under section 172(c)(9) of the CAA, contingency measures to be implemented if RFP is not achieved or if the standard is not attained by the applicable date. The General Preamble to Title I, (57 FR 13498) states that the contingency measures should, at a minimum, ensure that an appropriate level of emissions reduction progress continues to be made if attainment or RFP is not achieved and additional planning by the state is needed. Therefore, EPA interprets the CAA to require states with moderate and above ozone nonattainment areas to include sufficient contingency measures in the ROP plan, so that upon implementation of such measures, additional emissions reductions of up to 3% of the adjusted base year inventory (or a lesser percentage that will make up the identified shortfall) would be achieved in the year after the failure has been identified. However, the emissions reduction in Maryland's 15% plan for Cecil County exceed the required 15% by more than 3% of the required emissions reduction; thus, EPA considers the contingency measures requirement adequately addressed through the plan's total emissions reduction. Therefore, Maryland does not need to address contingency measures for Cecil County as a separate emissions reduction requirement. The needed emission reduction for the Cecil County ROP plan is the sum of the required 15% reduction, the expected emission growth from 1990 to 1996, and the 3% contingency reduction, totaling 3.68 TPD. This emissions reduction total can be fulfilled through the creditable control measures for Cecil County, which achieve a 4.72 TPD emission reduction.

IV. Proposed Action

EPA has evaluated the Maryland 15% plan submittal for Cecil County for consistency with the CAA, EPA regulations, and EPA policy. The RFP progress submittal will achieve enough reductions to meet the 15% requirements of section 182(b)(1) of the CAA, as well as the additional 3% as contingency measures under 172(c)(9) of the CAA. EPA is proposing full approval of Maryland's 15% plan and contingency measures for Cecil County under section 110(k)(3) and Part D of the CAA.

Nothing in this proposed rule should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This proposed approval for the Maryland 15% plan for the Cecil County nonattainment area has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this action from E.O. 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval of Maryland's 15% plan and contingency measures for Cecil County does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *US EPA*, 427 US 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector; or to state, local, or tribal governments in the aggregate.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

The Regional Administrator's decision to approve or disapprove the SIP revision pertaining to the Maryland 15% plan and contingency measures for the Cecil County nonattainment area will be based on whether it meets the requirements of section 110(a)(2) (A)–(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Parts 52 and 81

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental regulations, Reporting and recordkeeping, Ozone, Volatile organic compounds.

Dated: April 9, 1997.

A.R. Morris,

Acting Regional Administrator.

[FR Doc. 97–14719 Filed 6–4–97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD 053–3013; FRL–5835–6]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; 15% Plan for Metropolitan Washington, D.C. Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing conditional approval of the State Implementation Plan (SIP) revision submitted by the State of Maryland for the Maryland portion of the Metropolitan Washington, D.C. serious ozone nonattainment area to meet the 15 percent rate-of-progress (ROP) requirements (also known as the 15% plan) of the Clean Air Act (the Act). EPA is proposing conditional approval because the 15% plan submitted by the State of Maryland will result in significant emission reductions from the 1990 baseline emissions of volatile organic compounds (VOCs) which contribute to the formation of ground level ozone, and, thus, will improve air quality. This action is being taken under section 110 of the Act.

DATES: Comments on this proposed action for the 15% plan must be postmarked by July 7, 1997.

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Ozone/Carbon Monoxide, and Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107. Persons interested in examining these documents should schedule an appointment with the contact person (listed below) at least 24 hours before the visiting day. Copies of the documents relevant to this action are also available at the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Carolyn M. Donahue, Ozone/Carbon Monoxide, and Mobile Sources Section (3AT21), USEPA—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107, or by telephone at (215) 566–2095. Questions may also be addressed via e-mail at donahue.carolyn@epamail.epa.gov. Please note that only written comments can be accepted for inclusion in the docket.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(b)(1) of the Act, as amended in 1990, requires ozone nonattainment areas classified as moderate or above to develop plans to reduce VOC emissions by 15% from 1990 baseline levels in the area accounting for growth from 1990 to 1996. VOCs emitted during the summer months contribute significantly to the formation of ground level ozone.

The Metropolitan Washington, D.C. area is classified as a serious ozone nonattainment area and is subject to the 15% requirement. The Metropolitan Washington, D.C. ozone nonattainment area consists of the entire District of Columbia (''the District''), five counties in the Northern Virginia area and five counties in Maryland. The Maryland portion of the nonattainment area consists of the Counties of Calvert, Charles, Frederick, Montgomery, and Prince George's. These areas are subject to Maryland's 15% plan.

The Act sets limitations on the creditability of certain control measures towards reasonable further progress. Specifically, States cannot take credit for reductions achieved by Federal Motor Vehicle Control Program (FMVCP) measures (e.g., new car emissions standards) promulgated prior to 1990; or for reductions stemming from regulations promulgated prior to 1990 to lower the volatility [i.e., Reid Vapor Pressure (RVP)] of gasoline. Furthermore, the Act does not allow credit towards reasonable further progress (RFP) for post-1990 corrections to existing motor vehicle inspection and maintenance (I/M) programs or corrections to reasonably available control technology (RACT) rules, since these programs were required to be in-place prior to 1990. In addition to these restrictions, a creditable measure must be either in the approved SIP, result from a national rule promulgated by EPA or be contained in a permit issued under Title V of the Act. Any measure must result in real, permanent, quantifiable, and enforceable emission reductions to be creditable toward the 15% goal.

Virginia, Maryland and the District all must demonstrate reasonable further progress for the Metropolitan Washington, D.C. nonattainment area. The Commonwealth of Virginia, State of Maryland, and the District of Columbia, in conjunction with municipal planning organizations, collaborated on a coordinated 15% plan for the Metropolitan Washington, D.C. nonattainment area (regional 15% plan). This was done with the assistance of the regional air quality planning committee, the Metropolitan Washington Air Quality Committee (MWAQC), and the local municipal planning organization, the Metropolitan Washington Council of Governments (MWCOG), to ensure coordination of air quality and transportation planning. The Act provides for interstate coordination for multi-state nonattainment areas. Because the interstate municipal planning organization involved, MWCOG, meets the requirements of section 174(c) of the Act, EPA has determined that the relevant interstate coordination requirements have been fulfilled. In the absence of an agreement to prepare a nonattainment area-wide plan, each state could have developed and submitted a SIP revision to obtain the 15% ROP requirement independently of the others.

Although the plan was developed by a regional approach, each jurisdiction is required to submit its portion of the 15% plan to EPA as a revision to its SIP. The 15% plan for the Maryland portion of the nonattainment area was submitted as a SIP revision by the Maryland Department of the Environment (MDE) on July 12, 1995. Because ROP requirements such as the 15% plan affect transportation improvement plans, municipal planning organizations have historically been involved in air quality planning in the Metropolitan Washington, DC area. As explained in further detail below, the regional 15% plan determined the regional target level, regional projections of growth and finally the total amount of creditable reductions required under the 15% requirement in the entire Metropolitan Washington, DC ozone nonattainment area. The three jurisdictions, Maryland, Virginia, and the District, all agreed to apportion this total amount of required creditable reductions among themselves. EPA is taking action today on Maryland's 15% plan submittal, which addresses only Maryland's responsibility for the 15% ROP plan in the Metropolitan Washington, DC area.

On March 4, 1997, Maryland submitted a draft revised regional 15% plan for its portion of the Metropolitan Washington, DC nonattainment area. Maryland scheduled a public hearing on the proposed revisions to its 15% plan for March 3, 1997. EPA is taking action today on Maryland's July 12, 1995 15% plan submittal with the knowledge that

Maryland will be making a formal SIP revision revising its 15% plan.

EPA has reviewed Maryland's July 12, 1995 15% plan submittal and has identified several deficiencies, which prohibit its full approval. A detailed discussion of these deficiencies is included below in the Analysis portion of this rulemaking action, and also in the Technical Support Document (TSD) prepared by EPA for this action. Copies of the TSD are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this notice. Due to these deficiencies, it cannot be affirmatively determined that the State's plan achieves the 15% ROP target for reduction in VOCs. Therefore, EPA is proposing conditional approval of this 15% plan.

II. Analysis of the SIP Revision

A. Base Year Emission Inventory

The baseline from which states must determine the required reductions for 15% planning is the 1990 VOC base year emissions inventory. The inventory is broken down into several emissions source categories: stationary, area, on-road mobile, and off-road mobile. Maryland submitted formal SIP revisions containing their 1990 VOC base year inventory for the Maryland portion of the Metropolitan Washington, DC area on July 12, 1995.

B. Growth in Emissions Between 1990 and 1996

EPA has interpreted the Act to require that reasonable further progress towards attainment of the ozone standard must be obtained after offsetting any growth expected to occur over that period. Therefore, to meet the 15% ROP requirement, a state must enact measures achieving sufficient emissions reductions to offset projected growth in emissions, in addition to achieving a 15% reduction of VOC emissions from baseline levels. Thus, an estimate of VOC emissions growth from 1990 to 1996 is necessary for determining whether the 15% reduction target has been achieved. Growth is calculated by multiplying the 1990 base year inventory by acceptable forecasting indicators. Growth must be determined separately for each source or source category, since sources typically grow at different rates. EPA's inventory preparation guidance recommends the following indicators, as applied to emission units in the case of stationary sources or to a source category in the case of area sources, in order of preference: Product output, value added, earnings, and employment. Population can also serve as a surrogate indicator.

Maryland's 15% plan for the Maryland portion contains growth projections for stationary, area, on-road motor vehicle, and non-road vehicle source categories. For a detailed description of the growth methodologies used by the State, please refer to the TSD for this action.

To estimate growth for area sources and non-road mobile sources, Maryland used acceptable growth factor surrogates such as population, employment and vehicle miles traveled (VMT). The travel demand computer model, MOBILE5a, was used to project growth for on-road sources. The State's methodology for selecting growth factors and applying them to the 1990 base year emissions inventory to estimate growth in emissions in area, on-road mobile, and off-road mobile sources from 1990 to 1996 is approvable.

EPA, however, disagrees with the growth projections for the point source category. Maryland's 15% plan projected that point source emissions would remain constant for the period 1990 to 1996 because Maryland assumes new source review (NSR) offsets and special rules for modifications of sections 182(c) (6), (7), (8), and (10) of the Act would prevent an increase in point source emissions. EPA does not agree with this assumption for the following reasons:

1. The revised NSR rules for source modifications were not effective until November 15, 1992. Therefore, there may have been modifications of sources of less than the significance level of 40 tons per year (TPY) from 1990 to 1992. A potential 40 TPY increase could represent a 0.1 to 0.15 tons per season day (TPD) potential increase which is significant compared to the 1990 area-wide ROP (i.e., 1990 base year) inventory point source emissions of 18 TPD.

2. The revised NSR rules do not apply to cumulative modifications at a source of less than 25 TPY (de minimis modifications) nor to construction of new sources of less than 25 TPY potential emissions. For inventory purposes, point sources are defined as stationary sources with the potential to emit 10 TPY or more.

3. The NSR offset-related assumption does not address increases in emissions from sources that operated at less than 100% capacity during 1990 that can legally increase their typical ozone season day emissions by increasing the average daily production without triggering NSR offset requirements.

EPA cannot fully approve Maryland's point source growth projection based upon the assumption that the NSR program would hold point source emissions constant. As a condition of final approval, Maryland will have to remedy this deficiency and revise the 15% plan to:

1. Project growth in point source emissions between 1990 and 1996 using growth factors based upon an adequate surrogate in accordance with the applicable EPA guidance documents. Such a projection may be based upon more recent emissions data than 1990, e.g., from current emission statements where available; and

2. Adopt and implement, if necessary, additional creditable measures to ensure that growth in point source emissions from 1990 to 1996 is offset.

It is relevant to note that Maryland has included growth in point sources, based on actual growth between 1990 and 1996, in the March 4, 1997 revised draft regional 15% plan subject to public hearing scheduled for March 3, 1997.

C. Calculation of Target Level Emissions

The regional 15% plan calculates a target level of emissions to meet the 15% ROP requirement over the entire nonattainment area. The regional 15% plan projects emissions growth from 1990 to 1996 and apportions among the three jurisdictions the amount of creditable emission reductions that each jurisdiction must achieve in order for the entire nonattainment area to achieve a 15% reduction in VOCs net of growth. Each jurisdiction adopted the regional plan, which identified the amount of creditable emission reductions which that jurisdiction must achieve for the regional plan to get 15%, accounting for any growth. The regional plan calculated the ''target level'' of 1996 VOC emissions in accordance with EPA guidance.

EPA has interpreted section 182(b) of the Act to require that the base year VOC emission inventory be adjusted to account for reductions that would occur from the pre-1990 FMVCP and RVP programs. First, the regional plan calculated the non-creditable reductions from the pre-1990 FMVCP and RVP programs and subtracted those emissions from the 1990 ROP inventory. This yields the 1990 ''adjusted base year inventory''. The target level is the 1990 ROP inventory less the sum of the following:

1. 15% of the adjusted base year inventory,

2. The sum of the non-creditable reductions from the pre-1990 FMVCP and RVP programs, and

3. Any reductions resulting from post-1990 corrections to existing motor

vehicle inspection and maintenance (I/M) programs or corrections to RACT rules.

There were no post-1990 emission reductions attributed to RACT corrections or I/M corrections in the Metropolitan Washington, DC nonattainment area, and the regional plan correctly claimed zero reductions in the target level calculation. Table 1 summarizes the calculations for the 1996 VOC target level for the entire Metropolitan Washington, DC nonattainment area.

TABLE 1.—CALCULATION OF REQUIRED REDUCTIONS FOR THE WASHINGTON, DC NONATTAINMENT AREA 15% PLAN

	District of Columbia	Maryland	Virginia	Washington D.C. area totals
1 1990 ROP Inventory	65.9	249.9	222.8	538.6
2 1990 Adjusted Base Year Inventory	56.3	216.9	190.7	463.9
3 FMVCP/RVP Adjustment (Line 1 less Line 2)	9.60	33.00	32.10	74.70
4 15% Reduction Requirement = 15% of Adjusted Base Year (0.15 × Line 2)	8.45	32.54	28.61	69.6
5 RACT Corrections	0.00	0.00	0.00	0
6 I/M Corrections	0.00	0.00	0.00	0
7 Total 15% & Non-creditable Reductions (Sum of lines 3, 4, 5 & 6)	18.05	65.54	60.71	144.30
8 Projected Growth 1990 to 1996	5.20	29.10	29.00	63.30
9 1996 Regional Target Level (line 1 less line 7)	.....	.....	.....	394.30
10 Apportioned State Emission Reduction and Regional Total	12.3	60.7	59.9	132.90
11 Total Reductions Claimed in 15% Plan	12.7	62.7	61.8	137.20

The emission reduction required to meet the 15% ROP requirement equals the sum of 15% of the adjusted base year inventory and any reductions necessary to offset emissions growth projected to occur between 1990 and 1996, plus reductions that resulted from corrections to the I/M or VOC RACT rules that were required to be in-place before 1990. The target level, Line 9 of the table, is the 1990 ROP inventory less the base 15% reduction (Line 4 of the table) and less all non-creditable emission reductions (Lines 3, 5 and 6 of the table). The Metropolitan Washington, DC nonattainment area regional target level is 394.3 TPD. EPA has determined that the regional target level for the Metropolitan Washington, DC nonattainment area has been properly calculated in accordance with EPA guidance.

The Maryland portion of the total 15% and non-creditable reductions is 65.54 TPD. Thus, the target level for Maryland is 184.4 TPD. EPA has determined that the target level for Maryland was also properly calculated in accordance with EPA guidance.

D. Creditable Emission Control Strategies in the 15% Plan

The specific measures adopted (either through state or federal rules) are addressed, in detail, in Maryland's 15% plan. The following is a brief description of each control measure Maryland has claimed credit for in the submitted 15% plan, as well as the results of EPA's review of the use of that strategy towards the Act's ROP requirement.

Reformulated Gasoline (RFG)

Section 211(k) of the Act requires that, beginning January 1, 1995, only RFG be sold or dispensed in ozone nonattainment areas classified as severe or above. Gasoline is reformulated to reduce combustion by-products and to produce fewer evaporative emissions. Section 211(k)(6) allows other nonattainment areas to ''opt in'' to the program. EPA approved the request by Maryland to opt in to the RFG program. The State claims a reduction of 9.2 TPD from its 1996 projected uncontrolled on-road mobile source emissions using the MOBILE5a model to determine the emission benefit. EPA has reviewed the Maryland submittal's calculation of the benefits for this measure and finds that the amount of reduction Maryland claims is creditable, but has not been documented as required by the Act.

In order to address these documentation and modeling issues, as well as the requirements of the National Highway Systems Designation Act (NHSDA), EPA is requiring Maryland to recalculate the mobile source credits for enhanced I/M program, RFG and FMVCP (Tier I). The benefits from RFG and Tier I must not be separated out on a tons per day basis for each control measure, but rather all mobile source measures must be included in the 1999 target level calculation run. This remodeling assessment will therefore remove any potential for ''double-counting'' the credit accorded to individual mobile source measures. The requirement for a remodeling assessment is discussed below in the section addressing credits for Maryland's enhanced I/M program. While EPA will require Maryland to document and remodel the credits derived from RFG under the remodeling condition cited in the enhanced I/M section of this rule, EPA has no reason to dispute at this time that the 9.2 TPD emission benefit claimed in Maryland's 15% plan from the RFG program is creditable.

Off-Road Use of Reformulated Gasoline

The use of RFG will also result in reduced emissions from off-road engines such as motors for recreational boats and lawn mower engines, commonly used in summer months. Maryland claims a reduction of 1.2 TPD from its 1996 projected uncontrolled off-road mobile source emissions. Maryland used guidance provided on August 18, 1993 by EPA's Office of Mobile Sources on the VOC emission benefits for non-road equipment which are in a nonattainment area that uses Federal Phase I RFG. Maryland has correctly used the guidance to quantify the VOC emission reductions for this measure. EPA had determined that the 1.2 TPD emission benefit claimed in Maryland's 15% plan is creditable.

Post 1990 Federal Motor Vehicle Control Program (Tier I)

EPA promulgated a national rule establishing ''new car'' standards for 1994 and newer model year light-duty vehicles and light-duty trucks on June 5, 1991 (56 FR 25724). Since the standards were adopted after the Act was amended in 1990, the resulting emission reductions are creditable toward the 15% reduction goal. Due to the three-year phase-in period for this program and the associated benefits stemming from fleet turnover, the reductions prior to 1996 are somewhat limited. Maryland claimed a reduction of 1.0 TPD from the

Tier I using the MOBILE5a model to determine the emission benefits. EPA has reviewed the methodology used by Maryland in calculating the benefits for this measure and finds that the amount of reduction Maryland claims is creditable, but has not been documented as required by the Act.

As described above, in order to address these documentation and modeling issues, as well as the requirements of the NHSDA, EPA is requiring Maryland to recalculate the mobile source credits for enhanced I/M, RFG, and Tier I. While EPA will require Maryland to remodel the credits derived from Tier I under the remodeling condition cited in the enhanced I/M section of this rule, EPA has no reason to dispute at this time that the 1.0 TPD emission benefit claimed by Maryland in its 15% plan from Tier I is creditable.

Architectural and Industrial Maintenance Coatings (AIM)

In EPA's most recent policy memorandum on AIM credits, ''Update on the Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coatings Rule,'' dated March 7, 1996, EPA allowed states to claim a 20% reduction of total AIM emissions from the national rule. Maryland claimed a 20% reduction in AIM emissions under its 15% plan, which is a reduction of 4.9 TPD from their 1996 projected uncontrolled AIM coating emissions. In the March 7, 1996 memorandum, EPA allowed states to continue to claim a 20% reduction of total AIM emissions from the national rule in their 15% plans although the emission reductions are not expected to occur until April 1997. As a result of legal challenges to the proposed national rule, EPA has negotiated a compliance date of no earlier than January 1, 1998. Even though the promulgation date for this rule is now months beyond the end of 1996, it is EPA's intention to still allow the amount of credit specified for the AIM rule in the memorandum in states' 15% plans. EPA believes this is justified in light of the significant delays in proposing the rule. Furthermore, EPA believes the State has a significantly limited ability to effectuate reductions from this measure through the state adoption process any sooner than EPA's rulemaking schedule. If this final rule does not provide the amount of credit that Maryland claims in its 15% plan, the State is responsible for developing measures to make up the shortfall.

Use of emissions reductions from EPA's expected national AIM rule is acceptable towards the 15% plan target. Therefore, the 4.9 TPD in Maryland's 15% plan are creditable.

Consumer and Commercial Products

Section 183(e) of the Act required EPA to conduct a study of VOC emissions from consumer and commercial products and to compile a regulatory priority list. EPA is then required to regulate those categories that account for 80% of the consumer product emissions in ozone nonattainment areas. Group I of EPA's regulatory schedule lists 24 categories of consumer products to be regulated by national rule, including personal, household, and automotive products. EPA intends to issue a final rule covering these products in the near future. EPA policy allows states to claim up to a 20% reduction of total consumer product emissions towards the ROP requirement. Maryland claimed a 20% reduction or the equivalent reduction of 1.7 TPD from their 1996 projected uncontrolled consumer and commercial products emissions in its 15% plan. For the reasons discussed above under the AIM rule regarding delayed implementation of national rules, the EPA believes the 1.7 TPD projected reduction in Maryland's 15% plan is creditable. If this final rule does not provide the amount of credit that Maryland claims in its 15% plan, the State is responsible for developing measures to make up the shortfall.

Autobody Refinishing

In a November 29, 1994 memorandum, ''Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule and the Autobody Refinishing Rule,'' EPA set forth policy on the creditable reductions to be assumed from the national rule for autobody refinishing. That memorandum allowed for a 37% reduction from current emissions with an assumption of 100% rule effectiveness (presuming the coating application instructions were being followed). Maryland followed EPA's guidance to determine the creditable emissions from this rule and claimed a reduction of 2.5 TPD from their 1996 projected uncontrolled autobody refinishing emissions in its 15% plan. For the reasons discussed above under the AIM rule regarding delayed implementation of national rules, EPA believes the 2.5 TPD projected reduction in Maryland's 15% plan is creditable. If this final rule does not provide the amount of credit that Maryland claims in its 15% plan, the State is responsible for developing measures to make up the shortfall.

Stage I Vapor Recovery

Stage I vapor recovery is a control measure which substantially reduces VOC emissions during the process of filling gasoline storage tanks at gasoline stations. This measure can be applied in newly designated nonattainment areas after the 1990 Amendments to the Act. In the Maryland portion of the Metropolitan Washington, DC nonattainment area, Stage I is a creditable measure in Calvert, Charles, and Frederick Counties in Maryland because Stage I was not required in these counties before 1990. The measure requires ''balanced submerged'' filling of gasoline storage tanks at gasoline service stations.

EPA policy allows emission reduction credits achieved in areas implementing Stage I control measures after 1990 to be creditable toward the 15% plan. Maryland estimates that this rule would result in a reduction of 0.9 TPD from Stage I in Calvert, Charles, and Frederick Counties. The 0.9 TPD projected reduction in Maryland's 15% plan is creditable.

Stage II Vapor Recovery

Section 182(b)(3) of the Act requires all owners and operators of gasoline dispensing systems in moderate and above ozone nonattainment areas to install and operate a system for gasoline vapor recovery (known as Stage II) of emissions from the fueling of motor vehicles. Stage II vapor recovery is a control measure which substantially reduces the VOC emissions during the refueling of motor vehicles at gasoline service stations. The Stage II vapor recovery nozzles at gasoline pumps capture the gasoline-rich vapors displaced by liquid fuel during the refueling process. On November 15, 1992, Maryland submitted a revision to its SIP to require the Stage II controls in all counties of the Maryland portion of the Metropolitan Washington, D.C. ozone nonattainment area.

Maryland had no pre-1990 Stage II controls in its portion of the Metropolitan Washington, DC nonattainment area. Stage II is a creditable measure in counties where these controls were not required before 1990. Maryland estimates that the control measure will result in a reduction of 7.9 TPD from the 1996 projected baseline of 11.7 TPD. The Maryland 15% plan states that Maryland used the MOBILE5a model in conjunction with gasoline throughput to determine the creditable emission reduction. For this mobile source measure, the State submitted limited documentation with regard to the

MOBILE5a runs and calculations done to determine credit. However, EPA has no reason to dispute Maryland's methodology. This measure and the 7.9 TPD is creditable toward the 15% requirement of Maryland's 15% plan.

Transportation Control Measures (TCMs)

TCMs are strategies to both reduce VMT and decrease the amount of emissions per VMT. TCMs are considered an essential element of control strategies for nonattainment areas. Section 108(f)(1)(A) of the Act classifies TCMs as programs for improved transit, traffic flow, fringe parking facilities for multiple occupancy transit programs, high occupancy or share-ride programs, and support for bicycle and other non-automobile transit. Maryland's measures include TCM projects programmed between fiscal years 1994–1999 in the transportation improvement plan (TIP) under the Congestion Mitigation and Air Quality (CMAQ) Improvement Program and funded for implementation by 1996 in the Metropolitan Washington, DC region. CMAQ provides funding for transportation related projects and programs designed to contribute to the attainment of air quality standards. TCMs are considered acceptable measures for states to use to achieve 15% reductions. EPA guidance requires that TCMs meet the following conditions to be creditable for the 15% plans: (1) A description of the measure; (2) evidence that the measure was adopted by the jurisdictions with legal authority to execute the measure; (3) evidence that funding is available to implement the measure; (4) evidence that all approvals have been obtained; (5) evidence that a complete schedule to plan, implement and enforce the measure has been adopted by the implementing agencies; and (6) a description of any monitoring program to evaluate the measure's effectiveness.

Maryland provided the required evidence in the plan submittal for a total emissions benefit of 0.2 TPD. Maryland used acceptable methodology for calculating the emissions benefit for the TCMs. The TCMs were all programmed and funded in the Washington Metropolitan Region's Fiscal Year 1994–1999 TIP. EPA has determined that the 0.2 TPD are creditable.

Seasonal Restrictions on Open Burning

Maryland has amended COMAR 26.11.07 to institute a ban on open burning during the peak ozone season in Maryland's severe and serious ozone nonattainment areas. Maryland considers the months of June, July, and August the peak ozone season, because that is when ambient levels of ozone in Maryland are usually the highest.

This ban on open burning affecting the Maryland portion of the Metropolitan Washington, DC serious ozone nonattainment area is a measure to reduce VOC emissions. During the peak ozone season, the practice of burning for the disposal of brush and yard waste as a method of land clearing will be banned. These revisions were adopted on May 1, 1995, and effective on May 22, 1995. Maryland submitted these revisions to EPA as a SIP revision on July 12, 1995. EPA's direct final approval of these revisions into the Maryland SIP was signed on January 31, 1997.

The following open fires are not prohibited, as long as all reasonable means are used to minimize smoke:

1. For cooking of food on noncommercial property (cook outs);
2. For recreational purposes (camp fires);
3. For prevention of fire hazards that cannot be abated by any other means;
4. For the instruction of fire fighters or the testing of fire fighter training systems fueled by propane or natural gas;
5. For protection of health and safety when disposal of hazardous waste is not possible by any other means;
6. For burning pest infested crops or agricultural burning for animal disease control;
7. For good forest resource management practices;
8. For the burning of excessive lodging for the purpose of re-cropping; and
9. For testing fire fighting training systems.

This ban is in effect during the ''peak ozone season''. During the remainder of the year (September 1–May 31) Maryland's existing open fire regulations apply. Current regulations require that a permit be obtained before open burning can take place.

The State of Maryland claims 3.7 TPD emissions reductions from the seasonal open burning ban. EPA has determined that this emission benefit is creditable to the Maryland portion of the Metropolitan Washington, DC nonattainment area.

Enhanced Vehicle Inspection and Maintenance (I/M) Program

Most of the 15% SIPs originally submitted to the EPA contained enhanced I/M programs because this program achieves more VOC emission reductions than most, if not all other, control strategies. However, because most states experienced substantial difficulties with these enhanced I/M programs, only a few states are currently actually testing cars using their original enhanced I/M protocols.

In the case of the Maryland portion of the Metropolitan Washington, DC nonattainment area, Maryland has submitted a 15% SIP that would achieve the amount of reductions needed from I/M by November 1999. On March 27, 1996, Maryland submitted an enhanced I/M SIP revision that calls for I/M program implementation in counties in the Metropolitan Washington, DC nonattainment area and Washington County. The Maryland enhanced I/M program is a biennial program with implementation required to begin no later than November 15, 1997. The enhanced I/M submittal consists of it's enabling legislation, a description of the I/M program, proposed regulations, and a good faith estimate that includes the State's basis in fact for emission reductions claimed from the I/M program. On October 31, 1996, EPA proposed conditional approval of the March 27, 1996 enhanced I/M SIP revision (61 FR 56183). The proposed conditional approval listed numerous minor and major deficiencies, and required Maryland to submit a letter within 30 days committing to correct the deficiencies. Maryland received an extension and submitted a letter dated December 23, 1996 committing to meet the requirements of full approval outlined in the October 31, 1996 proposed rulemaking. Full approval of Maryland's 15% plan is contingent on Maryland satisfying the conditions of the conditional approval of its enhanced I/M SIP by a date certain within one year of final conditional approval, and receiving final full EPA approval of its enhanced I/M program. If Maryland corrects the deficiencies by that date and submits a new enhanced I/M SIP revision, EPA will conduct rulemaking to approve that revision. If Maryland fails to fulfill a condition required for approval, and its I/M program converts to a disapproval, then the conditional approval of Maryland's 15% plan would also convert to a disapproval.

In September 1995, EPA finalized revisions to its enhanced I/M rule allowing states significant flexibility in designing I/M programs appropriate for their needs (60 FR 48029). Subsequently, Congress enacted the NHSDA, which provides states with additional flexibility in determining the design of enhanced I/M programs. The substantial amount of time needed by states to re-design enhanced I/M programs in accordance with the guidance contained within the NHSDA, secure state legislative approval when

necessary, and set up the infrastructure to perform the testing program has precluded states that revise their enhanced I/M programs from obtaining emission reductions from such revised programs by November 15, 1996.

The heavy reliance by many states upon enhanced I/M programs to help achieve the 15% VOC emissions reduction required under section 182(b)(1) of the Act, coupled with the recent NHSDA and regulatory changes regarding enhanced I/M programs, rendered it impracticable for many states to achieve the portion of the 15% reductions that are attributed to I/M by November 15, 1996.

Under these circumstances, disapproval of the 15% SIPs would serve no purpose. Consequently, under certain circumstances, EPA will propose to allow states that pursue re-design of enhanced I/M programs to receive emission reduction credit from these programs within their 15% plans, even though the emissions reductions from the I/M program will occur after November 15, 1996. The provisions for crediting reductions for enhanced I/M programs is contained in two documents: ''Date by which States Need to Achieve all the Reductions Needed for the 15 Percent Plan from I/M and Guidance for Recalculation,'' note from John Seitz and Margo Oge, dated August 13, 1996, and ''Modelling 15 Percent VOC Reductions from I/M in 1999—Supplemental Guidance,'' memorandum from Gay MacGregor and Sally Shaver, dated December 23, 1996.

Specifically, EPA is proposing approval of 15% SIPs if the emissions reductions from the revised, enhanced I/M programs, as well as from the other 15% SIP measures, will achieve the 15% level as soon after November 15, 1996 as practicable, pursuant to a February 12, 1997 memorandum from John Seitz and Richard Ossias entitled, ''15 Percent VOC SIP Approvals and the ''As Soon As Practicable' Test.'' To make this ''as soon as practicable'' determination, EPA must determine that the SIP contains all VOC control strategies that are practicable for the nonattainment area in question and that meaningfully accelerate the date by which the 15% level is achieved. EPA does not believe that measures meaningfully accelerate the 15% date if they provide only an insignificant amount of reductions.

EPA has examined other potentially available SIP measures to determine if they are practicable for Maryland's portion of the Metropolitan Washington, DC area and if they would meaningfully accelerate the date by which the area reaches the 15% level of reductions. The EPA proposes to determine that the SIP does contain the appropriate measures. The TSD for this action contains a discussion of other measures available for 15% plans. Maryland has taken credit for several of these measures (or essentially similar measures), such as reformulated gasoline, revised surface cleaning rules, etc., in the 15% plan; and taken credit for measures that EPA must promulgate under section 183(e) such as AIM coatings, consumer and commercial products rule, and autobody refinishing. Provided below is a tabular summary of this analysis. Measures for which Maryland took credit in the 15% ROP plan are identified in the table below as ''In 15% Plan'' and are not available as a possible alternative to I/M. The other programs that Maryland included in the 15% ROP plan result in only a possible 2.28 TPD reduction and do not deliver in the aggregate, anything close to the reductions achieved by enhanced I/M.

MARYLAND 15% PLAN METROPOLITAN WASHINGTON, D.C. AREA POTENTIAL

Measures considered	Potential VOC reduction (tons/day)
Area Source Measures:	
AIM Coatings—Federal Rule.	In 15% Plan.
Consumer Products—Federal Rule.	In 15% Plan.
Solvent Cleaning—Substitution/Equipment.	In 15% Plan.
Graphic Arts—Web Offset Control.	1.44
Autobody Refinishing—ACT control.	In 15% Plan.
Landfills—Federal Rule	In 15% Plan.
Other Dry Cleaning—SCAQMD 1102.	0.81
Stage I Enhancement—P/V Vents.	In 15% Plan.
Stage II—Vapor Recovery	In 15% Plan.
Nonroad Gasoline—Reformulated Gasoline.	In 15% Plan.
Point Source Measures:	
Other Dry Cleaning—SCAQMD 1102.	0.02
Stage I—P/V Vents	In 15% Plan.
Flexographic Printing—MACT early implementation.	In 15% Plan.
Gravure Printing—MACT early implementation.	0.01
Web Offset Lithography—ACT control.	In 15% Plan.
Non-mandated On-Road Mobile Measures:	
Reformulated Gasoline	In 15% Plan.
I/M Reductions:	
High Enhanced in 15% Plan.	In 15% Plan.

EPA has determined that the enhanced I/M program is the only measure that will significantly accelerate the date by which the 15% requirement will be achieved. EPA proposes to determine that Maryland's 15% plan does contain all measures, including enhanced I/M, that achieve reductions as soon as practicable. EPA proposes to allow enhanced I/M reductions occurring until November 15, 1999 to count toward the 15% emission reduction level for the 15% plan, since in doing so, the state will reach a 15% VOC reduction as soon as practicable.

Maryland claimed a total of 23.2 TPD credit for this measure. In its July 12, 1995 15% plan submittal, Maryland evaluated the I/M program using EPA's MOBILE5a model with assumptions that called for implementation of a centralized, IM240 test with pressure and purge testing, and a program start date of January 1, 1995. Since the time of the July 12, 1995 submittal, Maryland has revised its enhanced I/M program and submitted the redesigned program to EPA.

Maryland's I/M program is a biennial, centralized program network using IM240 testing equipment scheduled to begin testing by November 1997. Maryland has designed its centralized network of testing stations to accommodate biennial testing. EPA has determined that Maryland cannot accelerate the reductions by initially requiring annual testing because:

1. Without additional testing stations other requirements of the enhanced I/M rule relating to motorist convenience would suffer. Motorist convenience is one important aspect that affects public acceptance and effectiveness of the I/M program.

2. Additional infrastructure changes (e.g. more testing equipment, enlarging or building new testing stations, and the hiring and training of additional inspectors) to the enhanced I/M program would not come on-line in time to afford a substantial increase the amount of reductions realized before November 15, 1999.

3. The cost effectiveness of the program would be adversely affected because the additional costs would not result in a corresponding amount of reductions.

EPA proposes to determine that the I/M program for Maryland's portion of the Metropolitan Washington, D.C. area does achieve reductions from enhanced I/M as soon as practicable.

Because Maryland's revised I/M program is designed to meet EPA's high-enhanced performance standard and will achieve essentially the same number of testing cycles between start-up and November 1999 as that modeled

in the regional 15% plan, EPA believes that Maryland's program will achieve 23.2 TPD of reductions by 1999. However, EPA believes that Maryland (with MWCOG) is best able to perform the definitive determination because Maryland will use the same highway network model that was used to determine the 1990 base year inventory and the 1996 on-road VOC emissions budget used for transportation conformity purposes (The same highway network model is also used for conformity determinations). EPA believes it would be appropriate to condition approval of the 15% ROP upon Maryland remodeling the I/M benefits to reflect all relevant parameters (start date, network type, test types for exhaust and purge/pressure testing, waiver rates, cut points, etc.) of the revised, enhanced I/M program and show the I/M reductions needed to make the 15% reduction are achieved by no later than November 15, 1999. In performing this demonstration, the State should ensure that Tier I and RFG benefits are considered. Benefits should not be separated out on a tons per day basis for each control measure, but rather all mobile source measures should be evaluated in the 1999 ''target level,'' as defined in the December 23, 1996 memorandum, calculation run. EPA would further condition that such modeling would be done in accordance with EPA guidance. EPA's guidance for remodeling I/M for 15% plans includes: (1) A note to the Regional Division Directors from John Seitz and Margo Oge dated August 13, 1996 entitled ''Date by which States Need to Achieve all the Reductions Needed for the 15% Plan from I/M Guidance for Recalculation,'' and (2) a joint memorandum from Gay MacGregor and Sally Shaver dated December 23, 1996 entitled ''Modeling 15% VOC Reduction(s) from I/M in 1999—Supplemental Guidance.''

As it relates to Maryland's I/M program, EPA proposes a conditional approval of the 23.2 TPD reduction from enhanced I/M in the nonattainment area and Washington County, provided Maryland meets the conditions of the October 31, 1996 conditional approval of the enhanced I/M program; receives full EPA approval of its enhanced I/M program; and remodels its enhanced I/M program using the appropriate, updated parameters (e.g. appropriate start date, etc.).

Further, EPA makes this conditional approval of the 15% plan contingent upon Maryland maintaining a mandatory I/M program. EPA will not credit any reductions toward the 15% ROP requirement from a voluntary enhanced I/M program. Since the State's 15% plan claims 23.2 TPD from the implementation of a mandatory, centralized, IM240 plan, any changes to I/M which would render the program voluntary or discontinued would cause a shortfall of credits in the 15% reduction goal. EPA is, therefore, proposing in the alternative to convert this action automatically to a proposed disapproval should the State make the I/M a voluntary measure.

E. Emission Control Measures Not Evaluated

EPA is not taking action at this time on the following control measures contained in the Maryland 15% Plan submitted July 12, 1995:

Graphic Arts

This measure regulates emissions from formerly uncontrolled small lithographic printing operations, such as heatset web, non-heatset web, non-heatset sheet-fed, and newspaper non-heatset web operations. VOCs are emitted from the inks, fountain solutions and solvents used to clean the printing presses. This measure is modeled on EPA's draft documents ''Offset Lithographic Printing Control Techniques Guideline'' and ''Alternative Control Techniques Document: Offset Lithographic Printing'' announced in the **Federal Register**, November 8, 1993. Maryland claims 1.0 TPD in emission benefits from the 1996 projected year inventory of lithographic printing sources. EPA is not taking action on this control strategy in the July 12, 1995 Maryland 15% plan submittal, nor crediting the 1.0 TPD reduction toward the 15% ROP requirement in this rulemaking.

Surface Cleaning Operations

This measure amends the Maryland regulation for surface cleaning (also called cold cleaning and degreasing) devices and operations for area sources and requires more stringent emission control requirements and enlarges the field of applicable sources. Maryland's 1996 projection year inventory in this source category is 3.7 TPD. Maryland estimates that this measure would result in a 10% reduction of emissions and with 80% rule compliance resulting in 1.5 TPD reduction credits. EPA is not taking action on this control strategy in the July 12, 1995 Maryland 15% plan submittal, nor crediting the 1.5 TPD reduction toward the 15% ROP requirement in this rulemaking.

Municipal Landfill Emissions

This control measure is a state control program regulating VOC emissions from municipal landfills, utilizing landfill gas capture and destruction systems. Maryland estimated that this rule would result in a reduction of 0.7 TPD. EPA is not taking action on this control strategy in the July 12, 1995 Maryland 15% plan submittal, nor crediting the 0.7 TPD reduction toward the 15% ROP requirement in this rulemaking.

Pesticide Reformulation

This measure requires the use of low-VOC content pesticides for consumer, commercial and/or agricultural use. Maryland claims that this measure results in a reduction of 2.5 TPD by applying a 40% overall reduction to the 1996 base year projection emissions for pesticide application. EPA is not taking action on this control strategy in the July 12, 1995 Maryland 15% plan submittal, nor crediting the 2.5 TPD reduction toward the 15% ROP requirement in this rulemaking.

Non-CTG RACT to 50 TPY

Section 182(b)(2)(B) of the Act requires that serious ozone nonattainment areas adopt rules to require RACT for all VOC sources in the nonattainment area not already covered by any Control Technique Guideline (CTG) issued by EPA that has potential emissions of greater than or equal to 50 TPY. Maryland revised its existing RACT regulations to lower the major source threshold to include sources with allowable emissions of 50 TPY or more, and to extend the geographic applicability of the regulation statewide, which required RACT in Calvert, Charles, and Frederick Counties for the first time.

The State of Maryland requires the use of RACT coatings with emission limits of 3.5 pounds per gallon for Miscellaneous Metal Coatings. Also, Maryland will require controls on the oven vents of bakeries, but this rule has yet to be approved into Maryland's SIP. EPA is currently reviewing the bakery rule submitted by the State of Maryland. EPA is not taking action on this control strategy in the July 12, 1995 Maryland 15% plan submittal, nor crediting the 0.3 TPD reduction toward the 15% ROP requirement in this rulemaking.

Non-CTG RACT to 25 TPY

This measure involves expanding the required RACT standards to point sources with the potential to emit in excess of 25 TPY of VOC. States would be required to develop and implement new RACT regulations for all non-CTG point sources with the potential to emit between 25 and 50 TPY not already regulated or required to be regulated under the major source definition.

Maryland claims 0.3 TPD emission reduction from two sources: Andrews Air Force Base and Stone Industrial. EPA is not taking action on this control strategy in the July 12, 1995 Maryland 15% plan submittal, nor crediting the 0.3 TPD emission reduction toward the 15% ROP requirement in this rulemaking.

F. Reasonable Further Progress

The table below summarizes the proposed creditable measures and those measures which EPA is not taking action on in this rulemaking from Maryland's 15% plan for the Metropolitan Washington, D.C. area.

SUMMARY OF CREDITABLE EMISSION REDUCTIONS IN THE STATE OF MARYLAND'S 15% PLAN FOR THE METROPOLITAN WASHINGTON, D.C. SERIOUS OZONE NONATTAINMENT AREA

[Tons/day]

Creditable Reductions:	
FMVCP Tier I	1.0
Reformulated Gasoline	
On-Road	9.2
Off-Road	1.2
Autobody Refinishing	2.5
AIM	4.9
Consumer/Commercial Products	1.7
TCMs	0.2
Seasonal Open Burning Restrictions	3.7
Stage II Vapor Recovery Nozzles	7.9
Stage I Enhancement	0.9
Enhanced Inspection & Maintenance [1]	21.1
Washington County	2.1
Total Creditable	56.4
Measures EPA is not Taking Action on in This Rulemaking:	
Graphic Arts—Offset lithography	1.0
Surface Cleaning and Degreasing	1.5
Non-CTG RACT to 50 TPY	0.3
Non-CTG RACT to 25 TPY	0.3
Municipal Landfills	0.7
Pesticide Reformulation	2.5
Total No Action	6.3

[1] To conform with EPA's proposal of conditional approval of Maryland's I/M plan, EPA is proposing conditional approval of the reduction credits from Maryland's I/M program claimed in Maryland's 15% plan.

EPA has evaluated the July 12, 1995 Maryland submittal for consistency with the Act, applicable EPA regulations, and EPA policy. On its face, Maryland's 15% plan achieves the required 15% VOC emission reduction to meet Maryland's portion of the regional multi-state plan to achieve the 15% ROP requirements of section 182(b)(1) of the Act. However, there are measures included in the Maryland 15% plan, which may be creditable towards the Act requirement but which are insufficiently documented for EPA to take action on at this time. While the amount of creditable reductions for certain control measures has not been adequately documented to qualify for Clean Air Act full approval, EPA has determined that the submittal for Maryland contains enough of the required structure to warrant conditional approval. Furthermore, the July 12, 1995 submittal strengthens the SIP.

Based on EPA's preliminary review of the draft revised regional 15% plan for the Metropolitan Washington, DC nonattainment area, sent to EPA for comment by the State on March 4, 1997, EPA believes that the amount of VOC reduction that Maryland needs to satisfy the 15% ROP requirement in the Metropolitan Washington, DC area may be lower than the 56.4 TPD accounted for with creditable measures in the July 12, 1995 submittal. The draft revised plan includes revised information for the 1990 base year inventory and actual growth between 1990 and 1996, as opposed to projected growth. The effect of these revisions may lower the amount of creditable emission reductions Maryland needs to achieve the 15% ROP requirement.

III. Proposed Action

In light of the above deficiencies and to conform with EPA's proposed conditional approval of Maryland's I/M program, EPA is proposing conditional approval of this SIP revision under section 110(k)(4) of the Act.

EPA is proposing conditional approval of the Maryland 15% plan for the Maryland portion of the Metropolitan Washington, DC nonattainment area if Maryland commits, in writing, within 30 days of EPA's proposal to correct the deficiencies identified in this rulemaking. These conditions are described below. If the State does not make the required written commitment to EPA within 30 days, EPA is proposing in the alternative to disapprove the 15% plan SIP revision. If the State does make a timely commitment, but the conditions are not met by the specified date within one year, EPA is proposing that the rulemaking will convert to a final disapproval. EPA would notify Maryland by letter that the conditions have not been met and that the conditional approval of the 15% plan has converted to a disapproval. Each of the conditions must be fulfilled by Maryland and submitted to EPA as an amendment to the SIP. If Maryland corrects the deficiencies within one year of conditional approval, and submits a revised 15% plan as a SIP revision, EPA will conduct rulemaking to fully approve the revision. In order to make this 15% plan approvable, Maryland must fulfill the following conditions by no later than 12 months after EPA's final conditional approval:

1. Maryland's plan must account for growth in point sources.

2. Maryland must meet the conditions listed in the October 31, 1996 conditional I/M rulemaking notice, including its commitment to remodel the I/M reductions using the following two EPA guidance memos: ''Date by which States Need to Achieve all the Reductions Needed for the 15 Percent Plan from I/M and Guidance for Recalculation,'' note from John Seitz and Margo Oge dated August 13, 1996, and ''Modeling 15% VOC Reductions from I/M in 1999—Supplemental Guidance,'' from Gay MacGregor and Sally Shaver dated December 23, 1996.

3. Maryland must remodel to determine affirmatively the creditable reductions from RFG and Tier I in accordance with EPA guidance.

4. Maryland must submit a SIP revision amending the 15% plan with a determination using appropriate documentation methodologies and credit calculations that the 56.4 TPD reduction, supported through creditable emission measures in the submittal, satisfies Maryland's 15% ROP requirement for the Metropolitan Washington, DC area.

After making all the necessary corrections to establish the creditability of chosen control measures, Maryland must demonstrate that 15% emission reduction is obtained in the Washington, DC nonattainment area as required by section 182(b)(1) of the Act and in accordance with EPA's policies and guidance.

Further, EPA makes this conditional approval of the 15% plan contingent upon Maryland maintaining a mandatory I/M program. EPA will not credit any reductions toward the 15% ROP requirement from a voluntary enhanced I/M program. Since the State's 15% plan claims 23.2 TPD from the implementation of a mandatory, centralized, IM240 plan, any changes to I/M which would render the program voluntary or discontinued would cause a shortfall of credits in the 15% reduction goal. EPA is, therefore, proposing in the alternative to convert this action automatically to a proposed disapproval should the State make the enhanced I/M program a voluntary measure.

EPA and the Maryland Department of the Environment have worked closely

since the July 1995 submittal to resolve all the issues necessary to fully approve the 15% plan. Maryland is aware of the above deficiencies and has addressed many of the above-named deficiencies in the draft revised plan. Maryland has stated that it intends to submit additional information to address all deficiencies within the 15% plan. Therefore, while some deficiencies currently remain in the 15% plan, EPA believes that these issues will be resolved no later than 12 months after EPA's final conditional approval. EPA will consider all information submitted as a supplement or amendment to the July 1995 submittal prior to any final rulemaking action.

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

IV. Administrative Requirements

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. § 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. §§ 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Conditional approvals of SIP submittals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected.

Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action would not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more.

Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Under section 801(a)(1)(a) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

The Regional Administrator's decision to approve or disapprove the SIP revision pertaining to the Maryland 15% plan for the Metropolitan Washington, DC area will be based on whether it meets the requirements of section 110(a)(2)(a)–(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental regulations, Reporting and recordkeeping, Ozone, Volatile organic compounds.

Dated: May 28, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 97–14717 Filed 6–4–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Parts 214 and 215

[DFARS Case 97–D011]

Defense Federal Acquisition Regulation Supplement; Distribution of Contract Financing Payments

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to specify that, when a contract contains multiple accounting classification citations and a provision for contract financing payments, the contract also shall include instructions adequate to permit the paying office to distribute the contract financing payments in proportions that reasonably reflect the performance of work under the contract.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before August 4, 1997 to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Melissa Rider, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 97–D011 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT:

Ms. Melissa Rider, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes amendments to DFARS Subpart 214.2, Solicitations of Bids, and Subpart 215.4, Solicitation and Receipt of Proposals and Quotations, to indicate that, when a contract contains multiple accounting classification citations and includes a provision for contract financing payments, the contracting officer shall provide instructions adequate to permit the payment office to distribute the contract financing payments in proportions that reasonably reflect the performance of work on the contract. The contracting officer is required to use one of four alternative approaches for developing the payment instructions.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule primarily pertains to internal Government accounting procedures. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 97–D011 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because this proposed rule does not impose any information collection requirements that require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 214 and 215

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, it is proposed that 48 CFR parts 214 and 215 be amended as follows:

1. The authority citation for 48 CFR parts 214 and 215 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 214—SEALED BIDDING

2. Section 214.201–2 is added to read as follows:

214.201–2 Part I—The Schedule.

(g) *Section G, Contract administration data.* When a contract contains multiple accounting classification citations and includes a provision for contract financing payments (see FAR 32.902), the contracting officer shall provide instructions based on one of the following alternatives, adequate to permit the paying office to distribute the contract financing payment in proportions that reasonably reflect the performance of the work on the contract. Payment instructions shall not be selected solely on the basis of administrative convenience. The payment instructions may be updated as necessary.

(i) *Contract financing payments based on information supplied in accordance with contract requirements.* Payments will be made in a manner consistent with information provided by the contractor as a result of a contract requirement. For example, payment could be based on:

(*A*) A payment distribution profile developed by the contracting officer from a contract funds status report, or other form of cost reporting, that identifies actual funds usage by contract line item (or subline item) (CLIN/SLIN); or

(*B*) Information contractually required to be included on the contractor's payment request, identifying the amount of payment to be made for each CLIN/SLIN against which payment is requested.

(ii) *Contract financing payments based on a unique payment distribution profile.* Payments will be based on a payment distribution profile established by the contracting officer at contract award or as revised during contract performance. The profile must indicate, for each anticipated payment, a percentage apportionment by CLIN/SLIN, based on anticipated contract performance. Payment distribution profiles may be derived from information supplied by the contractor, contract administration office, program office, or elsewhere. Payment profiles may reflect a combination of the other alternatives described herein; however, each CLIN/SLIN may use only one method (see 204.7103–1 and 204.7104–1).

(iii) *Contract financing payments distributed on a proportionate percentage basis.* Payments will be distributed on a proportionate percentage basis against all CLINs/SLINs when a best estimate of contractor work performance supports an assumption that work will be performed supports an assumption that work will be performed for all CLINs/SLINs in a relatively proportionate manner.

(iv) *Contracting financing payments using oldest funds first.* This payment method should be used only when other payment instruction options are not practicable. When used, payments will be made from the appropriate accounting classification citations in a sequence that enables exhaustion of the oldest fiscal year financing appropriation, before payments are made from more recent fiscal year appropriations. This form of payment instruction most typically applies to requirements that are funded by research, development, test and evaluation appropriations for successive fiscal years.

3. Section 214.201–9 is added to read as follows:

214.201–9 Simplified contract format.

(b) *Contract schedule.*

(8) See 214.201–2(g) for contracts that contain multiple accounting classification citations and include a provision for contract financing payments.

PART 215—CONTRACTING BY NEGOTIATION

4. Section 215.406–2 is revised to read as follows:

215.406–2 Part I—Schedule.

(g) *Section G, Contract administration data.*

(i) When a contract contains both fixed-price and cost-reimbursement line items or subline items, the contracting officer shall provide, in Section B, Supplies or Services and Prices/Costs, an identification of contract type specified for each contract line item or subline item to facilitate appropriate payment.

(ii) When a contract contains multiple accounting classification citations and includes a provision for contract financing payments (see FAR 32.902), the contracting officer shall provide instructions based on one of the following alternatives, adequate to permit the paying office to distribute the contract financing payment in proportions that reasonably reflect the performance of the work on the contract. Payment instructions shall not be selected solely on the basis of administrative convenience. The payment instructions may be updated as necessary.

(A) *Contract financing payments based on information supplied in accordance with contract requirements.* Payments will be made in a manner consistent with information provided by the contractor as a result of a contract

requirement. For example, payment could be based on:

(*1*) A payment distribution profile developed by the contracting officer from a contract funds status report, or other form of cost reporting, that identifies actual funds usage by contract line item (or subline item) (CLIN/SLIN); or

(*2*) Information contractually required to be included on the contractor's payment request, identifying the amount of payment to be made for each CLIN/SLIN against which payment is requested.

(B) *Contract financing payments based on a unique payment distribution profile.* Payments will be based on a payment distribution profile established by the contracting officer at contract award or as revised during contract performance. The profile must indicate, for each anticipated payment, a percentage apportionment by CLIN/SLIN, based on anticipated contract performance. Payment distribution profiles may be derived from information supplied by the contractor, contract administration office, program office, or elsewhere. Payment profiles may reflect a combination of the other alternative described herein; however, each CLIN/SLIN may use only one method (see 204.7103–1 and 204.7104–1).

(c) *Contract financing payments distributed on a proportionate percentage basis.* Payments will be distributed on a proportionate percentage basis against all CLIN/SLINs when a best estimate of contractor work performance supports an assumption that work will be performed for all CLIN/SLINs in a relatively proportionate manner.

(D) *Contract financing payments using oldest funds first.* This payment method should be used only when other payment instruction options are not practicable. When used, payments will be made from the appropriate accounting classification citations in a sequence that enables exhaustion of the oldest fiscal year financing appropriation, before payments are made from more recent fiscal year appropriations. This form of payment instruction most typically applies to requirements that are funded by research, development, test and evaluation appropriations for successive fiscal years.

[FR Doc. 97–14623 Filed 6–4–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

[Docket No. 96–D021]

Defense Federal Acquisition Regulation Supplement; Contingent Fees-Foreign Military Sales

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation supplement (DFARS) to permit payment of contingent fees in excess of $50,000 per foreign military sale case under a government contract, if the foreign customer approves the payment in writing before contract award.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before August 4, 1997, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, *Attn:* Ms. Amy Williams, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 96–D021 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes amendments to the interim rule published in the **Federal Register** on January 17, 1997 (62 FR 2616). The interim rule amended DFARS Subpart 225.73 and the clauses at 252.212–7001 and 252.225–7027 for conformance with revisions made to the Federal Acquisition Regulation pertaining to contingent fee arrangements. As a result of public comments received on the interim rule, this proposed rule removes the prohibition on payment of contingent fees exceeding $50,000 for foreign military sales, and instead permits payment of contingent fees exceeding $50,000 per foreign military sale case if the foreign customer agrees to such fees in writing before contract award.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most firms that pay or receive contingent fees on foreign military sales are not small business concerns. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 96–D021 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because this proposed rule does not impose any information collection requirements that require Office of Management and Budget approval under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, it is proposed that 48 CFR Parts 225 and 252 be amended as follows:

1. The authority citation for 48 CFR Parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

2. Section 225.7303–4 is revised to read as follows:

225.7303–4 Contingent fees.

(a) Except as provided in paragraph (b) of this subsection, contingent fees are generally allowable under defense contracts provided that the fees are paid to a bona fide employee or a bona fide established commercial or selling agency maintained by the prospective contractor for the purpose of securing business (see FAR Part 31 and FAR Subpart 3.4).

(b) (1) Under DoD 5105.38–M, Security Assistance Management Manual, Letters of Offer and Acceptance for requirements for the governments of Australia, Taiwan, Egypt, Greece, Israel, Japan, Jordan, Republic of Korea, Kuwait, Pakistan, Philippines, Saudi Arabia, Turkey, Thailand, or Venezuela (Air Force) must provide that all U.S. Government contracts resulting from the Letters of Offer shall prohibit the payment of contingent fees unless the payments have been identified and approved in writing by the foreign

customer before contract award (see 225.7308(a)).

(2) For FMS to countries not listed in paragraph (b)(1) of this subsection, no payment of contingent fees in excess of $50,000 per FMS case shall be made under a U.S. Government contract, unless payment has been identified and approved in writing by the foreign customer before contract award.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.225–7027 is revised to read as follows:

252.225–7027 Restriction on Contingent Fees for Foreign Military Sales.

As prescribed in 225.7308(a), use the following clause. Insert in paragraph (b)(1) of the clause the name(s) of any foreign country customer(s) listed in 225.7303–4(b).

RESTRICTION ON CONTINGENT FEES FOR FOREIGN MILITARY SALES

(a) Except as provided in paragraph (b) of this clause, contingent fees, as defined in the Covenant Against Contingent Fees clause of this contract, are generally an allowable cost, provided that the fees are paid to a bona fide employee or to established commercial selling agencies maintained by the Contractor for the purpose of securing business.

(b) For Foreign military sales, unless the contingent fees have been identified and payment approved in writing by the foreign customer before contract award, the following contingent fees are unallowable costs under the contract:

(1) For sales to the Government(s) of _____, contingent fees in any amount.

(2) For sales to Governments not listed in paragraph(b)(1) of this clause, contingent fees in excess of $50,000 per foreign military sale case.

(End of clause)

[FR Doc. 97–14624 Filed 6–4–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Parts 245 and 252

[DFARS Case 92–D024]

Defense Federal Acquisition Regulation Supplement; Demilitarization

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to address control of Munitions List items and Strategic List items and demilitarization of excess property under Government contracts.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before August 4, 1997 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Mr. Rick Layser, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 92–D024 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Rick Layser, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published in the **Federal Register** on March 16, 1994 (59 FR 12223). The rule proposed amendments to the DFARS to improve control of Munitions List and Strategic List items and demilitarization of excess contractor inventory. After evaluation of public comments, a second proposed rule was published in the **Federal Register** on March 23, 1995 (60 FR 15276). As a result of public comments received on the second proposed rule, additional changes have been made, including amendment of the clause at 252.245–7XXX to—

(1) State that any adjustment in contract price incident to the contracting officer's direction to demilitarize excess Government property shall be made in accordance with the Changes clause of the contract;

(2) Specify the terms and conditions that the contractor must include in any agreement for sale of items requiring demilitarization or trade security controls; and

(3) Eliminate the requirement for inclusion of demilitarization codes on transfer documents when contractor-acquired property is transferred to a follow-on contract.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the vast majority of property requiring demilitarization or trade security controls is in the custody of contractors that are large business concerns. Additionally, contractor expenses incident to demilitarization are reimbursable contract costs. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 92–D024 in correspondence.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been approved by the Office of Management and Budget under Clearance Number 0704–0363 through June 30, 1998.

List of Subjects in 48 CFR Parts 245 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore it is proposed that 48 CFR Parts 245 and 252 be amended as following:

1. The authority citation for 48 CFR Parts 245 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 245—GOVERNMENT PROPERTY

245.601 [Amended]

2. Section 245.601 is amended by removing paragraph (2), and by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

3. Section 245.604 is revised to read as follows:

245.604 Restrictions on purchase or retention of contractor inventory.

(1) Contractors authorized to sell contractor inventory (see FAR 45.601) may not knowingly sell the inventory to any person or that person's agent, employee, or household member if that person—

(i) Is a civilian employee of the DoD or the U.S. Coast Guard; or

(ii) Is a member of the armed forces of the United States, including the U.S. Coast Guard; and

(iii) Has any functional or supervisory responsibilities for or within the Defense Reutilization and Marketing Program, or for the disposal of contractor inventory.

(2) (i) A contractor's authority to approve a subcontractor's sale, purchase, or retention at less than cost, and the subcontractor's authority to sell, purchase, or retain at less than cost if approved by a higher-tier contractor, does not include authority to approve—

(A) a sale by a subcontractor to the next higher-tier contractor or to an affiliate of such contractor or of the subcontractor; or

(B) A sale, purchase, or retention at less than cost, by a subcontractor affiliated with the next higher-tier contractor.

(ii) The written approval of the plant clearance officer is required for each excluded sale, purchase, or retention at less than cost.

(3) *Classified inventory.* Classified contractor inventory shall be disposed of in accordance with applicable security regulations or as directed by the contracting officer.

(4) *Dangerous inventory.* Contractor inventory dangerous to public health or safety shall not be donated or otherwise disposed of unless rendered innocuous or until adequate safeguards have been provided.

4. Section 245.604–70 is added to read as follows:

§ 245.604–70 Demilitarization and trade security controls.

(a) *Definitions.* ''Munitions List item,'' ''Strategic List item,'' and ''trade security controls'' are defined in the clause at 252.245–7XXX, Demilitarization and Trade Security Controls.

(b) *General.* Demilitarization requires total or key point destruction of property to preclude further use for its originally intended military or lethal purpose (see DoD 4160.21–M–1, Defense Demilitarization Manual).

(c) *Procedures*—(1) *Solicitations and contracts.* When Government-furnished property will be furnished to the contractor, the contracting officer shall include in the solicitation and contract a demilitarization code, provided by the inventory/technical manager, for each property item.

(2) *Inventory schedules.* (i) For Government-furnished property, the contractor is required to enter demilitarization codes in the item description on inventory schedules that report excess Government property requiring demilitarization and/or trade security controls.

(ii) For other excess Government property, the contractor is required to assign and enter appropriate demilitarization codes (see DoD 4160.21–M–1, Defense Demilitarization Manual, Appendix 3) in the item description of inventory schedules that report excess Government property requiring demilitarization and/or trade security controls.

(3) The plant clearance officer is responsible for monitoring contractor inclusion of appropriate demilitarization codes for items requiring demilitarization and/or trade security controls on inventory schedules that report excess Government property.

(4) When excess Government property is to be demilitarized as a condition of sale, plant clearance officers shall ensure that the agreement between the contractor and the purchaser contains specific guidance to the purchaser on how the property is to be demilitarized, including (when applicable) the identification of specific equipment that must be furnished/used by the purchaser to perform the demilitarization. Upon the sale of items that are subject to trade security controls, plant clearance officers, shall, prior to approving the contractor's release of the Munitions List items or Strategic List items to the purchaser, conduct a preaward check in accordance with Defense Logistics Agency Regulation (DLAR) 2030.1, Trade Security Control Procedures Applicable to Department of Defense Surplus Property and Foreign Excess Personal Property. Additionally, prior to release of such items to a purchaser, the plant clearance officer shall ensure that all documentation required by DLAR 2030.1 and the sales terms and conditions identified in the clause at 252.245–7XXX are forwarded to the Defense Logistics Agency Trade Security Control Resident Office—Memphis, Bldg. 210, Bay 5, 2163 Airways Blvd., Memphis, TN 38114, for follow-up checks/consent.

(d) *Contract clause.* Use the clause at 252.245–7XXX, Demilitarization and Trade Security Controls, in solicitations and contracts when Government property will be furnished to the contractor, or when the contractor will acquire or fabricate property that might become Government property under the contract.

245.7310–1 [Removed and reserved]

5. Section 245.7310–1 is removed and reserved.

6. Section 252.245–7XXX is added to read as follows:

252.245–7XXX Demilitarization and Trade Security Controls.

As prescribed in 245.604–70(d), use the following clause:

DEMILITARIZATION AND TRADE SECURITY CONTROLS (DATE)

(a) *Definitions.* As used in this clause:

(1) *Munitions List item* means any item contained in the United States Munitions List (22 CFR part 121).

(2) *Strategic List item* means any commodity, software and/or technology the Department of Commerce, Bureau of Export Administration, has determined requires licensing prior to export from the United States. Strategic List items are listed in 15 CFR part 774, Supplement 1, Commerce Control List, and Supplement 2, General Technology and Software Notes.

(3) *Trade security controls* means control procedures designed to preclude the sale or shipment of Munitions List or Strategic List property to any entity whose interests are inimical to those of the United States. These controls are also applicable to such other selected property as may be designated by the Deputy Under Secretary of Defense (Trade Security Policy).

(b) *Inventory schedules.* (1) For items that were furnished to the Contractor by the Government, the Contractor shall enter demilitarization codes (see DoD 4160.21–M–1, Defense Demilitarization Manual, Appendix 3) in the item description on inventory schedules that report excess Government property requiring demilitarization and/or trade security controls.

(2) For other excess Government property, the Contractor shall assign and enter demilitarization codes (see DoD 4160.21–M–1, Defense Demilitarization Manual, Appendix 3) in the item description on inventory schedules that report excess Government property requiring demilitarization and/or trade security controls.

(c) *Demilitarization.* (1) Demilitarization requires total or key point destruction of property to preclude further use for its originally intended military or lethal purpose (see DoD 4160.21–M–1, Appendix 2). When directed by the Contracting Officer, the Contractor shall demilitarize excess Government property. Any adjustment in contract price incident to such direction shall be made in accordance with the procedures of the Changes clause of the contract.

(2) Trade security controls required by the Arms Export Control Act and 22 CFR parts 120–130, the International Traffic in Arms Regulations; the Export Administration Act of 1979 and 15 CFR parts 700–774, the Export Administration Regulations; and Defense Logistics Agency Regulation (DLAR) 2030.1, Trade Security Control Procedures Applicable to Department of Defense Surplus Property and Foreign Excess Personal Property, apply to all Munitions List items and Strategic List items the Contractor is authorized to sell.

(3) The Contractor, when authorized to sell excess Government property requiring demilitarization, is responsible for ensuring that demilitarization is accomplished properly.

(d) *Required terms and conditions for sales.* (1) If the Contractor is authorized to offer for sale excess Government property that requires demilitarization by the Purchaser, then the Contractor shall include in the agreement between the Contractor and the Purchaser the following terms and conditions. The Contractor also shall include these terms and conditions in any solicitations for excess Government property requiring demilitarization or trade security controls.

(i) *DEMILITARIZATION.*

Item(s) _____ require demilitarization by the Purchaser in a manner and to the degree set forth in the Defense Demilitarization Manual, DoD 4160.21–M–1, Appendix 4, and in accordance with any contract requirement. Title shall not pass to

the Purchaser until the Seller or a representative has verified that the Purchaser has demilitarized the property properly.

(ii) *FAILURE TO DEMILITARIZE.*

If, for any reason, the Purchaser fails to accomplish the required demilitarization, the Seller reserves the right to demand return of the property, or repossess the property, for purposes of completing the required demilitarization.

(2) If authorized to offer Munitions List items or Strategic List items for sale, the Contractor shall include in the agreement between the Seller and the Purchaser the following terms and conditions and will provide the documentation required by DLAR 2030.1:

(i) *MUNITIONS LIST ITEMS.*

(A) Except as permitted by this clause, none of the Munitions List items identified in this agreement between the Seller and the Purchaser will be directly or indirectly used or disposed of for military use or exported without a full disclosure of the origin of the property (by reference to this agreement) to the appropriate export licensing department or agency.

(B) Notwithstanding the provisions of paragraph (2)(i)(A) of this agreement, Munitions List items that do not require demilitarization may be sold for military or other use to the United States Government, its designees, and to foreign governments or international organizations, subject to the issuance of an export license by the United States Department of State under the International Traffic In Arms Regulations (see 22 CFR subchapter M, part 121. *et seq.*).

(ii) *STRATEGIC LIST ITEMS.*

(A) None of the Strategic List items identified in this agreement between the Seller and the Purchaser will be directly or indirectly used or disposed of for military use.

(B) Property purchase in the United States, Puerto Rico, American Samoa, Guam, the Trust Territories of the Pacific Islands, or the U.S. Virgin Islands may not be exported without a full disclosure of the origin of the property, by reference to this agreement between the Seller and the Purchaser, being made to: Office of Export Administration, P.O. Box 273, Washington, DC 20044.

(C) It is understood that the Office of Export Administration may require the Purchaser to mutilate the property to the extent necessary to preclude its use for its originally intended purpose, and/or require the Purchaser to have or obtain an export license before the property may be exported outside of the United States, Puerto, Rico, American Samoa, Guam, the Trust Territories of the Pacific Islands, or the U.S. Virgin Islands.

(iii) *DISPOSTIONS AND USE OF PROPERTY.*

(A) The Purchaser agrees to submit documentation regarding disposition and use of property in the form prescribed in DLAR 2030.1, Enclosure 1.

(B) The ultimate destination, use, and disposition of the property shall be in accordance with the documentation submitted to the Seller.

(C) Any changes in the specified destination, use, or disposition of the property prior to the release to the Purchaser, will require the written approval of the Seller in coordination with the plant clearance officer.

(D) Any changes in the specified destination, use, or disposition of the property after release to the Purchaser, will require the prior written consent of the Trade Security Control Resident Office identified as follows:

(*1*) For all sales of property in the Continental United States, Hawaii, and all Pacific, Far East, Southeast Asian, South American, and Caribbean locations, the Purchaser shall forward the changes to: DLA Trade Security Control Resident Office—Memphis, Bldg. 210, Bay 5, 2163 Airways Blvd, Memphis, TN 38114.

(*2*) For all sales of property in all European, Middle Eastern, and African countries, the Purchaser shall forward the changes to: DCIA–E, Trade Security Control Resident Office, CMR–443, Box 131, APO AE 09096.

(E) The Purchaser further agrees to notify in writing any and all subsequent purchasers or receivers of this property of the provisions of the sales agreement including: the authorized destination; the requirement for consent by the Trade Security Control Resident Office of any change of such destination prior to exportation thereto; the specific United States restrictions on exports and re-exports directly and indirectly to denied areas or other prohibited destinations that may have been specified in this contract; the documentation (e.g., Import Certificate/Delivery Verification (IC/DV) documents, lading certificates, answers to follow-up requests) that may be required; and United States sanctions against violators. Subsequent purchasers and receivers also must agree to make similar notification to purchasers and receivers from them. Any unauthorized disposition of the property by a subsequent purchaser or subsequent received of the property shall be the responsibility of such purchaser or receiver and, where at fault, of the original buyer.

(F) When property purchased under this agreement between the Seller and the Purchaser is intended for more than one destination and/or consignee, the Purchaser agrees to submit a listing of those items specifying quantities intended for each destination and consignee. The Purchaser further agrees to furnish the listing referred to in this paragraph with each request for approval of a change in destination.

(G) Whenever requested by the Trade Security Control Resident Office to furnish information regarding the actual disposition of the property, the Purchaser agrees to furnish the requested information within 30 calendar days after the date of the request.

(H) On those items requiring resale consent, the Purchaser agrees to maintain detailed records of their disposition and to provide such records to the Trade Security Control Resident Office whenever requested to do so.

(I) The trade control actions required by paragraphs (1) through (4) of these terms and conditions apply to all items included in the original sale. Resale breakdowns of such sales will be subject to the same control requirements applicable to the original sale.

(iv) *EXPORT OF PROPERTY FROM THE UNITED STATES.*

The property sold under this agreement between the Seller and the Purchaser may or may not be authorized for export from the United States. It is the sole responsibility of the Purchaser to obtain any necessary export clearances or approvals from the United States Department of State and/or Department of Commerce for any property purchased under this agreement between the Seller and the Purchaser that is subject to export control.

(v) *MUNITIONS LIST AND STRATEGIC LIST ITEMS.*

The use, disposition, export and re-export of this property is subject to all applicable United States Laws and Regulations. This includes, but is not limited to, the Export Administration Act of 1979 (50 U.S.C., Appx. 2401, *et seq.*), the Arms Export Control Act (22 U.S.C. 2751, *et seq.*), the International Traffic in Arms Regulation (22 CFR part 121), and the Export Administration Regulation (15 CFR subchapter C).

(vi) *DENIED AREAS.*

The Purchaser understands and agrees that the ultimate destination of the property purchased under this agreement between the Seller and the Purchaser shall not be—

(A) A denied area or prohibited area or prohibited destination identified in 22 CFR parts 120–130, the International Traffic in Arms Regulations; 15 CFR parts 700–774, Export Administration Regulations; 31 CFR parts 500–585, Foreign Assets Control Regulation; and Defense Security Assistance Agency, Security Assistance Management Manual, DoD 5105.38–M; or

(B) Any other prohibited destination that may be specified in this agreement between the Seller and the Purchaser.

(3) The Contractor also shall include the following terms and conditions in the agreement between the Seller and the Purchaser for the sale of any property located outside of the United States, American Samoa, Guam, Puerto Rico, the Trust Territories of the Pacific Islands, and the U.S. Virgin Islands:

(i) *COMPLIANCE WITH LAWS, RESTRICTIONS, AND REGULATIONS.*

The Purchaser is responsible for compliance with all applicable foreign laws and regulations that may apply to this transaction and shall pay all custom duties, taxes, and similar charges that may be levied by respective governments against a purchaser of United States Government property. The United States Government shall not be liable for taxes, duties, or other assessments imposed by any government as a result of this transaction or imposed on any property transferred under this contract.

(ii) *IMPORT CERTIFICATE AND DELIVERY VERIFICATION.*

(A) Prior to removal of the property the Purchaser agrees to submit an Import Certificate, issued by the government of the country into which the property or any part of the property is to be imported, to the Seller who in turn will forward it, via the plant clearance officer, to the Trade Security Control Resident Office (as identified in the terms and conditions of this sale, disposition, and use of property) for consent. A triangular Import Certificate (stamped with a triangular symbol) to indicate that the importer is

uncertain about the ultimate destination of the property will not be accepted.

(B) Prior to release of the property for import into a country that does not issue an Import Certificate or Delivery Verification, the Purchaser agrees to submit a notification of consignee to the Seller who in turn will forward it, via the plant clearance officer, to the Trade Security Resident Office for approval of the destination and consignee.

(C) Within 60 calendar days after release of the property, the Purchaser agrees to submit to the Trade Security Control Resident Office a Delivery Verification issued by the government that issued the Import Certificate.

(D) Within 90 calendar days after release of the property for import into a country that does not issue an Import Certificate or Delivery Verification, the Purchaser agrees to submit to the Trade Security Control Resident Office evidence of the arrival of the property at the approved destination and delivery to the approved consignee. Such evidence may consist of a receipted copy of the bill of lading, a Landing Certificate issued by the country of import, or other valid documentary evidence identifying the final destination and consignee.

(E) Failure of the Purchaser or any subsequent purchaser to submit a required Delivery Verification or other documentary evidence of the arrival and delivery may be cause for administrative action to be taken against the Purchaser or subsequent purchaser which could result in the denial of future contracts with the United States Government.

(e) *Subcontracts.* The Contractor shall include this clause in all contracts with its subcontractors or suppliers at any tier, except contracts for commercial items, when Government property will be furnished to the subcontractor, or when the subcontractor will acquire or fabricate property that might become Government property under the subcontract. The clause shall not be modified other than to identify the contracting parties.

(End of clause)

[FR Doc. 97–14625 Filed 6–4–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 648

[I.D. 052797F]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Applications for Experimental Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of experimental fishery proposals; request for comments.

SUMMARY: NMFS issues this notice to announce that the Regional Administrator, Northeast Region, NMFS (Regional Administrator), is considering approval of two experimental fishing proposals that would permit vessels to conduct operations otherwise restricted by regulations governing the fisheries of the Northeastern United States. The experimental fisheries would involve a longline fishery for white hake (*Urophycis tenuis*) in deep water and an Atlantic halibut (*Hippoglossus hippoglossus*) longline fishery in northern Gulf of Maine waters. Provisions under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notice to provide interested parties the opportunity to comment on the proposed experimental fisheries.

DATES: Comments on this notice must be received by June 20, 1997.

ADDRESSES: Comments should be sent to Andrew A. Rosenberg, Ph.D., Regional Administrator, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on Proposed Longline Experimental Fisheries.''

FOR FURTHER INFORMATION CONTACT: Dana Hartley, Fishery Management Specialist, 508–281–9226.

SUPPLEMENTARY INFORMATION: A request for an exemption to fish for white hake using longline gear in three designated deepwater areas of the northwestern Atlantic was submitted by Ms. Barbara Stevenson. An experimental fishery permit would authorize vessels to evaluate area, gear, and season to determine bycatch of regulated multispecies. A request for an exemption for a longline halibut fishery in the Gulf of Maine that would allow NMFS to investigate area and gear, and to collect basic biological information about halibut in this area was submitted by Mr. Steve Rosen. These fisheries were initially requested by industry members seeking an exemption from the days-at-sea restrictions of the Northeast Multispecies Fishery Management Plan. Such exemptions may be authorized by the Regional Administrator on a long-term basis if sufficient data exist to show that a fishery would have a bycatch rate of less than 5 percent of regulated multispecies. The Regional Administrator has concluded that the existing bycatch data on these two fisheries is insufficient and seeks comment on his proposal to authorize them as experimental fisheries to investigate operational controls that may allow these fisheries to become exempted in the future. Therefore, comments are requested on these proposals as experimental fishery projects. Both proposed experimental fisheries would be of limited duration. The hake fishery would not exceed 1 year and the halibut fishery would operate for 6 months. After 1 year, both fisheries will be reviewed by the New England Fishery Management Council to determine whether or not they would be appropriate for exempted fisheries. The white hake project would not allow for the landing of any regulated multispecies other than white hake, whereas the halibut project would not allow the landing of any regulated multispecies.

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

Dated: May 29, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–14660 Filed 6–4–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 052997B]

RIN: 0648–AJ36

Amendment 49 to the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 49 to the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area for Secretarial review. Amendment 49 would require all vessels fishing for groundfish in the Bering Sea and Aleutian Islands Area to retain all pollock and Pacific cod beginning January 1, 1998, and all rock sole and yellowfin sole beginning January 1, 2003. Amendment 49 also would establish minimum utilization standards for all at-sea processors; for pollock and Pacific cod beginning January 1, 1998, and for rock sole and yellowfin sole beginning January 1, 2003. Comments from the public are requested.

DATES: Comments on Amendment 49 must be submitted on or before August 4, 1997.

ADDRESSES: Comments on Amendment 49 should be submitted to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th. Street, Juneau, AK. Copies of Amendment 49 and the Environmental Assessment/ Regulatory Impact Review/Initial Regulatory Flexibility Analysis prepared for the amendment are available from NMFS at the above address, or by calling the Alaska Region, NMFS, at 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each Regional Fishery Management Council submit any fishery management plan (FMP) or plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, immediately publish a document announcing that the FMP or amendment is available for public review and comment. NMFS will consider the public comments received during the comment period in determining whether to approve the FMP or amendment.

Amendment 49 is the result of over 3 years of specific discussions and analyses of alternative solutions to the discard problem occurring in the groundfish fisheries off Alaska. The expressed intent of the Council is to implement a program that ''would provide an incentive for fishermen to avoid unwanted catch, increase utilization of fish that are taken, and thus reduce discards of whole fish.'' While such discards are counted against the overall total allowable catch established for each species and therefore do not represent a direct biological concern, they do represent foregone harvest opportunities for other fishing operations which might otherwise target and utilize those fish. In addition, high levels of discards represent an important social policy issue, one that the fishing industry and the Council feel the necessity to address.

In September 1996, after extensive debate and public testimony, the Council approved an Improved Retention/Improved Utilization (IR/IU) program as Amendment 49 to the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area. The retention requirement adopted by the Council would require full retention of pollock and Pacific cod beginning January 1, 1998, and full retention of rock sole and yellowfin sole beginning January 1, 2003. The utilization requirement adopted by the Council would require that all IR/IU species either be (1) processed at sea subject to minimum recovery rates and/or requirements to be specified by regulation, or (2) delivered in their entirety to onshore processing plants for which similar minimum requirements are implemented through state regulations.

NMFS will consider the public comments received during the comment period in determining whether to approve the proposed amendment. A proposed rule to implement Amendment 49 is scheduled to be published within 15 days of this document.

Dated: May 30, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–14661 Filed 6–4–97; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 62, No. 108

Thursday, June 5, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 30, 1997.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

An agency May not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Peaches Grown in California—Marketing Order No. 917.

OMB Control Number: 0581–0080.

Summary of Collection: Information is collected to nominate producers and shippers to the committee, conduct referendum, and keep track of peaches shipped by variety and trees in production.

Need and use of the Information: The information is used to implement the provisions of Market Order No. 917.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 721.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Monthly.

Total Burden Hours: 1,140.

Farm Service Agency

Title: Standards for Approval of Warehouses for Cotton or Cotton Linters—CFR Part 1427/1081–1088.

OMB Control Number: 0560–0010.

Summary of Collection: The Commodity Credit Corporation (CCC) must maintain a list of warehouses approved by CCC to store CCC-owned or loan cotton. This cotton is acquired under various price support programs.

Need and use of the Information: The information required on the various forms is necessary to establish and maintain the list of approved warehouses, which follow accepted warehousing practices.

Description of Respondents: Business or other for-profit.

Number of Respondents: 400.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Annually.

Total Burden Hours: 42,995.

Food and Consumer Service

Title: 7 CFR Part 210, National School Lunch Program.

OMB Control Number: 0584–0006.

Summary of Collection: The National School Lunch Program provides for safeguarding the health and well-being of the Nation's children and to encourage the domestic consumption of nutrition agricultural commodities and other food, by assisting the States in providing an adequate supply of food and other facilities for the establishment, maintenance, operation, and expansion of nonprofit school lunch programs.

Need and use of the Information: Serious legal and accountability questions would be raised if the collection of information was not collected.

Description of Respondents: States, Local or Tribal Government; Individual or households; Business or other for-profit; Not-for-profit institutions; Federal Government.

Number of Respondents: 114,169.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Monthly; Semi-annually; Annually; Biennially; Daily.

Total Burden Hours: 9,394,291.

Donald Hulcher,

Departmental Clearance Officer.

[FR Doc. 97–14726 Filed 6–4–97; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Big Boulder Road Access, Wenatchee National Forest, Kittitas County, WA

AGENCY: Forest Service, USDA.

ACTION: Cancellation of an environmental impact statement.

SUMMARY: On May 19, 1994, a Notice of Intent (NOI) to prepare an environmental impact statement (EIS) for the Big Boulder Road Access on the Cle Elum Ranger District of the Wenatchee National Forest was published in the **Federal Register** (59 FR 26205). Forest Service has decided to cancel the environmental analysis process. There will be no EIS for the Big Boulder Road Access. The NOI is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this cancellation to Susan Carter, Environmental Coordinator, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801 or telephone 509–662–4335.

Dated: May 27, 1997.

Sonny J. O'Neal,

Forest Supervisor.

[FR Doc. 97–14673 Filed 6–4–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Hex Trail Road Access, Wenatchee National Forest, Kittitas County, WA

AGENCY: Forest Service, USDA.

ACTION: Cancellation of an environmental impact statement.

SUMMARY: On May 19, 1994, a Notice of Intent (NOI) to prepare an environmental impact statement (EIS) for the Hex Trail Road Access on the Cle Elum Ranger District of the Wenatchee National Forest was published in the **Federal Register** (59 FR 26204). Forest Service has decided to cancel the environmental analysis process. There will be no EIS for the Hex Trail Road Access. The NOI is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this cancellation to Susan Carter, Environmental Coordinator, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801 or telephone 509–662–4335.

Dated: May 27, 1997.

Sonny J. O'Neal,

Forest Supervisor.

[FR Doc. 97–14733 Filed 6–4–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Sasse/Bell Ridge Road Access, Wenatchee National Forest, Kittitas County, WA

AGENCY: Forest Service, USDA.

ACTION: Cancellation of an environmental impact statement.

SUMMARY: On May 19, 1994, a Notice of Intent (NOI) to prepare an environmental impact statement (EIS) for the Sasse/Bell Ridge Road Access on the Cle Elum Ranger District of the Wenatchee National Forest was published in the **Federal Register** (59 FR 26202). Forest Service has decided to cancel the environmental analysis process. There will be no EIS for the Sasse/Bell Ridge Road Access. The NOI is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this cancellation to Susan Carter, Environmental Coordinator, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801 or telephone 509–662–4335.

Dated: May 27, 1997.

Sonny J. O'Neal

Forest Supervisor.

[FR Doc. 97–14734 Filed 6–4–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Kalispell; Idaho Panhandle National Forests; Bonner County, Idaho and Pend Oreille County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) to disclose the environmental effects of salvage thinning, reforestation, site preparation and use of prescribed fire in an ecosystem management project in the Kalispell Creek drainage. The area is located west of Priest Lake in the northern Selkirk Mountains, Idaho Panhandle National Forests, Priest Lake Ranger District, Bonner County, Idaho and Pend Oreille County, Washington. Part of the proposed activities are within the Hungry Mountain Roadless Area (01–156). The project area is within the Kalispell-Granite Grizzly Bear Management Unit.

The purposes of this project are to improve the health and vigor of stands, to salvage dead and dying timber, to rehabilitate 50- to 70-year-old plantations of off-site ponderosa pine and white pine which is not blister-rust resistant, to reintroduce the role of fire into dry-site ecosystems, and to contribute to meeting society's demand for wood products. The proposal's actions to harvest and reforest stands and utilize prescribed fire are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25).

This project-level EIS tiers to the Idaho Panhandle National Forests Land and Resource Management Plan (Forest Plan) and Final EIS (September, 1987), which provides overall guidance of all land management activities on the Idaho Panhandle National Forests, including timber and access management.

DATES: Written comments should be received on or before July 21, 1997.

ADDRESSES: Send written comments to Kent Dunstan, District Ranger, Priest Lake Ranger District, HCR 5, Box 207, Priest River, ID 83856; or e-mail comments to cjcary/rl__ipnf@fs.fed.us.

FOR FURTHER INFORMATION: Contact Bob Stutz, EIS Team Leader; telephone (208) 443–2512.

SUPPLEMENTARY INFORMATION: Ecosystem management activities are proposed on a total of approximately 5,050 acres within the Kalispell Creek drainage. Existing roads, 15.6 miles of temporary winter roads constructed from snow, and 11 helicopter landing sites would provide access for vegetative treatments. No new road construction would occur. The proposal includes 4,094 acres of salvage in plantations which are 50 to 70 years old, followed by planting on 3,803 acres within those plantations; prescribed burning on 206 acres of dry-site ecosystems; prescribed burning on 1,049 acres for fuel breaks and/or site preparation; thinning on 245 acres of immature, overly-dense stands; and reforestation on 505 acres which would not be harvested before planting.

The Kalispell drainage has experienced a series of significant natural and human-caused disturbances within the last 70 years. The major disturbances include a wildfire in 1926 and a subsequent reburn in 1939. Logging occurred from 1927 to 1932, including salvaging in a portion of the area burned by the 1926 fire. Following these events, approximately 9,000 acres of ponderosa pine and white pine were planted, as well as a scattering of Douglas-fir and spruce. The ponderosa pine seedlings were from a seed source not suited to this area, and the white pine seedlings were not rust-resistant stock, resulting in uncharacteristically high levels of insects and diseases. Current mortality is high, and ongoing mortality in the non rust-resistant white pine is estimated to be three percent per year.

The goal of this project is to restore the vegetation in the analysis area towards historic stocking levels and species compositions. This would create conditions that more closely resemble the historical stands that were adapted to the site, climate, and fire regimes in this ecosystem and that are sustainable over time.

The purpose and need for ecosystem management in this area is four-fold, as follows: (1) To salvage and rehabilitate high mortality stands that were planted with ''off-site'' ponderosa pine and non blister-rust-resistant white pine; (2) to reintroduce the role of fire in the ecosystem, where it has been disrupted through fire suppression, in a way that will emulate effects of mixed severity fire under a natural fire regime; (3) to provide tree species and stocking levels that existed historically; (4) to contribute to the short-term supply of

timber to help meet the national demand for wood products and to support the local economy.

The analysis area consists of approximately 24,400 acres of National Forest lands included in T35N., T36N. and T37N. in R.45E., T35N. and T36N., R.46E., Willamette Meridian, Washington; and T.60N., and T61.N. in R.4W., and T.60N and T.61N., R.5W., Boise Meridian, Idaho.

The decision to be made is how much, if any, timber harvest should occur; how many acres, if any, of reforestation and site preparation should be accomplished; how many acres, if any, prescribed burning should be performed; and the timing of such activities. The decision would also include the type and level of access, if any.

The Forest Plan provides guidance for management activities within the analysis area through goals, objectives, standards, guidelines, and management area directions. The proposed activities would take place in designated Management Areas (MAs) 1, 4, 9 and 16. Goals for each of these MAs include protecting soil productivity, meeting or exceeding state water quality standards, providing opportunities for dispersed recreation, and meeting visual quality objectives. Below is a brief description of other management direction for these areas.

Management Area 1: Manage for long-term growth and production of commercially valuable wood products and to provide wildlife habitat.

Management Area 4: Manage big game winter range to provide forage for wildlife needs through timber harvest and permanent forage areas.

Management Area 9: Manage lands to maintain and protect existing improvements and resource productive potential.

Management Area 16: Riparian area dependent resources will be featured, while producing other resource outputs at levels compatible with objectives for riparian resources.

The Forest Service will consider a range of alternatives, including the ''no action'' alternative in which none of the proposed activities would be implemented. Additional alternatives will examine varying levels and locations for the proposed activities as well as responding to issues and other resource values.

The EIS will analyze the direct, indirect and cumulative environmental effects of the alternatives. Past, present, and reasonably foreseeable activities in the analysis area will be considered. Analysis of site-specific mitigation measures and their effectiveness will be disclosed.

Public participation is an important part of the analysis process, commencing with the initial scoping process (40 CFR 1501.7) which will begin with the publication of this notice. The public is encouraged to take part in the process and to visit with Forest Service officials at any time during the analysis and prior to the decision. 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 input will be used in preparation of the draft and final EIS. The scoping process will include:

- Identifying potential issues.
- Identifying major issues to be analyzed in depth.
- Identifying alternatives to the proposed action.
- Exploring additional alternatives which will be derived from issues recognized during scoping activities.
- Identifying potential environmental effects of this project and alternatives (i.e. direct, indirect and cumulative effects and connected actions).

The following issues have been identified: Grizzly bear security habitat, water and sediment yield and fisheries habitat, roadless area character, soils, and big game winter range. This list may be changed based on continuing public participation.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by September, 1997. At that time EPA will publish a notice of availability in the **Federal Register.** The comment period on the Draft EIS will close 45 days from the date the notice of availability appears in the **Federal Register**. It is very important that those interested in the management of this area participate at that time. While public participation in this analysis is welcome at any time, comments received within 45 days of the publication of this notice will be especially useful in the preparation of the Draft EIS. The Final EIS is scheduled to be completed by December, 1997.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First reviewers of draft environmental impact statements must structure their 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 Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *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). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day scoping period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS. Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection.

To be most helpful, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.0 in addressing these points.

I am the responsible official for this environmental impact statement.

Dated: May 28, 1997.

Kent Dunstan,

District Ranger.

[FR Doc. 97–14635 Filed 6–4–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request an Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request an extension of a currently approved information collection, the Supplemental Qualifications Statement that expires September 30, 1997.

DATES: Comments on this notice must be received by August 11, 1997 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 4117 South Building, Washington, DC 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Supplemental Qualifications Statement.

OMB Number: 0535–0209.

Expiration Date of Approval: September 30, 1997.

Type of Request: To extend a currently approved information collection.

Abstract: Under Interagency Agreement Number DOA–1, between the Department of Agriculture and Office of Personnel Management, the Administrative and Financial Management Staff examines, rates, and certifies applicants for Agricultural Statistician positions, GS–1530 and Mathematical Statistician (Agricultural) GS–1529 positions within the National Agricultural Statistics Service. The Interagency Agreement was made under provisions of 5 U.S.C. Section 1104, as amended by Pub. L. No. 104–52 (1995).

Resumes, curriculum vitae, and the ''Optional Application for Federal Employment'', (OF–612) are general purpose forms used to evaluate applicants for positions in the Federal service. While these forms request specific information about an applicant, they do not always obtain detailed references to those knowledges, skills and abilities (KSA's) that are critical to the job. The Supplemental Qualifications Statement for agricultural statistician and mathematical statistician positions (agricultural) allows applicants the opportunity to describe their achievements or accomplishments as they relate to the required KSA's.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3 hours per response.

Respondents: Individual Job Applicants.

Estimated Number of Respondents: 200.

Estimated Total Annual Burden on Respondents: 600 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to:

Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Ave. SW, Room 4162 South Building, Washington, DC 20250–2000.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, D.C., April 29, 1997.

Donald M. Bay,

Administrator, National Agricultural Statistics Service.

[FR Doc. 97–14727 Filed 6–4–97; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Palmers Crossing and Irene Chapel Resource Conservation and Development Flood Control Plan Forrest County, MS

AGENCY: Natural Resources Conservation Service, Agriculture.

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 Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Palmers Crossing and Irene Chapel Resource Conservation and Development (RC&D) Flood Control Plan, Forrest County, Mississippi.

FOR FURTHER INFORMATION CONTACT: Homer L. Wilkes, State Conservationist, Natural Resources Conservation Service, Suite 1321, A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, telephone 601–965–5205.

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, Homer L. Wilkes, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns an RC&D flood control plan for the purpose of reducing flood damages to residences and businesses belonging to disadvantaged residents in the flood plains of the Palmers Crossing and Irene Chapel communities. The planned works of improvement consist of channel modification on 3.05 miles of manmade and/or previously modified channel.

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 Homer L. Wilkes.

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.)

[FR Doc. 97–14699 Filed 6–4–97; 8:45 am]

BILLING CODE 3410–16–M

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: June 10, 1997; 9:30 a.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20547.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating

to U.S. Government-funded nonmilitary international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6)).

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Brenda Thomas at (202) 401–3736.

Dated: June 2, 1997.

David W. Burke,

Chairman.

[FR Doc. 97–14772 Filed 6–2–97; 4:14 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

Export Administration

Karl Cording; Decision and Order

In the Matter of: Karl Cording, with Addresses at Anzstrasse 8, Windhoek, Namibia, A. Rosenthal (PTY) Ltd., P.O. Box 97, 292 Independence Avenue, Windhoek, Namibia, A. Rosenthal (PTY) Ltd., P.O. Box 3721, 13 Loop Street, Cape Town, South Africa, and A. Rosenthal (PTY) Ltd., P.O. Box 44198, 65 7th Street, Denmyr Building, 2104 Linden, South Africa, Respondent.

Decision and Order

On November 27, 1995, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter ''BXA''), issued a charging letter initiating an administrative proceeding against Karl Cording. The charging letter alleged that Cording committed seven violations of the Export Administration Regulations (61 FR 12734–13041, March 25, 1996, to be codified at 15 CFR parts 730–774) (hereinafter the ''Regulations''),[1] issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420 (1991 & Supp. 1997)) (hereinafter the ''Act'').[2]

Specifically, the charging letter alleged that, between mid-1990 and early 1992, Cording conspired with James L. Stephens, president and co-owner of Weisser's Sporting Goods, National City, California, and Ian Ace, manager of A. Rosenthal, Cape Town, South Africa, to export and, on two separate occasions, actually exported U.S.-origin shotguns, with barrel lengths 18 inches and over, to Namibia and South Africa, without applying for and obtaining from the Department the validated export licenses Cording knew or had reason to know were required under the Act and Regulations. In addition, BXA alleged that, in furtherance of the conspiracy, and in connection with each of those exports, Cording made false or misleading representations of material fact to a U.S. Government agency in connection with the preparation, submission, or use of export control documents. BXA alleged that, in so doing, Cording committed one violation of section 787.3(b), two violations of section 787.4(a), two violations of section 787.5(a), and two violations of section 787.6 of the former Regulations, for a total of seven violations of the former Regulations.

The charging letter was served on Cording during December 1995. Cording failed to answer the charging letter. Thus, on April 18, 1997, pursuant to section 766.7 of the Regulations, BXA moved that the Administrative Law Judge find the facts to be as alleged in the charging letter and render a Recommended Decision and Order.

Following BXA's motion, on May 1, 1997, Chief Administrative Law Judge Joseph A. Ingolio issued a Recommended Decision and Order in which he found the facts to be as alleged in the charging letter, and concluded that those facts constituted violations of the Act and Regulations, as BXA alleged. The Administrative Law Judge also concurred with BXA's recommendation that the appropriate penalty to be imposed for those violations is a denial, for a period of 20 years, of all of Cording's export privileges. As provided by section 766.22(a) of the Regulations, the Recommended Decision and Order has been referred to me for final action.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the Recommended Decision and Order of the Administrative Law Judge.

Accordingly, it is therefore Ordered, First, that for a period of 20 years from the date of this Order, Karl Cording, with an address at Anzstrasse 8, Windhoek, Namibia; with an address c/o A. Rosenthal (PTY) Ltd., P.O. Box 97, 292 Independence Avenue, Windhoek, Namibia; with an address c/o A. Rosenthal (PTY) Ltd., P.O. Box 3721, 13 Loop Street, Cape Town, South Africa; and with an address c/o A. Rosenthal (PTY) Ltd., P.O. Box 44198, 65 7th Street, Denmyr Building, 2104 Linden, South Africa, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to an ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person, may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by a denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a denied person acquires or attempts to acquire such ownership, possession or control;

[1] The violations at issue occurred between mid-1990 and early 1992. The Regulations governing those violations are found in the 1990, 1991, and 1992 versions of the Code of Federal Regulations (15 CFR parts 768–799 (1990, 1991, and 1992)) and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructed; the restructured Regulations, to be codified at 15 CFR Parts730–774, establish the procedures that apply to the matters set forth in this Decision and Order.

[2] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR, 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR, 1995 Comp. 501 (1996)) and August 14, 1996 (61 FR 42527, August 15, 1996), continued the Regulations in effect under International Emergency Economic Powers Act (currently codified at 50 U.S.C.A. 1701–1706 (1991 & Supp. 1997)).

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by a denied person, or service any item, of whatever origin, that is owned, possessed or controlled by a denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that a copy of this Order shall be served on Cording and BXA, and shall be published in the **Federal Register**.

This Decision and Order, which constitutes final agency action in this matter, is effective immediately.

Dated: May 29, 1997.

William A. Reinsch,

Under Secretary for Export Administration.

[FR Doc. 97–14636 Filed 6–4–97; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Export Administration

Pan Asia Exim Enterprises PTE Limited; Decision and Order

In the Matter of: Pan Asia Exim Enterprises PTE Limited, 108 Tagore Lane, Singapore 2678, Respondent.

On March 5, 1996, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter ''BXA''), issued a charging letter initiating an administrative proceeding against Pan Asia Exim Enterprises PTE Limited (hereinafter ''Pan Asia''). The charging letter alleged that Pan Asia committed one violation of the Export Administration Regulations (61 FR 12734–13041, March 25, 1996, to be codified at 15 CFR parts 730–774) (hereinafter the ''Regulations''),[1] issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420 (1991 & Supp. 1997)) (hereinafter the ''Act'').[2]

Specifically, the charging letter alleged that, on or about April 22, 1993, Pan Asia reexported U.S.-origin spare parts for small 4HP to 12HP engines from Singapore to Vietnam without obtaining from BXA the reexport authorization required by section 774.1(a) of the former Regulations. BXA alleged that, by reexporting commodities to any person or destination in violation of or contrary to the terms of the Act, or any regulation, order, or license issued thereunder, Pan Asia committed one violation of Section 787.6 of the former Regulations.

The charging letter was served on Pan Asia on March 15, 1996. Pan Asia failed to answer the charging letter within 30 days of service of the charging letter, as required by section 788.7 of the former Regulations. Thus, pursuant to section 766.7 of the Regulations, BXA moved that the Administrative Law Judge (hereinafter the ''ALJ'') find the facts to be as alleged in the charging letter and render a Recommended Decision and Order.

Following BXA's motion, the ALJ issued a Recommended Decision and Order in which he found the facts to be as alleged in the charging letter, and concluded that those facts constitute a violation of the former Regulations by Pan Asia, as BXA alleged. The ALJ also agreed with BXA's recommendation that the appropriate penalty to be imposed for that violation is a denial, for a period of two years, of all of Pan Asia's export privileges. As provided by section 766.22 of the Regulations, the Recommended Decision and Order has been referred to me for final action.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the Recommended Decision and Order of the ALJ.

Accordingly, it is therefore Ordered,

First, That, for a period of two years from the date of this Order, Pan Asia Exim Enterprises PTE Limited, 108 Tagore Lane, Singapore 2678, and all its successors, assignees, officers, representatives, agents and employees, whenever acting within the scope of their employment with Pan Asia, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations, concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, That no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that

[1] The violation at issue occurred in 1993. The Regulations governing the violation are found in the 1993 version of the Code of Federal Regulations (15 CFR parts 768–799 (1993)) and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations, to be codified at 15 CFR parts 730–774, establish the procedures that apply to the matters set forth in this decision and order.

[2] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR, 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR, 1995 Comp. 501 (1996)) and August 14, 1996 (61 FR 42527, August 15, 1996), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1996 & Supp. 1997)).

has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that this order shall be served on Pan Asia and on BXA, and shall be published in the **Federal Register.**

This Order, which constitutes the final agency action in this matter, is effective immediately.

Dated: May 29, 1997.

William A. Reinsch,

Under Secretary for Export Administration.

[FR Doc. 97–14648 Filed 6–4–97; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

President's Export Council Subcommittee on Export Administration; Notice of Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Export Administration (PECSEA) will be held June 30, 1997, 9:00 a.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 4832, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

Public Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on Administration export control initiatives.
4. Task Force reports.

Closed Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A Notice of Determination to close meetings, or portions of meetings, of the Subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved October 27, 1995, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For further information, contact Ms. Lee Ann Carpenter on (202) 482–2583.

Dated: June 7, 1997.

Steven C. Goldman,

Acting Deputy Assistant Secretary for Export Administration.

[FR Doc. 97–14744 Filed 6–4–97; 8:45 am]

BILLING CODE 3510–DT–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, June 30, 1997.

PLACE: 1155 21st St., NW., Washington, DC, 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–14789 Filed 6–3–97; 10:17 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, June 23, 1997.

PLACE: 1155 21st St., NW., Washington, DC, 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–14790 Filed 6–3–97; 10:17 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, June 16, 1997.

PLACE: 1155 21st St., NW., Washington, DC, 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–14791 Filed 6–3–97; 10:17 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, June 9, 1997.

PLACE: 1155 21st St., NW., Washington, DC, 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–14792 Filed 6–3–97; 10:17 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Information Collection in Support of the DoD Acquisition Process (Solicitation Phase), OMB Number 0704–0187.

Type of Request: Revision.

Number of Respondents: 250,121.

Responses Per Respondent: Approximately 11.

Annual Responses: 2,808,197.

Average Burden Per Response: 15.51 hours.

Annual Burden Hours: 43,544,644.

Needs and Uses: The information collection requirement pertains to information, not separately covered by another Office of Management and Budget clearance, that an offeror must submit to DoD in response to a request for proposals or invitation for bids. This information is used by DoD to (1) evaluate offers, (2) determine which offeror should be selected for contract award, and (3) determine whether the offered price is reasonable. This information is also used to determine whether the Government should furnish precious metals as Government-furnished material; to determine whether to accept alternative preservation, packaging, or packing; to determine whether to trade in existing personal property towards the purchase of new items: to verify compliance with requirements for labeling of hazardous material; to evaluate requests for price adjustment on stevedoring contracts; and to monitor compliance with the U.S.-flag vessel shipping requirements. In general, this information collection requirement implements the laws relating to federal procurement, as found in Chapters 137–148 of Title 10 of the United States Code. Specifically, it implements 10 U.S.C. 2304, 10 U.S.C. 2306a, 10 U.S.C. 2326, 10 U.S.C. 2327, 10 U.S.C. 2452 note, 10 U.S.C. 2631, 40 U.S.C. 481(c), 50 U.S.C. App 2405(j), and Section 222 of Public Law 100–180.

Affected Public: Business or Other For-Profit; Not-For-Profit Institutions.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Mr. Peter Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written request for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 29, 1997.

Patricia L. Toppings,

Alternative OSD Federal Register, Liaison Officer, Department of Defense .

[FR Doc. 97–14658 Filed 6–4–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Advisory Committee on High Performance Computing and Communications, Information Technology, and the Next Generation Internet; Notice of Meeting

SUMMARY: This notice sets forth the schedule and summary agenda for the second meeting of the Advisory Committee on High Performance Computing and Communications, Information Technology, and the Next Generation Internet, and describes the functions of the Committee. The meeting will be open to the public. Notice of this meeting is required under the Federal Advisory Committee Act, (Pub. L. 92–463).

DATES: June 24–25, 1997.

ADDRESSES: NSF Board Room (Room 1235) on June 24–25, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: The Advisory Committee on High Performance Computing and Communications, Information Technology, and the Next Generation Internet, established on February 11, 1997, by Executive Order 13035, held its first meeting on February 27–28, 1997. The purpose of the Committee is to provide the National Science and Technology Council, through the Director of the Office of Science and Technology Policy, with advice and information on high performance computing and communications, information technology, and the Next Generation Internet. The Committee members are a well-balanced group of distinguished individuals appointed by the President from various non-Federal sectors.

PROPOSED SCHEDULE AND AGENDA: The Advisory Committee will meet in open session from approximately 8:30 a.m. to noon and 1:00 p.m. to 5:00 p.m. on June 24–25, 1997. This meeting will address networking R&D directions, high end computing strategies, and formulating charges to the Subcommittees. In addition, an initial Subcommittee report on the Next Generation Internet will be made and discussed. Time will also be allocated during the meeting for public comments by individuals and organizations.

FOR FURTHER INFORMATION CONTACT: The National Coordination Office for Computing, Information, and Communications has a web site at: http://www.hpcc.gov, and can be reached on (703) 306–4722. Public seating for this meeting is limited, and is available on a first-come, first-served basis.

Dated: May 28, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–14659 Filed 6–4–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Air Force HQ USAF Scientific Advisory Board Meeting

The C2 Vision/Investment Strategy Panel Meeting in support of the HQ USAF Scientific Advisory Board will meet in Dayton, OH on July 1, 1997, from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information and receive briefings for a review of Rome Labs C2 Vision/ Investment Strategy.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Barbara A. Carmichael,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–14708 Filed 6–4–97; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Naval Research Advisory Committee Panel on CVX Flexibility will meet on June 4–6, 1997. The meeting will be held at the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia. The meeting will commence at 8:30 a.m. and terminate at 4:30 p.m. on June 4; commence at 8:30 a.m. and terminate at 5:00 p.m. on June 5; and commence at 8:30 a.m. and terminate at 12:30 p.m. on June 6, 1997. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to identify for the Department of the Navy the science and technology opportunities that have the potential for major impact on operational flexibility over the lifetime of new Navy ship classes now under consideration. The agenda will include briefings and discussions related to the requirements and concepts for CVX roles, missions, capabilities and configurations; potential technical limitations to CVX operational flexibility over the lifetime of the class; specific science and technology initiatives, such as integrated electric power and electric drive, to address such limitations; and the applicability of such initiatives to other current and new Navy ship classes. These briefings and demonstrations will contain classified and proprietary information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting.

Accordingly, the Under Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c) (1) and (4) of title 5, United States Code.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Mason-Muir, Office of Naval Research, Naval Research Advisory Committee, 800 North Quincy Street, Arlington, VA 22217–5660, telephone number: (703) 696–6769.

Dated: May 23, 1997.

D.E. Koenig, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 97–14637 Filed 6–4–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

DEPARTMENT OF LABOR

Office of School-To-Work Opportunities; Advisory Council for School-To-Work Opportunities; Notice of Open Meetings

SUMMARY: The Advisory Council for School-to-Work Opportunities was established by the Departments of Education and Labor to advise the Departments on implementation of the School-to-Work Opportunities Act. The Council assesses the progress of School-to-Work Opportunities systems development and program implementation; makes recommendations regarding progress and implementation of the School-to-Work initiative; advises on the effectiveness of the new Federal role in providing venture capital to States and localities to develop School-to-Work systems; and acts as an advocate for implementing the School-to-Work framework on behalf of their stakeholders.

Time and Place: The Advisory Council for School-to-Work Opportunities will have an open meeting on Wednesday, June 18, 1997 from 8:30 a.m.–10:00 a.m., 11:45 a.m.–12:30 p.m. and from 3:30 p.m.–4:30 p.m. at the Academy for Educational Development Conference Center, 1875 Connecticut Avenue, NW Washington, DC 20009.

Agenda: The agenda for the meeting from 8:30 a.m. to 10:00 a.m. will include opening remarks and an update of School-to-Work implementation. The Council will then meet in breakout sessions and from 11:45 a.m. to 12:30 p.m. will report out to the entire Council. During the afternoon, the Council's five subcommittees will meet for strategy sessions around key STW issues. The agenda from 3:30 p.m. to 4:30 p.m. will include reports from the various subcommittees, a summary of the day's meeting and a discussion of future actions.

Public Participation: The meeting Wednesday, June 18, from 8:30 a.m.–10:00 a.m., 11:45 a.m.–12:30 p.m. and 3:30 p.m. to 4:30 p.m. will be open to the public. Seats will be reserved for the media. Individuals with disabilities in need of special accommodations should contact the Designated Federal Official (DFO), listed below, at least 7 days prior to the meeting.

For Additional Information Contact: JD Hoye, Designated Federal Official (DFO)), Advisory Council for School-to-Work Opportunities, Office of School-to-Work Opportunities, 400 Virginia Avenue, S.W., Room 210, Washington, DC (202) 401–6222, (This is not a toll free number.)

Signed at Washington, D.C. this 30th day of May, 1997.

Raymond J. Uhalde,

Acting Assistant Secretary, Employment and Training Administration, U.S. Department of Labor.

Patricia W. McNeil,

Assistant Secretary for Vocational and Adult Education, U.S. Department of Education.

[FR Doc. 97–14655 Filed 6–4–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF ENERGY

Notice of Intent To Grant Exclusive Patent Licenses to Remote Tools, Inc.

AGENCY: Department of Energy, Office of the General Counsel.

ACTION: Notice of intent to grant exclusive patent licenses.

SUMMARY: Notice is hereby given of an intent to grant to Remote Tools, Inc., of New Ellenton, South Carolina, exclusive licenses to practice the inventions described in U.S. Patent No. 5,398,560, entitled ''Apparatus for Inspecting Piping'' and U.S. Patent No. 5,433,236, entitled ''Apparatus for Moving a Pipe Inspection Probe through Piping.'' The inventions are owned by the United States of America, as represented by the Department of Energy (DOE).

DATES: Written comments or nonexclusive license applications are to be received at the address listed below no later than August 4, 1997.

ADDRESSES: Office of Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Robert J. Marchick, Office of the Assistant General Counsel for Technology Transfer and Intellectual

Property, U.S. Department of Energy, Forrestal Building, Room 6F–067, 1000 Independence Avenue, SW., Washington, DC 20585; Telephone: (202) 586–4792.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 209(c) provides the Department with authority to grant exclusive licenses in Department-owned inventions, where a determination can be made, among other things, that the desired practical application of an invention has not been achieved, or is not likely expeditiously to be achieved, under a nonexclusive license. The statute and implementing regulations (37 CFR part 404) require that the necessary determinations be made after public notice and opportunity for filing written objections.

Remote Tools, Inc., of New Ellenton, South Carolina, has applied for exclusive licenses to practice the inventions embodied in U.S. Patent No. 5,398,560, entitled ''Apparatus for Inspecting Piping'' and U.S. Patent No. 5,433,236, entitled ''Apparatus for Moving a Pipe Inspection Probe through Piping,'' and has plans for commercialization of the inventions.

Any exclusive license will be subject to a license and other rights retained by the U.S. Government, and other terms and conditions to be negotiated. DOE intends to grant the request, upon a final determination in accordance with 35 U.S.C. § 209(c), unless, within 60 days of this notice, the Assistant General Counsel for Technology Transfer and Intellectual Property, Department of Energy, Washington, D.C. 20585, receives in writing any of the following, together with supporting documents.

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license or licenses; or

(ii) An application for a nonexclusive license to either or both inventions, in which applicant states that he has already brought either or both inventions to practical application or is likely to bring either or both inventions to practical application expeditiously.

The Department will review all timely written responses to this notice, and will grant the request if, after consideration of written responses to this notice, a determination is made that such licensing is in the public interest.

Issued in Washington, D.C., on May 29, 1997.

Eric J. Fygi,

Acting General Counsel.

[FR Doc. 97–14709 Filed 6–4–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration, DOE.

ACTION: Agency information collection activities: Proposed collection; comment request.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments concerning proposed revisions to the Forms EIA–23, EIA–23P, and EIA–64A, ''Oil and Gas Reserves Surveys.''

DATES: Written comments must be submitted on or before July 7, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Mr. Paul Chapman, Energy Information Administration, (EI–443), Dallas Field Office, 1999 Bryan Street, Room 1110, Dallas, Texas 75201–6801, telephone (214) 720–6195, e-mail (pchapman@eia.doe.gov), and FAX (214) 720–6155.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Mr. Chapman at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. No. 93–275) and the Department of Energy Organization Act (Pub. L. No. 95–91), the Energy Information Administration (EIA) is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

The EIA, as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13)), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to: prepare data requests in the desired format, minimize reporting burden, develop clearly understandable reporting forms, and assess the impact of collection requirements on respondents. Also, EIA will later seek approval by the Office of Management and Budget (OMB) for the collections under Section 3507(h) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, Title 44, U.S.C. Chapter 35).

Operators of crude oil and natural gas wells are the target respondents of the Forms EIA–23 and EIA–23P, while operators of natural gas plants are the target respondents of the Form EIA–64A. The amounts of crude oil, associated-dissolved and nonassociated natural gas, and lease condensate production and reserves by field are requested annually of large and intermediate size producers on Form EIA–23. Small operators are required to submit Form EIA–23 which is less detailed information and most are not asked to report each year. A selected sample of small operators provides information on production and reserves of crude oil, natural gas and lease condensate at a State level on the Form EIA–23.

Form EIA–23P is a postcard form used to collect information on possible oil and gas well operators that may be included in future EIA–23 surveys. Form EIA–64A collects information on the amount of natural gas processed, natural gas liquids produced, the resultant shrinkage of the natural gas, and the amount of natural gas used in processing from natural gas plant operators.

In accordance with Section 657 of Public Law 95–91, estimates of United States oil and gas reserves are to be reported annually. These estimates are essential to the development, implementation, and evaluation of energy policy and legislation. Data will be published in the annual U.S. Crude Oil, Natural Gas, and Natural Gas Liquids Reserves, and incorporated in a number of other publications and analyses. Secondary publications which use the data include the Annual Energy Review, Annual Energy Outlook, Petroleum Supply Annual, and Natural Gas Annual.

II. Current Actions

This notice is for a proposed three-year extension through December 31, 2000, of the Forms EIA–23, ''Annual Survey of Domestic Oil and Gas Reserves,'' EIA–23P, ''Oil and Gas Well Operator List Update Report,'' and EIA–64A, ''Annual Report of the Origin of Natural Gas Liquids Production.'' Both Forms EIA–23P and EIA–64A will be extended without modification. For operators reporting on Form EIA–23, the definitions of proved reserves used for reporting will be modified to conform to the new ''Society of Petroleum Engineers'' (SPE) and ''World Petroleum Congress'' (WPC) definitions for proved reserves. These proposed modifications reflect the recent adoption by the SPE and the WPC of new definitions for proved reserves. The EIA strongly supported the adoption of the new definitions and feels that their adoption will allow the use of new estimation techniques. The new definitions are also expected to lead to improvements in the interpretation of U.S. proved reserves and their reliability.

In addition, respondents will be required to report the average price used in the estimates of proved reserves and production. Because knowledge of the oil and gas prices at the field level is essential to successful profitable operations, it is assumed that field level price data are readily available to large and intermediate size operators. EIA is interested in whether small operators can report price information at the State level. In conjunction with requesting the price reporting, the average annual survey size will be reduced by 42 percent by surveying small operators less frequently.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of responses. Please indicate to which form(s) your comments apply.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency? Does the information have practical utility. Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can EIA make to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can data be submitted by the due date?

C. Public reporting burden for these collections is estimated to average: for Form EIA–23, 8 hours for small operators, 62 hours for intermediate operators, and 333 hours for large operators; 15 minutes for operators reporting on Form EIA–23P; and 6 hours for natural gas plants reporting on Form EIA–64A. Burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information.

Please comment on (1) the accuracy of our estimates and (2) how the agency could minimize the burden of the collection of information, including the use of information technology.

D. EIA estimates that respondents will incur no additional costs for reporting other than the hours required to complete the collection. What is the estimated: (1) Total dollar amount annualized for capital and start-up costs, and (2) recurring annual costs of operation and maintenance, and purchase of services associated with this data collection?

E. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the methods of collection.

As a Potential User

A. Can you use data at the levels of detail indicated on the form?

B. For what purpose would you use the data? Be specific.

C. Are there alternate sources of data and do you use them? If so, what are their deficiencies and/or strengths?

D. For the most part, information is published by EIA in U.S. customary units, e.g., cubic feet of natural gas, short tons of coal, and barrels of oil. Would you prefer to see EIA publish more information in metric units, e.g., cubic meters, metric tons, and kilograms? If yes, please specify what information (e.g., coal production, natural gas consumption, and crude oil imports), the metric unit(s) of measurement preferred, and in which EIA publication(s) you would like to see such information.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, DC, May 30, 1997.

Jay H. Casselberry,

Agency Clearance Officer, Office of Statistical Standards Energy Information Administration.

[FR Doc. 97–14712 Filed 6–4–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Dissemination Activities: Proposed Discontinuance of Dissemination by Diskette; Comment Request

AGENCY: Energy Information Administration, DOE.

ACTION: Agency information dissemination activities: Proposed discontinuance of dissemination by diskette.

SUMMARY: The Energy Information Administration (EIA) is informing the public of a proposed change in the methods that EIA uses to disseminate data files and modeling programs and is soliciting public comments on the proposal.

DATES: Written comments must be submitted on or before July 7, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Sandra Wilkins, National Energy Information Center, EI–231, Forrestal Building, U.S. Department of Energy, Washington, DC 20585, telephone (202) 586–1173, e-mail swilkins@eia.doe.gov, and FAX (202) 586–0727.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Ms. Wilkins at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. No. 93–275) and the Department of Energy Organization Act (Pub. L. No. 95–91), the EIA is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and forecasts related to energy

resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

The EIA, as part of its continuing effort to provide adequate notice when initiating, substantially modifying, or terminating significant information products, (required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13)), is issuing this notice to provide the public and other Federal agencies with an opportunity to comment on the proposed discontinuance of the dissemination of EIA's data files and modeling programs on computer diskettes.

II. Current Actions

EIA currently disseminates statistical data, forecasts, and related information using various methods including printed publications, CD-ROM (EIA's ''Energy InfoDisk''), EIA's Internet site (www.eia.doe.gov), an electronic publishing system (EPUB), an electronic mail subscription service (''listerve''), computer diskettes, and, for gasoline and diesel fuel price data, a 24-hour telephone hotline. EIA's Internet site has experienced significant increases each month in accessions while requests for data files and modeling programs on diskette are very infrequent.

Given the numerous methods available for users to acquire EIA's information and to increase the efficiency of EIA's operations, EIA is proposing to discontinue releasing data files and modeling programs on computer diskettes. The diskettes have been available for purchase through the Department of Energy's Office of Scientific and Technical Information (OSTI).

III. Request for Comments

EIA stakeholders and other interested parties should comment on the action discussed in item II.

Statutory Authority: Section 3506 (d)(3) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, D.C. May 29, 1997.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 97–14710 Filed 6–4–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–167–004]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

May 30, 1997.

Take notice that on May 27, 1997, Columbia Gas Transmission Corporation (Columbia) tendered for filing the revised tariff sheets listed on Appendix A to the filing in compliance with the Commission's directives in its ''Order Accepting Compliance Filing Subject to Conditions and Granting Clarification and Rehearing in Part,'' issued May 16, 1997. Columbia proposes an effective date of June 1, 1997 for the revised sheets.

Columbia states that the revised sheets reflect changes to Columbia's tariff directed by the Commission in the compliance order as more fully set forth in the letter transmitting the tariff sheets to the Commission.

Columbia states that copies of its filing have been mailed to all of its customers, affected state regulatory commissions, and all parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE Washington, DC 20426, in accordance with section 385.211 of the Commission's regulations. All such protests must be made as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but such protests will not serve to make protestants parties to this proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–14645 Filed 6–4–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–166–005]

Columbia Gulf Transmission Company; Notice of Compliance Filing

May 30, 1997.

Take notice that on May 27, 1997, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the revised tariff sheets listed on Appendix A to the filing in compliance with the Commission's directives in its ''Order on Rehearing and Second Compliance Filing,'' issued May 14, 1997. Columbia Gulf proposed an effective date of June 1, 1997 for the revised sheets.

Columbia Gulf states that the revised sheets reflect changes to Columbia Gulf's tariff directed by the Commission in the compliance order as more fully set forth in the letter transmitting the tariff sheets to the Commission.

Columbia Gulf states that copies of its filing have been mailed to all of its customers, affected state regulatory commissions, and all parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Regulations. All such protests must be made as provided in section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but such protests will not serve to make protestants parties to this proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–14644 Filed 6–4–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2261–000]

Constellation Power Source, Inc.; Notice of Issuance of Order

May 30, 1997.

Constellation Power Source, Inc. (CPS) filed an application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, CPS requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by CPS. On May 15, 1997, the Commission issued an Order Conditionally Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's May 15, 1997 Order granted the request for blanket approval under part 34, subject to the

conditions found in Ordering Paragraphs (E), (F), and (H):

(E) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by CPS should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First 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.

(F) Absent a request to be heard within the period set forth in Ordering Paragraph (E) above, CPS is hereby authorized to issue securities and assume obligations and liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of CPS, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(H) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of CPS' issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 16, 1997. Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–14693 Filed 6–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2176–000]

Energis Resources Incorporated; Notice of Issuance of Order

May 30, 1997.

Energis Resources Incorporated (Energis) filed an application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, Energis requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Energis. On May 15, 1997, the Commission issued an Order Conditionally Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's May 15, 1997 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (E), (F), and (H):

(E) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Energis should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First 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.

(F) Absent a request to be heard within the period set forth in Ordering Paragraph (E) above, Energis is hereby authorized pursuant to section 204 of the FPA, to issue securities and assume obligations or liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Energis, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(H) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Energis' issuances of securities or assumptions of liabilities * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 16, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–14694 Filed 6–4–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR96–12–000]

Montana Power Company; Notice of Informal Settlement Conference

May 30, 1997.

Take notice that an informal settlement conference in the above-captioned proceeding will be held on Tuesday, June 10, 1997, at 10:00 a.m. in a room to be designed at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Attendance will be limited to the parties and staff. For additional information, please contact Pamela Seeley at (202) 208–0528.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–14641 Filed 6–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–546–000]

National Fuel Gas Supply Corporation; Notice of Application

May 30, 1997.

Take notice that on May 27, 1997, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket no. CP97–546–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations for permission and approval to abandon certain underground natural gas storage facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

National Fuel proposes to abandon five wells, and five segments of 2-inch pipeline totaling 685 feet. The wells will be plugged, 102 feet of the pipeline will be removed, and the remaining pipeline will be abandoned in-place.The facilities to be abandoned are part of National Fuel's Belmouth Storage Field in Elk County, Pennsylvania. National Fuel states that it is abandoning the wells because their poor deliverability and injection performance does not justify the expense of reconditioning the wells, which is necessary due to deterioration of the well casings, to keep them in operation as storage wells. National Fuel also states that the pipeline segments to be abandoned are attached to the wells and will not serve any purpose after the wells are plugged. National Fuel further states that abandonment of the wells will not decrease field performance.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 20, 1997, file with the Federal Energy Regulatory Commission at 888 First 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 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the apporpriate 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 the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the NGA 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 application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for National Fuel to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–14640 Filed 6–4–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–540–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

May 30, 1997.

Take notice that on May 21, 1997, NorAm Gas Transmission Company (Applicant), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP97–540–000 a request pursuant to sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act for authorization to abandon certain facilities in Harrison, Texas, under blanket certificate issued in Docket No. CP82–384–000,[1] all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

Applicant states that it proposes to abandon two inactive 1-inch meter stations and two inactive 2-inch meter stations on Line F–185 in Harrison County, Texas, that delivered gas to customers of Entex, a NorAm Energy Company (Entex). Entex has discontinued use of these facilities and consented to their removal. No service will be abandoned as a result of this proposal. Entex now serves these customers through its Longview distribution system. The original cost of the facilities to be abandoned is $7,979. The taps will be abandoned in place and all above ground facilities removed.

Pursuant to Section 157.216(b), Applicant confirms that it will provided notice of the proposed abandonment to the Texas Railroad Commission.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–14639 Filed 6–4–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–129–002]

Questar Pipeline Company; Notice of Tariff Filing

May 30, 1997.

Take notice that on May 27, 1997, pursuant to 18 CFR 154.7 and 154.201, and in compliance with the Commission's May 20, 1997, Order on Compliance Filing in Docket No. RP97–129–001, Questar Pipeline Company (Questar) tendered for filing and acceptance, to be effective June 1, 1997, proposed revised tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff.

Questar states that the below-listed tariff sheets conform to the requirements of the May 20 order, as directed by the Commission.

Proposed Revised Tariff Sheets

Original Sheet Nos. 46B and 75C
Substitute Original Sheet Nos. 75A, 75B and 99A
Substitute Second Revised Sheet Nos. 44, 45, 46A, 75 and 94
Substitute Fourth Revised Sheet Nos. 46 and 92

Questar explains that it has revised Section 1 (Definitions), Section 2 (Electronic Bulletin Board (EBB)), Section 11 (Operating Provisions for Transportation and Storage Services), Section 18 (Billing and Payment) and Section 29, (GISB Standards), as required by the Commission in the May 20 order. In further compliance with the May 20 order, Questar states that it will (1) adopt the Gas Industry Standards Board Model Trading Partner Agreement reflecting Internet standards when approved by the Commission and (2) receive and process any Sender s Option data elements that the sender chooses to submit.

Questar requests waiver of 18 CFR 154.207 so that the tendered tariff sheets may become effective June 1, 1997, as proposed.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Wyoming Public Service Commission.

Any person desiring to protect said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–14643 Filed 6–4–97; 8:45 am]

BILLING CODE 6717–01–M

[1] *See*, 20 FERC ¶ 62,408 (1982).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–109–005]

Sabine Pipe Line Company; Notice of Compliance Filing

May 30, 1997.

Take notice that on May 27, 1997, Sabine Pipe Line Company (Sabine) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets proposed to be effective June 1, 1997:

Substitute First Revised Sheet No. 256
Substitute First Revised Sheet No. 262
Substitute First Revised Sheet No. 297

Sabine states that the tariff sheet revisions are in compliance with the Commission's order issued May 16, 1997 in Docket No. RP97–109–000. Sabine states that Tariff Sheet Nos. 256 and 262 have been revised to indicate that Sheet Nos. 256 through 260 and Sheet Nos. 262 through 264, respectively, are reserved for future use. Tariff Sheet No. 297 has been revised to incorporate by reference GISB Standard 3.3.3, and to state Sabine's commitment to use the GISB Model Trading Partner Agreement.

Sabine states that copies of this filing are being mailed to its customers, state commissions and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commissioners Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–14642 Filed 6–4–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–513–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

May 30, 1997.

Take notice that on May 7, 1997, as supplemented on May 22, 1997, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP97–513–000 a request pursuant to Sections 157.205, 157.212, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205,157.212, and 157.216) for approval and permission to modify an existing delivery facility for the City of New Albany (New Albany), under the blanket certificate issued in Docket No. CP82–413–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee states that it proposes to modify an existing delivery point in Union County, Mississippi, to add delivery capabilities to deliver up to 5,000 Dekatherms per dat of firm transportation for New Albany. Tennessee also states that it will remove the existing valve box at the existing delivery point and install an above-ground tie-in assembly. It is indicated that Tennessee will remove all existing interconnecting pipe and measurement facilities and install EGM to the new meter facility.

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 Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and notwithdrawn 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–14638 Filed 6–4–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–183–004]

Texas Gas Transmission Corporation; Notice of Filing of Tariff Sheets

May 30, 1997.

Take notice that on May 27, 1997, Texas Gas Transmission Corporation (Texas Gas) tendered for filing, as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

Substitute First Revised Sheet No. 148
Substitute Second Revised Sheet No. 156
Alternate Substitute Second Revised Sheet No. 156
Substitute Second Revised Sheet No. 196
Substitute Original Revised Sheet No. 206
Substitute Original Revised Sheet No. 206A
Substitute Original Revised Sheet No. 206C
Substitute Fifth Revised Sheet No. 207

Texas Gas states that the instant filing is being made in compliance with the Commission's Order issued May 16, 1997, in Docket No. RP97–183–002, et al., (79 FERC ¶ 61,175) in response to the tariff sheets previously filed on April 1, 1997, to implement the business standards issued by the Gas Industry Standards Board (GISB) which were incorporated by the Commission in Order Nos. 587 and 587–B. The filing also seeks reconsideration of the Commission's directive for Texas Gas to reestablish its proposed EBB invoice option.

Texas Gas states that copies of the tariff sheets are being served upon Texas Gas's jurisdictional customers and interested state commissions, as well as all parties on the Commission's official service list in Docket No. RP97–183.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. 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. Copies of this filing are on file with the Commission and are

available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–14646 Filed 6–4–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP96–249–000, et al. and Docket No. CP97–238–000]

Portland Natural Gas Transmission System, Portland Natural Gas Transmission System and Maritimes & Northeast Pipeline, L.L.C.; Notice of Availability of the Draft Environmental Impact Statement for the Proposed PNGTS Project and PNGTS/Maritimes Phase II Joint Facilities Project and Notice of Meeting Site Change

May 30, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a Draft Environmental Impact Statement (DEIS) on the natural gas pipeline facilities proposed by Portland Natural Gas Transmission System (PNGTS), and jointly by PNGTS and Maritimes & Northeast Pipeline, L.L.C. (Maritimes) in the above referenced dockets. The specific facilities addressed in this DEIS are referred to as the PNGTS Project and the PNGTS/Maritimes Phase II Joint Facilities Project (PNGTS and Phase II Joint Facilities).

The DEIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project would have limited adverse environmental impact if constructed as planned with the proposed and recommended mitigation.

The DEIS addresses the potential environmental effects of the construction and operation of the following facilities:

- The PNGTS Project, which includes:

—About 141.6 miles of 24-inch-diameter mainline between Pittsburg, New Hampshire and Westbrook, Maine;
—About 0.7 mile of 8-inch-diameter pipeline (Groveton Lateral);
—About 26.9 miles of 12-inch-diameter pipeline (Rumford Lateral);
—About 16.6 miles of 12-inch-diameter pipeline (Jay Lateral); and
—Three new meter stations and other associated aboveground facilities.

- The Phase II Joint Facilities, which include:

—About 35.2 miles of 30-inch-diameter mainline between Wells, Maine and Westbrook, Maine;
—About 3.8 miles of 12-inch-diameter pipeline (Westbrook Lateral); and
—Three new meter stations and other associated aboveground facilities.

Comment Procedure

Written Comments

Any person wishing to comment on the DEIS may do so. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Reference Docket Nos. CP96–249–000 and CP97–238–000;
- Send two copies of your comments to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 1A, Washington, DC 20426.
- Mail your comments so they will be received on or before July 21, 1997.

Public Meeting Schedule

Three public meetings to receive comments on the DEIS will be held at the following times and locations (please note that the date for the meeting in Colebrook, New Hampshire has changed):

Date	Time	Location
July 7, 1997.	7:00 p.m	The Warren Library, 479 Maine Street, Westbrook, Maine.
July 8, 1997.	7:00 p.m	Town and Country Inn, Route 2, Gorham, New Hampshire.
July 9, 1997.	7:00 p.m	Colebrook Public Library, 149 Maine Street, Colebrook, New Hampshire.

Interested groups and individuals are encouraged to attend and present oral comments on the environmental impacts described in the DEIS. Anyone who would like to speak at the public meetings may get on the speakers list by signing up at the public meetings. Priority will be given to persons representing groups. Transcripts will be made of the meetings.

After these comments are reviewed, any significant new issues are investigated, and modifications are made to the DEIS, a final environmental impact statement (FEIS) will be published and distributed. The FEIS will contain the staff's responses to timely comments received on the DEIS.

The DEIS has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, (202) 208–1371.

A limited number of copies are available at this location.

Copies of the DEIS have been mailed to Federal, state, and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding. Any person may file a motion to intervene on the basis of the Commission staff's DEIS (see 18 CFR 380.106 and 385.214). You do not need intervenor status to have your comments considered.

Additional information about the proposed project is available from Paul McKee in the Commission's Office of External Affairs, at (202) 208–1088.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–14696 Filed 6–4–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00213; FRL–5720–7]

Forum on State and Tribal Toxics Action (FOSTTA) Projects; Open Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The four projects of the Forum on State and Tribal Toxics Action (FOSTTA) will hold meetings open to the public at the time and place listed below in this notice. The public is encouraged to attend the proceedings as observers. However, in the interest of time and efficiency, the meeting is structured to provide maximum opportunity for state, tribal, and EPA invited participants to discuss items on the predetermined agenda. At the discretion of the chair of the project, an effort will be made to accommodate participation by observers attending the proceedings.

DATES: The four projects will meet June 23, 1997, from 8 a.m. to 5 p.m., with a plenary session on EPA's National Environmental Goals Report from 8 a.m. to 9:30 a.m., and on June 24, 1997, from 8 a.m. to noon.

ADDRESSES: The meetings will be held at The Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: Darlene Harrod, Designated Federal Official (DFO), Office of Pollution Prevention and Toxics (7408), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 260–6904, e-mail:

harrod.darlene@epamail.epa.gov. Any observer wishing to speak should advise the DFO at the telephone number or e-mail address listed above no later than 4 p.m. on June 16, 1997.

SUPPLEMENTARY INFORMATION: FOSTTA, a group of state and tribal toxics environmental managers, is intended to foster the exchange of toxics-related program and enforcement information among the states/tribes and between the states/tribes and EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS) and Office of Enforcement and Compliance Assurance (OECA). FOSTTA currently consists of the Coordinating Committee and four issue-specific projects. The projects are the: (1) Toxics Release Inventory Project; Pollution Prevention Project; (3) Chemical Management Project; and (4) Lead (Pb) Project.

List of Subjects

Environmental protection.

Dated: May 27, 1997.

Susan B. Hazen,

Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–14722 Filed 6–4–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

AGENCY: Federal Election Commission.

FEDERAL REGISTER NUMBER: 97–1275.

PREVIOUSLY ANNOUNCED DATE & TIME: Thursday, May 22, 1997 10:00 a.m. Meeting open to the public.

This meeting was cancelled.

DATE & TIME: Tuesday, June 10, 1997 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

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 & TIME: Thursday, June 12, 1997 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Report of the Audit Division on Arlen Specter '96.
Petition for Rulemaking Filed by Five Members of Congress; Notice of Availability.
FY '98 Amended Budget Request.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 97–14897 Filed 6–3–97; 3:39 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 224–201025

Title: Port of New Orleans/Maritrend, Inc. Lease Agreement

Parties: The Board of Commissioners of the Port of New Maritrend, Inc. (''Maritrend'')

Synopsis: The proposed Agreement authorizes the Port to lease to Maritrend 9.33 acres, and improvements thereon, at the Port's Alabo Street facilities for a period of 90 days.

Dated: May 30, 1997.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 97–14664 Filed 6–4–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

BACKGROUND: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR Part 1320 Appendix A.1. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number. Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the OMB 83–I and supporting statement and the approved collection of information instruments will be placed into OMB's public docket files. The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following: a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; c. ways to enhance the quality, utility, and clarity of the information to be collected; and d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before August 4, 1997.

ADDRESSES: Comments, which should refer to the OMB control number or agency form number, should be addressed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible

from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments received may be inspected in room M–P–500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed forms and instructions, the Paperwork Reduction Act Submissions (OMB 83–I), supporting statements, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Mary M. McLaughlin, Chief, Financial Reports Section (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins (202–452–3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, with revision, of the following reports:

1. *Report Titles:* Report of Transaction Accounts, Other Deposits and Vault Cash; Report of Certain Eurocurrency Transactions; and Advance Reports of Deposits.

Agency form numbers: FR 2900, FR 2950, FR 2951, FR 2000, and FR 2001.

OMB control number: 7100–0087.

Frequency: Weekly, quarterly, daily—dependent upon request.

Reporters: Depository institutions.

Annual reporting hours: 1,281,447.

Report	Estimated average hours per response	Number of respondents
FR 2900	3.50	6,026 weekly; 5,982 quarterly.
FR 2950/2951 ..	1.00	642 weekly; 1 quarterly.
FR 2000	0.84	186.
FR 2001	0.96	540

Small businesses are affected.

General description of reports: This information collection is mandatory (12 U.S.C. 248(a), 461, 603, 615, and 3105(b)(2)) and is given confidential treatment under the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Abstract: This package of reports collects information on: deposits and related items from depository institutions that have transaction accounts or nonpersonal time deposits and that are not fully exempt from reserve requirements (''nonexempt institutions'')(FR 2900); Eurocurrency transactions from depository institutions that obtain funds from foreign (non-U.S.) sources or that maintain foreign branches (FR 2950, FR 2951); and selected items on the FR 2900 in advance from samples of nonexempt insitutions on a daily basis (FR 2000) and on a weekly basis (FR 2001). The Federal Reserve proposes that the deposit cutoff used to determine weekly versus quarterly FR 2900 reporting (the ''nonexempt deposit cutoff'') be raised above its indexed level of $59.3 million to $75.0 million. The higher cutoff would result in a potential shift of almost 1,000 reporters from weekly to quarterly FR 2900 reporting and a significant reduction in annual reporting burden. No revisions to the content of any of the reports are proposed. Information provided by these reports is used for administering Regulation D—Reserve Requirements of Depository Institutions; or for constructing, analyzing, and controlling the monetary and reserves aggregates; or both.

2. Report title: Commercial Bank Report of Consumer Credit.

Agency form number: FR 2571.

OMB control number: 7100–0080.

Frequency: Monthly.

Reporters: Commercial banks.

Annual reporting hours: 2,475.

Estimated average hours per response: 0.55.

Number of respondents: 375.

Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. 225a and 248(a)(2)) and is given confidential treatment under the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Abstract: The FR 2571 collects information on consumer installment loans outstanding, by type of credit (automobile loans, revolving credit, and all other installment loans), as of the last business day of the month. Once a year, in September, two additional items are collected: total noninstallment consumer loans and total consumer loans. The FR 2571 also collects on a monthly basis three supplemental items on outstanding balances underlying securitized loan sales. The information, together with information obtained from other Federal Reserve reports and from secondary sources, is used to construct information on consumer credit for current analysis for monetary policy purposes.

The following revisions are proposed: 1. reduce the authorized panel size from 400 to 375 commercial banks; 2. redefine loans to purchase automobiles (item 1 and supplemental item 1.a) to include loans to purchase light trucks for personal use; 3. eliminate the two annual items, Total noninstallment credit (item 5) and Total (item 6); and 4. eliminate the distinction between installment and noninstallment debt. (Items 1, 3, and 4 and supplemental item 1.c would be redefined to include both installment and noninstallment credit).

3. Report titles: Quarterly Report of Interest Rates on Selected Direct Consumer Installment Loans; Quarterly Report of Credit Card Plans.

Agency form numbers: FR 2835, FR 2835a.

OMB control number: 7100–0085.

Frequency: Quarterly.

Reporters: Commercial banks.

Annual reporting hours: 90 (FR 2835), 200 (FR 2835a).

Estimated average hours per response: 0.15 (FR 2835), 0.50 (FR 2835a).

Number of respondents: 150 (FR 2835), 100 (FR 2835a).

Small businesses are not affected.

General description of reports: This information collection is voluntary (12 U.S.C. 248(a)(2)). The FR 2835 is not given confidential treatment, and the FR 2835a is given confidential treatment under the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Abstract: The FR 2835 collects the most common interest rate (largest dollar volume of loans) charged at a sample of commercial banks on two types of consumer loans made in a given week each quarter: new auto loans and other loans for consumer goods and personal expenditures. The FR 2835a collects two measures of average credit card interest rates from a sample of commercial banks. The information, together with information obtained from other Federal Reserve reports and from secondary sources, is used to construct information on consumer credit for current analysis for monetary policy purposes.

On the FR 2835, the Federal Reserve proposes to redefine interest rates on loans for new automobiles (item 1) to include rates on loans to purchase light trucks for personal use, to reduce the authorized panel size for the FR 2835 from 175 to 150 commercial banks, and to reduce the authorized panel size for

the FR 2835a from 150 to 100 commercial banks.

4. Report title: Monthly Survey of Industrial Electricity Use.

Agency form numbers: FR 2009a, FR 2009b.

OMB control number: 7100–0057.

Frequency: Monthly.

Reporters: Public and privately-owned electric utilities (FR 2009a) and cogenerators (FR 2009b).

Annual reporting hours: 3,384.

Estimated average hours per response: 1.0 (FR 2009a), 0.5 (FR 2009b).

Number of respondents: 183 (FR 2009a), 198 (FR 2009b).

Small businesses are not affected.

General description of reports: This information collection is voluntary (12 U.S.C. 225a, 263, 353 *et seq.*, and 461) and is given confidential treatment under the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Abstract: These surveys collect information on the volume of electric power sold during the month to classes of industrial customers. There are two versions of the survey: the FR 2009a, which is collected from electric utilities, and the FR 2009b, which is collected from manufacturing and mining facilities that generate electric power for their own use (cogenerators). The electric power data are used in deriving the Federal Reserve's monthly index of industrial production (IP) as well as for calculating the monthly estimates of electric power used by industry.

The electric utility industry is currently restructuring in response to deregulation at the federal and state levels. As a result of the restructuring, sales of electric power to end users are no longer the exclusive domain of utilities, because new entities, such as power brokers, power marketers, and independent power producers (IPPs), are entering the industry; however, utilities will continue to control transmission facilities. The Federal Reserve proposes to revise the FR 2009a such that respondents would report the amount of power delivered to industrial customers, instead of power sold, so that utilities will continue to report all power consumed by industrial customers connected to their facilities. No revisions are proposed to the FR 2009b. No change in reporting burden is anticipated.

5. Report title: Report of Terms of Credit Card Plans.

Agency form number: FR 2572.

OMB control number: 7100–0239.

Frequency: Semiannually.

Reporters: Financial institutions.

Annual reporting hours: 77.

Estimated average hours per response: 0.25.

Number of respondents: 153.

Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. 1646(b)) and is not given confidential treatment.

Abstract: The FR 2572 collects data on credit card pricing and availability from a sample of at least 150 institutions that offer credit cards. The information is reported to the Congress and made available to the public in order to promote competition within the industry. The proposed revisions would modify the report instructions to clarify the treatment of introductory or teaser rates and would modify the reporting form to include an option to indicate the availability of such a rate. The general instructions would be revised to define more explicitly the nature of the credit card plan to be reported.

6. Report titles: Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer; Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer.

Agency form numbers: FR MSD–4, FR MSD–5.

OMB control numbers: 7100–0100, 7100–0101.

Frequency: On occasion.

Reporters: State member banks, bank holding companies, and foreign dealer banks engaging in activities as municipal securities dealers, and persons who are or seek to be associated with such dealers as municipal securities principals or representatives.

Annual reporting hours: 369 (FR MSD–4), 94 (FR MSD–5).

Estimated average hours per response: 1.00 (FR MSD–4), 0.25 (FR MSD–5).

Number of respondents: 369 (FR MSD–4), 377 (FR MSD–5).

Small businesses are not affected.

General description of reports: These information collections are mandatory (15 U.S.C. 78o–4, 78q, and 78u) and are given confidential treatment under the Freedom of Information Act (5 U.S.C. 552(b)(6)).

Abstract: Rule G–7, ''Information Concerning Associated Persons,'' of the Municipal Securities Rulemaking Board (MSRB) requires a person who is or seeks to be associated with a municipal securities dealer to provide certain background information to the dealer, and conversely, requires the dealer to obtain such information. The FR MSD–4 collects information, such as personal history and professional qualifications, on an employee whom the dealer wishes to assume the duties of a municipal securities principal or representative. The FR MSD–5 collects the date of, and the reason for termination of such an employee, and whether there occurred any investigations or actions by agencies or securities industry self regulating organizations (SROs) involving the associated person during the period of employment.

The proposed changes to the instructions are, for the FR MSD–4: 1. to remove reference to the rules and regulations of the Board, the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) (instruction 2); 2. to add that ''a State branch or agency of a foreign bank'' must file with the Federal Reserve (instruction 3.a); 3. to specify a filing deadline not in MSRB Rule G–7 that may not be specified elsewhere because of the elimination of the rules and regulations of the FRB, OCC, and FDIC (instruction 5); and 4. to remove a grandfather clause (instruction 15).

For the FR MSD–5 the Federal Reserve proposes to change instruction 3.a by adding that ''a State branch or agency of a foreign bank'' must file with the Federal Reserve. The proposed revisions reflect changes to the Federal Reserve's Regulation H and minor changes to the instructions to ensure conformity with reporting forms issued by the OCC and the FDIC. The proposed revisions would not change the information collected.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following reports.

1. Report title: Quarterly Gasoline Company Report.

Agency form number: FR 2580.

OMB control number: 7100–0009.

Frequency: Quarterly.

Reporters: Gasoline companies.

Annual reporting hours: 4.

Estimated average hours per response: 0.15.

Number of respondents: 7.

Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. 225a, 263, 353 *et seq.* and 461) and is given confidential treatment under the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Abstract: The FR 2580 collects information on open-end retail credit outstanding from seven gasoline companies. The information, together with information obtained from other Federal Reserve reports and from secondary sources, is used to construct information on consumer credit for current analysis for monetary policy purposes.

2. Report titles: Quarterly Report of Selected Deposits, Vault Cash and Reservable Liabilities; Annual Report of Total Deposits and Reservable Liabilities.

Agency form numbers: FR 2910q, FR 2910a.

OMB control number: 7100–0175.

Frequency: Quarterly, annually.

Reporters: Depository institutions.

Annual reporting hours: 3,896 (FR 2910q), 2,838 (FR 2910a).

Estimated average hours per response: 2.0 (FR 2910q), 0.5 (FR 2910a).

Number of respondents: 487 (FR 2910q), 5,675 (FR 2910a).

Small businesses are affected.

General description of reports: This information collection is mandatory (12 U.S.C. 248(a) and 461) and is given confidential treatment under the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Abstract: These reports collect information from depository institutions (other than U.S. branches and agencies of foreign banks and Edge and agreement corporations) that are fully exempt from reserve requirements under the Garn-St Germain Depository Institutions Act of 1982. Information provided by these reports is used to construct and analyze the monetary aggregates and to ensure compliance with Regulation D—Reserve Requirements of Depository Institutions.

3. Report title: Allocation of Low Reserve Tranche and Reservable Liabilities Exemption.

Agency form numbers: FR 2930, FR 2930a.

OMB control number: 7100–0088.

Frequency: Annually, and on occasion.

Reporters: Depository institutions.

Annual reporting hours: 86.

Estimated average hours per response: 0.25.

Number of respondents: 342.

Small businesses are affected.

General description of reports: This information collection is mandatory (FR 2930: 12 U.S.C. 248(a), 461, 603, and 615; FR 2930a: 12 U.S.C. 248(a) and 461) and is given confidential treatment under the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Abstract: The FR 2930 and the FR 2930a provide information on the allocation of the low reserve tranche and reservable liabilities exemption for depository institutions having offices (or groups of offices) that submit separate FR 2900 deposits reports. The data collected on these reports are needed for the calculation of required reserves.

Board of Governors of the Federal Reserve System, May 30, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–14652 Filed 6–4–97; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are 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 standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 30, 1997.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. First United Bancshares, Inc., El Dorado, Arkansas; to merge with Fredonia Bancshares, Inc., Nacogdoches, Texas, and thereby indirectly acquire Fredonia State Bank, Nacogdoches, Texas.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Moody Bancshares, Inc.,, Galveston, Texas, and Moody Bank Holding Company, Reno, Nevada; to acquire an additional 0.4 percent, for a total of 25.4, of the voting shares of the Bank of Galveston, N.A., Galveston, Texas.

Board of Governors of the Federal Reserve System, May 30, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–14654 Filed 6–4–97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice 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 the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 19, 1997.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Pinnacle Financial Services, Inc., St. Joseph, Michigan; to acquire and merge with Indiana Federal Corporation, Valparaiso, Indiana, and thereby acquire Indiana Federal Bank for Savings, Valparaiso, Indiana, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of the Board's Regulation Y, and IndFed Mortgage Company, Valparaiso, Indiana, and thereby engage in community development activities, pursuant to § 225.28(b)(12) of the Board's Regulation Y, and provide advice in connection with financing

transactions, pursuant to § 225.28(b)(iii) of the Board's Regulation Y; IFB Investment Services, Inc., Valparaiso, Indiana, and thereby engage in financial and investment advisory activities, pursuant to § 225.28(b)(6) of the Board's Regulation Y, and provide securities brokerage services and riskless principal transactions, pursuant to § 225.28(b)(7) of the Board's Regulation Y; and 33.3 percent of Forrest Holdings, Inc., and its wholly-owned subsidiary, Forrest Financial Corporation, both of Lisle, Illinois, and thereby engage in leasing, pursuant to § 225.28(b)(3)(i) & (ii) of the Board's Regulation Y.

2. Pinnacle Financial Services, Inc, St. Joseph, Michigan; to acquire and merge with CB Bancorp, Inc., Michigan, City, Indiana, and thereby indirectly acquire Community Bank, FSB, Michigan City, Indiana, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)ii). Applicant, through a wholly-owned subsidiary of Community Bank, Community Financial Services, Inc., Michigan City, Indiana, and its subsidiary, Community Brokerage Services, Inc., Michigan City, Indiana, also proposes to engage in financial and investment advisory activities, pursuant to § 225.28(b)(6)(ii), (iii), (iv), (v), and (vi) of the Board's Regulation Y, and provide securities brokerage services, pursuant to § 225.28(b)(7)(i) and (ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 30, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–14653 Filed 6–4–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[Docket No. 9260]

Jenny Craig, Inc.; Jenny Craig International, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft amended complaint that accompanies the consent agreement and terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 4, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld, Federal Trade Commission, San Francisco Regional Office, 901 Market Street, Suite 570, San Francisco, CA 94103. (415) 356–5270. Matthew Gold, Federal Trade Commission, San Francisco Regional Office, 901 Market Street, Suite 570, San Francisco, CA 94103. (415) 356–5270.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and section 3.25 of the Commission's Rules of Practice (16 CFR 3.25), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for May 29, 1997), on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from Jenny Craig, Inc., and Jenny Craig International, Inc. (hereinafter ''Jenny Craig'' or ''respondents''), marketers of the Jenny Craig Weight Loss Program. The Jenny Craig Weight Loss Program is offered to the public nationwide through company-owned and franchised clinics.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and any comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

The Commission's complaint alleged that the respondents deceptively advertised: (1) their program's success in helping customers achieve and maintain weight loss; (2) the time frame within which consumers will achieve their desired weight loss goals; (3) the purchase price of the program; and (4) the extent to which Jenny Craig customers would recommend the program to others. The complaint further alleged that respondents engaged in the deceptive practice of failing to warn clients whom they monitor of the health importance of following the diet protocol.

Weight Loss and Weight Maintenance Success Claims

The complaint against Jenny Craig alleges that the company failed to possess a reasonable basis for claims it made regarding the success of its customers in losing weight and maintaining the weight loss achieved on the program. Through consumer testimonials and other advertisements, Jenny Craig represented that its customers typically are successful in reaching their weight loss goals and in maintaining, either long-term or permanently, the weight loss achieved under the Jenny Craig program.

The proposed consent order seeks to address the alleged success misrepresentations cited in the accompanying complaint in several ways. First, the proposed order, in Part I.A., requires the company to possess a reasonable basis consisting of competent and reliable scientific evidence substantiating any claim about the success of participants on any diet program in achieving or maintaining weight loss. To ensure compliance, the proposed order further specifies what this level of evidence shall consist of when certain types of success claims are made:

(1) In the case of claims that weight loss is typical or representative of all participants using the program or any subset of those participants, that evidence shall be based on a representative sample of: (a) all participants who have entered the programs where the representation relates to such persons; or (b) all participants who have completed a

particular phase of the program or the entire program, where the representation *only* relates to such persons.

(2) In the case of claims that any weight loss is maintained long-term, that evidence shall be based upon the experience of participants who were followed for a period of at least two years after their completion of the respondents' program, including any periods of participation in respondents' maintenance program.

(3) In the case of claims that weight loss is maintained permanently, that evidence shall be based upon the experience of participants who were followed for a period of time after completing the program that is either: (a) generally recognized by experts in the field of treating obesity as being of sufficient length to constitute a reasonable basis for predicting that weight loss will be permanent; or (b) demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

Second, Part I.B. of the proposed order requires the respondents, when making any claim that participants of any diet program have successfully maintained weight loss, to disclose the fact that ''For many dieters, weight loss is temporary.'' In addition, Part I.C. requires respondents to disclose the following information relating to that claim:

(1) the average percentage of weight loss maintained by those participants (e.g., ''60% of achieved weight loss was maintained''),

(2) the duration over which the weight loss was maintained, measured from the date that participants ended the active weight loss phase of the program, and the fact that all or a portion of the time period covered includes participation in respondents' maintenance program(s) that follows active weight loss, if that is the case (e.g., ''Participants maintain an average of 60% of weight loss 22 months after active weight loss (includes 18 months on a maintenance program)),'' and

(3) the proportion of the total participant population that those participants represent, if the participant population referred to is not representative of the general participant population for that program (e.g., ''Participants on maintenance—30% of our clients—kept off an average of 66% of the weight for one year (includes time on maintenance program)).'' (In lieu of that factual disclosure, respondents may state: ''Jenny Craig makes no claim that this result is representative of all participants in the Jenny Craig program).''

Third, for maintenance success claims made in broadcast advertisements of thirty-seconds or less duration, the proposed order, in Part I.D., provides that Jenny Craig, in lieu of making the factual disclosures set out in Part I.C., may (1) include in such advertisements the statement ''Check at our centers for details about our maintenance record,'' and (2) provide consumers at point-of-sale with a document containing certain maintenance information, which includes the factual disclosures required by Part I.C. The proposed order specifies that this document must be signed by the client and retained in the company's client file.

The proposed order makes clear that the alternative disclosure requirement contained in Part I.D. does not relieve Jenny Craig of the obligation to substantiate any maintenance success claim in accordance with Part I.A. of the proposed order. In addition, the proposed order specifies that, if Jenny Craig makes a maintenance success claim that uses numbers or descriptive terms that convey a quantitative measure, such as ''most of our customers maintain their weight loss long term,'' Jenny Craig would have to make all the disclosures required by Part I.C. in the ad and provide the disclosures at point-of-sale.

Fourth, Part I.E. of the proposed order addresses weight-loss and weight-loss maintenance success claims, made through endorsements or testimonials, that are not representative of what Jenny Craig Weight Loss Program participants generally achieve. Part I.E. requires respondents to disclose either what the generally expected success would be for Jenny Craig customers, or the limited applicability of the endorser's experience to what consumers may generally expect to achieve. The proposed order's treatment of testimonial claims is in accordance with the Commission's ''Guides Concerning Use of Endorsements and Testimonials in Advertising'' 16 CFR 255.2(a). Under the proposed order, Jenny Craig may disclose ''generally expected success'' by use of the following format in the relevant advertisement: ''Weight loss averages__lbs. over__weeks.'' Alternatively, respondents may disclose in the advertisement the average number of pounds lost by their customers, and provide to each potential customer, prior to entering into an agreement, a form containing more detailed weight loss information. Respondents may disclose ''limited applicability'' by use of one of several alternative statements, such as ''This result is not typical. You may be less successful.''

Finally, the proposed order, in Part I.L., generally prohibits the company from misrepresenting the performance or efficacy of any weight loss program.

Rate of Weight Loss Claims

The Commission's complaint further alleges that Jenny Craig failed to possess a reasonable basis for its claim made during initial sales presentations that consumers will typically reach their desired weight-loss goals within the time frame set by the company's computer program. To address this practice, Part I.I. of the proposed order prohibits Jenny Craig from representing that prospective participants will reach a specified weight within a specified period of time, unless respondents possess and rely upon competent and reliable scientific evidence substantiating the representation. Part I.J. of the proposed order would prevent respondents from misrepresenting the rate or speed at which any program participant has experienced or will experience weight loss.

Price Claims

The Commission's complaint against Jenny Craig also alleges that the company falsely represented that the price it advertised for its diet program is the only cost associated with losing weight on the diet program, when, in fact, there are substantial additional mandatory expenses that far exceed the advertised price. The complaint further alleges that respondents failed to disclose adequately to consumers the existence and amount of all mandatory expenses associated with participation in the diet program.

The proposed consent order seeks to address these practices in four ways. First, Part I.F. of the proposed order prohibits untrue representations that an advertised price for a weight loss program is the only cost associated with losing weight on that program. Second, for any advertisement containing a price at which any weight loss program can be purchased, Part I.G. of the proposed order requires Jenny Craig to disclose either the existence and amount of all mandatory costs or fees associated with the program offered or a statement identifying a list of all products or services that participants must purchase at an additional cost. This disclosure must be made orally under the proposed order if the price representation is made orally in broadcast media.

Third, Part I.H. of the proposed order requires the respondents to disclose over the telephone to callers who inquire or are told about the cost of any weight loss program, the existence and amount of any mandatory costs or fees

associated with participation in the program. Finally, Part I.L. generally prohibits the company from misrepresenting the price of any weight loss program.

Health Risks Claims

According to the complaint, Jenny Craig provides its customers with diet protocols that require the customers to come into one of proposed respondents' centers once a week for monitoring of their progress, including weighing in. In the course of regularly ascertaining weight loss progress, respondents, in some instances, have been presented with weight loss results indicating that customers are losing weight significantly in excess of their projected goals, which is an indication that they may not be consuming all of the food prescribed by their diet protocol. According to the complaint, such conduct could, if not corrected promptly, result in health complications. The Commission's complaint alleges that Jenny Craig failed to disclose to consumers who were losing weight significantly in excess of their projected goals that failing to follow the diet protocol and consume all of the food prescribed could result in health complications.

The proposed consent order seeks to address this allegation in two ways. First, the proposed order, in Part I.K., requires Jenny Craig to disclose in writing to all participants, when they enter the program, that failure to follow the program protocol and eat all of the food recommended may involve the risk of developing serious health complications. Second, the proposed order, in Part I.L., generally prohibits any misrepresentation concerning the safety of any weight loss program.

Customer Satisfaction Claims

The complaint also alleges that Jenny Craig deceptively advertised that ''nine out of ten'' Jenny Craig clients would recommend Jenny Craig to their friends. The complaint further alleges that the company's claim that competent and reliable studies or surveys substantiate the ''nine out of ten'' claim was false.

The proposed order seeks to address these claims in two ways. First, Part I.M. would require respondents to possess competent and reliable evidence (which when appropriate must be competent and reliable scientific evidence) for any representation that participants on any weight loss program recommend or endorse the program. Second, Part I.N. would prevent respondents from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, or survey.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 97–14678 Filed 6–4–97; 8:45 am]

BILLING CODE 6750–01–M

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board; Meeting

AGENCY: General Accounting Office.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that the Federal Accounting Standards Advisory Board will meet on Thursday, June 3, 1997, from 9:00 A.M. to 4:00 P.M. in the Elmer Staats Briefing Room, room 7C13 of the General Accounting Office building, 441 G St., NW., Washington, DC.

The purpose of the meeting is to discuss the following issues: (1) Proposed amendments to the Property, Plant, and Equipment standard, (2) comments on the Management's Discussion and Analysis (MD&A) document, and (3) pensions.

Any interested persons may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., NW., Room 3B18, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: June 2, 1997.

Wendy M. Comes,

Executive Director.

[FR Doc. 97–14724 Filed 6–4–97; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Meetings of the National Bioethics Advisory Commission (NBAC); Correction

The Notice published on March 24, 1997, at 62 FR 13887, is corrected as follows:

The date and times for the meeting to be held on June 7, 1997, are corrected to read:

DATES: Saturday, June 7, 1997: full Commission Meeting, 7:30 a.m.–11:30 a.m.; Human Subjects Subcommittee, 1:00 p.m.–5:00 p.m.; and Genetics Subcommittee, 1:00 p.m.–4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Henrietta Hyatt-Knorr, National Bioethics Advisory Commission, MSC–7508, 6100 Executive Boulevard, Suite 3C01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Dated May 27, 1997.

Henrietta Hyatt-Knorr,

Acting Deputy Director, National Bioethics Advisory Commission.

[FR Doc. 97–14208 Filed 6–4–97; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Statement of Organization, Functions and Delegations of Authority

This Notice amends Part A (Office of the Secretary) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) to reflect recent changes in Chapter AF, Office of Inspector General (OIG). Chapter AF was last published in its entirety on May 13, 1996 (61 FR 22059).

The statement of organization, functions and delegations of authority reflects the original transfer of the statutory basis for the Office of Inspector General from Public Law 94–505 to Public Law 95–452 (and made under the Inspector General Act Amendments of 1988, Public Law 100–504), and conforms to and carries out the statutory requirements for operating the Office of Inspector General. A number of revisions have been made to reflect the consolidation of the Inspector General Division of the Office of the General Counsel and the Office of Litigation Coordination into the new Office of Counsel to the Inspector General (OCIG), and the incorporation of OCIG into the OIG organizational structure. In addition, several technical changes have been made to reflect revised component functions and duties in accordance with new or amended authorities and responsibilities resulting from the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191). These organizational changes have been made in an effort to assist the

Office of Inspector General in accomplishing its mission with greater efficiency and effectiveness.

As amended, Chapter AF now reads as follows

Section AF.00, Office of Inspector General (OIG)—Mission. This organization was established by law as an independent and objective oversight unit of the Department to carry out the mission of promoting economy, efficiency and effectiveness through the elimination of waste, abuse and fraud. In furtherance of this mission, the organization engages in a number of activities:

A. Conducting and supervising audits, investigations, inspections and evaluations relating to HHS programs and operations.

B. Identifying systemic weaknesses giving rise to opportunities for fraud and abuse in HHS programs and operations and making recommendations to prevent their recurrence.

C. Leading and coordinating activities to prevent and detect fraud and abuse in HHS programs and operations.

D. Detecting wrongdoers and abusers of HHS programs and beneficiaries so appropriate remedies may be brought to bear.

E. Keeping the Secretary and the Congress fully and currently informed about problems and deficiencies in the administration of such programs and operations and about the need for and progress of corrective action, including imposing sanctions against providers of health care under Medicare and Medicaid who commit certain prohibited acts.

In support of its mission, the Office of Inspector General carries out and maintains an internal quality assurance system and a peer review system with other Offices of Inspectors General, that include periodic quality assessment studies and quality control reviews, to provide reasonable assurance that applicable laws, regulations, policies, procedures, standards and other requirements are followed; are effective; and are functioning as intended in OIG operations.

Section AF.10, Office of Inspector General—Organization. There is at the head of the OIG a statutory Inspector General, appointed by the President and confirmed by the Senate. The Office of Inspector General consists of seven organizational units:

A. Immediate Office of the Inspector General (AFA).

B. Office of Management and Policy (AFC).

C. Office of Evaluation and Inspections (AFE).

D. Office of Enforcement and Compliance (AFF).

E. Office of Counsel to the Inspector General (AFG).

F. Office of Audit Services (AFH).

G. Office of Investigations (AFJ).

Section AF.20, Office of Inspector General—Functions. The component sections which follow describe the specific functions of the organization.

Section AFA.00, Immediate Office of the Inspector General (IOIG)—Mission. The Inspector General is directly responsible for meeting the statutory mission of the OIG as a whole and for promoting effective OIG internal quality assurance systems, including quality assessment studies and quality control reviews of OIG processes and products. The Office of Inspector General also plans, conducts and participates in a variety of inter-agency cooperative projects and undertakings relating to fraud and abuse activities with the Department of Justice (DoJ), the Health Care Financing Administration (HCFA) and other governmental agencies.

Section AFA.10, Immediate Office of the Inspector General—Organization. The Immediate Office is comprised of the Inspector General, the Principal Deputy Inspector General, and an immediate staff.

Section AFA.20, Immediate Office of the Inspector General—Functions. As the senior official of the organization, the Inspector General supervises the Chief Counsel to the Inspector General and the Deputy Inspectors General who head the major OIG components. The Inspector General is appointed by the President, with the advice and consent of the Senate, and reports to and is under the general supervision of the Secretary or, to the extent such authority is delegated, the Deputy Secretary, but does not report to and is not subject to supervision by any other officer in the Department. In keeping with the independence intended in the statutory basis for the OIG and its mission, the Inspector General assumes and exercises, through line management, all functional authorities related to the administration and management of the OIG and all mission related authorities stated or implied in the law or delegated directly from the Secretary.

The Inspector General provides executive leadership to the organization and exercises general supervision over the personnel and functions of its major components. The Inspector General determines the budget needs of the OIG, sets OIG policies and priorities, oversees OIG operations and provides reports to the Secretary and the Congress. In this capacity the Inspector General is empowered under the law with general personnel authority, e.g., selection, promotion, assignment of employees, including members of the senior executive service. The Inspector General delegates related authorities as appropriate.

The Principal Deputy Inspector General assists the Inspector General in the management of the OIG, and during the absence of the Inspector General, acts as the Inspector General.

Section AFC.00, Office of Management and Policy (OMP)—Mission. This office is responsible for the reporting and legislative and regulatory review functions required in the law; for formulating and executing the OIG budget; for managing external affairs; and for establishing functional policies for the general management of the OIG. In support of its mission, the office carries out and maintains an internal quality assurance system. The system includes quality assessment studies and quality control reviews of OMP processes and products to ensure that policies and procedures are followed effectively and function as intended.

Section AFC.10, Office of Management and Policy—Organization. This office is directed by the Deputy Inspector General for Management and Policy, and comprises the Deputy Inspector General for OMP and an immediate staff.

Section AFC.20, Office of Management and Policy—Functions. Through the Deputy Inspector General for Management and Policy:

A. The office conducts and coordinates OIG reviews of existing and proposed legislation and regulations related to HHS programs and operations to identify their impact on economy and efficiency and their potential for fraud and abuse. It serves as contact for the press and electronic media and serves as OIG congressional liaison. The office prepares or coordinates congressional testimony and confers with officials in the Office of the Secretary staff divisions on congressional relations, legislation and public affairs. It develops and publishes OIG newsletters, recruitment brochures and other issuances to announce and promote OIG activities and accomplishments.

B. The office coordinates the development of the OIG long-range strategic plan. It compiles the Semiannual and other legislatively-mandated reports to the Congress and operates the Executive Secretariat. It formulates and oversees the execution of the OIG budget and confers with the Office of the Secretary, the Office of Management and Budget and the

Congress on budget issues. It issues quarterly grants to States for Medicaid fraud control units. It conducts management studies and analyses and establishes and coordinates general management policies for the OIG and publishes those policies in the OIG Administrative Manual. It serves as OIG liaison to the Office of the Secretary for personnel issues and other administrative policies and practices, and on equal employment opportunity and other civil rights matters. It coordinates internal control reviews for the OIG.

C. The office is responsible for OIG information resources management (IRM), as defined by the Paperwork Reduction Act, OMB Circular A–130, the Federal Information Resources Management regulations, the Computer Security Act of 1987, HHS IRM Circulars, and by related guidance. The office also provides information technology support to the OIG through management of its local area networks nationwide, provision of headquarters computer end-user support, and support of OIG information systems as required. Through this office, the Deputy Inspector General for Management and Policy serves as the OIG Chief Information Officer.

Section AFE.00, Office of Evaluation and Inspections (OEI)—Mission. The Office of Evaluation and Inspections is responsible for conducting inspections of HHS programs, operations and processes to identify vulnerabilities, to prevent and detect fraud, waste and abuse, and to promote economy, efficiency and effectiveness in HHS programs and operations.

Section AFE.10, Office of Evaluation and Inspections—Organization. This office is directed by the Deputy Inspector General for Evaluation and Inspections, and comprises the Immediate Office, including the Deputy Inspector General for OEI and an immediate staff, and eight regional offices.

Section AFE.20, Office of Evaluation and Inspections—Functions. The office is responsible for carrying out inspections supporting the OIG mission. The Deputy Inspector General provides general supervision to the OEI immediate office staff and supervises the Regional Inspectors General for Evaluation and Inspections who carry out OEI's mission and activities in assigned geographic areas. The Immediate Office carries out OEI's mission in headquarters.

A. The immediate office develops OEI's evaluation and inspections policies, procedures and standards. It manages OEI's human and financial resources. It develops and monitors OEI's management information systems. It conducts management reviews within the HHS/OIG and for other OIG's upon request. The office carries out and maintains an internal quality assurance system. The system includes quality assessment studies and quality control reviews of OEI processes and products to ensure that policies and procedures are effective; are followed; and are functioning as intended.

B. The immediate office manages OEI's work planning process, and develops and reviews legislative, regulatory and program proposals to reduce vulnerabilities to fraud, waste and mismanagement. It develops evaluation techniques and coordinates projects with other OIG and departmental components. It provides programmatic expertise and information on new programs, procedures, regulations and statutes to OEI regional offices. It maintains liaison with other components in the Department, follows up on implementation of corrective action recommendations, evaluates the actions taken to resolve problems and vulnerabilities identified, and provides additional data or corrective action options, where appropriate.

C. The immediate office provides statistical and data base advice and services for inspections conducted by the regional offices. It carries out analyses of large data bases to identify potential areas of fraud and abuse, and provides technical assistance to the regional offices for these purposes. It operates a toll-free hotline for the OIG to permit individuals to call in suspected fraud or waste, refers the calls for appropriate action by HHS agencies or other OIG components, and analyzes the body of calls to identify trends and patterns of fraud and abuse needing attention.

D. The regional offices carry out OEI's mission in the field. The regional offices evaluate HHS programs and produce the results in inspection reports. They conduct data and trend analyses of major HHS initiatives to determine the effects of current policies and practices on program efficiency and effectiveness. They recommend changes in program policies, regulations and laws to improve efficiency and effectiveness, and to prevent fraud, abuse, waste and mismanagement. They analyze existing policies to evaluate options for future policy, regulatory and legislative improvements.

Section AFF.00, Office of Enforcement and Compliance (OEC)—Mission. The Office of Enforcement and Compliance is responsible for the imposition of those mandatory and permissive program exclusions and civil money penalty (CMP) and assessment actions not handled by the Office of Counsel to the Inspector General (OCIG), Civil Recoveries Branch. The office serves as a liaison with HCFA, State licensing boards and other outside organizations and entities with regard to exclusion, compliance and enforcement activities. It develops models for corporate integrity, compliance and enforcement programs; monitors ongoing compliance, exclusion, enforcement activities and HCFA suspension agreements; and promotes industry awareness of corporate integrity and enforcement agreements developed by the OIG.

Section AFF.10, Office of Enforcement and Compliance—Organization. This office is directed by the Deputy Inspector General for Enforcement and Compliance, and comprises the Deputy Inspector General for OEC and an immediate staff.

Section AFF.20, Office of Enforcement and Compliance—Functions. Through the Deputy Inspector General for Enforcement and Compliance:

A. The office develops, coordinates and effectuates all health care mandatory and permissive exclusions, with the exception of those handled by the OCIG, Civil Recoveries Branch. The office develops standards governing the imposition of the mandatory and permissive exclusion authorities within the scope of its responsibility, and develops criteria for evaluating when it will impose such permissive exclusions against health care providers. It reviews all applications for readmission to program participation for purposes of determining whether an excluded provider has demonstrated the ability to comply with program requirements; and ensures enforcement of exclusions imposed through liaison with HCFA, DoJ and other governmental and private sector entities. The office coordinates with the Public Health Service to effectuate repayment agreements with those excluded individuals who have defaulted on HEAL loans.

B. The office is responsible for developing, improving and maintaining a comprehensive and coordinated OIG data base on all OIG exclusion actions, and promptly and accurately reports all exclusion actions within its authority to the data base. It informs appropriate regulatory agencies, health care providers and the general public of all OIG exclusion actions, and is responsible for improving public access to information on these exclusion actions to ensure that excluded individuals and entities are effectively barred from program participation.

C. The office imposes CMPs and other assessments in accordance with the CMP law on those cases not handled by the OCIG, Civil Recoveries Branch, and ensures that all monetary recoveries are promptly and accurately reported to the appropriate OIG data base.

D. The office monitors corporate and provider compliance plans adopted as part of settlement agreements, and develops audit and investigative review standards for monitoring such plans in cooperation and coordination with other OIG components. It resolves breaches of compliance plans through the development of corrective action plans, on-site reviews, and when appropriate, refers material breaches of compliance plans to the OCIG, Civil Recoveries Branch for potential sanctioning.

E. The office serves to increase industry awareness of corporate compliance issues by proactively promoting voluntary adoption of corporate compliance plans through speeches, articles, visits and other liaison activities with governmental and private sector groups, as well as developing model or best practice recommendations to be utilized by the health care industry.

F. The office represents the OIG in coordinating all CMP actions initiated by other Federal health care programs that are authorized to prosecute health care providers. The office provides guidance and monitors all actions in this area until completion of these actions.

Section AFG.00, Office of Counsel to the Inspector General (OCIG)—Mission. The Office of Counsel to the Inspector General (OCIG) is responsible for providing all legal services and advice to the Inspector General, Principal Deputy Inspector General and all the subordinate components of the Office of Inspector General, in connection with OIG operations and administration, OIG fraud and abuse enforcement activities, and OIG activities designed to promote efficiency and economy in the Department's programs and operations. The OCIG is also responsible for litigating civil money penalty (CMP) and program exclusion cases within the jurisdiction of the OIG, for the coordination and disposition of False Claims Act *qui tam* and criminal, civil and administrative matters involving the Department of Justice (DoJ), and for the resolution of voluntary disclosure and program compliance activities.

Section AFG.10, Office of Counsel to the Inspector General—Organization. The office is directed by the Chief Counsel to the Inspector General, and the Assistant Inspector General for Legal Affairs. The office is comprised of the following components:

A. Advice.
B. Civil Recoveries.
C. Administrative Litigation.
D. Industry Guidance.

Section AFG.20, Office of Counsel to the Inspector General—Functions. A. *Advice.* This office provides legal advice to the various components of the OIG on legal issues that arise in the exercise of the OIG's responsibilities under the Inspector General Act of 1978. Such issues include the scope and exercise of the Inspector General's authorities and responsibilities; investigative techniques and procedures (including criminal procedure); the sufficiency and impact of legislative proposals affecting the OIG; and the conduct and resolution of investigations, audits and inspections. The office evaluates the legal sufficiency of OIG recommendations and develops formal legal opinions, in coordination with the HHS Office of the General Counsel, to support those recommendations. The office provides legal advice on OIG internal administration and operations, including appropriations, delegations of authority, ethics, OIG regulations, personnel matters, the disclosure of information under the Freedom of Information Act and the safeguarding of information under the Privacy Act. The office is responsible for conducting and coordinating litigation activities on personnel and Equal Employment Opportunity matters and Federal tort actions involving OIG employees. The office is responsible for the clearance and enforcement of subpoenas issued by the OIG, and defends the OIG in litigation matters as necessary.

B. *Civil Recoveries.* This office oversees all False Claims Act cases, including *qui tam* cases, and handles final sign-off on False Claims Act settlements for the Department. It coordinates DOJ resource requests, participates in settlement negotiations and provides litigation support. It coordinates the Department's response to all settlement proposals in cases involving DOJ, including the amount of restitution and resolution of the selected CMP and program exclusion liability. Where necessary, the office litigates appeals of program exclusions imposed in such cases before the Department Appeals Board (DAB) and assists DOJ in handling any subsequent appeals of such cases to the Federal courts. The office coordinates and resolves all voluntary disclosure cases through: (1) liaison activities with DOJ and the U.S. Attorney's office; (2) the disclosure verification efforts of OAS and OI; and (3) final disposition and sign-off of the matter. The office, in coordination with other OIG components, develops both the standards governing the use of program exclusion authorities in cases involving other Federal agencies, including DOJ, and the criteria for evaluating whether to impose program exclusions against health care providers in such cases. It is responsible for ensuring that all program exclusion actions not handled by OEC are promptly and accurately reported to the appropriate OIG data base. The office is responsible for developing and maintaining a comprehensive and coordinated data base on all settled and pending False Claims Act and CMP cases under its authority.

C. *Administrative Litigation.* This office is responsible for providing legal advice to OEC concerning the legal sufficiency of proposed program exclusions, issues relating to the scope and effect of program exclusions, and the reinstatement of excluded persons or entities. The office assists OEC in developing standards governing the imposition of program exclusions. The office litigates appeals of program exclusions imposed by OEC before the DAB and assists DOJ in handling any subsequent appeals of such cases to the Federal courts. The office reviews all patient anti-dumping cases referred by the Health Care Financing Administration, makes recommendations regarding the handling of these cases, and negotiates settlements with hospitals and physicians of their liability for CMPs and program exclusions. Where appropriate, the office litigates CMPs and program exclusions imposed on hospitals and physicians for violations of the patient anti-dumping statute. The office also reviews, negotiates settlements, and litigates other CMP cases that have been referred by OEC. In addition, the office provides legal advice to OEC on matters involving the development and monitoring of corporate compliance plans, the resolution of breaches of such plans, and the development of corrective action plans. The office also has primary responsibility for developing and promulgating all OIG sanction and interpretative regulations for codification into the Code of Federal Regulations, all OIG-related **Federal Register** notices, and the review and drafting of legislative proposals relating to fraud and abuse enforcement activities.

D. *Industry Guidance.* This office is responsible for drafting and issuing advisory opinions to the health care industry and members of the public on whether an activity (or proposed

activity) would constitute grounds for the imposition of a sanction under the anti-kickback statute, the CMP law or the program exclusion authorities, and on other issues pertaining to the anti-kickback statute. The office develops and updates procedures for the submission of requests for advisory opinions and for determining the fees that will be imposed. The office solicits and responds to proposals for new regulatory safe harbors to the anti-kickback statute, modifications to existing safe harbors, and new fraud alerts. The office consults with, and obtains the concurrence of, DOJ on all proposed advisory opinions and safe harbors before issuance or publication. The office provides legal advice to the various components of the OIG, other offices of the Department, and DOJ concerning matters involving the interpretation of the anti-kickback statute and assists those components or offices in analyzing the applicability of the anti-kickback statute to various practices or activities under review.

Section AFH.00, Office of Audit Services (OAS)—Mission. The Office of Audit Services provides policy direction for and conducts and oversees comprehensive audits of HHS programs, operations, grantees and contractors, following generally accepted Government auditing standards (GAGAS), the Single Audit Act of 1984, applicable Office of Management and Budget (OMB) circulars and other legal, regulatory and administrative requirements. It maintains an internal quality assurance system, including periodic quality assessment studies and quality control reviews, to provide reasonable assurance that applicable laws, regulations, policies, procedures, standards and other requirements are followed in all audit activities performed by, or on behalf of, the Department. In furtherance of this mission, the organization engages in a number of activities:

A. The office coordinates and confers with officials of the central Federal management agencies (OMB, the General Accounting Office (GAO), the Office of Personnel Management (OPM) and the Department of the Treasury) on audit matters involving HHS programs and operations. It provides technical assistance to Federal, State and local investigative offices on matters concerning the operation of the Department's programs. It participates in interagency efforts implementing OMB Circulars A–128 and A–110, which call for use of the single audit concept for most external audits. It performs audits of activities administered by other Federal departments, following the system of audit cognizance administered by OMB. It participates in the President's Council on Integrity and Efficiency (PCIE) initiatives and other Government-wide projects. It works with other OIG components on special assignments and projects. It responds to congressional oversight interests related to audit matters in the Department.

B. The Office of Audit Services helps HHS operating divisions and the Office of the Secretary staff divisions to develop policies to manage grants and procurements and policies to establish indirect cost rates. It performs pre-award audits of grant or contract proposals to determine the financial capability of the grantees or contractors and conducts post-award audits.

C. The office reviews legislative, regulatory and policy proposals for audit implications. It recommends improvements in the accountability and integrity features of legislation, regulations and policy. It prepares reports of audits and special studies for the Secretary, heads of HHS operating divisions, Regional Directors and others. It gathers data on unresolved audit findings for the statutorily required Semiannual Reports to the Congress and for the Deputy Secretary as Chairman of the Audit Resolution Council. It conducts follow-up examinations and special analyses of actions taken on previously reported audit findings and recommendations to ensure completeness and propriety.

D. The office decides when audits can or may be performed by audit organizations outside the Department, including those by other Federal or nonfederal governmental agencies, contractors, or public accounting firms. It assures that any audit performed by non-OIG auditors complies with the Government auditing standards established by the Comptroller General of the United States. It evaluates audits performed for the Department by outside organizations. It coordinates the development of the OIG Annual Work Plan and produces summaries of both (1) the Orange Book—a summary of unimplemented program and management improvements recommended—and (2) the Red Book—a summary of significant monetary recommendations not yet implemented.

E. The office serves as the focal point for all financial audit activity within the Department and provides the primary liaison conduit between the OIG and departmental management. The office provides overall leadership and direction in carrying out the responsibilities mandated under the Chief Financial Officers Act relating to financial statement audits.

Section AFH.10, Office of Audit Services—Organization. The Office of Audit Services comprises the following components:

A. Immediate Office.

B. Audit Operations and Financial Statement Activities.

C. Health Care Financing Audits.

D. Administrations of Children, Family and Aging Audits.

E. Public Health Audits.

Section AFH.20, Office of Audit Services—Functions. A. *Immediate Office of the Deputy Inspector General for Audit Services.* This office is directed by the Deputy Inspector General for Audit Services who carries out the functions designated in the law for the position, Assistant Inspector General for Auditing. The Deputy Inspector General for Audit Services is responsible to the Inspector General for carrying out OIG's audit mission and supervises the Assistant Inspectors General heading OAS offices described below.

The Immediate Office manages the human and financial resources of the Office of Audit Services including developing staffing allocation plans and issuing policy for, coordinating and monitoring all budget, staffing, recruiting and training activities of the office. Included in this is the responsibility to track court ordered or agreed-to costs of audits recouped from health care providers found to have violated Medicare fraud and abuse program provisions. It maintains a professional development program for Office of Audit Services staff which meets the requirements of Government auditing standards. The office provides liaison with the General Accounting Office. It reviews all replies to GAO reports to ensure they are responsive, properly coordinated and representative of HHS policy and advises the Secretary and other officials about significant findings.

B. *Audit Operations and Financial Statement Activities.* This office is directed by the Assistant Inspector General for Audit Operations and Financial Statement Activities. In addition to directing this office, the Assistant Inspector General supervises the eight Regional Inspectors General for Audit Services. The office's principal functions include providing direction and oversight to OAS through its work planning and quality assurance activities; the direct-line responsibility for audits of financial statements and financial related audits, including internal audits of functional areas

within the Department; and directing field audit operations.

1. The office serves as the focal point for all financial statement and financial related audit activity within the Department and serves as the primary liaison conduit between the OIG and departmental management.

2. The office operates an internal quality assurance system that provides reasonable assurance that applicable laws, regulations, policies, procedures, standards and other requirements are followed in all audit activities performed by, or on behalf of, the Department.

3. The office evaluates audit work, including performing quality control reviews of audit reports, and develops and monitors audit work plans. It develops audit policy, procedures, standards, criteria and instructions for all audit activities performed by, on behalf of, or conforming with departmental programs, grants, contracts or operations in accordance with GAGAS and other legal, regulatory and administrative requirements.

4. The office tracks, monitors and reports on audit resolution and follow-up in accordance with OMB Circular A–50.

5. The office provides oversight for audits of governments, universities and nonprofit organizations conducted by nonfederal auditors and those under contract with the OIG (external audit resources).

6. The office coordinates with the other OIG components in developing the semiannual report to Congress.

C. *Health Care Financing Audits.* This office is directed by the Assistant Inspector General for Health Care Financing Audits. The office conducts programmatic and fraud and abuse oriented audits of HCFA program operations and oversees nationwide the audits of the Medicare and Medicaid programs, their contractors, and providers of services and products. It maintains an internal quality assurance system, including periodic quality control reviews, to provide reasonable assurance that applicable laws, regulations, policies, procedures, standards and other requirements are followed in all HCFA audit activities performed by, or on behalf of, the Department.

D. *Administrations of Children, Family and Aging Audits.* This office is directed by the Assistant Inspector General for Administrations of Children, Family and Aging Audits. The office conducts and oversees audits of the operations and programs of the Administration for Children and Families and the Administration on Aging, as well as statewide cost allocation plans. It maintains an internal quality assurance system, including periodic quality control reviews, to provide reasonable assurance that applicable laws, regulations, policies, procedures, standards and other requirements are followed in its audit activities.

E. *Public Health Audits.* This office is directed by the Assistant Inspector General for Public Health Audits. The office conducts and oversees audits of the programs and activities of the public health related agencies, including the Food and Drug Administration; the National Institutes of Health; the Health Resources and Services Administration; the Alcohol, Drug Abuse, and Mental Health Administration; the Centers for Disease Control and Prevention; the Agency for Toxic Substances and Disease Registry; the Indian Health Service and the Surgeon General, as well as those colleges, universities and nonprofit organizations that receive research grants from the Federal Government. It maintains an internal quality assurance system, including periodic quality control reviews, to provide reasonable assurance that applicable laws, regulations, policies, procedures, standards and other requirements are followed in all public health related audit activities performed by, or on behalf of, the Department.

Section AFJ.00, Office of Investigations (OI)—Mission. The Office of Investigations is responsible for conducting and coordinating investigative activities related to fraud, waste, abuse and mismanagement in HHS programs and operations, including wrongdoing by applicants, grantees, or contractors, or by HHS employees in the performance of their official duties. It serves as OIG liaison to DoJ on all matters relating to investigations of HHS programs and personnel, and reports to the Attorney General when the OIG has reasonable grounds to believe Federal criminal law has been violated. It works with other investigative agencies and organizations on special projects and assignments. In support of its mission. the office carries out and maintains an internal quality assurance system. The system includes quality assessment studies and quality control reviews of OI processes and products to ensure that policies and procedures are followed effectively, and are functioning as intended.

Section AFJ.10, Office of Investigations—Organization. The Office of Investigations comprises the following components:

A. Immediate Office.

B. Criminal Investigations.

C. Investigations Policy and Oversight.

Section AFJ.20, Office of Investigations —Functions. A. *Immediate Office of the Deputy Inspector General for Investigations.* This office is directed by the Deputy Inspector General for Investigations who is responsible for the functions designated in the law for the position, Assistant Inspector General for Investigations. The Deputy Inspector General for Investigations supervises the Assistant Inspectors General who head the OI offices described below.

The Deputy Inspector General for Investigations is responsible to the Inspector General for carrying out the investigative mission of the OIG and for leading and providing general supervision to the OIG investigative component. The Immediate Office coordinates quality assurance studies to ensure that applicable laws, regulations, policies, procedures, standards and other requirements are followed in all investigative activities performed by, or on behalf of, the Department.

B. *Criminal Investigations.* This office is directed by the Assistant Inspector General for Criminal Investigations who supervises a headquarters policy and review staff and the Regional Inspectors General for Investigations who carry out investigative activities in their assigned geographic areas.

1. The headquarters staff assists the Deputy Inspector General for Investigations to establish investigative priorities, to evaluate the progress of investigations, and to report to the Inspector General on the effectiveness of investigative efforts. It develops and implements investigative techniques, programs, guidelines and policies. It provides programmatic expertise and issues information on new programs, procedures, regulations and statutes. It directs and coordinates the investigative field offices.

2. The headquarters staff reviews completed reports of investigations to ensure accuracy and compliance with guidelines. It issues the reports to pertinent agencies, management officials and the Secretary and recommends appropriate debarment actions, administrative sanctions, CMPs and other civil actions, or prosecution under criminal law. It identifies systemic and programmatic vulnerabilities in the Department's operations and makes recommendations for change to the appropriate managers.

3. The staff provides for the personal protection of the Secretary.

4. The field offices conduct investigations of allegations of fraud, waste, abuse, mismanagement and

violations of standards of conduct and other investigative matters within the jurisdiction of the OIG. They coordinate investigations and confer with HHS operating divisions, staff divisions, OIG counterparts and other investigative and law enforcement agencies. They prepare investigative and management improvement reports.

C. *Investigations Policy and Oversight.* This office is directed by the Assistant Inspector General for Investigations Policy and Oversight who leads outreach activities to State and local investigative agencies, and the general management functions of the Office of Investigations.

1. The office oversees State Medicaid fraud control units and is responsible for certifying and recertifying these units and for auditing their Federal funding. The office provides pertinent information from HHS records to assist Federal, State and local investigative agencies to detect, investigate and prosecute fraud. It manages the HHS Hotline to receive complaints and allegations of fraud, waste and abuse, and to refer the information for investigation, audit, program review, or other appropriate action. It coordinates with the GAO hotline and hotlines from other agencies.

2. The office maintains an automated data and management information system used by all OI managers and investigators. It provides technical expertise on computer applications for investigations and coordinates and approves investigative computer matches with other agencies.

3. The office develops general management policy for the OI. It develops and issues instructional media on detecting wrongdoing and on investigating and processing cases. The office reviews proposed legislation, regulations, policies and procedures to identify vulnerabilities and recommends modification where appropriate. It reviews investigative files in response to Privacy and Freedom of Information Act requests. It plans, develops, implements and evaluates all levels of employee training for investigations, management, support skills and other functions, and serves as OIG liaison to the Office of the Secretary for Freedom of Information and Privacy Act requests. It coordinates general management processes, e.g., compiles reports on the budget, on awards and on other personnel matters for OI as a whole; implements policies and procedures published in the OIG Administrative Manual; and processes procurement requests and other service related actions.

Dated: May 15, 1997.

June Gibbs Brown

Inspector General.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Announcement Number 747]

Research Programs for the Development of Methods for the Toxicity Assessment of Environmental Chemical Mixtures

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1997 funds for a cooperative agreement based research program to develop methods to determine the health effects of hazardous substances in combination with other substances with which they are commonly found at National Priorities List (NPL) sites and facilities. Such combinations are referred to as ''chemical mixtures.'' The objective of this program is to develop methods of toxicity assessment of chemical mixtures so as to promote public health practices based on current scientific understanding and to evaluate exposure to environmental chemicals of populations living in the vicinity of hazardous waste sites.

ATSDR is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2000,'' a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the Healthy People 2000 priority areas of Environmental Health, Surveillance and Data Systems, and Occupational Safety and Health. (For ordering a copy of ''Healthy People 2000,'' see the Section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under sections 104(i)5(A) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986 ((42 U.S.C. 9604(i)5(A) and (15)).

Eligible Applicants

Eligible applicants are the official public health agencies of the States or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments. State organizations, including State universities, State colleges, and State research institutions, must affirmatively establish that they meet their respective State's legislative definition of a State entity or political subdivision to be considered an eligible applicant.

Funding preference will be given to the three applicants that are currently funded under this cooperative agreement program.

Smoke-Free Workplace

ATSDR strongly encourages all cooperative agreement recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Availability of Funds

Approximately $400,000 will be available in FY 1997 to fund up to 3 cooperative agreement awards. It is expected that the average award will be approximately $125,000, ranging from $50,000 to $250,000. The awards are expected to begin on or about September 30, 1997, for a 12-month budget period within a project period of 5 years. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds. The funding estimate above may vary and is subject to change.

Purpose

The purpose of this program to develop methods for the assessment of health effects of chemical mixtures found at hazardous waste sites. Specific areas of funded research may include to: (1) Identify hazards associated with chemical mixtures found in the environment that impact public health; (2) evaluate potential toxicity to human populations from exposure to chemical mixtures; (3) study the pharmacokinetic behavior of chemical mixtures; (4) study the various endpoints that would be affected and the target organs that would be impacted; (5) study the mechanisms of action, progression and repair of the injury caused by chemical

mixtures; (6) identify biomarkers (specific and generic) that would allow the determination of the health of an organism; (7) develop qualitative and quantitative health assessment methods for chemical mixtures; and (8) develop methods for assessments of multiple health effects.

Program Requirements

ATSDR will provide financial assistance for developing assessment methods and/or conduct of experimental animal research. The objective of the assessment component is to solve the immediate problems posed to the Agency while the research component allows the development of generic guidance for chemical mixtures through a long term plan. Both of these activities are necessary and complementary for the successful development of a viable research program. This research program for chemical mixtures would improve the knowledge base on the linkage between the uptake of hazardous substances and their health consequences, and reduce the uncertainties in the public health assessments performed at hazardous substance releases and facilities.

In conducting activities to achieve the objectives of this program, the recipient will be responsible for the activities listed under A., below, and ATSDR will be responsible for conducting activities listed under B., below:

A. Recipient Activities

1. Develop a detailed program of research to investigate toxicity of chemical mixtures found at hazardous waste sites and facilities based on the specific objectives listed in the **Purpose** section of this announcement.

2. Establish and maintain a research plan and system for collecting information.

3. Provide technical and research updates to ATSDR on a quarterly basis. Also, provide a formal annual report of research and financial status of the project.

4. Conduct workshops or symposia (periodically) to exchange current information, opinions and research findings on mixtures.

5. Develop and implement mechanisms to assure the publication of research supported through this cooperative agreement.

6. Demonstrate the potential application of research findings to public health assessment at hazardous waste sites.

B. ATSDR Activities

1. Provide consultative, administrative and technical assistance, as needed, in the development of the program of research activities.

2. Conduct technical peer review of protocols, studies and results according to ATSDR established policies.

3. Collaborate with the recipient in the establishment of a research plan and system for collecting/monitoring data and developing periodic reports on activity.

4. Collaborate on the preparation of reports and briefing materials on a timely basis to assist recipient in presenting and writing publications including abstracts, and journal articles.

5. Participate and collaborate with the applicant in planning workshops or symposia to exchange current information, opinions, and research findings on mixtures.

Application Content

In a narrative form, the applicant shall submit sufficient supporting evidence to satisfy all items in the EVALUATION CRITERIA section of this announcement. The applications submitted under this cooperative agreement will contain a testing program to distinguish health effects posed by exposure to mixtures of hazardous chemicals. It is anticipated that the application received will contain technical proposal(s) that may cover up to a five-year period.

Evaluation Criteria

Applications will be reviewed and evaluated for scientific and technical merit according to the following criteria:

A. Scientific and Technical Review Criteria of New Applications

1. *Appropriateness and Knowledge of Study Design—25%*

The extent to which the applicant's proposal addresses: (a) Rationale for the proposed study design; (b) a plan for exposure assessment and/or a plan for evaluating adverse health outcomes; and (c) a detailed plan for analysis of the data.

2. *Proposed Study—25%*

The adequacy of the proposal relevant to: (a) The study purpose, objectives, and rationale; (b) the quality of program objectives in terms of specificity, measurability, and feasibility; (c) the specificity and feasibility of the applicant's timetable for implementing program activities and timely completion of the study; (d) the likelihood of the applicant completing proposed program activities and attaining proposed objectives based on the thoroughness and clarity of the overall program; and (e) the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed project. This includes, (1) the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) the proposed justification when representation is limited or absent; (3) a statement as to whether the design of the study is adequate to measure the differences when warranted; and (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

3. *Relationship to Initiative—15%*

The extent to which the application addresses the areas of investigation outlined by ATSDR. (See examples under PURPOSE section of this announcement).

4. *Quality of Data Collection—15%*

The extent to which: (a) The study ascertains the information necessary to meet the objectives, including (but not limited to) information on pathways of exposure, confounding factors, and biomedical testing; (b) the quality control and quality assurance of questionnaire data are provided, including (but not limited to) interviewer training and consistency checks of data; (c) the laboratory tests (if applicable) are sensitive and specific for the chemical or disease outcome of interest; and (d) the quality control, quality assurance, precision and accuracy of information for the proposed tests are provided and acceptable.

5. *Applicant Capability and Coordination Efforts—10%*

The extent to which the proposal has described: (a) The capability of the applicant's administrative structure to foster successful scientific and administrative management of a study; (b) the capability of the applicant to demonstrate an appropriate plan for interaction with the community; and (c) the suitability of facilities and equipment available.

6. *Program Personnel—10%*

The extent to which the proposed program staff is qualified and appropriate, and the time allocated for them to accomplish program activities is adequate.

7. *Program Budget—(NOT SCORED)*

The extent to which the budget is reasonable, clearly justified, and

consistent with intended use of cooperative agreement/grant funds.

8. *Human Subjects—(NOT SCORED)*

The extent to which the applicant complies with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects.

B. Review of Continuation Applications

Continuation awards within the project period will be made on the basis of the following criteria:

1. Satisfactory progress has been made in meeting project objectives;

2. Objectives for the new budget period are realistic, specific, and measurable;

3. Proposed changes in described long-term objectives, methods of operation, need for grant support, and/or evaluation procedures will lead to achievement of project objectives; and

4. The budget request is clearly justified and consistent with the intended use of grant funds.

Technical Reporting Requirements

Quarterly progress reports are required. An annual progress report is due with submission of the application for continuation. Annual Financial Status Reports (FSRs) are due 90 days after the end of each budget period. The final financial status and performance reports are required 90 days after the end of the project period.

Executive Order 12372

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should forward them to Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 321, Mailstop E–13, Atlanta, Georgia 30305, no later than 45 days after the application deadline. The granting agency does not guarantee to ''accommodate or explain'' State process recommendations it receives after that date.

Indian tribes are strongly encouraged to request tribal government review of the proposed application. If tribal governments have any tribal process recommendations on applications submitted to CDC, they should forward them to Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 321, Mailstop E–13, Atlanta, Georgia 30305, no later than 45 days after the application deadline. The granting agency does not guarantee to ''accommodate or explain'' for tribal process recommendations it receives after that date. (By formal agreement, the CDC Procurement and Grants Office will act on behalf of and for ATSDR on this matter.)

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.161.

Other Requirements

A. Technical Review

All protocols, studies, and results of research that ATSDR carries out or funds in whole or in part will be reviewed to meet the requirements of CERCLA section 104(i)(13). ATSDR funded or conducted studies must be:

1. Reported or adopted only after appropriate review;

2. Technically reviewed within a period of 60 days to the maximum extent practical; and

3. Reviewed by no fewer than three nor more than seven reviewers who are selected by the Administrator, ATSDR, are disinterested scientific experts, have a reputation for scientific objectivity, and lack institutional ties with any persons involved in the conduct of the study or research under review.

B. Paperwork Reduction Act

Projects that involve collection of information from 10 or more individuals and funded by cooperative agreements will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. OMB clearance will be requested, if required.

C. Protection of Human Subjects

If the proposal involves research on human subjects, the applicant must comply with 45 CFR part 46, regarding the protection of human subjects. Assurances must be provided that the project or activity will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing evidence of this assurance in accordance with the appropriate guidelines and forms provided in the application kit.

In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any American Indian community is involved, its tribal government must also approve that portion of the project applicable to it.

D. Women, Racial and Ethnic Minorities

It is the policy of CDC and ATSDR to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC/ATSDR-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaskan Native, Asian, Pacific Islander, Black and Hispanic. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. In conducting review for scientific merit, review groups will evaluate proposed plans for inclusion of minorities and both sexes as part of the scientific assessment and scoring. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, pages 47947–47951, Friday, September 15, 1995.

E. Cost Recovery

CERCLA, as amended by SARA, provides for the recovery of costs incurred for health assessments and health effects studies at each Superfund site from potentially responsible parties. The recipient would agree to maintain an accounting system that will keep an

accurate, complete, and current accounting of all financial transactions on a site-specific basis, i.e., individual time, travel, and associated cost including indirect cost, as appropriate for the site. The recipient will retain the documents and records to support these financial transactions, for possible use in a cost recovery case, for a minimum of 10 years after submission of a final Financial Status Report (FSR), unless there is a litigation, claim, negotiation, audit, or other action involving the specific site, then the records will be maintained until resolution of all issues on the specific site.

F. Third Party Agreements

Project activities which are approved for contracting pursuant to the prior approval provisions shall be formalized in a written agreement that clearly establishes the relationship between the grantee and the third party. The written agreement shall, at a minimum:

1. State or incorporate by reference all applicable requirements imposed on the contractors under the grant by the terms of the grant, including requirements concerning technical review (ATSDR selected reviewers), release of data, ownership of data, and the arrangement for copyright when publications, data or other copyrightable works are developed under or in the course of work under a PHS grant supported project or activity.

2. State that any copyrighted or copyrightable works shall be subject to a royalty-free, nonexclusive, and irrevocable license to the government to reproduce, publish, or otherwise use them, and to authorize others to do so for Federal government purposes.

3. State that whenever any work subject to this copyright policy may be developed in the course of a grant by a contractor under a grant, the written agreement (contract) must require the contractor to comply with these requirements and can in no way diminish the government's right in that work.

4. State the activities to be performed, the time schedule for those activities, the policies and procedures to be followed in carrying out the agreement, and the maximum amount of money for which the grantee may become liable to the third party under the agreement.

5. The written agreement required shall not relieve the grantee of any part of its responsibility or accountability to DHHS under the grant. The agreement shall, therefore, retain sufficient rights and control to the grantee to enable it to fulfill this responsibility and accountability.

G. *Animal Subjects*

If the proposed project involves research on animal subjects, the applicant must comply with the ''PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions.'' An applicant organization proposing to use vertebrate animals in DHHS-supported activities must file an Animal Welfare Assurance with the Office for Protection from Research Risks at the National Institutes of Health.

Application Submission Deadline

The original and two copies of the application Form PHS 5161–1 (Revised 7/92, OMB Number 0937–0189) must be submitted to Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 321, Mail Stop E–13, Atlanta, Georgia 30305, on or before July 15, 1997. (By formal agreement, the CDC Procurement and Grants Office will act on behalf of and for ATSDR on this matter.)

A. *Deadline*

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

B. *Late Applications*

Applications which do not meet the criteria in A.1. or A.2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

To receive an application kit, call (404) 332–4561. You will be asked your name, address, and telephone number and will need to refer to Announcement 747. In addition, this announcement is also available through the CDC Home Page on the Internet. The address for the CDC Home Page is http://www.cdc.gov. If you have questions after reviewing the contents of all the documents, business management assistance may be obtained from Kathy Raible, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mail Stop E–13, Atlanta, Georgia 30305, telephone (404) 842–6803. Programmatic assistance may be obtained from Dr. Moiz Mumtaz, Project Officer, Division of Toxicology, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mail Stop E–29, Atlanta, Georgia 30333, telephone (404) 639–6306.

Please refer to Announcement 747 when requesting information and submitting an application.

Potential applicants may obtain a copy of ''Healthy People 2000'' (Full Report, Stock No. 017–001–00474–0) or ''Healthy People 2000'' (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: May 29, 1997.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 97–14525 Filed 6–4–97; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–97–12]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the

use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. Childbearing-age Women, Folic Acid, and the Prevention of Spina Bifida and Anencephaly: Interventions and Evaluation in a Managed Care Setting-New—Spina bifida and anencephaly are neural tube defects (NTDs) that are common and serious birth defects. In 1992, the Public Health Service (PHS) issued the recommendation that all women capable of becoming pregnant should consume daily 0.4 mg of folic acid to prevent spina bifida and anencephaly. An estimated 50% to 70% of spina bifida and anencephaly could be prevented with the use of periconceptional folic acid, but at least 70% of the 60 million U.S. women of childbearing age do not consume adequate folic acid to prevent these defects. The Division of Birth Defects and Developmental Disabilities (DBDDD) at the National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) promotes increased consumption of folic acid to prevent these birth defects, with a goal of increasing the number of women of childbearing age who consume folic acid-containing vitamins. In mounting efforts to promote folic acid use, there is a need to (1) improve the understanding of the factors that shape women's behaviors relative to folic acid supplement use, (2) design and carry out interventions to increase folic acid use, and (3) evaluate the effectiveness of these interventions using pre- and post-intervention assessments. This project will address these needs in a managed care setting, where a large proportion of childbearing age women receive their health care. Interventions will include providing folic-acid containing vitamins to child-bearing age women, educating members and health care providers regarding folic acid and prevention of neural tube defects, and raising member and provider awareness through campaigns. Focus groups will be used to design the educational and awareness campaigns (i.e., message development). At one site primary health care providers will participate in educational sessions about the link between folic acid NTDs; a subset of those providers primarily involved in women's health care will receive additional training on how to best tailor folic acid educational messages to women. Pre- and post-intervention telephone surveys of child-bearing age women members regarding their knowledge and behaviors relative to supplement use and the prevention of NTD defects will be performed to evaluate the effectiveness of the interventions. Pre- and post-intervention serum folate levels will also be used to evaluate the effectiveness of the interventions. Serum folate levels will be obtained from a sample of pregnant women at the time of their first prenatal visit. Blood drawn for other routine prenatal care purposes will be used, and therefore will not require an additional blood draw. A shorter telephone survey of a smaller sample of pregnant women after their first prenatal visit will be done to determine vitamin supplement use prevalence early in pregnancy. The total cost to respondents is 0.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Child bearing age women	4800	1	.20	960
Pregnant women	720	1	.083	59.7
Focus group, childbearing age women	40	1	1.5	60
Primary health care providers	350	1	1.0	350
Primary women's health care providers	150	1	2.0	300
Total				1729.7

2. Health Effects from Exposure to High Levels of Sulfate in Drinking Water-New—The Safe Drinking Water Act Amendments of August 1996 require the Centers for Disease Control and Prevention, in collaboration with the U.S. Environmental Protection Agency, to conduct a dose-response study of the health effects of exposure of susceptible populations to drinking water that contains sulfate. There is concern that individuals who are not used to drinking water containing sulfate will experience diarrhea when they first drink tap water containing high levels of sulfate. The effect is acute and temporary. However, becoming acclimated, or used to, water with high levels of sulfate may take approximately two weeks, during which time individuals, particularly those who cannot control their fluid intake, i.e., infants, may become dehydrated. Previous studies of the effects of sulfate on the incidence of diarrhea have suffered from a number of limitations, including small sample size, failure to account for other causes of diarrhea, and inadequate characterization of the water itself. This study will analyze the incidence of diarrhea in non-acclimated infants and adults exposed to drinking water containing a range of sulfate concentrations by collecting data from mothers of newborn infants living in areas with a range of naturally-occurring sulfate levels and adult volunteers who will consume drinking water containing specific levels of sulfate. The total cost to the respondents is $0.00.

DATA COLLECTION

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Recruiting project participants	2500	1	0.16	400
Training for project participants: interview	1250	1	1	1250
Follow-up phone calls	1250	3	0.2	750
Mothers with newborn infants: diary	1250	28	0.1	3500
Adult volunteers: questionnaire.	100	1	0.34	34

DATA COLLECTION—Continued

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Adult volunteers: diary	100	6	0.1	60
Total				5994

Dated: May 28, 1997.

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–14674 Filed 6–4–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Idaho National Engineering Laboratory Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Idaho National Engineering Laboratory (INEL) Health Effects Subcommittee.

Times and Dates: 8:30 a.m.–5 p.m., June 26, 1997. 8:30 a.m.–5 p.m., June 27, 1997.

Place: Holiday Inn, 1399 Bench Road, Pocatello, Idaho 83201, telephone 208/237–1400, FAX 208/238–0225.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, an MOU was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

Matters to be Discussed: Agenda items include presentations from the National Center for Environmental Health (NCEH) regarding current activities, the National Institute for Occupational Safety and Health and ATSDR will provide updates on the progress of current studies, and working group discussions.

Agenda items are subject to change as priorities dictate.

Contact Persons For More Information: Arthur J. Robinson, Jr., or Nadine Dickerson, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044.

Dated: May 30, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–14677 Filed 6–4–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Investigational Biological Product Trials; Procedure to Monitor Clinical Hold Process; Meeting of Oversight Committee and Request for Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the remaining 1997 meetings of its clinical hold oversight committee, which reviews the clinical hold orders that the Center for Biologics Evaluation and Research (CBER) has placed on certain investigational biological product trials. For each meeting, FDA is inviting any interested biological product company to use this confidential mechanism to submit to the committee for its review the name and number of any investigational biological product trial placed on clinical hold during the past 12 months that the company wants the committee to review.

DATES: The next meetings will be held on August 12, 1997, and November 12, 1997. Biological product companies may submit review requests for the August meeting by July 1, 1997, and for the November meeting by October 1, 1997.

ADDRESSES: Submit clinical hold review requests to Amanda Bryce Norton, FDA Chief Mediator and Ombudsman, Office of the Commissioner (HF–7), 5600 Fishers Lane, rm. 14–105, Rockville, MD 20857, 301–827–3390.

FOR FURTHER INFORMATION CONTACT: Joy A. Cavagnaro, Center for Biologics Evaluation and Research (HFM–5), Food and Drug Administration, 1401

Rockville Pike, Rockville, MD 20852–1448, 301–827–0379.

SUPPLEMENTARY INFORMATION: FDA regulations in part 312 (21 CFR part 312) provide procedures that govern the use of investigational new drugs and biologics in human subjects. If FDA determines that a proposed or ongoing study may pose significant risks for human subjects or is otherwise seriously deficient, as discussed in the investigational new drug regulations, it may order a clinical hold on the study. The clinical hold is one of FDA's primary mechanisms for protecting subjects who are involved in investigational new drug or biologic trials. Section 312.42 describes the grounds for ordering a clinical hold.

A clinical hold is an order that FDA issues to a sponsor to delay a proposed investigation or to suspend an ongoing investigation. The clinical hold may be ordered on one or more of the investigations covered by an investigational new drug application (IND). When a proposed study is placed on clinical hold, subjects may not be given the investigational drug or biologic as part of that study. When an ongoing study is placed on clinical hold, no new subjects may be recruited to the study and placed on the investigational drug or biologic, and patients already in the study should stop receiving therapy involving the investigational drug or biologic unless FDA specifically permits it.

When FDA concludes that there is a deficiency in a proposed or ongoing clinical trial that may be grounds for ordering a clinical hold, ordinarily FDA will attempt to resolve the matter through informal discussions with the sponsor. If that attempt is unsuccessful, a clinical hold may be ordered by or on behalf of the director of the division that is responsible for the review of the IND.

FDA regulations in § 312.48 provide dispute resolution mechanisms through which sponsors may request reconsideration of clinical hold orders. The regulations encourage the sponsor to attempt to resolve disputes directly with the review staff responsible for the review of the IND. If necessary, the sponsor may request a meeting with the review staff and management to discuss the clinical hold.

CBER began a process to evaluate the consistency and fairness of practices in ordering clinical holds by instituting an oversight committee to review clinical holds (see 61 FR 1031 at 1033, January 11, 1996). CBER held its first clinical hold oversight committee meeting on May 17, 1995, and plans to conduct further quality assurance oversight of the IND process. The review procedure of the committee is designed to afford an opportunity for a sponsor who does not wish to seek formal reconsideration of a pending clinical hold to have that clinical hold considered ''anonymously.'' The committee consists of senior managers of CBER, a senior official from the Center for Drug Evaluation and Research, and the FDA Chief Mediator and Ombudsman.

Clinical holds to be reviewed will be chosen randomly. In addition, the committee will review clinical holds proposed for review by biological product sponsors. In general, a biological product sponsor should consider requesting the review when it disagrees with FDA's scientific or procedural basis for the decision.

Requests for committee review of a clinical hold should be submitted to the FDA Chief Mediator and Ombudsman, who is responsible for selecting clinical holds for review. The committee and CBER staff, with the exception of the FDA Chief Mediator and Ombudsman, are never advised, either in the review process or thereafter, which of the clinical holds were randomly chosen and which were submitted by sponsors. The committee will evaluate the selected clinical holds for scientific content and consistency with FDA regulations and CBER policy.

The meetings of the oversight committee are closed to the public because committee discussions deal with confidential commercial information. Summaries of the committee deliberations, excluding confidential commercial information, may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. If the status of a clinical hold changes following the committee's review, the appropriate division will notify the sponsor.

For each meeting, FDA invites biological product companies to submit to the FDA Chief Mediator and Ombudsman the name and IND number of any investigational biological product trial that was placed on clinical hold during the past 12 months that they want the committee to review. Submissions should be made by July 1, 1997, for the August meeting, and by October 1, 1997, for the November meeting to Amanda Bryce Norton, FDA Chief Mediator and Ombudsman (address above).

Dated: May 28, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–14684 Filed 6–4–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request, Alcoholism Prevalence and Gene/Environment Interactions in Native American Tribes (a 10 Tribe Study)

SUMMARY: Under the provisions of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Institute on Alcohol Abuse and Alcoholism (NIAAA), National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously in the **Federal Register** on July 1, 1996, and allowed 60 days for public comment. There were no requests for additional information about this data collection activity, no public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

The NIH may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after June 30, 1999, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Alcoholism Prevalence and Gene/Environment Interactions in Native American Tribes (a 10 tribe study). *Type of Information Collection request:* New. *Need and Use of Information Collection:* The information proposed for collection in this study will be used by the NIAAA to define the prevalence in alcoholism and associated problems in tribes in which the rates of alcoholism have been reported to be widely divergent. Additional information will be collected on severe trauma and stress, alcohol availability and socioeconomic factors to identify how these variables interact with hereditary factors in the development of alcoholism and related problems.

Frequency of Response: On Occasion. *Affected Public:* Individuals. *Type of Respondents:* Native American adults. *Estimated Number of Respondents:* 1000. *Estimated Number of Responses per Respondent:* 1. *Average Burden*

Hours per Response: 6. *And Estimated total Annual Burden Hours Requested:* 6000. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

The annual burden estimates are as follows:

Type and number of respondents	Responses per respondent	Total responses	Hours	Total hours
Clients—1000	1	1000	6.0	6000

Total Number of Respondents—3000 (1000 per year)

Total Number of Responses—3000 (1000 per year)

Totals Hours—18000 (6000 per year)

Request For Comments

Comments are invited on: (a) Whether the proposed collection is necessary, including whether the information has practical use; (b) ways to enhance the clarity, quality, and use of the information to be collected; (c) the accuracy of the agency estimate of burden of the proposed collection; and (d) ways to minimize the collection burden of the respondents. Send written comments to Ms. Ronni Nelson, Laboratory of Neurogenetics, Division of Intramural Clinical and Biological Research, NIAAA, NIH, DANAC4 (Flow Labs), 12501 Washington Ave., Rockville, Maryland 20852.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH.

FOR FURTHER INFORMATION: To request more information on the proposed project or to obtain a copy of the data collection plans, contact Ms. Ronni Nelson, Laboratory of Nuerogenetics, Division of Division of Intramural Clinical and Biological Research (DICBR), NIAAA, DANAC4 (Flow Labs), 12501 Washington Ave., Rockville, Maryland 20852, or call non-toll-free number (301) 443–5781.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before July 7, 1997.

Dated: May 21, 1997.

Martin K. Trusty,

Executive Officer, NIAAA.

[FR Doc. 97–14714 Filed 6–4–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Call for Nominations for the National Cancer Institute Director's Consumer Liaison Group

The National Cancer Institute (NCI), the Federal Government's primary agency for cancer research, is launching a new initiative—the Director's Consumer Liaison Group (DCLG). Notice is hereby given that the NCI is accepting nominations for membership on the DCLG. This group will help the NCI to increase the representation of the cancer advocacy community on Institute advisory committees, and increase their involvement in program and policy development. The DCLG will consist of fifteen (15) consumer-advocates who are involved in cancer advocacy. The NCI will bring together these advocates from diverse communities, creating a two-way street that enables them to interact directly with the scientific community at the NCI on a wide range of programs and issues. The DCLG will also help the NCI to widen the pool of qualified consumer-advocates who can be called upon to serve on NCI advisory committees and other groups. Specifically the DCLG will meet several times a year to:

- Help develop and establish processes, mechanisms, and criteria for identifying appropriate consumer-advocates to serve on a variety of program and policy advisory committees responsible for advancing the mission of the NCI.
- Serve as a primary forum for discussing issues and concerns and exchanging viewpoints that are important to the broad development of the NCI programmatic and research priorities.
- Establish and maintain strong collaborations between the NCI and the cancer advocacy community to reach common goals.

The DCLG will provide advice and make recommendations to the Advisory Committee to the Director, NCI. Members of the first DCLG will serve one, two, or three year terms. In subsequent years, members will serve three year terms.

Eligibility Requirements for Individual Members. To serve on the DCLG, a member must meet the following minimum eligibility requirements:

- Be involved in the cancer experience as a cancer survivor, a person affected by the suffering and consequences of cancer, or a professional or volunteer who works with survivors or those affected.
- Represent a constituency (formally or informally) with which she or he communicates regularly on cancer issues and be able to serve as a conduit for information both to and from his/her constituency.

Another essential requirement is a commitment to participating in the DCLG. This will not be used in the initial screening of nominees, but will be assessed as part of a more in-depth evaluation of qualified candidates.

Criteria for Evaluating Individual Candidates. Nominees who meet the minimum eligibility requirements will be further assessed based on the following criteria:

- Cancer advocacy experience.
- Ability to communicate effectively.
- Ability to represent broad issues, think ''globally.''
- Ability to contribute to an effective group process (e.g., cooperative, constructive, flexible, innovative).
- Leadership ability. (While members of the DCLG are not required to hold a formal leadership position within a cancer advocacy organization, they must have leadership skills.)

Characteristics of the DCLG. In addition to the criteria for individual candidates, the following characteristics of the DCLG as a group are intended to ensure that it reflects the breadth and diversity of the consumer advocacy community:

- Multicultural diversity.
- A broad mix of cancer sites.
- Representation of the medically underserved.
- Men and women.
- A range of organizations (local/regional and national).
- Age diversity.
- Geographic diversity (rural/urban mix).

Screening, Scoring, and Review Process. After nominees are screened for eligibility, they will be scored in terms of the criteria. A list of highly qualified candidates who reflect balance and diversity of representation will be forwarded to the Director, NCI, for selection of the DCLG members.

Nomination Process. The call for nominations is being disseminated to a broad range of groups, including local, regional and national organizations, to encourage nominations of candidates reflecting the diversity sought for the DCLG. Nominations may come from members of organizations, or individuals, including self-nominations. The nominations must be postmarked by September 15, 1997. To request a nomination package send your name, advocacy organization affiliation (if any), and address to the Office of Liaison Activities, NCI, c/o Palladian Partners, 7315 Wisconsin Avenue, Suite 440 W, Bethesda, MD 20814, FAX (301) 986–5047.

Dated: May 28, 1997.

Marvin Kalt,

Director, Division of Extramural Activities, National Cancer Institute.

[FR Doc. 97–14663 Filed 6–4–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting

SUMMARY: Notice is hereby given of a public meeting sponsored by the Office of Protection from Research Risks (OPRR), National Institutes of Health (NIH), to discuss the role of nonaffiliated members of Institutional Animal Care and Use Committees (IACUC).

DATES: The meeting will be held on Wednesday, July 16, from 9:00 a.m. to 3:00 p.m. at the National Institutes of Health, 9000 Rockville Pike, Building 31, Room 6C6, Bethesda, Maryland 20892.

FOR FURTHER INFORMATION CONTACT: Carol Wigglesworth, Senior Policy Analyst, Office for Protection from Research Risks, National Institutes of Health, 6100 Executive Blvd., MSC 7507, Rockville, Maryland 20892–7507, telephone 301–496–7163, ext. 245; fax 301–402–2803.

SUPPLEMENTARY INFORMATION: The Public Health Service (PHS) Policy on Humane Care and Use of Laboratory Animals requires PHS awardee institutions to maintain a properly constituted Institutional Animal Care and Use Committee (IACUC), which, as an agent of the institution, is authorized to oversee the institution's animal care and use program, including review of protocols. In accord with IV.A.3.b.(4) of the PHS Policy, at least one of the members of the IACUC must not be affiliated with the institution in any way, other than as a member of the IACUC. With the PHS Policy in place for more than 10 years, OPRR is interested in examining the role of the nonaffiliated member, who is generally thought to provide a different perspective than those who have an affiliation and the institution. This meeting will allow an opportunity for OPRR to hear some of those perspectives directly, and to engage in discussions with nonaffiliated members about their various experiences on IACUCs. OPRR have invited participation in this meeting of nonaffiliated members form a random cross-section of institutions that currently hold Assurances of compliance with PHS Policy.

Tentative Agenda

9:00 am—Welcome and Introductions—Dr. Gary B. Ellis, Director, OPRR
9:10 am—History and Role of Nonaffiliated IACUC Members—Dr. Nelson Garnett, Director, Division of Animal Welfare, OPRR
9:20 am—Presentations of Invitees
10:30 am—Coffee Break
10:40 am—Presentations of Invitees
12:00—Lunch Break
1:00—Discussion (led by Dr. Ellis)
2:30—Public Comment
3:00—Conclusion (Dr. Ellis)

Public Participation

This meeting is open to the public with attendance limited by the availability of space. Members of the public who wish to present oral statement should contact the individual listed above by telephone, fax, or mail as soon as possible, prior to the meeting. The order of speakers will be assigned on a first come, first serve basis. Individuals may also mail or fax comments to the individual listed above for inclusion in the record.

Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact the individual listed above as soon as possible.

Dated: May 29, 1997.

Gary B. Ellis,

Director, Office for Protection from Research Risks, National Institutes of Health.

[FR Doc. 97–14715 Filed 6–4–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4182–N–03]

Fiscal Year 1997 Notice of Funding Availability for Continuum of Care Homeless Assistance; Supportive Housing Program (SHP); Shelter Plus Care (S+C); Sec. 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals (SRO)

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding availability (NOFA); Notice of Revision and Extension of Deadline.

SUMMARY: On April 8, 1997 (62 FR 17024), HUD published a notice announcing the availability of fiscal year (FY) 1997 funding for three of its programs that assist communities in combating homelessness. The three programs are: (1) Supportive Housing; (2) Shelter Plus Care; and (3) Section 8 Moderate Rehabilitation for Single Room Occupancy Dwellings for Homeless Individuals. Since the issuance of the April 8, 1997 NOFA, HUD has realized that the NOFA's limitations placed on the level of refunding for existing projects are too inflexible. HUD's policy is to allow communities as much flexibility as possible in the preparation of their Continuum of Care System and the size and selection of projects. Therefore, this notice announces that the April 8, 1997 NOFA is revised to allow communities to request full funding for eligible renewal activities when proposing renewal of existing projects. This notice also extends the application deadline to August 18, 1997.

DEADLINE DATES: *Applications Delivered.* Applications are due before midnight on August 18, 1997.

Before and on the deadline date, and during normal business hours (up to 6:00 p.m.) completed applications will be accepted at the Office of Special Needs Assistance Programs (Room 7270) in Washington at the address below.

On the deadline date and after normal business hours (after 6:00 p.m.), hand-carried applications will be received at the South Lobby of the Department of Housing and Urban Development at the address below. HUD will treat as ineligible for consideration delivered applications that are received after that deadline.

Applications Mailed. Applications will be considered timely filed if postmarked before midnight on August

18, 1997, and received by HUD Headquarters within ten (10) days after that date.

Applications Sent by Overnight Delivery. Overnight delivery items will be considered timely filed if received before or on August 18, 1997, or upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than August 18, 1997.

No facsimile (FAX). Applications may not be sent by FAX.

Copies of Applications to Field Offices. Two copies of the application must also be sent to the HUD Field Office serving the State in which the applicant's projects are located. Field office copies must be received by the application deadline. All three copies may be used in reviewing the application.

SUPPLEMENTARY INFORMATION:

Background

On April 8, 1997 (62 FR 17024), HUD published a notice announcing the availability of fiscal year (FY) 1997 funding for three of its programs that assist communities in combatting homelessness. The three programs are: (1) Supportive Housing; (2) Shelter Plus Care; and (3) Section 8 Moderate Rehabilitation for Single Room Occupancy Dwellings for Homeless Individuals. On May 5, 1997 (62 FR 24501), HUD published a notice announcing that the application deadline for the April 8, 1997 Continuum of Care Homeless Assistance notice of funding availability (NOFA) was extended to July 31, 1997. HUD extended the deadline since the FY 1997 Continuum of Care NOFA introduced new procedures for awarding project renewal funds, which could require, in certain communities, additional time for reanalyzing the gaps that exist in continuum of care systems within the communities, and for reformulating plans and priorities for filling those gaps.

Project Renewals

Following the issuance of the NOFA on April 8, 1997, HUD has heard from a number of communities that the limitations placed on the level of refunding for existing projects are too inflexible. They believe that the local process should have the flexibility to request full funding for existing well-run projects that have limited ability to obtain other resources. As it is HUD's policy to allow communities as much flexibility as possible in the preparation of their continuum of care system and the size and selection of projects, this notice revises the FY 1997 Continuum of Care Homeless Assistance to provide that communities can request full funding for eligible renewal activities when requesting renewal of existing projects.

Extension of Application Deadline

This notice also extends the application deadline to August 18, 1997 in order to allow communities time to revise their continuum of care priority lists to take into account the change being made to the NOFA provisions on project renewals, as described above. This change may require more time for additional meetings and other new activities at the community level.

Accordingly, FR Doc. 97–9034, the Fiscal Year 1997 Notice of Funding Availability for Continuum of Care Homeless Assistance; Supportive Housing Program (SHP); Shelter Plus Care (S+C); Sec. 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals (SRO), published in the **Federal Register** on April 8, 1997 (62 FR 17024), is amended on page 17026, column 2, in section I.(e), by revising the text under the subheading ''Project renewals'' to read as follows:

I. Substantive Description

* * * * *

(e) Prioritizing

* * * * *

Project renewals. In the past, HUD has taken a portion of the funds available under the current appropriation to fund the renewal of expiring Supportive Housing grants, Supportive Housing Demonstration Program grants, and SAFAH grants. However, this policy results in less funds available for the competition and places the decision on what is needed in a community in the hands of HUD officials rather than communities. Consistent with the Continuum of Care approach, the need for the continuation of previously funded projects should be considered in the local needs analysis process and a decision should be made locally on the priority to assign to the continuation of a project. Therefore, HUD funds needed to continue expiring Supportive Housing grants, Supportive Housing Demonstration Program grants, SAFAH grants, and Shelter Plus Care grants, as described below, will only be available through the competitive process described in this NOFA. In reviewing a community's continuum of care and determining the points to assign, HUD will consider whether the community took its renewal needs into account in preparing its project priority list. The Continuum of Care score will reflect the extent to which renewal needs are addressed in the gaps analysis.

For this 1997 competition, communities need to pay particular attention to the funding needs of current Supportive Housing Program grants, Supportive Housing Demonstration Program grants and SAFAH grants whose terms will expire in 1998, and current Shelter Plus Care grants which will have insufficient funds to continue operating throughout 1998 if additional funds are not awarded to them in this competition. To the extent a locality desires to have such projects renewed, it should give them the top priorities on the priority projects listing in the application. However, communities should bear in mind that the funds available under this NOFA are not sufficient to cover the renewal of projects expiring nationwide in 1998 at 100 percent of their last year's funding for a 3-year period.

For the renewal of a Supportive Housing Program project, Supportive Housing Demonstration Program project or SAFAH project, you may request for each of three (3) years up to 100 percent of the amount of HUD grant funds for leasing, operations, and supportive services approved for the final year of the expiring grant's term. For the renewal of a Shelter Plus Care project, you may request up to the amount determined by multiplying the number of units under lease at the time of application for renewal funding under this NOFA by the applicable current Fair Market Rent(s) by 60 months. While full funding of existing grants may be requested, there is no guarantee that the entire amount will be awarded.

This NOFA is not applicable to the renewal of funding under the SRO program.

* * * * *

Dated: June 3, 1997.

Jacquie Lawing,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 97–14811 Filed 6–3–97; 12:27 pm]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Extension Approval under the Paperwork Reduction Act

ACTION: Notice.

SUMMARY: The collection of information listed below has been submitted to OMB

for extension approval under the provisions of the Paperwork Reduction Act. Copies of the proposed information collection requirement, related forms, and explanatory material may be obtained by contacting the Service Information Collection Clearance Officer at the address listed below.

DATES: Comments must be submitted on or before July 7, 1997.

ADDRESSES: Comments and suggestions on the requirement should be sent directly to the Office of Information and Regulatory Affairs, OMB; Attention: Interior Desk Officer; Washington, DC 20503; and a copy of the comments should be sent to the Information Collection Clearance Officer, US Fish and Wildlife Service, MS 224–ARLSQ, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Phyllis H. Cook, Service Information Collection Clearance Officer, 703/358–1943; 703/358–2269 (fax).

SUPPLEMENTARY INFORMATION: Comments are invited on (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents.

Title: Certification of Hunting and Fishing License Holders.

Approval Number: 1018–0007.

Service Form Number(s): 3–154a (Certification of Hunting and Fishing License Holders); 3–154b (Summary of Hunting and Sport Fishing Licenses Issued).

Description and use: The Federal Aid in Fish Restoration Act and the Federal Aid in Wildlife Restoration Act provide that funds are apportioned to the States in accordance with a prescribed formula. One factor in the apportionment formula for each Act is the number of paid fishing/hunting license holders in each state. The acts require state fish and game departments to certify the number of paid hunting and sport/recreational fishing license holders prior to the fiscal year for which the apportionment is made. Along with certification of the number of paid license holders, the states also provide information on hunting and fishing license sales. The license sales information is documented on Service form number 3–154b.

Frequency of Collection: Annually.

Description of Respondents: State governments.

Estimated Completion Time: 1 hour.

Annual Responses: 50.

Total Annual Burden Hours: 50.

Dated: March 27, 1997.

Randal Bowman,

Acting Assistant Director—External Affairs.

[FR Doc. 97–14609 Filed 6–4–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Carolyn Lysne, Evergreen, CO, PRT–829682.

The applicant request a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) from Namibia for the purpose of enhancement of the survival of the species.

Applicant: Harold Lysne, Evergreen, CO, PRT–829683.

The applicant request a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) from Namibia for the purpose of enhancement of the survival of the species.

Applicant: Glen Oak Zoo, Peoria, IL PRT–830004.

The applicant requests a permit to export one female South American tapir (*Tapirus terrestris*) to the Sarrbrucken Zoo, Germany, for the purposes of enhancement of the survival of the species through captive-breeding and conservation education.

Applicant: Paul Mazzaglia, Avondale, AZ, PRT–829449.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Ellen Trout Zoo, Lufkin, TX, PRT–830207.

The applicant requests a permit to export to the Valley Zoo, Alberta, Canada one captive-bred, female cotton-top tamarin (*Saguinus oedipus*) for the purpose of enhancement of the species through education and propagation of the species.

Applicant: Ronald Keith Montgomery, Tulsa, OK, PRT–829933.

The applicant requests a permit to import the sport-hunted trophy of one bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application(s) for permits to conduct certain activities with marine mammals. The application(s) was/were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Applicant: Loubert Suddaby, Orchard Park, NY, PRT–829687.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

Applicant: Greg Bond, Irving, TX, PRT–829684.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

Applicant: Arthur Nienow, East Palatka, FL, PRT–829690.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Baffin Bay polar bear population, Northwest Territories, Canada for personal use.

Applicant: Jan Bax, Appleton, WI, PRT–829887.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

Applicant: Stewart Shaft, Northfield, MN, PRT–829932.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

Applicant: Tom Winn, Corpus Christi, TX, PRT–829418.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Northern

Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

Applicant: Daniel Peyerk, Shelby Township, MI, PRT–829283.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Northern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

Applicant: John Kautzman, West Fargo, ND, PRT–828884.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

Applicant: Jon Ziegler, Rapid City, SD, PRT–830065

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on any of these applications should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 430, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice at the above address.

Dated: May 30, 1997.

Anna Barry,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–14626 Filed 6–4–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On March 24, 1997, a notice was published in the **Federal Register**, Vol. 62. No, 56, Page 13895, that an application had been filed with the Fish and Wildlife Service by Alaska Fish and Wildlife Research Center, Anchorage, AK, for renewal of permit (PRT–740507) to: (a) Take up to 325 Alaskan sea otters (*Enhydra lutris lutris*) (includes capture and release of 200, and capture/recapture, collect biological samples, flipper tag, implant transponder chip for 125, surgically implant 111 with a radio transmitter), (b) Collect biological samples from salvaged specimens found dead on Alaskan beaches, or in Alaskan waters or as may be available through the Native Alaskan subsistence harvest, and (c) Import of tissue samples from sea otters in Canada and Russia.

Notice is hereby given that on May 15, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On March 26, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 58, Page 14438, that applications had been filed with the Fish and Wildlife Service by the following applicants for permits to import sport-hunted polar bear (*Ursus maritimus*) trophies from the Northwest Territories, Canada for personal use.

Applicant/address	Polar bear population	Permit No.
Jerrie Eaton, Elma, WA	Northern Beaufort Sea	PRT–826740
Dan Fox, Chino, CA	McClintock Channel	PRT–826734
Charles Whitlow, Nunica, MI	Northern Beaufort Sea	PRT–826738
Domenick DiPlacido, Prospect Park, PA	Northern Beaufort Sea	PRT–826744
Perry Segura, New Iberia, LA	Northern Beaufort Sea	PRT–826741
Carl Strawberry, Annapolis, MD	Northern Beaufort Sea	PRT–826737
Jerry Imperial, Mesa, AZ	Viscount Melville	PRT–826776
Jack Leuenberger, Saginaw, MI	Southern Beaufort Sea	PRT–826755
D. Fujiye, Tahuya, WA	Southern Beaufort Sea	PRT–826754
Peter LaHaye, Medina, WA	Northern Beaufort Sea	PRT–826748
James Bush, Jr., Baltimore, MD	Viscount Melville	PRT–826735
Jerome Bofferding, Maple Grove, MN	Northern Beaufort Sea	PRT–826743
Joseph Smith, Soldotna, AK	Southern Beaufort Sea	PRT–826753
Horst Baier, Miami, FL	Southern Beaufort Sea	PRT–826749

Notice is hereby given that as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 430, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: May 30, 1997.

Anna Barry,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–14627 Filed 6–4–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Meetings and Tour

AGENCY: Fish and Wildlife Service.

ACTION: Notice of meetings and tour of Chicago Waterways.

SUMMARY: This notice announces the summer 1997 meeting of the Aquatic Nuisance Species Task Force and the spring 1997 meeting of the Great Lakes Panel on Aquatic Nuisance Species, and a related bus/boat tour of the Chicago Waterways. A number of topics will be addressed during the Task Force meeting, including: round goby and other nonindigenous species dispersal barrier initiatives in the Chicago Waterways; a request for ex-officio membership on the Task Force; a review

of Task Force Membership; legislation and funding related to nonindigenous species; U.S. Army Corps of Engineers nonindigenous species activities; and updates of the activities of the Task Force and its committees. Topics to be addressed during the Great Lakes Panel meeting include: presentations of recent Great Lakes Panel products; Great Lakes Panel committee reports and review of FY 1998 committee work plans; updates of the activities of the Great Lakes Panel and its committees; and other issues. The meetings are open to the public. Interested persons may make oral statements at the meetings or submit written statements for consideration. The public is welcome to participate in the tour of the Chicago Waterways subject to the availability of space on a first-come, first-served basis and payment of a $30.00 fee to the Great Lakes Panel.

DATES: The Great Lakes Panel will meet from 8:30 a.m. to 11:30 a.m. on Wednesday, June 18, 1997. The Chicago Waterways Tour will leave at Noon from the Clarion International Quality Inn—O'Hare, Rosemont, Illinois, and return about 5:00 p.m. on June 18, 1997. The ANS Task Force will meet from 8:00 a.m. to 4:00 p.m. on Thursday, June 19, 1997.

ADDRESS: Both meetings will be held at and the tour will leave from the Clarion International Quality Inn—O'Hare, 6810 N. Mannheim Road, Rosemont, Illinois.

FOR FURTHER INFORMATION CONTACT:

Robert A. People, Executive Secretary, ANS Task Force, by telephone at 703–358–2025 or E-Mail at robert__peoples@mail.fws.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces the Summer 1997 Meeting of the Aquatic Nuisance Species Task Force, as established by the Nonindigneous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701–4741), and the Spring 1997 Meeting of the Great Lakes Panel on Aquatic Nuisance Species, a Task Force committee. It also announces a bus/boat tour of the Chicago Waterways. Minutes of the meeting will be maintained by the Executive Secretary, ANS Task Force, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 840, Arlington, Virginia 22203–1622 and will be available for inspection during regular business hours within 30 days following the meeting.

Dated: June 2, 1997.

Gary Edwards,

Assistant Director—Fisheries, Co-Chair, Aquatic Nuisance Species Task Force.

[FR Doc. 97–14716 Filed 6–4–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–1060–00–24 1A]

Wild Horse and Burro Advisory Board; Notice of Intent To Reestablish and Call for Nominations

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to reestablish the Wild Horse and Burro Advisory Board and call for nominations.

SUMMARY: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.). Pursuant to Section 7 of the Wild Free-Roaming Horse and Burro Act (Public Law 92–195), notice is hereby given that the Secretaries of the Interior and Agriculture intend to reestablish the Wild Horse and Burro Advisory Board. The public is also being requested to submit nominations for membership on the Board.

Any individual or organization may nominate one or more persons to serve on the Wild Horse and Burro Advisory Board. Individuals may also nominate themselves for Board membership. All nomination letters should include the name, address, profession, relevant biographic data, and reference sources for each nominee, and should be sent to the address below. Nominations may be made for the following categories of interest:

Wild horse and burro advocacy group.
Wild horse and burro research (especially genetics and population biology).
Veterinary medicine (equine science).
Natural resources management (especially rangeland science).
Humane organization.
Wildlife management.
Livestock management.
Public-at-large.

The specific category that the nominee will represent should be identified in the letter of nomination.

DATES: Nominations should be submitted to the address listed below no later than July 7, 1997.

FOR FURTHER INFORMATION CONTACT: Jim Fox, Bureau of Land Management, LS 314, 1849 C Street, NW., Washington, DC 20240, telephone (202) 452–7744. Internet: j1fox@wo.blm.gov.

SUPPLEMENTARY INFORMATION: The purpose of the Wild Horse and Burro Advisory Board will be to advise the Secretary of the Interior, the Director of the Bureau of Land Management, the Secretary of Agriculture, and the Chief of the Forest Service on matters pertaining to management and protection of wild free-roaming horses and burros on the Nation's public lands.

Board membership shall be balanced in terms of categories of interest represented. Each member will be a person who, as a result of training and experience, has knowledge or special expertise which qualifies him or her to provide advice from among the categories of interest listed above. Pursuant to Section 7 of the Wild Free-Roaming Horse and Burro Act, members of the Board shall not be employees of Federal or State Government.

Members will serve without salary, but will be reimbursed for travel and per diem expenses at current rates for Government employees.

The Board will meet no less than two times annually. Additional meetings may be called by the Director, Bureau of Land Management, in connection with special needs for advice.

Dated: May 30, 1997.

Sylvia V. Baca,

Acting Director, Bureau of Land Management.

[FR Doc. 97–14685 Filed 6–4–97; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1610–00]

Notice of Availability; Montana

AGENCY: Bureau of Land Management, Montana, Miles City District, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with Section 202 of the Federal Land Policy and Management Act of 1976 and the National Environmental Policy Act of 1969, the Record of Decision has been prepared for the Calypso Trail, Big Dry Resource Area, Montana. The Record of Decision approves the decisions for management of the Calypso Trail.

EFFECTIVE DATE: The Record of Decision was signed May 27, 1997 by Montana State Director, Larry Hamilton.

ADDRESSES: Reading copies of the Record of Decision are available at the following Bureau of Land Management locations: External Affairs Office, Montana State Office, 222 North 32nd Street, Billings, MT and the Miles City

District Office, 111 Garryowen Road, Miles City, MT.

FOR FURTHER INFORMATION CONTACT: Brad Brown, Acting Big Dry Area Manager, Miles City District Office, 111 Garryowen Road, Miles City, MT 59301, 406–232–4333.

SUPPLEMENTARY INFORMATION: The Record of Decision approves the decisions made in the Calypso Trail Supplement to the Big Dry Resource Management Plan. The Supplement was issued in June of 1996. Three letters protesting the plan were received by the Director. The protests did not result in any changes to the plan.

Dated: May 28, 1997.

Janet L. Edmonds,

Acting District Manager.

[FR Doc. 97–14697 Filed 6–4–97; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–040–1020]

Notice of Availability; Utah

SUMMARY: The Bureau of Land Management, Richfield District, has completed an Environmental Analysis (EA) Finding of No Significant Impact (FONSI) of the Proposed Plan Amendments to the Henry Mountain, Parker Mountain, and Mountain Valley Management Framework Plans. The Proposed Amendments involve the addition of five new land tenure adjustment criteria.

DATES: The protest period for these Proposed Plan Amendments will commence with the date of publication of this notice and last for 30 days. Protests must be received on or before July 7, 1997.

ADDRESSES: Protests must be addressed to the Director (WO–210), Bureau of Land Management, Attn: Brenda Williams, 1849 C Street, NW., Washington, DC 20240 within 30 days after the date of publication of this Notice of Availability.

FOR FURTHER INFORMATION CONTACT: Rod Lee, Resource Advisor, Richfield District, at 150 East 900 North, Richfield, Utah 84701, (801) 896–1524. Copies of the proposed Plan Amendments are available for review at the Richfield District Office.

SUPPLEMENTARY INFORMATION: This action is announced pursuant to Section 202(a) of the Federal Land Management Act (1976) and 43 CFR part 1610. These Proposed Amendments are subject to protests by any party who has participated in the planning process. Protests must be specific and contain the following information:

—The name, mailing address, phone number, and interest of the person filing the protest.

—A statement of the issue(s) being protested.

—A statement of the part(s) of the proposed amendment being protested and citing pages, paragraphs, maps etc., of the Proposed Plan Amendment.

—A copy of all documents addressing the issue(s) submitted by the protestor during the planning process or a reference to the date when the protester discussed the issue(s) for the record.

—A concise statement as to why the protester believes the BLM State Director is incorrect.

Dated: May 30, 1997.

G. William Lamb,

State Director, Utah.

[FR Doc. 97–14671 Filed 6–4–97; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–080–100–1150–00]

Notice of Intent To Amend the Book Cliffs Resource Management Plan and Prepare an Associated Environmental Assessment (EA); Utah

SUMMARY: This notice is to advise the public that the Bureau of Land Management (BLM) is proposing to amend the Book Cliffs Resource Management Plan (RMP) for the re-introduction of black-footed ferrets into the Book Cliffs Resource Area (BCRA). The U.S. Fish and Wildlife Service (Service) is proposing to reintroduce black-footed ferrets as a non-essential experimental population, into the Book Cliffs Resource Area. The Utah Division of Wildlife Resources (UDWR), in conjunction with affected stakeholders, has prepared a reintroduction and management plan to determine what measures would be necessary for the reintroduction and what impacts and mitigation may result. As a part of the amendment process, the BLM will determine if the management plan will result in a change in the scope of the resource uses or a change in the terms, conditions, or decisions of the Book Cliffs RMP. The BLM is seeking public input on this RMP amendment.

EFFECTIVE DATES: The public scoping period is initiated with publication of this notice of intent and ends June 27, 1997. Scoping meetings will be held on Monday, June 9, 1997, from 6:00 p.m. to 9:00 p.m., in the auditorium of the Utah Division of Wildlife Resources Building, 1594 West North Temple Street, Salt Lake City, Utah, and Tuesday, June 10, 1997, from 6:00 p.m. to 9:00 p.m., in Room 2 of the Western Park Conference Center, 300 East 200 South, Vernal, Utah. The purpose of the meetings are to (1) identify issues and concerns regarding potential reintroduction of black-footed ferrets into Uintah and Duchesne Counties and (2) to provide the general public an opportunity to participate in the amendment process. Representatives from the UDWR, BLM, and the Service will be available to answer questions about the project and amendment. Written comments on the scope of the amendment must be postmarked by June 27,1997.

The EA for the amendment is scheduled to be completed in the summer of 1997, and made available for public review and comment. Notice of availability of the EA will be published in local newspapers and parties who have requested to be on the mailing list for this amendment will be notified by mail.

FOR FURTHER INFORMATION CONTACT: Bill Stroh, Wildlife Biologist, Bureau of Land Management, 170 South 500 East, Vernal, Utah, 84078, or telephone (801) 781–4481. Existing planning documents and information are available for review at the above address.

SUPPLEMENTARY INFORMATION: The BCRA comprises 1,455,880 acres in the northeastern corner of Utah. It is roughly triangular in shape, bounded by the Utah-Colorado state line on the east, the Book Cliffs Divide to the south, and the Green River to the north and west.

Administratively, the BCRA includes public lands and mineral resources that are within portions of Uintah and Grand Counties, Utah. Of the total area, 73% or 1,062,669 acres, are public lands administered by the BLM.

Of the remaining acreage, 15% is administered by the State of Utah, 8.5% is private, and 3.5% is public lands which are either within naval oil shale or federal power site reserves.

The primary area proposed for black-footed ferret reintroduction is located within Coyote Basin in east central Uintah County. The general issues which will be addressed by the planning amendment include: access to public lands, economic and social conditions, recreation uses, sensitive species, rangeland uses, mineral exploration and development, and public rights-of-way as they relate to

potential black-footed ferret re-introduction.

An interdisciplinary approach will be used to prepare the EA. The following disciplines will be included: economics, minerals, realty, vegetation, wildlife, range, cultural resources, and recreation.

The planning criteria for amending the Book Cliffs RMP is to establish a management objective which provides for black-footed ferret reintroduction with minimal impacts to other resources or uses. A range of alternatives associated with the proposed reintroduction of black-footed ferrets, including the No Action Alternative, will be considered. Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the BLM's decision on the amendment to the Book Cliffs RMP are invited to participate in the scoping process for the EA. To be most helpful, comments should be as specific as possible.

The scoping process for the RMP amendment/EA will include: (1) Identification of issues to be addressed; (2) identification of viable alternatives; and (3) notification of interested groups, individuals, and agencies so that information on these issues or other issues can be addressed.

Dated: May 30, 1997.

G. William Lamb,

Utah State Director.

[FR Doc. 97–14670 Filed 6–4–97; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR 125–6250–02; 0185]

Closure Notice For Motor Vehicles on Designated Roads; Oregon

AGENCY: Bureau of Land Management, U.S. Department of the Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the following listed roads have been selected for closure to motorized vehicles in accordance with the *Coos Bay Resource Management Plan & Environmental Impact Statement* and its Record of Decision (BLM, 1995) (RMP); which is in conformance with the *Final Supplemental and Environmental Impact Statement on Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl* and its Record of Decision (Interagency, 1984) (Northwest Forest Plan). Selected roads will have barriers installed on the Coos Bay District, within Coos and Douglas Counties. Closure is for an indefinite period (15 years or longer) beginning on or about 1 June, 1997, when roads will have barriers installed. Closures may be reversed by the BLM. Reopening of a road will be for temporary periods of time and the condition of the road will be restored to the original condition found (including erosion control and barriers). Acceptable reasons for reopening include the following: fire (prescribed or suppression), emergency, rescue, forestry management on lands administered by a private party (including but not limited to thinning, fertilization, stand exams, reforestation and harvesting activities on private lands and as authorized by the Area Manager on BLM administered lands). Closures otherwise may only be reopened for agency purposes by initiating an environmental assessment for a site specific project. Any use of motor vehicles by all parties within the closed areas is prohibited. This does not effect non-motorized forms of travel. The reason for this order is to implement the Northwest Forest Plan as it relates to road density management. Benefits to road closures include but are not limited to: improving water quality, reducing sedimentation, enhancing big game habitat, and reducing habitat disturbance to other wildlife species. Copies of the administrative determination and its environmental assessment, as well as, maps of the roads affected are available from the Coos Bay District Office, at the address below.

All persons authorized to enforce state game laws may enforce this closure. Oregon State Police and the Coos and Douglas County Sheriff's Departments are hereby authorized to enforce state and federal laws and regulations on federal properties affected in this notice.

This closure order is in accordance with the provisions of Pub. L. 93–452, the Sikes Act (88 Stat. 1369), (16 U.S.C. 670 et. Seq.) and Pub. L. 94–579, the Federal Land Policy and Management Act of 1976 (90 stat. 2743), (43 U.S.C. 1701), 43 CFR, Subpart 8364 and BLM Manual Handbook, State Office—Oregon H–2812–1—Logging Road Right-of-Way.

Any person who fails to comply with the provisions of this order may be subject to penalties outlined in 43 CFR 8360.0–7 or as ordered through the Oregon Judicial system.

The following is a list of road closures identified by this order, by resource area and road number. The location of the gate or barriers will be at or near the beginning of each road.

TABLE 1.—UMPQUA RESOURCE AREA PROPOSED ROAD CLOSURES

Road No.	Miles	Road No.	Miles	Road No.	Miles
21–8–4.1	1.10	23–9–20.1	0.20	23–10–1.0	0.30
21–8–15.0	1.00	23–9–20.2	0.80	23–10–1.1	0.30
20–9–11.1	0.30	23–9–20.3	0.30	20–8–4.0	0.06
20–9–11.5	0.43	23–9–20.4	0.28	20–8–4.3	0.39
20–9–12.3	0.35	23–9–27.1	0.60	20–8–5.2	0.22
20–9–12.4	0.26	23–9–27.2	0.20	21–9–20.4	0.55
20–9–13.3	0.19	23–9–28.0	0.40	23–8–21.0A2	0.90
21–9–20.1B	1.00	23–9–28.1	0.36	23–8–28.1B	0.42
23–9–7.0A2	0.64	23–9–29.0	0.50	23–8–28.2	0.50
23–9–9.0	0.17	23–9–29.1	0.30	23–8–30.0	0.60
23–9–15.0	0.60	23–9–29.3	0.50	23–8–32.5	0.10
23–9–17.1	0.10	23–9–29.6	0.20	23–8–33.1	0.13

Total No. Miles=15.25.

ADDRESSES: Detailed information concerning this notice, including the environmental analysis, is available for review at the Bureau of Land Management's Coos Bay District Office, 1300 Airport Lane, North Bend, OR 97459–2000.

DATES: Interested parties may submit comments to the Umpqua Area Manager at the above address until July 7, 1997. Objections will be evaluated by the Area Manager who may sustain, vacate or modify this action. In the absence of any objection, this action will become the final determination of the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: Patricia M. Bailey (541) 756–0100.

Dated: May 19, 1997.

Daryl L. Albiston,

Umpqua Resource Area Manager.

[FR Doc. 97–14647 Filed 6–4–97; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU–66481]

Utah; Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease UTU–66481 for lands in Utah County, Utah, was timely filed and required rentals accruing from January 1, 1997, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease UTU–66481, effective January 1, 1997, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Robert Lopez,

Group Leader, Minerals Adjudication Group.

[FR Doc. 97–14672 Filed 6–4–97; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–070–1620–00; AZA 30132]

Notice of Realty Action, Recreation and Public Purposes (R&PP) Act Classification; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands in La Paz County, Arizona have been examined and found suitable for classification for lease under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The classification is for the following lands for recreational or historical purposes.

Gila and Salt River Meridian, Arizona

T. 10 N., R. 15 W.,
sec. 28, W½SW¼;
sec. 29, lots 1 to 6, inclusive, NW¼SW¼;
sec. 32, lots 1 and 2;
sec. 33, lots 1 and 2;
MS 2797.

The area described contains 1,010 acres.

The lands are not needed for Federal purposes. Lease is consistent with the current BLM land use planning and would be in the public interest. The lease, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove materials.

4. All valid existing rights documented on the official public land records at the time of lease issuance.

5. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease or classification of the lands to the Field Manager, Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, AZ 86406.

Classification Comments

Interested parties may submit comments involving the suitability of the lands for recreational or historical purposes. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with the local planning and zoning, or if the use is consistent with the State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for recreational purposes.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Aline LaForge, Bureau of Land Management, Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona (520) 505–1200.

Dated: May 27, 1997.

Jaime T. Provenico,

Field Manager.

[FR Doc. 97–14707 Filed 6–4–97; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–048–07–1060–00]

Availability of Wild Horse Gathering Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Availability of Wild Horse Gathering Plan.

SUMMARY: The Green River Resource Area Wild Horse Gathering Plan is available for public review at the Rock

Springs District Office until July 5, 1997. The planned gathering period will extend from July 5, 1997 through April 10, 1998.

DATES: June 2 through July 5, 1997.

ADDRESSES: 280 North Highway 191, Rock Springs, Wyoming.

FOR FURTHER INFORMATION CONTACT: John S. McKee, Area Manager, Rock Springs District Office, 280 Highway 191 North, Rock Springs, Wyoming.

John S. McKee,

Area Manager.

[FR Doc. 97–14840 Filed 6–4–97; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that a proposed Consent Decree in *United States* v. *H. Brown Co., et al.,* Civil Action No. 1:96 CV–949 (W.D. Mich.), entered into the United States and twenty-two parties (''First Round Settling Defendants''), was lodged on May 16, 1997, with the United States District Court for the Western District of Michigan. The proposed Consent Decree resolves certain claims of the United States for past and future costs under the Comprehensive Environmental Response, Compensation and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9601, *et seq.,* with respect to the H. Brown Superfund Site (''Site'') in Walker, Michigan. Under the terms of the proposed Consent Decree, the First Round Settling Defendants will pay a total of $1,239,149 to the United States.

The Department of Justice will receive comments relating to the proposed Partial Consent Decrees for 30 days following publication of this Notice. Comments should be addressed by the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044–7611, and should refer to *United States* v. *H. Brown Co, et al.,* D.J. Ref. No. 90–11–2–835A. The Proposed Consent Decree may be examined at the Office of the United States Attorney for the Western District of Michigan, Grand Rapids, Michigan; the Region V Office of the United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, telephone no. (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check (25 cents per page for reproduction costs) in the amount of $13.25 for the Decree, payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–14705 Filed 6–4–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a consent decree was lodged in *U.S.* v. *Pacific Gas and Electric Company,* Civil Action No. C97–1969–MHP (N.D. Cal.) on May 27, 1997 with the United States District Court for the Northern District of California. The case is a civil action under Section 309 of the Clean Water Act (''Act''), 33 U.S.C. 1319, for violations of provisions of the Act and of National Pollution Elimination Discharge System (''NPDES'') permits that required Pacific Gas and Electric Company (''PG&E'') to demonstrate that the cooling water system at the Diablo Canyon nuclear power plant employed the best technology available to minimize adverse environmental impacts.

The United States' complaint alleges that PG&E submitted an incorrect, incomplete, and misleading report on the environmental effects of the Diablo Canyon cooling water system and that PG&E also failed to promptly submit missing information after it discovered that it had submitted incorrect information in a report. The State of California has also filed a complaint against PG&E. The State of California and the United States have entered into a joint consent decree with PG&E that resolves the allegations of both complaints. Under the Consent Decree, PG&E will pay the state and federal governments $14.04 million dollars. That sum includes $7.1 million in state and federal penalties, $6.19 million in environmental projects, and $750,000 in State fees and costs. The $6.19 million environmental enhancement component of the settlement comprises three projects: $3.66 million to be devoted to the Morro Bay State and National Estuary Program, $2.50 million for the State of California Mussel Watch Program, and $30,000 for a stream enhancement project. The League for Coastal Protection, which also filed a law suit against PG&E, assisted in securing the environmental enhancement components of the proposed settlement.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and copied to Robert R. Klotz, Environmental Enforcement Section, U.S. Department of Justice, 301 Howard Street, Suite 870, San Francisco, CA 94105. Comments should refer to *U.S.* v. *Pacific Gas and Electric Company,* DOJ No. 90–5–1–1–4348.

The proposed PG&E consent decree may be examined at the office of the United States Attorney, Northern District of California, 450 Golden Gate Avenue, San Francisco, California 94102; the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. To request a copy of the consent decree in *U.S.* v. *Pacific Gas and Electric Company,* please refer to that case and DOJ No. 90–5–1–1–4348 and enclose a check for the amount of $9.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–14704 Filed 6–4–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Compensation and Liability Act

In accordance with section 122(d)(2) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9622(d)(2), and Departmental policy, 28 CFR 50.7, notice is hereby given that on May 16, 1997, a proposed consent decree in *United States* v. *Union Pacific Railroad Company,* Civil Action No. 97–0578, was lodged with the United States

District Court for the Eastern District of Wisconsin. This consent decree represents a settlement of claims brought against the Union Pacific Railroad Company (''Union Pacific'') under CERCLA section 107, 42 U.S.C. 9607, for the recovery of costs incurred and to be incurred by the United States in responding to the release and threatened release of hazardous substances at and from the Moss-American Superfund Site in Milwaukee, Wisconsin (''Site'').

Under the proposed settlement, Union Pacific will be required, among other things, to: (1) pay $300,000 toward the costs incurred by the United States in connection with the Site; and (2) grant the Untied States and its assigns irrevocable access to those portions of the Union Pacific's property that comprises a part of the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publicaiton comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney general, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Union Pacific Railroad Company,* D.J. Ref. 90–11–2–590c.

The proposed Consent Decree may be examined at: (1) the Mill Road Library, 6431 N. 76th St., Milwaukee, Wisconsin; (2) U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Blvd, Chicago, Illinois 60604 (contact Mr. Russell D. Hart (312–886–4844)); and (3) the U.S. Department of Justice's Consent Decree Library, 1120 G. Street, NW., 4th Floor, Washington, DC 20010, (202) 624–0892. A copy of the consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G. Street, NW., 4th Floor, Washington, DC 20010. In requesting a copy, please enclose a check in the amount of $9.50 (consent decree only) or $47.00 (consent decree and appendices) (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–14706 Filed 6–4–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Biotechnology Research and Development Corporation (''BRDC'')

Notice is hereby given that, on May 9, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Biotechnology Research and Development Corporation (''BRDC'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, GalaGlen Inc. and Hewlett-Packard Company have withdrawn from the venture effective April 30, 1997 and May 14, 1997 respectively.

On February 24, 1997, BRDC issued to American Home Products Corporation (''American Home''), and American Home purchased from BRDC, 653–⅓ shares of common stock, without par value, of BRDC. Simultaneously, with the issuance and purchase of the shares of the common stock, BRDC and American Home entered into an Agreement to be Bound by BRDC Master Agreement whereby American Home agreed to be bound by the terms and conditions of the BRDC Master Agreement effective as of June 10, 1988, by and among BRDC and its common stockholders. American Home has the rights set forth in the BRDC Master Agreement in all project technology made, discovered, conceived, developed, learned, or acquired by or on behalf of BRDC in connection with, or arising out of, or as the result of, a research project in existence while American Home is a common stockholder of BRDC.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and BRDC intends to file additional written notification disclosing all changes in membership.

On April 12, 1988, BRDC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 12, 1988, 53 FR 16919. The last notification was filed December 6, 1996.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–14702 Filed 6–4–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993 HDP User Group

Notice is hereby given that, on April 23, 1997, pursuant to Section 6(a) of the National Cooperative Research Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), HDP User Group International, Inc., an Arizona non-profit corporation, filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Asymtek, Carlsbad, CA; Heraeus Precision Engineering, Singapore, Singapore; and VLSI Technology, Inc., San Jose, CA have become members of the HDP User Group International, Inc. Additionally, Ericsson Telecom AB, Stockholm, SWEDEN; ASAT, Inc., Palo Alto, CA; Motorola, Inc., Schaumburg, IL; and SGS Thompson, Milan, ITALY have left the Group.

No other changes have been made in either the membership, corporate name, or planned activities of this joint venture.

On September 14, 1994, the HDP User Group filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 23, 1995 (60 FR 15306). The last notification was filed with the Department on August 20, 1996. A notice was published in the **Federal Register** on September 12, 1996 (61 FR 48169).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–14703 Filed 6–4–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA # 153R]

Controlled Substances: Notice of Proposed Revised 1997 Aggregate Production Quotas

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed revised 1997 aggregate production quotas and request for comments.

SUMMARY: This notice proposes revised 1997 aggregate production quotas for controlled substances in Schedules I and II, as required under the Controlled Substances Act of 1970.

DATES: Comments or objections should be received on or before July 7, 1997.

ADDRESSES: Send comments or objections to the Administrator, Drug Enforcement Administration, Washington, DC. 20537, Attn: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, D.C. 20537, (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act, (21 U.S.C. 826), requires the Attorney General to establish aggregate production quotas for controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the DEA pursuant to § 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator of the DEA pursuant to § 0.104 of Title 28 of the Code of Federal Regulations.

On December 17, 1996, a notice of the established initial 1997 aggregate production quotas was published in the **Federal Register** (61 FR 66311). The notice stipulated that the Deputy Administrator of the DEA would adjust the quotas in early 1997 as provided for in Title 21, Code of Federal Regulations, § 1303.13(c). The proposed revised 1997 aggregate production quotas represent those quantities of controlled substances that may be produced in the United States in 1997, and do not include imports of controlled substances for use in industrial processes.

The proposed revisions are based on a review of 1996 year-end inventories, 1996 disposition data submitted by quota applicants, estimates of the medical needs of the United States submitted to the DEA by the Food and Drug Administration, and other information available to the DEA.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826), delegated to the Administrator of the DEA by § 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator, pursuant to § 0.104 of Title 28 of the Code of Federal Regulations, the Deputy Administrator hereby proposes the following revised 1997 aggregate production quotas for the listed controlled substances, expressed in grams of anhydrous acid or base:

Basic class	Previously established 1997 aggregate production quotas	Proposed revised 1997 aggregate production quotas
Schedule I		
2,5-Dimethoxyamphetamine	15,200,100	15,200,100
2,5-Dimethoxy-4-ethylamphetamine	2	2
3-Methylfentanyl	14	14
3-Methylthiofentanyl	2	2
3,4-Methylenedioxyamphetamine	22	22
3,4-Methylenedioxy-N-ethylamphetamine	27	27
3,4-Methylenedioxymethamphetamine	7	7
3,4,5-Trimethoxyamphetamine	2	2
4-Bromo-2,5-Dimethoxyamphetamine	2	2
4-Bromo-2,5-Dimethoxyphenethylamine	2	2
4-Methoxyamphetamine	17	17
4-Methylaminorex	2	2
4-Methyl-2,5-Dimethoxyamphetamine	2	2
5-Methoxy-3,4-Methylenedioxyamphetamine	2	2
Acetyl-alpha-methylfentanyl	2	2
Acetylmethadol	7	7
Alpha-acetylmethadol	7	7
Alpha-ethyltryptamine	2	2
Alpha-methadol	2	2
Alpha-methylfentanyl	2	2
Alpha-methylthiofentanyl	2	2
Aminorex	7	7
Beta-acetylmethadol	2	2
Beta-hydroxyfentanyl	2	2
Beta-hydroxy-3-methylfentanyl	2	2
Beta-methadol	2	2
Bufotenine	2	2
Cathinone	9	9
Codeine-N-oxide	2	2
Difenoxin	14,000	14,000
Dihydromorphine	7	7
Ethylamine Analog of PCP	5	5
Heroin	2	2
Lysergic acid diethylamide	32	32
Mescaline	7	7
Methaqualone	17	17
Methcathinone	11	11

Basic class	Previously established 1997 aggregate production quotas	Proposed revised 1997 aggregate production quotas
Morphine-N-oxide	2	2
N-Ethylamphetamine	7	7
N-Hydroxy-3,4-Methylenedioxyamphetamine	2	2
N,N-Dimethyltryptamine	7	7
Norlevorphanol	2	2
Normethadone	7	7
Normorphine	7	7
Para-fluorofentanyl	2	2
Pholcodine	2	2
Psilocin	2	2
Psilocybin	2	2
Tetrahydrocannibinols	25,100	25,100
Thiofentanyl	2	2
Thiophene Analog of Phencyclidine	5	5
Schedule II		
1-Phenylcyclohexylamine	10	10
1-Piperidinocyclohexanecarbonitrile	12	12
Alfentanil	9,300	9,300
Amobarbital	15	15
Amphetamine	2,968,000	3,137,000
Carfentanil	500	500
Cocaine	550,100	550,100
Codeine (for sale)	49,103,000	53,140,000
Codeine (for conv)	19,679,000	19,679,000
Desoxyephedrine	1,422,000	1,393,000
1,361,000 grams of levodesoxyephedrine for use in a noncontrolled, nonprescription product and 32,00 grams for methamphetamine.		
Dextroproproxyphene	116,469,000	116,469,000
Dihydrocodeine	255,100	188,000
Diphenoxylate	1,572,000	1,572,000
Ecgonine (for conv)	651,000	651,000
Ethylmorphine	12	12
Fentanyl	193,000	193,000
Glutethimide	2	2
Hydrocodone (for sale)	13,891,000	13,891,000
Hydrocodone (for conv)	1,769,000	1,769,000
Hydromorphone	563,000	563,000
Isomethadone	12	12
Levo-alpha-acetylmethadol	356,000	356,000
Levomethorphan	2	2
Levorphanol	16,400	12,000
Meperidine	9,843,000	9,843,000
Methadone (for sale)	3,977,000	3,977,000
Methadone (for conv)	364,000	364,000
Methadone Intermediate (for conv)	5,275,000	5,275,000
Methamphetamine (for conv)	723,000	723,000
Methylphenidate	13,824,000	13,824,000
Morphine (for sale)	11,126,000	11,126,000
Morphine (for conv)	68,165,000	68,165,000
Noroxymorphone (for sale)	30,000	30,000
Noroxymorphone (for conv)	2,000,000	2,000,000
Opium	937,000	575,000
Oxycodone (for sale)	6,634,000	6,634,000
Oxycodone (for conv)	1,200	1,200
Oxymorphone	56,000	56,000
Pentobarbital	16,772,000	16,772,000
Phencyclidine	60	60
Phenmetrazine	2	2
Phenylacetone	10	10
Secobarbital	491,000	491,000
Sufentanil	1,000	1,000
Thebaine	9,325,000	9,325,000

All interested persons are invited to submit their comments in writing regarding this proposal. A person may object to or comment on the proposal relating to any of the above mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Deputy

Administrator finds warrant a hearing, the deputy Administrator shall order a public hearing by notice in the **Federal Register,** summarizing the issues to be heard and setting the time for the hearing.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Deputy Administrator thereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility act, 5 U.S.C. 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. Aggregate production quotas apply to approximately 200 DEA registered bulk and dosage form manufacturers of schedule I and II controlled substances. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Dated: May 28, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–14698 Filed 6–4–97; 8:45 am]

BILLING CODE 4410–09–M

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

Availability of Final Programmatic Environmental Assessment and Finding of No Significant Impact

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of availability of final programmatic environmental assessment and 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 Final Regulations (40 CFR Parts 1500 through 1508); and the Operational Procedures of the United States Section, International Boundary and Water Commission, United States and Mexico (USIBWC), for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981 (46 FR 44083–44094); the USIBWC hereby gives notice that the Final Programmatic Environmental Assessment (PEA) and Final Finding of No Significant Impact (FONSI) to address the potential adverse environmental impacts of oil and natural gas development within the Falcon Dam and Reservoir Project, Starr and Zapata counties, Texas are available. The USIBWC finds that the proposed action to grant exceptions to its policy of prohibiting development within the reservoir is not a major federal action that would have a significant adverse effect on the quality of the human environment. A Notice of FONSI was signed February 10, 1997, and published in the **Federal Register** on February 19, 1997 (62 FR 7475–7477) for a thirty (30) day review and comment period.

ADDRESSES: Mr. Yusuf E. Farran, Division Engineer, Environmental Management Division, United States Section, International Boundary and Water Commission, United States and Mexico, 4171 North Mesa Street, C–310, El Paso, Texas 79902–1441. Telephone: 915/534–6704.

SUPPLEMENTARY INFORMATION:

Proposed Action

The action proposed is for the USIBWC to grant exceptions on a case-by-case basis to its policy of prohibiting oil and gas development upon USIBWC real property within Falcon Reservoir. The proposed action would alter USIBWC policy so that limited exceptions may be granted in appropriate cases, allowing some oil and gas exploration and development on USIBWC real property located below the 307-foot elevation traverse (the United States property line also called the ''307-foot traverse'') within Falcon Reservoir but above the 307-foot mean sea level elevation.

Alternatives Considered

Two alternatives were considered in the Final Programmatic Environmental Assessment (PEA):

The Proposed Action Alternative is for the USIBWC to grant exceptions to its policy of prohibiting oil and natural gas development upon USIBWC real property within Falcon Reservoir on a case-by-case basis. If the USIBWC makes the determination to allow exceptions to this prohibition, the United States Bureau of Land Management (BLM), the federal authorizing agency which approves applications for permits to drill for federal reserves, could then approve applications to drill from sites below the 307-foot traverse property line for oil and gas reserves located within the reservoir. Separate environmental assessments would then be prepared by project proponents tiered from this PEA to address the specific impacts of drilling for oil and natural gas at specific locations within the reservoir, and the USIBWC would consider issuing land use permits to ensure that such works do not interfere with the operation and maintenance of the Falcon Dam and Reservoir Project.

The No Action Alternative is for the USIBWC to not grant any exceptions to its policy of prohibiting oil and natural gas development upon USIBWC real property within Falcon Reservoir. BLM would only be able to approve applications for permits to drill from sites above the 307-foot traverse property line; hence outside the reservoir. Project proponents would need to consider use of alternative means to recover private and public natural gas reserves within the reservoir. Since no oil and natural gas development would be done within the Falcon Reservoir, the USIBWC would not issue land use permits to project proponents. The no action alternative would result in no development below the 307-foot traverse for private and public reserves in the reservoir; avoidance of any potential impacts associated with the proposed action; the loss of tax and royalty revenues to the local, state and federal governments; the loss of royalty revenues to mineral owners; and the loss of an otherwise recoverable clean energy source.

Programmatic Environmental Assessment

TransTexas Gas Corporation (TransTexas) requested the USIBWC to grant them permission to construct a drill pad site on an island above the 307-foot mean sea level elevation located within USIBWC real property below the 307-foot traverse within Falcon Reservoir for the purpose of drilling natural gas wells. The USIBWC began coordination with BLM, and BLM indicated it would not approve the application for permit to drill until the USIBWC determined whether it would waive the stipulation that prohibits oil and natural gas development within the

reservoir. Both agencies agreed that due to a lack of both funding resources and human resources for an agency produced environmental document and an immediate need by TransTexas to gain access to private and public reserves within the reservoir, a third party environmental analysis would be acceptable for determination of the significance of the impacts of the federal action of the USIBWC granting exceptions to its policy of prohibiting any mineral exploration or development within its property at Falcon Reservoir.

The Final PEA prepared by contract by TransTexas describes the historical and existing development of oil and natural gas in the general vicinity (but above the 307-foot traverse property line) of the reservoir area and the planned oil and natural gas activities within or adjacent to potential drill sites on the United States side of the international reservoir in the reasonably foreseeable future. It analyzes the general impacts expected from such development in the foreseeable future and the cumulative environmental impacts of oil and natural gas development within Falcon Reservoir. The Final PEA discusses mitigation measures to minimize degradation of environmental resources within and adjacent to the reservoir. The PEA is envisioned to serve as a baseline environmental document from which other drilling proponents and permit applicants will be able to tier site specific environmental assessments for similar activities within the reservoir area. The USIBWC reviewed and approved the completed Final PEA for proposed oil and gas development within the reservoir, and it is currently available.

Finding of the Programmatic Environmental Assessment

The Final PEA finds that the proposed action for the USIBWC to grant exceptions to its policy of prohibiting oil and natural gas development upon USIBWC real property below the 307-foot traverse property line at Falcon Reservoir but above the 307-foot mean sea level elevation does not constitute a major federal action which would cause a significant local, regional, or national adverse impact on the environment. The USIBWC has determined that an environmental impact statement is not required and hereby provides notice of FONSI based on the following facts:

1. Construction, drilling and production activities at potential well pad sites will have no significant adverse impacts on air quality. Standard construction practices to control fugitive dust would be utilized.

2. The slight impacts from construction, drilling and production activities associated with noise at potential well pad sites are fully mitigable through vegetative buffer zones, equipment noise suppressors, and avoidance of critical wildlife use periods.

3. Negligible impacts to geologic and water resources are mitigable through the use of erosion and sediment control measures and devices, secondary containment measures, best management practices during all phases of site development, and use of site specific spill prevention control and countermeasure plans.

4. Biological resources will be protected from impacts by total avoidance of clearing within heavy brush corridors, animal exclusion fences around drill pad locations, site specific surveys for threatened and endangered plant and animals, and monitoring plans coordinated by the appropriate federal and state conservation agencies.

5. Impacts to cultural resources can be mitigated through avoidance of sites determined to be eligible for the National Register of Historic Places and if avoidance is not viable, implementation of a Memorandum of Agreement for mitigating impacts will be necessary prior to BLM approval of applications for permits to drill, USIBWC issuance of land use permits, and any development at potential drill sites.

6. Negligible impacts associated with land use and transportation will not require additional mitigation.

7. Negligible impacts associated with visual resources are mitigable through properly placed night lighting, unobtrusive painting of facilities, and alignment of access road and utility corridors for limited views of individual project facilities.

Availability

Copies of the Final PEA and Final FONSI are available for public review at the USIBWC Falcon Dam Field Office, Falcon Road, Falcon Heights, Texas 78545, and have been distributed to Federal, State, and local agencies, organizations and individuals that have commented on or have been consulted and coordinated with in the preparation of the PEA. A limited number of copies are available to fill single copy requests at the above address.

Dated: May 29, 1997.

Randall A. McMains,

Attorney.

[FR Doc. 97–14675 Filed 6–4–97; 8:45 am]

BILLING CODE 4710–03–M

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

Availability of Final Environmental Assessment and Finding of No Significant Impact

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of availability of final environmental assessment and 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 Final Regulations (40 CFR parts 1500 through 1508); and the Operational Procedures of the United States Section, International Boundary and Water Commission, United States and Mexico (USIBWC), for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981 (46 FR 44083–44094); the USIBWC hereby gives notice that the Final Environmental Assessment (EA) and Final Finding of No Significant Impact (FONSI) to address the potential adverse environmental impacts of placement of a natural gas well pad and associated works within the Falcon Dam and Reservoir Project, Zapata County, Texas, are available. The USIBWC finds that the proposed action to issue a land use permit to construct a drill pad for the purpose of drilling natural gas wells on an island located on USIBWC real property within the reservoir is not a major federal action that would have a significant adverse effect on the quality of the human environment. A notice of availability was signed February 10, 1997, and published in the **Federal Register** on February 19, 1997 (62 FR 7475–7477) for a thirty (30) day review and comment period.

ADDRESSES: Mr. Yusuf E. Farran, Division Engineer, Environmental Management Division, United States Section, International Boundary and Water Commission, United States and Mexico, 4171 North Mesa Street, C–310, El Paso, Texas 79902–1441. Telephone: 915/534–6704.

SUPPLEMENTARY INFORMATION:

Proposed Action

The action proposed is for the USIBWC to issue a land use permit to TransTexas Gas Corporation (TransTexas) to construct a drill pad site on an island above the 307-foot mean sea level elevation located on USIBWC real property below the 307-foot elevation traverse (the United States

property line also called the ''307-foot traverse'') within Falcon Reservoir for the purpose of drilling natural gas wells. The construction of the drill pad on an island within the reservoir is desirable, due mainly to the constraints associated with current directional drilling, to enable the full development of private and public gas reserves in the western portion of TransTexas' lease area. The gas lease area is situated entirely within Falcon Reservoir with very limited land available to reach the required bottom hole locations.

Alternatives Considered

Two alternatives were considered in the Final Environmental Assessment (EA):

The Proposed Action Alternative is for the USIBWC to issue a land use permit to TransTexas to construct a drill pad site on an island above the 307-foot mean sea level elevation located on USIBWC real property below the 307-foot traverse property line within Falcon Reservoir. The USIBWC proposes to issue the land use permit based on its determination to allow limited exceptions to its policy of prohibiting oil and natural gas development upon USIBWC real property within the reservoir. Approval of the application for permit to drill for public reserves located within the reservoir by the United States Bureau of Land Management (BLM) would occur once the USIBWC land use permit is issued.

The No Action Alternative is for the USIBWC to not issue a land use permit to TransTexas to construct a drill pad and associated works on an island on USIBWC real property at Porcion 18 at Falcon Reservoir. BLM would only be able to approve an application for permit to drill from a site above the 307-foot traverse property line; hence outside the reservoir. TransTexas would need to consider use of alternative means to recover private and public natural gas reserves within the reservoir. The no action alternative would result in no development below the 307-foot traverse for private and public reserves in the western portion of TransTexas lease area; avoidance of any potential impacts associated with the proposed action; the loss of tax and royalty revenues to the local, state and federal governments; the loss of royalty revenues to mineral owners; and the loss of an otherwise recoverable clean energy source.

Environmental Assessment

TransTexas requested the USIBWC to grant them permission to construct a drill pad site above the 307-foot mean sea level elevation on an island located within USIBWC real property below the 307-foot elevation traverse within the international Falcon Reservoir for the purpose of drilling natural gas wells. The USIBWC began coordination with BLM regarding the application by TransTexas for a permit to drill for federal reserves within the reservoir. Both agencies agreed that due to a lack of both funding resources and human resources for an agency produced document and an immediate need by TransTexas to gain access to private and public reserves within the reservoir, a third party environmental analysis would be acceptable for determining the significance of the impacts of the federal action of the USIBWC issuing a land use permit to TransTexas to construct a natural gas well drill pad site on an island within Falcon Reservoir.

The Final EA prepared by contract by TransTexas is tiered from a Programmatic Environmental Assessment also prepared by TransTexas that address the impacts of oil and natural gas development within the Falcon Dam and Reservoir Project. The Final EA describes the historical and existing development of oil and natural gas in the general vicinity of Porcion 18 (but above the 307-foot traverse property line) of the reservoir and the planned oil and natural gas activities within or adjacent to the Porcion 18 site. It analyzes the specific impacts at the Porcion 18 site expected from natural gas development in the foreseeable future and the cumulative environmental impacts of natural gas development upon USIBWC real property at Falcon Reservoir. The Final EA discusses mitigation measures to avoid impacts to and minimize degradation of environmental resources on and adjacent to the Porcion 18 site. The USIBWC approved the completed Final EA for proposed natural gas development at Porcion 18, and it is currently available.

Finding of the Environmental Assessment

The Final EA finds that the proposed action for the USIBWC to issue a land use permit for natural gas development within the USIBWC real property at Porcion 18 at Falcon Reservoir does not constitute a major federal action which would cause a significant local, regional, or national adverse impact on the environment. The USIBWC has determined that an environmental impact statement is not required to issue a land use permit and hereby provides notice of FONSI based on the following facts:

1. Construction, drilling and production activities at the Porcion 18 well pad site will have no significant adverse impacts on air quality. Standard construction practices to control fugitive dust shall be used, and emissions will be minimized through properly maintained equipment.

2. The slight impacts from construction, drilling and production activities associated with noise at the Porcion 18 well pad site are fully mitigable through vegetative buffer zones, equipment noise suppressors, and avoidance of critical wildlife use periods.

3. Negligible impacts to geologic and water resources are mitigable through the use of erosion and sediment control measures and devices, secondary containment measures, best management practices during all phases of development at the Porcion 18 well pad site, and use of site specific spill prevention control and countermeasure plans.

4. Biological resources shall be protected from impacts by total avoidance of clearing within the heavy brush corridor adjacent to Porcion 18, reptile exclusion fences around the drill pad location, and an interior least tern monitoring plan coordinated by the appropriate federal and state conservation agencies. Based on site surveys, federally listed species are not likely to be adversely affected by the proposed action provided these mitigation measures are followed.

5. Impacts to cultural resources shall be mitigated through avoidance of sites determined to be eligible for the National Register of Historic Places and implementation of a Memorandum of Agreement for mitigating impacts if avoidance is not viable. These measures shall be completed prior to BLM approval of the application for permit to drill, USIBWC issuance of a land use permit, and any development at the Porcion 18 drill site. Additionally, construction activity shall be monitored by a qualified archaeologist with full authority to terminate construction if cultural resources are likely to be impacted at the site.

6. Negligible impacts associated with land use and transportation will not require additional mitigation.

7. Negligible impacts associated with visual resources are mitigable through properly placed night lighting, painting of the facility to blend with the surrounding terrain and vegetation, and alignment of the access road and utility corridor to limit the view of the facility from the shoreline.

Availability

Copies of the Final EA and Final FONSI are available for public review at

the USIBWC Falcon Dam Field Office, Falcon Road, Falcon Heights, Texas 78545, and have been distributed to Federal, State, and local agencies, organizations and individuals that have commented on or have been consulted and coordinated with in the preparation of the EA. A limited number of copies are available to fill single copy requests at the above address.

Dated: May 29, 1997.

Randall A. McMains,

Attorney.

[FR Doc. 97–14676 Filed 6–4–97; 8:45 am]

BILLING CODE 4710–03–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: 10 CFR part 71, ''Packaging and Transportation of Radioactive Material.''

2. Current OMB approval number: 3150–0008

3. How often the collection is required: Applications for package certification may be made at any time. Required reports are collected and evaluated on a continuing basis as events occur.

4. Who is required or asked to report: All NRC specific licensees who place byproduct, source, or special nuclear material into transportation, and all persons who wish to apply for NRC approval of package designs for use in such transportation.

5. The number of annual respondents: 350 licensees

6. The number of hours needed annually to complete the requirement or request: 56,712 hours for reporting requirements and 6,825 for recordkeeping requirements, or a total of 63,537 hours (approximately 182 hours per respondent).

7. Abstract: NRC regulations in 10 CFR part 71 establish requirements for packing, preparation for shipment, and transportation of licensed material, and prescribe procedures, standards, and requirements for approval by NRC of packaging and shipping procedures for fissile material and for quantities of licensed material in excess of Type A quantities.

Submit, by August 4, 1997, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW, (lower level), Washington, DC. Members of the public who are in the Washington, DC, area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advance Copy Document Library), NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 29th day of May, 1997.

For the Nuclear Regulatory Commission.

Arnold E. Levin,

Acting Designated Senior Official for Information Resources Management.

[FR Doc. 97–14681 Filed 6–4–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Docket Nos. 50–266 and 50–301

Wisconsin Electric Power Company; Notice of Withdrawal of Application For Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Wisconsin Electric Power Company (WEPCO, the licensee) to withdraw its October 23, 1995, application for proposed amendments to Facility Operating Licenses Nos. DPR–24 and DPR–27 for the Point Beach Nuclear Plant, Unit Nos. 1 and 2, located in Manitowoc County, Wisconsin.

The proposed amendment would have revised the facility operating licenses and technical specifications to change the company name from Wisconsin Electric Power Company to Wisconsin Energy Company.

The Commission had previously issued a Notice of Consideration of Issuance of Amendments published in the **Federal Register** on December 20, 1995 (60 FR 65687). However, by letter dated May 19, 1997, the licensee informed the Commission that the Boards of Directors of Northern States Power Company and WEPCO mutually agreed to terminate their proposed merger, and WEPCO withdrew the proposed change.

For further details with respect to this action, see the application for amendments dated October 23, 1995, and the licensee's letter dated May 19, 1997, which withdrew the application for license amendments. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Joseph P. Mann Library, 1516 Sixteenth Street, Two River, Wisconsin.

Dated at Rockville, Maryland, this 30th day of May 1997.

For the Nuclear Regulatory Commission.

Linda L. Gundrum,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–14680 Filed 6–4–97; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions place or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Patricia H. Paige, Staffing Reinvention Office, Employment Service (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR part 213 on April 28, 1997 (62 FR 22979). Individual authorities established or revoked under Schedules A and B and established under Schedule C between April 1, 1997, and April 30, 1997, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

The following Schedule A's were established:

Department of the Interior

National Park Service. All positions in the Grand Portage National Monument, Minnesota, when filled by the appointment of recognized members of the Minnesota Chippewa Tribe. Effective April 10, 1997.

The following Schedule A's have been revoked:

Department of Health and Human Services

Public Health Service. Not to exceed 30 positions of Cancer Control Science Associate in the Division of Cancer Prevention and Control, National Cancer Institute of Health, for assignments at level of difficulty and responsibility at or equivalent to GS–11/13. No one may be employed under this authority for more than 3 years, and no more than 10 appointments will be made under this authority in any 1 year. Effective April 11, 1997.

National Aeronautics and Space Administration

Not to exceed 40 positions of fully qualified pilot and mission specialist astronauts. Effective April 28, 1997.

Positions of Program Coordinator/Counselor at grades GS–7/9/11 for part-time and summer employment in connection with the High School Students Summer Research Apprenticeship Program. Effective April 4, 1997.

Schedule B

No Schedule B authorities were established in April 1997.

The following Schedule B authorities were revoked in 1997:

Department of Health and Human Service

Public Health Service. Not to exceed 68 positions at GS–11 and below on the Health and Nutrition Examination Survey teams of the National Center for Health Statistics. Effective April 11, 1997.

One Public Health Education Specialist, GS–1725–15, in the Centers for Disease Control, Atlanta, Georgia. Effective April 11, 1997.

U.S. Soldiers and Airmen's Home

Three GS–11 Medical Officer positions under a fellowship program on geriatrics. Effective April 16, 1997.

Smithsonian Institution

National Zoological Park. Four Positions of Veterinary Intern, GS–8/9/11. Employment under this authority not to exceed 36 months. Effective April 30, 1997.

Schedule C

The following Schedule C authorities were established during April 1997:

Commodity Futures Trading Commission

General Attorney (Special Counsel) to the General Counsel. Effective April 14, 1997.

Department of Agriculture

Confidential Assistant to the Administrator, Rural Utilities Services. Effective April 3, 1997.

Confidential Assistant to the Deputy Under Secretary for Operations and Management. Effective April 3, 1997.

Special Assistant to the Assistant Secretary for Administration. Effective April 3, 1997.

Deputy Chief of Staff to the Secretary of Agriculture. Effective April 10, 1997.

Confidential Assistant to the Assistant Secretary for Congressional Relations. Effective April 24, 1997.

Special Assistant to the Chief of Natural Resources Conservation Service. Effective April 30, 1997.

Department of the Air Force (DOD)

Special Advisor for International Affairs to the Assistant to the Vice President for National Security Affairs. Effective April 11, 1997.

Department of Commerce

Executive Assistant to the Secretary of Commerce. Effective April 10, 1997.

Senior Policy Advisor to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning. Effective April 18, 1997.

Director, Office of External Affairs to the Chief of Staff. Effective April 30, 1997.

Department of Education

Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education. Effective April 1, 1997.

Confidential Assistant to the Deputy Secretary. Effective April 8, 1997.

Confidential Assistant to the Special Advisor to the Secretary. Effective April 9, 1997.

Special Assistant to the Special Advisor to the Secretary (Director, America Reads Challenge). Effective April 10, 1997.

Special Assistant to the Deputy Secretary. Effective April 10, 1997.

Deputy Assistant Secretary for Management and Planning to the Assistant Secretary for Elementary and Secondary Education. Effective April 16, 1997.

Special Assistant to the Assistant Secretary, Office of Education Research and Improvement. Effective April 18, 1997.

Department of Energy

Special Assistant to the Secretary of Energy. Effective April 17, 1997.

Special Assistant to the Secretary of Energy. Effective April 17, 1997.

Executive Assistant to the Secretary of Energy. Effective April 17, 1997.

Department of Health and Human Services

Special Outreach Coordinator to the Assistant Secretary for Public Affairs. Effective April 4, 1997.

Special Assistant for Liaison Activities to the Administrator, Substance Abuse and Mental Health Services Administration. Effective April 7, 1997.

Confidential Assistant to the Executive Secretary. Effective April 8, 1997.

Department of Housing and Urban Development

Special Assistant to the Assistant Secretary for Housing, Federal Housing Commissioner. Effective April 3, 1997.

Scheduling Coordinator to the Director, Office of Scheduling. Effective April 4, 19978.

Advance Coordinator to the Director, Office of Scheduling. Effective April 4, 1997.

Director, Intergovernmental Relations to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective April 4, 1997.

Intergovernmental Relations Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective April 10, 1997.

Special Assistant to the Director, Executive Scheduling. Effective April 10, 1997.

Director, Executive Secretariat to the Deputy Chief of Staff for Operations. Effective April 10, 1997.

Special Assistant to the Deputy Assistant Secretary for Community Planning and Development. Effective April 10, 1997.

Special Counsel to the General Counsel. Effective April 14, 1997.

Department of the Interior

Special Assistant to the Commissioner of Reclamation. Effective April 18, 1997.

Special Assistant to the Commissioner of reclamation. Effective April 24, 1997.

Department of Justice

Attorney to the Deputy Director, Office of Intergovernmental Affairs. Effective April 22, 1997.

Department of Labor

Special Assistant to the Assistant Secretary for Employment and Training. Effective April 3, 1997.

Special Assistant to the Assistant Secretary for Occupational Safety and Health. Effective April 4, 1997.

Department of State

Special Assistant to the Chairman, International Joint commission. Effective April 1, 1997.

Senior Advisor to the Deputy Assistant Secretary, Bureau for International Narcotics and Law Enforcement Affairs. Effective April 10, 1997.

Senior Advisor to the Assistant Secretary, Bureau of European and Canadian Affairs. Effective April 16, 1997.

Department of the Treasury

Deputy to the Assistant Secretary, Legislative Affairs and Public Liaison. Effective April 1, 1997.

Staff Assistant to the chief of Staff. Effective April 15, 1997.

Environmental Protection Agency

Special Assistant to the Deputy Chief of Staff (Scheduling). Effective April 11, 1997.

Special Assistant to the Associate Administrator. Effective April 24, 1997.

General Services Administration

Special Assistant to the Associate Administrator for Congressional and Intergovernmental Affairs. Effective April 18, 1997.

Special Assistant to the Associate Administrator for Congressional and Intergovernmental Affairs. Effective April 22, 1997.

National Aeronautics and Space Administration

Manager, Multimedia Relations to the Associate Administrator for Public Affairs. Effective April 15, 1997.

International Programs Specialist to the Associate Administrator, Office of External Programs. Effective April 22, 1997.

Office of Management and Budget

Confidential Assistant to the Associate Director, Human Resources. Effective April 10, 1997.

Confidential Assistant to the Associate Director, Health/Personnel. Effective April 30, 1997.

Office of Science and Technology Policy

Confidential Assistant to the Associate Director for Environment. Effective April 24, 1997.

Social Security Administration

Special Assistant to the Chief of Staff. Effective April 24, 1997.

Executive Assistant to the Commissioner of Social Security. Effective April 24, 1997.

U.S. Arms Control and Disarmament Agency

Congressional Affairs Specialist to the Director of Congressional Affairs. Effective April 15, 1997.

U.S. International Trade Commission

Staff Assistant (Legal) to the Commissioner. Effective April 18, 1997.

United States Information Agency

Special Assistant to the Director, Office of Congressional and Intergovernmental Affairs. Effective April 4, 1997.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954—1958 Comp., p.218

Office of Personnel Management

James B. King,

Director.

[FR Doc. 97–14622 Filed 6–4–97; 8:45 am]

BILLING CODE 6325–01–M

POSTAL RATE COMMISSION

[Order No. 1179; Docket No. A97–21]

Kings Creek, South Carolina 29719 (Mr. & Mrs. John R. Boheler, Petitioners); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Before Commissioners: Edward J. Gleiman, Chairman; H. Edward Quick, Jr., Vice-Chairman; George W. Haley; W.H. ''Trey'' LeBlanc III.

Issued May 30, 1997.

Docket Number: A97–21.

Name of Affected Post Office: Kings Creek, South Carolina 29719.

Name(s) of Petitioner(s): Mr. & Mrs. John R. Boheler.

Type of Determination: Closing.

Date of Filing of Appeal Papers: May 28, 1997.

Categories of Issues Apparently Raised:

1. Effect on the community (39 U.S.C. 404(b)(2)(A)).

2. Effect on postal services (39 U.S.C. 404(b)(2)(C)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission orders: (a) The Postal Service shall file the record in this appeal by June 12, 1997.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Margaret P. Crenshaw,

Secretary.

May 28, 1997—Filing of Appeal letter
May 30, 1997—Commission Notice and Order of Filing of Appeal

June 23, 1997—Last day of filing of petitions to intervene (see 39 CFR 3001.111(b))
July 2, 1997—Petitioners' Participant Statement or Initial Brief (see 39 CFR 3001.115(a) and (b))
July 22, 1997—Postal Service's Answering Brief (see 39 CFR 3001.115(c)
August 6, 1997—Petitioners' Reply Brief should Petitioner choose to file one (see 39 CFR 3001.115(d))
August 13, 1997—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (see 39 CFR 3001.116)
September 25, 1997—Expiration of the Commission's 120-day decisional schedule (see 39 USC 404(b)(5))

[FR Doc. 97–14605 Filed 6–4–97; 8:45 am]
BILLING CODE 7710–FW–P

POSTAL RATE COMMISSION

[Order No. 1178; Docket No. A97–20]

Popejoy, Iowa 50227 (Thelma Stewart, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Before Commissioners: Edward J. Gleiman, Chairman; H. Edward Quick, Jr., Vice-Chairman; George W. Haley; and W.H. ''Trey'' LeBlanc III.

Issued May 30, 1997.

Docket Number: A97–20.

Name of Affected Post Office: Popejoy, Iowa 50227.

Name(s) of Petitioner(s): Thelma Stewart.

Type of Determination: Closing.

Date of Filing of Appeal Papers: May 28, 1997.

Categories of Issues Apparently Raised:

1. Effect on the community (39 U.S.C. 404(b)(2)(A)).

2. Effect on postal services (39 U.S.C. 404(b)(2)(C)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission orders: (a) The Postal Service shall file the record in this appeal by June 12, 1997.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Margaret P. Crenshaw,

Secretary.

May 28, 1997—Filing of Appeal letter
May 30, 1997—Commission Notice and Order of Filing of Appeal
June 23, 1997—Last day of filing of petitions to intervene (see 39 CFR 3001.111(b))
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July 22, 1997—Postal Service's Answering Brief (see 39 CFR 3001.115(c))
August 6, 1997—Petitioners' Reply Brief should Petitioner choose to file one (see 39 CFR 3001.115(d))
August 13, 1997—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (see 39 CFR 3001.116)
September 25, 1997—Expiration of the Commission's 120-day decisional schedule (see 39 U.S.C. 404(b)(5))

[FR Doc. 97–14604 Filed 6–4–97; 8:45 am]
BILLING CODE 7710–FW–P

POSTAL RATE COMMISSION

[Order No. 1177; Docket No. A97–19]

Rago, Kansas 67128 (Edwin J. Miller, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued May 30, 1997.

Before Commissioners: Edward J. Gleiman, Chairman; H. Edward Quick, Jr., Vice-Chairman; George W. Haley; and W.H. ''Trey'' LeBlanc III

Docket Number: A97–19.

Name of Affected Post Office: Rago, Kansas 67128.

Name(s) of Petitioner(s): Edwin J. Miller.

Type of Determination: Closing.

Date of Filing of Appeal Papers: May 28, 1997.

Categories of Issues Apparently Raised: 1. Effect on the community [39 U.S.C. 404(b)(2)(A)].

2. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission orders: (a) The Postal Service shall file the record in this appeal by June 12, 1997.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

May 28, 1997—Filing of Appeal letter
May 30, 1997—Commission Notice and Order of Filing of Appeal
June 23, 1997—Last day of filing of petitions to intervene [see 39 CFR 3001.111(b)]
July 2, 1997—Petitioners' Participant Statement or Initial Brief [see 39 CFR 3001.115(a) and (b)]
July 22, 1997—Postal Service's Answering Brief [see 39 CFR 3001.115(c)]
August 6, 1997—Petitioners' Reply Brief should Petitioner choose to file one [see 39 CFR 3001.115(d)]
August 13, 1997—Deadline for motions by any party requesting oral argument. The Commission will

schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR 3001.116]

September 25, 1997—Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. 404(b)(5)]

[FR Doc. 97–14603 Filed 6–4–97; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Removal of the Domestic Mail Manual Transition Book

AGENCY: Postal Service.

ACTION: Notice.

SUMMARY: Effective June 30, 1997, the Domestic Mail Manual Transition Book (DMMT) is removed as an official Postal Service document. This removal reflects the final disposition of postal rules and regulations contained in that document, which was part of the Domestic Mail Manual as incorporated by reference under title 39, Code of Federal Regulations, 111.1.

EFFECTIVE DATE: June 30, 1997.

FOR FURTHER INFORMATION CONTACT: Neil Berger, (202) 268–2859.

SUPPLEMENTARY INFORMATION: In revising the Domestic Mail Manual (DMM) for release as DMM Issue 46 on July 1, 1993, the Postal Service identified rules and procedures in the DMM that did not govern the eligibility for, and use of, domestic mail services. The Postal Service made a determination not to include that material in DMM Issue 46 and in subsequent issues of the DMM.

The identified material chiefly fell into two categories: (1) Recommendations for voluntary customer action; (2) internal instructions to postal employees. Other identified material not relating to mail classification included post office discontinuances, delivery policies, and philatelic procedures.

Pending the transfer of these rules and procedures to other documents, the Postal Service on July 1, 1993, published the identified material in a separate part of the DMM titled the Domestic Mail Manual Transition Book (DMMT). In creating the DMMT, the Postal Service provided that the rules included in that document remain in full force through June 30, 1994.

The purpose of that 1-year period was to allow the Postal Service to decide whether to rescind the rules in the DMMT or to incorporate them into other documents. As the following tables show, several changes were made to the DMMT since its publication.

The Postal Service rescinded the June 30, 1994, expiration date of the DMMT in a notice published on June 20, 1994, in the **Federal Register** (59 FR 31655–31656) and in Postal Bulletin 21870 (06–23–94). A subsequent notice of revision of the DMMT was published on October 23, 1996, in the **Federal Register** (61 FR 55053–55057) showing the removal or redesignation of nearly 75 percent of the material in the DMMT. Additional time was required to complete the transfer of the remaining material on application procedures, Express Mail acceptance and delivery, and postage meter procedures.

Table I shows the revisions made to the DMMT before a final disposition was made to selected sections. The Postal Bulletin, an official biweekly directive of the Postal Service, is cited by issue for the notice of these revisions.

Table II shows all DMMT sections rescinded (deleted) or transferred to certain Postal Service documents. The Postal Bulletin issue cited represents the issue containing the final revision action and disposition. The Postal Bulletin issues and the titles of the revisions used to construct this table are as follows:

- 21931 (10–24–96), Issuance of Revised Postal Operations Manual (this Postal Bulletin issue not cited in table).
- 21937 (01–16–97) Issuance of Revised Publication 2.
- 21940 (02–27–97), Issuance of Handbook DM–701 (this Postal Bulletin issue corrects and supersedes table published in Postal Bulletin 21931).
- 21941 (03–13–97), Express Mail Acceptance and Delivery.
- 21948 (06–19–97), Removal of Domestic Mail Manual Transition Book.

Stanley F. Mires,

Chief Counsel, Legislative.

TABLE I.—REVISIONS TO DMMT

Postal Bulletin	Action	Effective date	Sections	Subject
21846 (07–22–93)	Deletion	08–01–93	DMMT 164.5	First-day cancellations procedures for affixing stamps.
21850 (09–16–93)	Revision	07–01–93	DMMT 222.23	Express Mail security measures.
21851 (09–30–93)	Transfer	06–09–94	DMMT 113 to POM (Issue 6) 211 and 221.	Post office discontinuance procedures.
21851 (09–30–93)	Transfer	09–30–93	DMMT 123.3, 123.5, 124.1, and 124.5 to POM (Issue 6) 127 and 128.	Acceptance of nonmailable matter.
21856 (12–09–93)	Deletion	12–09–93	DMMT 426.311, 426.312, 426.32, 426.33, 426.35, and 427.52.	Second-class applications for additional entry.
21857 (12–23–93)	Revision	07–01–93	DMMT 138.4 and 917.23	Absentee balloting materials and nonrenewed business reply mail permits.
21869 (06–09–94)	Transfer and Revision	06–09–94	MMT 159.4 and 159.5 to POM (Issue 6) 650.	Dead mail and mail recovery centers.
21879 (10–27–94), 21880 (11–10–94).	Revision	10–27–94	DMMT 912.72, 913.71, 914.434, and 934.82.	Acceptance procedures for large-volume mailings with special services.
21897 (07–06–95)	Deletion	07–06–95	DMMT 465.2, 465.3, 664.2, 664.3, 784.2, and 784.3.	Elimination of requirement to submit written request to mail under plant-verified drop shipment (PVDS).

TABLE II.—FINAL DISPOSITION OF MATERIAL FROM DMMT

Code	Document and edition
39 CFR 501	Title 39, Code of Federal Regulations, Part 501, Authorization to Manufacture and Distribute Postage Meters (July 1, 1995).
DMM	Domestic Mail Manual Issue 51 (January 1, 1997).
HBK DM–701	Handbook DM–701, Procedures for Mailer Applications (January 1997).
POM	Postal Operations Manual Issue 7 (August 1, 1996).
PUB 2	Publication 2, Packaging for Mailing (November 1996).

DMMT	Action	Effective date	Postal Bulletin	Final disposition
113.1	Transfer	08–01–96	21940 (02–27–97)	POM 123.1.
113.2	Transfer	08–01–96	21940 (02–27–97)	POM 123.6.
113.3	Transfer	08–01–96	21940 (02–27–97)	POM 123.7.
113.4	Transfer	08–01–96	21940 (02–27–97)	POM 123.8.
113.5	Transfer	08–01–96	21940 (02–27–97)	POM 123.41.
113.6	Transfer	08–01–96	21940 (02–27–97)	POM 123.13.
113.7	Transfer	01–01–96	21940 (02–27–97)	POM 126.4.
113.8	Transfer	08–01–96	21940 (02–27–97)	POM 125.361.
113.9	Transfer	08–01–96	21940 (02–27–97)	POM 125.5.
121.1	Transfer	11–01–96	21937 (01–16–97)	PUB 2.
121.2	Transfer	11–01–96	21937 (01–16–97)	PUB 2.
121.3	Transfer	11–01–96	21937 (01–16–97)	PUB 2.
121.4	Transfer	11–01–96	21937 (01–16–97)	PUB 2.
121.5	Transfer	11–01–96	21937 (01–16–97)	PUB 2.
121.6	Transfer	11–01–96	21937 (01–16–97)	PUB 2.
121.7	Transfer	11–01–96	21937 (01–16–97)	PUB 2.
122.3	Transfer	01–01–97	21940 (02–27–97)	DMM A010.
122.6	Transfer	01–01–97	21940 (02–27–97)	DMM A010.
122.9	Transfer	01–01–97	21940 (02–27–97)	DMM A010.
123.3	Transfer	08–01–96	21940 (02–27–97)	POM 138.1.
123.5	Transfer	08–01–96	21940 (02–27–97)	POM 138.2.
124.1	Transfer	08–01–96	21940 (02–27–97)	POM 139.1.
124.5	Transfer	08–01–96	21940 (02–27–97)	POM 139.2.
137.1	Transfer	08–01–96	21940 (02–27–97)	POM 491.5.
137.2	Transfer	01–16–97	21937 (01–16–97)	DMM E060.
141.2	Transfer	08–01–96	21940 (02–27–97)	POM 132.2.
142.2	Transfer	08–01–96	21940 (02–27–97)	POM 132.1.
142.4	Transfer	08–01–96	21940 (02–27–97)	POM 132.4.
142.5	Transfer	01–01–97	21940 (02–27–97)	DMM G013.
143.2	Transfer	01–01–97	21940 (02–27–97)	HBK DM–701.
143.3	Transfer	01–01–97	21940 (02–27–97)	HBK DM–701.
144.2	Transfer	06–30–97	21948 (02–27–97)	POM 181.
144.3	Transfer	06–30–97	21948 (02–27–97)	POM 182.
144.5	Transfer	06–30–97	21948 (02–27–97)	POM 181.
144.6	Transfer	06–30–97	21948 (02–27–97)	POM 182.
144.7	Transfer	06–30–97	21948 (02–27–97)	POM 182.
144.9	Transfer	06–30–95	21940 (02–27–97)	39 CFR 501.
145.7	Transfer	01–01–97	21940 (02–27–97)	HBK DM–701.
145.8	Transfer	01–01–97	21940 (02–27–97)	HBK DM–701.
145.9	Transfer	01–01–97	21940 (02–27–97)	HBK DM–701.
146.2	Transfer	01–01–97	21940 (02–27–97)	DMM P011.
147.3	Transfer	08–01–96	21940 (02–27–97)	POM 146.1.
149.2	Transfer	08–01–96	21940 (02–27–97)	POM 147.1
149.6	Transfer	08–01–96	21940 (02–27–97)	POM 147.4.
149.7	Transfer	08–01–96	21940 (02–27–97)	POM 147.5.
151.5	Transfer	08–01–96	21940 (02–27–97)	POM 632.5.
152.1	Transfer	08–01–96	21940 (02–27–97)	POM 326.1.
152.2	Transfer	08–01–96	21940 (02–27–97)	POM 326.2.
152.3	Transfer	08–01–96	21940 (02–27–97)	POM 326.3.
152.4	Transfer	08–01–96	21940 (02–27–97)	POM 326.4
152.5	Transfer	08–01–96	21940 (02–27–97)	POM 326.5
152.6	Transfer	08–01–96	21940 (02–27–97)	POM 326.6
153.1	Transfer	08–01–96	21940 (02–27–97)	POM 611.
153.2	Transfer	08–01–96	21940 (02–27–97)	POM 612.
153.3	Transfer	08–01–96	21940 (02–27–97)	POM 613.
153.4	Transfer	08–01–96	21940 (02–27–97)	POM 614.
153.6	Transfer	08–01–96	21940 (02–27–97)	POM 615.
153.7	Transfer	08–01–96	21940 (02–27–97)	POM 616
153.8	Transfer	08–01–96	21940 (02–27–97)	POM 617.2.
153.9	Transfer	08–01–96	21940 (02–27–97)	POM 618.
154.1	Transfer	08–01–96	21940 (02–27–97)	POM 327.1.
154.2	Transfer	08–01–96	21940 (02–27–97)	POM 327.2.

DMMT	Action	Effective date	Postal Bulletin	Final disposition
154.3	Transfer	08–01–96	21940 (02–27–97)	POM 327.3.
154.4	Transfer	08–01–96	21940 (02–27–97)	POM 327.4.
154.5	Transfer	08–01–96	21940 (02–27–97)	POM 327.5.
154.6	Transfer	08–01–96	21940 (02–27–97)	POM 327.6.
154.7	Transfer	08–01–96	21940 (02–27–97)	POM 327.7.
154.8	Transfer	08–01–96	21940 (02–27–97)	POM 327.8.
155.1	Transfer	08–01–96	21940 (02–27–97)	POM 641.2.
155.2	Transfer	08–01–96	21940 (02–27–97)	POM 631.3.
155.3	Transfer	08–01–96	21940 (02–27–97)	POM 643.1.
155.4	Transfer	08–01–96	21940 (02–27–97)	POM 632.
155.5	Transfer	08–01–96	21940 (02–27–97)	POM 642.3.
155.6	Transfer	08–01–96	21940 (02–27–97)	POM 631.45.
156.1	Transfer	08–01–96	21940 (02–27–97)	POM 652.
156.2	Transfer	08–01–96	21940 (02–27–97)	POM 652.
156.3	Transfer	08–01–96	21940 (02–27–97)	POM 653.
156.4	Transfer	01–01–97	21940 (02–27–97)	DMM D042.
156.5	Transfer	08–01–96	21940 (02–27–97)	POM 632.5.
157.1	Transfer	08–01–96	21940 (02–27–97)	POM 661.
157.2	Transfer	08–01–96	21940 (02–27–97)	POM 662.
157.3	Transfer	08–01–96	21940 (02–27–97)	POM 663.
157.4	Transfer	08–01–96	21940 (02–27–97)	POM 664.
157.5	Transfer	08–01–96	21940 (02–27–97)	POM 665.
157.6	Transfer	08–01–96	21940 (02–27–97)	POM 666.1.
157.7	Transfer	08–01–96	21940 (02–27–97)	POM 666.2.
158.1	Transfer	08–01–96	21940 (02–27–97)	POM 619.1.
158.2	Transfer	08–01–96	21940 (02–27–97)	POM 619.2.
158.3	Transfer	08–01–96	21940 (02–27–97)	POM 619.3.
158.4	Transfer	08–01–96	21940 (02–27–97)	POM 619.4.
159.1	Transfer	08–01–96	21940 (02–27–97)	POM 681.
159.2	Transfer	08–01–96	21940 (02–27–97)	POM 682.
159.3	Transfer	08–01–96	21940 (02–27–97)	POM 683.
159.4	Transfer	08–01–96	21940 (02–27–97)	POM 691.
159.5	Transfer	08–01–96	21940 (02–27–97)	POM 692.
161.1	Transfer	08–01–96	21940 (02–27–97)	POM 211.
161.2	Transfer	08–01–96	21940 (02–27–97)	POM 211.
161.3	Transfer	08–01–96	21940 (02–27–97)	POM 211.
162.1	Transfer	08–01–96	21940 (02–27–97)	POM 211a.
162.2	Transfer	08–01–96	21940 (02–27–97)	POM 212.1.
162.3	Transfer	08–01–96	21940 (02–27–97)	POM 211b.
163.1	Transfer	08–01–96	21940 (02–27–97)	POM 212.3.
163.2	Transfer	08–01–96	21940 (02–27–97)	POM 212.32.
163.3	Transfer	08–01–96	21940 (02–27–97)	POM 222.
163.4	Transfer	08–01–96	21940 (02–27–97)	POM 226.
163.5	Transfer	08–01–96	21940 (02–27–97)	POM 221.
163.51	Transfer	08–01–96	21940 (02–27–97)	POM 221.1.
163.52	Transfer	08–01–96	21940 (02–27–97)	POM 222.
163.521	Transfer	08–01–96	21940 (02–27–97)	POM 222.2.
163.522	Transfer	08–01–96	21940 (02–27–97)	POM 222.3.
163.523	Transfer	08–01–96	21940 (02–27–97)	POM 222.4.
163.524	Transfer	08–01–96	21940 (02–27–97)	POM 222.5.
163.525	Transfer	08–01–96	21940 (02–27–97)	POM 222.6.
163.531	Transfer	08–01–96	21940 (02–27–97)	POM 224.2.
163.532	Transfer	08–01–96	21940 (02–27–97)	POM 224.3.
163.533	Transfer	08–01–96	21940 (02–27–97)	POM 224.4.
163.534	Transfer	08–01–96	21940 (02–27–97)	POM 224.5.
163.535	Transfer	08–01–96	21940 (02–27–97)	POM 224.7.
163.536	Transfer	08–01–96	21940 (02–27–97)	POM 224.1.
163.537	Transfer	08–01–96	21940 (02–27–97)	POM 221.4.
163.6	Transfer	08–01–96	21940 (02–27–97)	POM 221.3.
164.1	Transfer	08–01–96	21940 (02–27–97)	POM 231.1.
164.11	Transfer	08–01–96	21940 (02–27–97)	POM 231.1.
164.12	Transfer	08–01–96	21940 (02–27–97)	POM 231.21.
164.13	Transfer	08–01–96	21940 (02–27–97)	POM 231.22.
164.2	Transfer	08–01–96	21940 (02–27–97)	POM 231.1.
164.3	Transfer	08–01–96	21940 (02–27–97)	POM 231.5.
164.4	Transfer	08–01–96	21940 (02–27–97)	POM 232.
164.41	Transfer	08–01–96	21940 (02–27–97)	POM 232.3.
164.42	Transfer	08–01–96	21940 (02–27–97)	POM 234.
164.43	Transfer	08–01–96	21940 (02–27–97)	POM 236.1.
164.44	Transfer	08–01–96	21940 (02–27–97)	POM 231.9.
164.45	Deletion	08–01–96	21940 (02–27–97)	
164.46	Transfer	08–01–96	21940 (02–27–97)	POM 231.8.
164.5	Transfer	08–01–96	21940 (02–27–97)	POM 232.

DMMT	Action	Effective date	Postal Bulletin	Final disposition
164.51	Transfer	08–01–96	21940 (02–27–97)	POM 232.1.
164.52	Transfer	08–01–96	21940 (02–27–97)	POM 232.2.
164.531	Transfer	08–01–96	21940 (02–27–97)	POM 233.1.
164.532	Transfer	08–01–96	21940 (02–27–97)	POM 233.2.
164.533	Deletion	08–01–96	21940 (02–27–97)	
164.534	Transfer	08–01–96	21940 (02–27–97)	POM 233.6.
164.535	Transfer	08–01–96	21940 (02–27–97)	POM 233.3.
164.536	Transfer	08–01–96	21940 (02–27–97)	POM 233.4.
164.537	Transfer	08–01–96	21940 (02–27–97)	POM 233.5.
164.538	Transfer	08–01–96	21940 (02–27–97)	POM 233.7.
164.539	Transfer	08–01–96	21940 (02–27–97)	POM 233.8.
164.54	Transfer	08–01–96	21940 (02–27–97)	POM 233.9.
164.6	Deletion	08–01–96	21940 (02–27–97)	
164.7	Transfer	08–01–96	21940 (02–27–97)	POM 231.6.
164.71	Transfer	08–01–96	21940 (02–27–97)	POM 231.61.
164.72	Transfer	08–01–96	21940 (02–27–97)	POM 231.62.
164.73	Transfer	08–01–96	21940 (02–27–97)	POM 231.63.
164.741	Transfer	08–01–96	21940 (02–27–97)	POM 231.7.
164.742	Transfer	08–01–96	21940 (02–27–97)	POM 231.7.
164.751	Transfer	08–01–96	21940 (02–27–97)	POM 244.1.
164.752	Transfer	08–01–96	21940 (02–27–97)	POM 244.2.
164.753	Transfer	08–01–96	21940 (02–27–97)	POM 244.3.
164.754	Transfer	08–01–96	21940 (02–27–97)	POM 244.3.
164.755	Transfer	08–01–96	21940 (02–27–97)	POM 244.3.
164.756	Transfer	08–01–96	21940 (02–27–97)	POM 244.4.
164.757	Transfer	08–01–96	21940 (02–27–97)	POM 244.1.
164.758	Transfer	08–01–96	21940 (02–27–97)	POM 244.5.
164.76	Transfer	08–01–96	21940 (02–27–97)	POM 238.2.
164.77	Transfer	08–01–96	21940 (02–27–97)	POM 238.1.
164.8	Transfer	08–01–96	21940 (02–27–97)	POM 241.
164.81	Transfer	08–01–96	21940 (02–27–97)	POM 241.
164.82	Transfer	08–01–96	21940 (02–27–97)	POM 241.
164.831	Transfer	08–01–96	21940 (02–27–97)	POM 243.1.
164.832	Transfer	08–01–96	21940 (02–27–97)	POM 243.2.
164.833	Transfer	08–01–96	21940 (02–27–97)	POM 243.3.
164.834	Transfer	08–01–96	21940 (02–27–97)	POM 243.4.
164.835	Transfer	08–01–96	21940 (02–27–97)	POM 243.1.
164.836	Transfer	08–01–96	21940 (02–27–97)	POM 247.
164.84	Transfer	08–01–96	21940 (02–27–97)	POM 232.3.
164.9	Transfer	08–01–96	21940 (02–27–97)	POM 235.
165.1	Transfer	08–01–96	21940 (02–27–97)	POM 246.
165.2	Deletion	08–01–96	21940 (02–27–97)	
165.3	Transfer	08–01–96	21940 (02–27–97)	POM 239.
171.1	Transfer	08–01–96	21940 (02–27–97)	POM 236.1.
171.2	Transfer	08–01–96	21940 (02–27–97)	POM 236.2.
171.3	Transfer	08–01–96	21940 (02–27–97)	POM 236.22.
171.4	Transfer	08–01–96	21940 (02–27–97)	POM 236.3.
172	Transfer	08–01–96	21940 (02–27–97)	POM 236.4.
173.1	Transfer	08–01–96	21940 (02–27–97)	POM 236.5.
173.2	Transfer	08–01–96	21940 (02–27–97)	POM 236.6.
173.3	Transfer	08–01–96	21940 (02–27–97)	POM 236.7.
173.4	Transfer	08–01–96	21940 (02–27–97)	POM 236.8.
174.1	Transfer	08–01–96	21940 (02–27–97)	POM 236.91.
174.2	Transfer	08–01–96	21940 (02–27–97)	POM 236.92.
174.3	Transfer	08–01–96	21940 (02–27–97)	POM 236.93.
175.1	Deletion	08–01–96	21940 (02–27–97)	
175.2	Deletion	08–01–96	21940 (02–27–97)	
176.1	Transfer	08–01–96	21940 (02–27–97)	POM 237.1.
176.2	Transfer	08–01–96	21940 (02–27–97)	POM 237.2.
222.2	Transfer	03–13–97	21941 (03–13–97)	POM 137.522, 137.523.
224.1	Transfer	03–13–97	21941 (03–13–97)	POM 137.541.
224.2	Transfer	03–13–97	21941 (03–13–97)	POM 674.42, 674.52.
226.1	Transfer	03–13–97	21941 (03–13–97)	POM 137.561.
226.2	Transfer	03–13–97	21941 (03–13–97)	POM 674.61, 674.62.
273.3	Transfer	03–13–97	21941 (03–13–97)	POM 674.61, 674.62.
273.4	Transfer	03–13–97	21941 (03–13–97)	POM 137.542, 137.552, 137.562
286.1	Transfer	01–01–97	21941 (03–13–97)	DMM P011.1.6
286.2	Transfer	01–01–97	21941 (03–13–97)	DMM P011.1.6
292.3	Transfer	08–01–96	21940 (02–27–97)	POM 682.4
293.2	Transfer	03–13–97	21941 (03–13–97)	POM 814.5
332	Deletion	07–01–96	21940 (02–27–97)	
353	Deletion	07–01–96	21940 (02–27–97)	
423.1	Transfer	01–01–97	21940 (02–27–97)	HBK DM–701.

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423.2	Transfer	01–01–97	21940 (02–27–97)	HBK DM–701.
423.3	Transfer	01–01–97	21940 (02–27–97)	HBK DM–701.
423.4	Transfer	01–01–97	21940 (02–27–97)	HBK DM–701.
423.5	Transfer	01–01–97	21940 (02–27–97)	HBK DM–701.
423.6	Transfer	01–01–97	21940 (02–27–97)	HBK DM–701.
424.1	Transfer	01–01–97	21940 (02–27–97)	HBK DM–701.
424.2	Transfer	01–01–97	21940 (02–27–97)	HBK DM–701.
424.3	Transfer	01–01–97	21940 (02–27–97)	HBK DM–701.
424.7	Transfer	01–01–97	21940 (02–27–97)	HBK DM–701.
424.8	Transfer	01–01–97	21940 (02–27–97)	HBK DM–701.
425.4	Transfer	01–01–97	21940 (02–27–97)	HBK DM–701.
426.3	Transfer	01–01–97	21940 (02–27–97)	HBK DM–701.
426.4	Transfer	01–01–97	21940 (02–27–97)	HBK DM–701.
426.5	Transfer	01–01–97	21940 (02–27–97)	HBK DM–701.
426.6	Transfer	01–01–97	21940 (02–27–97)	HBK DM–701.
426.7	Transfer	01–01–97	21940 (02–27–97)	HBK DM–701.
427.5	Transfer	01–01–97	21940 (02–27–97)	HBK DM–701.
445.1	Transfer	01–01–97	21940 (02–27–97)	DMM200.
445.2	Transfer	01–01–97	21940 (02–27–97)	DMM045.
445.3	Transfer	01–01–97	21940 (02–27–97)	DMM045.
445.4	Transfer	01–01–97	21940 (02–27–97)	DMM045.
461.3	Transfer	01–01–97	21940 (02–27–97)	HBK DM–701.
463.1	Transfer	01–01–97	21940 (02–27–97)	HBK DM–701.
463.3	Transfer	01–01–97	21940 (02–27–97)	HBK DM–701.
463.4	Transfer	01–01–97	21940 (02–27–97)	HBK DM–701.
464.4	Transfer	01–01–97	21940 (02–27–97)	HBK DM–701.
464.5	Transfer	01–01–97	21940 (02–27–97)	HBK DM–701.
465.2	Transfer	01–01–97	21940 (02–27–97)	HBK DM–701.
465.3	Transfer	01–01–97	21940 (02–27–97)	HBK DM–701.
465.4	Transfer	01–01–97	21940 (02–27–97)	HBK DM–701.
465.5	Transfer	01–01–97	21940 (02–27–97)	HBK DM–701.
561.2	Deletion	07–01–97	21940 (02–27–97)	
562.4	Deletion	07–01–97	21940 (02–27–97)	
563.5	Deletion	07–01–97	21940 (02–27–97)	
564.4	Deletion	07–01–97	21940 (02–27–97)	
565.5	Deletion	07–01–97	21940 (02–27–97)	
566.6	Deletion	07–01–97	21940 (02–27–97)	
568.1	Deletion	07–01–97	21940 (02–27–97)	
568.2	Deletion	07–01–97	21940 (02–27–97)	
574.3	Deletion	07–01–97	21940 (02–27–97)	
575.1	Deletion	07–01–97	21940 (02–27–97)	
575.2	Deletion	07–01–97	21940 (02–27–97)	
575.3	Deletion	07–01–97	21940 (02–27–97)	
581.1	Deletion	07–01–97	21940 (02–27–97)	
583.1	Deletion	07–01–97	21940 (02–27–97)	
583.2	Deletion	07–01–97	21940 (02–27–97)	
583.3	Deletion	07–01–97	21940 (02–27–97)	
583.4	Deletion	07–01–97	21940 (02–27–97)	
583.5	Deletion	07–01–97	21940 (02–27–97)	
624.7	Transfer	01–01–97	21940 (02–27–97)	DMM E651.
624.8	Transfer	01–01–97	21940 (02–27–97)	DMM M050.
626.2	Transfer	01–01–97	21940 (02–27–97)	DMM E670.
626.3	Transfer	01–01–97	21940 (02–27–97)	DMM E670.
626.4	Transfer	01–01–97	21940 (02–27–97)	DMM E670.
626.5	Transfer	01–01–97	21940 (02–27–97)	DMM E670.
627.1	Transfer	01–01–97	21940 (02–27–97)	DMM E670.
627.2	Transfer	01–01–97	21940 (02–27–97)	DMM E670.
644.1	Transfer	01–01–97	21940 (02–27–97)	DMM M045.
644.2	Transfer	01–01–97	21940 (02–27–97)	DMM M045.
644.3	Transfer	01–01–97	21940 (02–27–97)	DMM M045.
644.4	Transfer	01–01–97	21940 (02–27–97)	DMM M045.
645.1	Transfer	01–01–97	21940 (02–27–97)	DMM M045.
664.2	Transfer	01–01–97	21940 (02–27–97)	DMM P750.
664.3	Transfer	01–01–97	21940 (02–27–97)	DMM P750.
664.4	Transfer	01–01–97	21940 (02–27–97)	DMM P750.
664.5	Transfer	01–01–97	21940 (02–27–97)	DMM P750.
665.3	Transfer	01–01–97	21940 (02–27–97)	HBK DM–701.
772.4	Transfer	01–01–97	21940 (02–27–97)	DMM E652.
767.4	Transfer	01–01–97	21940 (02–27–97)	DMM M630.
767.5	Transfer	01–01–97	21940 (02–27–97)	DMM M045.
767.6	Transfer	01–01–97	21940 (02–27–97)	DMM M045.
784.2	Transfer	01–01–97	21940(02–27–97)	DMM P750.
784.3	Transfer	01–01–97	21940(02–27–97)	DMM P750.

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784.4	Transfer	01–01–97	21940(02–27–97)	DMM P750.
784.5	Transfer	01–01–97	21940(02–27–97)	DMM P750.
785.2	Transfer	01–01–97	21940(02–27–97)	HBK DM–701.
785.4	Transfer	01–01–97	21940(02–27–97)	HBK DM–701.
911.2	Transfer	08–01–96	21940(02–27–97)	POM 811.1.
911.25	Transfer	08–01–96	21940(02–27–97)	POM 811.2.
911.251	Transfer	08–01–96	21940(02–27–97)	POM 811.21.
911.252	Transfer	08–01–96	21940(02–27–97)	POM 811.22.
911.253	Transfer	08–01–96	21940(02–27–97)	POM 811.23.
911.254	Transfer	08–01–96	21940(02–27–97)	POM 811.24.
911.255	Transfer	08–01–96	21940(02–27–97)	POM 811.25.
911.26	Transfer	08–01–96	21940(02–27–97)	POM 811.26.
911.3	Transfer	08–01–96	21940(02–27–97)	POM 811.3.
911.4	Transfer	08–01–96	21940(02–27–97)	POM 811.4.
911.5	Transfer	08–01–96	21940(02–27–97)	POM 811.5.
912.4	Transfer	08–01–96	21940(02–27–97)	POM 812.
912.5	Transfer	08–01–96	21940(02–27–97)	POM 812.2.
912.6	Transfer	08–01–96	21940(02–27–97)	POM 812.3.
912.7	Transfer	08–01–96	21940(02–27–97)	POM 812.4.
913.4	Transfer	08–01–96	21940(02–27–97)	POM 813.
913.5	Transfer	08–01–96	21940(02–27–97)	POM 813.2.
913.6	Transfer	08–01–96	21940(02–27–97)	POM 813.3.
913.7	Transfer	08–01–96	21940(02–27–97)	POM 813.4.
913.71	Transfer	08–01–96	21940(02–27–97)	POM 813.41.
913.72	Transfer	08–01–96	21940(02–27–97)	POM 813.42.
913.73	Transfer	08–01–96	21940(02–27–97)	POM 813.5.
913.74	Transfer	08–01–96	21940(02–27–97)	POM 813.6.
914.4	Transfer	08–01–96	21940(02–27–97)	POM 814.
914.5	Transfer	08–01–96	21940(02–27–97)	POM 814.2.
914.6	Transfer	08–01–96	21940(02–27–97)	POM 814.24.
914.61	Transfer	08–01–96	21940(02–27–97)	POM 814.241.
914.62	Transfer	08–01–96	21940(02–27–97)	POM 814.242.
914.63	Transfer	08–01–96	21940(02–27–97)	POM 814.243.
914.64	Transfer	08–01–96	21940(02–27–97)	POM 814.25.
914.65	Transfer	08–01–96	21940(02–27–97)	POM 814.26.
914.66	Deletion	08–01–96	21940(02–27–97)	
914.67	Deletion	08–01–96	21940(02–27–97)	
914.68	Transfer	08–01–96	21940(02–27–97)	POM 814.17.
914.69	Transfer	08–01–96	21940(02–27–97)	POM 814.27.
914.7	Transfer	08–01–96	21940(02–27–97)	POM 814.3.
914.8	Transfer	08–01–96	21940(02–27–97)	POM 814.4.
915.5	Transfer	08–01–96	21940(02–27–97)	POM 815.
917.2	Transfer	01–16–97	21940(02–27–97)	DAM S922.
919.2	Transfer	01–16–97	21937(01–16–97)	DAMM S923.
919.7	Transfer	01–16–97	21937(01–16–97)	DMM S923.
931.3	Transfer	08–01–96	21940(02–27–97)	POM 821.1.
932.4	Transfer	08–01–96	21940(02–27–97)	POM 822.1.
932.41	Transfer	08–01–96	21940(02–27–97)	POM 822.11.
932.42	Transfer	08–01–96	21940(02–27–97)	POM 822.2.
933.4	Transfer	08–01–96	21940(02–27–97)	POM 823.
934.6	Transfer	08–01–96	21940(02–27–97)	POM 824.1, 824.2, 824.3, 824.4, 824.5, 824.6.
934.7	Transfer	08–01–96	21940(02–27–97)	POM 824.7.
934.8	Transfer	08–01–96	21940(02–27–97)	POM 824.8.
941.1	Transfer	08–01–96	21940(02–27–97)	POM 831.
941.3	Transfer	08–01–96	21940 (02–27–97)	POM 832.
941.5	Transfer	08–01–96	21940 (02–27–97)	POM 833.
941.6	Transfer	08–01–96	21940 (02–27–97)	POM 834.
941.7	Transfer	08–01–96	21940 (02–27–97)	POM 835.
941.8	Transfer	08–01–96	21940 (02–27–97)	POM 836.
951.1	Transfer	08–01–96	21940 (02–27–97)	POM 841.1.
951.2	Transfer	08–01–96	21940 (02–27–97)	POM 841.2.
951.3	Transfer	08–01–96	21940 (02–27–97)	POM 841.3.
951.4	Transfer	08–01–96	21940 (02–27–97)	POM 841.4.
951.5	Transfer	08–01–96	21940 (02–27–97)	POM 841.5.
951.6	Transfer	08–01–96	21940 (02–27–97)	POM 841.6.
951.7	Transfer	08–01–96	21940 (02–27–97)	POM 841.7.
951.8	Transfer	08–01–96	21940 (02–27–97)	POM 841.8.
952.1	Transfer	08–01–96	21940 (02–27–97)	POM 842.1.
952.2	Transfer	08–01–96	21940 (02–27–97)	POM 842.2.
952.3	Transfer	08–01–96	21940 (02–27–97)	POM 842.3.
952.4	Transfer	08–01–96	21940 (02–27–97)	POM 842.4
953.3	Transfer	08–01–96	21940 (02–27–97)	POM 843.1.

DMMT	Action	Effective date	Postal Bulletin	Final disposition
953.4	Transfer	08–01–96	21940 (02–27–97)	POM 843.2.
954.7	Transfer	08–01–96	21940 (02–27–97)	POM 844.

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POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service.

ACTION: Notice of a new system of records and the addition of new routine uses and modifications to two existing systems of records.

SUMMARY: The purpose of this document is to publish notice of the establishment of a new system of records, USPS 050.060, Finance Records—Accounts Payable Files. It also publishes notice of a modification to an existing system of records and the addition of new routine uses to that and another existing system of records.

These proposals are prompted by data collection and sharing requirements of the Debt Collection Improvement Act of 1996 (Pub. L. 104–134). Pursuant to that Act, the Department of the Treasury is establishing a Treasury Offset Program under which it will centrally gather and cross-match certain payment and debtor records of participating agencies for the purpose of identifying delinquent debtors due to receive federal payments and offsetting the payments to satisfy the debt. As a participating agency, the Postal Service plans to disclose limited information from its accounts payable, accounts receivable, and payroll files.

The new system of records collects the names, addresses, and taxpayer identification numbers of individuals and entities to whom the Postal Service owes payment for equipment, goods, or services provided. Information collected is used to pay these creditors, which are primarily businesses not covered by the Privacy Act. For the reason that some of the taxpayer identification numbers contained in the system are being provided to Treasury for cross-matching may also be social security numbers, a new system of records is being established. Included in the system of records is a routine use that will permit the Postal Service to make the disclosure to Treasury.

In addition, similar routine uses are added to existing Privacy Act systems of records USPS 050.005, Finance Records—Accounts Receivable Files and USPS 050.020, Finance Records—Payroll System to allow disclosure of debtor and employee data, respectively, for purposes of participating in the Treasury Offset Program. System modifications and other new routine uses in system USPS 050.005 enhance the system description and permit disclosure of current, as well as delinquent, debt information to credit reporting agencies pursuant to the Debt Collection Improvement Act.

DATES: Any interested party may submit written comments on the proposed amendments and additions. This proposal will become effective without further notice July 15, 1997, unless comments received on or before that date result in a contrary determination.

ADDRESSES: Written comments on this proposal should be mailed or delivered to Payroll Accounting/Records, US Postal Service, 475 L'Enfant Plaza SW RM 8831, Washington, DC 20260–5243. Copies of all written comments will be available at the above address for public inspection and photocopying between 8 a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Betty E. Sheriff, (202) 268–2608.

SUPPLEMENTARY INFORMATION: The Debt Collection Act of 1982, as amended (Pub. L. 97–365) provides statutory authority for federal agencies to collect debts through administrative offset, provided that each agency publishes regulations for conducting the offset and gives debtors certain due process rights. The Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104–134, contains various provisions intended to maximize collection of federal debts while minimizing costs to collect those debts. One provision requires federal agencies to transfer non-tax debts delinquent for over 180 days to the Secretary of the Treasury for purposes of administrative offset against payments due elsewhere in the Government. The Act also requires an annual interagency computer match of the delinquent debts due all agencies to determine which debts are payable by active and retired federal employees. These requirements are met by agency participation in the Treasury Offset Program (TOP), a government-wide delinquent debt matching and payment offset program operated by the United States Department of the Treasury (Treasury).

TOP provides a one-stop source for identifying delinquent debtors receiving government funds and offsetting the delinquent debt using those same funds. Specifically maintained by the Treasury is a centralized database of qualified delinquent nontax debtor files provided by participating creditor agencies. Non-salary payments made by Treasury and other disbursing agencies, including the Postal Service, will be matched against the database. When a match occurs, the payment will be diverted to pay the delinquent debt, to the extent legally allowed.

Also matched at least annually against the delinquent debtor database are federal agency wage and retirement payment records. When a match occurs, the salary of a matched employee will be offset to pay the delinquent debt, to the extent legally allowed.

To the extent these statutes apply to the Postal Service or the Postal Service has elected to participate in TOP, the Postal Service proposes the following:

Part 1—System Modification to USPS 050.005, Finance Records—Accounts Receivable Files and the Addition of New Routine Uses to That System and a New Routine Use to System USPS 050.020, Finance Records—Payroll System

(a) Postal Service system of records USPS 050.005, Finance Records—Accounts Receivable Files. This system contains records used to facilitate debt collection and to monitor and record collections made by the Postal Service. To the extent records relate to individuals, as opposed to businesses, they are covered by the Privacy Act. As a participant in TOP, the Postal Service will disclose to Treasury pursuant to proposed routine use No. 9 the following information for each debtor who owes non-tax debts delinquent for a period of 180 days: Name, taxpayer identification number (TIN) or social security number (SSN), address, date delinquency began, initial delinquent amount, date debt originally opened, original amount of debt, debt type, and agency and control numbers. (Debts owed by current employees will not be referred to TOP.) On a periodic basis, payment agencies participating in TOP provide to Treasury their payment files reflecting federal fund vendor, benefit, or other payments for cross-matching with the delinquent debtor database. A

match on both taxpayer identification number and name is required to intercept a payment for offset.

The DCIA gives Treasury the authority to waive the matching agreement and verification requirements of sections (o) and (p) of the Privacy Act for administrative offset matching upon an agency's written certification that it has provided the debtor due process notice. Consequently, debtor records submitted to TOP will be accompanied by a certification that the debts are accurate and that necessary due process notification has been made to the debtor. In addition, the Postal Service will have provided the debtor notice of its intention to collect the debt through administrative offset.

The DCIA also authorizes agencies to obtain credit reports for debt collection purposes and to report both delinquent and non-delinquent commercial and consumer nontax debt to consumer reporting agencies. Proposed routine uses 10 and 11 permit such disclosures.

Finally, proposed modifications to the ''categories of records covered by the system'' enhance the system notice without altering the amount or character of the information collected.

(b) Postal Service system of records USPS 050.020, Finance Records—Payroll System. This system contains records used to handle all necessary payroll functions, including salary deductions. New routine use 32 will permit disclosure of limited information to Treasury for matching employee data against other agency debtor records. For matched records, the Postal Service will disclose to Treasury the date of birth, home address, and work address of the employee.

While the DCIA allows the Secretary of the Treasury to waive the requirements of subsections (o) and (p) of the Privacy Act for administrative offset, those requirements are not waived for salary offset matching. Consequently, as required by subsection (o), matching of Postal Service employee data with other agency debtor data will be done under a computer matching agreement concluded between the Postal Service and Treasury. In addition, pursuant to subsection (p), any discrepancies or inconsistencies developed as a result of the match, such as the amount of indebtedness, will be independently investigated and verified by Treasury prior to initiating offset with the Postal Service.

The Postal Service currently conducts salary offset matches with various federal agencies pursuant to the computer matching provisions of the Privacy Act. TOP will eliminate most of those matching programs since the matches will be centrally conducted by Treasury. Consequently, Postal Service participation in TOP will result in fewer disclosures of information to accomplish the same matching purpose of identifying delinquent debtors and offsetting salaries when voluntary repayment is not forthcoming.

Part 2—Establishment of New System of Records USPS 050.060—Finance Records—Accounts Payable Files

The Postal Service has historically maintained accounts payable records. However, accounts payable records clearly pertaining to individuals have been covered by existing systems of records. Because the remaining records are largely about businesses who provide transportation, cleaning, contract station, construction, and other services, they are not considered covered by the Privacy Act which applies to records about individuals. Nevertheless, in reviewing the planned disclosure of accounts payable records to Treasury for TOP cross-matching, it has come to our attention that, at least in the case of sole proprietors, the taxpayer identification number to be matched might also be a social security number. Consequently, a new system of records is being established to cover all accounts payable records to the extent they pertain to individuals or could be construed to pertain to individuals operating as a contractor or business.

Accounts payable records will be disclosed to Treasury pursuant to routine use No. 1 for matching against delinquent debtor files submitted by other federal agencies. Match and partial match information will be used to provide debtor locator/address information to creditor agencies. A match on both TIN and name is required to intercept a payment for offset.

Routine use No. 2 authorizes disclosure upon request of the name and address of the owner of a leased facility, or of the payee when this is a different individual.

The system modifications and additions are not expected to have any effect on individual privacy rights. As stated above, accounts payable information pertains primarily to businesses. To the extent that information within new system of records USPS 050.060 pertains to individuals, it relates to business transactions rather than to personal matters. Consequently, even in the event of an inadvertent improper disclosure, we do not anticipate an adverse impact on any individual's privacy rights. Nevertheless, appropriate safeguards are applied to protect information. Records are kept in a secured environment, with automated data processing physical and administrative security and technical software applied to data on computer media. Paper records are kept in a secured area of post offices and are made available internally on an official need-to-know basis. Contractors who maintain data collected by any of these systems are made subject to subsection (m) of the Privacy Act and are required to apply appropriate protections subject to the audit and inspection of the Postal Inspection Service.

The TOP system has several security features to protect data and restrict user access. Of key importance is that an agency user will be able to access information only about his or her particular agency record submission. For example, authorized Postal Service users will be able to access one of its own accounts receivable files and update it to reflect adjustments or payments. The user, however, cannot access the payment agency's file on the same individual, even though that individual's payment is being offset to pay a postal debt. Further, when a payment and delinquent debtor file matches, TOP provides notification of the match to both the creditor and payment agency. However, the creditor agency is not informed of the source of the offset.

Application and database security applied to the TOP database will use security group definitions to determine access to application functions and database tables. Password security schemes and user logon IDs, issued by the RISC/UNIX and TOP Host administrators, are used to prevent unauthorized access to the TOP system. Access to an agency's records is provided on a need-to-know basis as defined by the agency. A user accessing the TOP system must have an authorized user identification and password. The user's ID defines the data areas in the TOP system the user may access and the functions (read only, add data, delete data, update data) the user will be authorized to perform. Passwords will expire periodically after creation or a change. Audit trails will record any record change and who changed it.

With respect to the accuracy of information, the creditor agency is responsible for the validity and accuracy of its debts in the delinquent debtor database. It must update its file to reflect collections, additional fees, interest, or other changes to the debtor information. It must also validate account information when updated by TOP as a result of an offset. Periodically, Treasury will ask the creditor agency to

verify the status of its records in the database.

The Privacy Act permits agencies to disclose information without the consent of the records subject for ''routine uses,'' that is, for purposes that are compatible with the purposes for which the information is collected. The proposed routine uses meet the compatibility requirement of the Privacy Act.

It is the policy of the Postal Service that postal employees should honor their financial obligations. Because information within system USPS 050.020 is collected to handle payroll functions, which include adjustments to reflect a salary offset, proposed routine use No. 32 is clearly compatible with the purpose of the system.

Similarly, routine uses 9, 10, and 11 proposed for USPS 050.005 each allow a disclosure that will facilitate the collection of debts owed to the Postal Service. Since the system was established to facilitate the collection of debts, the compatibility standard is clearly met.

Routine use statements a through m referenced in new system of records USPS 050.060 have been applied to most of the Postal Service's systems of records as representing situations in which the Postal Service would routinely need to disclose information in the conduct of its business. Permitted by the Privacy Act are disclosures of information about a record subject to a congressional office at the request of the record subject. Present with regard to all Postal Service records is the need to disclose: For law enforcement purposes; in litigation involving the Postal Service; when obtaining from or providing to an agency information relevant to an agency decision; to an agency contractor fulfilling an agency function; to the Federal Records Center for storage; in proceedings before the Equal Employment Opportunity Commission or Merit Systems Protection Board; and to postal unions. Routine uses a through m were last published in the **Federal Register** on October 26, 1989 (54 FR 43654–43655).

Routine use No. 1 permits disclosure of payment records to identify payees who owe delinquent federal debts. Such disclosure is consistent with the system's purpose of offsetting any delinquent debts the creditor owes to the federal government. Routine use No. 2 permits disclosure of the name and address of the owner of leased property, or of the payee when different from the owner. Such disclosure is clearly consistent with the accounts payable function, particularly when identifying to whom government monies are paid.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed system changes has been sent to Congress and to the Office of Management and Budget for their evaluation.

USPS Privacy Act system 050.005 was last published in its entirety in the **Federal Register** on October 26, 1989 (54 FR 43666–43667) and was amended in the **Federal Register** on December 22, 1994 (59 FR 66061–66062) and December 7, 1995 (60 FR 62901). USPS Privacy Act system 050.020 was last published in its entirety in the **Federal Register** on December 4, 1992 (57 FR 57515–57519) and was amended in the **Federal Register** on November 22, 1993 (58 FR 61718–61719) and on June 12, 1996 (61 FR 29774). The Postal Service proposes amending these systems as shown below.

USPS 050.005

SYSTEM NAME:

Finance Records—Accounts Receivable Files, 050.005.

* * * * *

CATEGORIES OF RECORDS COVERED BY THE SYSTEM:

(CHANGE TO READ) Debtor's name, address, telephone number, and social security number; invoice and other information relating to the amount, history, and status of the claim; information relating to due process notice; and records reflecting information obtained from or disclosed to consumer reporting or credit reporting agencies for purposes of recovering the debt.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(CHANGE TO READ) Routine use statements a, b, c, d, e, f, g, h, j, k, l, and m listed in the prefatory statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:

* * * * *

(ADD THE FOLLOWING:)

9. Disclosure of information about individuals who are over 180 days delinquent in debts owed to the Postal Service may be made to the Department of the Treasury for cross-matching under its Treasury Offset Program. Disclosure will be limited to information needed to establish the identity of the individual as a payee of funds payable by another federal agency and to offset those funds by administrative offset.

10. Disclosure of information that a person is responsible for a claim which is current may be made to a consumer reporting agency or commercial reporting agency.

11. Disclosure of information about individuals from whom the Postal Service is attempting to collect or compromise a claim may be made to consumer reporting agencies for the purpose of obtaining a consumer report as defined in the Fair Credit Reporting Act.

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 PURPOSES OF SUCH USES:

(CHANGE TO READ) Routine use statements a, b, c, d, e, f, g, h, j, k, l, and m listed in the prefatory statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:

* * * * *

(ADD THE FOLLOWING:)

32. Disclosure of information about current or former postal employees may be made to the Department of the Treasury for approved computer matching efforts under its Treasury Offset Program. Disclosure will be limited to information needed to establish the identity of the employee as an individual owing a delinquent debt to another federal agency and to offset the salary of the employee to repay that debt.

USPS 050.060

SYSTEM NAME:

Finance Records—Accounts Payable Files, USPS 050.060.

SYSTEM LOCATIONS:

Post offices; accounting service centers; and Postal Service Headquarters, Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals or entities to whom the Postal Service owes, or makes payment to, for services or materials received. Payments relate to expenses incurred for rental of properties used by the Postal Service; job cleaning; reimbursement of carriers who use privately owned vehicles to deliver mail; procurement of employee uniforms; air, highway, and

contract transportation services; indemnity claims made for damage or loss to certain classes of mail; employee travel; capital investments such as facility projects; mortgages on postal-owned properties; administrative tort claims; and various other equipment, supplies, and services procured by the Postal Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, and taxpayer identification number (or social security number) of creditor; amount, status, and history of the purchase or lease including invoices and control documents; and payment history including any adjustments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 404, and 1206; Public Law 104–134.

PURPOSE(S):

Information within this system is used to verify charges for goods and services received; to assure charges are properly authorized and services and materials are delivered; to offset any delinquent debts the creditor owes to the federal government; and to promptly pay creditors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements a, b, c, d, e, f, g, h, j, k, l, and m listed in the prefatory statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses follow:

1. Disclosure of information about individuals on whom the Postal Service has established accounts payable may be made to the Department of the Treasury for cross-matching under its Treasury Offset Program. Disclosure will be limited to information needed to establish the identity of the individual as a delinquent debtor of another federal agency and to offset the payment to pay the debt.

2. Disclosure of the name and address of the owner of leased property, or of the payee when different from the owner, may be made upon request.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and computer storage media.

RETRIEVABILITY:

Name of creditor and taypayer identification number (Social Security number, if an individual).

SAFEGUARDS:

Hard copy records and computers containing information within this system of records are located in a building with controlled access. Access to the building and to controlled areas within the building is restricted by the use of guards and authorized badges and/or card keys. Computer systems are protected with an installed security software package, the use of computer log-on IDs, and operating system controls. Access is limited by those means to persons whose duties require such access.

RETENTION AND DISPOSAL:

a. See the following systems descriptions for retentions of accounts payable-related records: USPS 050.010; 050.040; 160.010; 160.020; 200.020; and 200.030.

b. Stop Payment Cases. Cut off the file at the end of each calendar year. Destroy 8 years from the date of cutoff.

c. Notice of Remittances Received. Cut off the file each fiscal year. Destroy 8 years from the date of cutoff.

SYSTEM MANAGER(S) AND ADDRESS:

VICE PRESIDENT, CONTROLLER, U.S. POSTAL SERVICE, 475 L'ENFANT PLAZA SW., WASHINGTON DC 20260–5200.

NOTIFICATION PROCEDURE:

Individuals wanting to know whether information about them is maintained in this system of records must address inquiries in writing to the system manager. Inquiries must contain the individual's name and taxpayer identification number (or social security number).

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and the Postal Service Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Information is furnished by Postal Service creditors, employees, supervisors, and accounting systems and by other federal agencies to whom the creditor is delinquently indebted. Some information may be duplicated in other Privacy Act systems of records including USPS 010.030, 050.010, 050.040, 160.010, 160.020, 200.020 and 200.030.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–14729 Filed 6–4–97; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Privacy Act of 1974, System of Records

AGENCY: Postal Service.

ACTION: Notice of the addition of a new routine use and modifications to an existing system of records; correction.

SUMMARY: In notice document 97–12267 beginning on page 25980 in the issue of Monday, May 12, 1997, the Postal Service published a notice of the addition of a new routine use and modifications to existing system of records USPS 140.020, Postage—Postage Meter Records.

On page 25981 in the second column, line four from the bottom, the last four words of routine use No. 1 were dropped. Routine use No. 1 is corrected to read:

1. The name and address of a meter user, and the name of any person applying for a permit on behalf of the user, may be disclosed to any member of the public provided that the requester at the time of the request supplies the applicable meter serial number and the name or ZIP Code of the licensing post office as they appear in meter indicia.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–14732 Filed 6–2–97; 8:45 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such Section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning July 1, 1997, shall be at the rate of 35 cents.

In accordance with directions in Section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the

quarter beginning July 1, 1997, 31.0 percent of the taxes collected under Sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 69.0 percent of the taxes collected under such Sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under Section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

By Authority of the Board.
Dated: May 28, 1997.

Beatrice Ezerski,

Secertary to the Board.

[FR Doc. 97–14701 Filed 6–4–97; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22693; 812–10444]

Compass Capital Funds et al.; Notice of Application

May 29, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Compass Capital Funds, on behalf of its existing and future portfolio series (the ''Compass Funds''); Securities Lending Trust (the ''Trust''), on behalf of its General Money Market Fund (the ''Money Fund''), and U.S. Government Securities Money Market Fund (the ''Government Money Fund''), and each future portfolio series of the Trust (collectively, the ''Investment Funds''); PNC Asset Management Group, Inc. (the ''Adviser''); PFPC Inc. (the ''Trustee''); PNC Bank, National Association (''PNC Bank,'' and collectively with the Trust, the Adviser, and the Trustee, the ''Trust Applicants''); any entity which may be controlled by or under common control with PNC Bank (the ''PNC Entities''); any other registered investment company or portfolio series thereof which currently is or in the future may be advised by the Adviser or PNC Bank, or any other entity controlling, controlled by, or under common control (as defined in section 2(a)(9) of the Act) with the Adviser or PNC Bank, that may participate from time to time as a lender in the securities lending program (the ''Program'') administered by PNC Bank (together with the Compass Funds, the ''Affiliated Lending Funds''); and each other registered investment company or portfolio series thereof that may participate from time to time as a lender in the Program (the ''Other Lending Funds,'' and together with the Affiliated Lending Funds, the ''Lending Funds'').[1]

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) granting an exemption from section 17(a), under rule 17d–1 to permit certain transactions in accordance with section 17(d) and rule 17d–1, and under section 6(c) granting an exemption from section 17(e).

SUMMARY OF APPLICATION: Trust Applicants request an order to permit (a) The Lending Funds to use cash collateral received from the borrowers of their portfolio securities to purchase shares of the Trust, an affiliated private investment company, pursuant to the Program; (b) the Lending Funds to pay PNC Bank, and PNC Bank to accept, fees for acting as lending agent with respect to securities lending transactions by the Lending Funds; and (c) certain joint transactions incident to the Program. In addition, PNC Bank requests an order to permit PNC Bank or any PNC Entity (a) To engage in principal transactions in securities with the Other Lending Funds that are affiliated persons of PNC Bank or any PNC Entity solely because they hold 5% or more of the securities of an Investment Fund; and (b) to receive fees or commissions from such Other Lending Funds for acting as broker or agent in connection with the purchase or sale of securities for the Other Lending Funds.

FILING DATES: The application was filed on November 21, 1996, and amended on April 2, 1997, and May 27, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 23, 1997, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o PNC Bank, National Association, 1600 Market Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Brian T. Hourihan, Senior Counsel, at (202) 942–0526, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Compass Funds, a registered investment company organized as a Massachusetts business trust, is composed of various equity, fixed income, and money market portfolio series. It is the only Affiliated Lending Fund that currently intends to lend portfolio securities.[2] The Adviser, a wholly-owned indirect subsidiary of PNC Bank Corp., is an investment adviser registered under the Investment Advisers Act of 1940. The Adviser (or a control affiliate thereof) serves or will serve as the investment adviser to the Affiliated Lending Funds.

2. The Trust is organized as a Delaware business trust and will initially consist of two portfolio series: the Money Fund and the Government Money Fund.[3] It intends to operate as a

[1] From time to time, it is possible that the Adviser, PNC Bank or an entity controlling, controlled by, or under common control with the Adviser or PNC Bank may serve as the investment adviser for certain portfolio series of a particular registered investment company, and that other portfolio series of that investment company could be advised by other entities. In such a circumstance, if the portfolio series at issue is advised by the Adviser, PNC Bank, or an entity controlling, controlled by, or under common control with the Adviser or PNC Bank, the portfolio series (and the investment company) will be considered an Affiliated Lending Fund, whereas, if the portfolio series at issue is not advised by the Adviser, PNC Bank, or an entity controlling, controlled by, or under common control with the Adviser or PNC Bank, the portfolio series (and the investment company) will be considered an Other Lending Fund.

[2] All existing Affiliated Lending Funds that currently intend to rely on the requested relief to permit the Lending Funds to pay and PNC Bank to accept fees based on a share of the revenue generated from securities lending transactions pursuant to the Program have been named as parties to the application. Certain other Affiliated Lending Funds, or portfolio series thereof, for which the Adviser or PNC Bank, or any entity controlling, controlled by, or under common controls with the Adviser or PNC Bank, acts as investment adviser do not presently intend to rely on that portion of the requested relief. Any such Affiliated Leading Fund, or portfolio series thereof, however, may do so in the future, but only in accordance with the terms and conditions described in the application. In addition, any Affiliated Lending Fund that authorizes investment in shares of the Trust in the future and intends to rely on the requested relief will do so only in accordance with the terms and conditions described in this application.

[3] The Money Fund's investments may include a variety of short-term instruments that are available in the money markets, and the Government Money

private investment company excepted from the definition of investment company under section 3(c)(1) or section 3(c)(7) of the Act.

3. The Trustee, a Delaware corporation, is a wholly-owned indirect subsidiary of PNC Bank Corp., that will serve as the sole trustee of the Trust and oversee its operations. The Trustee will receive compensation for the Trust for providing accounting and other administrative services to the Trust. The Adviser will, subject to the supervision of the Trustee, act as the investment adviser to the Trust. The Adviser will, among other things, determine the securities to be purchased, retained, or sold by the Investment Funds, and place orders for the purchase and sale of such securities. Neither the Adviser nor any affiliated person thereof, as defined in section 2(a)(3) of the Act, will receive any advisory fee from the Trust for the investment advisory services provided by the Adviser to the Trust.

4. PNC Bank, a wholly-owned indirect subsidiary of PNC Bank Corp., is a member bank of the Federal Reserve system and is regulated by the Office of the Comptroller of the Currency. PNC Bank serves as custodian or sub-custodian for each of the Lending Funds. PNC Bank also will serve as custodian of the Trust's assets, but will not receive a custodial fee from the Trust for those services.

5. PNC Bank administers the Program and, pursuant to securities lending customer agreements (the ''Customer Agreements'') covering the respective Lending Funds, act as the securities lending agent for each of the Lending Funds. Each Lending Fund will be authorized to seek additional income by lending portfolio securities. In addition, each Lending Fund's board of directors, including a majority of the directors who are not ''interested persons,'' within section 2(a)(19) of the Act, will initially approve the Program and will monitor it on an ongoing basis. The Customer Agreements will make clear that the Lending Funds (and their investment advisers) retain the ultimate authority regarding the lending of portfolio securities, and that PNC is subject to their direction in carrying out its responsibilities under the Program.[4]

6. Under the Program, PNC Bank will enter into agreements (the ''Securities Loan Agreements'') with certain entities (the ''Borrowers'') that wish to borrow portfolio securities owned by the respective Lending Funds. PNC Bank may enter into Securities Loan Agreements on behalf of a particular Lending Fund only with Borrowers set forth in a list approved by that Lending Fund. PNC Bank has the discretion to refuse to lend securities to any Borrower on the list. Pursuant to the Securities Loan Agreements, PNC Bank delivers portfolio securities to the Borrowers, who agree to return such securities on demand within three business days. The Lending Funds (a) remain the owner of securities that are loaned to a Borrower, (b) retain the right to receive from the Borrower the economic equivalent of any distributions made with respect to those securities, and (c) have the power to terminate a loan at any time. PNC Bank will monitor corporate actions with respect to securities loaned by the Lending Funds and will reallocate or terminate loans as necessary and to the extent possible to enable a Lending Fund to vote its portfolio securities.

7. As collateral for the securities loaned, PNC Bank is authorized to accept cash, and may also upon consent of a Lending Fund accept other types of instruments such as U.S. Government securities or irrevocable letters of credit. With respect to securities loans that are collateralized by assets other than cash, the Lending Fund involved receives a loan fee paid by the Borrower equal to a percentage of the market value of the loaned securities as specified in the Securities Loan Agreement. Alternatively, with respect to securities loans collateralized by cash, the Borrower is entitled to receive a fixed cash collateral fee based on the amount of cash collateral, and the Lending Fund will be compensated on the spread between the net amount earned on the investment of the cash collateral and the Borrower's cash collateral fee. With respect to Affiliated Lending Funds, PNC Bank currently is compensated on a transaction fee basis depending upon the number and type of transactions it performs and the type of securities loaned, plus a flat fee for accounting and recordkeeping. With respect to the Other Lending Funds and other participants in the Program, PNC Bank currently may be compensated based on a portion of the loan or fee spread.

8. Subject to receipt of the requested relief, PNC Bank intends to propose to the boards of directors of the Affiliated Lending Funds that its compensation for its lending agent services be based upon a pre-negotiated percentage of the loan fee or portion of the return on the investment of cash collateral received by an Affiliated Lending Fund with respect to each loan. The extent to which PNC Bank will be compensated for acting as lending agent will be set forth in the Customer Agreement.

9. Applicants anticipate that in most instances collateral will consist of cash. In order to enhance the return on the securities lending arrangements for the respective Lending Funds, the Customer Agreements authorize and instruct PNC Bank to invest the cash collateral on behalf of the Lending Funds. Each Customer Agreement sets forth specific written investment parameters, including a listing of eligible types of investments, which may include shares of both affiliated and unaffiliated private investment companies. PNC Bank is required to adhere to the parameters established by a Lending Fund in investing cash collateral on behalf of the Lending Fund.

10. Trust Applicants request an order to permit the Lending Funds to use the cash collateral received from the Borrowers to purchase and redeem shares of the Trust (''Shares''). By investing cash collateral in Shares, Trust Applicants anticipate that the Lending Funds will be able to reduce transaction costs, create more liquidity, enjoy greater returns on their cash collateral, and achieve greater diversification with respect to investment of cash collateral.

11. Shares of the Trust may be offered to the Lending Funds and other participants in the Program in reliance on the exemption provided by Regulation D under the Securities Act of 1933. The Trust does not presently propose to make a public offering of Shares or other securities. Shares will have no voting rights, and may not be transferred without the consent of the Trustee. The Trust will offer daily redemption of Shares at the current net asset value per Share. Shares will not be subject to any sales load, redemption fee, asset-based sales charge or service fee.

12. At the present time, the Other Lending Funds may engage in principal transactions with PNC Bank or a PNC Entity, or PNC Bank or a PNC Entity may act as a broker or agent for the Other Lending Funds. However, to the extent that an Other Lending Fund

Fund's investments may include securities that are issued or guaranteed by the U.S. government or its agencies or instrumentalities, and repurchase agreements related thereto. Both the Money Fund and the Government Money Fund intend to use the amortized cost method of valuation as defined in rule 2a–7 of the Act and to comply with the maturity, quality and diversification requirements set forth in paragraphs (c)(2), (c)(3), and (c)(4), paragraph (d) of the rule. None of the Investment Funds will purchase shares of any registered investment company.

[4] The duties to be performed by PNC Bank as lending agent with respect to any Affiliated Lending Fund will not exceed the parameters set forth in *Norwest Bank Minnesota, N.A.* (pub. avail. May 25, 1995), except to the extent that the staff of the Division of Investment Management should later modify such parameters.

acquires 5% or more of the securities of an Investment Fund, sections 17(a) and 17(e) of the Act could operate to limit or prohibit trading relationships that currently exist or in the future may exist between PNC Bank or a PNC Entity and the Other Lending Funds. Accordingly, PNC Bank requests an order to permit PNC Bank or any PNC Entity to (a) engage in principal transactions in securities with the Other Lending Funds, and (b) receive fees or commissions from the Other Lending Funds for acting as agent or broker in connection with the purchase or sale of securities for the Other Lending Funds, in each case irrespective of any affiliation that may arise because of investment by the Other Lending Funds in Shares.

Applicants' Legal Analysis

A. Sections 17(a) and 17(b)

1. Sections 17(a) (1) and (2) of the Act make it unlawful for any affiliated person of a registered investment company, or any affiliated person of such an affiliated person, acting as a principal, to sell any security to, or purchase any security from, such registered investment company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include any person directly or indirectly controlling or controlled by, or under common control with, such other person, and an ''affiliated person'' of an investment company to include any investment adviser thereof. Section 2(a)(9) of the Act states that ''control'' means the power to exercise a controlling influence over the management or policies of a company, and that control is presumed to exist in situations in which an entity, directly or indirectly through another controlled company, beneficially owns more than 25% of a company's voting securities. By virtue of serving as the investment adviser for the Affiliated Lending Funds, the Adviser is an ''affiliated person'' of such funds. In addition, the Adviser and the Trustee may be considered affiliated persons of each other because, as indirect wholly-owned subsidiaries of PNC Bank Corp., they are under common control. The Trustee in turn may be deemed to control the Trust by virtue of its position as sole trustee of the Trust. Therefore, the Trust may be considered to be an affiliated person of an affiliated person of the Affiliated Lending Funds and the sale of Shares to the Affiliated Lending Funds, and the redemption of such Shares, could be prohibited under section 17(a) unless the requirements of section 17(b) are satisfied. Moreover, to the extent that the Trust's securities are deemed to be ''voting securities'' for purposes of the Act, and to the extent that a particular Other Lending Fund acquires 5% or more of an Investment Fund's securities, the Other Lending Fund could be deemed an affiliated person of such Investment Fund, and thus prohibited from engaging in further purchases or redemptions from the Investment Fund.

2. Because PNC Bank Corp. could be deemed to control PNC Bank, the PNC Entities, and the Trust, each such entity could be deemed to be under common control, and thereby an affiliated person of each other entity. In addition, PNC Bank and the PNC Entities could be deemed affiliated persons of affiliated persons of an Other Lending Fund that becomes an affiliated person of an Investment Fund through the acquisition of 5% or more of the securities of the Investment Fund. Therefore, once the Trust is established, the provisions of sections 17(a)(1) and 17(a)(2) technically could prohibit PNC Bank or a PNC Entity from selling securities to or purchasing securities from certain Other Lending Funds on a principal basis.

3. Section 17(b) of the Act authorizes the SEC to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each registered investment company concerned, and the general purposes of the Act. Because section 17(b) could be interpreted to exempt only a single transaction, applicants also are seeking relief pursuant to section 6(c) of the Act to the extent necessary to permit the investment of cash collateral in Shares, and the principal transactions in securities between PNC Bank or the PNC Entities, and the Other Lending Funds.[5]

4. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Trust Applicants believe that the requested relief is appropriate under section 6(c) for the same reasons that it is appropriate under 17(b).

5. Trust Applicants submit that the terms of the proposed transactions regarding the purchase of Shares, as they relate to the respective Lending Funds, are reasonable and fair and consistent with the general purpose of the Act as well as with the policies of the respective Lending Funds. For the same reasons, Trust Applicants believe that the proposed transactions are in the best interests of the Lending Funds and their shareholders.

6. The Lending Funds will be treated like any other shareholders in the Trust and will purchase and redeem Shares on the same terms and on the same basis, including price, as Shares are purchased and redeemed by all other shareholders of the Trust. Shareholders of the Lending Funds will not be required to absorb a second tier investment advisory fee as a result of an investment in the Trust, because the Adviser will not charge the Trust for providing investment advisory services. Permitting the Lending Funds to invest cash collateral in the Trust enables them to invest in a vehicle that is designed to be similar to a registered investment company in terms of the liquidity, diversification, and quality of its investments at a cost that is expected to be significantly lower than the cost that is typically incurred when investing in a registered investment company. In addition, applicants state that cash collateral from loans by Lending Funds that are money market funds will not be used to acquire shares of any Investment Fund that does not comply with the requirements of rule 2a–7 under the Act. Finally, applicants state that because the Trust will comply with certain provisions and interpretations of the Act relating to the diversification, liquidity, and quality of portfolio securities, as well as major substantive provisions of the Act relating to prohibitions on affiliated transactions, leveraging and senior securities, and rights of redemption, shareholders of the Lending Funds will not be disadvantaged or subject to potential overreaching.

7. PNC Bank believes that, as discussed below, it is in the best interests of the public and consistent with the protection of investors and the purposes intended by the policies and provisions of the Act to permit the continuation of existing or future trading relationships between PNC Bank or the PNC Entities, and the Other Lending Funds.

8. Applicants submit that no element of self-dealing would be involved in the principal transactions between PNC Bank or a PNC Entity and an Other Lending Fund that acquires 5% or more of an Investment Fund. Applicants believe that each transaction between an

[5] *See Keystone Custodian Funds, Inc.*, 21 S.E.C. 295 (1945).

Other Lending Fund and PNC Bank or a PNC Entity will be the product of arms-length bargaining, because each Other Lending Fund has its own investment adviser or sub-adviser that is not controlled by or under common control with PNC Bank and that, in economic reality, may be a competitor of PNC Bank or the PNC Entity involved. In addition, applicants believe that because the interests of the Other Lending Fund's investment advisers and sub-advisers are solely and directly aligned with those of the Other Lending Funds (to which the advisers have fiduciary responsibilities), it would be reasonable to conclude that the consideration to be paid to or received by the Other Lending Funds in connection with a principal transaction with PNC Bank or a PNC Entity will be reasonable and fair.

B. Section 17(d) and Rule 17d–1

1. Section 17(d) of the Act and rule 17d–1 thereunder prohibit any affiliated person of or principal underwriter for a registered investment company or any affiliated person of such person or principal underwriter, acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit sharing plan, in which such investment company participates.

2. The Adviser, as investment adviser to the Affiliated Lending Funds, is an affiliated person of such funds. Moreover, because PNC Bank and the Adviser are each indirect wholly-owned subsidiaries of PNC Bank Corp., they may be deemed to be under common control and therefore affiliated persons, and PNC Bank may be deemed an affiliated person of an affiliated person of each such Affiliated Lending Fund. A lending agent agreement between an investment company and an affiliated person of such investment company under which compensation is based on a share of the revenue generated by the lending agent's efforts may be a ''joint enterprise or other joint arrangement or profit sharing plan.'' Consequently, applicants seek exemptive relief to permit PNC Bank, as lending agent, to receive a percentage of the revenue generated by an Affiliated Lending Fund's participation in the Program.

3. As noted above, Other Lending funds that acquire 5% or more of an Investment Fund's securities may be deemed affiliated persons of the Investment Fund. PNC Bank Corp. indirectly owns all of the voting securities of PNC Bank and of the Trustee, and, therefore, could be deemed to control both entities. Moreover, because the Trustee may be deemed to control the Trust, PNC Bank and the Trust could be deemed to be affiliated persons, and PNC Bank could be deemed to be an affiliated person of an affiliated person of the Other Lending Fund. Thus, section 17(d) and rule 17d–1 could operate to prohibit PNC Bank from receiving a percentage of the revenue generated through the participation of the Other Lending Funds in the Program.

4. Applicants also state that it is possible that the Adviser, PNC Bank, or an affiliate thereof may serve as the investment adviser or sub-adviser for certain portfolio series of a particular investment company, while other portfolio series of that investment company could be advised by entities that are not affiliated with the Adviser, PNC Bank, or an affiliate thereof. Applicants note that one or more of the portfolio series may participate in the Program, including portfolio series advised by entities that are not affiliated with the Adviser, PNC Bank or an affiliate thereof. Each portfolio series of the investment company could be deemed to be under common control and thus an affiliated person of each other portfolio series because the investment company's board of directors governs each portfolio series. PNC Bank would be an affiliated person of any portfolio series for which it acted as investment adviser, and an affiliated person of an affiliated person (or a second-tier affiliate) of those portfolio series for which it did not act as investment adviser. As a result, the prohibitions of section 17(d) and rule 17d–1 thereunder may apply to the activities involving such portfolio series and PNC Bank, including PNC Bank's activities as lending agent and its receipt of a share of the revenue from lending activities.

5. Rule 17d–1 permits the SEC to issue an order with respect to a joint transaction. In passing on applications for such orders, the SEC is to consider whether the company's participation in the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

6. Applicants propose that each Affiliated Lending Fund will adopt the following procedures to ensure that the proposed fee arrangement and the other terms governing the relationship with PNC Bank, as lending agent, will be fair:

(a) In connection with the approval of PNC Bank as lending agent for an Affiliated Lending Fund and implementation of the proposed fee arrangement, a majority of the board of directors (including a majority of the directors who are not ''interested persons'' within the meaning of the Act) will determine (i) the contract with PNC Bank is in the Best interests of the Affiliated Lending Fund and its shareholders; (ii) the services to be performed by PNC Bank are required for the Affiliated Lending Fund; (iii) the nature and quality of the services provided by PNC Bank are at least equal to those provided by others offering the same or similar services; and (iv) the fees for PNC Bank's services are fair and reasonable in light of the usual and customary charges imposed by others for services of the same nature and quality.

(b) Each Affiliated Lending Fund's contract with PNC Bank for lending agent services will be reviewed annually and will be approved for continuation only if a majority of the board of directors (including a majority of the board of directors who are not ''interested persons'' within the meaning of the Act) makes the findings referred to in paragraph (a) above.

(c) In connection with the initial implementation of the proposed fee arrangement whereby PNC Bank will be compensated as lending agent based on a percentage of the revenue generated by an Affiliated Lending Fund's participation in the Program, the board of directors will obtain competing quotes with respect to lending agent fees from at least three independent lending agents to assist the board of directors in making the findings referred to in paragraph (a) above.

(d) The board of directors, including a majority of the directors who are not ''interested persons'' within the meaning of the Act, will (i) determine at each regular quarterly meeting that the loan transactions during the prior quarter were effected in compliance with the conditions and procedures set forth in the application, and (ii) review no less frequently than annually the conditions and procedures set forth in the application for continuing appropriateness.

(e) Each Affiliated Lending Fund will (i) maintain and preserve permanently in an easily accessible place a written copy of the procedures and conditions (and modifications thereto) described in the application or otherwise followed in connection with lending securities pursuant to the Program, and (ii) maintain and preserve for a period not less than six years from the end of the fiscal year in which any loan transaction pursuant to the Program occurred, the first two years in an easily accessible place, a written record of each such loan transaction setting forth a description of

the security loaned, the identity of the person on the other side of the loan transaction, the terms of the loan transaction, and the information or materials upon which the determination was made that each loan was made in accordance with the procedures set forth above and the conditions to the application.

7. The Affiliated Lending Funds and potentially the Other Lending Funds (by purchasing and redeeming Shares), the Adviser (by managing the portfolio securities of the Affiliated Lending Funds and the Trust at the same time that the Affiliated Lending Funds' cash collateral is invested in Shares), PNC Bank (by acting as lending agent, investing cash collateral in Shares and receiving a portion of the revenue generated by securities lending transactions), the Trust (by selling Shares to and redeeming them for the Lending Funds) and the Trustee (by serving as trustee of and providing other services to the Trust at the same time that the Trust sells Shares to and redeems them from the Lending Funds), also could be deemed to be participants in a joint enterprise or arrangement within the meaning of section 17(d) of the Act and rule 17d–1 thereunder. Applicants state that the Lending Funds will invest in Shares on the same basis as any other shareholder. Applicants argue that all investors in Shares will be subject to the same eligibility requirements imposed by the Trust and that all Shares will be priced in the same manner and will be redeemable under the same terms. Additionally, applicants argue that due to the lower expenses incurred by the Trust, investing cash collateral in the Trust is expected to offer returns to the Lending Funds superior to those that could be attained by investing in a registered investment company, whether affiliated or unaffiliated, while still offering the benefits of investing in a registered investment company in terms of liquidity, diversity, and quality of investments.

C. Sections 6(c) and 17(e)

1. Section 17(e)(1) of the Act makes it unlawful for any affiliated person of a registered investment company, or any affiliated person of such person, when acting as agent, to accept from any source any compensation (other than a regular salary or wages from such registered company) for the purchase or sale of any property to or for such registered company, except in the course of such person's business as an underwriter or broker. Section 17(e)(2) of the Act makes it unlawful for any affiliated person of a registered investment company, or any affiliated person of such person, acting as broker in connection with the sale of securities to or by such registered investment company, to receive from any source a commission for effecting such transaction which exceeds (a) the usual and customary broker's commission if the sale is effected on a securities exchange, or (b) 2 per centum of the sales price if the sale is effected in connection with a secondary distribution of such securities, or (c) 1 per centum of the purchase or sale price of such securities if the sale is otherwise effected.

2. Banks are specifically excluded from the definition of ''broker'' in section 2(a)(6) of the Act, and thus not covered by the exception contained in section 17(e)(1) to the extent they are acting in a brokerage capacity. Therefore, PNC Bank or any PNC Entity which becomes affiliated with an Other Lending Fund through the Trust, but which is a bank, could be prohibited from acting in a brokerage or similar capacity for the Other Lending Fund.

3. Rule 17e–1 provides a safe harbor from the prohibition contained in section 17(e). Rule 17e–1 provides that, for purposes of section 17(e)(2)(A) of the Act, a commission shall be deemed as not exceeding the usual and customary broker's commission, if certain procedures are followed. These procedures include the requirement in rule 17e–1(b)(3) that a registered investment company's board of directors, including a majority of directors who are not ''interested persons'' under the Act, determines, no less frequently than quarterly, that all transactions effected pursuant to the rule comply with procedures which are reasonably designed to provide that the brokerage commission is consistent with the standards set forth in the rule. Applicants submit that while PNC Entities that qualify as ''brokers'' under the Act could rely on rule 17e–1 in effecting transactions for Other Lending Funds, compliance by those funds with the rule's provisions is unnecessary and unduly burdensome, given that the affiliation between the Other Lending Funds and PNC Bank or the PNC Entities is a technical one, arising solely through the mechanism of the Trust.

4. Applicants submit that section 17(e) was designed to address the concern raised in section 1(b)(2) of the Act, where Congress determined that the national public interest and the interests of investors are adversely affected when investment companies are organized, operated, managed, or their portfolio securities are selected, in the interests of their affiliates, or of brokers, dealers or underwriters. Applicants argue that Congress, in fashioning section 17(e), intended that a broker affiliated with a registered investment company receive no more than the ordinary stock exchange brokerage commission, and sought to eliminate any risk of self-dealing.

5. Applicants assert that brokerage or similar transactions by PNC Bank or a PNC Entity for the Other Lending Funds that may acquire 5% or more of the securities of an Investment Fund raise no possibility of self-dealing or any concern that these Other Lending Funds would be managed in the interest of PNC Bank or the PNC Entity. In each instance, PNC Bank or the PNC Entity would not have influence over the decisions made by the Other Lending Funds. Applicants submit that each transaction between an Other Lending Fund and PNC Bank or a PNC Entity would be the product of arms-length bargaining, because each Other Lending Fund has its own investment adviser or sub-adviser that is not controlled by or under common control with PNC Bank or a PNC Entity and that, in economic reality, may be a competitor of PNC Bank or the PNC Entity involved.

6. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons discussed above, applicants submit that the proposed transactions meet the section 6(c) standard.

Applicants' Conditions

Affiliated Lending Funds agree that any order of the SEC granting the requested relief will be subject to the following conditions:

1. Except as set forth in the application, the securities lending program of each Affiliated Lending Fund will comply with all present and future applicable SEC staff positions regarding securities lending arrangements, *i.e.*, with respect to the type and amount of collateral, voting of loaned securities, limitations on the percentage of portfolio securities on loan, prospectus disclosure, termination of loans, receipt of dividends or other distributions, and compliance with fundamental policies.[6]

2. The approval of an Affiliated Lending Fund's board of directors,

[6] *See, e.g., SIFE Trust Fund* (pub. avail. Feb. 17, 1982).

including a majority of directors who are not ''interested persons'' under the Act, shall be required for the initial and subsequent approvals of PNC Bank's service as lending agent for the Affiliated Lending Fund pursuant to the Program, for the institution of all procedures relating to the Program as it relates to the Affiliated Lending Fund, and for any periodic review of loan transactions for which PNC Bank acted as lending agent pursuant to the Program.

In addition, Trust Applicants agree that any order of the SEC granting the requested relief will be subject to the following conditions:

3. A majority of the board of directors of a Lending Fund (including a majority of the directors who are not ''interested persons'' within the meaning of the Act of such Lending Fund), will initially and at least annually thereafter determine that the investment of securities lending cash collateral in Shares of the Trust is in the best interests of the shareholders of the Lending Fund.

4. Investment in Shares of the Trust by a particular Lending Fund will be consistent with such Lending Fund's investment objectives and policies.

5. Investment in Shares of the Trust by a particular Lending Fund will be in accordance with the guidelines regarding the investment of securities lending cash collateral specified by the Lending Fund in the Customer Agreement. A Lending Fund's cash collateral will be invested in a particular Investment Fund only if that Investment Fund invests in the types of instruments that the Lending Fund has authorized for the investment of its cash collateral.

6. Each Investment Fund that uses the amortized cost method of valuation as defined in rule 2a–7 under the Act will maintain a portfolio that complies with the maturity, quality, and diversification requirements of rule 2a–7 (c)(2), (c)(3), (c)(4), and (d). A Lending Fund may only purchase Shares of an Investment Fund using the amortized cost method of valuation if the Adviser determines on an ongoing basis that such Investment Fund is in compliance with paragraphs (c)(2), (c)(3), (c)(4), (c)(6), and (d) of rule 2a–7. The Adviser shall preserve for a period not less than six years from the date of determination, the first two years in an easily accessible place, a record of such determination and the basis upon which such determination was made. This record will be subject to examination by the SEC and the staff.

7. The Trust will comply as to each Investment Fund with the requirements of sections 17 (a), (d), and (e) and 18 of the Act as if the Trust were a registered open-end investment company. With respect to all redemption requests made by a Lending Fund, the Trust will comply with section 22(e) of the Act. The Adviser shall, subject to approval by the Trustee, adopt procedures designed to ensure that the Trust complies with section 17 (a), (d), and (e), 18, and 22(e) of the Act. The Adviser will also periodically review and periodically update as appropriate such procedures and will maintain books and records describing such procedures, and maintain the records required by rules 31a–1(b)(1), 31a–1(b)(2)(ii), and 31a–1(b)(9) under the Act. All books and records required to be made pursuant to this condition will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, and will be subject to examination by the SEC and the staff.

8. The net asset value per share with respect to Shares of the Trust will be determined separately for each Investment Fund by dividing the value of the assets belonging to the Investment Fund, less the liabilities of that Investment Fund, by the number of Shares outstanding with respect to the Investment Fund. Each Investment Fund that uses the amortized cost method of valuation as defined in rule 2a–7 under the Act will comply with rule 2a–7(c)(6), except that the Adviser, subject to the approval by the Trustee, shall adopt the procedures described in that provision and the Adviser shall monitor such procedures and take such other actions as are required to be or may be taken by a board of directors pursuant to that provision.

9. The Shares of the Trust will not be subject to a sales load, redemption fee, any asset-based sales charge, or service fee (as defined in rule 2830(b)(9) of the Conduct Rules of the National Association of Securities Dealers).

10. Each leaning Fund will purchase and redeem Shares of the Trust as of the same time and at the same price, and will receive dividends and bear its proportionate share of expenses on the same basis, as other shareholders of the Trust. A separate account will be established in the shareholder records of the Trust for the account of each applicable Lending Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–14617 Filed 6–4–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22694; 812–10584]

State Street Research Financial Trust, et al.; Notice of Application

May 30, 1997.

AGENCY: Securities and Exchange Commission (the ''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: State Street Research Financial Trust (the ''Trust''), State Street Research Portfolios, Inc. (the ''Company''), State Street Research & Management Company (''SSRM''), State Street Research Investment Services, Inc. (''SSRIS''), and GFM International Investors Limited (''GFM'').

RELEVANT ACT SECTIONS: Order requested under section 17(b) to exempt applicants from the provisions of section 17(a).

SUMMARY OF APPLICATION: Applicants seek an order to permit a reorganization between a series of the Trust and a series of the Company.

FILING DATES: The application was filed on March 25, 1997. Applicants have agreed to file an amendment during the notice period, the substance of which is incorporated herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 19, 1997, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants: the Trust, SSRM, and SSRIS, One Financial Center, Boston, Massachusetts 02111; the Company, One Madison Avenue, New York, New York 10010; and GFM, 5 Upper Street Martins Lane, London WC2H 9EA, England.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Senior Counsel, at (202) 942–0572, or Mercer E. Bullard, Branch Chief, at (202) 942–0564

(Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a Massachusetts business trust registered under the Act as an open-end management investment company. The Trust consists of four series, including the State Street Research Government Income Fund (the ''Acquiring Fund''). The Company, which was originally organized under the name MetLife Portfolios, Inc., is a Maryland corporation registered under the Act as an open-end management investment company. The Company consists of two series, including the State Street Research International Fixed Income Fund (the ''Acquired Fund'').

2. SSRM serves as the Acquiring Fund's and, as of March 1, 1997, the Acquired Fund's investment adviser. SSRIS serves as the distributor of the Acquired Fund and served as investment adviser to the Acquired Fund until March 1, 1997. GFM serves as the subadviser for the Acquired Fund. SSRM, SSRIS, and GFM are registered as investment advisers under the Investment Advisers Act of 1940 and are indirect wholly-owned subsidiaries of Metropolitan Life Insurance Company (''MetLife''). As of December 31, 1996, MetLife and its affiliates held a record 72% of the outstanding shares of the Acquired Fund. In some cases, any of MetLife and its affiliates may hold or share voting discretion, investment discretion, or both with respect to these shares.

3. The Acquiring and Acquired Funds both offer four classes of shares. The classes of shares of the Acquiring Fund have identical arrangements with respect to the imposition of initial and contingent deferred sales charges and distribution and service fees as the comparable classes of shares of each of the Acquired Funds.

4. The investment objective of the Acquired Fund is to seek a high level of return by investing primarily in high quality debt securities of non-U.S. issuers. The investment objective of the Acquired Fund is not fundamental and may be changed by the board of directors of the Company without a shareholder vote. The investment objective of the Acquiring Fund is to seek high current income and under normal circumstances the Acquiring Fund will invest at least 65% of the value of its total assets in securities that are issued or guaranteed by the U.S. Government, U.S. Government agencies or instrumentalities, or certain mixed-ownership Government corporations. The investment objective of the Acquiring Fund is fundamental and may not be changed without a shareholder vote.

5. The Trust, on behalf of the Acquiring Fund, and the Company, on behalf of the Acquired Fund, will enter into an agreement and plan of reorganization, which was approved by the board of directors of the Company on February 4, 1997 and by the board of trustees of the Trust on November 6, 1996. The boards of the Acquiring and Aquired Funds, including the members who are not ''interested persons'' as defined by the Act, found that the reorganization would be in the best interest of the Acquiring and Acquired Funds and their shareholders, respectively, and that the interests of the existing shareholders of the respective Funds will not be diluted as a consequence thereof. Each board considered a number of factors, including the efficiencies resulting from combining the operations of a small fund with a large fund; [1] the performance of the Acquired Fund; the size, stability, and strength of the Acquiring Fund; and that each Fund uses the same distribution and multiple class structure and sales load structure. In addition, in reaching its determination that the reorganization was in the best interest of the Funds' shareholders, the boards also considered the differences in the investment objectives of each Fund and concluded that greater portfolio diversification could result from a larger asset base. Applicants expect that greater diversification from a portfolio of securities of both U.S. and non-U.S. issuers would be beneficial to Acquired Fund shareholders because it may reduce the risk associated with a portfolio of securities issued only by non-U.S. issuers.

6. Upon consummation of the proposed reorganization (the ''Closing''), the Acquiring Fund will acquire all of the assets of the Acquired Fund (subject to the assumption by the Acquiring Fund of all liabilities of the Acquired Fund which are reflected on an unaudited statement of assets and liabilities on the Valuation Date (as defined below)) in exchange for Class A, B, C, and D shares of the Acquiring Fund. The number of Class A, B, C, and D shares to be issued to the Acquired Fund will be determined by dividing (a) the aggregated net assets in each class of shares of the Acquired Fund by (b) the net asset value per Class A, B, C, and D share, respectively, of the Acquiring Fund, each computed as the close of business on the business day next preceding the Closing (the ''Valuation Date''). The Acquired Fund will liquidate and distribute shares of the Acquiring Fund to its shareholders at or as soon as practicable after the Closing. Holders of the Acquiring Fund shares acquired as a result of the reorganization will continue to be subject to a contingent deferred sales charge upon subsequent redemption to the same extent as if they had continued to hold shares of the Acquired Fund. The class of Acquiring Fund shares distributed to each shareholder of the Acquired Fund upon the liquidation of the Acquired Fund will correspond to the class of shares of the Acquired Fund held by such shareholder immediately prior to the reorganization.

7. At or prior to the Closing, the Acquired Fund shall declare a dividend or dividends which shall have the effect of distributing to the shareholders of the Acquired Fund all of the Fund's investment company taxable income for all taxable years ending on or prior to the Closing (computed without regard to any deduction for dividends paid) and all of its net capital gain realized (after reduction for any capital loss carry-forward) in all taxable years ending on or prior to the Closing.

8. The proposed reorganization is subject to approval by an affirmative vote of the holders of a majority of the outstanding shares entitled to vote of the Acquired Fund. Approval will be solicited pursuant to a prospectus/proxy statement, which was sent to shareholders of the Acquired Fund on March 17, 1997. Each prospectus/proxy statement includes pertinent financial information and projected expense ratios of the combined funds. A shareholder meeting is scheduled to be held on May 30, 1997.

9. The Acquiring and Acquired Funds each will bear half of the costs of entering into and carrying out the provisions of the plan of reorganization, whether or not the reorganization is consummated. In determining this allocation, the boards of both Funds determined that, in the absence of any special advantage of one Fund relative to the other, an equal split of expenses was appropriate, and that any potential benefits to SSRM, SSRIS, GFM or any of their affiliates as a result of the reorganization were outweighed by the

[1] As of October 31, 1996, the Acquired and Acquiring Funds had net assets of approximately $33 million and $702 million, respectively.

potential benefits to each Fund and its shareholders.

10. The consummation of each reorganization is subject to certain conditions, including that the parties shall have received from the SEC the order requested in the application, and the receipt of an opinion of tax counsel to the effect that upon consummation of each reorganization and the transfer of substantially all the assets of each Acquired Fund, no gain or loss will be recognized by the Acquired or Acquiring Funds or their shareholders as a result of the reorganization. Applicants will not amend, waive, or supplement any term of the plan of reorganization without the prior approval of the SEC if such amendment, waiver, or supplement would materially alter the plan from the description of the plan in the application.

Applicants' Legal Analysis

1. Section 17(a) of the Act provides, in pertinent part, that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such an affiliated person, acting as principal, knowingly to sell or purchase securities to or from such registered company.

2. Section 2(a)(3) of the Act defines the term ''affiliated person'' of another person to include, in pertinent part, (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of such other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by such other person, (c) any person directly or indirectly controlling, controlled by, or under common control with such other person, and, (d) if such other person is an investment company, any investment adviser thereof.

3. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied. Applicants state they may not be able to rely on rule 17a–8 because MetLife and its affiliates hold or share direct or indirect ownership of more than 5% of the outstanding shares of the Acquired Fund, that the adviser of the Acquiring Fund is a wholly-owned subsidiary of MetLife which, therefore, could be deemed to control the Acquiring Fund, and that the Acquiring Fund, therefore, may be deemed an affiliated person of an affiliated person of the Acquired Fund, and vice versa, for reasons not based solely on their common adviser.

4. Section 17(b) of the Act provides that the SEC may exempt a transaction from the prohibitions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants submit that the terms of the proposed reorganization satisfy the standards set forth in section 17(b). Applicants note that the exchange of the Acquired Fund's assets and liabilities for shares of the Acquiring Fund will be based on each Fund's relative net asset value, and that the proposed reorganization is expected to be effected on a tax-free basis, so that neither the Acquiring Fund, the Acquired Fund, nor the shareholders of the Acquired Fund will recognize taxable gains or losses as a result of the proposed reorganization.

6. Applicants submit that the terms of the proposed reorganization are fair and reasonable and do not involve overreaching on the part of any person concerned and that the proposed reorganization is consistent with the policies of the Acquiring and Acquired Funds.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margret H. McFarland,

Deputy Secretary.

[FR Doc. 97–14692 Filed 6–4–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38699; File No. 4–208]

Intermarket Trading System; Order Approving Twelfth Amendment to the Restated ITS Plan Relating to Amending the Pre-Opening Application, Deleting Text No Longer Applicable, and Making Technical Amendments

May 30, 1997.

I. Introduction

On January 31, 1997, the Intermarket Trading System (''ITS'') submitted to the Securities and Exchange Commission (''Commission'') an amendment to the Restated ITS Plan (''Plan'') pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 11Aa3–2 thereunder[2] to amend the Pre-Opening Application, to delete text no longer applicable, and to make technical amendments.[3] The proposed plan amendment was published for comment in Securities Exchange Act Release No. 38520 (April 17, 1997), 62 FR 19846 (April 23, 1997). No comments were received on the proposal. For the reasons discussed below, the Commission is approving the proposal.

Participants to the Plan include the American Stock Exchange, Inc. (''Amex''), the Boston Stock Exchange, Inc. (''BSE''), the Chicago Board Options Exchange, Inc. (''CBOE''), the Chicago Stock Exchange, Inc. (''CHX''), the Cincinnati Stock Exchange, Inc. (''CSE''), the National Association of Securities Dealers, Inc. (''NASD''), the New York Stock Exchange, Inc. (''NYSE''), the Pacific Stock Exchange, Inc. (''PSE''), and the Philadelphia Stock Exchange, Inc. (''PHLX'').

II. Description

The purpose of the proposed changes to the Plan is amend the Pre-Opening Application, to delete text relating to the NASD Pilot Phase and the ITS/Computer Assisted Execution System (''CAES'') Linkage, and the National Security Trading System (NSTS'')/ITS Automated Linkage, which by their terms are no longer applicable, and to make technical amendments. The current Pre-Opening Application sections of the Plan trigger the use of the Pre-Opening Application whenever an ''indication of interest'' (i.e., an opening price range) is sent to the Consolidated Tape Association (''CTA'') Plan Processor prior to the opening of trading in the relevant security or prior to reopening of trading in the relevant security following the declaration of a trading halt for certain defined reasons, even if the anticipated opening or re-opening price is not greater than the ''applicable price change.'' The current Pre-Opening Application sections provide that the Pre-Opening Application applies when an indication

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] The ITS, a communications and order routing network linking eight national securities exchanges and the electronic over-the-counter (''OTC'') market operated by the National Association of Securities Dealers, Inc. (''NASD''), is a National Market System (''NMS'') plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. The ITS was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets.

of interest is disseminated following five defined trading halt situations; reopenings following order imbalance, order influx, equipment changeover, news pending and news dissemination, and for a delay opening.

Under the proposed amendment, the Pre-Opening Application would not also be triggered when indications of interest are disseminated in situations other than those five defined trading halts, including the resumption of trading following the activation of market-wide circuit breakers. In particular, the proposed amendment deletes the definition of ''Trading Halt,'' which is limited to the five defined trading halt situations mentioned above,[4] and replaces all references to ''Trading Halt'' with ''halt or suspension in trading.'' As a result, one standard procedure would then govern all trading halt situations and would include suspensions of trading pursuant to circuit breakers.

The proposed Plan amendment replaces ''NASD Market Services, Inc.'' with ''The Nasdaq Stock Market, Inc.,'' and ''MSI'' with ''Nasdaq,'' to reflect the reorganization of the NASD. The amendment also deletes references to and language regarding the operation of the ITS/CAES linkage during the NASD Pilot Phase; restrictions of the participation of the ITS/CAES market makers in the ITS during the Pilot Phase, including the number of ITS/CAES securities the market makers can trade through the ITS during the Pilot; and descriptions of the NASD Pilot Phase, including entire Section 10(d).

The amendment to the Plan deletes reference to the limitations on ITS/CAES third market commitments to sell short until the CAES is modified to permit compliance with SEC Rule 10a–1 (the short sale rule). In connection with this limitation, the proposed amendment to the Plan deletes the body of Section 8(f)(vi) of the Plan, which states that the NASD is to enhance CAES prior to the Pilot Phase to permit execution of commitments to sell short routed through the CAES Switch in compliance with SEC Rule 10a–1, and also deletes mention in Section 8(b) of the Plan of this short sale limitation. In addition, the amendment deletes the limitation on commitments to trade in ITS in Section 8(a)(iii) of the Plan, which states that the commitments can only originate from an ITS/CAES third market maker during the two year Pilot Phase, and then the NASD has to determine how they will be handled, pursuant to Section 10(d) of the Plan.

The proposed Plan amendment deletes references and language pertaining to first and second anniversaries of the NSTS/ITS Automated Linkage (''CSE Linkage'') Commencement Date (which was April 1, 1986), and the restrictions that applied to the CSE Linkage during that period between the commencement date and the first or second anniversary. The amendment deletes Sections 10(e)(ii)(A) and (B) of the Plan, which discuss the capacity relief and terminal interface costs of the CSE Linkage; language relating to only Designated Dealers being able to trade System securities; deletes language in Section 8(a)(ii) of the Plan that says for the two years following the CSE Linkage Commencement Date, NSTS Users can only use the ITS as to System securities assigned to a Designated Dealer(s), except they can use ITS with regard to other System securities that are traded on the CSE for the purpose of complying with the CSE trade through and block trade policies adopted by Sections 8(d)(ii) and (iii) of the Plan.

The proposed amendment deletes the body of Section 7(d) of the Plan, which states that the 1990 revised Pre-Opening Application would commence on a date that the operating committee specified, but no later than the 60th day following Commission approval of the 1990 revision of the Pre-Opening Application. The commencement date was August 5, 1991.

The proposed amendment deletes language regarding the limitations on how to calculate the NSTS/ITS Outgoing Agency Interest, Originating Agency Interest, and Incoming Dealer Executions (Incremental Constant) before the ''contributing dealer adjustment date,'' which is the later of one year from the anniversary of the CSE Linkage commencement date or from a determination that ''Approved Dealer'' no longer excludes Contributing Dealers as anticipated by Section 2(1A).[5] The proposed amendment also changes the ''second anniversary of the NSTS/ITS Automated Linkage Commencement Date'' to ''April 1, 1986,'' in sections 8(e)(iv)(A)(6) and 8(e)(iv)(B) of the Plan. The proposed amendment also makes several technical changes to the Plan.

III. Discussion

The Commission finds that the proposed amendments to the Plan are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national market system plan, and, in particular, with the requirements of Section 11A.[6] In particular, the Commission believes the proposal is consistent with the Sections 11A(a)(1)(C)(ii) and (D)[7] requirements with provide for fair competition among the ITS Participants and their members, and the linking of all markets for qualified securities through communications and data processing facilities which foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to the best execution of such orders. The Commission also finds that the amendment is consistent with Rule 11Aa3–2(c)(2)[8] which requires the Commission to determine that the amendment is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

The Commission believes that the proposed amendments to the Pre-Opening Application portions of the Plan are consistent with the act because they will facilitate transactions in securities while continuing to further investor protection and the public interest, by enhancing the linkage among all ITS Participant Markets and promoting coordinated openings and reopenings in ITS securities. The proposed Plan amendment achieves these goals by amending the Pre-Opening Application so that one standard procedure governs all trading halt situations, including circuit breaker halts.[9]

The Commission believes that the changes to the Plan relating to references to and language regarding the operation of the ITS/CAES linkage during the NASD Pilot Phase, references to and language pertaining to the restrictions that applied to the CSE Linkage during the period between the commencement date and the first or second anniversary of that commencement date, and to the commencement of the 1990 revisions to the Pre-Opening Application, are reasonable and consistent with the Act

[4] Mention of the five defined terms is also deleted from Section 7(a) of the Plan.

[5] This language is found in Section 8(e)(iv) of the Plan, titled ''Operational Parameters for NSTS/ITS Automated Linkage.''

[6] 15 U.S.C. 78k–1.

[7] 15 U.S.C. 78k–1(a)(1)(C)(ii) and (D).

[8] 17 CFR 240.11Aa3–2(c)(2).

[9] The Commission published for notice and comment the proposed rule changes by the nine Plan Participants to amend their respective Pre-Opening Application rules, and the Commission is approving those proposed rule changes the same day as this Plan approval order.

in that they are no longer applicable by their terms because the time periods have expired.

The Commission also notes that the proposal provides additional, technical amendments to the Plan consistent with the ITS's purpose of facilitating intermarket trading in exchange-listed equity securities.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 11A(a)(3)(B) of the Act,[10] that the amendment be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–14689 Filed 6–4–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings; Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of June 9, 1997.

An open meeting will be held on Monday, June 9, 1997, at 10:00 a.m., in Room 6059. A closed meeting will be held on Wednesday, June 11, 1997, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Monday, June 9, 1997 at 10:00 a.m., in Room 6059, will be:

(1) The Commission will hear oral argument on appeal by Sharon M. Graham and Stephen C. Voss from an administrative law judge's initial decision.

(2) The Commission will hear oral argument on appeal by Adrian C. Havill from an administrative law judge's initial decision.

The subject matter of the closed meeting scheduled for Wednesday, June 11, 1997 at 10:00 a.m., will be:

Instituttion and settlement of injunctive actions.
Institution and settlement of administrative proceedings of an enforcement nature.
Formal order of investigation.
Post oral argument discussion.
Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: June 2, 1997.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–14841 Filed 6–3–97; 1:40 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release 34–38698; File No. 600–23]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Order Approving a Request for Extension of Temporary Registration as a Clearing Agency

May 30, 1997.

Notice is hereby given that on May 8, 1997, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities Exchange Commission (''Commission'') an application pursuant to Section 19(a) of the Securities Exchange Act of 1934 (''Act'')[1] requesting that the Commission grant GSCC full registration as a clearing agency or in the alternative extend GSCC's temporary registration as a clearing agency until such time as the Commission is able to grant GSCC permanent registration.[2] The Commission is publishing this notice and order to solicit comments form interested persons and to extend GSCC's temporary registration as a clearing agency until February 28, 1998.

On May 24, 1988, pursuant to Sections 17A(b) and 19(a) of the Act[3] and Rule 17Ab2–1 promulgated thereunder,[4] the Commission granted GSCC registration as a clearing agency on a temporary basis for a period of three years.[5] The Commission subsequently has extended GSCC's registration through May 31, 1997.[6]

GSCC provides clearance and settlement services for its members' transactions in government securities. GSCC offers its members services for next-day settling trades, forward settling trades, auction takedown activity, repurchase transactions, the multilateral netting of trades, the novation of netted trades, and daily marking-to-the-market. In connection with GSCC's clearance and settlement services, GSCC provides a centralized loss allocation procedure and maintains margin to offset netting and settlement risks.

At the time of GSCC's initial temporary registration, the Commission granted GSCC an exemption from compliance with the fair representation requirements in Section 17A(b)(3)(C) of the Act.[7] GSCC's current selection process for its board of directors permits any GSCC member to nominate candidates for election to the board and to vote for candidates so nominated.

However, the shareholder agreement requires the six directors be dealer participants, three directors be broker participants, and three directors be clearing agent bank participants.[8]

As part of GSCC's request for full clearing agency registration, GSCC states that it is finalizing a number of changes to its Shareholders Agreement and

[10] 15 U.S.C. 78k–1(a)(3)(B).

[11] 17 CFR 200.30–3(a)(29).

[1] 15 U.S.C. 78s(a).

[2] Letter from Sal Ricca, President and Chief Operating Officer, GSCC (April 11, 1997) (''Registration Letter'').

[3] 15 U.S.C. 78q–1(b) and 78s(a).

[4] 17 CFR 240.17Ab2–1.

[5] Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19639.

[6] Securities Exchange Act Release Nos. 29067 (April 11, 1991), 56 FR 15652; 32385 (June 3, 1993), 58 FR 32405; 35787 (May 31, 1995), 60 FR 30324; 36508 (November 27, 1995), 60 FR 61719; and 37983 (November 25, 1996), 61 FR 64183.

[7] 15 U.S.C. 78q–1(b)(3)(C). GSCC had also received a temporary exemption from the membership requirements contained in Sections 17A(b)(3)(B) and 17A(b)(4)(B) (15 U.S.C. 78q–1(b)(3)(B) and 78q–1(b)(4)(B)). Subsequently, the Commission determined that GSCC is in compliance with such requirements. Securities Exchange Act Release No. 36508 (November 27, 1995), 60 FR 61719.

[8] In its order granting GSCC its initial temporary approval, the Commission stated that while the composition of GSCC's board of directors reasonably reflected GSCC's anticipated initial membership, the Commission believed that it would be appropriate to defer to a later date its determination of whether GSCC's process for selecting its board of directors assures participants fair representation. This decision was based on the fact that GSCC planned on expanding its services during the temporary registration period and on the uncertainty with regards to GSCC's future participant base.

Bylaws as a result of GSCC management's review of its nomination and election process.[9] GSCC states that these changes are designed to make its nomination and election process more efficient and flexible while enhancing the degree of fair representation provided. GSCC anticipates distributing these changes to its shareholders for their approval and making the requisite rule filings with the Commission later this year. Therefore, the Commission will defer its decision on whether GSCC meets the fair representation requirement of Section 17A and should be granted permanent registration until GSCC submits its new selection procedures and the Commission has had an opportunity to evaluate them.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application. Such written data, views, and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with section 19(a)(1) of the Act.[10] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the amended application for registration and all written comments will be available for inspection at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All submissions should refer to File No. 600–23 and should be submitted by June 26, 1997.

It is Therefore Ordered that GSCC's registration as a clearing agency (File No. 600–23) be and hereby is temporarily approved through February 28, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–14691 Filed 6–4–97; 8:45 am]

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[9] Registration Letter, *supra* note 2.

[10] 15 U.S.C. 78s(a)(1).

[11] 17 CFR 200.30–3(a)(16).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38700; File Nos. SR–AMEX–97–07, SR–BSE–96–11, SR–CBOE–97–12, SR–CHX–96–34, SR–CSE–97–03, SR–NASD–97–09, SR–NYSE–97–03, and SR–PSE–97–05]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Changes by the American Stock Exchange, Inc., Boston Stock Exchange, Inc., Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., Cincinnati Stock Exchange, Inc., National Association of Securities Dealers, Inc., New York Stock Exchange, Inc., and the Pacific Stock Exchange, Inc., and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change by the National Association of Securities Dealers, Inc., to Amend Each Participant's Rules Concerning the Pre-Opening Application of the Intermarket Trading System

May 30, 1997.

I. Introduction

On December 10, 1996, December 19, 1996, January 29, 1997, January 31, 1997, February 10, 1997, February 11, 1997, and February 26, 1997, respectively, the Boston Stock Exchange Incorporated (''BSE''), the Chicago Stock Exchange, Incorporated (''CHX''), the Cincinnati Stock Exchange, Incorporated (''CSE''), the New York Stock Exchange, Incorporated (''NYSE''), the Americal Stock Exchange, Incorporated (''AMEX''), the Pacific Stock Exchange, Incorporated (''PSE''), the National Association of Securities Dealers, Incorporated (''NASD''), and the Chicago Board Options Exchange, Incorporated (''CBOE'') (each individually referred to herein as a ''Participant'' and two or more collectively referred to as ''Participants'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] proposed rule changes to enhance the operation of their respective Pre-Opening Applications[3] by effectively including circuit breakers as a trading halt situation that will trigger the Pre-Opening Application.[4]

The proposed rule changes, together with the substance of the proposal, were published for comment in Securities Exchange Act Release No. 38285 (February 13, 1997) 62 FR 8065 (February 21, 1997). CBOE's proposed rule change was separately published for comment in Securities Exchange Act Release No. 38393 (March 12, 1997) 62 FR 13201 (March 19, 1997).[5] No comment letters were received in response to the proposals. The NASD subsequently filed Amendment No. 1 to the proposed rule change on February 14, 1997.[6]

II. Background and Description

The purpose of the proposed rule changes is to enhance the operation of each Participant's Pre-Opening Application by effectively including circuit breakers as a trading halt situation that will trigger the Pre-Opening Application. The Participants' Intermarket Trading System (''ITS'') Pre-Opening Application rules contain basic definitions pertaining to ITS, prescribe the types of transactions that may be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Participants filed substantially similar proposed rule changes to amend their respective Intermarket Trading System (''ITS'') Rules regarding the ITS Pre-Opening Application. The Commission notes that some of the proposed rule changes by the ITS Participants contain additional technical changes. In addition, the NASD is proposing to incorporate language into NASD Rule 5240 from the model Pre-Opening Application Rule contained as Exhibit A to the ITS Plan that was previously inadvertently omitted. The PSE and CHX are proposing amendments to their respective Pre-Opening Application rules to add a footnote from the model Pre-Opening Application Rule regarding the definition of when a market in a security is considered opened or re-opened, for purposes of pre-opening responses. The language of each proposed rule change is on file at the Commission and at the principal offices of the various Participants. The file numbers for the rule filings are as follows: SR–AMEX–97–07; SR–BSE–96–11; SR–CBOE–97–12, SR–CHX–96–34; SR–CSE–97–03, SR–NASD–97–09; SR–NYSE–97–03; and SR–PSE–97–05.

[4] The respective Pre-Opening Application Rules that the Participants are proposing to amend are: AMEX, Rule 232; BSE, Chapter XXXI; CBOE, Rule 30.72; CHX, Article XX, Rule 39, CSE, Chapter 14, rules 14.1 and 14.3; NASD, Rules 5210, 5240 and 5250; NYSE, Rule 15; and PSE, Rule 5.20.

[5] The Philadelphia Stock Exchange's (''PHLX'') proposed Pre-Opening Application rule filing (SR–PHLX–97–13) was published for comment separately, and is being approved in a separate order issued on the same day as this order. *See* Securities Exchange Act Release Nos. 38507 (April 14, 1997), 62 FR 19383 (April 21, 1997) (notice) and 38701 (May 30, 1997) (approval order).

[6] Amendment No. 1 adds language to NASD's Rule 5250(c), Pre-Opening Notification from Other Markets, that conforms the rule with corresponding Pre-Opening Application rules of other ITS Participant markets and with the ITS Plan. The last sentence of revised Rule 5250(c) states that ''[n]o ITS/CAES Market Maker that has opened for trading or, with respect to a halt or suspension in trading initiated by another Participant Market, did not halt trading in the security reasonably contemporaneously with the Participant Market or resumed trading during such trading halt or suspension, shall respond to a pre-opening notification.'' *See* letter from Joan Conley, Corporate Secretary, NASD, to Katherine England, Assistant Director, Market Regulation, Commission, dated February 13, 1997 (''Amendment No. 1'').

effected through ITS and the pricing of commitments to trade, and specify the procedures pertaining to the Pre-Opening Application, whereby an Exchange specialist (''specialist'') or Designated Primary Market Maker (''DPM''), or a ITS/CAES market maker (''market maker'') in any ITS participant market who wishes to open his or her market in an ITS security may obtain any pre-opening interest in that security by other market makers registered in that security in other Participant markets.

The current Pre-Opening Application prescribes that if a specialist or a market maker anticipates that its opening transaction in the security the specialist, DPM, or market maker trades through ITS will be at a price that represents a change from the security's previous day's consolidated closing price of more than the ''applicable price change,'' the specialist, DPM, or market maker shall notify other Participant markets by sending a pre-opening notification through the ITS.[7] Thereafter, the specialist, DPM, or market maker shall not open the market in the security until not less than three minutes after the transmission of the pre-opening notification. Once a specialist, DPM, or market maker has issued a pre-opening notification, other Participant markets may transmit ''pre-opening responses'' to the specialist, DPM, or market maker through the ITS that contain ''obligations to trade.'' The specialist, DPM, or market maker is then obligated to combine these obligations with orders it already holds in the security, and, on the basis of this aggregated information, decide upon the opening transaction in the security.

Consolidated closing price	Applicable price change (more than)
Network A:	
Under $15	1/8 point.
$15 or over	1/4 point.
Network B:	
Under $5	1/8 point.
$5 or over	1/4 point.

The Pre-Opening Application also applies whenever an ''indication of interest'' is sent to the Consolidated Tape Association (''CTA'') Plan Processor prior to the opening of trading in the relevant security or prior to the reopening of trading in the relevant security following the declaration of a trading halt for certain defined reasons, even if the anticipated opening or re-opening price is not greater than the ''applicable price change.'' The current Pre-Opening Application rules provide that the Pre-Opening application applies when an indication of interest is disseminated following five defined trading halt situations; reopenings following order imbalance, order influx, equipment changeover, news pending and news dissemination, and for a delayed opening.

The purpose of the proposed amendments to the Participants' respective rules, to which all the Participants have agreed, is to amend the Pre-Opening Application rules to provide that the Pre-Opening Application will be triggered whenever an ''indication of interest'' (i.e., an anticipated opening price range) is sent to the Consolidated Tape System prior to the opening or reopening of trading in the relevant security. Under the proposed change, the Pre-Opening Application would also be triggered when indications of interest are disseminated in situations other than the five defined trading halts specified above, including the resumption of trading following the activation of market-wide circuit breakers. In particular, the proposed amendment would delete the definition of ''Trading Halt,'' which is limited to the five defined trading halt situations mentioned above, and replace all references to ''Trading Halt'' with ''halt or suspension in trading.'' As a result, one standard procedure would govern all trading halt situations and would include suspensions of trading pursuant to circuit breakers.[8]

III. Discussion

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and a national securities association, and, in particular, with the requirements of Sections 6(b)(5) and 15A(b)(6).[9] The Commission believes that the proposed rule changes are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission finds that the changes are also consistent with Section 11A(a)(1)(D) of the Act[10] which provides that the linking of all markets for qualified securities through communications and date processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to the best execution of such orders.[11]

The Commission believes that the proposed rule changes are consistent with the Act because they will facilitate transactions in securities while continuing to further investor protection and the public interest by enhancing the linkage among all ITS Participant Markets and promoting coordinated openings and reopenings in ITS securities. The proposed rule changes achieve these goals by applying a standard procedure to govern all trading halt situations, including circuit breaker halts.

The proposed rule changes to PSE and CHX's Pre-Opening Application Rules add a footnote from the model Pre-Opening Application rule that defines when a market in a security is opened or reopened, for purposes of when the specialist or market maker at those markets must accept pre-opening responses from other Participant markets.[12] The NASD is incorporating previously inadvertently omitted language into NASD Rule 5240(e)(1) and 5240(e)(2) that describes when an ITS/CAES market maker has to accept pre-opening responses from other Participant markets prior to reopening a security, and what the ITS/CAES market

[7] The ''applicable price changes'' are:

If the previous day's consolidated closing price of the security exceeded $100 and the security does not underlie an individual stock option contract listed and currently trading on an exchange, the ''applicable price change'' is one point. Network A is comprised of NYSE securities; Network B is comprised of securities admitted on the AMEX, BSE, CBOE, CHX, CSE, PSE, PHLX, or any other exchange, but not also admitted to dealings on the NYSE.

[8] In its proposed rule change, the NYSE notes that indications are also required pursuant to NYSE rules in other situations, including circuit breaker halts, when a stock's price will change the lesser of 10% or three points from the last sale, or five points for stocks over $100, unless the price change is less than one point. The NYSE notes that NYSE rules would continue to govern when NYSE specialists would be required to issue indications of interest. *See* NYSE filing SR–NYSE–97–03. Similarly, AMEX notes that in connection with a reopening following a ''circuit breaker'' halt, AMEX's rules require dissemination of an indication in the same circumstances as the NYSE. AMEX notes that its proposed amendments are intended to conform to the amendment to the ITS Plan agreed to by the Participants. *See* AMEX filing SR–AMEX–97–07.

[9] 15 U.S.C. 78f(b)(6); 15 U.S.C. 78*o*–3(b)(6).

[10] 15 U.S.C. 78k–1(a)(1)(D).

[11] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] The footnote is added to a section in PSE and CHX's rules titled ''Pre-Opening Responses from Open Markets.''

maker may do with regard to accepting pre-opening responses from other participant markets when the other market has already opened trading in the relevant security or, with respect to a halt or suspension in trading, either did not halt trading in the relevant security or has already resumed trading in the relevant security. The Commission finds that these additional substantive proposed rule changes are consistent with the Act because they should facilitate transactions in securities between and promote the linkage among the ITS Participants by conforming the CHX, PSE, and NASD's ITS rules with the model Pre-Opening Application rules contained as Exhibit A to the ITS Plan and the other ITS Participants' rules.

The Commission finds good cause to approve Amendment No. 1 to the NASD's proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 amends NASD Rule 5250(c), titled ''Pre-Opening Notification from Other Markets,'' to state that no ITS/CAES Market Maker that has opened for trading or, with respect to a halt or suspension in trading initiated by another Participant Market, did not halt trading in the security reasonably contemporaneously with the Participant Market or resumed trading during such trading halt or suspension, shall respond to a pre-opening notification. The Commission notes that this language aligns the NASD's Rule 5250(c) with comparable rules of other Participants and with Exhibit A of the ITS Plan itself. By conforming the NASD's rule language with that of the other ITS Participants, Amendment No. 1 should ensure that all the Participants operate under similar rules that are designed to achieve similar goals, thereby facilitating transactions in securities and fostering the linking of all securities markets in the national market system through ITS. Accordingly, the Commission believes that it is consistent with Section 15A(b)(6) of the Act to approve Amendment No. 1 to the NASD's proposal on an accelerated basis so that all the markets have parallel requirements at the same time.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the NASD's rule proposal. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–09 and should be submitted by June 26, 1997.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule changes (SR–AMEX–97–07, SR–BSE–96–11, SR–CBOE–97–12, SR–CHX–96–34, SR–CSE–97–03, SR–NASD–97–09, SR–NYSE–97–03, and SR–PSE–97–05), including NASD Amendment No. 1, are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–14686 Filed 6–4–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38693; File No. SR–Amex–97–15]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Options on the NatWest Energy Index

May 29, 1997.

I. Introduction

On March 20, 1997, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to authorize Options on the NatWest Energy Index.

The proposed rule change was published for comment in the **Federal Register** on April 24, 1997.[3] No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

A. General

Amex proposes to trade options on The NatWest Energy Index (''Index''), a cash-settled narrow based index developed by the Amex and NatWest Securities Corporation (''NatWest'') based on 30 stocks (or ADRs thereon) of companies whose business is in various segments of the energy industry. In addition, the Amex proposes to amend (1) Rule 901C, Commentary .01 to reflect that 90% of the Index's numerical index value will be accounted for by stocks that meet the current criteria and guidelines set forth in Rule 915; and (2) Rule 902C to include the NatWest Energy Index in the disclaimer provisions of that rule.[4]

B. Composition of the Index

The Amex and NatWest have developed the Index based entirely on shares of widely held companies involved in producing and providing different types of energy products. The industries represented by these companies are domestic and international oil producers, refiners and transmitters, oil equipment manufacturers and drillers, and natural gas producers.

The Exchange will use an ''equal dollar-weighted'' method to calculate the value of the Index.[5] The Index was initialized at a level of 250.00 as of the close of trading on December 20, 1996.

C. Eligibility Standards for the Inclusion of Component Stocks in the Index

The Exchange represents that the Index conforms with Exchange Rule 901C, which specifies criteria for inclusion of stocks in an index on which standardized options will be traded. In addition, the Index has met the following standards: (1) Each of the component securities is traded on the Amex, the New York Stock Exchange (''NYSE'') or through Nasdaq and are reported national market system securities; (2) each of the component securities has a minimum market

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[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 38526 (Apr. 18, 1997), 62 FR 20043 (Apr. 24, 1997).

[4] Amex Rule 902 will be amended to add subsection (g) which will provide, among other things, that NatWest does not guarantee the accuracy or completeness of the Index or any data included therein, nor does NatWest make any warranty, either express or implied, as to the results to be obtained by any person or entity from the use of the Index or any data included therein.

[5] *See infra* section II.D entitled ''Calculation of the Index'' for a description of this calculation method.

capitalization of at least $75 million;[6] (3) each of the components has had a monthly trading volume of at least one million shares during each of the previous six months; (4) each of the component securities in the Index has met the initial eligibility criteria for standardized options trading set forth in Rule 915;[7] (5) foreign country securities or ADRs thereon that are not subject to comprehensive surveillance sharing agreements do not in the aggregate represent more than 20% of the weight of the Index; and (6) no individual component stock in the Index represents more than 25% of the weight of the Index, and the top five highest weighted stocks do not constitute more than 50% of the weight of the Index. The criteria set forth above are identical to the criteria established for the expedited listing of options on stock industry indexes pursuant to Exchange Rule 901C, Commentary .02.

D. Calculation of the Index

The Index shall be calculated by the Amex using an ''equal-dollar weighting'' methodology designed to ensure that each of the component securities is represented in an approximately ''equal'' dollar amount in the Index. The following is a description of how the equal-dollar weighting calculation method works. As of the market close on December 20, 1996, a portfolio of stocks was established representing an investment of $100,000 in the stock (rounded to the nearest whole share) of each of the companies in the Index. The value of the Index equals the current market value (i.e., based on U.S. primary market prices) of the sum of the assigned number of shares of each of the stocks in the Index portfolio divided by the Index divisor. The Index divisor was initially determined to yield a benchmark value of 250.00 at the close of trading on December 20, 1996. Annually thereafter, following the close of trading on the third Friday of December, the Index portfolio will be adjusted by changing the number of whole shares of each component stock so that each company is again represented in ''equal'' dollar amounts. If necessary, a divisor adjustment is made at the rebalancing to ensure continuity of the Index's value. The newly adjusted portfolio becomes the basis for the Index's value on the first trading day following the annual adjustment.[8]

Subject to the maintenance criteria discussed below, for the Index the number of shares of each component stock in the Index portfolio remains fixed between annual reviews except in the event of certain types of corporate actions such as the payment of a dividend other than an ordinary cash dividend, stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component stocks. In a merger or consolidation of an issuer of a component stock, if the stock remains in the Index, the number of shares of that security in the portfolio will be adjusted, if necessary, to the nearest whole share, to maintain the component's relative weight in the Index at the level immediately prior to the corporate action. In the event of a stock replacement, the dollar value of the security being replaced will be calculated and that amount invested in the stock of the new component, to the nearest whole share. In all cases, the divisor will be adjusted, if necessary, to ensure Index continuity.

Additionally, if at any time between annual rebalancings the top five stocks in the Index by weight represent in the aggregate more than one-third of the Index's value, the Exchange will rebalance the Index after the close of trading on Expiration Friday in the next month on the March cycle.[9] For example, if in July it is determined that the top five components in the Index account for more than one-third of the Index's weight, then the Index will be rebalanced after the close of trading on expiration Friday in September.

Similar to other stock index values published by the Exchange, the value of the Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B and to the Options Price Reporting Authority (''OPRA'').

E. Maintenance of the Index

The Index will be calculated and maintained by the Amex in consultation with NatWest which may, from time to time, suggest changes in the Index's components, in the industry categories represented or in the number of component stocks in an industry category to properly reflect the changing conditions in the energy sector. The Index will be maintained in accordance with Rule 901C, Commentary .02 which provides that the Index continues to meet the eligibility standards set forth above, except that, (1) the total number of component securities will not increase or decrease by more than 33⅓% from the number of components in the Index at the time of its initial listing and in no event will the Index have less than nine components; (2) the monthly trading volume of each component security shall be at least 500,000 shares, or for each of the lowest weighted components in the Index that in the aggregate account for no more than 10% of the weight of the Index, the monthly trading volume shall be at least 400,000 shares; and (3) no single component will represent more than 25% of the weight of the Index and the five highest weighted components will represent no more than 50% of the Index as of the first day of January and July in each year.

At the beginning of each calendar year, NatWest will provide the Amex with a current list of replacement stocks on which to draw in the event that a component in the Index is to be replaced (''Replacement List'').[10] The Amex will publicly distribute the Replacement List as soon as practicable following receipt from NatWest.

The stocks in the Replacement List will be selected and ranked by NatWest based on a number of criteria, including conformity to the initial eligibility standards set forth above,[11] trading liquidity, market capitalization, the ability to borrow shares and share price. The replacement stocks will be categorized by industry within the energy sector and ranked within their category based on the aforementioned criteria. The replacement stock for a security leaving the Index will be selected by the Amex from the Replacement List based on industry category and liquidity.[12]

In addition, NatWest will advise the Exchange regarding the handling of

[6] In the case of ADRs, this represents market value as measured by total world-wide shares outstanding.

[7] Initial eligibility criteria include: (1) the security must have a minimum of 7,000,000 shares held by persons other than those required to report their security holdings under Section 16(a) of the Act; (2) there must be at least 2,000 holders of the security; (3) the security must have a trading volume of at least 2,400,000 shares over the preceding twelve months; (4) the security must have had a share price of at least 7½ for the majority of business days for the last three calendar months preceding the date of selection; and (5) the issuer is in compliance with any applicable requirements of the Act.

[8] In certain circumstances, the Index will be rebalanced prior to the end of a calendar year. *See infra* Section II.E entitled ''Maintenance of the Index.''

[9] The options on The NatWest Energy Index will expire on the Saturday following the third Friday of the expiration month (''Expiration Friday'').

[10] *See* letter from Jeffrey T. Letzler, General Counsel, NatWest to Sharon Lawson, Assistant Director, SEC, dated May 16, 1997 (''NatWest Letter'').

[11] *See supra* Section II. C entitled ''Eligibility Standards for the Inclusion of Component Stocks in the Index.''

[12] The Amex will ensure that at the time of selection it will only select securities that continue to meet the eligibility requirements discussed above.

unusual corporate actions which may arise from time to time. Routine corporate actions (e.g., stock splits, routine spin-offs, etc.) which require straightforward index divisor adjustments will be handled by Exchange staff without consultation with NatWest. All stock replacements and unusual divisor adjustments caused by the occurrence of extraordinary events such as dissolution, merger, bankruptcy, non-routine spin-offs or extraordinary dividends will be made by Exchange staff in consultation with NatWest. All stock replacements and the handling of non-routine corporate actions will be announced at least ten business days in advance of such effective change, whenever practicable. As with all options currently trading on the Amex, the Exchange will make this information available to the public through dissemination of an information circular.

F. Expiration and Settlement

The exercise settlement value for all of the Index's expiring options will be calculated based upon the primary exchange regular way opening sale prices for the component stocks. In the case of securities traded through the Nasdaq system, the first reported regular way sale price will be used. If any component stock does not open for trading on its primary market on the last trading day before expiration, then the prior day's last sale price will be used in the calculation.[13]

G. Contract Specifications

The proposed options on the Index will be European-style,[14] and cash settled. Standard option trading hours (9:30 a.m. to 4:10 p.m. New York time) will apply. The last trading day in an expiring option series will normally be the second to last business day preceding the Saturday following the third Friday of the expiration month (normally a Thursday). The Exchange Plans to list option series with expirations in the three near-term calendar months and in the two additional calendar months in the March cycle. The Exchange also intends to list longer term option series having up to thirty-six months to expiration. Trading in expiring options will cease at the close of trading on the last trading day. The Exchange proposes to list near-the-money (i.e., within ten points above or below the current index value) option series on the Index at 2–½ point strike (exercise) price intervals when the value of the Index is below 200 points.

H. Listing of Long-Term Options on the Full Value or the Reduced Value of the Index

The proposal provides that the Exchange may list longer term option series having up to thirty-six months to expiration on the full value of the Index. In lieu of such long-term options on a full value Index level, the Exchange may instead list long-term, reduced value put and call options based on one-tenth (1/10th) the Index's full value. In either event, the interval between expiration months for either a full value or reduced value long-term option will not be less than six months. The trading of any long term options would be subject to the same rules which govern the trading of all the Exchange's index options, including sales practice rules, margin requirements and floor trading procedures and all options will have European-style exercise.

I. Position and Exercise Limits, Margin Requirements and Trading Halts

Because the Index is a Stock Index Option under Amex Rule 901C(a) and Stock Index Industry Group under Rule 900C(b)(1), the proposal provides that Exchange rules that are applicable to the trading of narrow-based index options will apply to the trading of options on the Index. Specifically, Exchange rules governing margin requirements, position and exercise limits,[15] and trading halt procedures[16] that are applicable to trading of narrow-based index options will apply to options traded on the Index. Position limits on reduced value long-term NatWest Energy Index options will be equivalent to the position limits for regular (full value) Index options and would be aggregated with such options (for example, if the position limit for the full value options is 15,000 contracts on the same side of the market, then the position limit for the reduced value options will be 150,000 contracts on the same side of the market).

J. Surveillance

Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in options on the Index. These procedures include complete access to trading activity in the underlying securities. Further, the Intermarket Surveillance Group (''ISG'') Agreement, dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the Index.[17]

NatWest has also adopted special procedures to prevent the potential misuse of material, non-public information by the research, sales, and trading divisions of the firm in connection with the maintenance of the Index.[18] As discussed above, the Amex will publicly disseminate each Replacement List by issuing information circulars so that investors will know in advance which securities will be considered as replacements for the Index.[19]

In addition, NatWest will have a limited role in the stock replacement selection and substitution process. First, when a stock in the Index no longer meets the published criteria as determined following a quarterly review of the components by the Exchange, the Amex will determine, without consultation with NatWest, which security from the applicable Replacement List will be selected for addition to the Index. Second, the Amex will also make adjustments as a result of stock splits, routine spin-offs, and otherwise, without consultation with

[13] The Commission notes that pursuant to Article XVII, Section 4 of the Options Clearing Corporation's (''OCC'') by-laws, OCC is empowered to fix an exercise settlement amount in the event it determines a current index value is unreported or otherwise unavailable. Further, OCC has the authority to fix an exercise settlement amount whenever the primary market for the securities representing a substantial part of the value of an underlying index is not open for trading at the time when the current index value (*i.e.*, the value used for exercise settlement purposes) ordinarily would be determined. *See* Securities Exchange Act Release No. 37315 (June 17, 1996), 61 FR 42671 (order approving SR–OCC–95–19).

[14] A European-style option can be exercise only during a specified period before the option expires.

[15] Pursuant to Amex Rules 904C and 905C, respectively, the position and exercise limits for the proposed Index options will be 15,000 contracts, unless the Exchange determines, pursuant to Rules 904C and 905C, that a lower limit is warranted.

[16] Pursuant to Amex Rule 918C, the trading of options on the Index will be halted or suspended whenever trading in underlying securities whose weighted value represents more than 20% of the Index's value are halted or suspended.

[17] ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: the Amex; the Boston Stock Exchange, Inc.; the Chicago Board Options Exchange, Inc.; the Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc.; the NYSE; the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. Because of potential opportunities for trading abuses involving stock index futures, stock options, and the underlying stock, and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (e.g., the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

[18] *See* NatWest Letter, *supra* note 10.

[19] *Id.*

NatWest. Even in those situations where the Amex consults with NatWest, upon the occurrence of certain events, the actual replacement stock will be selected solely by Amex from the stocks on the Replacement List. Finally, the special procedures developed by NatWest to prevent the misuse of material, non-public information concerning the Index will also be used in connection with the addition or removal of an industry group from the Index.

III. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[20] and, in particular, with the requirements of Section 6(b)(5).[21] Specifically, the Commission finds that the trading of options on the Index, including full-value and reduced value index options, will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with an additional means to hedge exposure to market risk associated with stocks in the energy sectors.[22]

The trading of options on the Index and reduced-value Index, however, raises several issues relating to index design, customer protection, surveillance, and market impact. The Commission believes, for the reasons discussed below, that the Amex adequately has addressed these issues.

A. Index Design and Structure

The Commission believes it is appropriate for the Exchange to designate the Index as narrow-based for purposes of index options trading. The Index is comprised of a limited number of stocks intended to track discrete industry groups of the energy sector of the stock market. Accordingly, the Commission believes it is appropriate for the Amex to apply its rules governing narrow-based index options to trading in the proposed Index options.[23]

The Commission also believes that the liquid markets, large capitalizations, and relative weighings of the Index's component stocks significantly minimize the potential for manipulation of the Index. First, the stocks that comprise the Index are actively traded. Minimum monthly trading volume in the component stocks of the Index for the period between June 1, 1996 and December 1, 1996 ranged from 2.52 million to 27.52 million shares. Second, the market capitalizations of the stocks in the Index are very large, ranging from $1.86 billion to $126 billion. Third, because the index is equal dollar-weighted, no one particular stock or group of stocks dominates the Index.

Fourth, the Index will be maintained so that in addition to the other maintenance criteria discussed above in Section II. E, at each rebalancing, at least 90% of the Index's numerical value and at least 80% of the total number of component securities will be composed of securities eligible for standardized options trading. Fifth, NatWest and Amex will be required to ensure that each component of the Index is subject to last sale reporting requirements in the U.S. pursuant to Rule 11Aa3–1 of the Act. This will further reduce the potential for manipulation of the value of the Index. Finally, the Commission believes that Amex's existing mechanisms to monitor trading activity in the component stocks of the Index, or options on those stocks or the Index, will help deter as well as detect any illegal activity.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as options on the Index, can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because options on the Index will be subject to the same regulatory regime as the other standardized options currently traded on the Amex, the Commission believes that adequate safeguards are in place to ensure the protection of investors in options on the Index. Finally, the Amex has stated that it will distribute information circulars to members following rebalancings and prior to component changes to notify members of changes in the composition of the Index. Additionally, the Amex will publicly disseminate each Replacement List by means of information circulars. The Commission believes this should help to protect investors and avoid investor confusion.

C. Surveillance

The Commission believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation.[24] In this regard, markets on which the components of the Index currently trade, the markets on which all component stocks trade are members of the ISG, which provides for the exchange of all necessary surveillance information.[25]

The Commission notes that certain concerns are raised when a broker-dealer, such as NatWest, is involved in the development and maintenance of a stock index that underlies an exchange-traded derivative product. For several reasons, however, the Commission believes that the Amex has adequately addressed this concern with respect to options on the Index.

First, the value of the Index is to be calculated and disseminated by the Amex independent of NatWest. Accordingly, neither NatWest nor any other party will be in receipt of the value prior to its public dissemination. Second, routine corporate actions (e.g., stock splits, routine spinoffs, etc.) will be handled by the Amex without consultation with NatWest. Third, although stock replacements and unusual divisor adjustments caused by the occurrence of extraordinary events,

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[20] In approving this rule, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

[21] 15 U.S.C. 78f(b)(5).

[22] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed options on the Index will provide investors with a hedging vehicle that should reflect the overall movement of the stocks representing companies in the energy sector in the U.S. stock markets.

[23] *See supra* Section II.I entitled ''Position and Exercise Limits, Margin Requirements, and Trading Halts.''

[24] See Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (October 5, 1992).

[25] *See supra* note 17.

such as dissolution, merger, bankruptcy, non-routine spinoffs, or extraordinary dividends, will be made by Exchange staff in consultation with NatWest, Amex alone ultimately will select the actual replacement stock from the Replacement List without NatWest's assistance. Such replacements will be announced publicly at least 10 business days in advance of the effective change by the Amex through the dissemination of an information circular, whenever practicable. Fourth, the Commission believes that the procedures NatWest has established to detect and prevent material non-public information concerning the Index from being improperly used by the person or persons responsible for compiling the Replacement List, as well as other persons within NatWest responsible for coordinating with Amex on the Index, as discussed above,[26] adequately serve to minimize the likelihood of manipulation of options on the Index, the securities in the Index, and securities added to and deleted from any Replacement List. In summary, the Commission believes that the procedures outlined above help to ensure that NatWest will not have any informational advantages concerning modifications to the composition of the Index due to its limited role in consulting with Amex on the maintenance of the Index under certain circumstances.

D. Market Impact

The Commission believes that the listing and trading of options on the Index, including long-term full-value and reduced-value Index options, on the Amex will not adversely impact the underlying securities markets.[27] First, as described above, due to the ''equal dollar-weighting'' methodology, no one stock or group of stocks dominates the Index. Second, as noted above, the stocks contained in the Index have relatively large capitalizations and are relatively actively traded. Third, the currently applicable 15,000 contract position and exercise limits will serve to minimize potential manipulation and market impact concerns. Fourth, the risk to investors of contraparty non-performance will be minimized because the options on the Index will be issued and guaranteed by the Options Clearing Corporation just like any other standardized option traded in the United States.

Lastly, the Commission believes that settling expiring options on the Index (including long-term full-value and reduced-value Index options) based on the opening prices of component securities is reasonable and consistent with the Act. As noted in other contexts, valuing options for exercise settlement on expiration based on opening prices rather than closing prices may help reduce adverse effects on markets for stocks underlying options on the Index.[28]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–AMEX–97–15) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–14687 Filed 6–4–97; 8:45 am]

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[26] *See* NatWest Letter, *supra* note 10.

[27] In addition, the Amex and the OPRA have represented that the Amex and the OPRA have the necessary systems capacity to support those new series of index options that would result from the introduction of options on the Index. *See* Letter from Edward Cook, Jr., Managing Director, Trading Floor Systems & Technology, Amex, to Ivette Lopez, Assistant Director, Division of Market Regulation, SEC, dated April 7, 1997; and letter from Joe Corrigan, Executive Director, OPRA, to Ivette Lopez, Assistant Director, Division of Market Regulation, SEC, dated April 15, 1997.

[28] Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992).

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38697; File No. SR–MBSCC–97–03]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Approving a Proposed Rule Change Relating to the Establishment of the Comparison Only System

May 30, 1997.

On February 18, 1997, the MBS Clearing Corporation (''MBSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–MBSCC–97–03) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on April 7, 1997.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change modifies MBSCC's rules to establish the Comparison Only System (''COS'') and to create a new category of participant, a ''limited purpose participant,'' eligible to use this system. As a result of interest expressed by the Federal National Mortgage Association and other organizations, MBSCC developed COS.

Under current MBSCC rules, MBSCC processes securities through its Comparison and Clearing System (''CCS'') which provides a comparison and confirmation service, risk management services, and a multilateral netting service. The proposed COS is a more limited system than the CCS in that it will only provide comparison and confirmation services. COS will be a system restricted to those that trade in a principal capacity (*i.e.*, as dealers) where specified trade data must exactly and promptly compare between like contra-sides.

Because the COS is limited to comparison, participants will not be required to meet specific net capital or net worth financial requirements. COS will require each limited purpose participant to submit financial information to demonstrate its financial ability to meet its cash balance debit obligations to MBSCC, which are limited to the fees for using the COS and any late fees imposed. It is expected that these fees will be significantly lower than those imposed on participants in the CCS; therefore, no basic deposit fee will be required of COS participants. MBSCC will bill the limited purpose participant on a monthly basis. The bill will be payable to MBSCC via the federal funds wire. Similarly, limited purpose participants are not subject to margin and participants fund requirements.

Under COS, after a trade is negotiated by the parties, trade data will be submitted electronically by the parties to MBSCC for comparison. The submitted trade data will be compared in MBSCC's AM or PM processing pass. If a trade compares, MBSCC will issue a purchase and sale report to each side of the trade.[3] The purchase and sale report will serve as the sole binding confirmation of the matched trade.[4] Trades compared through COS will be settled outside of the MBSCC system. Trades that do not compare will be reported as unmatched on a transaction

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 38461 (April 1, 1997), 62 FR 16634.

[3] For a trade to compare in COS, certain trade data will have to match exactly. Specifically, the trade data will be buyer account, seller account, class code or CUSIP/pool number, price, trade type, trade date, settlement date, and par value.

[4] Under MBSCC's rules, as the sole confirmation, the purchase and sale report will evidence a valid, binding, and enforceable contract, and MBSCC will be entitled to rely upon the purchase and sale report for all purposes under their rules. MBSCC Rules, Article II, Rule 4, Section 2.

summary report sent to the parties. Individually or jointly, the parties must then resolve or delete the unmatched trade by taking one or more of the following on-line actions: delete, DK (don't know), affirm, and new input. Unmatched trades will remain on a transaction summary report until resolved. Until an unmatched trade is resolved or deleted, the participant(s) that have not taken one or more of the on-line actions will be subject to the imposition of any associated late fees by MBSCC. Late fees are similarly assessed against the participant(s) with unmatched trades in CCS. For purposes of computing the late fees, each missed processing pass after a two pass grace period will result in a separate assessment against the participant(s). If the unmatched trade is resolved, MBSCC will compare and confirm it with a purchase and sale report as described above.

II. Discussion

Section 17A(b)(3)(F)[5] of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that MBSCC's proposed rule change is consistent with MBSCC's obligation under the Act because the COS provides a more efficient means to compare trade data for mortgage-backed securities.

The objective of COS is to improve the means by which trades in mortgage-backed securities are compared by providing a centralized and automated alternative to the current method of verbal contact and physical processing. By automating the means by which trade data is compared, MBSCC is fulfilling its statutory obligation of promoting the prompt and accurate clearance and settlement of securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–MBSCC–97–03) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–14690 Filed 6–4–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38694; File No. SR–MSRB–97–3]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Fee for Backlog Document Collection of its Official Statement/Advance Refunding Document Subsystem of the Municipal Securities Information Library

May 29, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 20, 1997, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change (File No. SR–MSRB–97–3). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Board has designated this proposal as establishing or changing a due, fee or other charge under Section 19(b)(3)(A) of the Act,[2] which renders the proposed rule change effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing herewith a proposed rule change to establish a fee relating to the operation of its Official Statement/Advance Refunding Document (''OS/ARD'') subsystem of the Municipal Securities Information Library® (''MSIL®'') system.[3] The Board is establishing a price of $7,000 (plus delivery or postage charges) for its 1996 document collection of official statements and refunding documents, sold as a ''backlog'' collection.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 15 U.S.C. 78s(b)(3)(A).

[3] Municipal Securities Information Library and MSIL are registered trademarks of the Board. The MSIL system, which was approved in Securities Exchange Act Release No. 29298 (June 13, 1991), 56 FR 28194 (June 19, 1991), is a central facility through which information about municipal securities is collected, stored and disseminated.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Section A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The OS/ARD subsystem, which was activated on April 20, 1992, is a central electronic facility through which information that is collected and stored pursuant to MSRB rule G–36 is made available electronically and in paper form to market participants and information vendors.[4] The annual subscription fee for daily tapes of images of current year documents from the OS/ARD system currently is $14,000.[5] The fees for backlog collections are substantially less than fees for an annual subscription because an annual subscription requires the Board to send a computer tape to the subscriber each business day, but a backlog day, but a backlog collection requires fewer tapes.[6] The Board is establishing a price of $7,000 (plus delivery or postage charges) for the 1996 backlog collection.

In its prior filings with the Commission, the Board stated that it intends to use its general revenues to help fund collecting, indexing and storing the OS/ARD subsystem's

[4] Rule G–36 requires underwriters to provide copies of final official statements and advance refunding documents within certain specified time frames for most new issues issued since January 1, 1990.

[5] This fee was filed with the Commission. Securities Exchange Act Release No. 37361 (June 25, 1996), 61 FR 34463 (July 2, 1996).

[6] Currently, several business day's worth of documents are on each tape in an annual collection. The backlog fee plus delivery costs for 1995 is $9,000; 1994 is $7,000; 1993 is $9,000; 1992 is $7,000; 1991 is $8,000; 1990 is $6,000. These fees were filed with the Commission. Securities Exchange Act Release No. 37361 (June 25, 1996), 61 FR 34463 (July 2, 1996) (1996 and 1995 fees); Securities Exchange Act Release No. 35848 (June 14, 1995), 60 FR 32187 (June 20, 1995) (1994 fee); Securities Exchange Act Release No. 32482 (June 16, 1993), 58 FR 34115 (June 23, 1993) (1992 and 1990 fees); Securities Exchange Act Release No. 34602 (Aug. 25, 1994), 59 FR 45319 (Sept. 1, 1994) (1993 and 1991 fees). The fees for the backlog collections vary based on the number of documents received and processed in any given year.

documents. However, the Board stated its intention that the costs of producing and disseminating magnetic tapes (and paper copies) would be completely covered by user fees.[7] The Board is establishing the 1996 backlog collection fee to defray its cost of disseminating the collection tapes. This is consistent with the Commission's policy that self-regulatory organizations' fees be based on expenses incurred in providing information to the public.

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which requires, in pertinent part, that the Board's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The Board believes that employing cost-based prices is in the pubic interest since it will ensure that a complete collection of vital information will be available, at fair and reasonable prices, for the life of the municipal securities. The MSIL system is designed to increase the integrity and efficiency of the municipal securities market by, among other things, helping to ensure that the price charged for an issue in the secondary market reflects all available official information about that issue. The Board believes that the 1996 backlog fee is fair and reasonable in light of the costs associated with disseminating the information, and that the services provided by the MSIL system are available on reasonable and nondiscriminatory terms to any interested person.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

[7] Securities Exchange Act Release No. 28197 (July 12, 1990), 55 FR 29436 (July 19, 1990).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Board has designated this proposed rule change as establishing or changing a dues, fee or other charge under Section 19(b)(3)(A) of the Act,[8] which renders the proposed rule change effective on May 20, 1997, the date of receipt of this filing by the Commission.

At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change it if appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–97–3 and should be submitted by June 26, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–14620 Filed 6–5–97; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38692; File No. SR–NASD–97–34]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Miscellaneous Amendments to Arbitration Procedures and Clarifications of the Code of Arbitration Procedure

May 29, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 5, 1997,[1] the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation, Inc. (''NASDR'') is proposing to amend the Code of Arbitration Procedure (''Code'') to make certain minor procedural changes designed to enhance the arbitration process. Specifically, NASDR is proposing to amend: (1) Rule 10305 (formerly Section 16), to permit arbitrators to dismiss claims with and without prejudice; (2) 10310 (formerly Section 21), to extend the time periods for notice of selection of arbitrators and further inquiries concerning an arbitrator; (3) Rule 10311 (formerly Section 22), to permit the Director of Arbitration to grant additional peremptory challenges of arbitrators; (4) Rule 10313 (formerly Section 24), to extend the time in which a party can exercise its right to challenge a replacement arbitrator; and (5) rule 10330 (formerly Section 41), to permit awards to be served by facsimile.

[1] The NASD filed Amendment Nos. 1 and 2 with the Commission on May 13, 1997, and May 22, 1997, respectively, the substance of which are incorporated into the notice. *See* letters from Elliot R. Curzon, Assistant General Counsel, NASDR, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated May 8, 1997 (''Amendment No. 1'') and May 20, 1997 (''Amendment No. 2).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of its continuing efforts to enhance the arbitration process, NASDR has been engaged in a comprehensive review of proposals to improve the procedures for arbitration specified in the Code. The amendments to the Code proposed herein are a result of that effort, and are intended to clarify existing provisions, eliminate ambiguities, and adjust certain procedures to accommodate changing practices in arbitration. The amendments were considered and approved by the Securities Industry Conference on Arbitration (''SICA''). In addition, while NASDR does not believe that the rule changes proposed herein will conflict with amendments to the Code to be proposed in response to the recommendations of the NASD's Arbitration Policy Task Force, some of the rule changes proposed herein will ultimately be replaced or superseded by those amendments and are, therefore, temporary in nature. For example, the proposed changes to the peremptory challenge provision discussed below will be superseded when the Association's list selection rule is filed with and approved by the Commission. Nevertheless, NASDR believes that the rule changes proposed herein are important enough to be made now even if some of them will eventually be superseded.

NASDR is proposing to amend Rule 10305 of the Code (formerly Section 16), which relates to dismissal of arbitration proceedings, to clarify that the arbitrators may dismiss a proceeding without prejudice to the claims or defenses of the parties and refer the parties to their judicial remedies and, in addition, to any other dispute resolution forum agreed to by the parties. The Code does not specify the grounds for dismissals without prejudice; however, such dismissals would generally occur only where appropriate and in the interest of justice, such as where the parties have agreed to the dismissal (especially if they have agreed to proceed in another forum), or where an indispensable party cannot be joined in the arbitration.

NASDR is also proposing to amend Rule 10305 by adding a new subsection (b) granting arbitrators the express authority to dismiss a claim, defense, or proceeding with prejudice as a sanction for willful and intentional material failure to comply with an order of the arbitrator(s), but only if lesser sanctions have proven ineffective.[2] This provision is intended to establish clearly that arbitrators have the power to issue orders in aid of the arbitration process and to enforce those orders by use of the ultimate sanction of dismissal with prejudice. Such a sanction would be used, for example, where a party refused to produce documents necessary for another party's claim or defense. In such instances, after the arbitrators have imposed lesser sanctions that have not induced compliance with the order, the arbitrators may dismiss a claim, defense, or the entire arbitration proceeding, with prejudice.

NASDR is proposing to amend Rules 10310, 10311, and 10313 of the Code (formerly Sections 21, 22, and 23), which relate to arbitrator selection, peremptory challenges and arbitrator disclosures, to extend the time limitations on a party to (1) seek additional information under Rules 10310 and 10313 about replacement arbitrators, and (2) exercise a peremptory challenge under Rule 10311, from 5 days to 10 days prior to the hearing. In addition, Rule 10310 is proposed to be amended to extend the Arbitration Department's obligation to provide the parties with the names and histories of the arbitrators from 8 to 15 days prior to the date of the first hearing. The proposed rule change further amends Rule 10310 to replace ''the Director of Arbitration'' with ''the Director'' whenever it occurs.

NASDR is also proposing to amend Rule 10311 to permit the Director to grant additional peremptory challenges under certain circumstances. Currently, the rule permits the Director to grant additional peremptory challenges in multi-party cases when the Director, ''in the interests of justice,'' determines that additional peremptory challenges are warranted by the circumstances of the case. For example, on occasion a party will discover grounds for a cause challenge to one arbitrator after the party has used its peremptory challenge against that arbitrator. In such an instance, the party may argue that it would have used its peremptory challenge differently had it known of the information. Under the current rule if that circumstance arose in a multi-party case, the Director may, ''in the interests of justice,'' grant additional challenges. NASDR believes that similar circumstances may arise in single-party cases and, therefore, is seeking to amend the rule to permit the Director to grant such additional challenges.

NASDR is also proposing to amend Rule 10330 of the Code (formerly Section 41) to permit the Office of Dispute Resolution to serve arbitration awards by facsimile or other electronic means if the recipient agrees. The Office frequently is asked to provide arbitration awards to parties by facsimile. Because the Code does not provide for this method of service, the Office serves the award by facsimile and also duplicate service by one of the other methods specified in the Code. By amending the Code to permit facsimile service, the Office will not be required to serve duplicates by another approved method. Nevertheless, the Office will not use the facsimile method of service unless both parties have agreed to this form of service in order to prevent disagreements over when an award was served for purposes of time limitations on appeals.

The proposed rule change also amends references to numbers, such as ''eight (8)'' or ''fifteen (15)'', throughout the proposed rule change to delete the word from and retain the Arabic numeral.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[3] in that clarifying procedures, eliminating ambiguities, and adjusting procedures to accommodate changing practices are consistent with the NASD's longstanding goal of providing the investing public with a fair, efficient, and cost-effective forum for the resolution of disputes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will impose any inappropriate burden on competition.

[2] While it is believed that arbitrators currently have plenary power to issue such dismissal orders, this power is rarely exercised because it is not expressly provided for in the Code and arbitrators appear to be reluctant to wield such sanctioning power without express authority.

[3] 15 U.S.C. 78*o*–3.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–34 and should be submitted by June 26, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–14618 Filed 6–4–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38690; File No. SR–PCX–97–17]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Incorporated Relating to a Correction to its Rules on Listing Requirements

May 28, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 13, 1997, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to modify its Rule 3.2(b) in order to correct a cross-reference in its rules on listing requirements. The text of the proposed rule change is available at the office of the Secretary, PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 22, 1994, the Commission approved an Exchange proposal to modify its listing and maintenance standards.[2] Under the rule change, a new Rule 3.2(b) was added, stating in part that ''Any security listed pursuant to this Rule 3.2, paragraphs (c) through (i) . . . Shall be designated as a Tier I security.'' Subsequently, on December 16, 1994, the Commission approved an Exchange proposal to adopt listing standards for Limited Partnership Rollups.[3] In that filing, the Exchange added a new Rule 3.2(i) (''Limited Partnerships''), and changed the numbering of existing Rule 3.2(i) (''Other Securities'') to Rule 3.2(j). However, the cross-reference in Rule 3.2(b) was not also changed at that time. Accordingly, the Exchange is now proposing to make this technical correction by modifying Rule 3.2(b) to state, in part, that ''Any security listed pursuant to this Rule 3.2, paragraphs (c) through (j) . . . shall be designated as a Tier I security.''

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6 (b)(4)[5] in particular, in that it is designed to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange represents that the proposed rule change will not impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is concerned solely with the administration of the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and subparagraph (e) of Rule 19b–4 thereunder.[7]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is

[1] 15 U.S.C. 78s(b)(1).

[2] *See* Securities Exchange Act Release No. 34429 (Jul. 22, 1994), 59 FR 38998 (Aug. 1, 1994) (order approving SR–PSE–93–12).

[3] *See* Securities Exchange Act Release No. 35111 (Dec. 16, 1994), 59 FR 66388 (Dec. 23, 1994) (order approving SR–PSE–94–36).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4.

necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Pacific Exchange. All submissions should refer to File No. SR–PCX–97–17 and should be submitted by June 26, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–14619 Filed 6–4–97; 8:45 am]

BILLING CODE 8010–01–M

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38701; File No. SR–PHLX–97–13]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice and Order Granting Accelerated Approval to Amendment Nos. 1 and 2 to Proposed Rule Change Amending the Exchange's Rule Concerning the Pre-Opening Application of the Intermarket Trading System

May 30, 1997.

I. Introduction

On March 19, 1997, the Philadelphia Stock Exchange, Inc. (''PHLX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Phlx Rule 2001, Intermarket Trading System (''ITS''), to enhance the operation of the Pre-Opening Application by effectively including circuit breakers as a trading halt situation that will trigger the Pre-Opening Application. The proposed rule change will also reorganize and update Rule 2001 to make it conform more closely to the Pre-Opening Application rules of other exchanges and to the model Pre-Opening Application Rule attached as Exhibit A to the ITS Plan.

Notice of the proposed rule change, together with the substance of the proposal, was published for comment in Securities Exchange Act Release No. 38507 (April 14, 1997), 62 FR 193883 (April 21, 1997).[3] No comments were received on the proposal. Phlx subsequently filed Amendment Nos. 1 and 2, on May 27, 1997 and May 29, 1997, respectively.[4]

II. Description

The purpose of the proposed rule change is to enhance the operation of the Pre-Opening Application under PHLX's Rule 2001. Rule 2001 contains basic definitions pertaining to ITS, prescribes the types of transactions that may be effected through ITS and the pricing of commitments to trade, and specifies the procedures pertaining to the operation of the Pre-Opening Application, whereby an Exchange specialist who wishes to open a market in an ITS stock may obtain any pre-opening interest in that stock by other market-makers registered in that stock in other Participant markets.

PHLX's current Pre-Opening Application prescribes that if an Exchange specialist anticipates that the opening transaction on the Exchange will be at a price that represents a change from the security's previous day's consolidated closing price of more than the ''applicable price change,'' the Exchange specialist shall notify other Participant markets by sending a pre-opening notification through ITS. The ''applicable price changes'' in current Rule 2001 are:

Consolidated closing price[5]	Applicable price change (more than)
Network A:[6]	
Under $15	⅛ point.
$15 or over	¼ point.
Network B:	
Under $5 or over	⅛ point.
	¼ point.

Thereafter, the Exchange specialist shall not open the market in the security until not less than three minutes after the transmission of the pre-opening notification. Once an Exchange specialist has issued a pre-opening notification, other Participant markets may transmit ''pre-opening responses'' to the Exchange specialist through ITS that contain ''obligations to trade.'' The Exchange specialist is then obligated to combine these obligations with orders it already holds in the security, and, on the basis of this aggregated information, decide upon the opening transaction in the security.

PHLX's current Rule 2001(c)(ii) states that the Pre-Opening Application also applies whenever the specialist wishes to resume trading on the Exchange in any Eligible Listed security following the initiation of a ''Regulatory Halt'' by any Participant that is an exchange if both trading has been halted in all exchange markets and, when the relevant security is also eligible for trading through the interface between the ITS and the NASD's Computer Assisted Execution System (''CAES''), the NASD has suspended quotations in the relevant security. Pursuant to current Rule 2001(c)(ii), the Pre-Opening Application does not apply

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that a joint order approving the ITS Pre-Opening Application rule proposals for the other eight ITS Participants is being issued on the same day as this approval order, as well as an order approving similar changes to the ITS Plan itself. *See* Securities Exchange act Release Nos. 38700 (May 30, 1997) and 38699 (May 30, 1997) (ITS Plan Amendment Approval Order).

[4] Amendment No. 1 amends Rule 2001 to add subparagraph (c)(ii)(B), titled ''Pre-Opening Responses for Open Markets'' and sub-paragraph (d)(ii) titled ''Responses When the Exchange is Open'' and renumbers the remaining sub-paragraphs. Amendment No. 1 also places sub-paragraph headings in bold print and amends sub-paragraph (d)(vii), ''Request for Participation Report,'' to reflect a T+3 time frame; instead of a T+1 time frame. Amendment No. 2 further amends the new sub-paragraph (c)(ii)(B) by adding additional language, and by adding the word ''third'' to sub-paragraph (d)(vii) to reflect the change to a T+3 time frame. See letters from Philip H. Becker, Senior Vice President, Chief Regulatory Officer, Phlx, to Heather Seidel, Attorney, Market Regulation, Commission, dated May 23, 1997 (''Amendment No. 1'') and May 29, 1997 (''Amendment No. 2'') respectively.

[5] If the previous day's closing price of an eligible listed security exceeded $100 and the security does not underlie an individual stock option contract listed and currently trading on an exchange, the ''applicable price change'' is one point.

[6] Network A is comprised of New York Stock Exchange (''NYSE'') securities; Network B is comprised of securities admitted on the American Stock Exchange, the Boston Stock Exchange, the Chicago Board Options Exchange, the Chicago Stock Exchange, the Cincinnati Stock Exchange, the Pacific Exchange, PHLX, or any other exchange, but not also admitted to dealings on the NYSE.

when trading on the Exchange is resumed following the initiation of a Regulatory Halt if either (1) Trading has not been halted in all exchange markets or, when the relevant security is also eligible for trading through the interface between the ITs and CAES, the NASD has not suspended quotations in the affected security or (2) following any other type of halt in trading on the Exchange for any reason. When the Pre-Opening Application applies under Rule 2001(c)(ii), the Exchange specialist must send a pre-opening notification through ITS.

The purpose of the proposal is to amend PHLX's Rule 2001 to provide that the Pre-Opening Application would be triggered whenever any ''indication of interest'' (i.e., an anticipated opening price range) is sent to the Consolidated Tape System prior to the opening or reopening of trading in the relevant security. Under the proposed change, the Pre-Opening Application would be triggered when indications of interest are disseminated in situations other than those defined in Rule 2001(c)(ii), ''Applicability Following Regulatory Halts,'' including the resumption of trading following the activation of market-wide circuit breakers.

In particular, the proposal would amend Rule 2001(b)(7) to provide that the Pre-Opening Application applies (i) ''whenever a market maker in any Participant market, in arranging an opening transaction in that market in a System security, anticipates that the opening transaction will be at a price that represents a change from the security's 'previous day's closing price' at more than the 'applicable price range' '' and (ii) ''whenever an 'indication of interest' (an anticipated opening price range) is sent to the CTA Plan Processor as required or permitted by the CTA Plan or a Participant market's rules.''[7] The proposed rule change also deletes current Rule 2001(c)(x), ''Tape Indications,'' replaces it with the exact language of the ITS Plan model Pre-Opening Application rule pertaining to tape indications, and renumbers the section as Rule 2001(c)(i)(B). The proposed rule change would replace all references to ''Trading Halt'' with ''halt or suspension in trading'' and delete current Rule 2001(c)(ii), ''Applicability Following Regulatory Halts,'' because it would be inconsistent with the new language ''halt or suspension in trading.'' As a result, one standard procedure would then govern all trading halt situations and would include suspensions of trading pursuant to circuit breaker halts.[8]

In addition, the proposed rule change amends Rule 2001(a), which contains the core definitions applicable to ITS, by adding the previously omitted definitions or Network A and Network B eligible securities and renumbering the remaining definitions. The Exchange also proposes to reorganize certain provisions of Rule 2001 to improve its clarity. The proposed rule change reorganizes Rule 2001(c) into sub-paragraphs (i) Notifications and (ii) Pre-Opening Responses. The proposed rule change further divides proposed Rule 2001(c)(i) into (A) Applicable Price Changes and (B) Tape Indications. The proposed rule change then further subdivides Rule 2001(c)(i)(A) into (1) Initial Notification, (2) Forms of Notification, and (3) Subsequent Notification. The proposed rule change also amends proposed Rule 2001(c)(i)(A)(1) to state that the applicable price changes for Network B securities would be ⅛ point for consolidated closing prices under $5 and ¼ point for consolidated closing prices of $5 or over. Finally, the proposed rule change adds ''Network A'' to the footnote under proposed Rule 2001(c)(i)(A)(1) to state that ''[i]f the previous day's consolidated closing price of a Network A Eligible Listed security exceeded $100 and the security does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the 'applicable price change' is one point.''

In addition, Amendment No. 1 adds proposed Rule 2001(c)(ii)(B), ''Pre-Opening Responses from Open Markets,'' and proposed Rule 2001(d)(ii), ''Responses When the Exchange is Open.'' Amendment No. 2 adds additional language to proposed Rule 2001(c)(ii)(B). Amendment Nos. 1 and 2 also amend Rule 2001(d)(vii) to reflect a T+3 time frame.[9]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[10] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[11] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public, by treating all halts similarly for purposes of ITS.[12]

The Commission finds that the proposed rule change is also consistent with Section 11A(a)(1)(D)[13] of the Act that states that the linking of all markets for qualified securities through communications and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to the best execution of such orders.

The Commission believes that the portions of the proposed rule change that conform the operation of PHLX's Pre-Opening Applications with regard to trading halts to the amended rules of the other ITS Participants and with the Model Pre-Opening Application rules contained as Exhibit A to the ITS Plan, are consistent with the Act. The Commission finds that this change will facilitate transactions in securities while continuing to further investor protection and the public interest by enhancing the linkage among ITS Participant Markets and promoting coordinated openings and reopenings in ITS securities. The proposed rule change achieves these goals by amending the PHLX's Pre-Opening Application so that one standard procedure governs all trading halt situations, including circuit breaker halts.

PHLX's proposed rule change makes additional substantive proposed changes, which include: adding the previously omitted definitions of Network A and Network B eligible securities and renumbering the remaining definitions; reorganizing certain provisions of Rule 2001 to improve its clarity;[14] amending proposed Rule 2001(c)(i)(A)(1) to state that the applicable price changes for

[7] The Commission notes that this language is essentially the same as that in other exchange's Pre-Opening Application rules and the model Pre-Opening Application rule contained in the ITS Plan.

[8] The Exchange notes that this amendment to Rule 2001 is being made in conjunction with comparable amendments to the ITS Plan, as well as the rules of the other ITS Participant exchanges, which originate from recent changes to exchange circuit breaker provisions. *See* SR–BSE–96–11 and Securities Exchange Act Release Nos. 37459 (July 19, 1996) 61 FR 39172 (July 26, 1996) (one-half hour and one hour halts) and 38221 (January 31, 1997) 62 FR 5871 (February 7, 1997) (350 and 550 point thresholds).

[9] Finally, Amendment No. 1 amends all sub-paragraph headings to place them in bold print.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78d–1(a)(1)(D).

[14] The details of the reorganization of Rule 2001 are contained in the Description section above.

Network B securities would be ⅛ point for consolidated closing prices under $5 and ¼ point for consolidated closing prices of $5 or over; adding ''Network A'' to the footnote under proposed Rule 2001(c)(i)(A)(1) to state that ''[i]f the previous day's consolidated closing price of a Network A Eligible Listed security exceeded $100 and the security does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the 'applicable price change' is one point;'' deleting current Rule 2001(c)(X) ''Tape Indications,'' replacing it with the ITS Plan model Pre-Opening Application rule language, and renumbering the section; adding proposed Rules 2001(c)(ii)(B), ''Pre-Opening Responses from Open Markets'' and 2001(d)(ii), ''Responses When the Exchange is Open''; [15] and amending Rule 2001(d)(vii) to reflect a T+3 time frame.[16]

The Commission believes that these changes are consistent with the Act because they should facilitate transactions in securities between and promote the linkage among the ITS Participants by conforming the PHLX's ITS rules with the model Pre-Opening Application rules contained as Exhibit A to the ITS Plan and the other ITS Participants' rules. This alignment should help ensure that all the Participants operate under similar rules that are designed to achieve similar goals.

The Commission finds good cause to approve Amendment Nos. 1 and 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment Nos. 1 and 2 amend the Pre-Opening Application by adding proposed Rules 2001 (c)(ii)(B) and (d)(ii) and by changing Rule 2001(d)(vii) to reflect a T+3 time frame, to conform PHLX's Pre-Opening Application rule those of the existing rules of other ITS Participants and to the model ITS Plan Pre-Opening Application rule. In addition, Amendment No. 1 makes a technical change by placing all sub-paragraph headings in bold print. These changes will help ensure consistency in the Pre-Opening Application rules of all the Participants.

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2 to the rule proposal. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR–PHLX–97–13 and should be submitted by June 26, 1997.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–PHLX–97–13), including Amendment Nos. 1 and 2, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–14688 Filed 6–4–97; 8:45 am]

BILLING CODE 8010–01–M

[15] See Amendment Nos. 1 and 2, supra note 4.

[16] See Amendment Nos. 1 and 2, supra note 4.

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 97–003]

Additional Hazards Study

AGENCY: Coast Guard, DOT.

ACTION: Notice and request for comments.

SUMMARY: This notice announces two public workshops to be held to present the results of the Additional Hazards Study.

DATES: Duplicate public workshops will be held on June 24, 1997, from 8:30 a.m. to 12:30 p.m. and 5:30 p.m. to 9:30 p.m. Comments concerning this notice should reach the Coast Guard on or before 6 July, 1997.

ADDRESSES: The workshops will be held at Best Western Executive Inn, 200 Taylor Ave. N., Seattle, WA 98109. Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) [CGD 97–003], U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593-0001, or may be delivered to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this project. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Duane Boniface, Human Element and Ship Design Division (G–MSE–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, telephone 202–267–0178, fax 202–267–4816, email fldr-he@comdt.uscg.mil.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit written data, views, or arguments, concerning the subject matter of this notice. Persons submitting comments should include their names and addresses, identify this docket (CGD 97–003), and give the reason for each comment, providing specific examples whenever possible. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Background and Purpose

The Volpe National Transportation Systems Center (Volpe) has conducted a study entitled ''The Additional Hazards Study'' on behalf of the U.S. Coast Guard and Department of Transportation in accordance with a Presidential Directive issued in 1996. This study has evaluated all measures, current and planned, intended to reduce the hazards of major oil spills (including crude oil, refined product, and bunker) by commercial ships while transiting the waters of Puget Sound, the Straits of Juan de Fuca, and the Olympic Coast National Marine Sanctuary. An example of one of these measures is the planned International Tug of Opportunity System (ITOS), which is a system designed to coordinate tugs responding to disabled vessels off the Olympic Coast.

This study represents another step in a continuous improvement process to address maritime concerns in the Pacific Northwest. Development of this project began in early December 1996.

These Workshops are the second formal session to obtain stakeholder

input and feedback. The first two, held in March in Seattle, were used to obtain the stakeholder concerns about the hazards in the waterway, as well as to identify potential additional measures. This information was used by the Expert Panel (held in Seattle in April) and Volpe to augment both expert judgment and data in their analysis. This session will be used to gather feedback on the outcome of the study (in addition to the docket as described above) and to start to develop a refined picture of what additional steps should be evaluated as the process moves forward.

The current workshops will allow the Coast Guard to present the outcome of the study, and gather stakeholder comments on the outcome. These comments will be presented to the Secretary along with the Additional Hazards Study.

Dated: May 29, 1997.

Howard L. Hime,

Acting Director, Standards, U.S. Coast Guard.

[FR Doc. 97–14737 Filed 6–4–97; 8:45 am]

BILLING CODE 4910–14–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD8–97–014]

Lower Mississippi River Waterway Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Lower Mississippi River Waterway Safety Advisory Committee will meet to discuss various navigation safety matters affecting the Lower Mississippi River area. The meeting will be open to the public.

DATES: The meeting will be held from 1 p.m. to approximately 3 p.m. on Wednesday, June 25, 1997.

ADDRESSES: The meeting will be held in the basement FGSA conference room of the Hale Boggs Federal Building, 501 Magazine Street, New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Mr. Monty Ledet, USCG, Administrator, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (m), Room 1341, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone (504) 589–4686.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 §1 et seq. The meeting is open to the public. Members of the public may present written or oral statements at the meeting. The agenda for the meeting consists of the following items:.

(1) Approval of the minutes from the December 17, 1996 full Committee meeting.

(2) Subcommittee Reports.

(3) New Business.

(4) Adjournment.

INFORMATION ON SERVICES FOR INDIVIDUALS WITH DISABILITIES: For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Executive Director, Captain J. Calhoun, Chief of Marine Safety Division, Eighth Coast Guard District as soon as possible.

Dated: May 2, 1997.

T.W. Josiah

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

[FR Doc. 97–14738 Filed 6–4–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[#97–03–C–00–GJT]

Intent to Rule on Applicaiton to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Walker Field Airport, Submitted by the Walker Field Airport Authority, Grand Junction, Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Walker Field Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 7, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan E. Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Corinne Nystrom, Airport Manager, at the following address: Walker Field Airport Authority, 2828 Walker Field Drive, Grand Junction, CO 81506.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Walker Field Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 342–1258; Denver Airports District Office, DEN–ADO Federal Aviation Administration; 26805 68th Avenue, Suite 224; Denver, CO 80249–6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#97–03–C–00–GJT) to impose and use PFC revenue at Walker Field Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 28, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Walker Field Airport Authority, Grand Junction, Colorado, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 27, 1997.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: September 1, 1997

Proposed charge expiration date: March 1, 2004

Total requested for use approval: $2,157,000

Brief description of proposed project: Rehabilitation of Taxiway C; Aircraft rescue and firefighting (ARFF) /Snow removal equipment (SRE) building; SRE—multi use snow plow/broom.

Class or classes of air carriers which the public agency has requested are not required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055–4056. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Walker Field Airport.

Issued in Renton, Washington on May 28, 1997.

David A. Field,

Manager, Planning, Programming, and Capacity Branch, Northwest Mountain Region.

[FR Doc. 97–14656 Filed 6–4–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–501 (Sub–No. 1X)]

Longhorn Railway Company et al.; Discontinuance Exemption; in Burnet County, TX

On May 15, 1997, Longhorn Railway Company (Longhorn) filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to discontinue service over approximately a .25-mile segment of the Burnet City track owned by the City of Austin, TX, extending between Polk Street and the end of the line at Washington Street in Burnet, which traverses through U.S. Postal Zip Code 78611. Longhorn has indicated that the only station to be affected by the proposed discontinuance of service is Burnet, TX.

The line does not contain federally granted rights-of-way. Any documentation in Longhorn's possession will be made available promptly to those requesting it. The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Company—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). In a prior decision, Longhorn was specifically directed to address the exemption criteria of 49 U.S.C. 10502(b) if it filed a petition for discontinuance of service exemption. See *Longhorn Railway Company—Discontinuance Exemption—In Burnet, TX,* STB Finance Docket No. AB–501X(STB served Apr. 1, 1997) (*Longhorn*). Because the instant petition fails to include a discussion of the exemption criteria, Longhorn is directed to submit a supplemental filing addressing the exemption criteria within 10 days of the service of this decision. Failure to do so will result in termination of this exemption proceeding. Assuming we receive the supplemental information, a final decision will be issued by September 2, 1997.

Any offer of financial assistance to subsidize continued rail service under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer of financial assistance must be accompanied by a $900 filing fee. *See* 49 CFR 1002.2(f)(25).

Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate.

Longhorn and the rail line owners, the City of Austin, TX, and Capital Metropolitan Transportation Authority, have filed the required environmental report necessary before the rail line may be discontinued and abandoned. See *Longhorn, supra.*

All filings in response to this notice must refer to STB Docket No. AB–501(Sub-No. 1X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Donald T. Cheatham, 10220–E Metropolitan Drive, Austin, TX 78758.

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary), prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: May 30, 1997.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams,

Secretary.

[FR Doc. 97–14731 Filed 6–4–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 97–47]

Country of Origin Marking of Products of Hong Kong

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

ACTION: Notice of Policy.

SUMMARY: This document notifies the public that, with respect to imported goods produced in Hong Kong after the reversion of that region to China on July 1, 1997, the proper country of origin marking for such goods will continue to be ''Hong Kong.''

EFFECTIVE DATE: The position set forth in this document is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 1, 1997.

FOR FURTHER INFORMATION CONTACT: Craig Walker, Special Classification and Marking Branch (202) 482–6980.

SUPPLEMENTARY INFORMATION:

Background

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Failure to mark an article in accordance with the requirements of 19 U.S.C. 1304 shall result in the levy of a duty of ten percent *ad valorem*. Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

Pursuant to the Sino-British Joint Declaration, signed in 1984, the People's Republic of China will resume the exercise of sovereignty over Hong Kong on July 1, 1997. With respect to goods produced in Hong Kong while under the sovereignty of Great Britain, the Customs Service has taken the position that such goods should properly be marked to indicate that their origin is ''Hong Kong.''

It has been determined that no change in the current practice regarding the country of origin marking of goods produced in Hong Kong should be made as a result of the reversion of that region's sovereignty to China. Therefore, this document notifies the public that, unless excepted from marking, goods

produced in Hong Kong which are entered or withdrawn from warehouse for consumption into the U.S. on or after July 1, 1997, shall continue to be marked to indicate that their origin is ''Hong Kong.''

Dated: May 29, 1997.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 97–14662 Filed 6–4–97; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

Census of Foreign Students in the United States

ACTION: Request for proposal.

SUMMARY: The Advising and Student Services Branch of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. U.S. educational, cultural, public, and private for-profit and not-for profit-organizations with significant substantive experience in international education may apply to conduct a statistical survey (census) of foreign nationals affiliated with institutions of higher learning in the United States. The census should identify in the most economical way possible the number of foreign students and scholars studying, conducting research, or teaching at all accredited universities and colleges in the United States starting in the 1997–1998 academic year; it must provide detailed individual student profile data which should include which students are first-time entrants to the U.S higher educational system, country-specific aggregate data in the form of Country Locator Reports, and survey the number of American students studying abroad. Proposals should describe the methodology which will be used to collect the data and how the material will be analyzed and presented to the public. The proposals must also include plans to establish an advisory board to provide assistance in identifying and framing policy issues to be addressed.

SUPPLEMENTARY INFORMATION:

Overview

As the Federal agency tasked with promoting international educational exchange, USIA considers it essential to have an accurate picture of foreign study and scholarship in the United States, such as that provided by the statistical survey. This survey should provide a detailed and comprehensive picture of the number and characteristics of foreign nationals (excluding permanent residents and refugees) affiliated with American institutions of higher learning and the number of U.S. students studying abroad. Topics of interest include the number of students and scholars, their gender, countries of origin, and fields of study. Information about students' academic level (undergraduate, graduate, post-doctorate), primary source of financial support, financial contributions they make while in the United States, and location of study should be included. A survey of students in intensive English language programs would be of interest but is not required.

The Agency will consider funding a publication, database, newsletter, or any other medium presented as a viable vehicle for making census data about the U.S. and foreign student population widely available in a timely manner and in a clear and concise format. Continued support, assuming availability of funding, will be contingent upon accurate data collection, quality of presentation of that data, and prompt publication of the census. The Agency reserves the right to reproduce, publish or otherwise use any work developed under this grant for Government purposes.

Guidelines

Proposals should include a description of the methodology to be used to canvass colleges and universities for information about their statistics. Provision should be made for securing the highest possible response rate. Data collected from the surveys of foreign students enrolled in regionally accredited U.S. institutions of higher learning should be collected annually with 650 copies of the first edition being published in hard-copy and shipped to USIA in the fall of 1998. For a more detailed analysis and cross tabulation of the characteristics of the foreign student population, individual student profile data should be collected annually with the first data appearing biennially in computerized diskette format along with the hard copy in the fall of 1999. This individual student profile data should also be provided to USIA in a format that is country-specific on diskette in the summer of 1998 and should specify detailed information showing the number of students from a specific country attending institutions of higher education in each state of the U.S.

The Agency is interested in a clear presentation of the data collected as well as a rigorous analysis of the data which will draw conclusions about the trends in international study in the U.S. and make data recommendations for policy for both government and academia. An advisory board must be established to provide assistance in identifying and framing policy issues to be addressed and should meet at least once a year. Board members would likely be drawn from a broad range of disciplines and organizations such as NAFSA: Association of International Educators and the American Association of Collegiate Registrars and Admissions Officers, and would be expected to provide fresh perspectives on topics that are related to the internationalization of higher education.

Scholarly analyses of census data addressing pertinent policy issues should be included, taking into consideration a wide range of prospective readers and policymakers in government, academia, and business. The publication should include a section on the mechanics and uses of data analysis, highlighting how conclusions can be drawn from the data collected, what some of the limitations of that analysis can be, and how the data can benefit those supplying it, i.e. as a campus advocacy or recruiting tool.

Please include with the proposal a complete list of proposed chapter headings and sample analyses. We welcome innovative approaches to the presentation of material. Topics we would like to see addressed might include:

(1) Relationship to immigration flows

(2) Global competitiveness: How changing patterns in preferred fields of study among international students reflect sociological and economic trends in other countries;

(3) The impact on the U.S. economy and labor market;

(4) Global trade;

(5) A comparative analysis of readily available statistics on foreign student enrollment in countries with significant international student presence;

(6) How demographics of the international student population in the U.S. is affected by visa control;

(7) U.S. faculty and students lecturing and researching abroad: The countries/regions they are going to, the fields of study, and who pays for it.

Grant should begin on or about October 1, 1997 and run through September 30, 1999.

Proposed budget: Budget may not exceed $175,000. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget. For

further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding. The $175,000 is expected to constitute only a portion of the total project funding. Cost sharing is required and the proposal should list other anticipated sources of support. Grant applications should demonstrate financial and in-kind support.

Allowable costs for the program include the following:

(1) Salaries and fringe benefits; travel and per diem;

(2) Other direct costs, inclusive of rent, utilities, etc.;

(3) Overhead expenses, auditing costs, subject to limits outlined above.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Area Offices and the USIA post overseas, where appropriate. Proposals may be reviewed by the Office of the General Counsel or by other agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

(1) Cost-Sharing

Proposals should maximize cost-sharing through host institutions and other private sector support as well as institutional direct funding contributions and may include marketing the data.

(2) Overall Quality

The content, definition, and organization of all aspects of the project, appropriateness of project plan and content to program objectives; extensive academic and professional involvement of the staff assigned to the project in the U.S. educational community; evidence of understanding of the dynamics of trends in international education.

(3) Institutional Capacity

Adequacy of proposed resources, including professional staff and available educational network(s), to administer the census successfully, based on achieving a high response rate from those institutions surveyed, in the most economical way possible. Development of an appropriate method and format for presentation and analysis of the data.

(4) Institution's Track Record/Ability

Clear evidence of applicant institution's track record of successful projects and experience with international education. Demonstrated expertise of the project director to assume the administration of this undertaking.

(5) Cost-Effectiveness

The indirect costs and administrative components of the program, as well as salaries, should be kept as low as possible. All other items should be necessary and appropriate. In-kind contributions should also be included.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite use with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program cited above is provided through the legislation.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT TITLE AND NUMBER: All communications with USIA concerning this RFP should refer to the announcement's title and reference number E/ASA–98–01.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on July 25, 1997. Faxed documents will not be accepted at any time. Documents postmarked by July 25, 1997 but received at a later date will not be accepted.

FOR FURTHER INFORMATION CONTACT: Advising and Student Services, E/ASA, Room 349, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, Tel: (202) 619–5434, Fax: (202) 401–1433, e-mail: advise@usia.gov. to request a Solicitation Package containing more details. Please request required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

TO DOWNLOAD A SOLICITATION PACKAGE VIA INTERNET: The entire Solicitation Package may be downloaded from USIA's website a hittp://www.usia.gov/education/rfps. Please read all information before downloading.

TO RECEIVE A SOLICITATION PACKAGE VIA FAX ON DEMAND: The entire Solicitation Package may be received via the Bureau's ''Grants Information Fax on Demand System'', which is accessed by calling 202/401/7616. Please request a ''Catalog'' of available documents and order numbers when first entering the system.

Please specify USIA Program Officer Ann Prince on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

SUBMISSIONS: Applicants must follow all instructions given in the Solicitation Package. The original and twelve copies of the proposal plus one extra copy of the cover sheet should be sent to: U.S. Information Agency, Ref.: *E/ASA–98–01*, Office of Grants Management, E/XE, Room 326, 301 4th Street, SW., Washington, DC 20547.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly

encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy'', USIA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: May 30, 1997.

Dell Pendergrast,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–14713 Filed 6–4–97; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0569]

Proposed Information Collection Activity: Proposed Collection; Comment Request; Revision

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to customer satisfaction surveys.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 4, 1997.

ADDRESSES: Submit written comments on the collection of information to Lynne R. Heltman, Veterans Benefits Administration (243F), Department of Veterans Affairs, 810 Vermont Avenue, N.W, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0569'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Lynne R. Heltman at (202) 273–5440.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Generic Clearance for the Veterans Benefits Administration Customer Satisfaction Surveys.

OMB Control Number: 2900–0569.

Type of Review: Revision of a currently approved collection.

Abstract: The VBA administers integrated programs of benefits and services, established by law for veterans and their survivors, and service personnel. Executive Order 12862, Setting Customer Service Standards, requires Federal agencies and departments to identify and survey its customers to determine the kind and quality of services they want and their level of satisfaction with existing service. The VBA uses customer satisfaction surveys to gauge customer perceptions of VA services as well as customer expectations and desires. The results of these information collections lead to improvements in the quality of VBA service delivery by helping to shape the direction and focus of specific programs and services.

Affected Public: Individuals or households, non-profit organizations, educational institutions, veterans' service organizations, and businesses or other for-profits.

Year	Number of respondents	Estimated annual burden (hours)	Frequency of response
Survey of Veterans' Satisfaction With the VA Compensation and Pension Claims Process			
1997	22,800	5,700	One-time.
1998	22,800	5,700	One-time.
1999	22,800	5,700	One-time.
VA Compensation and Pension Claims Process Customer Satisfaction Focus Groups			
1997	200	400	One-time.
1998	200	400	One-time.
1999	200	400	One-time.

Year	Number of respondents	Estimated annual burden (hours)	Frequency of response
Survey of Veterans' Satisfaction With the VA Education Claims Process			
1997	4,000	1,000	One-time.
1998	3,200	800	One-time.
1999	3,200	800	One-time.
VA Education Claims Process Focus Groups (Certifying Official Needs, Montgomery GI Bill, and Service Organization Focus Groups)			
1997	140	220	One-time.
1998	140	220	One-time.
1999	140	220	One-time.
VA Loan Customer Service Survey			
1997	2,300	575	One-time.
1998	2,300	575	One-time.
VA Loan Guaranty Lender Survey			
1997	909	303	One-time.
1998	909	303	One-time.
VA Regional Office-Based Loan Guaranty Surveys			
1997	980	257	One-time.
1998	980	262	One-time.
1999	980	262	One-time.
VA Regional Office-Based Loan Guaranty Focus Groups (Loan Servicer and Realtor Focus Groups)			
1997	210	960	One-time.
1998	210	960	One-time.
1999	210	960	One-time.
VA Regional Office-Based Vocational Rehabilitation and Counseling Surveys			
1997	2,174	384	One-time.
1998	2,164	506	One-time.
1999	2,164	506	One-time.
Insurance Customer Surveys			
1997	2,160	216	One-time.
1998	2,808	280	One-time.
1999	2,808	280	One-time.
Survey of Insurance Interactive Voice Response Users			
1997	200	41	One-time.
VA Regional Office-Based Customer Satisfaction Surveys			
1997	3,912	423	One-time.
1998	4,056	468	One-time.
1999	4,056	468	One-time.
VA Regional Office-Based Customer Satisfaction Focus Groups			
1997	402	767	One-time.
1998	402	767	One-time.
1999	402	767	One-time.
VA Regional Office Specific Service Improvement Initiatives (Comment Card)			
1997	800	4,275	One-time.
1998	1,600	8,550	One-time.
1999	1,600	8,550	One-time.
VA Regional Office-Based Surveys Of Specialized Population Groups (Veterans Service Officers and Persian Gulf War Veterans)			
1997	556	125	One-time.
1998	546	115	One-time.
1999	546	115	One-time.

Year	Number of respondents	Estimated annual burden (hours)	Frequency of response
VA Regional Office-Based Focus Groups of Specialized Population Groups (Female Veterans, Minority Veterans, Active Duty Military Personnel, and Separating Active Duty Military Personnel) (NOTE: 2-year surveys)			
1997	60	120	One-time.
1999	60	120	One-time.
Vocational Rehabilitation and Counseling Service Survey (National Survey)			
1999	11,200	5,600	One-time.
Vocational Rehabilitation and Counseling Focus Groups (National Survey)			
1998	300	600	One-time.
1999	300	600	One-time.
VA Loan Customer Service Survey			
1999	18,400	4,600	One-time.
Survey of Educational Institutions			
1999	1,000	250	One-time.
Survey of Veterans Who Filed for an Increase in Their Service-Connected Disability Compensation			
1999	500	167	One-time.
Survey of Veterans and Their Survivors Who Have Been Denied Claims for Service-Connected Disability Compensation or Related Benefits			
1999	500	167	One-time.
Survey of Military Personnel Who Are Separating From Active Duty			
1999	500	167	One-time.
Survey of Veterans Service Officers			
1998	150	50	One-time.
Undetermined Focus Groups (To Assess Issues and Canvass Population Groups Not Yet Identified)			
1998	2,000	4,000	One-time.
1999	2,000	4,000	One-time.

Most customer satisfaction surveys will be recurring so that the VBA can create ongoing measures of performance and to determine how well the agency meets customer service standards. Each collection of information will consist of the minimum amount of information necessary to determine customer needs and to evaluate the VBA's performance. The VBA expects to conduct 62 focus groups involving a total of 2,467 hours during the remainder of 1997; 282 focus groups involving an estimated 6,947 hours in 1998; and 292 focus groups involving an estimated 7,067 hours in 1999. In addition, the VBA expects to distribute written surveys with a total annual burden of approximately 13,308 hours in 1997, 17,559 hours in 1998, and 27,683 hours in 1999. The grand totals for both focus groups and written surveys are—15,775 hours in 1997, 24,506 hours in 1998, and 34,750 hours in 1999.

The areas of concern to the VBA and its customers may change over time, and it is important to have the ability to evaluate customer concerns quickly. OMB will be requested to grant generic clearance approval for a 3-year period to conduct customer satisfaction surveys and focus groups. Participation in the surveys and focus groups will be voluntary and the generic clearance will not be used to collect information required to obtain or maintain eligibility for a VA program or benefit. In order to maximize the voluntary response rates, the information collection will be designed to make participation convenient, simple, and free of unnecessary barriers. Baseline data obtained through these information collections will be used to improve customer service standards. The VBA will consult with OMB regarding each specific information collection during this approval period.

Dated: May 14, 1997.

By direction of the Secretary

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 97–14665 Filed 6–4–97; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0073]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 et seq.), this notice announces that the Veterans Benefits

Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 7, 1997.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0073.''

SUPPLEMENTARY INFORMATION:

Title and Form Number: Enrollment Certification, VA Form 22–1999. **(Note:** A reference to VA Form 22–1999 also includes VA Forms 22–1999–1, 22–1999–2, and 22–1999–3 unless otherwise specified. VA Forms 22–1999–1, 22–1999–2, and 22–1999–3 contain the same information as VA Form 22–1999.)

OMB Control Number: 2900–0073.

Type of Review: Extension of a currently approved collection.

Abstract: The VA is authorized to pay educational benefits to veterans and other persons pursuing approved programs of education under Chapters 30, 32, and 35, Title 38, U.S.C., Chapter 1606, Title 10, U.S.C., and Sections 901 and 903 of Public Law 96–342. Educational institutions and job training establishments are required to report without delay information concerning the enrollment or reenrollment into training of veterans, service persons, reservists, and other eligible person. In certain cases, VA is authorized to make payments in advance if the trainee requests an advanced payment. The information collected on VA Form 22–1999 is used by the VBA to determine the amount of educational benefits payable to the trainee during the period of enrollment or training and to determine whether the trainee has requested an advanced payment of benefits. Without the information, the VBA would not have a basis upon which to make payment.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 31, 1996 at page 69134.

Affected Public: Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government.

Estimated Annual Burden: 110,344 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion (The number of responses per respondent will vary according to the number of trainees who receive VA benefits at the educational institution or job training establishment during a 12-month period).

Estimated Annual Responses: 662,068.

Estimated Number of Respondents: 7,481.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0073'' in any correspondence.

Dated: May 19, 1997.

By direction of the Secretary.

William T. Morgan,

Program Analyst.

[FR Doc. 97–14666 Filed 6–4–97; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0132]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 7, 1997.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0132.''

SUPPLEMENTARY INFORMATION:

Title and Form Number: Veteran's Application in Acquiring Specially Adapted Housing or Special Home Adaptation Grant, VA Form 26–4555.

OMB Control Number: 2900–0132.

Type of Review: Extension of a currently approved collection.

Abstract: VA grants for specially adapted housing and special housing adaptations for disabled veterans are authorized under Title 38, U.S.C., 2101(a) and (b). VA Form 26–4555 is used to gather the necessary information to determine the veteran's eligibility to specially adapted housing or the special home adaptation grant.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 31, 1996 at page 69133.

Affected Public: Individuals or households.

Estimated Annual Burden: 133 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 800.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0132'' in any correspondence.

Dated: May 19, 1997.

By direction of the Secretary:

William T. Morgan,

Program Analyst.

[FR Doc. 97–14667 Filed 6–5–97; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0051]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 7, 1997.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0051.''

SUPPLEMENTARY INFORMATION:

Title and Form Number: Quarterly Report of State Approving Agency Activities, VA Form 22–7398.

OMB Control Number: 2900–0051.

Type of Review: Revision of a currently approved collection.

Abstract: The VA has authority to reimburse State Approving Agencies (SAAs) for necessary salary, and fringe and travel expenses incurred in the approval and supervision of education and training programs under Chapter 30, 32, 35, and 36 of Title 38, U.S.C., and Chapter 1606 of Title 10, U.S.C. Reimbursement is retrospectively on a monthly or quarterly basis upon submission of an itemized invoice by the SAA supported by visit reports and program documents. VA Form 22–7398 is used to standardize the collection of information from the SAAs. The information is used by the VBA to ensure that the reimbursements are proper and accurate. Without this report, the VBA would have no means to compare the efficiency and effectiveness of the SAAs.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on February 3, 1997 at page 5070.

Affected Public: State, Local or Tribal Government.

Estimated Annual Burden: 240 hours.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: Quarterly.

Estimated Annual Responses: 240.

Estimated Number of Respondents: 60.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0051'' in any correspondence.

Dated: May 19, 1997.

By direction of the Secretary:

William T. Morgan,

Program Analyst.

[FR Doc. 97–14668 Filed 6–4–97; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday
June 5, 1997

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 589

Substances Prohibited From Use in Animal Food or Feed; Animal Proteins Prohibited in Ruminant Feed; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 589

[Docket No. 96N–0135]

RIN 0910–AA91

Substances Prohibited From Use in Animal Food or Feed; Animal Proteins Prohibited in Ruminant Feed

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to provide that animal protein derived from mammalian tissues for use in ruminant feed is a food additive subject to certain provisions in the Federal Food, Drug, and Cosmetic Act (the act). The final rule establishes a flexible system of controls designed to ensure that ruminant feed does not contain animal protein derived from mammalian tissues and to encourage innovation in such controls. FDA is taking this action because ruminants have been fed protein derived from animals in which transmissible spongiform encephalopathies (TSE's) have been found. Such proteins may cause TSE's in ruminants. TSE's are progressively degenerative central nervous system diseases of man and other animals that are fatal. Epidemiologic evidence gathered in the United Kingdom suggests an association between an outbreak of a ruminant TSE, specifically bovine spongiform encephalopathy (BSE), and the feeding to cattle of protein derived from sheep infected with scrapie, another TSE. Also, there may be an epidemiologic association between BSE and a form of human TSE known as new variant Creutzfeldt-Jakob disease (nv–CJD) reported in England. BSE has not been diagnosed in the United States, and the final rule is intended to prevent the establishment and amplification of BSE in the United States through feed and thereby minimize any risk to animals and humans.

DATES: This final rule becomes effective on August 4, 1997, except § 589.2000(e)(1)(iv), which contains collection of information provisions subject to review and clearance by the Office of Management and Budget (OMB). FDA is announcing that the proposed collection of information has been submitted to OMB for review and clearance under the Paperwork Reduction Act of 1995. The provision of this section will be effective upon approval. FDA will announce the effective date of § 589.2000(e)(1)(iv) in the **Federal Register**. Submit written comments on the collection of information provisions by July 7, 1997.

FOR FURTHER INFORMATION CONTACT: George A. (Bert) Mitchell, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–5587.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of January 3, 1997 (62 FR 552), FDA published a proposed rule that would regulate persons that manufacture, blend, process, and distribute certain animal protein products and ruminant feeds containing such products. The proposed rule would create a new § 589.2000 entitled, ''Animal proteins prohibited in ruminant feed.'' In general, the proposed rule would state that protein derived from ruminant and mink tissues is not generally recognized as safe (GRAS) for use in ruminant feed, but rather a food additive subject to certain requirements under the act. The proposed rule also would require certain cautionary statements on products that contain or may contain such proteins, and establish recordkeeping requirements. These proposed recordkeeping requirements were intended to facilitate compliance with the rule. For example, an invoice obtained from a feed manufacturer for a protein product not labeled with the cautionary statement could be used to trace the product back to the supplier to ensure that the supplier manufactures and distributes animal protein products from nonruminant sources. The proposed rule also would reduce or eliminate certain regulatory requirements upon the development of methods for detecting or deactivating TSE agents, or for verifying product identity.

The preamble to the proposed rule contained information regarding available scientific information about TSE's, industry practices, and regulatory efforts concerning TSE's. The agency refers interested persons to that document for such information. A list of recently published, relevant scientific information also appears later in this document.

The preamble to the proposed rule also contained five alternatives to the proposed restriction on the use of ruminant protein in ruminant feed. These alternatives, which are discussed in greater detail later in this document, included a restriction on the use of all ruminant and mink materials (except those that have not been found to present a risk of transmitting TSE's) in ruminant feed, a restriction on the use of all mammalian protein in ruminant feed, a restriction on the use of materials from domestic species (such as sheep, goats, mink, deer, and elk) diagnosed as having a TSE, a restriction on the use of specified sheep and goat offal in ruminant feed, and a ''no action'' alternative. The final rule restricts the use of protein derived from mammalian tissues, with certain exceptions, in ruminant feed. Thus, the final rule represents a regulatory approach that covers more material and is easier to implement than the proposed restriction on the use of ruminant protein in ruminant feed, but is more flexible and better suited to current industry practices than the alternative restriction on the use of all mammalian protein in ruminant feed.

FDA continues to believe, as it stated in the preamble to the proposed rule, that it is prudent to take action prohibiting the use of certain animal protein products in ruminant feed even though BSE has not been diagnosed in the United States and there is scientific uncertainty as to its origin, transmissibility, etc. This final rule will prevent the establishment and amplification of BSE in the United States through feed, an action the agency believes is necessary to protect animal and public health.

FDA received numerous comments, as discussed below, on its proposed rule. Based on those comments, the agency, in the **Federal Register** of April 17, 1997 (62 FR 18728), published the codified provisions of the draft final rule and provided an opportunity for comment. The codified provisions of the draft final rule were similar to those in the proposed rule, but the draft final rule would prohibit the use of protein derived from mammalian tissue with certain specific exceptions (such as blood, gelatin, inspected and processed meat products that have been cooked and offered for human consumption, and products whose mammalian protein consists entirely of porcine protein). Additionally, the codified provisions of the draft final rule would eliminate the cautionary statements on pet food sold at retail, define the term ''ruminant,'' eliminate certain regulatory requirements if a renderer used exclusively a validated, publicly-available method for controlling the manufacturing process that minimizes the risk of the TSE agent entering the product, and simplify the recordkeeping requirements.

The agency received over 60 comments on the codified provisions of the draft final rule. Most comments supported the draft final rule, although several comments suggested technical changes, additional exemptions, or clarifications. Other comments reiterated their objections to any rulemaking that would declare tissues to be nonGRAS for use in ruminant feed or advocated other alternatives (particularly the use of hazard analysis critical control point programs).

Based on those comments, the agency has made some changes in this final rule. The final rule provides that protein derived from mammalian tissues (with certain exclusions) is a food additive under the act. The act defines a ''food additive'' as ''any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food * * * if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use * * *'' (see section 201(s) of the act (21 U.S.C. 321(s))). Expert opinion that the tissues are GRAS would need to be supported by scientific literature, and other sources of data and information, establishing that there is a reasonable certainty that the material is not harmful under the intended conditions of use. Expert opinion would need to address topics such as whether it is reasonably certain that BSE does not, or will not, occur in the United States; whether it is reasonably certain that the BSE agent will not be transmitted through animal feed, i.e., that the processed tissues are not infected by the agent, are deactivated by the rendering process or are not transmitted orally; and whether it is reasonably certain that the agent will not be transmitted to humans through consumption of ruminant products. ''General recognition'' cannot be based on an absence of studies that demonstrate that a substance is unsafe; there must be studies to establish that the substance is safe. Also, the burden of establishing that a substance is GRAS is on the proponent of the substance (see *U.S.* v. *An Article of Food* * * * *Coco Rico*, 752 F.2d 11 (1st Cir. 1985).

The preamble to the proposed rule included an extensive discussion of the basis of FDA's preliminary conclusion that protein derived from ruminant and mink tissue for use in ruminant feed is not GRAS, but rather is a food additive under the act. As discussed in detail in the agency's responses to the comments received on the proposed rule, FDA did not receive any information that would refute its conclusion that protein derived from ruminant and mink tissue for use in animal feed is not GRAS.

With regard to the scope of the final rule, protein derived from mammalian tissues includes both ruminant and nonruminant tissues. FDA's basis for its nonGRAS determination for ruminant and mink tissue is discussed extensively in the preamble to the proposed rule and no information was submitted to refute that determination. With regard to nonruminant tissue besides mink, such tissues may include animals such as cats, dogs, horses, swine, etc. As the preamble to the proposed rule discussed concerning a mammalian-to-ruminant prohibition (62 FR 552 at 568), industry comments indicated that the usual practice at feed mills and rendering facilities is to commingle ruminant and nonruminant protein products. FDA indicated that regular commingling could provide a basis to determine that protein from mammalian tissues is not GRAS for use in ruminant feed. The description of industry practice received in comments on the proposed rule again indicated that the practice is to commingle ruminant and nonruminant protein. Because of the potential TSE infectivity caused by mixing tissues from ruminant and mink and other mammalian tissues, FDA has determined that protein derived from mammalian tissues (with certain exclusions discussed later in this preamble) is not GRAS for use in ruminant feed. FDA notes that the ruminant-to-ruminant prohibition in the proposed rule also would have prohibited the use in ruminant feed of this commingled tissue because the definition of protein derived from ruminant and mink tissue would apply to pure ruminant or mink tissue as well as other mammalian tissue that could contain ruminant or mink protein due to commingling. This final rule also reduces the risk of cattle and other ruminants being exposed to an agent that causes feline spongiform encephalopathy and acknowledges that feline protein could be a commingled component of mammalian protein products.

The definition of food additive in section 201(s) of the act does not apply to substances used in accordance with a sanction or approval granted prior to enactment of section 201(s) of the act and granted under the act, the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), or the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*). The Commissioner of Food and Drugs (the Commissioner) is unaware of any prior sanction applicable to the use of protein derived from mammalian tissue in ruminant feed. No one asserted a prior sanction for the use of protein derived from ruminant and mink tissues in ruminant feed based on the agency's discussion of a possible mammalian-to-ruminant ban in the preamble to the proposed rule (62 FR 552 at 566). In addition, no one asserted a prior sanction for use of protein derived from mammalian tissues in ruminant feed in response to the agency's discussion of a possible mammalian-to-ruminant prohibition in the preamble to the proposed rule. The failure of any person to come forward with proof of an applicable prior sanction is a waiver of the right to assert or rely on a prior sanction at any later time.

The agency notes, that for substances not included in the scope of the definition of protein derived from mammalian tissues, persons may continue to self determine whether such substances are GRAS for use in ruminant feed. FDA's authority to determine substances to be food additives under the act is discussed in further detail below in responses to the comments on the proposed rule.

The final rule also simplifies the cautionary statement for animal feeds containing mammalian-derived proteins, eliminates the labeling requirements for pet food products sold at the retail level and feeds for nonruminant laboratory animals, and elaborates on the information that must be kept and made available for inspection. These changes are further discussed below in the responses to comments received on the proposed rule.

II. Comments on the Proposed Rule and Draft Codified Text

FDA received more than 700 comments on the proposed rule. The comments came from a wide variety of organizations, such as cattlemen, renderers, feed manufacturers, and pharmaceutical firms, Federal agencies, foreign governments, State agriculture departments, trade associations, professional organizations, universities and research institutions, consumer organizations, and individual consumers. Additionally, FDA held two public meetings on the proposed rule. The first meeting was held in St. Louis, MO, on February 4, 1997, and focused on the rule's economic impact and issues of interest to the affected industries. The second meeting was

held in Washington, DC, on February 13, 1997, and focused on the rule's environmental analysis and issues of interest to consumer groups and organizations.

Additionally, in the **Federal Register** of April 17, 1997 (62 FR 18728), FDA published the codified provisions of the draft final rule and provided an opportunity for public comment. FDA received over 60 comments on the draft codified text.

Most comments (including remarks made at the public meetings) agreed that the Federal Government should take action to prevent the establishment and amplification of BSE in the United States through feed. However, many comments disagreed as to whether more or less stringent regulatory efforts were needed. FDA also received comments supporting and opposing each alternative that was described in the preamble to the proposed rule, as well as numerous comments that recommended new alternatives. To simplify the nature of the ideas expressed in the comments, the comments can be divided into two groups. One group would maximize the scope of the regulations, and the other would minimize the scope of regulations.

A large number of comments encouraged FDA to increase the scope of the regulations to include a partial or complete mammalian-to-ruminant prohibition or a mammalian-to-farm animal prohibition, or to apply a feed prohibition on all food-producing animals, either to achieve a greater reduction in the potential risk of human exposure or easier compliance with less need for enforcement actions. For example, a few comments asked that the proposed regulations be expanded to prohibit the feeding of ruminant proteins to felines and zoo animals, and the feeding of proteins from these animals to ruminants. Some comments noted the presence of scrapie and other TSE diseases in the United States and the epidemiological association between scrapie or a modified scrapie agent and BSE in the United Kingdom in support of enlarging the scope of the rule. One comment requested a ban on the feeding of all animal remains to other animals, regardless of species or processing method. Another comment noted that the specifications for tallow allowed for the presence of a small amount of protein and the possibility of a protein-associated infectivity.

Other comments supported a ''minimalist'' approach. For example, a significant number of comments pointed out that BSE has not been diagnosed in the United States despite a most exhaustive surveillance effort by Federal and State veterinary laboratory diagnosticians, veterinarians accredited by the U.S. Department of Agriculture (USDA), and veterinary practitioners who have been specifically trained to diagnose the early clinical signs of BSE in cattle. The USDA through statutes administered by the Animal and Plant Health Inspection Service (APHIS) and the Food Safety and Inspection Service (FSIS) has taken actions to ensure that the border defenses against importing the BSE agent are as secure as possible. FDA has advised manufacturers of human and animal drugs and devices, human biologics, dietary supplements, and cosmetics to obtain bovine derived ingredients from countries which are free of BSE. Some comments stated that the adoption by industry of voluntary measures to avoid the rendering of fallen sheep or sale of sheep proteins for use in ruminant rations, or to stop the feeding of ruminant proteins to ruminants are sufficient, and no regulation is warranted. Other comments reminded the agency of its public statements that the risk of BSE occurring in the United States is low and getting lower. A comment from a foreign regulatory official observed that zero risk cannot be achieved and that the calculation of risk through a mathematical model is essential; this comment also expressed the view that the agency's proposed regulatory approach exceeded the risk of BSE in the United States.

A description of the comments and FDA's responses follows.

A. General Comments

1. Exclusions for Certain Products

(Comment 1). Several comments, in addressing either the proposed rule or the agency's alternatives to a ruminant-to-ruminant prohibition, suggested exclusions for specific products. The suggested exclusions included proteinaceous tissues (such as meat), nonproteinaceous materials (such as grease, fat, tallow, amino acids, and dicalcium phosphate as a byproduct of the gelatin manufacturing process), and materials that are not considered to be tissues (such as paunch meal, feces, and urine). A few sought exclusions for specific organs, such as hearts and kidneys, or even exclusions for tissues (such as distal ileum) that have been shown to be infective for TSE's in experimental studies.

The agency has carefully considered the various exclusions suggested by the comments and has revised § 589.2000(a)(1) to define ''protein derived from mammalian tissue'' as any protein-containing portion of mammalian animals, excluding blood and blood products, gelatin, inspected and processed meat products which have been cooked and offered for human consumption and further heat processed for feed (such as plate waste and used cellulosic food casings), milk products, and products whose only mammalian protein consists entirely of porcine or equine protein.

FDA excluded these items from the definition because the agency believes that they represent a minimal risk of transmitting TSE's to ruminants through feed. The excluded proteins and other items are materials that the available data suggests do not transmit the TSE agent, or have been inspected by the FSIS or an equivalent State agency at one time and cooked and offered for human food and further heat processed for feed and thus are of lower risk than those products that the agency has determined to be nonGRAS, or current industry practices can provide assurances that certain mammalian products can be produced without becoming commingled with potentially infective materials. Additional information on specific exemptions appears later in this document.

The agency did not revise the definition to exclude nonproteins or items that are not considered tissues. Such products, for example, tallow, fats, oils, grease, amino acids, and dicalcium phosphate as a byproduct of the gelatin manufacturing process, are not covered under this rule and thus do not require a specific exclusion. Moreover, infectivity studies conducted on some of these products (e.g., tallow) have demonstrated that they are at low risk of transmitting the TSE agent. As for those comments suggesting exclusions for specific organs or tissues, FDA declines to exempt such organs or tissues either because of their demonstrated infectivity or because they have not been sufficiently studied to confirm that they cannot transmit TSE disease to ruminants or may present a higher risk of transmitting a TSE to ruminants or because current industry practice does not support separation of these organs or tissues from other higher-risk organs or tissues. For example, under current industry practices, separation of muscle meat from potentially infective nervous tissue from spinal cords or nerve tissue connected to spinal cords cannot be assured. In addition, FDA notes that the origin of these materials is not easily determined when they arrive at a rendering facility.

The agency may revise the rule further to add or delete items from the

list of exclusions and make necessary corresponding changes to the rule when sufficient scientific information becomes available about the ability of those items to transmit TSE disease.

2. Scientific Issues

Numerous comments raised scientific issues regarding BSE, nv–CJD, and the need for additional scientific research.

a. *Causes of BSE.*

(Comment 2). Several comments stated that BSE is unlikely to occur spontaneously in an individual animal.

Although the theory that TSE's occur spontaneously as well as the other theories as to BSE's origins (see 62 FR 552 at 558 and 559) are not proven, FDA has not discounted any theory. The final rule would prevent the establishment and amplification of BSE in ruminants through feed by prohibiting the use of proteins derived from mammalian tissue in ruminant feed regardless of whether BSE may occur spontaneously or enter the United States through imported animals or animal products or may result from a cross-species or intra-species transmission of a TSE agent.

(Comment 3). Many comments claimed that scrapie in sheep was the cause of BSE in the United Kingdom.

FDA agrees that the use of sheep with scrapie which were rendered and fed to cattle as meat and bone meal is a possible cause of BSE in the United Kingdom. This final rule prevents sheep materials from being processed and fed back to cattle and other ruminants. Additionally, some comments stated that the adoption by industry of voluntary measures to avoid rendering of fallen sheep and the sale of sheep proteins to ruminants should provide sufficient safeguards to allow sheep to be excluded from the final rule. FDA disagrees with this statement because sheep are known to have a TSE (scrapie) that has a long incubation period and because of information from an FDA survey conducted in 1992 that clearly showed that a voluntary ban was not fully implemented and that sheep that had died of causes other than slaughter were being rendered and that rendered sheep protein was being sold for use in the manufacture of cattle feed. This survey is discussed in the preamble to the proposed rule (62 FR 552 to 582).

(Comment 4). Several comments argued that, in the United Kingdom, BSE was spread by ruminant-to-ruminant recycling.

FDA agrees that, in the United Kingdom, BSE was spread by the practice of feeding ingredients from processed BSE-infected cattle to other cattle, including young calves. The processes that were used did not completely inactivate the BSE agent. This final rule prevents ruminant-to-ruminant recycling.

(Comment 5). Several comments pointed out that the cause of BSE is unknown.

Even though the exact nature of the cause of BSE and many aspects of its etiology and pathogenesis are unknown, studies indicate that the feeding of BSE-infected material to cattle spread the disease to uninfected animals. The final rule is intended to prevent the establishment and amplification of BSE in the United States through feed even though many details regarding the BSE agent are unknown.

b. *Epidemiology of BSE.*

(Comment 6). Numerous comments expressed concern that transmissible mink encephalopathy (TME) resulted from mink being fed materials derived primarily from downer cattle. These comments suggested that this possible link between cattle and TME may indirectly indicate that BSE is already present in the United States cattle population.

The exact cause of these TME outbreaks, the most recent occurring in 1985, has not been proven, but FDA agrees that there is a possibility that the theory is correct. The final rule, however, would prevent cattle-to-cattle transmission of any undetected BSE in the United States as well as the transmission of TSE's from mink to cattle.

(Comment 7). Several comments claimed that BSE is present in pigs in the United States.

Based on the available evidence, FDA does not believe that BSE is present in pigs in the United States. A naturally-occurring TSE has not been identified in pigs in the United States or elsewhere in the world. FDA is aware that, in a study conducted in the United Kingdom, 1 out of 10 pigs appeared to develop TSE lesions after exposure to BSE (Ref. 1), but this infection occurred through intracerebral, intraperitoneal, and intravenous inoculation rather than under natural conditions (such as feeding). Despite these new inoculations, the other nine pigs did not develop a TSE. In another experiment, newborn pigs fed the BSE agent have remained healthy at 72 months of age (Ref. 2).

(Comment 7a). One comment claimed that a TSE was observed in U.S. pigs in 1979.

The cause of the clinical signs and lesions cannot be affirmed or completely refuted. FDA notes that it has been over 17 years since the incident was reported and that there have been no reports of a recurrence. From FDA's evaluation of this comment, the agency notes that the condition caused by salt toxicity/water deprivation, produces similar clinical signs and lesions as those reported in the 1979 incident.

(Comment 8). Many comments pointed out that TSE's already exist in animals in the United States. These comments usually referred to TSE's in sheep, goats, elk, mink, and deer.

FDA agrees that TSE's already exist in some animals in the United States and identified several such TSE's in the preamble to the proposed rule (see 62 FR 552 at 556 and 557 (describing scrapie, TME, and chronic wasting disease (CWD))). By prohibiting the use of proteins derived from mammalian tissues in ruminant feed, the final rule should prevent the transmission of these diseases to ruminants through feed.

(Comment 9). Several comments cited feline spongiform encephalopathy (FSE) as an example of the BSE agent's ability to cross species barriers.

The epidemiology of FSE supports this theory, but the risk of BSE crossing species barriers is present only in a country where BSE exists. The United States has no BSE, and the final rule provides the necessary feed controls to limit the risk of BSE crossing species barriers and infecting U.S. cattle and other ruminants through feed uses of protein products from infected animals should BSE occur here (i.e., a preventive barrier to the establishment and amplification of BSE through feed).

(Comment 10). Some comments argued that TSE diseases may occur in all animals, and prions have been identified in species as diverse as salmon and fruit flies.

Prions are proteins and are normal constituents of many living organisms ranging from yeast to mammals. The function of prions are unknown. Under one theory, the TSE or BSE agent is an abnormal, infectious protein that changes a normal ''host'' protein or prion in an animal or organism into the causative agent (see 62 FR 552 at 558). At this time, a naturally occurring TSE has not been identified in all animals. For example, although horses, pigs, poultry, salmon, and fruit flies have prions, they are not known to have naturally-occurring TSE's.

(Comment 11). Several comments discussed the possibility of BSE being present in the feces of poultry that consumed cattle meat and bone meal in their diets. These comments expressed concern that the BSE agent would spread to cattle which might consume poultry litter in their feed or to plants to which poultry litter was applied as a fertilizer.

FDA is unaware of any research on this issue that would indicate that the agency should take regulatory action on poultry litter at this time.

c. *Transmission of BSE.*

(Comment 12). Many comments addressed the safety of various tissues (such as blood, bone, and muscle) relative to TSE diseases. For example, some comments asserted that ruminant blood will not transmit TSE whereas others claimed that blood presents some risk of infectivity. Other comments asserted that bone and muscle are safe, but that brain, spinal cord, and eyes are high-risk tissues for TSE. Some comments claimed that oral transmission of TSE is very inefficient.

The research to date on TSE diseases and the infectivity of various tissues from infected animals consists of 2 types. The first consists of extensive research carried out over a long period of time in sheep, using sheep as the model for evaluating scrapie and other TSE diseases. This research has provided valuable information about the nature of the diseases in animals and comparatively little on the infectivity of tissues. The second consists of recent studies that have been carried out in other animals using agents such as BSE in cattle and TSE's in mice. Many of the tissue infectivity studies for scrapie and BSE have been carried out using several different strains of laboratory mice which have various degrees of natural susceptibility to TSE's. Samples of tissues taken from TSE infected animals are inoculated into the brain of these laboratory animals. The assessment of the infectivity of tissues has been based on the outcome of these studies. The results of this research indicate that blood, bone, certain other tissues, and tallow do not transmit TSE to the experimentally exposed mice whereas samples of brain, spinal cord, eyes, and some areas of the intestinal tract from cattle that died of BSE transmit a TSE to the mice.

FDA agrees with the comments regarding the comparative infectivity of oral versus intracerebral routes of exposure and the estimate that the oral route might be as much as 100,000 times less infective than by injection (Ref. 3). However, at this time, research has not provided adequate data on the level of infectivity from oral transmission.

(Comment 13). Other comments pointed to the unproven nature of the rodent bioassay for safety evaluation of various animal tissues. The comments stated that the TSE agent may be in other tissues at amounts below the detection limit of the rodent bioassay. The comments asserted that, if the lowest infectious dose of BSE is very small, undetected small amounts of agent in tissues could theoretically transmit TSE to a new host.

FDA agrees that the infective dose of TSE agents is small and that bioassays have limitations. The results of these assays cannot presently be confirmed by more traditional chemical or microbiological methods. Therefore, while small undetected amounts of the TSE agent could be present in the tissue, at this time, the agency believes these amounts present a minimal risk.

(Comment 14). Several comments discussed recent information describing maternal transmission of BSE. These comments stated that maternal transmission is at a very low rate and would not maintain the epidemic in the United Kingdom. Other comments claimed that lateral transmission (from one animal to another in the same herd) is not detected in BSE, whereas some comments stated that BSE crosses species barriers.

FDA acknowledges these characteristics of BSE, and the preamble to the proposed rule identified possible maternal transmission and BSE's ability to cross species barriers as being among the various factors justifying FDA's regulation of proteins intended for use in ruminant feed in order to prevent the establishment and amplification of BSE in the United States through feed (see 62 FR 552 at 559 and 560). While it may be true that the risk of maternal transmission is very low and will not sustain a significant epidemic as discussed in the preamble to the proposed rule, the possible use of infected protein from mammalian tissues in cattle feed may lead to establishment and amplification of BSE in the United States through feed. Thus, the final rule ensures that, whatever the mode of transmission, the TSE agent will stop with the infected animal.

(Comment 15). One comment suggested that FSE-infected cats transported to the United States from the United Kingdom could introduce BSE into the United States if the carcasses of those cats were permitted to be rendered into meat and bone meal.

The probability that such a scenario would occur appears to be remote since fewer than 100 cats in the United Kingdom have been diagnosed with FSE, and, therefore, the probability that an infected cat would be transported to the United States is small. Furthermore, relatively few domestic cats (those that are considered family pets) are rendered upon their deaths. Rendering of cat carcasses is much more common for feral or stray animals, but in the event that FSE-infected tissues were rendered into meat and bone meal, the final rule prohibits the use of proteins derived from mammalian tissues, including feline tissues, in ruminant feed. Therefore, FSE-infected cats will not cause BSE in the United States through feed.

(Comment 16). Two comments expressed the view that protein derived from cats and zoo animals should be prohibited from use in feeds intended for ruminants, cats, and zoo animals. This recommendation was based on the fact that domestic cats and other members of the family, Felidae, including zoologic specimens are susceptible to TSE.

The agency agrees that the concerns raised in the comments are valid, and the final rule prohibits the use of feline and ruminant protein in ruminant rations including the rations of ruminants maintained in zoological exhibits. The final rule does not prohibit the use of mammalian-derived protein in feeds intended for felids or nonruminant zoo animals because the intent of the rule is to prevent the establishment and amplification of BSE in the United States through feed and thereby minimize risk to animals and humans. The feed use of protein from felids and zoo animals in feed for cats and nonruminant zoo animals should not present a risk of establishing and amplifying BSE in the United States through feeds for ruminants.

d. *New Variant Creutzfeldt-Jakob Disease (nv-CJD).*

(Comment 17). Many comments expressed concern about the emergence of nv-CJD in the United Kingdom and France and that it may have been transmitted to humans through meat consumption. Some comments raised concerns that nv-CJD might occur in the United States.

FDA shares this concern about nv-CJD and, in conjunction with the Centers for Disease Control and Prevention, is monitoring it closely. As stated in the preamble to the proposed rule, the epidemiological studies conducted in the United Kingdom do not directly link nv-CJD to meat consumption, but suggest that the nv-CJD cases are linked to exposure to BSE before the introduction of specified tissue bans in the United Kingdom in 1989 (62 FR 552 at 561). In October 1996, a study using strain typing techniques for TSE's compared nv-CJD's strain characteristics against BSE transmitted to mice and macaques. The results showed nv-CJD's strain characteristics to be consistent with BSE as the source of nv-CJD. This study, which appeared in the October 24, 1996, issue of *Nature* (Ref. 4), provided a suggested link between BSE

and nv-CJD, but was not direct proof of such a link.

The Centers for Disease Control and Prevention completed a survey in 1996 of cases of CJD in the United States and found no cases that fit the characteristics of nv-CJD. Additionally, most meat products consumed by humans are subject to USDA's jurisdiction, and USDA is examining this issue to identify any risk and ways to minimize the risks, if any, to consumers.

e. *Research needs for BSE.*

(Comment 18). Numerous comments expressed concern about the lack of adequate published research on TSE diseases, inactivation of the agents, and public health implications. For example, some comments noted the lack of information about the minimum infective dose for BSE while others expressed a need to develop a process to inactivate or eliminate the BSE agent during rendering or to develop specific and sensitive analytical methods for animal feeds that would detect rendered proteins from various species.

FDA agrees, as discussed in the preamble to the proposed rule, that many scientific issues related to TSE's remain unresolved. The agency encourages research that addresses these needs, specifically (but not limited to): Determination of minimum infective oral dose for establishment of BSE in cattle; development and validation of a process to inactivate or eliminate the BSE agent during rendering; development of specific and sensitive analytical methods for the detection of rendered proteins from various species in animal feeds; development of a highly sensitive bioassay for determination of the TSE agent presence in animal tissues; and development of specific antemortem tests to detect the presence of TSE agents and diseases in animals.

f. *New scientific information.*

Several recently published articles on TSE's, BSE, and nv-CJD are not referenced in the proposed rule. In brief, the most relevant of these scientific publications are listed in the references in section IX of this document.

In one article, the physicochemical properties of the BSE and nv-CJD molecules were characterized to identify strain variations with nv-CJD (Ref. 4). It was found that nv-CJD is distinct from other types of CJD and resembles BSE transmitted to mice, cats, and macaque, which is consistent with BSE being the source of nv-CJD.

In another article, the authors used mathematical models to make assumptions about the incubation period for nv-CJD and the number of exposed people (Ref. 5). Based on these assumptions, they outlined a range of scenarios to estimate the future incidence of nv-CJD in the United Kingdom. A large measure of uncertainty surrounds any modeling that is based on 14 cases of nv-CJD and a lack of reliable information about the incubation period for nv-CJD.

The results of USDA's examination of 5,427 cattle brains were discussed in a recent article (Ref. 6).

Another article discussed the detection of scrapie in peripheral nerves of scrapie-diseased sheep and concluded that mutton of scrapie-diseased animals should not be regarded as being free of the scrapie agent (Ref. 7).

Prion protein was not detected by Western blot analysis in 55 percent of mice inoculated intra-cerebrally with BSE, although it was detected in 100 percent in subsequent passages (Ref. 8).

The hypothesis that BSE is a zoonosis was described and the risk characterized as low (Ref. 9).

TSE's, including clinical signs, gross and microscopic lesions, and ancillary test findings, in wild deer and elk in north-central Colorado from 1981 to 1995 were described (Ref. 10). The disease in wild cervids is indistinguishable from that reported in captive deer and elk.

The articles do not provide entirely new information, but rather add to the basic knowledge about TSE's and the need for this final rule. FDA has placed these articles in the administrative record for the final rule.

3. Enforcement-Related Issues

A number of comments addressed issues related to enforcement of the rule.

(Comment 19). Several comments stated that the proposed rule would be enforceable. However, several others argued that the rule would not be enforceable. The latter comments gave several reasons for their position, including the following: (1) There is no practical analytical test to distinguish ruminant protein from nonruminant protein. Enforcement, therefore, would depend on compliance with the rule's labeling and recordkeeping requirements which could be vulnerable to falsification or other abuse; (2) the rule's reliance on invoices may be inadequate because invoices may not contain sufficient information and may not be kept routinely; and (3) the clean-out procedures for firms that intend to separate ruminant from nonruminant protein (as provided by the proposed rule) would not be readily enforceable. Several comments recommended that the agency adopt a mammalian-to-ruminant prohibition because a practical analytical test (feed microscopy) for distinguishing mammalian from nonmammalian proteins is available.

When the agency issued the proposed rule, it acknowledged that the mammalian-to-ruminant alternative might be more easily enforced than the ruminant-to-ruminant prohibition in the proposed rule. However, the agency intended to commit the resources necessary to enforce the ruminant-to-ruminant option if adopted. The agency believed that the rule which it proposed could be enforced. For example, the establishments that would not separate ruminant from nonruminant protein would be subject to the simple, enforceable requirement that labeling for all outgoing products bear the statement cautioning against use of the product in ruminant feed. The agency estimated that the great majority of affected establishments—independent renderers, blenders, and feedmills—would elect not to separate products. Those that did separate products would be subject to additional scrutiny, such as on-site inspection that would include inspection of incoming product as well as observation of facilities and processes for separation. In addition, the agency has had experience in enforcing the act in other settings in which it was unable to test for violative products.

Limiting the mammalian species exclusion to pure porcine or equine products narrows the number of acceptable mammalian protein sources for ruminant feeds, thus simplifying the agency's records review and trace back efforts. The fact that some comments from regulated industries suggested support for a mammalian-to-ruminant prohibition should foster voluntary compliance.

(Comment 20). Several comments stated that the role of the States in enforcing the rule is unclear, but that State agencies lack the authority to enforce some aspects of the rule. Some comments also asked whether the rule imposed an unfunded mandate upon States.

Because this regulation is a Federal rule, only those State employees that are commissioned by FDA under section 702(a) of the act (21 U.S.C. 372(a)) would have a role in enforcing this rule. For commissioned State employees that have the same enforcement authority as FDA employees, such employees would be able to fully enforce the rule. State employees who are not commissioned do not have authority to enforce this rule. Comments about unfunded mandates imposed on States are discussed elsewhere in this document.

(Comment 21). Several comments suggested additional approaches to enhance the rule's enforceability. One comment suggested that the agency allow firms to substitute commercial contract guarantees (that the product does not contain ruminant material) instead of maintaining and providing sales invoices. The guarantees would be available for FDA inspection and copying. The comment asserted that use of such a guarantee would provide assurance that meat and bone meal containing ruminant or mink protein would not be inadvertently accepted for delivery at commercial feedmills.

FDA agrees that such a provision could enhance enforcement, through both self-regulation within the industry and enforcement of the act which makes the giving of a false guarantee a violation of section 301(h) of the act (21 U.S.C. 331(h)). However, it is unclear from the comments whether the commercial contract guarantees would provide adequate information for FDA to trace back purchases of protein products and feeds. Therefore, it is unclear whether the guarantees would enhance enforcement. In any event, the final rule, as written, provides the necessary tools for enforcement. Therefore, the agency declines to accept the comment's suggestion.

(Comment 22). One comment suggested that the agency revise the rule to require renderers to register with FDA.

Through the use of publicly available sources (such as trade publications), the agency has access to a comprehensive list of renderers, so a registration requirement is, at this time, unnecessary.

(Comment 23). One comment asked FDA to clarify the penalties that would be associated with a violation of the rule. Other comments asked the agency to discuss the consequences of a violation of the regulation and whether a person must knowingly have committed a violation.

The agency notes that it intends to implement a vigorous enforcement program. Although FDA cannot specify the penalty that would be imposed in any given scenario or case, the agency does note that the act provides several possible sanctions, including, but not limited to, injunctions (see section 302 of the act (21 U.S.C. 332)), criminal penalties (see section 303 of the act (21 U.S.C. 333)) and seizure of the adulterated or misbranded product (see section 304 of the act (21 U.S.C. 334)). Seizure and injunction actions generally do not require knowledge on the part of responsible persons, and criminal violations may or may not require such knowledge.

(Comment 24). Some comments asked about the disposition of adulterated feed, animals that have been fed adulterated feed, and products, such as milk, from animals that were fed adulterated feed.

The agency has guidance documents for the disposition of products found to be violative under the act (see for example CPG 675.200). This guidance can be used to facilitate the disposition of products determined to be violative as a result of this final rule. Alternatively, the agency can consider the disposition based upon the unique factors of the situation.

(Comment 25). One comment expressed concern about the adequacy of FDA's enforcement resources, stating a need for more frequent inspections of regulated firms such as feedmills. Another comment stated that an ''unlevel playing field'' would exist in the animal feed industry such that FDA would devote more regulatory attention to a relatively small number of registered (as opposed to unregistered) feedmills.

FDA reiterates its intention to commit adequate resources to enforcing this rule and to implement a vigorous enforcement program. FDA will allocate those resources in such a way that all segments of the industry receive attention commensurate with the risk presented by a violation in each segment.

(Comment 26). Several comments expressed the expectation that a mammalian-to-ruminant prohibition, if adopted by the agency, would also simplify the requirements placed on the affected industries. For example, the comments stated that, under a mammalian-to-ruminant prohibition, no special labeling would be required and that recordkeeping could be simplified.

Because the mammalian-to-ruminant prohibition in this final rule includes certain exceptions, the labeling and recordkeeping requirements are necessary, and the agency has retained them (with some revisions) in the final rule.

(Comment 27). Several comments implied that certain options, other than a ruminant-to-ruminant or mammalian-to-ruminant prohibition, would be enforceable. These options included a partial ruminant-to-ruminant prohibition, a prohibition only of proteins from TSE species, and a plan for ''certified ruminant derived protein'' based on a hazard analysis critical control point (HACCP) program approach. Some comments also stated that the ruminant-to-ruminant prohibition would be unenforceable.

As stated earlier, the final rule adopts a mammalian-to-ruminant prohibition with certain exceptions. The agency agrees that there are alternatives to a ruminant-to-ruminant or a mammalian-to-ruminant prohibition. Each alternative, including a ruminant-to-ruminant or a mammalian-to-ruminant prohibition, presents various enforcement challenges. FDA believes, however, that the final rule is a reasonable approach in terms of enforcement.

(Comment 28). One comment, from a cattle producers' organization, referred to that organization's commitment (along with many others) to ensure enforcement of the final rule. The organization pledged that it would work diligently to inform producers of their role in enforcement. Several other comments advocated use of educational programs, including education to consumers, and guidelines.

The agency appreciates the comment's commitment and intends to work closely with industry associations in educational efforts. The agency also expects to implement an educational program for consumers and the affected industries and will provide guidance documents to the affected industries.

4. Comments on the Alternatives

a. *Background.*

The preamble to the proposed rule listed 6 regulatory alternatives to prevent the establishment and amplification of BSE in the United States through feed (62 FR 552 at 567). The alternatives ranged from a prohibition on the use of mammalian tissue in ruminant feed to a ''no action'' alternative. FDA received comments supporting and opposing each alternative, as well as numerous comments that suggested new alternatives.

The principal alternative was a prohibition on the use of ruminant proteins in ruminant feed; this was the alternative initially selected by the agency and used in the proposed rule. Comments on the ''ruminant-to-ruminant'' prohibition are addressed later in this document. The other alternatives and the comments submitted on those alternatives are described below.

b. *The partial ruminant-to-ruminant prohibition.*

The second alternative was to exclude all ruminant and mink materials, except those that have not been found to present a risk of transmitting TSE's, from ruminant feed. This was commonly known as the ''partial

ruminant-to-ruminant'' ban. The exclusions, in addition to milk products, gelatin, and bovine blood, might have covered products such as bovine byproducts that have been inspected and passed in inspected slaughter facilities (except for the brain, eyes, spinal cord, and distal ileum because these tissues have been shown to transmit TSE's). This alternative had the advantage of having its prohibitions based primarily on scientific information related to the infectivity of specific tissues, yet it also had several important disadvantages. For example it may be impractical in the slaughter and rendering processes to segregate and to exclude the protein tissues that have not been found to present a risk of transmitting TSE disease. USDA expressed reservations that separating the distal ileum from other intestinal offal could jeopardize a slaughter plant's ability to meet pathogen reduction goals required by USDA's HACCP regulations. (The ''ileum'' is the terminal part of the small intestine, from the free edge of the ileocecal fold to the ileocecal orifice, and enters the junction of the cecum and colon obliquely on the medial surface. ''Offal'' refers generally to material left as a byproduct from the preparation of some specific product, less valuable portions and the byproducts of milling.) Enforcement would also be impractical because there is no specific diagnostic method for identifying protein derived from such tissues. Additionally, the alternative would not address the risk that other tissues may present a risk of infectivity (62 FR 552 at 567 and 568).

(Comment 29). Several comments supported this alternative, although most would modify it to cover only some tissues (such as tissues that are known to be infective in sheep, cattle, or other species), conditioned their support on the addition of other requirements (such as a HACCP program and good manufacturing practices (GMP's)), or conditioned their support on the feasibility of enforcing this alternative. A smaller number of comments opposed this alternative; most reiterated the arguments set forth in the preamble to the proposed rule by stating that there is inadequate scientific information to determine whether a particular tissue is or is not safe for use in ruminant feed, that separating certain tissues may be unsafe or impractical, and that the absence of a test to detect the TSE agent warrants rejection of this alternative.

The agency agrees with those comments that oppose a partial ruminant-to-ruminant prohibition. The agency is persuaded that under current industry practice, separating acceptable ruminant tissues from unacceptable ruminant tissue may be impractical, and the current lack of scientific knowledge about the TSE agent and BSE, coupled with the lack of a detection method, makes this alternative less acceptable compared to a mammalian-to-ruminant prohibition which is more enforceable and also endorsed by the most affected industries.

(Comment 30). Two comments raised the concern that the stunning of cattle at slaughter by captive bolt results in the formation of brain emboli which lodge in tissues that are normally considered to be incapable of transmitting TSE diseases. If protein derived from those tissues was permitted for use in ruminant rations, it potentially could transmit TSE diseases to ruminant animals. For this reason, it was argued that a partial ruminant-to-ruminant prohibition may fail to prevent the introduction and amplification of BSE in the United States.

The probability of introducing BSE into the United States from the small amount of nervous tissue that would be expected to result from brain emboli is minimal under a partial ruminant-to-ruminant prohibition; however, the final rule eliminates even this minimal probability because it provides that all mammalian tissues (with certain exceptions) are prohibited from use in ruminant rations.

c. *The mammalian-to-ruminant prohibition.*

The third alternative was to prohibit the use of all mammalian protein in ruminant feed (''mammalian-to-ruminant'' prohibition). The preamble to the proposed rule noted that some rendering and feed associations supported this alternative because separating ruminant from nonruminant materials or proteins might not be feasible due to the routine industry practice of commingling protein products (62 FR 552 at 568). The preamble to the proposed rule also noted that this alternative would provide greater assurance of industry compliance than a partial or total ruminant-to-ruminant prohibition because practical analytical methods exist for distinguishing mammalian from nonmammalian proteins and that this alternative would not require additional or new labeling. Furthermore, the preamble to the proposed rule stated that this alternative would avoid concerns about permitting some products containing meat and bone meal to be used in ruminant feeds while prohibiting others and the effect on financially sensitive commodities markets for animal protein.

The disadvantages to a mammalian-to-ruminant prohibition included the absence of scientific data establishing or suggesting TSE infectivity in nonruminant animals (other than in cats or mink) and claims from some industries that they would prefer or had the ability to separate ruminant from nonruminant tissues.

(Comment 31). The mammalian-to-ruminant alternative received the most support among the alternatives to a ruminant-to-ruminant prohibition discussed in the preamble to the proposed rule. These comments came from the affected industries (although most would prefer alternatives to this rulemaking), consumer groups, other government agencies (including a foreign government), and academia. Most comments supporting this alternative explained that it would provide the same or more protection than the proposed rule, would be both practical and enforceable, would give greater assurance of industry compliance, and would be consistent with international initiatives. However, some comments acknowledged that the current scientific evidence provides more support for a specified tissue prohibition or ruminant-to-ruminant prohibition rather than a mammalian-to-ruminant prohibition.

FDA has revised the rule to prohibit the use of protein derived from mammalian (rather than ruminant) tissues, with certain exclusions. Numerous comments from the rendering and feed industries advocated a mammalian-to-ruminant prohibition. These industries indicated that a mammalian-to-ruminant prohibition would result in easier and greater compliance (because the usual industry practice is to commingle ruminant and nonruminant material rather than separate ruminant from nonruminant material) and provide a higher degree of confidence in the feed or feed ingredients produced and sold. Given this practice of commingling tissues, the possibility of cross-contamination of nonruminant mammalian tissues through contact with ruminant tissues, and reasons explained elsewhere in this document, FDA has determined that protein derived from mammalian tissues (as defined in the rule) is not GRAS for use in ruminant feed and has revised the final rule accordingly. The agency recognizes that, under current industry practices, pigs and horses may be slaughtered at dedicated slaughtering facilities which produce either pure porcine or pure equine material. The exclusion of equine material in addition to porcine material in the final rule is a change from the proposed codified

material. This change was made in response to comments (see comment 44 response) that for mammals which are considered to be major food animals, neither porcine nor equine species have ever been diagnosed with a naturally occurring TSE. For porcine and equine materials, persons may continue to self determine whether their use in ruminant feed is GRAS.

FDA also considered various exclusions to the rule. These exclusions are discussed elsewhere in this document.

(Comment 32). Several comments offered alternatives to a mammalian-to-ruminant prohibition, such as the exclusion of sheep under 12 months of age and cattle under 30 months of age. The comments claimed that animals in these age groups seldom exhibit clinical signs of TSE.

FDA declines to revise the rule as suggested by the comments. Because of the long incubation period for TSE's, an infected animal may not exhibit any clinical signs. Scrapie has been detected in 7-month-old sheep (discussed fully in the preamble to the proposed rule) and results of a BSE maternal transmission study conducted in the United Kingdom suggest that the risk of maternal transmission is approximately 10 percent for BSE infected cows. Additionally, there is little specific knowledge about the infectivity of tissues and organs during this period.

d. *The prohibition of materials from U.S. species diagnosed with TSE's.*

The fourth alternative was to prohibit the use of materials from species in which TSE's have been diagnosed in the United States (sheep, goats, mink, deer, and elk) in ruminant feed. The preamble to the proposed rule noted that this alternative would eliminate the scrapie agent, TME, and CWD from ruminant feed, and thereby reduce the risk of BSE in cattle by TSE transmission from other animal species (62 FR 552 at 568). However, it also noted that this alternative would not prevent the spread of BSE in the United States if BSE occurred for another reason, such as spontaneous mutation in cattle or the importation of animals infected with BSE (when such imported animals are subsequently processed and used in ruminant feed).

(Comment 33). FDA received several comments supporting this alternative and a smaller number opposing it. The comments supporting this alternative stated that it was the most prudent and pragmatic alternative and is supported by current scientific evidence. Comments opposed to this alternative stated that it would not prevent amplification of BSE, would not exclude cattle (because no U.S. cattle have been diagnosed as having BSE or a TSE), and would make it more difficult to exclude potentially infective tissues from ruminant feed. One comment questioned whether this alternative would extend to prohibiting any feed materials to any animal, including nonruminants.

After considering the comments, FDA declines to adopt this alternative. As stated in the preamble to the proposed rule and elsewhere throughout this document, the rule is intended to prevent the establishment and amplification of BSE in the United States through feed. This alternative would restrict some, but not all, routes for the BSE agent to enter ruminant feed. Consequently, FDA is not adopting this alternative.

e. *The sheep-specified offal prohibition.*

The fifth alternative was to prohibit the feeding of specified sheep and goat offal to ruminants. This alternative would eliminate scrapie from ruminant feed, but would not prevent the spread of BSE among cattle if BSE occurred spontaneously or entered the United States (62 FR 552 at 568 and 569).

(Comment 34). Very few comments addressed this alternative. Two comments supported this alternative, stating that no TSE's have been found in the United States or that this alternative would remove much unsafe protein from ruminant feed.

Three comments opposed this alternative. One comment stated that, if BSE is already present in the United States, this alternative would not prevent it from spreading to other cattle. Another comment expressed similar views, but added that the long incubation period for TSE's and the infectivity of tissues from preclinical or asymptomatic animals increased the risk of BSE amplification. Another comment stated that this alternative had limited effectiveness because it did not protect against other known TSE's in other species.

The agency agrees with those comments opposing this alternative. Although it would remove scrapie from ruminant feed, this alternative would be ineffective against BSE and other TSE's. As a result, FDA is not adopting this alternative.

f. *The ''no action'' alternative.*

The sixth alternative was to take no action. The preamble to the proposed rule explained that this alternative is arguably supported by the fact that data and information do not document a recognized immediate threat to the public health in the United States and that any threat may be minimal. Other arguments supporting this alternative included: (1) BSE has not been detected in the United States; (2) surveillance efforts are in place and have not detected BSE; and (3) there is no empirical evidence available to establish that BSE will be transmitted to cattle from another species, will occur spontaneously in cattle, or will be transmitted from imported animals or animal feed (62 FR 552 at 553). The preamble to the proposed rule further noted that: There is no conclusive scientific evidence that BSE would be spread through animal feed (although there is strong epidemiological evidence suggesting that widespread BSE infections in the United Kingdom occurred through contaminated animal feed and that enforced feed control regulations appear to be the reason for BSE's decline in the United Kingdom); the industrial practices in the United Kingdom believed to be associated with the BSE epidemic in the United Kingdom differ from those in the United States; transfer of TSE's from sheep to cattle is suggested by epidemiological evidence, but has not been confirmed by direct scientific data; and while there is an epidemiological association between BSE and the nv-CJD cases in the United Kingdom, the available evidence has not established that BSE causes nv-CJD.

Arguments against a ''no action'' alternative focused on the potentially high cost, in animal and human lives and economics, if BSE appeared in the United States and was transmitted and amplified through the feeding of ruminant protein to cattle. The preamble to the proposed rule noted that TSE transmission from other species, spontaneous occurrence, and transmission from imported animals or animal products was possible. Experimental evidence also indicated that the BSE agent may be more susceptible to oral transmission (such as through animal feed) than other TSE's, thereby increasing the chances that BSE could spread through the United States whether or not the BSE agent developed spontaneously, was transmitted by another species, or was introduced by some other means. Yet the greatest risk factor identified in the preamble to the proposed rule was the potential for unrecognized amplification of the BSE agent given the long incubation period for BSE and the absence of methods for detecting the agent (62 FR 552 at 555).

(Comment 35). Very few comments expressly addressed the ''no action'' alternative. One comment, without any explanation, supported the no action alternative, while another comment claimed that the proposed rule was essentially a ''no action'' alternative

because it would permit the use of tallow and fat in ruminant feed, and the comment opposed the use of tallow. Six comments opposed this alternative, declaring that the Federal Government must act to protect animal and human health and food safety now, that TSE's are known to exist in the United States, and that if TSE's exist in cattle, steps need to be taken to prevent amplification. Other comments opposing a ''no action'' alternative claimed that an undiagnosed TSE may already exist in the United States cattle population (arguing that TME may have originated as an undiagnosed TSE in cattle that was transferred to mink through contaminated feed), that this alternative would not protect against asymptomatic animals infected with a TSE, and that this alternative is not acceptable for purposes of international trade (because other countries will reject U.S. products if they cannot be assured that the products are not infected with BSE or a TSE).

FDA agrees with the comments that oppose a ''no action'' alternative. The most appropriate course of action is to take steps to prevent the establishment and amplification of BSE in the United States through feed before BSE is manifested in the United States. FDA will, as it does for all regulations, amend or modify its regulations to reflect any advances in scientific or industry technology, but the potential consequences to human and animal health are simply too great to justify a ''no action'' alternative at this time.

5. Miscellaneous Alternatives Suggested by the Comments

Many comments suggested other regulatory approaches, ranging from more comprehensive prohibitions on the use of animal proteins in feed to less restrictive alternatives that would focus solely on sheep or cattle or certain types of cattle. Other comments suggested alternatives to the nonGRAS status (e.g., issuing a compliance policy guide (CPG), an interim food additive regulation, a GRAS listing with restrictions, temporary ban to suspend the use of ruminant protein in ruminant feed, and HACCP programs). The discussion of these alternatives and the agency's response appears in section I.B.1.b of this document, comments 56 through 60. Few comments offered any detailed rationale or explanation supporting their alternatives.

a. *Alternatives involving ''downer'' animals.*

(Comment 36). FDA received hundreds of comments (in response to write-in campaigns) requesting that ''downer'' (nonambulatory) animals not be used for human food and not processed as ingredients in animal feed. Few comments offered any detailed rationale (scientific or otherwise) for their request, although some comments suggested that downed animals may be unable to walk because they have a TSE agent or suffer from some central nervous system (CNS) disease.

FDA declines to revise the rule as suggested by the comments. The final rule is limited to the use of proteins derived from mammalian tissues in ruminant feed. The rule is intended to prevent the establishment and amplification of BSE in the United States through feed. Because BSE has never been detected in the United States, the agency believes that the actions it has taken in this final rule will accomplish this regulatory objective.

FDA notes that issues involving downer animals actually have two components: (1) Animals that are ''down'' and are condemned on antemortem examination, such as those with clinical signs of CNS disorders; and (2) animals that are ''down'' but which are passed as ''suspects'' pending post-mortem examination, such as those with broken legs, mastitis, paralysis, etc. This final rule will prevent any downed (including CNS-condemned) ruminants from being used in ruminant feed. This final rule does not address issues related to nonruminant feed uses. The agency does not have any information that such uses for nonruminants at this time, present a risk of TSE infection to ruminants. The use of carcasses of downer animals and the offal of animals that are slaughtered as suspect for a CNS disorder in the manufacture of meat and bone meal for use in swine, poultry, and pet rations presents no known risk to humans. The risk to nonruminants other than ruminants appears to be limited to felids and mink and is considered to be extremely small.

Additionally, revising the rule to prohibit the use of all downers in nonruminant feeds would create significant environmental and economic problems. Issues further related to use of meat and poultry for human consumption are outside the scope of this rulemaking since they are regulated by USDA.

b. *Alternatives covering other animals.*

(Comment 37). Several comments advocated more inclusive alternatives, such as prohibiting the use of animals or mammals in mammalian feed, prohibiting the use of animal byproducts in feed for all animals or all farm animals, or prohibiting the use, in any livestock feed, of any potentially infectious tissue from any species known to have a TSE. Few explained their reasons for such alternatives other than to declare that a broader alternative would be more protective, to argue that noncarnivorous animals should eat only plants, or to argue that the practice of feeding animal protein to animals was ''cannibalism'' or ''unnatural.''

In developing this rule, the agency sought to create regulatory requirements that would prevent the establishment and amplification of BSE in the United States through feed while simultaneously considering the impact on the affected industries. The comments did not provide sufficient information to determine that the alternatives suggested by the comments would be equally or more effective in preventing the establishment and amplification of BSE in the United States through feed, and so FDA declines to revise the rule as suggested by the comments.

(Comment 38). Several comments advocated less restrictive alternatives to the rule, such as prohibiting cattle-derived protein from being fed to other cattle, or to sheep and cattle, or to other animals, prohibiting the use of sick and dying animals in human and animal food, or prohibiting the use of spinal cords and heads in animal feed.

FDA declines to revise the rule as suggested by the comments. These less restrictive alternatives would not meet the agency's goals. The comments did not offer any explanation as to how these alternatives would prevent the establishment and amplification of BSE in the United States through feed.

c. *Alternatives covering other subjects.*

(Comment 39). One comment requested that FDA revise the rule to address all food hazards (rather than focus on BSE in ruminants), prohibit the use of all meat protein supplements in all animal feed, prohibit the use of antibiotics in food-producing animals, and concentrate on possible causes of disease.

The agency declines to revise the rule as requested by the comment. The comment does not explain how the suggested change would prevent BSE from being established and amplified in the United States through feed. The comment's requests appear to address issues which are outside the scope of this rulemaking.

B. Comments on Specific Sections in the Proposed Rule

1. Section 589.2000(a)—Definitions

Proposed § 589.2000(a) would define various terms, such as ''protein derived from ruminant and mink tissues,'' ''renderer,'' ''blender,'' ''feed

manufacturer and distributor,'' and ''nonruminant protein.''

All comments addressing proposed § 589.2000(a) focused on the terms ''protein derived from ruminant and mink tissues.'' Proposed § 589.2000(a)(1) would define such proteins as ''any protein-containing portion of ruminant animals or mink, excluding blood from bovines, milk proteins and gelatin.''

As noted earlier in this document, the agency has revised § 589.2000(a)(1) to refer to protein derived from mammalian tissues and has excluded specific items from that definition. In general, the exclusions represent tissues that the available data suggests do not transmit the TSE agent or were, at one time, inspected by FSIS and found fit for human consumption and further heat processed for feed use or tissues from species without TSE's that, under current industry practice, are slaughtered in single species slaughter facilities. Comments on specific tissues are as follows:

(Comment 40). Several comments would exclude plate waste (food that has been inspected, prepared, and/or served to humans) from the rule. Some comments explained that all food products which compose plate waste have already been cooked and inspected several times before being offered for human consumption and later thrown away and that commercial processors of plate waste dehydrate the product at temperatures reaching 290 to 400 °F when converting it to an animal feed ingredient. The comments also asserted that the plate waste comes from institutions (universities, retirement homes, hospitals, prisons, etc.), fast-food establishments, and large restaurants/cafeterias, and does not consist of tissues that have demonstrated infectivity in cattle, e.g., brain, spinal column, eye and distal ileum of cattle. Furthermore, some comments stated that plate waste consists mostly (approximately 98 percent) of nonmeat products and is high in moisture. The high moisture content requires the addition of 50 to 60 percent corn, soybeans, or similar products to aid in the dehydration and the extrusion process. The comments also noted that the feeding of plate waste remains a common practice in many parts of the United States and around the world and that plate waste comprises approximately 8.9 percent of the Municipal Solid Waste stream in the United States.

The draft codified provisions that appeared in the **Federal Register** of April 17, 1997, included as an exclusion from the definition protein derived from mammalian tissue, ''inspected and processed meat products which have been cooked and offered for human consumption (plate waste and used cellulosic food casings).'' The initial decision to exclude plate waste was based on the fact that a small proportion of meat is included in plate waste and that plate waste represents a small proportion of ruminant feed. Additionally, the heat and pressure used to process plate waste should further reduce the risk of transmitting the TSE agent through feed in a product that is of minimal risk prior to the processing as plate waste.

Several comments addressed the reference to ''plate waste,'' and the majority of the comments supported the exclusion of plate waste from the definition of ''protein derived from mammalian tissues.'' However, many of these comments also sought a broader exemption by expanding the rule to include ruminant meat which had passed Federal or state inspection for human consumption. In contrast, one comment, from the USDA/APHIS, opposed an exclusion for plate waste, stating that the exclusion was too broad and could be interpreted to be similar to the USDA definition for garbage at 9 CFR 166.9 and that trimmings (bone and nervous tissue) from TSE-susceptible species might be included under the exclusion.

FDA agrees with the USDA/APHIS that the inclusion of trimmings or high-risk tissue, such as brain and eyes, is inappropriate for use in ruminant feed. FDA declines to expand the exclusion to include all ruminant meat that has passed Federal or state inspection for human consumption. FDA's approach to eliminating trimmings was to describe an acceptable product as one which was ''cooked and offered for human consumption.'' After further consideration FDA has revised the definition of protein derived from mammalian tissues to exclude ''inspected meat products which have been cooked and offered for human food and further heat processed for feed (plate waste and used cellulosic food casings).'' This is to clarify that the high risk tissues USDA/APHIS described in their comment are not covered by this exclusion.

FDA declines to expand the exclusion to include all ruminant meat that has passed Federal or state inspection for human consumption because this would require FDA to remove the safeguard against trimmings and also would allow brains and eyes which have passed inspection to be fed to ruminants.

The agency acknowledges that accurately describing products which are acceptable under this exclusion is difficult. In general, FDA interprets this exclusion as being restricted to food prepared in restaurants or restaurant-like establishments, offered to consumers for consumption on the premises, and then discarded by the consumer. Precooked food items, such as hot dogs, casings from cooked hot dogs, and cooked deli items, would be excluded from regulation under this rule by this exclusion. FDA has revised the definition to better reflect its position that the product must be cooked, offered to the consumer for human food, and then further heat processed before it can be fed to animals.

The Association of American Feed Control Officials, Inc. (AAFCO) is in the process of developing definitions for products described in this section. In general, the ''plate waste'' exclusion is similar to the AAFCO definition of ''restaurant waste.''

(Comment 41). A few comments questioned why meat and meat products inspected by the USDA and found acceptable for human consumption are not acceptable for ruminant consumption.

The risks posed to humans and those posed to animals are different. The significant steps advanced by this rule are supported by public health experts as an effective means to decrease the risk of TSE's in ruminants through feed and the potential risk to humans. To date, the occurrence of nv-CJD in Europe has not been definitively linked to human consumption of meat, and no cases of nv-CJD have been detected in the United States.

(Comment 42). One comment objected to the exclusion of gelatin and blood from the definition of ''protein derived from ruminant and mink tissues.'' The comment argued that gelatin and blood meal may be infectious and that blood meal may not be used as a feed ingredient or a fertilizer in the United Kingdom. The comment further noted that the USDA prohibits the importation of ruminant protein and blood meal from countries with documented BSE cases; the comment stated that if the USDA prohibits such imports because they may be infective, then FDA should not permit the use of domestic gelatin and blood meal.

The agency disagrees with the comment. As the agency discussed in the preamble to the proposed rule (62 FR 552 at 572) available data suggests that gelatin and blood do not transmit the TSE agent and USDA surveillance has not detected BSE in the United States. However, to minimize the risk of infected material being imported into

the United States, USDA has prohibited the importation of such products.

(Comment 43). Several comments addressed the reduction in TSE titer that results from the process that is used to make gelatin. Two comments added that dicalcium phosphate, which is derived from the gelatin manufacturing process, should be excluded from the rule; one described the processes for obtaining dicalcium phosphate. Another comment sought clarification whether amino acids derived from gelatin would be exempt from the rule.

Amino acids and dicalcium phosphate are excluded from the final rule because both products are by-products or the result of further processing of gelatin and do not contain proteins. Dicalcium phosphate is an inorganic mineral source that does not contain protein, and individual amino acids are not proteins. (Instead, proteins consist of amino acids.) Although the codified provision to the draft rule that was published in the **Federal Register** of April 17, 1997, expressly exempted amino acids and dicalcium phosphate derived from gelatin, and one comment sought to revise that language regarding dicalcium phosphate, the agency has reconsidered the need for this express language and decided that, because amino acids and dicalcium phosphate are not proteins, the express language is unnecessary.

(Comment 44). Several comments requested that FDA revise the rule to exclude pure porcine (swine) products. These comments argued that swine are not known to have TSE's and are often slaughtered in dedicated swine slaughter facilities so that pure porcine products can be easily separated from other mammalian products.

Other comments, submitted after the publication of the draft codified provisions in the **Federal Register** of April 17, 1997, suggested that FDA revise the rule to exclude pure equine products. FSIS commented that the rationale for the change from a ruminant-to-mink prohibition in the proposed rule to a mammalian prohibition, with porcine exclusion, is insufficiently supported by scientific fact and suggested that FDA consider an alternative to the draft final.

The agency agrees with the comments and has excluded products whose only mammalian protein consists entirely of porcine or equine protein from the definition of ''protein derived from mammalian tissues.'' This exclusion is scientifically defensible because swine and horses have not been shown or reported to have a condition that can be linked to a TSE and can be accomplished within the current industry structure and practice. Because most swine and horses are slaughtered in dedicated facilities, and the ease of verifying compliance at the source, FDA has excluded products containing pure porcine or pure equine protein from the rule and, where appropriate, revised other provisions in the final rule to reflect an exclusion for pure porcine or equine protein. FSIS is in agreement with these changes.

(Comment 45). A few comments asked the agency to provide a mechanism for exempting animals from flocks or herds that are designated by a Federal agency to be absent from TSE's, such as the USDA's Voluntary Scrapie Flock Certification Program.

The agency supports any initiative such as this which is designed to reduce or eliminate a naturally occurring TSE. However, there appears to be little assurance that the proteins derived from these flocks or herds could be kept separate as pure single-species proteins, and therefore, FDA declines to revise the rule as suggested by the comments.

(Comment 46). Proposed § 589.2000(a)(2) would define ''renderer,'' in part, as ''any firm or individual that processes slaughter byproducts, animals unfit for human consumption, meat scraps or food waste.''

The agency has removed ''food waste'' from the definition. This change is necessary because, as explained above, the agency has excluded plate waste from the definition of ''protein derived from mammalian tissues.'' The agency does note, however, that it interprets the term ''animals unfit for human consumption'' as including parts of animals that are unfit for human consumption.

(Comment 47). Proposed § 589.2000(a)(3) would define the term ''blender.''

The agency received no comments on this definition and has finalized it without change.

(Comment 48). Proposed § 589.2000(a)(4) would define ''feed manufacturer and distributor'' as including manufacturers and distributors of complete and intermediate feeds intended for animals, including on-farm and off-farm feed manufacturing and mixing operations.

FDA has revised the definition to separate ''feed manufacturer'' from ''distributor.'' The agency made this change to clarify that both feed manufacturers and distributors are subject to the rule rather than persons who perform both functions (manufacturing and distributing). Thus, § 589.2000(a)(4) defines ''feed manufacturer'' as including manufacturers of complete and intermediate feeds intended for animals and including on-farm in addition to off-farm feed manufacturing and mixing operations. Section 589.2000(a)(6) defines ''distributor'' as including persons who distribute or transport feeds or feed ingredients intended for animals. The substance of these definitions are similar to the definition in the draft codified provisions that appeared in the **Federal Register** of April 17, 1997. The agency has also made corresponding changes throughout the rule to clarify that feed manufacturers are distinct from distributors and deleted the reference to ''haulers'' from proposed § 589.2000(e) because the definition of ''distributor'' includes persons who transport feed and feed ingredients.

(Comment 49). Proposed § 589.2000(a)(5) would define ''nonruminant protein'' as including protein from nonruminant animals and vegetable sources.

The agency has revised § 589.2000(a)(5) to define ''nonmammalian protein'' as including protein from nonmammalian animals and vegetable sources. This corresponds to the final rule's change to a mammalian-to-ruminant prohibition.

(Comment 50). As stated earlier, FDA has revised the rule to create a new § 589.2000(a)(6) to define ''distributor.'' While the codified provisions of the draft rule that appeared in the **Federal Register** of April 17, 1997, initially defined ''distributor'' as including distributors of complete and intermediate feeds intended for animals, FDA, on its own initiative, has revised the definition further to clarify that persons who transport feed or feed ingredients intended for animals are distributors.

(Comment 51). The agency has also revised the rule to create a new § 589.2000(a)(7) to define ''ruminant'' as including ''any member of the order of animals which has a stomach with four chambers (rumen, reticulum, omasum, and abomasum) through which feed passes in digestion. The order includes, but is not limited to, cattle, buffalo, sheep, goats, deer, elk, and antelopes.'' FDA elected to define the word ''ruminant'' because several comments noted that some people might not know what animals are ''ruminants.''

2. Section 589.2000(b)—Food Additive Status

Proposed § 589.2000(b) would state that protein derived from ruminant and mink tissues is not generally recognized as safe for use in ruminant feed because it may contain TSE's and is a food

additive subject to section 409 of the act (21 U.S.C. 348). Thus, under the proposed rule, the use or intended use of any ruminant or mink-derived protein in ruminant feed would cause the feed to be adulterated and in violation of the act (unless it was the subject of an effective notice of claimed investigational exemption for a food additive or was the subject of a food additive regulation). Proposed § 589.2000(b) would also state that FDA has determined that ruminant and mink-derived protein is not prior sanctioned for use in ruminant feeds.

a. *NonGRAS status.*

At the outset, FDA notes that no comments provided FDA with any published studies, data, or other information or expert opinions upon which FDA could conclude that the material is safe or that there is a reasonable certainty that the material is not harmful under the intended conditions of use. FDA received no scientifically valid information, or expert opinion based on that information, that addressed: (1) Whether it is reasonably certain that BSE does not, or will not, occur in the United States; (2) whether the BSE agent can be detected; (3) whether it is reasonably certain that the BSE agent will not be transmitted to ruminants through animal feed, i.e., that the processed tissues are not infected by the agent, are deactivated by the rendering process or are not transmitted orally; or (4) whether it is reasonably certain that the agent will not be transmitted to humans through consumption of ruminant products. As discussed extensively in the preamble to the proposed rule (see 62 FR 552 at 553 and 564) and herein, these significant safety questions have been raised by credible currently available information about the transmission of BSE and TSE's to ruminants through feed. As a result of these questions, as provided in this final rule, FDA has determined that protein derived from mammalian tissues in ruminant feed is not GRAS.

(Comment 52). Many comments stated that ruminant protein had been safely used as components of animal feed for 100 years as well as before the enactment of the Food Additive Amendments of 1958. These comments seemed to assert that ruminant protein for use in ruminant feed is GRAS based on common use in food prior to 1958, and based on this history of safe use, FDA cannot now declare it to be a food additive.

FDA disagrees. As noted in the preamble to the proposed rule, if a substance was used in food before 1958, general recognition that the use of a feed ingredient is safe can be based on scientific procedures or experience based on common use in food (see 62 FR 552 at 566; section 201(s) of the act (21 U.S.C. 321(s)); and 21 CFR 570.30(a)). General recognition of safety through experience based on common use in food prior to January 1, 1958, may be determined without the quantity or quality of scientific procedures required for approval of a food additive regulation, but it nonetheless requires a demonstration of: (1) Safe use based on common use, and (2) an expert consensus of safety, based on that common use (see 21 CFR 570.30). The simple assertion of this safe use thus does not satisfy the burden the proponents of the use bear to establish general recognition. Although FDA agrees that, until recently, this material appears to have had a long history of use without known adverse effects (see 62 FR 552 at 566), FDA has never affirmatively declared the material to be GRAS based on common use in food.

Moreover, even if a substance is GRAS based on common use in food or GRAS based on scientific procedures, FDA may reassess the GRAS status of a food ingredient based on new information (see 21 CFR 530.30(g); see also, e.g., 51 FR 25021, July 9, 1986 (Sulfiting Agents; Revocation of GRAS Status for Use on Fruits and Vegetables to be Served or Sold Raw to Consumers)). Thus, even if ruminant protein for use in ruminant feed were GRAS based on common use in feed prior to 1958, that does not preclude FDA from reassessing it now that there exist new studies, data, or other information that show that the substance is, or may be, no longer safe (this is true whether the studies or data are published or unpublished (see 50 FR 27294 at 27296 (July 2, 1985))) or that there is no longer the basis for an expert consensus that it is safe.

Expert opinion that the substance for use in ruminant feed is GRAS would need to be supported by scientific literature, and other sources of data and information. ''General recognition'' cannot be based on an absence of studies that demonstrate that a substance is unsafe; there must be studies or other information to establish that the substance is safe (see *U.S.* v. *An Article of Food * * * Coco Rico,* 752 F.2d 11 (1st Cir. 1985)). Furthermore, if there are studies and other data or information that raise questions about the safety of the use of the material, this conflict—just like a conflict in expert opinion—may prevent general recognition of the substance.

As the agency explained in the preamble to the proposed rule, research and other information have raised questions regarding the safe use of protein derived from certain animal tissue in ruminant feeds. The agency stated that ''the evidence as discussed in sections I and II.A through II.D of this document, for the development of a new pattern of disease transmission, now indicates that these ingredients can no longer be categorically regarded as safe'' (see 62 FR 552 at 566).

Because the expert opinion must be ''general,'' a substance is not GRAS if there is no recognition among experts, or there is a genuine dispute among the experts, as to whether it is safe. Although there need not be unanimity among qualified experts that a substance is safe for ''general recognition'' of its safety to exist, an ''expert consensus'' is required (see *Weinberger* v. *Hynson, Wescott & Dunning, Inc.*, 412 U.S. 606, 632 (1073)).

Accordingly, there must be no genuine difference of opinion among qualified experts as to the substance's safety (see *Coco Rico*, 752 F.2d at 15 n.6; *United States* v. *Articles of Drug * * * 5,906 Boxes*, 745 F.2d 105, 119 n.22 (1st Cir. 1984)). As the Court of Appeals for the Second Circuit explained in *Premo Pharmaceutical Laboratories, Inc.* v. *United States*, 629 F.2d 795, 803 (2d Cir. 1980), when there is a dispute among experts as to ''general recognition,''

> The * * * issue (of actual safety) is to be determined by the FDA which, as distinguished from a court, possesses superior expertise, usually of a complex scientific nature, for resolving that issue.

See also *5,906 Boxes*, 745 F.2d at 119 n.22; *United States* v. *50 Boxes * * * Cafergot P–B Suppositories*, 721 F.Supp. 1462, 1465 (D. Mass. 1989), *aff'd*, 909 F.2d 24 (1st Cir. 1990); *An Article of Drug * * * Furestrol Vaginal Suppositories*, 251 F.Supp. 1307 (N.D. Ga. 1968), *aff'd*, 415 F.2d 390 (5th Cir. 1969).

The World Health Organization (WHO), in an April 1996 consultation on public health issues related to TSE, recommended that all countries ban the use of ruminant tissues in ruminant feed. This recommendation was intended to minimize the risk associated with exposure to BSE from beef and beef products. The background for WHO recommendation pointed out that the BSE epidemic in the United Kingdom appeared to have been due mainly to the recycling of infected bovine material back to cattle.

In response to the agency's request in the preamble to the proposed rule for comments on a ruminant-to-ruminant prohibition as well as other alternatives including a full mammalian to ruminant

ban, no one submitted or cited published studies to support the contention that the use of protein derived from ruminant tissue or from mammalian tissue in ruminant feed is GRAS. Furthermore, no comments refuted the agency's basis for determining protein derived from ruminant tissue for use in ruminant feed to be nonGRAS as set out in the preamble to the proposed rule. In addition, no one submitted or cited published studies to support a finding that the use of mammalian tissue in ruminant feed is GRAS either in response to the request for comments on the alternative set out in the preamble to the proposed rule or the request for comments on the draft rule, which included the mammalian (with certain exclusions) to ruminant ban. FDA believes that the same research and information set out in the proposed rule and the industry practice of commingling mammalian, including ruminant and mink, tissues, demonstrate that the use of protein derived from mammalian tissues can no longer be categorically regarded as safe. Therefore, this final rule provides that such protein for use in ruminant feed is a food additive subject to section 409 of the act.

(Comment 53). Numerous comments appeared to argue that the agency could not promulgate a rule declaring ruminant protein to be a food additive when intended for ruminant feed because there is no BSE in the United States.

Because these comments did not provide any legal or scientific explanation to support this argument, it is unclear to FDA whether they are arguing: (1) That FDA cannot rely on new information from foreign sources to reassess the GRAS status of a food ingredient, or (2) that FDA cannot take action until BSE actually occurs on United States soil. Whichever argument is meant, FDA disagrees. First, the act does not require evidence of actual harm to exist before a substance can be declared to be not GRAS by FDA; all that is required is information—which exists here—that the use of certain protein in ruminant feed may not be safe or that there is no expert consensus that the use of the substance is safe.

In addition, in response to comments that point out that there is no evidence of BSE in the United States, FDA notes that nothing in the act would support a blanket conclusion that FDA should only rely on data generated or conditions present in the United States when making this reassessment. Indeed, since, under the act, FDA must take into account relevant evidence of foreign use when assessing a claim that a food ingredient is GRAS based on common use in food prior to 1958 (see *Fmali Herb, Inc.* v. *Heckler*, 715 F.2d 1385 (9th Cir. 1985)), FDA believes it should likewise take relevant foreign data and expertise into account when reassessing safety and general recognition. Here, while there have been no reported cases of BSE in the United States, other conditions exist that make the foreign experience relevant, such as the fact that, in the United Kingdom, BSE was spread by the practice of feeding ingredients from processed BSE-infected cattle to other cattle, and the processes that were used failed to inactivate the BSE agent.

Moreover, the act as a whole and the 1958 Food Additives Amendment in particular were intended to give FDA the tools to prevent harm to the public health *before* it occurs (see, e.g., *United States* v. *Ewig Bros Co.*, 502 F.2d 715, 721 & n.24 (7th Cir. 1974), *cert. denied*, 420 U.S. 945 (1975); see also S. Rep. No. 2422, 85th Cong., 2d Sess. 1–3 (1958); H.R. Rep. No. 2284, 85th Cong., 2d Sess. 1 (1958)). As a result of the 1958 amendment, the burden of proof shifted to manufacturers, and the 1958 amendment ''permit(s) FDA to regulate the use of substances affecting foods without first determining that they are in fact dangerous; the method is to require that such substances be established as safe before being used'' (see *Natick Paperboard Corp.* v. *Weinberger*, 525 F.2d 1103, 1106 (1st Cir. 1975), *cert. denied*, 429 U.S. 819 (1976); see also *Ewig Bros.*, 502 F.2d at 721).

Thus, to claim that FDA cannot declare a substance to be a food additive until it has actually done damage in the United States and FDA can prove that actual harm has occurred would eviscerate the act. It would be contrary to the public health if FDA could not use this authority—based data and other relevant information from other countries—to prevent harm from occurring through the use of certain ingredients in feed.

FDA notes that section 801 of the act (21 U.S.C. 381), which gives the agency the authority to prevent the import into the United States of food that violate the act unless such items are intended for export rather than domestic distribution, underscores the weakness of the comments' arguments. If the act did not allow FDA to consider conditions that exist in, or evidence from, other countries when determining whether an article violates the provisions of the act, FDA would not be able to implement section 801 of the act and keep violative food from entering the country. Furthermore, if the comments' interpretation of the act is correct—that FDA can only look at conditions in this country—then FDA would not be able to declare animal protein from other countries to be an unsafe food additive, even if there had been cases of BSE reported in the country in which the animal protein originated.

(Comment 54). Several comments argued that more research is needed before FDA can take action and that the agency must establish that all feed components affected by this rulemaking may transmit TSE's.

These comments misunderstand the structure of the food safety provisions of the act. As noted above and in the preamble to the proposed rule (62 FR 552 at 566), the act places the burden to establish safety of a feed component on the proponent of the substance, not on the government to prove actual harm. Research of the type suggested by the comments could take years to complete. The agency believes that it is neither required nor appropriate to delay regulatory action to prevent transmission of BSE pending the completion of research.

The information presented in the preamble to the proposed rule set out the basis for the agency's nonGRAS determination for the use of protein derived from ruminant and mink tissue in ruminant feed. As discussed earlier in this preamble to the final rule, after evaluating the issues and information presented in the comments on the proposal and all other evidence, the agency has determined that a consensus does not exist that the use of protein derived from mammalian tissues is safe for use in ruminant feed. The agency finds that the potential remains for ruminants to be exposed to TSE agents in ruminant feed. When a ruminant is fed protein derived from mammalian tissues, TSE's may be transmitted. Therefore, FDA concludes that the use of protein derived from mammalian tissues in ruminant feed can no longer be considered GRAS.

(Comment 55). The draft rule that appeared in the **Federal Register** of April 17, 1997, revised § 589.2000(b) to eliminate unnecessary phrases that were included in proposed § 589.2000(b). These phrases were statements referring to FDA's determination that these proteins are nonGRAS, the absence of a regulation providing for safe use, and FDA's determination that these proteins are not prior sanctioned for use in ruminant feeds. A small number of comments questioned why the language was removed (because it did not alter the fact that proteins derived from

mammalian tissues for use in ruminant feed are food additives subject to section 409 of the act), and one comment asked FDA to restore the nonGRAS language.

FDA eliminated the text described above from § 589.2000(b) because the language was unnecessary. These revisions are solely editorial in nature and do not affect the substance of the agency's rulemaking or its determination that protein derived from mammalian tissues is not GRAS for use in ruminant feed and is not prior sanctioned for use in ruminant feeds.

b. *Alternatives to nonGRAS status and other legal comments.*

Several comments advocated alternatives to declaring proteins derived from ruminant tissues to be nonGRAS.

(Comment 56). Several comments suggested that FDA refrain from issuing the rule and instead issue a CPG. Some comments stated that a CPG could be used to determine that certain proteins are adulterants when added to ruminant feed and that use of a CPG would meet FDA's goal of increasing prevention of BSE. Some comments stated that a CPG would prevent the loss of GRAS status for the protein products and claimed that this loss will have serious ramifications, such as stigmatizing the protein products, as well as affecting the companies' ability to compete in the global market. One comment advocated the use of a CPG because it would allow the agency additional time to do a reasoned analysis of the scientific information before taking a final action. Some comments stated that use of a CPG would allow the agency to respond more quickly to scientific and technical changes than the use of notice and comment rulemaking.

FDA disagrees with these comments. Contrary to the arguments presented in the comments, FDA cannot use CPG's to impose any requirement. CPG's are guidance documents issued by the agency. These documents are not binding on the agency or any person. As the agency explained in its ''Good Guidance Practice'' document published in the **Federal Register** of February 27, 1997 (62 FR 8961), guidance documents ''represent the agency's current thinking on (a) subject'' and ''do not themselves establish legally enforceable rights or responsibilities and are not legally binding on the public or the agency.'' To issue a binding prohibition, the agency must follow an appropriate rulemaking procedure (see *Community Nutrition Institute* v. *Young*, 818 F.2d 943 (D.C. Cir. 1987)). Therefore, if the agency issues a CPG, it would not be binding and, as such, would be an ineffective means of banning the use of protein derived from certain tissues in ruminant feed. Furthermore, a CPG that states that certain proteins used in ruminant feed are adulterants under the act would require the agency, on a case-by-case basis, to bring enforcement actions for violations of section 402(a)(1) or section 402(a)(2)(C) of the act. Again, the agency does not believe this is an effective approach to preventing the establishment and amplification of BSE through feed. The agency believes it has made a reasoned analysis of the scientific information available and based on this analysis, the agency is taking the approach set out in this final rule.

(Comment 57). Several comments urged FDA to use an interim food additive regulation rather than declare certain proteins for use in ruminant feed are not GRAS. These comments explained that an interim food additive regulation would prevent their products from being stigmatized by a not GRAS determination. These comments also explained that the interim food additive regulation would keep the administrative record open to new evidence, permit FDA and the industry to react to new research findings, and permit FDA to require the industry to conduct planned research. Some comments cited the regulations in part 180 (21 CFR part 180) and the interim selenium rule as precedent for FDA issuing an interim food additive regulation.

FDA disagrees with these comments. The regulations in part 180, issued under section 409 of the act, apply to ''substances having a history of use in food for human consumption or in food contact surfaces'' (see § 180.1(a)). The definition of ''food'' for the subchapter (which includes part 180) includes ''human food, substances migrating to food from food-contact articles, pet food, and animal feed'' (see 21 CFR 170.3(m)). The language of § 180.1, however, only refers to human food and substances migrating to food from food contact surfaces. The limiting language in § 180.1 makes it clear that it does not apply to pet food or animal feed. The agency recognizes that § 570.38(c)(2) (21 CFR 570.38(e)(2)), applicable to animal feeds, provides that an interim food additive regulation may be issued. This provision was carried over when the rules at part 121 (21 CFR part 121 (1976)), which addressed both human food and animal feed additives, were reorganized to separate the human food and animal feed provisions. Section 121.41 of FDA's regulations, which included the reference to interim food additive regulations, was republished as § 570.38. The provisions governing promulgation of interim food additive regulations at § 121.4000 (now § 180.1) were not republished in part 570 (21 CFR part 570) governing animal feed (41 FR 38618, September 10, 1976). A decision to extend the use of interim food additive regulations to animal feeds and the creation of a procedure for doing so would likely require rulemaking under the Administrative Procedure Act (5 U.S.C. 501 *et seq.*)

Furthermore, even if this procedure were available to the agency here, it would not prevent the stigma that the comments state is created by the agency's determination that protein derived from certain tissues for use in ruminant feed is not GRAS since the same determination must be made to issue an interim food additive regulation (see, e.g., 61 FR 7990 March 1, 1996) (interim food additive for mannitol). Any determination by the agency that a substance is a food additive is also a determination that the substance is not GRAS. This is true regardless of whether the agency takes an action as in this final rule or the agency issues an interim food additive regulation.

With regard to the interim rule on selenium cited by some comments as an interim food additive regulation, the agency disagrees that the interim rule on selenium is an interim food additive regulation like those for human food issued under part 180. The selenium regulation at 21 CFR 573.920 was initially based on an approved food additive petition submitted under section 409 of the act. The interim final rule on selenium that appeared in the **Federal Register** of October 17, 1995 (60 FR 53702) was issued as an interim rule under the Administrative Procedure Act (5 U.S.C. 501 *et seq.*), not as an interim food additive regulation under section 409 of the act. The interim selenium rule implements Pub. L. 103–354 regarding the allowable levels of selenium in certain animal feeds. The rule is designated as an interim rule because it was issued under an exception in the Administrative Procedure Act (5 U.S.C. 553(b)(B)). This exception allows a final rule to be issued without prior notice and public comment if use of the procedures is impracticable, unnecessary, or contrary to the public interest. As stated in the preamble to the selenium rule, the agency determined that prior notice and public comment was unnecessary because the rule merely repeated the terms of Pub. L. 103–354 (see 60 FR 53702 and 53703). As stated above, an interim food additive regulation would be issued under section 409 of the act. Therefore, the interim selenium rule is

not precedent for the agency to issue an interim food additive regulation in this case.

(Comment 58). One comment stated that, instead of publishing a regulation under part 589 (21 CFR part 589) which lists substances prohibited in animal feed, the agency should do a GRAS listing with restrictions similar to the action taken in the propylene glycol rule that was published in the **Federal Register** of May 10, 1995 (60 FR 24808). The comment asserted that the GRAS listing (which is referred to as a ''GRAS affirmation'') would reduce the possible taint from listing the protein in part 589 as a prohibited substance. The comment explained that the GRAS listing could limit the animal feed that could contain the protein as it is listed in the proposed rule and include an exemption for use of approved deactivation and detection methods. The comment stated that the preamble to the rule should state the agency's view that all uses excepted from GRAS status must be subject to a food additive provision.

FDA does not agree with this comment. The action on propylene glycol that the comment cites was a proposed rule that would exclude from GRAS status propylene glycol used in or on cat food. The final rule was published in the **Federal Register** of May 2, 1996 (61 FR 19542). The proposed rule cited by the comment, as well as the final rule, included two provisions. One provision amended § 582.1666 (21 CFR 582.1666), which sets out the GRAS status of propylene glycol, to except its use in cat food. The second provision was a new § 589.1001 which lists propylene glycol in or on cat food as a substance prohibited from use in animal food or feed. In this case, no regulation exists that sets out a FDA determination of GRAS for protein derived from certain tissues for use in animal feed. Therefore, there is no GRAS regulation to amend as in the case with propylene glycol. Furthermore, this final rule, like the propylene glycol regulation, will list the substances as prohibited from use in animal feed in part 589.

The current regulations at §§ 570.30 and 570.35 (21 CFR 570.30 and 570.35) describe the information necessary to determine a substance as GRAS or to affirm GRAS status. The comment did not include or cite any information that would provide a basis for the agency to determine that the other feed uses of protein derived from certain tissues is GRAS or to affirm it as GRAS. FDA notes, however, that the act does not preclude manufacturers from making their own decisions on the GRAS status of uses not covered by this final rule. If FDA disagrees with this self-determination, FDA may take action, as it has done in this final rule or by enforcement action, to end that self-determined GRAS status (see FDA's proposed rule, Substances Generally Recognized as Safe, published on April 17, 1997 (62 FR 18938), for proposed revisions to the GRAS affirmation process.

(Comment 59). Several comments suggested that FDA adopt a ''temporary ban'' or a ''temporary moratorium'' to suspend the use of the ruminant protein in ruminant feed. The comments claimed that such temporary measures, unlike a formal rule, would be quickly modified or rescinded based on new information. The comments also stated that FDA should consider other alternative, yet effective, approaches and that FDA has the ability to use other available regulatory options.

The agency declines to adopt the comments' suggestions. The comments did not indicate what legal authority FDA should use or how ''temporary'' a ban or moratorium should be. While the agency has several authorities related to the regulation of animal feed, they are not applicable or would not be the most effective means of accomplishing the rule's goals. The agency believes that the approach used in this final rule is the most effective approach to accomplish the agency's objective of preventing the establishment and amplification of BSE in the United States through feed.

As stated in a response to an earlier comment, the agency could bring adulteration charges under section 402(a)(1) of the act (21 U.S.C. 342(a)(1)) or section 402(a)(2)(C) on a case-by-case basis. The agency does not believe this is a viable, efficient solution to preventing BSE because it would require FDA to prove, on a case-by-case basis, that mammalian protein is not GRAS when intended for use in ruminant feed. In addition, the burden of proof would be on the agency in such enforcement actions.

Under section 404 of the act (21 U.S.C. 344), the agency may issue regulations providing for the issuance of permits governing the manufacture, processing, or packaging of any class of food which the agency has found may be injurious to health due to contamination with micro-organism during such manufacture, processing, or packing. However, in this case, the agency may be unable to determine adequately whether a food may be injurious after the food has entered interstate commerce. The lack of information required to establish necessary conditions, coupled with the fact that the incubation period for BSE may range from 2 to 8 years, effectively precludes use of section 404 of the act.

Section 406 of the act (21 U.S.C. 346) authorizes the agency to set tolerances for food additives that are required for the production of a food or cannot be avoided by good manufacturing practice. However, in this case, section 406 of the act is inapplicable because protein derived from certain tissues is not required to produce ruminant feed nor is the protein an unavoidable contaminant. Even if section 406 of the act were applicable, FDA does not have sufficient information to set a tolerance because the quantity of the BSE agent necessary to product infection is currently unknown.

Finally, the agency has the authority to make and enforce regulations to prevent the spread of communicable diseases under section 361 of the Public Health Service Act (42 U.S.C. 264). This authority is available to the agency to address issues related to TSE's. FDA, however, has determined that, at this time, use of its authority under the food additive provisions of the act is appropriate.

(Comment 60). Comments from several individuals and organizations strongly opposed the agency's proposal to declare certain animal-derived feedstuffs as nonGRAS. As an alternative, the comments suggested that adequate methods could be instituted which would reduce to an acceptable level the risk that these feeds could transmit TSE's to ruminants. Such methods included, *inter alia,* eliminating high risk sources of raw materials (e.g., downer animals, specified ovine tissues) from processing into feedstuffs intended for ruminant rations, processing (rendering) conditions specifically designed to reduce the infectivity of the raw materials if TSE agents were present in such materials, and adequate clean-out, transport, and storage practices which would minimize the risk from carryover or contamination of feeds or feedstuffs with potentially infective materials.

Many comments, including some from the industries directly affected by this rule, suggested that the agency issue regulations to require risk reduction processes. These comments suggested that regulatory oversight would be facilitated through GMP's, HACCP programs, or similar instruments, and commercial firms determined by the agency to be in compliance with such regulations would be permitted to label feedstuffs produced under those conditions as ''Certified Ruminant Derived Protein.'' Feed bearing such labeling would be permitted for use in

all animal feed, including ruminant feed. One comment even provided a detailed example of an HACCP program applicable to rendering facilities, including a quantitative risk analysis specifying the reduction in BSE infectivity at each critical control point. A comment from the rendering trade association provided a detailed generic HACCP plan which could be adapted by individual rendering establishments to their specific operation. This comment also contained proposed codified language for implementing HACCP. Several other comments provided examples of practices intended to prevent high risk animals from entering rendering channels.

In the preamble to the proposed rule, the agency agreed that the need for mandatory HACCP, supported by GMP's for animal-derived proteins, could be considered in future rulemaking (62 FR 552 at 567). The agency continues to encourage the voluntary adoption of HACCP on a plant-by-plant basis in both the rendering and feed industries. To the extent that HACCP is adopted, FDA will be able to examine whether safe conditions of use for some or all of the prohibited protein in ruminant feed, using an HACCP plan, can be established under a food additive regulation or whether such uses using an HACCP plan are GRAS. However, a regulatory action to make HACCP mandatory for all manufacturers in these industries is outside the scope of this final rule.

The agency agrees, in concept, that procedures which inactivate TSE agents in feedstuffs or methods that detect the presence of TSE agents in feedstuffs could form the basis for determining whether HACCP, GMP, or similar process validation programs were sufficient to ensure that TSE's could not be transmitted to ruminants through consumption of feedstuffs produced under those programs. Additionally, under the final rule, renderers are exempt from labeling and certain recordkeeping requirements under this rule if they use routinely a test method that FDA has validated to detect the presence of the agent that causes TSE's and whose design has been made available to the public; or use exclusively a method for controlling the manufacturing process that minimizes the risk of the TSE entering the product and whose design has been made available to the public and validated by FDA.

Presently, the agency has not validated any methods to detect the TSE agent or any methods for controlling the manufacturing process that would minimize the risk of the TSE agent entering the product. Although some comments argued that rendering systems used widely in the United States have been shown by European researchers to inactivate BSE under specific parameters, such that products produced using these rendering systems should be exempted from the rule, it should be noted that mammalian meat and bone meal produced under the European system is not permitted to be fed to ruminants in the European Union (Ref. 11).

The agency believes that the information provided is insufficient to validate specific rendering processes. Although these rendering processes appear to reduce the infectivity of materials in the mouse model, the infective dose of a TSE agent remains unknown. The assay method used to measure reduction of infectivity has been questioned as to whether it is the appropriate assay for determining the infectivity of tissues under natural conditions. When the mouse bioassay has been used, there remain questions whether the test materials (tissues from BSE-infected cattle) contained sufficient titres of the TSE agent to ensure that materials produced under these rendering systems will not transmit TSE's to ruminants (see comment 41 of this document and the agency response). When sufficient data are available for the agency to validate a process for inactivating TSE agents in processed feedstuffs, a method for controlling the manufacturing process, or a test for detecting the TSE agent in feed, FDA will be able to examine whether safe conditions of use for mammalian protein in ruminant feed, using such validated processes or tests, can be established under a food additive regulation or whether such uses using the validated process or test are GRAS.

3. Section 589.2000(c)—Requirements for Renderers That Are Not Included in Paragraph (e) of This Section

Proposed § 589.2000(c) would set forth the requirements for most renderers. Proposed § 589.2000(c)(1)(i) would require renderers whose products contain or may contain protein derived from ruminant and mink tissues and intended for use in animal feed to label the materials as follows: Contains (or may contain) protein derived from ruminant and mink tissues. Do not feed to ruminant animals, and do not use to manufacture feed intended for ruminant animals. Proposed § 589.2000(c)(1)(ii) would require renderers to maintain copies of sales invoices and to make them available to FDA for inspection and copying. Proposed § 589.2000(c)(2) would exempt renderers from the labeling and recordkeeping requirements if they use exclusively a manufacturing method that FDA has validated to deactivate the TSE agent and make that method available to the public or routinely use a test method, also validated by FDA, for detecting the TSE agent, under proposed § 589.2000(c)(2)(ii), would be labeled ''Not for Use in Animal Feed,'' and records of test results would be made available for FDA inspection. Proposed § 589.2000(c)(3) would exempt renderers from recordkeeping requirements if they use a permanent method, approved by FDA, to mark the presence of protein derived from ruminant and mink tissues. If the marking method could not be seen on visual inspection, the proposed rule would require the method to be validated by FDA and made available to the public.

a. *Cautionary statement.*

Several comments addressed the statement in proposed § 589.2000(c)(1)(i).

(Comment 61). Several comments requested that FDA revise the rule to make the labeling statement simpler and more concise. Many suggested that the statement simply say, ''Do Not Feed to Ruminants.''

FDA agrees and has revised the cautionary statement in § 589.2000(c)(1)(i) to read, ''Do not feed to cattle or other ruminants.'' This statement has the advantages of being simple and concise, and it refers to cattle as an example of a ruminant animal.

(Comment 62). In contrast, some comments asked FDA to revise § 589.2000(c)(1)(i) by placing the word ''warning'' or ''caution'' in the heading; requiring the use of bold type; referring to FDA regulations or some other statement to indicate a legal prohibition; and specifying the type, size, color or location of the label to ensure it is noticeable.

The agency agrees in part and disagrees in part with the comments. Section 403(f) of the act (21 U.S.C. 343(f)) requires that any word, statement, or other information required to appear on food labels or labeling to be ''prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.'' Here, the essential point of the cautionary statement is that the product should not be fed to cattle and other ruminants; thus, citing FDA regulations to indicate

a legal prohibition would provide little useful information to the vast majority of consumers and would be contrary to keeping the statement simple and concise.

The agency does agree that the cautionary statement should be noticeable. The statement should appear on product labels (such as those attached to or are part of a bag or other container) and other labeling for the product. For bulk products, the statement should appear on the placard and invoice that accompany the shipment and on any other labeling for the product. The agency does not have a regulation that provides additional direction, beyond the statutory language quoted above, regarding the prominence of the cautionary statement and does not believe it is necessary to do so in this final rule. However, the agency suggests that the statement be distinguished by different type size or color or other means of highlighting the statement so that it is easily noticed by a purchaser. Additional information on animal food labeling may be found at part 501 (21 CFR part 501).

(Comment 63). One comment indicated a need for clear end user labeling of any and all human foods containing the specified offal (eye, spinal column, tonsil, thymus, spleen, and intestine) and/or mechanically recovered meat.

The USDA is responsible for labeling most meat products destined for human consumption as food. Thus, the comment's suggestion is outside the scope of this rule.

b. *Records.*

Proposed § 589.2000(c)(1)(ii) would require renderers to maintain copies of sales invoices and to make copies available for inspection and copying by FDA. The preamble to the proposed rule indicated that such records are a usual and customary part of normal business activities (see 62 FR 552 at 570 and 579) and that FDA would use such records to verify compliance with the rule.

(Comment 64). FDA received several comments concerning records. Several comments supported the use of such records for compliance purposes. However, a few comments suggested that sales invoices may not always accompany products, that persons may not retain sales invoices or records, or that sales invoices may not contain sufficient information for enforcing the regulation.

In considering these comments, the agency reviewed several Establishment Inspection Reports (EIR's) and supporting material that had been collected as part of routine inspections or surveys of feed ingredient manufacturers and feedmills. The supporting material for the EIR's confirmed that some invoices contained detailed information (regarding the items being sold and the identities of the seller and purchaser) while others contained only a vague description of the product and the name (without any address) of the company or person receiving the product. Given the diversity in the sales invoices, and the concerns expressed in some comments, FDA revised § 589.2000(c)(1)(ii) to require renderers to maintain records sufficient to track the materials throughout their receipt, processing, and distribution (rather than refer to sales invoices only), and to make the copies available for inspection and copying by FDA. The final rule enables renderers (and other parties that must comply with the record requirement in § 589.2000(c)(1)(ii)) to use sales invoices or other records or a combination of such information so long as they provide sufficient information to enable FDA to determine the receipt, processing, and distribution of materials.

The recordkeeping requirement can be satisfied by an invoice or other similar document reflecting receipt or purchase, and sale or delivery of the product by the renderer. The information normally expected to be included in these documents includes: (1) Date of the receipt or purchase, or sale or delivery; (2) seller's name and address; (3) consignee's name and address; (4) identification of the product; and (5) quantity. Regarding an identification of the product, FDA notes that invoices or similar sales documents may serve as labels for bulk rendered products.

The act generally requires that the label of a regulated product contain the product's customary or usual name. The common or usual names of rendered products typically are those included in the definitions published by AAFCO, such as ''meat and bone meal.'' Thus, the use of the common or usual name on the invoice or similar sales document will satisfy, in part, the ''records'' requirement in § 589.2000(c)(1)(ii) as well as the ''common or usual name'' requirement in the act. As discussed later in this document, the records must be made available for FDA inspection and copying. They should be kept so they are legible and readily retrievable.

c. *Exemptions for manufacturing and test methods.*

As stated earlier, proposed § 589.2000(c)(2)(i) would exempt renderers from the labeling and recordkeeping requirements if they use exclusively a manufacturing method for deactivating the TSE agent that has been validated by FDA and made available to the public. Proposed § 589.2000(c)(1)(ii) would exempt renderers from the label and recordkeeping requirements if they routinely use a test method, validated by FDA, for detecting the TSE agent and make that method available to the public. Products found to contain a TSE agent would be labeled ''Not for Use in Animal Feed,'' and records of test results would be made available for FDA inspection.

Several comments strongly supported this provision because it would provide flexibility to the industry or would make methods available to the public where they could be discussed and analyzed. Other comments suggested amendments or clarification.

(Comment 65). One comment concerning proposed § 589.2000(c)(2)(i) suggested that ruminant protein rendered by an FDA-validated procedure should be labeled as ''Contains inactivated bovine protein.''

FDA declines to revise the rule as suggested by the comment. The agency will make any necessary changes to the labeling requirements by rulemaking when it validates the first rendering process.

(Comment 66). One comment claimed that, in proposed § 589.2000(c)(2)(ii), the label statement for products found to contain the TSE agent did not go far enough. The comment stated that such products should be destroyed and positive tests reported to FDA.

FDA declines to revise the rule as suggested by the comment at this time. However, as explained below, FDA has revised the labeling requirement so that products that are found to have a TSE agent must be labeled ''Do not feed to cattle or other ruminants.'' Products intended for use in ruminant feed that are found to contain a TSE agent are violative under the act, and the agency has guidance documents pertaining to the disposition of violative products.

(Comment 67). Several comments raised issues related to the concept of acceptable risk. One comment stressed that a definition of ''acceptable risk'' was necessary in order to develop a regulatory program with a targeted end point. Other comments indicated that regulatory programs should be based on some acceptable level of risk reduction rather than defining a finite level of acceptable risk. One comment suggested that FDA establish working groups comprised of members from industry and consumer organizations to establish the necessary level of risk reduction. Several comments cautioned that establishing a zero level of risk could unnecessarily destroy certain industries

and adversely impact the environment through the disposal of dead animals and animal tissues by means other than rendering.

The agency determines the safety of substances intended to become a part of food by approval of a food additive petition or by general recognition of safety. In either case, it must be established that there is a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use. Reasonable certainty of no harm does not imply a zero level of risk (see 21 CFR 570.3(i)). Congress, when enacting the Food Additive Amendments of 1958, recognized that it is impossible to establish with complete certainty that any substance is absolutely safe for use.

For the agency to determine that protein derived from mammalian tissue would be safe for use in ruminant rations, it must be demonstrated by scientific procedures that there is a reasonable certainty that such feedstuffs could not transmit TSE's to ruminants. The agency has determined that there is insufficient research on TSE diseases to determine a minimum infective dose of the TSE agents in ruminant rations, dose and age-related susceptibility factors, methods for inactivation of the TSE agents, or methods for reliably detecting the TSE agent in animal feeds. Such information is fundamental to the establishment of any safe use of protein derived from mammalian tissue in ruminant feed, and, under FDA's current statutory and regulatory requirements, questions regarding the safe use of the tissues are to be answered and presented to the agency in a food additive petition submitted under section 409 of the act. Alternatively, consistent with section 201(s) of the act (21 U.S.C. 321(s)) and § 570.30, the agency may be able to determine that the tissues are generally recognized as safe based on scientific procedure. The provisions of § 589.2000(c)(2)(i), (c)(2)(ii), and (c)(2)(iii) of this final rule provide that products containing protein derived from mammalian tissues are exempt from the labeling and recordkeeping requirements if a method for inactivation of the TSE agents is presented to and validated by the agency, a test method to detect the presence of the agent that causes TSE's is presented to and validated by the agency, or if validated methods for controlling the manufacturing process that minimizes the risk of the TSE entering the product are presented to and validated by the agency. These developments and their validation by FDA should provide relevant information on the establishment of safe conditions of use for protein derived from mammalian tissues.

(Comment 68). Proposed § 589.2000(c)(2)(ii) would require, in part, products that are found, through the use of validated test method to detect the presence of a TSE agent, to be labeled, ''Not for Use in Animal Feed.''

Upon further reflection, FDA realized that the proposed labeling in § 589.2000(c)(2)(ii) was not consistent with the agency's objective to prevent the establishment and amplification of BSE in the United States through ruminant feed. Because products found to contain the TSE agent are high risk FDA has revised the regulation to provide that for renders using validated test methods, such renders must continue to comply with the labeling and recordkeeping requirements in § 589.2000(c)(1) for products that test positive for the TSE agents.

(Comment 69). FDA, on its own initiative, has created a new § 589.2000(c)(2)(iii) to provide an exemption from the rule's labeling and recordkeeping requirements if a renderer uses exclusively a validated method for controlling the manufacturing process that minimizes the risk of the TSE entering the product. Under § 589.2000(c)(2)(iii), the method must be made available to the public and validated by the agency. The agency added this provision to complement § 589.2000 (c)(2)(i) and (c)(2)(ii) and because an exemption from the labeling and recordkeeping requirements would be appropriate if such a method were developed, validated, and used.

d. *Exemptions for marking methods.*

Proposed § 589.2000(c)(3) would exempt renderers from the recordkeeping requirement if they use a permanent method, approved by FDA, to mark the presence of protein derived from ruminant and mink tissues.

(Comment 70). FDA received very few comments on this provision. Two comments supported the provision, although one comment conceded that it was unaware of any permanent marking methods. Another comment suggested that, for used cellulosic food casings, the casings themselves act as a marker for ruminant proteins inside the casing.

As stated elsewhere in this document, FDA has revised the definition of ''protein derived from mammalian tissues'' to exclude used cellulosic food casings. As a result, it is unnecessary to consider whether used cellulosic food casings are a permanent method of marking.

FDA has made minor changes to this provision. The final rule omits the reference to renderers ''who are not exempted under paragraph (c)(2)(i) or paragraph (c)(2)(ii) of this section.'' FDA deleted this language because it is unnecessary. A second minor change consists of revising the phrase ''to mark the presence of the materials'' to ''to make a mark indicating the presence of the materials.'' This change reflects the fact that the presence of a material cannot be marked, but that the product can be marked to show that it contains or may contain protein derived from mammalian tissues.

4. Section 589.2000(d)—Requirements for Protein Blenders, Feed Manufacturers, and Distributors That Are Not Included in Paragraph (e) of This Section

Proposed § 589.2000(d)(1) would require protein blenders and feed manufacturers and distributors to comply with labeling and recordkeeping requirements. Proposed § 589.2000(d)(2) would provide exemptions if a protein blender or feed manufacturer and distributor purchased animal protein products from renderers that certified compliance with the requirements for deactivating or detecting the TSE agent or complied with such requirements itself. Proposed § 589.2000(d)(3) would exempt a protein blender or feed manufacturer and distributor from the recordkeeping requirement if it purchased animal protein products that had been marked or complied with the marking requirement itself. Proposed § 589.2000(d)(4) would require copies of the certified compliance statements to be made available to FDA for inspection and copying.

a. *Cautionary statement.*

Under proposed § 589.2000(d)(1)(i), protein blenders and feed manufacturers and distributors that manufacture, blend, process, and distribute products containing protein derived from ruminant and mink tissue would have to label the product to state, ''Contains (or may contain) protein derived from ruminant and mink tissues. Do not feed to ruminant animals, and do not use to manufacture feed intended for ruminant animals.''

(Comment 71). Several comments would exempt pet food from the rule's labeling requirement. One comment provided results from interviews of 350 pet owners in 5 cities. These interviews examined consumer reaction to the proposed rule's statement ''Contains (or may contain) protein derived from ruminant and mink tissues. Do not feed to ruminant animals, and do not use to manufacture feed intended for ruminant animals.'' Sixty-eight percent of pet owners said they would be concerned

about the safety of feeding any food to their pets with the proposed statement, and more than 71 percent said that they would buy some other pet food the first time they encountered the proposed statement on the label of the pet food they generally buy. Other comments argued that the statement was unnecessary on pet food because pet food is not used for ruminant feed (due to its smaller quantity and higher price when compared to ruminant feed). These comments did, however, suggest that the cautionary statement would be appropriate for pet food products that are salvaged or distressed and sold for possible use in animal feed.

Another comment, submitted in response to the draft codified provisions that appeared in the **Federal Register** of April 17, 1997, suggested that FDA also exempt feeds for nonruminant laboratory animals from the labeling requirement.

FDA agrees that the cautionary statement serves no useful purpose on pet food and feed for nonruminant laboratory animals and has amended the rule by creating a new § 589.2000(d)(4) to exclude pet food products that are sold or intended for sale at retail to non-food-producing animals and feeds for nonruminant laboratory animals. These products typically cost substantially more per ton than most complete feeds intended for food-producing animals. Therefore, there is little, if any, risk that pet foods or feeds for nonruminant laboratory animals will be purchased at full price for use in ruminant rations. However, if the pet food products are sold or are intended for sale as distressed or salvage items, then, under § 589.2000(d)(4), such products must state, ''Do not feed to cattle or other ruminants.''

In addressing the labeling requirement for salvaged or distressed pet food, the draft codified provisions that were published in the **Federal Register** of April 17, 1997, initially included the phrase ''for possible use'' in ruminant feed. FDA has deleted the phrase ''for possible use'' because it is unnecessary.

(Comment 72). One comment, responding to the draft rule that appeared in the **Federal Register** of April 17, 1997, sought clarification as to what ''pet food'' meant.

FDA interprets pet food as the food product fed to pet animals. A pet animal is any domesticated animal normally maintained in or near the household(s) of the owner(s) thereof. Examples include dogs, cats, rats, mice, hamsters, gerbils, rabbits, ferrets, nonhuman primates, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes, and turtles. FDA does not consider horses or other equids to be pets because they are routinely slaughtered for human food. Furthermore, FDA believes that, since feed for horses can be readily utilized in ruminant rations and is often priced comparably to ruminant feed, horse feed must be labeled ''Do not feed to cattle or other ruminants.''

(Comment 73). Some comments suggested revising the rule to require feeds destined for use in nonruminant livestock to carry the cautionary statement. In contrast, other comments argued that the cautionary statement was unnecessary for nonruminant livestock feed.

FDA acknowledges the possibility that very little feed labeled for use in nonruminant livestock is diverted to ruminant rations and that which is diverted would likely have to be markedly diluted to be nutritionally balanced for maximum benefit by the ruminant. Nevertheless, FDA agrees that a cautionary statement should be required. Complete feeds for nonruminant livestock typically cost only slightly more per ton and often contain more protein than complete ruminant feeds. Therefore, because nonruminant livestock feed may be diverted to ruminant feed, the final rule requires the cautionary statement on all animal feed, including nonruminant livestock feeds (with the exception for pet food products).

(Comment 74). Other comments suggested that the agency revise the collective terms in § 501.110 (21 CFR 501.110) because, as a result of the final rule, some feed ingredients would be prohibited in ruminant rations.

The agency disagrees with the comments. At this time, no revision to § 501.110 is necessary because there will still be a collective name/term known as animal protein products and this collective name/term will include animal products, marine products, and milk products. The final rule merely prohibits animal protein products containing protein derived from mammalian tissues from being used in ruminant feeds. Because of the final rule, however, AAFCO may need to amend its definition of the collective term ''animal protein products'' to identify those feed ingredients that are prohibited from use in ruminant rations. FDA intends to work with AAFCO to accomplish this change. Although manufacturers of ruminant feeds that use this collective term may need to reformulate their rations to exclude the protein derived from mammalian tissue, the ingredients list on the label for any ruminant feed can continue to use the ''animal protein products'' collective term.

(Comment 75). Several comments suggested that a mammalian to ruminant ban would eliminate the need to change the AAFCO definitions.

Except for some current AAFCO ingredients listed under animal protein products in the collective terms section, FDA agrees with the comments. AAFCO definitions currently allow the species of origin to be listed in the name of the product (e.g., swine meat and bone meal). These AAFCO definitions are flexible enough to allow positive certification on invoices and convey adequate information to consumers who are concerned about the presence of mammalian proteins in their feeds.

b. *Records.*

Proposed § 589.2000(d)(1)(ii) would require protein blenders and feed manufacturers and distributors to maintain copies of invoices for purchases of animal protein products or feeds containing such products and to make those records available for inspection and copying by FDA.

(Comment 76). One comment stated that this proposal was redundant to the GMP recordkeeping requirements although, under the proposal, the retention period would be 1 year longer than those required under the GMP regulations.

FDA disagrees, in part, with the comment. The GMP recordkeeping requirement at § 225.202 (21 CFR 225.202) requires records to be maintained that identify ''the formulation, date of mixing, and if not for own use, date of shipment'' and that the records be ''adequate to facilitate the recall of specific batches of medicated feed that have been distributed. Yet § 225.202, and the regulations in part 225, (21 CFR part 225) generally, only apply to persons manufacturing, processing, packing, or holding medicated feed, and it is unlikely that all protein blenders, feed manufacturers and distributors subject to § 589.2000 will be manufacturing, processing, packing, or holding medicated feed. However, because most persons subject to § 589.2000(d)(1)(ii) may be subject to the GMP recordkeeping requirement for medicated feed and because § 225.202 only requires records to be kept for 1-year after the date of last distribution, the agency has evaluated the relative benefit of a 2-year recordkeeping requirement and concluded that a 1-year recordkeeping requirement is adequate. Thus, FDA has revised § 589.2000(h) to adopt a 1-year record retention period.

FDA advises protein blenders, feed manufacturers, and distributors that the recordkeeping requirement can be

satisfied by an invoice or other similar document reflecting receipt or purchase, and sale or delivery of the product. The information normally expected to be included in these documents includes: (1) Date of the receipt or purchase, or sale or delivery; (2) seller's name and address; (3) consignee's name and address; (4) identification of the product; and (5) quantity. Regarding an identification of the product, FDA notes that invoices or similar sales documents may serve as labels for bulk rendered products, including blended protein products and feeds. The act generally requires that the label of a regulated product contain the product's customary or usual name. The common or usual names of blended protein products and feed ingredients typically are those included in the AAFCO definitions, such as ''meat and bone meal.'' Thus, the use of the common or usual name on the invoice or similar sales document will satisfy, in part, the ''records'' requirement in § 589.2000(d)(1)(ii) as well as the ''common or usual name'' requirement in the act. As discussed later in this document, the records must be made available for FDA inspection and copying. They should be kept so they are legible and readily retrievable.

(Comment 77). One comment stated that the recordkeeping requirement, as applied to feed containing ruminant tissue, places an unnecessary burden on all manufacturers of nonruminant feeds and pet foods.

Because the final rule now prohibits the use of protein derived from mammalian tissues in ruminant feed, FDA has revised § 589.2000(d)(1) to state that protein blenders, feed manufacturers, and distributors that manufacture, blend, process, and distribute products that contain or may contain protein derived from mammalian tissues shall comply with the requirements in § 589.2000(c)(1). This means that the provision does not apply to protein blenders, feed manufacturers, and distributors who do not manufacture, blend, process or distribute products that contain or may contain proteins derived from mammalian tissues.

(Comment 78). A small number of comments would revise this provision of the proposed rule so that commercial contract guarantees could be used as evidence of compliance by feed manufacturers. These comments explained that feed manufacturers should be able to rely on a guarantee because FDA, itself, would rely on commercial records for enforcement purposes.

The agency declines to revise the rule as suggested by the comments. Section 303 (c)(2) and (c)(3) of the act (21 U.S.C. 333 (c)(2) and (c)(3)) and FDA regulations at 21 CFR 7.12 and 7.13 already establish the statutory and regulatory requirements for a guaranty. Thus, the change suggested by the comments is unnecessary (see response to comment 21).

c. *Exemptions for purchases from renderers certifying compliance.*

Proposed § 589.2000(d)(2)(i) would exempt protein blenders, feed manufacturers, and distributors from the requirements in § 589.2000 (d)(1)(i) and (d)(1)(ii) if they purchased animal protein products from renderers certifying that they used methods to deactivate or detect the presence of the TSE agent. Alternatively, under proposed § 589.2000(d)(2)(ii), a protein blender, feed manufacturer, or distributor could obtain the exemption if it complied with the requirements regarding methods to deactivate or detect the presence of the TSE agent.

(Comment 79). One comment stated that, insofar as methods for deactivating the BSE agent are concerned, FDA must examine the accuracy of the infectivity assessment and the sensitivity and reliability of the methods used and consider the relationship between the quantity of material tested and the total quantity in a particular batch. The comment stated that FDA must use or develop this expertise.

The agency agrees with the comment and intends to carefully examine, when a claimed method for inactivating a TSE agent is presented to FDA for validation, whether the method is effective. At this time, the agency is unaware of any such methods.

(Comment 80). One comment, submitted in response to the draft provision that appeared in the **Federal Register** of April 17, 1997, requested clarification of the type of certification required under § 589.2000 (d)(2) and (d)(3) if the qualifications for exemption identified in § 589.2000(c)(2) were met.

FDA has not validated any methods that would meet the requirements for any of the exemptions in this rule. If and when the agency does so, it will provide guidance as needed for the implementation of such exemptions, including certification under § 589.2000 (d)(2) and (d)(3).

d. *Exemptions for purchases of marked protein products.*

Proposed § 589.2000(d)(3) would exempt protein blenders, and feed manufacturers and distributors from recordkeeping requirements if they purchased animal protein products that had been marked to indicate the presence of animal protein derived from ruminant or mink tissues complied with the marking requirement itself.

(Comment 81). One comment would revise this provision to include products that are ''labeled'' as being in compliance. The comment contemplated a system whereby persons could certify that their products did not contain ruminant protein and complied with the rule.

The agency declines to revise the rule as suggested by the comment. The permanent mark described in § 589.2000(c)(3) serves as a visual cue or other detectable signal that protein derived from mammalian tissue may be present. Labeling is not equivalent to a permanent mark because it may be separated from the product.

e. *Copies of certifications.*

Proposed § 589.2000(d)(4) would require copies of the certifications described in § 589.2000 (d)(2) and (d)(3) to be made available for inspection and copying by FDA.

(Comment 82). FDA received no comments on this provision. However, because the agency has added a new paragraph (d)(4) to exempt pet food products and feeds for nonruminant laboratory animals from the labeling requirement, FDA has renumbered proposed paragraph (d)(4) as paragraph (d)(5).

5. Section 589.2000(e)—Requirements for Persons That Intend To Separate Mammalian From Nonmammalian Materials

Proposed § 589.2000(e) would require persons that intend to separate ruminant and mink materials from nonruminant material to comply with the labeling requirement for products derived from ruminant and mink tissues or feeds containing such products, would require renderers to obtain nonruminant (excluding mink) materials only from single-species facilities, and would require these persons to provide for measures to avoid commingling and cross-contamination. Additionally, the proposal would exempt renderers, blenders, and feed manufacturers and distributors from these requirements if they met certain exemption criteria.

a. *Cautionary statement.*

Proposed § 589.2000(e)(1)(i) would require persons who intend to separate ruminant/mink and nonruminant/mink materials to comply with the labeling requirement in § 589.2000 (c)(1) or (d)(1) for products derived from ruminant and mink tissues or feeds containing such products.

(Comment 83). One comment would revise this provision to add equine materials.

Because the final rule now pertains to protein derived from mammalian tissues, the agency has revised § 589.2000(e)(1)(i) so that the labeling requirement only applies to products containing protein derived from mammalian tissues or feeds containing such products. Additionally, FDA, on its own initiative, has made two revisions to this provision. The agency has deleted ''haulers'' from the § 589.2000(e)(1) because such persons are considered to be ''distributors'' as defined in § 589.2000(a)(6). The final rule also refers to ''products containing protein derived from mammalian tissues'' rather than ''products derived from mammalian (other than pure porcine)'' tissues as used in the codified (62 FR 18728), to be consistent with the definition of ''protein derived from mammalian tissues'' in § 589.2000(a)(1).

b. *Nonmammalian or pure porcine or equine materials only from single-species facilities.*

Proposed § 589.2000(e)(1)(ii) would require renderers who intend to separate ruminant/mink and nonruminant/mink materials to obtain nonruminant (excluding mink) materials only from single-species facilities.

(Comment 84). FDA received no comments on this provision. However, because the final rule now pertains to protein derived from mammalian tissues, the agency has revised § 589.2000(e)(1)(ii) so that the renderer must obtain nonmammalian or pure porcine or equine materials only from single-species slaughter facilities. The insertion of the word ''slaughter'' is intended to clarify the type of facility involved in this provision. Additionally, FDA interprets the term ''single-species slaughter facilities'' to mean dedicated slaughter facilities that only slaughter one type of animal; the term does not include facilities that slaughter different types of animals on different days or work shifts.

c. *Measures to avoid commingling and cross-contamination.*

Proposed § 589.2000(e)(1)(iii) would require persons that intend to separate ruminant/mink from nonruminant (excluding mink) materials to provide for measures to avoid commingling or cross-contamination. This could be achieved through separate equipment or facilities for the manufacture, processing, or blending of such materials or through ''clean-out procedures or other means adequate to prevent carry-over'' of ruminant and mink derived protein into animal protein products or feeds intended for use in ruminants.

(Comment 85). No comments focused on the concept of maintaining separate equipment or facilities for the manufacture, processing, or blending of materials (although one comment presumed that separate facilities and equipment could be costly). Nevertheless, FDA advises interested persons that it interprets this provision as extending to separate storage of such materials.

(Comment 86). Most comments on proposed § 589.2000(e)(1)(iii) addressed issues concerning ''adequate'' clean-out and carry-over. Oral comments from the public meetings and written comments to the proposed rule requested that FDA define what constitutes ''adequate'' clean-out. Comments from industry and consumer groups expressed concern that it would be difficult to verify if adequate clean-out procedures were used because there is no test that readily differentiates between ruminant and nonruminant protein. Other comments suggested that firms handling prohibited and nonprohibited products obtain prior approval from FDA, that FDA consider the clean-out provisions of GMP's currently used by the feed industry for medicated feeds to be ''adequate,'' that FDA require clean-out procedures only where raw-product is co-mingled (i.e., equipment is shared), and that the agency publish procedures for ''adequate'' clean-out and solicit public comment. Additionally, one comment noted that much rendering equipment is not designed to be readily opened, so washing the equipment is not a viable option, while a comment from the rendering industry detailed clean-out procedures for the various rendering systems. The procedures varied depending on the system used and the point at which materials shared the same processing steps or equipment.

FDA agrees that only equipment and storage facilities that are shared by proteins derived from mammalian and nonmammalian tissues are subject to the clean-out requirement.

With regard to the word ''adequate,'' the agency realizes that equipment utilized by the feed and rendering industries has certain limitations relating to cleanout. In the feed industry, the medicated feed GMP's for sequencing and cleanout have proved to be effective in preventing unsafe drug carry over into feed and thereby preventing unsafe tissue residues in foods of animal origin intended for human consumption. For renderers, blenders, feed manufacturers, and distributors (including haulers), FDA will consider the use of clean-out procedures described immediately below to be ''adequate'' for purposes of § 589.2000(e)(1)(iii)(B). The procedures for blenders, feed manufacturers, and distributors are based on the equipment clean-out procedures in § 225.65 (21 CFR 225.65). The procedures for renderers are based on comments from the rendering industry on the proposed rule, suggesting clean-out procedures for the four types of rendering systems currently used in the United States. FDA will consider renderers who can document that they are using the clean-out protocol applicable to their system to be using ''adequate'' clean-out procedures under § 589.2000(e)(1)(iii)(B). The clean-out procedures for renderers appear in section II.B.5.c.i of this document.

i. *Separating and processing options for renderers.*

These options are based on what should work in most actual operational conditions that renderers face day-to-day in their plants.

(1). *A single plant with two or more totally segregated processing lines. This includes all process functions from raw material receiving through and including finished product load-out*

BILLING CODE 4160–01–P

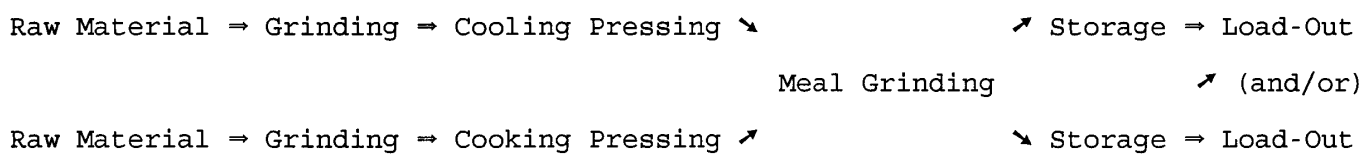
Raw Material ⇒ Grinding ⇒ Cooking ⇒ Pressing ⇒ Meal Grinding ⇒ Storage Load-Out

BILLING CODE 4160–01–C

Suggested Clean-out Procedures for Processing Option 1—No clean-out procedures are necessary for this processing situation, as the lines are completely separate. This type of plant should have the ability to process prohibited and nonprohibited products from the same plant so long as procedures are in place to assure total segregation. These procedures may be part of the plant's written procedures specifying the clean-out procedures utilized and would be available for inspection and subject to FDA review for compliance purposes.

(2). *Single plant with two or more segregated raw material receiving, grinding, cooking, and pressing lines but sharing finished product conveying, grinding, and load-out systems*

BILLING CODE 4160–01–P



BILLING CODE 4160–01–C

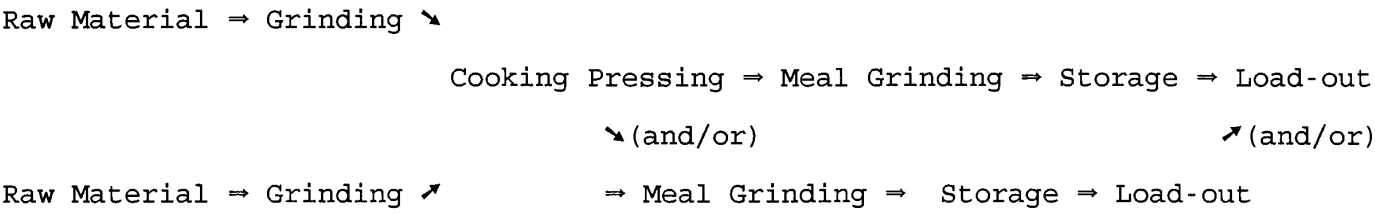
Suggested Clean-out Procedures for Processing Line Option 2—The clean-out and flushing guidelines for this type of plant deal specifically with the meal grinding (and screening), storage, and load-out systems. It is assumed that this type of plant would have separate storage facilities for prohibited versus nonprohibited product. It may have separate or common load-out facilities.

The first step in the clean-out and flushing procedure should be to empty all transport and process equipment from the first point of commonality of products to the final load-out device. The system should then be flushed with a sufficient volume of nonprohibited product to accomplish one complete change of operating volume of the entire system (exclusive of separate meal storage facilities). The flush material would be considered as prohibited meal and treated as such.

Once the system has been flushed, all subsequent material processed would be nonprohibited meal. Specific operating procedures would be documented and verified and would be part of the plant's written procedures specifying the clean-out procedures utilized and would be available for inspection and subject to FDA review for compliance purposes.

(3). *Single plant with separate raw material receiving and grinding, common cooking and pressing, common or separate finished product handling.*

BILLING CODE 4160–01–P



BILLING CODE 4160–01–C

Suggested Clean-out Procedures for Processing Option 3—The clean-out and flushing guidance for this type of plant deal specifically with the cooking and pressing systems. The meal grinding, storage, and load-out systems should be cleaned and flushed according to the guidance in processing option 2 above. It is also assumed that this type of plant would have separate storage facilities for prohibited versus nonprohibited finished meal. It may have separate or common load-out facilities.

The first step in the clean-out and flushing procedure should be to empty all transport and process equipment (including the cooker) from the first point of commonality of raw material to the meal grinding system. The system should then be flushed with sufficient prohibited raw material to accomplish the following changes of the operating volume of the cooker:

In the case of a continuous cooker with a bottom discharge (to provide positive cooker clean-out), raw material equal to at least one-half the operating volume of the cooker;

In the case of a continuous cooker without a bottom discharge, raw material equal to at least the operating volume of the cooker; or

In the case of a batch cooker system, raw material equal to at least one half the operating volume of the cooker for each batch cooker.

In general, the volume of material required to flush the cooking system should provide an adequate flush of the meal grinding, storage and load-out system, as well. The flush material should be considered prohibited product and treated as such. All subsequent material processed should be considered nonprohibited product. Specific operating procedures should be documented and verified, should be part of the plant's written procedures specifying the clean-out procedures utilized, and would be available for inspection and subject to FDA review for compliance purposes.

(4). *A single plant with one processing line. This includes all process functions from raw material receiving through and including product load-out.*

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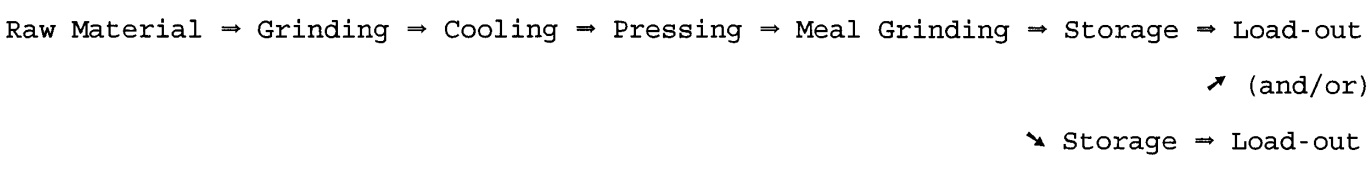

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Suggested Clean-Out Procedures for Processing Option 4—The clean-out and flushing guidelines for this type of plant deal with the complete plant process. It is assumed that this type of plant would have adequate storage facilities to separate prohibited from nonprohibited finished product. It may have separate or common load-out facilities.

The first step in the clean-out and flushing procedure should be to empty all transport and process equipment including the raw material receiving hoppers, conveyors, grinders, and cooker from the first point of commonality of raw material through the load-out system. As a guideline, the volume of flushing material should be equal to the operating volume of the process and transport equipment, including the cookers.

The flush material should be considered prohibited product and

treated as such. All subsequent material processed would be considered nonprohibited product. Specific operating procedures should be documented and verified, be part of the plant's written procedures specifying the clean-out procedures utilized, and be available for inspection and subject to FDA review for compliance purposes.

(5). *Summary for clean-out procedures.*

Due to the degree of variability among rendering systems, HACCP would be helpful in implementing any of the above clean-out procedures and could enable differences to be addressed on a site-specific basis. Renderers could follow the above clean-out procedures by determining their plant's individual characteristics and apply appropriate time and volume requirements for flushing material to accomplish the intent of the procedures. Individual clean-out procedures, including time and volume calculations, should be part of the plant's written procedures specifying the clean-out procedures utilized and would be available for inspection and subject to FDA review for compliance purposes.

ii. *Separating and processing options for blenders, manufacturers, and distributors.*

FDA is providing the following practical guidance based on what should work in most actual operational conditions that blenders, feedmills, distributors, and haulers face day-to-day in their operations and for complying with § 589.2000(e)(1)(iii)(B). This guidance was adapted from the medicated feed GMP's in § 225.65. The medicated feed GMP's for clean-out were chosen as a model because they have proved to be effective in preventing unsafe drug carry-over into feed and thereby preventing tissue residue in products intended for human food. The medicated feed GMP's are not an entirely appropriate model for clean-out procedures for the rendering industry because of the difference in equipment and operating procedures. The agency will consider firms using the clean-out procedures at least as stringent as those detailed below to be of ''adequate'' as used in § 589.2000(e)(1)(iii)(B).

Adequate clean-out procedures for all equipment used in the manufacture and distribution of feeds containing mammalian and nonmammalian protein are essential to avoid unsafe contamination of ruminant feeds. Such procedures may consist of cleaning by physical means, e.g., vacuuming, sweeping, washing, etc. Alternatively, flushing or sequencing or other equally effective techniques may be used whereby the equipment is cleaned through use of a nonprohibited product. After cleaning, the non-prohibited product used in the cleaning should be handled and stored in an appropriate manner.

FDA suggests that all equipment, including that used for storage, processing, mixing, conveying, and distribution that comes in contact with feeds containing mammalian and nonmammalian protein, follow all reasonable and effective procedures to prevent contamination of manufactured feed. The steps used to prevent contamination of feeds often include one or more of the following, or other equally effective procedures: (1) Physical means (vacuuming, sweeping, or washing), flushing, and/or sequential production of feeds; (2) if flushing is utilized, FDA recommends that the flush material be properly identified, stored, and used in a manner to prevent contamination of other feeds. The volume of the flushed material should be sufficient to equal the operating volume of the shared equipment; (3) if sequential production is utilized, FDA recommends that it be on a predetermined basis designed to prevent unsafe contamination of ruminant feeds. An example of appropriate sequencing would be producing a swine feed containing mammalian protein, followed by a swine or poultry feed not using mammalian protein, followed by a ruminant feed containing nonmammalian protein.

Due to the degree of variability among feedmill systems, an HACCP-based approach of process controls would be helpful in implementing any of the above clean-out procedures. This will enable differences to be addressed on a site-specific basis. Feedmills could follow the clean-out procedures by determining their plant's individual characteristics and apply appropriate time and volume requirements for flushing material to accomplish the intent of the procedures. Individual clean-out procedures, including time and volume calculations, may be part of the plant's written procedures specifying the clean-out procedures utilized, and the written procedures are subject to FDA review for compliance purposes.

d. *Written procedures.*

Proposed § 589.2000(e)(1)(iv) would require persons to maintain written procedures specifying the clean-out procedures or other means for separating ruminant and mink materials from nonruminant (excluding mink) materials from the time of receipt until the time of shipment.

(Comment 87). One comment suggested that firms that intend to separate ruminant from nonruminant protein be required to notify FDA of their intent.

As applied to the final rule, such a notification requirement could result in a more efficient use of FDA enforcement resources. However, because it would impose an additional burden on the regulated industry, the agency has decided against imposing a notification requirement.

(Comment 88). FDA, on its own initiative, has revised § 589.2000(e)(1)(iv) to replace ''ruminant and mink materials from nonruminant (excluding mink) materials'' with ''mammalian (other than pure porcine or equine) materials from nonmammalian materials.'' This change was necessary because the final rule now prohibits the use of protein derived from mammalian tissues in ruminant feed.

FDA also advises persons subject to § 589.2000(e)(1)(iv) to draft their written procedures in sufficient detail to give an FDA investigator a general understanding of the procedures being used to satisfy the regulations. The written procedures should also enable the investigator to take the written procedures into the plant and easily identify operations and procedures stated in the written procedures. In other words, the written procedures should correspond to the facility's actual operations.

e. *Exemptions.*

Proposed § 589.2000(e)(2) would, under certain conditions, exempt renderers, blenders, feed manufacturers, and distributors that intend to separate ruminant/mink from nonruminant/mink materials from the requirements in § 589.2000(e)(1).

(Comment 89). One comment stated that an exemption should be available for facilities using validated separation and clean-out procedures.

The agency believes that the comment misinterprets § 589.2000(e)(2). If a person separates materials and uses clean-out procedures or other means adequate to prevent carry-over of protein derived from mammalian tissues, then that person is, in effect, complying with § 589.2000(e)(1). Thus, no revision to § 589.2000(e)(2) is necessary.

6. Section 589.2000(f)—Requirements for Establishments and Individuals That Are Responsible for Feeding Ruminant Animals

Proposed § 589.2000(f) would require establishments and individuals that are responsible for feeding ruminants to

maintain copies of purchase invoices and labeling for all feeds received and to make copies available for inspection and copying by FDA.

(Comment 90). One comment stated that it was neither practical nor necessary to require establishments and individuals responsible for feeding ruminant animals to maintain copies of purchase invoices and labeling for all feed received. The comment stated that the recordkeeping requirement should apply only to feed and feed ingredients containing animal protein.

FDA agrees with the comment and has revised the rule to clarify that the recordkeeping requirement applies only to feed and feed ingredients containing animal protein products. The recordkeeping requirement does not apply to other feed and feed ingredients such as roughage, feed grains, etc.

The agency recognizes that bulk shipments of feed are commonplace, and that labeling information typically is contained in the invoices for bulk shipments. In those instances, maintenance of the invoice is sufficient. If the only labeling for a bulk product is on a placard, the placard for each shipment should be retained. Feed may also be received in bags or other containers that have attached labeling. In those instances, the labeling should be removed and retained. However, maintenance of only one such labeling piece from each shipment that represents a different product is necessary. Finally, if the labeling cannot be removed from the bag or other container, maintenance of a representative bag or a transposed copy of the labeling information from a container that cannot feasibly be stored will suffice.

7. Section 589.2000(g)—Adulteration and Misbranding

Proposed § 589.2000(g) would declare that animal protein products and feeds containing such products that do not comply with the requirements in § 589.2000 (c) through (f) may be deemed adulterated under section 402 (a)(2)(C) or (a)(4) of the act. Products that do not comply with the labeling requirements would be misbranded under section 403(a)(1) of the act.

(Comment 91). FDA received no comments on this paragraph. However, the agency, on its own initiative, has revised § 589.2000(g) to include a reference to section 403(f) of the act. Section 403(f) of the act (21 U.S.C. 343(f)) considers a food to be misbranded if any word, statement, or other information required by the act to appear on the label or labeling ''is not prominently placed thereon with such conspicuousness * * * and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.'' Here, a reference to section 403(f) of the act is appropriate because the final rule contains a required cautionary statement.

8. Section 589.2000(h)—Inspection and Records Retention

Proposed § 589.2000(h)(1) would require records to be made available for inspection and copying and to be kept for at least 2 years. Under proposed § 589.2000(h)(2), written procedures required by § 589.2000 would have to be made available for FDA inspection and copying.

(Comment 92). A small number of comments would revise proposed § 589.2000(h)(1) to extend the time period. Some comments explained that TSE's have a long incubation period so, in the event of a TSE outbreak, the records may no longer exist. These comments suggested lengthening the amount of time records would be retained.

FDA declines to revise the rule as suggested by the comments. The rule is intended to help prevent the establishment and amplification of TSE's in ruminants through feed, and the records to be retained under the rule are to help FDA determine compliance with the rule. FDA acknowledges that TSE's may have long incubation periods exceeding 2 years, but, for purposes of determining whether a person is currently complying with the rule and for reasons expressed earlier in this document, the agency has revised § 589.2000(h)(1) to adopt a 1 year record retention period.

Additionally, extending the record retention period would have little practical value in determining the source of a TSE in an animal, considering the potentially long time period from ingestion of the TSE agent in feed to manifestation of clinical signs and lesions and the lack of a reliable estimate for the latency period.

FDA does suggest, however, that records be kept in a clean and orderly manner to facilitate prompt retrieval and be legible.

C. Comments on the Effective Date

(Comment 93). Two comments endorsed implementation of the final rule 60 days after date of publication in the **Federal Register**. However, one comment suggested that printed packaging materials, labels, and labeling on hand or under production contract be exempt from compliance with the implementation date. The other comment requested an exemption for the finished products on hand or in channels of distribution.

Another comment, submitted in response to the codified provisions (62 FR 18728), requested a 1-year effective date.

FDA does not believe that an effective date of 1 year after publication of this final rule is consistent with the agency's objectives. Therefore, the final rule is effective on August 4, 1997. With regard to printed packaging, labels, labeling, and finished products manufactured before the publication of the rule, such materials and products may continue to be used until those supplies are exhausted, but such period should not exceed October 3, 1997. The agency believes this is a reasonable period to exhaust existing supplies during the 60 days before the rule takes effect and within 60 days after the rule becomes effective.

D. Miscellaneous Comments

(Comment 94). One comment asserted that the absence of reported BSE cases in the United States can only support the assumption of BSE-free status with an acceptable level of uncertainty if there exists an effective epidemiological surveillance program, and an acceptable reduction in exposure of sensitive animals, based on supportable risk assessment studies, has been achieved. The comment further described an effective epidemiological surveillance system to include an information network among veterinary practitioners, breeders, and the government veterinary services. The comment would also require all suspect animals, including downer cattle, to undergo an histological diagnostic examination for TSE's.

There is no evidence to date to show that BSE exists in the United States. As stated in the preamble to the proposed rule, APHIS has a comprehensive surveillance program in the United States to ensure timely detection and swift response should BSE occur in the United States (see 62 FR 552 at 562 and 563). The APHIS surveillance program incorporates both the location of imports from the United Kingdom and targeted active and general surveillance for either BSE or any other TSE in cattle. APHIS has not found any evidence of BSE in any British cattle imported into the United States between January 1, 1981, and July 1989 (at which time the United States prohibited the importation of ruminants from countries affected with BSE).

In May 1990, a targeted active surveillance program for BSE began. BSE is a notifiable disease, and more

than 250 Federal and State regulatory veterinarians are specially trained to diagnose foreign animal diseases, including BSE. This surveillance effort, which involves APHIS, FSIS, and the Centers for Disease Control and Prevention, examines cases of cattle exhibiting signs of neurological disease, cattle condemned at slaughter for neurological reasons, neurological cases submitted to veterinary diagnostic laboratories and teaching hospitals, and a random sampling of cattle which are nonambulatory at slaughter. The targeted active surveillance program focuses on these animals because they are the highest risk population. As of March 31, 1997, 5,552 brains had been examined for BSE or another TSE in cattle, and no evidence of either condition has been found.

Additionally, the USDA has a general surveillance program that uses existing data sources, such as a database of diagnoses from 27 veterinary schools in the United States, CNS antemortem condemnation data from FSIS, necropsies performed at zoos on various species, and a veterinary diagnostic laboratory reporting system. Referrals of unusual cases by private practitioners to veterinary schools and diagnostic laboratories adds to this surveillance. Through these sources, there has been no reported incidence of a new neurologic disease in cattle and no increase in the number of neurologic diagnoses or referrals.

Based on these programs, there is no evidence to date to show that BSE exists in the United States. FDA's final rule adds to these programs by preventing the establishment and amplification of BSE in the United States through feed, thereby minimizing the health risk to animals and humans.

As for the comment that would require all suspect animals to undergo a histological diagnostic examination for TSE's, such examinations are conducted by the USDA and therefore are outside the scope of this rule.

(Comment 95). One comment objected to a sentence in the preamble to the proposed rule which stated that there is ''no immediate threat to the U.S. public health'' (62 FR 552 at 554). The comment argued that the sentence should say that there is no ''recognized'' immediate threat to public health and claimed that over 10,000 people would eventually die from nv-CJD.

FDA agrees that there is no recognized immediate threat of BSE or nv-CJD in the United States because neither BSE nor nv-CJD have been diagnosed in the United States. There is a very small probability that undiagnosed cases of BSE and/or nv-CJD might exist.

(Comment 96). One comment objected to a sentence in the preamble to the proposed rule which stated that ''The agency recognizes that processed ruminant byproducts have a long history of use in animal feeds without known adverse effects'' (62 FR 552 at 566). The comment interpreted this sentence as meaning that an animal fed a high-fat diet will have a body fat composition that is a reflection of the degree of saturation of the fats in the diet.

FDA does not dispute this dietary interpretation, but the agency's intent was to state that correctly processed and handled ruminant byproducts used in feeds have not previously been implicated as a vector for diseases in animals. BSE is the first instance in which the safe use of these processed products in ruminant feed has been questioned as a possible vector for disease.

(Comment 97). The same comment also questioned the role of overall food animal management practices (diet, housing, breeding, etc.) and the role these practices have in animal diseases.

FDA is unaware of any food management practices, other than the use of mammalian protein in ruminant feeds, that presents a risk of contributing to the establishment and amplification of BSE in the United States through feed. FDA is opposed to management practices that result in physical or nutritional harm to animals. A correctly formulated feed containing animal protein should be safe both from a nutritional and animal disease standpoint. BSE has prompted FDA to question the safety, from an animal disease perspective, of feeding mammalian protein products to ruminants, but has not led FDA to question the nutritional value of rendered ruminant products.

(Comment 98). One comment questioned whether the final rule applies to imported animal feeds and feed ingredients.

The act does not impose different requirements for imported animal feeds and feed ingredients intended for use in the United States. Such products are subject to the same statutory and regulatory requirements as domestically produced animal feeds and feed ingredients. Thus, under the final rule, protein derived from mammalian tissues is not generally recognized as safe for use in ruminant feed in the United States regardless of whether the feed is domestic or imported.

(Comment 99). Two comments referred to additional surveillance data which were available from other State and Federal sources but not used in the proposed rule. These comments stated that more complete data are available from accredited and certified State and Federal diagnostic laboratories to supplement surveillance and risk assessments, and the comments requested that FDA assemble, evaluate, and publish the data before issuing a final rule.

When FDA drafted the proposed rule, it used the most recent data available from the USDA. FDA is aware of the recent data which was published in 1997 (Ref. 12) but the data do not warrant a change to the rule.

Additionally, contrary to the comments' assertion, there are no State surveillance data.

(Comment 100). Several comments addressed issues related to surveillance activities. These comments called for: increased import restrictions, including the acceptance of imported products from only BSE-free countries that have active monitoring and surveillance programs and with similar controls on rendering practices; the testing of all downer cows or all animals exhibiting neurological disorders and of beef and dairy herds by using a bovine urine test; the eradication of all TSE's in food animals; examination of the brains of pigs and poultry for CNS disorders; a separate, significant epidemiological study to determine the incidence of TSE in downer cattle through a mandatory inspection program; a mandatory certification program for Suffolk sheep breeders, and for all infected flocks and for all flocks to which infected sheep have been traced back, for all breeds; a mandated scrapie and TSE eradication program with full producer indemnification; and monitoring, surveillance and education regarding all TSE diseases in animals, including veterinary and producer education programs, and the establishment of a national database of TSE monitoring with information from all state veterinarians. Another comment requested that the agency inform consumers of the risk associated with eating meat from animals fed animal byproducts. Several comments addressed the adequacy of United States surveillance efforts. An additional comment questioned the impact that the proposed rule will have on existing and potential animal disease control programs. Another comment suggested that farmers should be reimbursed for the ''pre-disease full market value'' for any BSE-infected cattle, which must be killed and carefully disposed of, to prevent farmers from hiding or selling BSE-infected cattle.

These animal disease monitoring matters are covered by laws which are

administered by the USDA, and are therefore outside the scope of this rule. FDA intends to work with the USDA to coordinate respective educational programs.

(Comment 101). One comment argued that the rule was unnecessary because, according to the comment, the heat used in rendering processes reaches 270 °F and therefore would kill infectious organisms.

FDA disagrees, in part, with the comment. While rendering does eliminate conventional infectious organisms such as bacteria and viruses, the TSE agent does not appear to be a conventional living organism. As noted in the preamble to the proposed rule, the TSE agent is resistant to various methods for inactivation, including high temperatures (see 62 FR 552 at 560). Research has shown that some rendering processes may reduce the amount of the TSE agent present, but may not eliminate it completely. FDA is also aware that not all rendering processes reach 270 °F; some reach lower temperatures.

(Comment 102). Two comments pertained to the risk to humans who consume mechanically deboned meat including meat obtained from Advanced Meat Recovery systems. The comments indicated that meat from such systems contains central nervous tissue in the form of the brain stem and spinal cord, thus exposing the public to tissues that potentially contain TSE agents. One comment stated that FDA should work with the FSIS to ensure that the animal population and the human population are protected by minimizing the possibility of BSE reaching the United States.

FDA does not have jurisdiction over mechanically deboned meat and, therefore, cannot address issues related to mechanically deboned meat in the final rule. Because the rule is intended to prevent the establishment and amplification of BSE within the United States through feed, cattle presented for slaughter should remain free of TSE agents, and any potential risk of transmitting TSE's to humans from consuming of mechanically deboned meat should be reduced substantially.

(Comment 103). One comment asserted that the comment period on the proposed rule was not adequate in light of the far reaching and complicated issues involved in this rulemaking. The comment stated that the agency should publish an interim final rule to give industry additional time to comment.

The agency does not agree with this comment. The agency believes it has provided a more than adequate comment period to address the issues presented in this rulemaking. Because of the complex issues involved in this rulemaking, in addition to the 45-day comment period for the proposed rule, the agency has provided four other opportunities for public comment. The advanced notice of proposed rulemaking that was published in the **Federal Register** on May 14, 1996 (61 FR 24253), provided a 30-day public comment period. In addition, the agency held two open forums to discuss the notice of proposed rulemaking (see 62 FR 3848, January 27, 1997). Finally, the agency made available a draft rule and provided a 10-day public comment period (see 62 FR 18728).

The Administrative Procedure Act (APA) requires only that an agency ''give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments * * *'' (5 U.S.C. 553(c)). This is all the APA requires; there is no statutory requirement concerning how many days an agency must allow, nor is there a requirement that an agency must extend the period at the request of an interested person (see *Phillips Petroleum Co.* v. *EPA*, 803 F.2d 545, 559 (10th Cir. 1986)).

FDA's own regulations generally afford the public 60 days to comment on a proposed rule, unless the Commissioner of Food and Drugs shortens or lengthens the period for good cause (21 CFR 10.40(b)(2)). Executive Order 12889 implementing the North American Free Trade Agreement prescribes a minimum comment period of 75 days on certain proposed rules, except when good cause is shown for a shorter comment period (see 58 FR 69681, December 30, 1993).

Here, the agency provided the public with 87 days to participate in this rulemaking including 85 days to provide written comments and 2 days to present views at the open public forums. The agency does not believe that any interested person has not been provided an adequate opportunity to participate in this rulemaking. The agency received over 600 comments on the advanced notice of proposed rulemaking, more than 700 comments on the notice of proposed rulemaking. In addition, the agency received oral views at the public forums and over 60 comments on the draft codified provisions that the agency made available pursuant to 21 CFR 10.40(f) and 10.80(d)(2). Given the number of comments the agency received on the proposed rule, at the public forums, and on the draft codified text, the agency does not agree that it should issue an interim final rule under the APA to give the regulated industry additional time to comment on the final rule.

(*Comment 104).* FDA, on its own initiative, has revised the ''authority'' citation for the rule to include section 403 of the act. Section 403 of the act applies to misbranded foods and is relevant to this rule because of the required cautionary statement.

III. Description of the Final Rule

As mentioned earlier, the final rule states that proteins derived from mammalian tissues are a food additive subject to section 409 of the act. Consistent with the definition of ''food additive'' in section 201(s) of the act, FDA's determination that protein derived from mammalian tissues for use in ruminant feed is a food additive also is a determination that this use is not GRAS. Section 589.2000(a)(1) defines ''protein derived from mammalian tissues'' as being any protein-containing portion of mammalian animals, excluding blood and blood products, gelatin, inspected meat products which have been cooked and offered for human food and further heat processed for feed (such as plate waste and used cellulosic food casings), milk products, and products whose mammalian protein consists entirely of porcine or equine products. In general, the exclusions represent tissues that the available data suggests do not transmit the TSE agent or were, at one time, inspected by the FSIS and found fit for human consumption and further heat processed for feed use or tissues from pigs and horses that are slaughtered in single species slaughter facilities.

Section 589.2000(a)(2) defines ''renderer,'' in part, as any firm or individual that processes slaughter byproducts, animals unfit for human consumption, or meat scraps.

Section 589.2000 (a)(3) and (a)(4) define the terms ''blender'' and ''feed manufacturer'' respectively. These definitions are essentially unchanged in the final rule.

Section 589.2000(a)(5) defines ''nonmammalian protein'' as including proteins from nonmammalian sources. This definition corresponds to the final rule's mammalian-to-ruminant prohibition.

Section 589.2000(a)(6) defines ''distributor.'' This term was initially part of § 589.2000(a)(4) but is now a separate definition to clarify that a distributor does not have to be a feed manufacturer and that persons who transport feed and feed ingredients intended for animals are distributors.

Section 589.2000(a)(7) defines ''ruminant'' to provide an

understanding as to what animals are ruminants.

Section 589.2000(b) declares that protein derived from mammalian tissues for use in ruminant feed is a food additive under section 409 of the act. While not stated in the rule itself, FDA's food additive determination is a determination that this use is not GRAS. The final rule states that use of such proteins in ruminant feed will cause the feed to be adulterated and in violation of the act unless it is the subject of an effective notice of claimed investigational exemption for a food additive.

Section 589.2000(c) describes the principal requirements for renderers. The provision differs from the proposed rule in two principal respects. First, § 589.2000(c)(1)(i) requires products that contain or may contain mammalian proteins to bear a label stating, ''Do not feed to cattle or other ruminants.'' This statement is more concise than the statement in the proposed rule and identifies cattle as ruminants. Second, § 589.2000(c)(1)(ii) requires renderers to maintain records sufficient to track the receipt, processing, and distribution of materials. This provision differs from the proposed rule by addressing the type of information FDA requires rather than referring to a specific type of record. The remaining paragraphs in § 589.2000(c) provide for exemptions from the labeling and recordkeeping requirements if the renderer uses a manufacturing method validated by FDA for deactivating or detecting the TSE agent or a process that minimizes the risk of the TSE agent entering the product or if the renderer uses a permanent method, approved by FDA, to mark the feed to indicate that it contains or may contain protein derived from mammalian tissue.

Section 589.2000(d) describes the principal requirements for protein blenders, feed manufacturers, and distributors. These persons are subject to the same labeling and recordkeeping requirements as renderers, except that, under § 589.2000(d)(4), pet food products that are sold or intended for sale at retail and feeds for nonruminant laboratory animals do not have to be labeled with the statement, ''Do not feed to cattle or other ruminants.'' Pet food products and feeds for nonruminant laboratory animals that are sold as distressed goods or salvaged are, however, subject to the labeling requirement. Section 589.2000(d) also provides exemptions if animal products are purchased from renderers that certified compliance with the requirements pertaining to methods for deactivating or detecting the TSE agent or if the protein blender, feed manufacturer, or distributor complies with such requirements itself. Another exemption exists if protein blenders, feed manufacturers, and distributors purchase animal protein products that are marked in accordance with the regulations or mark such products themselves.

Section 589.2000(e)(1) sets forth requirements for persons that intend to separate mammalian and nonmammalian materials. This requires compliance with the labeling and recordkeeping requirements, requires renderers that intend to separate these materials to obtain nonmammalian or pure porcine or equine materials only from single-species slaughter facilities, and requires persons to avoid commingling and cross-contamination with mammalian materials. The provision further requires persons to maintain written procedures specifying the clean-out procedures to prevent carry-over of mammalian protein into ruminant feed and the procedures for separating materials from the time of receipt to the time of shipment. Section 589.2000(e)(2) provides for persons to be exempt from applicable requirements in paragraph (e)(1) if they meet the exemption criteria in paragraph (c)(2), (c)(3), (d)(2), or (d)(3). Persons meeting the exemption criteria in paragraph (c)(3) or (d)(3) are exempt only from the recordkeeping requirements in paragraph (e)(1). Such persons must continue to comply with the labeling requirement in paragraph (e)(1).

Section 589.2000(f) contains recordkeeping requirements for establishments and individuals that feed ruminant animals. Under the final rule, these requirements would apply only for feed or feed ingredients containing animal protein products.

Section 589.2000(g) states that animal protein products and feeds containing such products that do not comply with the regulation will be deemed adulterated or misbranded under the act.

Section 589.2000(h) contains the inspection and record retention requirements. The record retention period is 1 year under the final rule.

IV. Environmental Impact

The ''Environmental Impact'' discussion in the preamble to the proposed rule summarized the agency's environmental assessment (EA) and its analysis of the 6 regulatory alternatives (see 62 FR 552 at 571). The agency considered each alternative under 2 different scenarios; under one scenario, BSE does not occur in the United States, and, under the other scenario, BSE does occur in the United States. The discussion described the range of environmental impacts for the alternatives, including environmental effects from on-farm disposal of animals and landfill use, and concluded that the proposed rule would not have a significant impact on the human environment.

FDA received several comments on its environmental analysis.

(Comment 105). One comment questioned the safety of burial as a method for disposal of TSE- infective animals and whether burial should be allowed as a method for disposal of dead stock (as discussed in the agency's EA).

There is no current disposal method for TSE-infected tissues shown to completely remove all infectivity. FDA recognizes that one report (Brown and Gajdusek, 1991) found that buried scrapie-infected tissue may still be infective after 3 years, although infectivity was reduced by 2 to 3 logs by this exposure.

Migration of prions from burial sites is expected to be minimal. Prions, as proteinaceous materials carrying electrostatic charges, are unlikely to move with water through soil media, but are apt to be adsorbed to clay particles. This is supported by the Brown and Gajdusek (1991) (Ref. 13) observation that ''no infectivity was detectable in the lower layer of soil 4–8 cm beneath the bottom of the dish.'' In other words, little leaching of the scrapie infective agent was found. This method of disposal, burial, is the method accepted by APHIS for disposing of scrapie infected sheep and goats in the United States.

Secondly, most on-farm dead stock die from causes other than TSE's, and FDA does not expect that cattle dead stock will include significant numbers of cattle that died from BSE. BSE has not been found in the United States, and this final rule puts into place procedures that will limit the spread of any cases that might occur undiagnosed in the ruminant population.

Third, States and localities regulate burial of animals, and, in areas where burial is inappropriate due, for example, to high water table or inappropriate soil type, these laws would prohibit burials. The final rule does not require burial of dead stock. Burial is merely an option to be considered where State and local authorities permit it.

Burial of dead stock has limitations in that it requires resources to dispose of dead stock as a waste rather than to produce useful products. However, at this time, there is no evidence that burial of animals that are susceptible to

TSE's, in accordance with existing State and local controls, is inherently more environmentally unsafe than incineration, composting, or rendering.

(Comment 106). Several comments requested that the agency prepare a formal environmental impact statement (EIS) under the National Environmental Policy Act in addition to the Finding of No Significant Impact and Environmental Assessment (FONSI/EA) that was prepared in support of the proposed action.

A primary difference between the EA prepared in this instance and an EIS is the administrative process that was followed. Both documents are objective analyses that focus on significant environmental issues associated with the proposed action and possible alternative actions. The EIS process, however, is a more formal process that includes issuance of a notice of intent describing the proposed action and possible alternatives, convening of optional public forums to identify (''scope'') environmental issues of concern to the public, preparation of a draft EIS that is filed with the Environmental Protection Agency and distributed to the public for comment, preparation of a final EIS describing how the comments were considered, and preparation of a concise public record of decision describing the weight that environmental effects were given in the decision making.

As part of the Advanced Notice of Proposed Rulemaking on May 14, 1996, FDA requested environmental information to assist the agency in determining the scope of issues to be addressed and the significance of environmental issues related to the full spectrum of possible actions being considered by the agency. FDA then solicited comments on the FONSI/EA as part of the proposed rule that appeared in the **Federal Register** on January 3, 1997. At the same time, FDA made the FONSI/EA available on the Center for Veterinary Medicine's (CVM's) ''Home Page,'' in addition to the traditional means of availability, in order to facilitate submission of additional information through comments to the docket established for the proposed rule. Furthermore, FDA held public meetings on February 4 and 13, 1997, where comments on the FONSI/EA were solicited, and placed transcripts from those meetings on the CVM Home Page, as well as in the docket, to facilitate commenting. The preamble to the proposed rule and this preamble to the final rule, like the record of decision prepared for an EIS, discuss how environmental issues were weighed in the decision.

Consistent with the National Environmental Policy Act and the Council on Environmental Quality's regulations, FDA discussed in its EA and FONSI the need for action, significant environmental issues, and alternative actions, and carefully listed the sources of information and methods used in preparing the EA. The agency took a hard look at the environmental consequences of its proposed action and the alternatives before deciding that an EIS was not required. FDA encouraged and facilitated public involvement, requesting information and soliciting public comment on all issues involved with this rulemaking, including environmental issues. Given the rigor of FDA's EA and the steps taken to involve the public and the limited benefits from a more searching evaluation, the time and expense of preparing an EIS are not commensurate with the likely benefits of preparing such a document (see *River Road Alliance* v. *Corps of Engineers*, 764 F.2d 445, 449 (7th Cir. 1985) (''The statutory concept of 'significant' impact has no determinate meaning, and to interpret it sensibly in particular cases requires a comparison that is also a prediction; whether the time and expense of preparing an environmental impact statement are commensurate with the likely benefits from a more searching evaluation than an [EA] provides.''), *cert. denied*, 475 U.S. 1055, (1986).

(Comment 107). Several comments made FDA aware of some potential environmental impacts that could be mitigated, and these mitigations were integrated, where consistent with other factors, in the final action. The final rule excludes certain items, such as blood and gelatin, from the definition of ''protein derived from mammalian tissues'' and these excluded materials may be used in ruminant feed as well as feed for other species. Thus, materials excluded from the final rule have a reduced potential to become wastes. Plate wastes, used cellulosic food casings, and pure porcine or equine products are all examples of materials that are allowed in cattle feed that would not have been allowed under the mammalian-to-ruminant ban described in the proposed rule which was broader than the mammalian to ruminant ban in this final rule. These materials should now be fully utilized instead of presenting potential environmental issues relating to disposal.

As a result of comments on the proposed rule, the final rule does not require a cautionary statement on labeling of pet foods at the retail level. Thus, there is no longer the potential for consumers to misinterpret the cautionary statement and incorrectly deduce from the labeling a safety problem for pets. In the absence of the potentially confusing cautionary statement on pet food at the retail level, it is now not expected that meat and bone meal would be dropped from pet food formulations. Consequently, the demand for meat and bone meal derived from ruminants should not be significantly decreased in the pet food industry.

Therefore, certain anticipated environmental issues will not be realized because of the changes to the action that appear in this final rule, compared to both the proposed rule and the mammalian-to-ruminant alternative originally described. These changes are the consequence of comments received on the proposed action.

(Comment 108). Comments from the rendering industry, in particular, desired a more quantified environmental analysis of the potential impacts of the actions covered in the EA. These comments were especially concerned about the amounts of dead stock that might no longer be rendered due to an anticipated decrease in the value of meat and bone meal derived from ruminants and, consequently, in the value of raw materials used to make the meat and bone meal.

Some quantities of dead stock were estimated in a report (the Sparks Report) presented in the comment from the National Renderers Association; however, other comments only spoke in generalities about the issue without providing information that could be used in the requested quantification.

The Sparks Report (Table III–1, p. 10) estimated that 1.1 billion pounds (lb) of dead cattle are collected from all sources and rendered each year. Presumably, dead sheep, goats, and deer are included in the 190 million (m) lb that are collected from ''Other'' species in the Sparks Report. It is not known with certainty whether these estimates represent a large percentage of all ruminant dead stock, as such information is not reported and was not submitted in comments despite requests from FDA. However, some rough calculations can be used to make an estimate. There are approximately 100 m cattle of all ages in the United States at any time. If the overall mortality rate on the farm (i.e., for reasons other than slaughter) is 5 percent per year, then this would result in 5 m dead cattle of all ages available for pick up by renderers each year. If the average weight for a dead cattle carcass (across all age groups) is 650 lb, then the total weight of dead cattle that could be potentially retrieved by renderers each

year is 3.25 billion lb. Based on this estimate, then renderers are currently retrieving about one-third (by weight) of the available dead cattle that could be rendered. This also indicates that about two-thirds of the available dead cattle are currently being disposed of by means other than rendering. If one assumed a mortality rate higher than 5 percent or a larger standing population of cattle, then renderers would be picking up a smaller proportion.

FDA did not receive any comments containing first hand information indicating that the current unretrieved dead stock are being disposed of in an unsafe manner, and the agency has no independent information to this effect. Methods that are available in some, but not all locations include burial, as discussed above, landfilling, and composting (often for animals smaller than 300 lb). In some locations (such as on range land), animals that die may be left exposed. A small number of farms may own or have access to an appropriately designed incinerator. State and local regulation affects the availability of disposal options. While rendering is a desirable option for disposal of dead stock, it is not the only acceptable option.

The comments provided no basis to estimate the final rule's effect on the retrieval of dead stock by renderers. The agency's economic analysis (which appears later in this document) accepts estimates that the value of meat and bone meal may decrease by $68 per ton. While this price is still profitable, it is possible that there may be some disruption in dead stock retrieval from small producers while the rendering industry adjusts to the new prices. For the sake of discussion, FDA assumes that the upper limit on this temporary decrease in dead stock retrieval could be 20 percent. Twenty percent of 1.1 billion lb is 220 m lb, or at an estimated 650 lb per carcass, about 340,000 fewer cattle picked up, against a background of 5 m dead cattle per year.

The estimated, temporary, 20 percent decrease from the current level of dead stock retrieval is probably an overestimate. First, the final rule takes steps different from the proposal to encourage the continued use of ruminant products in acceptable animal feed applications. For example, the final rule eliminates potentially confusing labeling in pet foods at retail. Second, protein supplements manufactured from dead stock are expected to remain in strong demand, especially from countries that remain BSE free and have taken precautionary steps to minimize the potential for its amplification through the food chain. (In other words, a strong market will exist because foreign buyers will be confident in the safety of rendered products from the United States.) Meat and bone meal today in the United States is worth more than before FDA published the advanced notice of proposed rulemaking in May 1996. Third, trends in feedlots and dairies in the United States have been towards larger facilities. Large facilities, because of the larger population of animals, generate the most dead stock. This centralized location is efficient for renderers to retrieve dead stock, as opposed to traveling a collection route among smaller farms. In many locations, owners of large feedlots and dairies are currently being paid by renderers for their dead stock. Even if the credit for dead stock were erased, large facilities would likely still find it convenient to use rendering as the disposal option for their dead stock. Fourth, cattle producers would still demand protein and mineral supplements derived from animal sources, for example blood meal, poultry meal, and pure porcine or equine meat and bone meal. Therefore, continued demand for animal protein products by ruminant producers will contribute to overall demand for animal protein products, including those affected by the final rule, for use in feed of all species of animals. Lastly, mammalian-derived protein affected by this rule is still expected to be profitable to produce and to sell. Adjustments by renderers to buy additional equipment and incorporate new procedures are expected to proceed rapidly during the delayed effective date for this rule.

For the reasons stated above, any decreases in dead stock retrieval from farms that occurs as a result of disruptions caused by this final rule should be short term and small in magnitude. Long term trends will continue to encourage use of dead stock as a feed ingredient raw material.

Outside of these types of estimations, quantifications of the environmental benefits and costs of any of the regulatory alternatives including ''No Action,'' are not feasible with the quality of information currently available. Much needed information, for example the dead stock issue above, appears to be unavailable. Other environmental benefits and costs rely on chains of events occurring where there is considerable uncertainty. These uncertainties are detailed in the EA, consistent with the guidance in 40 CFR 1502.22 of the Council on Environmental Quality's regulations.

FDA will continue to be receptive to information that could assist in a better quantification of impacts and will use such information in considering what amendments, if any, should be made to the final rule in the future. FDA has a continuing interest in this matter, as environmental costs of disposal alternatives for dead stock will be a major consideration in the event that BSE is ever found to be established in the U.S. cattle population. Remedial actions by FDA, alone and in concert with other agencies, at such a time will be considered separately for potential environmental impacts.

The potential long term and short term environmental effects of the final rule are qualitatively similar, perhaps intermediate in magnitude when compared with the proposed ruminant-to-ruminant ban and the alternative mammalian-to-ruminant ban described in the EA. These potential effects were compared at Table 1 of the EA, pages 63 and 64. Because the potential environmental impacts of the final rule are bracketed by these two alternative actions that were considered equally in the EA, because a hard look at the consequences of both alternatives led to a finding of no significant impact, and because additional information was not submitted or identified that would improve the quantification of the EA, FDA does not believe that it is necessary to further amend the EA apart from the clarifications to the analysis found in this Environmental Issues section of the preamble to the final rule.

(Comment 109). Several comments asserted that there would be large increases in the quantity of dead stock and offal requiring disposal and questioned the environmental safety of landfilling as a disposal method. One comment stated that landfilling of dead stock was not permitted in some areas. Another comment objected to the use of landfills for the disposal of offal or carcasses. No comment provided supporting details or other information on this issue.

Similar to the situation with burial of dead stock as a disposal method, landfilling is not available as a disposal method where State or local authorities do not permit it. This final rule, however, does not require disposal of dead stock or offal by landfilling, although it may be an option in some areas. Where landfilling is an option, there is no reason to suspect that this means of disposal is unsafe. FDA did not receive any comments from a State environmental office or local landfill or waste control authority on this issue or any related issue.

FDA expects that, to the extent that landfilling occurs due to a decrease in the retrieval of dead ruminant stock by renderers, the increased use of landfill

space for disposal of dead stock would be small and temporary. In any event, as discussed above, it is evident that the majority of dead ruminant stock is currently being disposed of by means other than retrieval by renderers and that such means includes landfilling.

As for offal, the agency does not anticipate that there will be any significant reduction in the collection of offal by renderers. Thus, there should be no significant increases in landfilled offal resulting from this rule. Hide and tallow provide significant economic incentive for continued collection and rendering of offal and carcasses whether or not the protein products have greater or lesser value.

(Comment 110). Some comments claimed that there will be adverse effects to the environment because of changes in disposal practices at small locker plants and grocers.

As markets adjust to the rule, FDA believes that there may be a temporary, small decrease in the pickup by renderers at small locker plants that process ruminants (i.e., there will be a corresponding small increase in material disposed of by composting, by on-site burial, by incineration and in local landfills). Additionally, because the rule should enhance the value of rendered ruminant products from the United States on the world market, FDA believes that most of the anticipated increase in disposal by means other than rendering at small locker plants will be temporary (see also discussion relating to retrieval of dead stock, above, for a discussion of additional factors that, in the long term should support the value of raw materials used to make animal protein feed ingredients).

FDA believes that fat trimmings and out-of-date meat are the major products picked up by renderers at most small grocers. Because fat, tallow, and grease are not affected by this rule and most out-of-date meat is collected with these materials at grocers, renderers will continue to pickup virtually all material from small grocers. Thus, FDA foresees minimal, if any, adverse environmental effects from this rule on small grocers.

(Comment 111). Other comments inquired as to the environmental effects when feeds containing ruminant proteins must be disposed because they cannot be sold. This would primarily involve feed formulated especially for ruminants.

This final rule becomes effective on August 4, 1997. Furthermore, as stated earlier in this document, FDA intends to permit persons to exhaust existing supplies of products that were manufactured before June 5, 1997, but this period should not exceed October 3, 1997. Thus, at this time, FDA foresees minimal, if any, disposal or reconditioning of feed required by this rule.

(Comment 112). Several comments raised concern that poultry, as consumers of ruminant-derived meat and bone meal, may excrete intact prions in chicken litter. This litter could later be spread on crops, causing an unexpected contamination of vegetables. Some comments also noted that chicken litter is sometimes recycled as a cattle feed and could therefore serve as a source of TSE for ruminants. The source of this concern appears to be a hypothesis offered by Clarence Gibbs in his testimony to the House of Representatives' Subcommittee on Human Resources and Intergovernmental Relations on January 29, 1997.

FDA has no evidence, other than Clarence Gibbs' statement, that would indicate that infective ruminant prions survive the chicken intestinal tract and/or the composting process. Such a hypothetical route of transmission would appear to be of more immediate importance in countries where BSE has been diagnosed.

To FDA's knowledge, none of the countries where BSE is present have reported the presence of prions in poultry litter. FDA is not aware of any epidemiologic evidence that associates BSE with the incorporation of poultry litter in cattle rations or on crop land. In Suffolk sheep with scrapie, there is no detectable infectivity in the feces (see Bulletin of the World Health Organization, 70(2):183–190 (1992)). This is the only report, to FDA's knowledge, of testing of TSE infectivity in feces of any species. FDA will continue to monitor scientific developments in this area for findings clarifying this issue.

(Comment 113). One comment, with little explanation, disagreed with the agency's environmental analysis and suggested that FDA consult the Environmental Protection Agency (EPA) ''to accurately assess the impact.''

Consistent with the National Environmental Policy Act and the Council on Environmental Quality's regulations, FDA maintains an interdisciplinary staff of scientists with broad expertise in EA methodology, animal disease and nutrition, the feed industry, and animal and agricultural waste management. FDA used this expertise in preparing the EA for this action. FDA is not required to involve EPA in the preparation of an EA.

Nonetheless, FDA has extensive, long-standing contact with EPA at scientific and managerial levels. The agencies cooperate in many areas where there is a common mission or complementary expertise. The development of the action described here began in the work leading up to the 1994 proposed rule on scrapie in sheep and goats. FDA coordinated its efforts with many groups in the USDA and the Centers for Disease Control and Prevention to obtain the best expertise available. FDA carefully considered whether EPA, by virtue of its expertise or mission, needed to be involved in developing the EA or other aspects of this action, and concluded that, because FDA already uses EPA's environmental risk assessment paradigm, EPA's involvement would not yield additional benefits to the analysis.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, under the Regulatory Flexibility Act (5 U.S.C. 601–612), and under the Unfunded Mandates Reform Act (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages, and distributive impacts and equity). The Regulatory Flexibility Act requires agencies to examine the economic impact of a rule on small entities. The Unfunded Mandates Reform Act requires agencies to prepare an assessment of anticipated costs and benefits before enacting any rule that may result in an expenditure in any one year by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 (adjusted annually for inflation).

FDA concludes that this final rule is consistent with the principles set forth in the Executive Order and in these two statutes. FDA's analysis, as presented in the remainder of this section, demonstrates that the final rule constitutes an economically significant rule, as described in Executive Order 12866. The agency has further determined that the final rule may have a significant economic impact on a substantial number of small entities. This analysis, therefore, along with the other relevant sections of this preamble and the two reports of FDA's economics contractor, the Eastern Research Group (ERG), constitute the agency's final regulatory flexibility analysis as required under the Regulatory Flexibility Act. Because this rule makes no mandates on government entities and will result in expenditures of less than $100,000,000 in any one year, FDA need

not prepare additional analyses pursuant to the Unfunded Mandates Reform Act.

FDA presented a summary of its preliminary economic analysis in the preamble to the proposed rule (62 FR 552 at 572). The summary discussed the potential benefits of the proposed rule and described an industry impact analysis conducted by FDA's contractor, ERG. In response, the agency received many comments, both oral and written, which addressed economic issues and concerns. Many industry comments criticized FDA's analysis for underestimating the burden that the rule would impose and for counting the economic gains as well as the costs in aggregating the net impacts of the rule. Only a few comments spoke to the estimates included in the benefits discussion. Although most industry comments presented little quantitative information, a report prepared by the Sparks Companies Inc. for the National Renderers Association, Inc., and the Animal Protein Producers Industry provided detailed industry data and alternative estimates of the regulatory burdens. FDA has examined and evaluated the reasoning and data presented in all these comments and has incorporated many of these elements into this revised analysis of the final rule. (An addendum to ERG's preliminary cost analysis presents the industry impact estimates in even greater detail.)

A. Need for Regulation

In its analysis of the proposed rule, FDA explained that the need for regulatory action is based on the risk that BSE will be established and proliferate in the United States. In its guidelines for the preparation of Economic Impact Analyses, OMB directs Federal regulatory agencies to determine whether a market failure exists, and if so, whether that market failure could be resolved by measures other than new Federal regulation. In this instance, FDA determined that private incentive systems for both suppliers and purchasers in markets for cattle, rendering, and ruminant feed may inadequately address the risk of BSE. The potential for market failure among suppliers in these sectors results from the externality that could be created by individual suppliers imposing economic hardships on other suppliers within the industry. The potential for market failure among purchasers results from the inadequate information that would be available to purchasers of potentially infective products.

With respect to suppliers, any renderer, feed manufacturer, or cattle producer that permits animal protein derived from at-risk mammals to be placed in ruminant feed increases the risk that other renderers, feed manufacturers, or cattle producers will suffer the severe economic consequences that would follow an outbreak of BSE in the United States. Although the benefits of voluntary programs designed to reduce or eliminate this risk accrue to all members of these industries, compliance with these measures is incomplete, because individual noncomplying members can avoid the costs of risk reduction measures while still enjoying the benefits of compliance by others in the industry.

If purchasers could easily identify the risk of the infective agent associated with products from specific suppliers, they could more easily take defensive actions to reduce these risks (e.g., refusing products from cattle known to have consumed specified ruminant proteins). Purchasers are unlikely to obtain the information they need, however, for several reasons. First, the long incubation period for BSE creates a lag between the actual onset and the recognition of the disease and could lead to a suboptimal level of risk prevention by the concerned parties during the incubation period. By the time the first signs of disease are observed, many animals may have been exposed. Moreover, renderers sell their product to feed manufacturers who frequently combine proteins from many different sources and animal species to produce cattle feed. Ruminant producers, therefore, have no sure way of knowing whether a particular batch of feed is free from potentially infective proteins and cannot easily avoid purchasing risky feed. Finally, if renderers or feed manufacturers do not believe that BSE is an important threat, they may choose not to take preventive action, regardless of the risk levels perceived by epidemiological experts or consumers. FDA received no comments that directly questioned the existence of this market failure.

B. Benefits

The primary benefits of this regulation are the costs that would be averted by reducing the risk that BSE will become established and proliferate in the United States through feed. As described in FDA's analysis of the proposed rule, a quantitative measure of these benefits must consider three distinct factors: (1) The probability that, in the absence of this rule, BSE would be established and amplified in the United States through feed, (2) the costs, both direct and indirect, that would be associated with the spread of BSE in the United States, and (3) the extent to which this rule would reduce the likelihood of these costs. FDA explained that it could not develop an overall quantitative estimate of these benefits, primarily because it could not adequately measure the first of these factors, the probability that BSE would otherwise occur in the United States. While the agency determined that the risk was positive, the available data were inadequate to develop a quantitative risk assessment. The agency did, however, derive a partial estimate of the potential direct costs that would result from the proliferation of BSE in the United States (the second factor), and present a strong qualitative assessment of the probable effectiveness of the proposed rule (the third factor).

For its estimate of the potential direct costs associated with the outbreak and spread of BSE in the United States, FDA extrapolated from the experience of the United Kingdom, but adjusted for certain differences between the United States and the United Kingdom. The relevant United Kingdom variables included the number of cattle that had died from BSE (despite the implementation of a feed ban in that country after BSE was identified) and the slaughter and destruction of additional cattle considered to be at risk of BSE. Based on these projections, FDA estimated that, if BSE were to occur in this country, the disease would be associated with approximately $3.8 billion in losses due to the destruction of BSE-exposed livestock and the taking of other measures needed to prevent continued BSE proliferation. While FDA could not quantify the expected additional costs to consumers and producers in the United States that would result from the loss of consumer confidence following a BSE outbreak, the agency found that plausible scenarios indicated that the likely drop in the demand for cattle and beef products could cause billions of dollars in lost market values. In addition, FDA noted, but did not attempt to quantify, the value of the human lives that might be lost or the associated medical treatment costs that might follow a domestic outbreak of BSE.

(Comment 114). One comment on the proposed rule stated that FDA should modify its projection of the potential amplification and subsequent proliferation of BSE in the United States, because FDA's use of the United Kingdom's experience as a model is misleading and exaggerates the real risk. The comment suggested that an

extensive epidemiological study be conducted instead, based on use of ruminant proteins in ruminant feed over the past 50 years, to produce a more accurate risk assessment.

FDA does not believe that its projection was invalid or misleading, because although the United Kingdom's and United States' cattle industries are not identical, the United Kingdom experience provides the most detailed and least speculative basis available for understanding the potential impact of BSE on this nation's cattle industry. FDA's methodology incorporated adjustments to reflect the younger average age of United States cattle and the later age of first exposure of United States dairy cattle to meat and bone meal. The analysis concurred that, compared to the United Kingdom, a much lower proportion of cattle in the United States would be at risk of contracting BSE if an outbreak occurred. Nonetheless, because of the delay between infection and identification, it found that a substantial number of cattle in the United States could become infected before the disease was contained.

Although further epidemiological study on the use of mammalian protein in ruminant feed (with exclusions) could provide useful information, FDA believes that such a study would not significantly alter the agency's conclusions, because the degree of infectivity at various exposures to mammalian protein is not known. Moreover, only a small part of the overall cost to industry of a BSE outbreak would depend on the number of cattle actually infected. The greatest costs would be associated with the measures that would be needed to restore consumer confidence in beef and dairy products, and these measures would be undertaken irrespective of the precise level of infectivity.

FDA has, however, updated its estimates of the projected costs of a BSE outbreak, based on: (1) The more recent estimates of the number of United Kingdom cattle diagnosed with BSE (projected here at approximately 169,600 cumulative BSE deaths through 1997); (2) the current United Kingdom estimates of 1.3 m cattle culled by the end of 1996 to end the epidemic; (3) the more recent estimates of the size of the United States cattle population (now estimated at approximately 101 m cattle); (4) the assumption that cattle at risk of BSE would require disposal at a cost of $33 per animal, and that cattle with known BSE could require medical-waste level incineration at a cost of $100 per animal; and (5) the updated estimates of the costs of implementing a feed ban at the time of a BSE outbreak (currently estimated, as described below, at $52.9 m per year).

FDA's revised calculation again addresses only three of the costs that would be associated with the proliferation of BSE in the United States: (1) The cost of direct livestock losses due to BSE infection, (2) the costs associated with slaughtering at-risk cattle culled to prevent BSE spread and restore consumer confidence, and (3) the costs associated with imposing feed regulations at the time BSE was detected. Recalculating BSE-related costs using the updated figures yields an estimated present value for these three components of $93 m, $4.7 billion, and $593 m, respectively. In sum, these updated projections yield an estimated present value of $5.3 billion in costs that would be associated with the establishment and proliferation of BSE in the United States through feed.

Additional costs that could not be quantified include the lost human lives and medical treatment costs that could result from BSE-related disease, as well as the consumer and producer losses that would result from the expected decrease in the sales and consumption of beef. Sales of medical products and cosmetics containing cattle-derived components could also be affected.

(Comment 114a). One comment stated that a single case of BSE in the United States would have an enormous impact on the American cattle industry and that a 1 percent change in consumer purchases of cattle products results in a $350 m impact on farm and ranch income. Other comments stated that action must be taken to maintain consumer confidence in meat products, and one estimated that, if BSE were detected, first year costs to the economy would total $64 billion.

Nevertheless, FDA is still unable to quantify the expected benefits of this rule, because the agency cannot estimate the probability that, in the absence of this regulation, BSE would occur and proliferate in the United States.

Moreover, to the extent that the rule will not completely eliminate all chance of a BSE outbreak, the expected value of the potential benefits is less than the expected value of the potential BSE-related costs. Several comments pointed out that a lack of enforcement of the proposed rule would greatly reduce its efficacy. FDA agrees that adequate enforcement is critical to achieving the full potential benefit of the rule, and, as discussed elsewhere, has attempted to craft the rule in a way that will maximize its enforceability. Thus, FDA believes that the vigorous implementation of this rule will very nearly eliminate the risk of the widespread proliferation of BSE in the United States.

C. Industry Impacts

FDA has carefully examined numerous public comments that addressed industry impacts of the proposed rule. In addition, FDA asked ERG to prepare an addendum to its earlier impact analysis. This section summarizes the ERG reports, responds to public comments related to the analysis of industry impacts, describes the composition, size, and scale of economic activity for the various affected industry sectors, and presents FDA's estimates of the cost and market impacts of the final rule and six other regulatory alternatives (see Table 1).

TABLE 1.—ESTIMATED ANNUAL AFFECTED PROTEIN AND ANNUAL COSTS OF ALTERNATIVE REGULATORY PROHIBITIONS [1]

Annualized impacts	Mammalian-to-ruminant	Mammalian-to-ruminant, with exceptions [2] (final rule)	Partial ruminant-to-ruminant	Sheep/mink-to-ruminant	Sheep/goat-to-ruminant
Quantity of restricted meat and bone meal (m lb)	6,086	5,031	2,283	16.9	0.6
Capital costs ($ m)	7.1	7.1	4.9	NA	NA
Plant Operating costs ($ m)	20	20	26.9	NA	NA
Transportation costs ($ m)	10.7	7.5	5.3	NA	NA
Documentation costs ($ m)	0.3	0.3	0.2	0	0
Reformulation, reregistration and relabeling costs ($ m)	2.1	1.3	0	NA	NA
Feed substitution costs ($ m)	9.7	8	3.6	NA	NA
Disposal costs ($ m)	NA	NA	NA	5.1	0.2

TABLE 1.—ESTIMATED ANNUAL AFFECTED PROTEIN AND ANNUAL COSTS OF ALTERNATIVE REGULATORY PROHIBITIONS [1]—Continued

Annualized impacts	Mammalian-to-ruminant	Mammalian-to-ruminant, with exceptions [2] (final rule)	Partial ruminant-to-ruminant	Sheep/mink-to-ruminant	Sheep/goat-to-ruminant
Subtotal ($ m)	49.9	44.3	41.1	5.1	0.2
Meat and bone meal revenue losses [3] ($ m)	206.9	171	77.6	4.2	0.2
Nonruminant sector gains ($ m)	(196.6)	(162.5)	(73.7)	NA	NA
Aggregate net costs ($ m)	60.2	52.9	44.9	9.3	0.4

[1] Totals may not match text due to rounding error.
[2] Also reflects costs of proposed ruminant-to-ruminant rule.
[3] Assumes $68 per ton decrease in price of affected meat and bone meal.

1. Summary of Impacts of Final Rule

The final regulation prohibits the use of mammalian protein (excluding pure porcine or equine protein and certain other materials) in ruminant feeds. FDA estimates that the direct compliance costs of the rule, including annualized capital and operating costs, will be about $44.3 m per year. In addition, FDA has accepted an industry forecast that the regulatory prohibition will lower the price of the affected meat-and-bone-meal (MBM) by as much as $68 per ton, reducing the initial value of this product to the rendering industry by $171.0 m annually. In contrast, nonruminant animal producers may gain up to $162.5 m in lower feed costs. Thus, FDA estimates that the aggregated net annualized costs of this rule, accounting for both losses and gains, will total $52.9 m. Renderers will pass much of the economic burden of the new regulations upstream to meat packing operations, which will incur increases in renderer charges (or declines in renderer payments) of up to 1 percent of revenues. In turn, meat packers will raise slaughtering fees and lower the price paid for slaughter cattle. In the long run, these actions will result in a modest reduction in the size of the affected animal herds.

2. Market Impacts

a. *Introduction to regulatory alternatives.*

The regulatory action selected by FDA is one of seven regulatory alternatives examined by the agency, of which six would prohibit some type of animal protein in ruminant feed, generating compliance costs and revenue impacts on industry. The seven alternatives are, in order of their regulatory stringency: (1) A prohibition on mammalian-derived protein in ruminant feed; (2) the final rule, a prohibition of mammalian proteins in ruminant feed, excluding protein exclusively from porcine and equine sources, and selected other materials; (3) the proposed rule, a prohibition on ruminant protein in ruminant feed; (4) a prohibition on selected ruminant tissues, i.e., those believed most likely to be infectious, in ruminant feed; (5) a prohibition on protein from those species in which TSE has been identified, including sheep, goat, deer, and mink in ruminant feed; (6) a prohibition on sheep and goat protein in ruminant feed; and (7) a no action alternative, or an agency position of watchful waiting. The estimated costs for five of the alternatives are displayed in Table 1 of this section. (Estimates for the third and seventh alternative as described above, are not displayed, because the estimated costs for the third alternative (the proposed rule) are almost identical to those of the second alternative (the final rule), and the seventh alternative generates no regulatory costs.)

b. *Quantities of offal and meat and bone meal affected.*

The regulatory alternatives are differentiated by the types of animal protein prohibited in ruminant feed. The final rule will affect the sale of protein generated from the annual slaughter or processing of about 50 m animals. An estimated 5 billion lb of protein (see Table 1 of this section) is rendered from the animals and other protein sources covered by the final rule. This rule is less inclusive than Alternative 1, which would prohibit all mammalian protein in ruminant feed and therefore restricts the sale of pure porcine or pure equine protein as well. The final rule is similar in coverage to the ruminant-to-ruminant alternative, which FDA had first proposed and most industry comments addressed. The least restrictive regulatory alternative would target only sales of sheep and goat offal, affecting minor quantities of animal offal and protein. Alternative 7, under which the agency takes no action but continues to monitor the health of U.S. herds, does not affect the processing of animals.

c. *Affect on meat and bone meal prices.*

There was little disagreement within the public comments that the first four regulatory alternatives, by prohibiting the sale of certain types of meat and bone meal for use in ruminant feed, would cause declines in the long-run equilibrium price of this product. The other three alternatives were believed to have negligible effects on the market for meat and bone meal.

In its economic assessment of the proposed rule, FDA accepted the estimate of its contractor (ERG) that the more restrictive alternatives would cause a price decline for meat and bone meal of $25 to $100 per ton. The size of the estimated range reflected considerable uncertainty over the reaction of the affected markets to the new restrictions. Nevertheless, even under the high market impact scenario, ERG forecast that the market for meat and bone meal would reach an equilibrium (i.e., quantity demanded would equal quantity supplied) at a positive market price.

A number of comments on the proposed rule addressed the estimated decline in the price of ruminant-containing meat and bone meal. The National Renderers Association commissioned a comprehensive study by Sparks Companies, Inc. (SCI) to assess the regulatory impact on the meat and bone meal markets. SCI developed an independent estimate of the size and breadth of the agricultural markets affected by the proposed regulation and estimated that 15 percent of meat and bone meal is consumed by ruminant animals, compared to the 10 percent presented in the ERG study. SCI considered questions relating to the disposition and price of ruminant-containing meat and bone meal under the proposed rule by analyzing the historical statistical relationship between meat and bone meal and soybean meal and by conducting telephone interviews with 30 executives

of affected industries. For its most likely scenario, SCI concluded that ''all raw materials would continue to be rendered, and all ruminant-containing meat and bone meal would be consumed by nonruminant operations, though a price discount would be necessary to induce these operations to purchase the additional quantities that otherwise would have been used in ruminant feed.'' For this scenario, SCI estimated that meat and bone meal prices would decline by $68.27 per ton, or almost the midpoint of the $25 to $100 per ton range previously estimated by ERG ($62.50 per ton).

(Comment 115). A comment by a federation of American farm bureaus predicted that the proposed ruminant-to-ruminant prohibition would cause a fairly small price effect, but many other comments suggested that the price of meat and bone meal would fall sharply due to the perceived stigma that would be placed on the product. Most of these comments, however, expressed strong opposition to the proposed rule's labeling requirement, asserting that the proposed labels would generate unwarranted public concern over the safety of meat and bone meal in pet foods and, in turn, would significantly reduce the demand for meat and bone meal by pet food manufacturers.

FDA believes that it has alleviated this concern by exempting retail pet food packaging from the labeling requirements of the final rule.

(Comment 116). One major feed industry association had initially argued that meat and bone meal prices would fall to zero, triggering large-scale disposal of the material and other economic impacts. These comments, however, contained no market analysis for their forecast of meat and bone meal prices. This association later acknowledged that its forecasted price decline was an assumption.

(Comment 117). One comment disagreed with FDA's position that a lower meat and bone meal price would increase sales of meat and bone meal to the nonruminant sector (62 FR 552 at 576). The comment claimed that the poultry and swine industries cannot absorb 450,000 tons of meat and bone meal (which would otherwise have been used for ruminant feed) and that substituting meat and bone meal for other meal (such as soybean meal) would adversely affect animal production.

FDA disagrees with the comment because it failed to provide information to demonstrate that the poultry and swine industries were at their maximum use level for meat and bone meal. Moreover, the comment did not consider the ability of the pet food industry to include more meat and bone meal in its products. Given the expected price reductions, the agency believes that these industries will find it cost-effective to absorb the additional meat and bone meal.

The comment also misconstrues FDA's position. The agency does not expect meat and bone meal to serve as a total substitute for soybean meal. Instead, FDA finds that the nonruminant sector will be able to include more meat and bone meal in its formulations without the negative effects predicted by the comment. For example, just a 1.5 percent increase of meat and bone meal in the diets of all swine in the United States would absorb the entire excess.

In the addendum to its final report, ERG explained that because meat and bone meal can be readily substituted for other protein sources in many uses, the resulting price decline for meat and bone meal could be towards the lower end of its previously estimated $25 to $100 per ton range. ERG acknowledged, however, that the price decrease could be greater if large buyers of meat and bone meal for poultry feed or pet food react adversely to public uncertainty or concerns about BSE dangers. ERG also noted that such reactions could occur irrespective of this rule in response to fears triggered by the presence of BSE in Europe, or to new research findings of greater health risk. Since the industry has not presented any data suggesting price declines outside of the projected range of $25 to $100 per ton, ERG revised its analysis to maintain the range, but used the approximate midpoint of $68 per ton, as suggested by the SCI study, to project the probable industry impacts.

FDA has similarly adopted SCI's forecast of a $68 per ton decline in the price of affected meat and bone meal as a basis for calculating reasonable estimates of regulatory impacts. This estimate was derived directly from discussions with industry representatives, is fully consistent with the earlier analysis prepared by ERG, and no other industry comment offered more persuasive, alternative data.

3. Costs of Compliance

a. *Direct costs.*

i. *Documentation and relabeling costs*

The final rule requires renderers, feed manufacturers, and other affected parties to perform specific recordkeeping and labeling activities to demonstrate compliance. For its analysis of the proposed rule, FDA had estimated that added recordkeeping, including relabeling, would cost $1.5 m to $1.8 m per year. These estimates generated a number of comments.

(Comment 118). A representative of the AAFCO commented in public hearings that relabeling costs had been underestimated because necessary changes in the AAFCO definitions for certain collective terms would involve more animal feed mixes than simply those containing meat and bone meal. Specifically, the comment claimed that the proposed rule would have necessitated a change in the AAFCO collective term ''animal protein products'' which is used on bag labels and tags for products containing proteins other than ruminant protein.

Under the final rule, AAFCO will need to amend its definition of the collective term ''animal protein products'' to identify those feed ingredients that are prohibited from use in ruminant rations. FDA intends to work with AAFCO on this matter. Although manufacturers of ruminant feeds that use this collective term may need to reformulate their rations, there should be no change required in the ingredient list on the labels for any feed manufacturer that uses the ''animal protein products'' collective term.

(Comment 119). A number of industry associations expressed concern about the market impact of the proposed labeling requirement, particularly as it was potentially applicable to retail sales of pet food that contain ruminant meat and bone meal.

FDA agrees that the cautionary statement is not necessary on pet food intended for retail sale, and the final rule eliminates the requirement for pet food for retail sale.

(Comment 120). Other comments expressed general concerns or made suggestions about documentation and labeling requirements, but did not provide specific information on costs.

As shown in the addendum to its final report, ERG revised its earlier estimates by distinguishing between relabeling and documentation costs and changing its method of estimating relabeling costs from per facility to per label costs. As shown in its addendum, ERG also increased the projected number of feed mix reformulations that would be necessary under the final rule. Although ERG determined that it had previously undercounted the number of affected labels, the net result of these changes yielded an annualized incremental cost for relabeling, reregistration and reformulation of $1.3 m and an annualized feedmill documentation cost of $0.3 m. FDA has included these adjustments in its revised estimates of capital and operating costs.

ii. *Plant and equipment costs.*

FDA does not expect renderers to invest in separate processing lines for mammalian and nonmammalian tissues. ERG reported that large packer/renderers process only a single animal species and will have no incentive or use for separate processing lines. Independent renderers were assumed to be too dependent upon mammalian animals and dead stock to have sufficient economic rationale to invest in a separate processing line for nonmammalian protein. The SCI report confirmed this view by presenting a financial assessment of the investment that would be needed by independent renderers to construct separate processing lines for nonmammalian protein. This analysis concluded that renderers would lose money by operating separate lines.

ERG determined, however, that the rule is likely to prompt new capital expenditures by certain feedmills. Many feedmills, including some in areas with both cattle and hog production, now have storage bin capacity for only one type of meat and bone meal. If the price of affected meat and bone meal falls substantially, a number of feedmills will choose to add storage bin capacity in order to carry both types of meat and bone meal (i.e., containing protein from pure porcine and mixed mammalian sources), so that the price discount for meat and bone meal containing mammalian protein can be passed on to their hog-producing customers. No comments questioned ERG's initial estimate that 1,000 major commercial feedmill operations would install a second meat and bone meal storage tank to handle both restricted and unrestricted meat and bone meal.

(Comment 121). One comment from a major feed industry association suggested that the ERG capital cost estimate of $50,000 per feedmill for capacity expansion was too low.

ERG had noted that this expenditure would be sufficient to add a storage tank capable of receiving one and one-half truckloads of meat and bone meal. This size (representing approximately 30 to 40 tons) is economically efficient because it would allow a feedmill to receive a full truckload of new product before exhausting the previous shipment. Also, the National Grain and Feed Association (NGFA) estimated the cost of capacity expansion at feedmills at $25,000 to $30,000. As such, FDA has retained ERG's $50,000 estimate for feedmill expansion costs and estimates the annualized capital costs of the final rule (discounting over 10 years at 7 percent) to be $7.1 m.

iii. *Plant operating costs.*

ERG initially estimated the incremental operating costs of adding new clean up procedures at each feedmill that handles both ruminant and nonruminant protein to be $10,000 per year. FDA received no comments on the accuracy of this estimate, which ERG derived from data provided in the NGFA comments to the advance notice of proposed rulemaking. Thus, FDA has retained this figure as the best available measure of the incremental operating costs for these feedmills. Additionally, further analysis contained in ERG's addendum concludes that the $10,000 annual cost estimate should also be applied to the 1,000 major feedmills which already have the excess capacity to handle both types of meat and bone meal. This adds $10 m to the annual clean out cost estimate for feedmills for a total of $20 m.

iv. *Transportation costs.*

In its analysis of the proposed rule, ERG had found that renderers would incur incremental transportation costs to sell meat and bone meal to new customers, many of whom might be in more distant regions, and that feedmills and animal producers would purchase substitute feed inputs, which sometimes would come from more distant suppliers. Renderers were not assumed to incur incremental transportation costs for the collection of animal tissue because, as noted, they were not expected to separate animal offal and, therefore, would not change their sources of animal tissue.

ERG had allocated an average incremental transportation cost of $25 per ton for that portion of meat and bone meal (estimated at approximately 500 m lb in ERG's initial cost analysis) that would be displaced by the restrictions on ruminant feed. ERG had also allocated $5 per ton of meat and bone meal to address incremental transportation costs for feed substitutes. While these data were limited, these amounts were considered overall averages sufficient to represent this element of the regulatory impact.

(Comment 122). A few comments noted that transportation costs could be significant, but no comments provided specific estimates of expected increases in transportation costs. One comment criticized the ERG study for lacking analysis of specific regional transportation difficulties.

FDA recognizes that ERG did not present a regional transportation analysis and that renderers in regions most distant from prospective new markets might incur relatively high transportation costs. Nevertheless, no industry comment provided quantitative data on this point or sufficient analysis to indicate that transportation costs would be higher than that predicted. Therefore, FDA has accepted ERG's methodology. Table 1 indicates that these compliance costs are estimated at $7.5 m per year.

v. *Disposal costs.*

(Comment 123). A number of comments stated that renderers or meatpackers would incur additional disposal costs if economic conditions deteriorate to the point where animal offal or dead stock is no longer rendered.

As discussed above, FDA believes that these costs will be small, because essentially all animal offal will continue to be rendered. The agency agrees, however, that some incremental on-farm disposal of dead stock may occur in response to increases in renderer pickup charges. As explained below in the discussion of market adjustments, these activities would not raise the agency's overall cost estimates.

b. *Indirect costs.*

i. *Initial revenue losses.*

Table 1 summarizes the initial decline in meat and bone meal revenues under the various regulatory alternatives. These estimates were derived by multiplying the quantity of meat and bone meal affected by the forecasted $68 per ton meat and bone meal price decline. As shown, the final rule is expected to generate an initial revenue decline for renderers of $171 m per year. The industry-sponsored SCI study used essentially the same methodology and estimated the most likely loss to renderers from the ruminant-to-ruminant prohibition at $160 m. Both ERG and SCI predicted that most of these losses will be passed back to suppliers of the raw materials.

ii. *Feed costs in ruminant sectors.*

The restriction on the use of mammalian protein (with exceptions) in ruminant feed will require existing purchasers of this material to substitute new feed ingredients. FDA's estimate of the cost of this substitution effect was derived from an American Feed Industry Association (AFIA)-sponsored analysis of feed price impacts. In this analysis, Dr. Thomas Lenard calculated the costs of substituting soybean and replacement minerals for ruminant meat and bone meal and estimated a unit price increase of $0.01588 per pound of ruminant-containing meat and bone meal replaced. Because Dr. Lenard assumed that no meat and bone meal would be sold once the rule was in place, his analysis applied this incremental feed substitution cost to all current meat and bone meal consumption. Both the ERG and the SCI analyses, however, concluded that it is

much more likely that meat and bone meal will continue to be sold for nonruminant feed. Thus, FDA has rejected the assumption that additional feed substitution costs will be incurred to replace all meat and bone meal and has extrapolated the unit cost over only the 10 to 15 percent share of mammalian meat and bone meal now consumed by cattle to calculate an expected cost increase of $8.0 m per year.

(Comment 124). Some comments expressed additional concern about the cost of feed. Some mentioned higher prices for new dairy cattle feeds than are derived using Dr. Lenard's unit cost estimates.

These comments, however, did not provide sufficient data for FDA to evaluate their assumptions and calculation methodologies. ERG attempted to confirm the validity of one very high estimate of feed substitution costs, but that comment could not verify the factors used in the estimate. Thus, FDA has retained the AFIA unit cost increment to support its $8.0 m estimate for feed substitution costs.

iii. *Feed costs in nonruminant sectors.*

The forecasted decline in the price of restricted meat and bone meal will reduce feed costs for those sectors, such as poultry and hog producers and pet food manufacturers, that will continue to use the product. As shown in Table 1, FDA forecasts that these feed cost savings will be $162.5 m per year under the final rule. The estimated savings to these purchasers are slightly less than the estimated revenue decline for producers of ruminant meat and bone meal, because the meat and bone meal will be somewhat less efficient in these uses.

(Comment 125). Only a few comments noted that the nonruminant sectors would gain from the decrease in ruminant-derived meat and bone meal prices, and no quantitative estimates of such savings were provided to the agency. A number of comments, however, suggested that these cost savings not be used to offset costs to other sectors.

As discussed below, FDA believes that the societal perspective appropriate for agency analyses of federal regulations must consider significant impacts on all affected sectors. FDA is fully aware, however, that any gains to the nonruminant sectors will not reduce the regulatory burden imposed on the rendering, livestock feed, and cattle industries. These sectors will experience significant costs and revenue reductions.

iv. *Distribution of costs and revenue losses by sector.*

(1) *Initial impacts.*

(Comment 126). Many comments raised questions about the distribution of the economic impacts of the regulatory alternatives. A number noted that FDA summed the revenue impacts across sectors and asserted that FDA was concerned only with the aggregate size of the combined cost impacts and not with the separate impacts on each agricultural sector. Actually, FDA aggregated the cost impacts for the purpose of providing a concise and comprehensive accounting of the societal impacts, as is normally performed for regulatory analysis.

FDA estimates that the final rule will impose total annualized direct compliance costs of $6.3 m on rendering facilities, $30.0 m on feedmills, and $8.0 m on ruminant producers. Renderers will also incur an initial revenue decline of $171.0 m per year which will be largely passed on to other agricultural sectors. As noted, producers of nonruminant animals and other purchasers of meat and bone meal containing mammalian protein will benefit from a decline in feed prices of $162.5 m per year.

(Comment 127). Many comments expressed concern that FDA had not adequately considered the economic impact on their particular industry.

FDA notes that the preamble to the proposed rule included only a summary of the ERG final report. That ERG report, as well as the more recent addendum, addresses the economic impacts on all of the affected sectors.

(2) *Market adjustments.*

(Comment 128). Several comments noted that renderers will endeavor to pass the majority of the revenue losses to others in the agricultural market.

FDA finds that the affected markets will adjust to this rule in numerous ways. The primary adjustments are: (1) Renderer payments for raw materials will decrease, and charges for rendering services, such as dead stock pickup, will increase; (2) meat packing plants will reduce prices paid for cattle, and small meat packing plants, often referred to as locker plants, will increase charges for custom slaughtering services; (3) ruminant animal producers will pay increased feed prices as they substitute other protein sources for meat and bone meal; and (4) ruminant and other affected livestock producers will decrease their demand for grazing lands in the long run, in response to the decline in the value of cattle and other affected livestock.

Renderers will experience the greatest initial lost revenues, but these losses will largely be passed on back to the meat packers and animal producers that supply the raw materials. SCI explained that most renderers have contracts with raw material suppliers that link prices paid for animal tissue to publicly available information on the price of meat and bone meal. Its analysis reported that:

> Although the rendering industry will be on the front lines of any cost shock emanating from the FDA regulation, the economic impact eventually would be distributed among the individuals and companies that form the marketing chain for cattle (ruminants) and derived products—affecting cattle producers, beef packers, meat fabricator/processors, and renderers unevenly. The costs will not disappear as they make their way down the marketing chain; rather, they will be shared.

FDA agrees with this assessment, but finds that the rendering industry will continue to incur negative impacts due to the gradual decline in raw material throughput and the other costs and incremental marketing expenses associated with the rule.

(Comment 129). Some comments claimed that renderer pickups of animal offal would cease, arguing that the regulatory impacts would make meat and bone meal unmarketable. Others predicted that the regulatory impacts would create substantial disposal costs. A number of comments noted that local landfills will not accept animal offal or dead stock.

As noted above, both ERG and the industry-sponsored study by SCI predicted that ruminant-derived meat and bone meal will most likely continue to be marketed, albeit at lower prices. Thus, FDA expects that renderers will continue to pick up animal offal from nearly all of their raw material suppliers, negating the need for substantial new disposal costs for animal offal.

Nevertheless, as discussed in the previous section on environmental impacts, a move by renderers to raise pickup fees may reduce the number of dead animals supplied to renderers. ERG found that this effect is likely to be strongest among those small-scale animal producers that could respond to increased renderer charges by simply dragging animals off to remote areas and leaving them. In comparison, the larger operations were thought less likely to change management practices in response to a decline in renderer payments (or an increase in pickup charges) for dead animals, because of limitations on available land or other complications involved with changing methods for managing dead stock disposal.

ERG found that the costs reflected in Table 1 of this section imply a drop in

the market value of protein in animal carcasses of about $2 per calf or pig, and up to $7 per head for a 900-lb cow. Thus, although some renderers may raise their pickup fees by amounts that cause the loss of some dead stock, such fee hikes would be unprofitable, and therefore unlikely, if the resulting loss to the renderer exceeded $2 per calf or pig, or $7 per cow. As a result, the costs included in Table 1 reflect an upper bound estimate of the regulatory costs and any subsequent market adjustments will serve only to redistribute or potentially reduce these costs.

Other sectors will also adjust to these impacts by raising fees or reducing payments. ERG calculated that a $68 decline in the price per ton of meat and bone meal implies a 3.4 cents per lb decline in the value of protein from current values of around 15 cents per pound. Most meat packing plants are likely to pass this loss on to customers through an increase in the charge for slaughtering, although some small locker plants may have difficulty. Manufacturers of ruminant feeds will shift increased costs to ruminant producers, who could face feed price increases of 1.6 cents per pound of meat and bone meal replaced. Other sectors, however, will gain by these market adjustments. For example, nonruminant producers will experience lower feed prices and hog producers are likely to see a small increase in slaughter values as increases in porcine meat and bone meal prices increase the value of hog offal.

In the long run, each adversely affected sector will experience some cost impacts that cannot be passed on. Renderers will experience lower raw material throughput to the extent that fewer animals are slaughtered and more dead stock remain unrendered. Meat packers will see a reduced supply of slaughter animals due to the lower prices paid for cattle and the increased charges for custom slaughtering services. Livestock producers will make modest reductions in the size of their herds because of the reduced animal prices. If the predominant part of the decline in the value of meat and bone meal is passed back to cattle producers, the value of cattle would fall by roughly $3 per head (about one-half of one percent). One official of a major cattleman's association acknowledged that the high range cost estimate could result in a cost to cattle producers of $6 a head, but recognized the need for regulation and explained that, ''[w]e made a commitment to incur this cost.''

v. *Additional small business impacts.*

(1) *Statement of purpose and objectives of the final rule.*

The Regulatory Flexibility Act requires that agencies present a succinct statement of the purpose and objectives of any rule that will have a significant effect on a substantial number of small entities. As explained earlier in this document, FDA is instituting this rule to reduce the risk of BSE becoming established and amplified in the United States through feed. Existing epidemiological evidence suggests a link between the incidence and proliferation of BSE in the United Kingdom and the practice of feeding mammalian proteins to cattle. This rule prohibits that practice. Thus, the need for regulatory action is based on the need to prevent the spread of BSE among the nation's livestock.

(2) *Description of the affected small entities.*

Most businesses in the affected agricultural industries are small, as defined by the standards used by the Small Business Administration (SBA). SBA provided information to FDA on the employment size of businesses in several of the affected sectors. SBA noted that 86.9 percent of the businesses in the Animal and Marine Fats and Oils Industry (which encompasses animal rendering) employ fewer than 500 employees. In the meat packing industry and sausage and other prepared meats industries, 96.1 percent and 93.3 percent of businesses, respectively, employ fewer than 500 workers. Similarly, the great majority of cattle producers are also small, family-owned businesses. According to statistics collected by the National Beef Cattlemen's Association, 98 percent of cattle producers are small- to mid-sized family businesses with less than 500 head. In 1993, the average size of beef cow herds was 38.3 head (NCA, 1996). Among the feedmills classified in Standard Industrial Classification (SIC) 2048 (Prepared Feeds and Feed Ingredients for Animals and Fowls, Except Dogs and Cats) and SIC 5191 (Farm Supplies), the large majority employ fewer than 500 employees, and thus are small businesses. SBA data show that 95 percent of feedmill firms in SIC 2048 and 99 percent of firms in SIC 5191 employ fewer than 500 employees. The small businesses in SIC 2048 operate 70 percent of all feedmill establishments. A total of 61 large companies operate the remaining 30 percent of feedmills classified in SIC 2048 (Bureau of the Census, 1996). The ERG final report projects the number of establishments in all of these sectors with less than or greater than 500 employees.

c. *Description of economic impacts.*

i. *Small renderers.*

The ERG final report provided detailed information on the expected economic impacts of the proposed rule on small renderers. The addendum presents ERG's revised estimates of the impacts of the final rule on small independent renderers. On average, each of these establishments is estimated to incur initial revenue declines of approximately $371,000 per year. (Meat-and-bone-meal price reductions greater or smaller than the estimated $68 per ton would yield proportional changes in these estimates.)

As noted in the SCI report, most of the revenue impacts will quickly be passed on to material suppliers. The smallest independent renderers, however, are likely to experience the most severe impacts. According to ERG, the number of rendering establishments has been decreasing for a number of years, and many small operations have already closed. Moreover, since the smallest renderers tend to be those most dependent on the availability of dead stock supplies for raw materials, these operations will be least able to shift losses to raw material suppliers. (Larger renderers obtain raw material supplies predominantly from medium to large meat packing plants and are less dependent on dead stock supplies, which could fall in response to increased pick up fees.)

ERG estimated in its final report that 20 to 25 rendering establishments are in this vulnerable group of small businesses. While many renderers submitted comments on the proposed regulation, no rendering companies submitted comments predicting plant closures. The SCI study did not address plant closures other than in the case, which it described as unlikely, that all meat and bone meal is unmarketable. No other comments provided additional information on the number of possible plant closures. Nevertheless, as suggested in the ERG report, FDA agrees that some business closures are possible among these companies, but the data are not sufficient to determine how many closures may occur.

ii. *Small meat packing operations.*

Many small meat packing facilities will be required by their renderers, generally through contractual arrangements, to pay higher prices for renderer pickups of animal offal. Large and medium meat packing operations (many of which are small businesses according to the SBA definitions) will continue to receive payments from renderers for raw materials, although the size of the payments will decline with the fall in restricted meat and bone meal prices. These plants will endeavor

to pass through costs by paying less for slaughter cattle. To the extent that competitive market conditions exist, all meat packers will experience similar declines in renderer payments, and new equilibrium prices will reflect a pass-through of these charges to producers of cattle and other affected livestock.

The smallest plants in the industry, often referred to as locker plants, provide custom slaughtering services, thereby differentiating themselves from the large packer/renderers. Small meat packing or locker plants have been in decline for a number of years for several reasons, including the decline in small farm operations and in the consumption of red meat and custom meat products. ERG reported that the smallest meat packing plants, i.e., those with 2 to 5 employees, are at a cost disadvantage relative to even slightly larger plants, such as those with 12 or more employees.

To assess whether impacts on these small plants are significant, ERG developed revenue estimates for locker plants with slaughtering rates representative of the smallest plants in the industry. The smallest locker plants have substantially less raw material for rendering, and the renderers' charges (which are heavily influenced by the fixed costs of operating the collection truck) currently represent a relatively large share of plant operating costs. Also, because animal offal cannot be stored for long periods, small operations require nearly as many renderer pickups as much larger facilities. ERG determined that the increase in renderer charges will represent approximately one percent of revenues for these plants and that these increased charges might be sufficient to depress profits by significant amounts.

According to ERG, some industry representatives predicted that increased renderer pickup charges would precipitate failures among the smallest meat packers. Other small meat packers anticipated that they would be able to pass on some charges to customers and expected to remain in business. ERG concluded that some of the smallest meat packers, particularly those with five or fewer employees, are vulnerable to increased renderer charges and, in the context of a poor economic environment, some might cease operations. No reliable quantitative estimate could be made, however, of the number or percentage of facilities likely to close.

iii. *Small cattle producers.*

The reduction in slaughter prices and the increase in cattle feed prices are not expected to differentially impact small ruminant producers, as the impact of this decline on cattle producers will be directly proportional to the size of the producer's herd. Nevertheless, all cattle producers will experience lost revenues of roughly $3 per head, or about one-half of one percent of the animal's market value.

iv. *Small feedmills.*

Feedmills will incur costs to document their handling of mammalian protein and to perform clean out procedures to ensure separation of mammalian and pure porcine or pure equine meat and bone meal. Also, feedmills that currently serve both ruminant and nonruminant producers, but lack the capacity to handle two types of feeds, will be encouraged to add storage capacity if the price of the two types of meat and bone meal diverge significantly. The ERG study indicates that these capital and operating costs may be substantial, but finds that the larger feedmills would be much more likely to make this investment.

d. *Description of the recordkeeping burden of the rule.*

The Regulatory Flexibility Act directs agencies to describe the recordkeeping requirements of its rules. This regulation will require certain feed manufacturers to develop new written operating procedures. No unusual skills or expertise will be required to establish such systems. In addition, many firms will have to retain invoices or other materials sufficient to track the materials, but FDA believes that the retention of such records is already a widely accepted business practice. The addendum to the ERG report summarizes the paperwork and the other documentation costs for the final regulation and for each alternative considered.

e. *Analysis of regulatory alternatives.*

The Regulatory Flexibility Act requires an evaluation of any regulatory overlaps and regulatory alternatives that would minimize the costs to small entities. FDA is unaware of any significant regulatory conflicts with other Federal rules. FDA examined six regulatory alternatives in addition to the no action alternative: (1) The mammalian-to-ruminant prohibition; (2) the mammalian (with exceptions)-to-ruminant prohibition; (3) the ruminant-to-ruminant prohibition; (4) the partial ruminant-to-ruminant prohibition; (5) the prohibition of all sheep, goat, mink, deer, and elk proteins in ruminant feed; and (6) the prohibition of sheep and goat proteins in ruminant feed. As described above, FDA and its contractor, ERG, have prepared a detailed comparison of the respective impacts of these alternatives and have found that the estimated net costs of the final regulation are lower under the mammalian-to-ruminant prohibition, with exceptions, than it would have been under the full mammalian-to-ruminant prohibition (no exceptions), and are comparable to the costs of the proposed ruminant-to-ruminant prohibition. Although the partial ruminant-to-ruminant prohibition is probably less costly, and the other two alternatives would be considerably less costly, these alternatives would not be as effective in reducing the risk of an outbreak and spread of BSE. Thus, FDA believes that the rule selected is the most cost-effective regulatory alternative that meets the objective of the agency.

In response to the many comments from small businesses requesting agency consideration of their views, FDA has revised the rule in several ways to decrease the burden on small entities. For example, FDA has exempted all pet food at the retail level from the requirement to display the cautionary statement on labeling. This exemption will substantially mitigate the lost value of mammalian meat and bone meal, lessening the market adjustments for all entities. Also, the agency has exempted plate wastes and used cellulosic food casings from coverage of the rule. Moreover, the scope of the recordkeeping burden has decreased, so that those producers using only nonmammalian protein products will be exempt from recordkeeping requirements for these products. Finally, FDA has accepted industry comments urging the acceptance of GMP definitions of acceptable clean out procedures for feedmills. This interpretation will reduce the need for any additional training of medicated feedmill employees. Most feedmills manufacture medicated feeds and the employees in those mills are already familiar with good manufacturing practices.

f. *Miscellaneous comments on the analysis of impacts discussion in the proposed rule.*

(Comment 130). Several comments, including several oral comments at the public meetings, claimed that FDA erred in not declaring the proposed rule to be a ''major rule.''

The comments appear to have misinterpreted the proposed rule and the terminology used in the proposed rule. The preamble to the proposed rule clearly stated that the rule ''constitutes an economically significant rule as described in (Executive Order 12866)'' (62 FR 552 at 573). The Executive Order 12866 process uses the term ''economically significant'' to denote those rules which may have an annual

effect on the economy of $100 m or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (see Executive Order 12866, Section 3(f)(1)). This definition is similar to the definition of ''major rule'' in Executive Order 12291 (which declared a rule to be a major rule if it was likely to have an annual effect on the economy of $100 m or more, a major increase in costs or prices for consumers, industries, governments, or geographic regions, or significant adverse effects on competition, jobs, investment, productivity, innovation, or competition with foreign-based enterprises). However, Executive Order 12866 revoked Executive Order 12291. Thus, when FDA said that the rule was an economically significant rule within Executive Order 12866, it was using current terminology.

(Comment 131). Some comments contended that prohibiting the use of protein derived from certain tissues in ruminant feed would impose an unfunded mandate on the States.

FDA disagrees with the comments. For purposes of determining whether an unfunded mandate will be imposed on the states, 2 U.S.C. 658 defines ''Federal intergovernmental mandate,'' in relevant part, as ''any provision in legislation, statute, or regulation that * * * would impose an enforceable duty upon State, local, or tribal governments.'' Therefore, the statute applies to regulations which impose a nondiscretionary function on a State, local, or tribal government and compliance with the regulation could be enforced against the State, local, or tribal government. Neither the proposed rule nor the final rule imposes any nondiscretionary functions on any State. Furthermore, no provisions of the proposed or final rule are enforceable against any State. As such, neither the proposed nor the final rule imposes any unfunded mandate on the States.

The agency noted in response to an earlier comment that states with employees commissioned by FDA under section 702(a) of the act could be used for enforcement of the final rule. The costs of these commissioned employees, however, are borne by FDA, not the states. In addition, states have worked with FDA for many years under voluntary cooperative agreements in regulating animal feeds. FDA expects that such voluntary cooperation from the states will continue.

VI. The Paperwork Reduction Act of 1995

This final rule contains information collection provisions that were submitted to OMB for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) at the time the proposed rule was published (62 FR 552). The title, description, and the respondent description of the information collection provisions are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Animal Proteins Prohibited in Ruminant Feed—21 CFR 589.2000.

Description: This final rule (§ 589.2000) provides that protein derived from mammalian tissues (with some exceptions) for use in ruminant feed is a food additive subject to section 409 of the act (21 U.S.C. 348). Proteins derived from animal tissues contained in such feed ingredients in distribution cannot be readily identified (i.e., species) by recipients engaged in the manufacture, processing and distribution, and use of animal feeds and feed ingredients.

Thus, under the agency's authority in section 701(a) of the act (21 U.S.C. 371(a)) to issue regulations for the efficient enforcement of the act, this final rule places three general requirements on persons that manufacture, blend, process, distribute, or use products that contain or may contain protein derived from mammalian tissues, and feeds made from such products. The first requirement is for cautionary labeling of these products with direct language developed by FDA. This labeling requirement is exempt from the scope of the Paperwork Reduction Act because it is a ''public disclosure of information originally supplied by the Federal government for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

The second requirement is for these establishments to maintain and make available to FDA records that are sufficient to track any material that contains protein derived from mammalian tissues (as defined in § 589.2000(a)(1)) throughout the material's receipt, processing, and distribution. Based on available information, FDA believes that maintenance of such records is a usual and customary part of normal business activities for such firms. Therefore, this recordkeeping requirement creates no paperwork burden.

The third requirement is that individuals or firms that manufacture, blend, process, or distribute both mammalian and nonmammalian materials must maintain written procedures to prevent commingling and cross-contamination. An estimate of the burden resulting from this recordkeeping requirement is provided below. The estimate is based on the time required to develop the written procedures, which FDA anticipates will be a one-time effort.

In the preamble to the proposed rule, FDA included estimates for capital cost and operating cost in the recordkeeping burden chart. These estimates have been deleted from the chart below because the capital and operating costs, although properly included in the analysis of impacts discussion in this document, are not a result of the recordkeeping provisions of the rule and therefore are not part of the recordkeeping burden.

Description of respondents: Individuals or firms that manufacture, blend, process, distribute, or use feed or feed ingredients that contain or may contain protein derived from mammalian tissues.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section	No. of record keepers/ firms	Frequency	Total annual records	Hours per record	Total hours
589.2000(e)(1)(iv)	2,000	1	2,000	14	28,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The January 1997 proposed rule provided a 45-day comment period and specifically requested comments regarding collection of information. OMB did not approve the package submitted with the proposed rule and filed the following comments as terms of clearance:

OMB is concerned that the reporting and recordkeeping requirements in the NPRM may be overly burdensome and not maximize utility, and wishes to allow the public the opportunity to consider the NPRM. When the paperwork package is resubmitted for OMB approval at the final rule stage, FDA will directly address OMB's concerns and all comments received on these issues in the preamble of the rule and in the paperwork submission package.

During the 45-day comment period provided by the proposed rule, FDA received no comments regarding the requirement that individuals or firms that manufacture, blend, process, or distribute both mammalian and nonmammalian materials must maintain written procedures to prevent commingling and cross-contamination. Thus, FDA received no comments that suggested that the recordkeeping requirements were overly burdensome or did not maximize utility.

The agency also announced the availability of a draft rule in the **Federal Register** of April 17, 1997 (62 FR 18728). This document contained the codified section of the draft final rule and provided an additional comment period of 10 days. None of the comments received concerned collection of information.

FDA is announcing that the proposed collection of information has been submitted to OMB for review and clearance under the Paperwork Reduction Act of 1995. Section 589.2000(e)(1)(iv) will be effective upon approval by OMB. FDA now invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology. FDA will announce the effective date in the **Federal Register**. Submit written comments on the collection of information by July 7, 1997.

Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA. For further information contact: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1472. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

VII. Federalism

FDA has analyzed the final rule in accordance with the principles set forth in Executive Order 12612 and has determined that this final rule does not warrant the preparation of a Federalism Assessment.

VIII. Congressional Review

This final rule has been determined to be a major rule for purposed of 5 U.S.C. 801 *et seq.*, Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121). FDA is submitting the information and reports as required by that statute.

IX. References

The following references have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Dawson, M., et. al., ''Parenteral Transmission of BSE to the Pig,'' *Veterinary Record*, 127: 338 (1990).
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3. Kimberlin, R. H., et. al., ''An Overview of Bovine Spongiform Encephalopathy,'' at the Symposium on Virological Aspects of the Safety of Biological Products, London, England, in *Developments in Biological Standardization*, 75: 75–82 (1990).
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8. Lasmezas, C. I., et. al., ''Transmission of the BSE Agent to Mice in the Absence of Detectable Abnormal Prion Protein,'' *Science*, 275: 402–405 (1997).
9. Moon, H., ''Bovine Spongiform Encephalopathy: Hypothetical Risk of Emergence as a Zoonotic Foodborne Epidemic,'' *Journal of Food Protection*, 59(10): 1106–1111 (1996).
10. Spraker, T. R., et. al., ''Spongiform Encephalopathy in Free-Ranging Mule Deer, White-Tailed Deer, and Rocky Mountain Elk in North Central Colorado,'' *Journal of Wildlife Diseases*, 33(1): 1–6 (1997).
11. European Commission, Decision, 27 June 1994, 94/381/EC, *Official Journal of the European Commission*, 172/23.
12. Davis, A., ''Bovine Spongiform Encephalopathy—United States Surveillance,'' *Dx Monitor*, Winter 1996—Spring 1997, 11 (1997).
13. Brown, P. and D. C. Gajdusek, ''Survival of Scrapie Virus After 3 Years'' Interment,'' *Lancet*, 337: 269–270 (1991).
14. Eastern Research Group, ''Cost Analysis of Regulatory Options to Reduce the Risk of an Outbreak of Transmissible Spongiform Encephalopathies (TSE's) in the United States,'' Addendum to the Final Report, April 29, 1997.

List of Subjects in 21 CFR Part 589

Animal feeds, Animal foods, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Lead Deputy Commissioner, 21 CFR part 589 is amended as follows:

PART 589—SUBSTANCES PROHIBITED FROM USE IN ANIMAL FOOD OR FEED

1. The authority citation in 21 CFR part 589 is revised to read as follows:

Authority: Secs. 201, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 343, 348, 371).

2. New § 589.2000 is added to subpart B to read as follows:

§ 589.2000 Animal proteins prohibited in ruminant feed.

(a) *Definitions.*—(1) *Protein derived from mammalian tissues* means any protein-containing portion of mammalian animals, excluding: Blood and blood products; gelatin; inspected meat products which have been cooked and offered for human food and further heat processed for feed (such as plate waste and used cellulosic food casings); milk products (milk and milk proteins); and any product whose only

mammalian protein consists entirely of porcine or equine protein.

(2) *Renderer* means any firm or individual that processes slaughter byproducts, animals unfit for human consumption, or meat scraps. The term includes persons who collect such materials and subject them to minimal processing, or distribute them to firms other than renderers (as defined here) whose intended use for the products may include animal feed. The term includes renderers that also blend animal protein products.

(3) *Blender* means any firm or individual which obtains processed animal protein from more than one source or from more than one species, and subsequently mixes (blends) or redistributes an animal protein product.

(4) *Feed manufacturer* includes manufacturers of complete and intermediate feeds intended for animals, and includes on-farm in addition to off-farm feed manufacturing and mixing operations.

(5) *Nonmammalian protein* includes proteins from nonmammalian animals.

(6) *Distributor* includes persons who distribute or transport feeds or feed ingredients intended for animals.

(7) *Ruminant* includes any member of the order of animals which has a stomach with four chambers (rumen, reticulum, omasum, and abomasum) through which feed passes in digestion. The order includes, but is not limited to, cattle, buffalo, sheep, goats, deer, elk, and antelopes.

(b) *Food additive status.* The Food and Drug Administration has determined that protein derived from mammalian tissues for use in ruminant feed is a food additive subject to section 409 of the Federal Food, Drug, and Cosmetic Act (the act). The use or intended use in ruminant feed of any material that contains protein derived from mammalian tissues causes the feed to be adulterated and in violation of the act, unless it is the subject of an effective notice of claimed investigational exemption for a food additive under § 570.17 of this chapter.

(c) *Requirements for renderers that are not included in paragraph (e) of this section.* (1) Renderers that manufacture products that contain or may contain protein derived from mammalian tissues and that are intended for use in animal feed shall take the following measures to ensure that materials identified in paragraph (b) of this section are not used in the feed of ruminants:

(i) Label the materials as follows: ''Do not feed to cattle or other ruminants''; and

(ii) Maintain records sufficient to track the materials throughout their receipt, processing, and distribution, and make the copies available for inspection and copying by the Food and Drug Administration.

(2) Renderers described in paragraph (c)(1) of this section will be exempted from the requirements of paragraphs (c)(1)(i) and (c)(1)(ii) of this section if they:

(i) Use exclusively a manufacturing method that has been validated by the Food and Drug Administration to deactivate the agent that causes transmissible spongiform encephalopathy (TSE) and whose design has been made available to the public;

(ii) Use routinely a test method that has been validated by the Food and Drug Administration to detect the presence of the agent that causes TSE's and whose design has been made available to the public. Renderers whose products test positive for agents that cause TSE's must comply with paragraphs (c)(1)(i) and (c)(1)(ii) of this section. Records of the test results shall be made available for inspection by the Food and Drug Administration; or

(iii) Use exclusively a method for controlling the manufacturing process that minimizes the risk of the TSE agent entering the product and whose design has been made available to the public and validated by the Food and Drug Administration.

(3) Renderers described in paragraph (c)(1) of this section will be exempted from the requirements of paragraph (c)(1)(ii) of this section if they use a permanent method, approved by FDA, to make a mark indicating that the product contains or may contain protein derived from mammalian tissue. If the marking is by the use of an agent that cannot be detected on visual inspection, the renderer must use an agent whose presence can be detected by a method that has been validated by the Food and Drug Administration and whose design has been made available to the public.

(d) *Requirements for protein blenders, feed manufacturers, and distributors that are not included in paragraph (e) of this section.* (1) Protein blenders, feed manufacturers, and distributors that manufacture, blend, process, and distribute products that contain or may contain protein derived from mammalian tissues shall comply with paragraph (c)(1) of this section.

(2) Protein blenders, feed manufacturers, and distributors, shall be exempt from paragraphs (d)(1) of this section if they:

(i) Purchase animal products from renderers that certified compliance with paragraph (c)(2) of this section or purchase such materials from parties that certify that the materials were purchased from renderers that certified compliance with paragraph (c)(2) of this section; or

(ii) Comply with the requirements of paragraph (c)(2) of this section where appropriate.

(3) Protein blenders, feed manufacturers, and distributors, shall be exempt from paragraph (c)(1)(ii) of this section if they:

(i) Purchase animal protein products that are marked in accordance with paragraph (c)(3) of this section or purchase such materials from renderers that certified compliance with paragraph (c)(3) of this section, or purchase such materials from parties that certify that the materials were purchased from renderers that certified compliance with paragraph (c)(3) of this section; or

(ii) Comply with the requirements of paragraph (c)(3) of this section where appropriate.

(4) Pet food products that are sold or are intended for sale at retail and feeds for nonruminant laboratory animals are exempt from the labeling requirements in paragraphs (c) and (d) of this section. However, if the pet food products or feeds for nonruminant laboratory animals are sold or are intended for sale as distressed or salvage items, then such products shall be labeled in accordance with paragraph (c) or (d) of this section, as appropriate.

(5) Copies of certifications as described in paragraphs (d)(2) and (d)(3) of this section, shall be made available for inspection and copying by the Food and Drug Administration.

(e) *Requirements for persons that intend to separate mammalian and nonmammalian materials.* (1) Renderers, protein blenders, feed manufacturers, distributors, and others that manufacture, process, blend and distribute both products that contain or may contain protein derived from mammalian tissues or feeds containing such products, and protein products from other animal tissues or feeds containing such products, and that intend to keep those products separate shall:

(i) Comply with paragraphs (c)(1) or (d)(1) of this section as appropriate except that the labeling requirement shall apply only to products that contain or may contain protein derived from mammalian tissues or feeds containing such products;

(ii) In the case of a renderer, obtain nonmammalian or pure porcine or pure equine materials only from single-species slaughter facilities;

(iii) Provide for measures to avoid commingling or cross-contamination;

(A) Maintain separate equipment or facilities for the manufacture, processing, or blending of such materials; or

(B) Use clean-out procedures or other means adequate to prevent carry-over of products that contain or may contain protein derived from mammalian tissues into animal protein or feeds that may be used for ruminants; and

(iv) Maintain written procedures specifying the clean-out procedures or other means, and specifying the procedures for separating products that contain or may contain protein derived from mammalian tissue from all other protein products from the time of receipt until the time of shipment.

(2) Renderers, blenders, feed manufacturers, and distributors will be exempted from applicable requirements of paragraph (e)(1) of this section, if they meet the criteria for exemption under paragraphs (c)(2) or (c)(3) of this section, and (d)(2) or (d)(3) of this section.

(f) *Requirements for establishments and individuals that are responsible for feeding ruminant animals.* Establishments and individuals that are responsible for feeding ruminant animals shall maintain copies of purchase invoices and labeling for all feeds containing animal protein products received, and make the copies available for inspection and copying by the Food and Drug Administration.

(g) *Adulteration and misbranding.* (1) Animal protein products, and feeds containing such products, that are not in compliance with paragraphs (c) through (f) of this section, excluding labeling requirements, will be deemed adulterated under section 402(a)(2)(C) or 402(a)(4) of the act.

(2) Animal protein products, and feeds containing such products, that are not in compliance with the labeling requirements of paragraphs (c) through (f) of this section will be deemed misbranded under section 403(a)(1) or 403(f) of the act.

(h) *Inspection; records retention.* (1) Records that are to be made available for inspection and copying, as required by this section, shall be kept for a minimum of 1 year.

(2) Written procedures required by this section shall be made available for inspection and copying by the Food and Drug Administration.

Dated: May 9, 1997.

Michael A. Friedman,

Lead Deputy Commissioner for the Food and Drug Administration.

Dated: May 9, 1997.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 97–14682 Filed 6–3–97; 8:45 am]

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