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Tuesday
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Briefing on How To Use the Federal Register
For information on a briefing in New Orleans, LA, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

NEW ORLEANS, LA

WHEN: July 23, at 9:00 am
WHERE: Federal Building, 501 Magazine St., Conference Room 1120, New Orleans, LA
RESERVATIONS: Federal Information Center 1–800–366–2998

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Presidential Documents

Title 3—

The President

Proclamation 6311 of June 28, 1991

National Forest System Month, 1991

By the President of the United States of America

A Proclamation

This year we Americans proudly celebrate the 100th anniversary of our National Forest System, an unparalleled national resource. A century ago, the designation of the Yellowstone Park Timber Land Reserve marked the beginning of a great movement to conserve a portion of America's vast forests for all our people. Today the National Forest System—191 million acres of magnificent National Forests and National Grasslands—stretches from Alaska to Puerto Rico and from Michigan to Texas.

This anniversary celebrates what many historians consider to have been the watershed event in American conservation history. With the first forest reserve, America made a fundamental change in its policies regarding the administration of public lands. As a Nation, we recognized that there are important public values, both environmental and economic, in holding public lands in trust and managing them for long-term public benefits. The National Forest System embodies this conservation ideal.

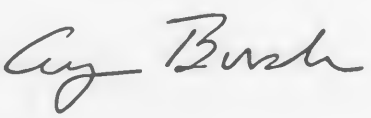
Our National Forest System provides an excellent example of efficient and responsible management of valuable natural resources. Indeed, the development of our National Forest System has introduced the world to new ideas for sound resource management—including multiple-use, sustained yield and the preservation of wilderness areas and scenic rivers.

All Americans can be proud of the management of our National Forest System because it demonstrates how precious natural resources can be conserved while being used to meet a variety of public needs.

The Congress, by Senate Joint Resolution 159, has designated the month of June 1991 as "National Forest System Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim June 1991 as National Forest System Month and encourage all Americans to join in celebrating the past 100 years of natural resource stewardship in the United States.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of June, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.



[FR Doc. 91-15868
Filed 6-28-91; 2:25 pm]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 220

School Breakfast Program—Program Outreach

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the School Breakfast Program regulations to require that State agencies: (1) Provide information to school boards and public officials concerning the enhanced benefits and availability of the Program and (2) direct special informational efforts annually toward selected nonparticipating schools with a substantial low-income enrollment. These enhanced informational efforts are mandated by the Child Nutrition and WIC Reauthorization Act of 1989.

EFFECTIVE DATE: These provisions are effective July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, or Mr. Charles Heise, Child Nutrition Division, USDA, 3101 Park Center Drive, room 1007, Alexandria, Virginia 22302, telephone (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been reviewed by the Assistant Secretary for Food and Consumer Services under Executive Order 12291 and has been classified as not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Administrator of the Food and Nutrition Service has certified that this rule will not have a significant economic impact on a substantial number of small entities.

The School Breakfast Program is listed in the Catalog of Federal Domestic Assistance under No. 10.553 and is subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials (See 7 CFR part 3015, subpart V and final rule related to notice at 49 FR 29114, June 24, 1983).

Paperwork Reduction Act

The final rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed.

Title: School Breakfast Program Outreach.

Description: The SBP Outreach final rule requires State agencies to implement enhanced informational efforts and to develop criteria appropriate to their school populations in order to target annually schools with significant low-income enrollment in need of the Program. The rule creates a new reporting and recordkeeping burden at the State agency level under 7 CFR part 220. The OMB control number assigned to the existing SBP data collection and recordkeeping requirements is OMB No. 0584–0012. These requirements have been approved by OMB for use through April 30, 1992.

Description of Respondents: 58 State agencies.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Reporting Burden				
7 CFR 220.13(l)(1):				
Existing	XXX	XXX	XXX	XXX
Required	58	1	12.267	711.5
7 CFR 220.13(l)(2):				
Existing	XXX	XXX	XXX	XXX
Required	58	1	13.888	805.5
Recordkeeping Burden				
7 CFR 220.13(l)(1) and (2):				
Existing	XXX	XXX	XXX	XXX
Required	58	2	.078	9

Total existing burden hours: 0
Total required burden hours: 1526
Total difference +1526

As required by section 3504(h) of the Paperwork Reduction Act of 1980, FNS will submit a copy of this final rule to OMB for its review of these information collection requirements. The new information collection requirements will not become effective until OMB has assigned a control number. Organizations and individuals who desire to comment on these requirements, including suggestions for reducing the burdens, should direct them to the Policy and Program Development Branch Child Nutrition Division (address above) and to the Office of Information and Regulatory Affairs, OMB, room 3208, New Executive Office Building, Washington, DC 20503. Attn: Laura Oliven, Desk Officer for FNS.

Background

Section 121 of the Child Nutrition and WIC Reauthorization Act of 1989, Public Law 101–147, enacted November 10, 1989, amended section 4(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(f)) to require the States to (1) provide information concerning the benefits and availability of the School Breakfast Program (SBP) to local school boards and other public officials; and (2) select each year, for additional informational efforts, nonparticipating schools in which a substantial portion of the enrollment consists of children from low-income families. Also pursuant to section 121 of Public Law 101–147, by October 1, 1993, the Secretary must inform Congress of the efforts to increase participation in the SBP. This legislative action was prompted by Congressional concern that significant numbers of low-income children may not have access to a school breakfast because of insufficient awareness at the local level of the enhanced benefits of the Program. In response to this Congressional mandate for Program outreach, the Department published a proposed rule on SBP outreach on May 7, 1990, in the **Federal Register** at 55 FR 18908–9. Pursuant to section 121 of Public Law 101–147, that rulemaking proposed to amend 7 CFR part 220.13, State Agency Responsibilities, to require that States notify school boards and public officials of the enhanced benefits of the Program and annually target for special outreach selected nonparticipating schools with a significant enrollment of students eligible for free and reduced-price meals.

The Department's school breakfast outreach proposal provided for a 60-day public comment period, which closed July 6, 1990. During the public comment period, 21 predominantly favorable public comments were received. The commenters represented: 10 State agencies (SAs); 2 large school food authorities (SFAs); 7 small SFAs; and 2 public interest groups.

The commenters were generally supportive of the Congressionally mandated requirement for outreach to school boards and public officials and of the Department's proposal to implement this mandate. A number of commenters agreed that lack of knowledge about Program benefits or availability and misconceptions about costs and logistics may keep some schools from operating the SBP, and some suggested that public outreach efforts be broadened to include additional interested parties, such as superintendents and principals, allied professional groups (e.g., the National Education Association, the Parent-Teacher Association, the Association of School Business Officials, public health officials, etc.) and other pertinent community organizations. One commenter also recommended that public employment offices, hospitals and other relevant community sites be provided with Program outreach materials to make available to households. The Department recognizes the merit of these suggestions in certain instances and encourages State agencies to be as creative as possible in publicizing the Program.

In the preamble to the proposed rule, the Department specifically solicited public comment on two issues: (1) Whether the Department should set national guidelines for targeting local schools in need of the Program and (2) what forms of State outreach and Program assistance to local schools have proved most helpful and effective. In response to the question of whether national guidelines are needed, all of the SA and SFA commenters (19) favored reserving this responsibility to the States, as intended by the proposed rule, because the individual State agencies are in the best position to know the particular needs within their local communities. These commenters observed that general criteria such as income statistics or percentages of free and reduced-price participation may be misleading in some local situations and their mandated use may not necessarily be the most effective means of targeting needy households in some instances. On the other hand, two commenters, (both representing public interest groups), recommended that the Department develop national standards. One recommended special outreach, at a minimum, to all nonparticipating schools eligible for "severe need" reimbursement (i.e., schools with a minimum of 40 percent of the enrollment eligible for free or reduced-price meals and Program costs in excess of reimbursement). The other recommended mandating outreach to families in any school in which 20 percent or more of the students are eligible for free or reduced-price meals.

The Department shares the concerns of commenters that schools in particularly needy areas be targeted for outreach. However, the Department agrees with the majority of commenters that arbitrary benchmarks such as 20 percent or 40 percent needy may not accurately reflect the need for the Program in certain areas. The Department believes, moreover, that requiring States to base their special outreach efforts on specific percentages could result in an inefficient use of State resources, as in cases where schools are extremely small. The Department also observes that many States are already making significant efforts to expand the SBP in especially needy areas. The State response to the availability of SBP startup grants, funded through section 121 of Public Law 101–147, demonstrates a widespread effort on the part of States to promote outreach and increased Program participation. For these reasons, the Department does not believe it necessary to establish minimum national outreach criteria and is adopting without change the proposed outreach requirement allowing States to target needy schools using their own criteria.

With respect to successful outreach initiatives, a number of commenters cited the value of having officials of participating schools share their expertise first-hand through visits to nearby nonparticipating schools. One commenter also suggested that States provide schools with lists of successful programs and contact persons. A number of small SFAs from one State expressed satisfaction with their State's assistance in setting up new Programs, but also reiterated the importance of technical assistance and the schools' sharing of information among each other on successful program management. Several commenters also cited the need for more Program materials and technical assistance; in particular, guidance on how to overcome such barriers to participation as scheduling, transportation, supervision or lack of facilities. Four commenters raised concerns over the cost to State and local authorities of the mandated increase in outreach efforts.

The Department understands that many factors can influence local decisions to offer the Program and urges State agencies to work with schools to

resolve these situations. The Department also recognizes the importance of technical assistance and guidance materials explaining the Program. The Department is pleased to note that a variety of new Program assistance materials have been recently developed by State agencies and public interest organizations, as well as by the Department. The Department's contributions include a video and a brochure outlining requirements for both the National School Lunch Program and the School Breakfast Program. The Department has also issued a manual describing Program meal patterns and the "offer versus serve" options of the SBP. Additionally, the Department is aware of State contributions in these areas. With respect to funding, the Department wishes to reiterate that the SBP startup grants, mentioned above, allow the use of grant funds for State and/or local Program outreach initiatives. The Department believes these combined efforts will result in greater public awareness of the benefits available through the SBP.

The Department is taking under advisement those suggestions concerning outreach initiatives offered by the commenters and wishes to thank all commenters for taking the time to share their concerns and recommendations with us.

List of Subjects in 7 CFR Part 220

Food assistance programs, School Breakfast Program, Grant programs—social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agriculture commodities.

Accordingly, 7 CFR part 220 is amended as follows:

PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation for part 220 continues to read as follows:

Authority: Secs. 4 and 10 of the Child Nutrition Act of 1966, 80 Stat. 886, 889 (42 U.S.C. 1773, 1779), unless otherwise noted.

2. In § 220.13, a new paragraph (l) is added to read as follows:

§ 220.13 Special responsibilities of State agencies.

* * * * *

(l) Each State agency, or FNSRO where applicable, shall:

(1) provide information to school boards and public officials concerning the benefits and availability of the program; and

(2) select each year, for additional informational efforts concerning the program, nonparticipating schools in which a substantial portion of the enrollment is eligible for free or reduced-price meals.

Dated: June 24, 1991.

Betty Jo Nelsen,

Administrator, Food and Nutrition Service.

[FR Doc. 91-15662 Filed 7-1-91; 8:45 am]

BILLING CODE 3410-30-M

Farmers Home Administration

7 CFR Part 1944

Section 502 Rural Housing Loan Policies, Procedures and Authorizations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding administration of the Rural Housing loan making program. This action is necessary to improve underwriting criteria and reduce loan losses to the Government, provide for the consistent evaluation of processing of loan applications for creditworthiness, and reduce the workload of County Office staffs. The intended effect is to reduce eventual loan losses to the Government stemming from bad loans, and reduce the number of appeals by clarifying the credit requirements.

EFFECTIVE DATE: August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Karen S. Murray, Senior Loan Specialist, Farmers Home Administration, USDA, room 5334–S, South Agriculture Building, 14th and Independence SW., Washington, DC 20250, Telephone (202) 382–1474.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined to be nonmajor because there is no substantial change from practices under existing rules that would have an annual effect on the economy of $100 million or more. There is no major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions, or significant adverse effects on competition, employment, productivity, innovation, or in the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Discussion of Comments Received

A proposed rule was published in the **Federal Register** (55 FR 42576) on October 22, 1990, and invited comments for 60 days ending December 21, 1990. Twenty-seven comments were received, eight were received after the comment period closed. All comments were considered. Fifteen of the comments were submitted by groups who work with FmHA applicants on a regular basis, or employees of these groups. Included in this category were responses from nonprofit housing advocacy associations, self-help housing groups, and legal services organizations. This category of respondents will be referred to as the nonprofits.

Twelve respondents were FmHA employees who work with this regulation on a regular basis. They represented a variety of levels within the Agency, including County Supervisors, State Rural Housing Specialists, State Directors, and National Office Rural Housing Specialists. This category of respondents will be referred to as FmHA employees.

The respondents were split on their opinion of the changes. Nine fully supported the changes (2 nonprofits, 7 FmHA employees), and six supported the changes with some modification (5 nonprofits, 1 FmHA employee). Nine respondents were against making any changes to the existing credit criteria (8 nonprofits and 1 FmHA employee). Three comments (all FmHA employees) were editorial in nature, and did not reflect an opinion of the changes.

Thirteen respondents felt that the proposed changes were too restrictive for low-income families. They were particularly concerned with paragraphs (f)(1) (vi) and (vii) of the proposed rule, which deal with collection accounts. They felt that hospital bills are often referred to collection agencies without the family's knowledge, and therefore should not be considered. The collection still represents a debt that must be paid by the applicant. Paragraphs (f)(1) and (f)(2)(iv)(A) of the proposed rule allow for exceptions of credit problems, if the cause for the credit problem was beyond the applicant's control. As long as arrangements have been made to pay the debt, the emergency nature of hospital bills will qualify for an exception. Other circumstances beyond the applicant's control cited by the respondents will also be considered for exceptions. Paragraph (f)(2), listing exceptions, was further clarified and expanded into paragraphs (f)(3) and (f)(4) to ensure that applicants will be

given every opportunity to explain credit problems. Another respondent felt that we should not exclude collection accounts that have been paid off within the last 12 months, as they still reflected unsatisfactory payment. This comment has been incorporated.

Two respondents felt that the regulations were too liberal, and two others felt that the regulation removed County Supervisor discretion. The Agency did not intend to make the criteria more or less restrictive, but to clarify what was expected of all applicants. Some County Supervisor discretion is being replaced by clear and objective credit requirements. Four respondents stated that the proposed changes would reduce the number of appeals for this reason.

One respondent felt that allowing for no more than one late payment in the last twelve months was unduly restrictive, and did not take into consideration why the payment was late. A comment was also received stating that paragraph (f)(1)(iv) of the proposed rule does not allow for subordination agreements for hospital bills and motor vehicle judgments. Paragraph (f)(3) of the final rule allows all credit requirements in this section to be waived under authorized circumstances. This provides adequate options for the consideration of applicants who may be affected by the issues raised in both comments.

Another respondent raised concerns that FmHA will be making credit decisions based on stale debt information by including debts written off and judgments removed within the last twelve months. It is FmHA's position that outstanding debts and judgments which existed within the last twelve months constitute an unacceptable credit history, and represent a recent debt.

Three respondents, one against the proposed changes, and two supporting them with modifications, felt that FmHA should notify the applicant of credit problems before the application is rejected in order to give the applicant an opportunity to present new information before the actual rejection. Applicants should fully disclose information pertinent to their eligibility at the time of application. Rejected applicants are notified of their opportunity to meet with the decision maker, and receive full disclosure of adverse credit information in accordance with 7 CFR part 1900–B.

Ten respondents felt that paragraph (f)(1) conflicted with sections of paragraph (f)(2), or disagreed with the time limitations used in one or more of the credit criteria. The time restrictions were reviewed and amended for consistency. Because the respondents comments conflicted with each other, the comments will not be addressed individually. An effort was made to be uniform and develop standards attainable by low-income families. A time limit of 36 months was kept for long term credit actions. The eighteen month limit for certain types of credit actions was eliminated. A twelve months limit is used for minor incidents. Payments 30 days late or more are considered delinquent. These credit standards are considered reasonable for low-income families.

Three respondents, all against the proposed restrictions regarding outstanding collection accounts and Government debts, stated that the proposed regulation conflicted with the Fair Credit Act. The Act prohibits the credit bureaus from reporting credit data on inactive accounts older than seven years. If a valid judgment exists which is older than seven years, it could prevent FmHA from having a valid mortgage on the property. Two of the same respondents felt that the proposed regulation was in violation of a recent court ruling determining that HUD was obligated, under the Housing Act of 1949, to finance risky mortgages of low-income mortgagors that "prudent investors" will not take. Because the section 502 program is established under the same Act, the respondents feel that using credit criteria of this nature is in violation of this decision, and each applicant should be considered on the merits of the individual application. Credit standards are only one measure of an applicant's credit quality. FmHA feels that this is an important criterion that low-income families have the ability to meet. FmHA applicants are already considered "risky" by conventional lenders. They typically do not meet other standards used by conventional lenders, such as higher income levels and debt ratio restrictions.

Four respondents requested that we define "delinquency" or cross reference this regulation with subpart G of part 1951 of this chapter, which deals with servicing delinquency of FmHA rural housing accounts. FmHA does not wish to define delinquency for other creditors, and will continue to use the creditor's determination of whether the applicant maintained the terms of their payment agreement. Because FmHA is a supervised credit agency, the regulatory definition of delinquency does not apply to conventional lenders.

Two respondents suggested incorporating a reference to § 1944.4 of subpart A part 1944 of this chapter, which refers to loan restrictions. Because credit quality requirements are not a loan restriction, but an eligibility restriction, this suggestion will not be incorporated. One respondent requested that FmHA incorporate a paragraph exempting delinquent accounts protected by other applicable federal laws. The example cited involved National Guard activation, which gives eligible citizens additional rights under the Soldiers' and Sailors' Civil Relief Act of 1940. FmHA feels that these types of situations are adequately addressed in the new paragraph (f)(3).

Regulatory Flexibility Act

La Verne Ausman, Administrator of Farmers Home Administration, has determined that this action will not have a significant economic impact on a substantial number of small entities because the regulatory changes affect FmHA processing of section 502 loans and individual applicant eligibility for the program.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this proposed action does not constitute a major Federal Action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Programs Affected

This program is listed in the catalog of Federal Domestic Assistance under 10.410, Low Income Housing Loans.

Intergovernmental Consultation

For the reason set forth in the final rule related Notice to 7 CFR part 3015, subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

List of Subjects in 7 CFR Part 1944

Home improvement, Loan program—Housing and community development, Low and moderate income housing—rental, Mobile homes, Mortgages, Rural housing, Subsidies.

Therefore, Part 1944, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1944—HOUSING

1. The authority citation for part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

2. Section 1944.9 is amended by revising paragraph (f) as follows:

§ 1944.9 Other eligibility requirements.

* * * * *

(f) Have a credit history which indicates a demonstrated ability and willingness to meet obligations as they become due.

(1) Any or all of the following are indicators of an unacceptable credit history unless FmHA determines that the cause was beyond the applicant's control, and satisfies the criteria in paragraph (f)(3) of this section:

(i) Incidents of more than one secured or unsecured debt payment being more than 30 days late if the incidents have occurred within the last 12 months. This includes more than one late payment on a single account.

(ii) Loss of security due to a foreclosure if the foreclosure has been completed within the last 36 months.

(iii) Outstanding tax liens or delinquent Government debts with no satisfactory arrangements for payments.

(iv) A court-created or affirmed obligation (judgment), caused by nonpayment, that is currently outstanding or has been outstanding within the last 12 months.

(v) Two or more rent payments paid 30 days or more past due, that have occurred within the last three years.

(vi) Accounts which have been converted to collections within the last 12 months (utility bills, hospital bills, etc.)

(vii) Collection accounts outstanding, or which have been outstanding within the last 12 months, with no satisfactory arrangements for payments, no matter what their age, as long as they are currently due and payable.

(viii) Non-FmHA debts written off within the last 36 months.

(2) The following will not indicate an unacceptable credit history:

(i) "No history" of credit transactions by the applicant.

(ii) A bankruptcy in which the debtor was discharged more than 36 months before the date of application.

(iii) A satisfied judgment, or foreclosure with no loss of security, which was completed more than 12 months before the date of application.

(3) When an applicant has an unacceptable credit history, an exception may be considered by the loan approval official, when the applicant provides documentation that:

(i) The circumstances were of a temporary nature, were beyond the applicant's control, and have been removed. Examples: Loss of job; delay or reduction in benefits, or other loss of income; increased expenses due to illness, death, etc.

(ii) The adverse action or delinquency was the result of a refusal to make full payment because of defective goods or services or as a result of some other justifiable dispute relating to the goods or services purchased or contracted for.

(4) It is the responsibility of the applicant to work directly with the credit bureau to correct any erroneous credit bureau records. A corrected report, showing that the error has been removed, must be presented to FmHA before the application is determined eligible.

Dated: May 15, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91-15727 Filed 7-1-91; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-42-AD; Amdt. 39-7059; AD 91-14-18]

Airworthiness Directives; British Aerospace Viscount Model 744, 745D, and 810 Series Airplanes.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Viscount Model 744, 745D, and 810 series airplanes, which requires repetitive eddy current inspections to detect corrosion along the total length of the top surface of the wing spar upper boom, and repair, if necessary. This amendment is prompted by a report of corrosion found between the upper surface of the wing spar upper boom and the underside of the wing upper skins. This condition, if not corrected, could result in reduced structural integrity of the wings.

DATES: Effective August 6, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 6, 1991.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to all British Aerospace Model 744, 745D, and 810 series airplanes, which requires repetitive eddy current inspections to detect corrosion along the total length of the top surface of the wing spar upper boom, and repair, if necessary, was published in the **Federal Register** on March 27, 1991 (56 FR 12687).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 29 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7,975.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, 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 final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-14-18. British Aerospace: Amendment 39-7059. Docket No. 91-NM-42-AD.

Applicability: All Viscount Model 744, 745D, and 810 series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent reduced structural integrity of the wings, accomplish the following:

A. Within 180 days after the effective date of this AD, and thereafter at intervals not to exceed 180 days, perform an eddy current inspection to detect corrosion along the total length of the top surface of the left and right wing spar upper boom in accordance with British Aerospace Preliminary Technical Leaflet (PTL) No. 321, Issue 1, dated January 13, 1989, or PTL No. 190, Issue 1, dated January 13, 1989, as appropriate.

B. If corrosion is found, prior to further flight, repair in accordance with PTL No. 321, Issue 1, dated January 13, 1989, or PTL No. 190, Issue 1, dated January 13, 1989, as appropriate; or in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

C. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

E. The inspections and repair requirements shall be done in accordance with British Aerospace Preliminary Technical Leaflet (PTL) No. 321, Issue 1, dated January 13, 1989, or PTL No. 190, Issue 1, dated January 13, 1989, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. Copies may be inspected at the FAA, Transport Airplane Directorate, Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC. This amendment becomes effective August 6, 1991.

Issued in Renton, Washington, on June 18, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-15640 Filed 7-1-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-47-AD; Amdt. 39-7060; AD 91-14-19]

Airworthiness Directives; British Aerospace Model BAe 146 Series Airplanes.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model BAe 146 series airplanes, which requires a detailed visual inspection to detect cracks and corrosion in the left and right main landing gear (MLG) door rear hinge bracket assemblies, and repair of corrosion or replacement of bracket, if necessary. This amendment is prompted by reports of cracked and corroded rear hinge, bracket assemblies discovered on in-service airplanes. This condition, if not corrected, could result in the MLG door becoming detached in flight.

DATES: Effective August 6, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 6, 1991.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to all British Aerospace Model BAe 146 series airplanes, which requires a detailed visual inspection to detect cracks and corrosion in the left and right main landing gear (MLG) door rear hinge bracket assemblies, and repair of corrosion or replacement of bracket, if necessary, was published in the Federal Register on March 27, 1991 (56 FR 12689).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 74 airplanes of U.S registry will be affected by this AD, that it will take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,070.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, 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 final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-14-19. British Aerospace: Amendment 39-7060. Docket No. 91-NM-47-AD.

Applicability: All Model BAe 146 series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent detachment of the landing gear (MLG) door in flight, accomplish the following:

A. Prior to the accumulation of 6,000 landings or within 30 days after the effective date of this AD, whichever occurs later, perform a detailed visual inspection of the left and right MLG door rear hinge bracket assemblies, in accordance with British Aerospace Alert Service Bulletin 32-A119, dated November 14, 1990.

1. If cracks are found, prior to further flight, replace the rear hinge bracket assembly with a serviceable part having the same part number, in accordance with the service bulletin.

2. If corrosion is found, prior to further flight, remove corrosion and repair in accordance with the Structural Repair Manual 51-73-00 and Figure 1, Section A-A.

a. If corrosion removed measures less than 0.150 inch, within 300 landings following repair, replace the rear hinge bracket assembly with a serviceable part having the same part number, in accordance with the service bulletin.

b. If corrosion removed measures 0.150 inch or more, prior to further flight, replace the rear hinge bracket assembly with a serviceable part having the same part number, in accordance with the service bulletin.

3. After repair, or if no corrosion is found, reseal bonding lead tags in accordance with Aircraft Maintenance Manual 20-10-01, Method 3.

B. Within 10 days after accomplishing the inspection required by paragraph A. of this AD, submit a written report of all findings to British Aerospace in accordance with paragraph 1.C.(5) of British Aerospace Alert Service Bulletin 32-A119, dated November 14, 1990. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

C. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

E. The inspection and replacement requirements shall be done in accordance with British Aerospace Alert Service Bulletin 32-A119, dated November 14, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. Copies may be inspected at the FAA, Transport Airplane Directorate, Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment becomes effective August 6, 1991.

Issued in Renton, Washington, on June 18, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-15461 Filed 7-1-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-35-AD; Amdt. 39-7058; AD 91-14-17]

Airworthiness Directives; SAAB-Scania Models SF-340A and SAAB 340B Series Airplanes.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain SAAB-Scania Models SF-340A and SAAB 340B series airplanes, which requires replacement of a wire in the autopilot electrical system. This amendment is prompted by reports indicating that a possibility exists for a wire overload occurring in the event of a short circuit in the autopilot system. This condition, if not corrected, could result in an electrical fire and smoke in the cockpit.

DATES: Effective August 6, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 6, 1991.

ADDRESSES: The applicable service information may be obtained from SAAB-Scania AB, Product Support, S-581.88, Linköping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 227-2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain SAAB-Scania Models SF-340A and SAAB 340B series airplanes, which requires replacement of a wire in the autopilot electrical system, was published in the Federal Register on March 22, 1991 (56 FR 12132).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the change previously described. The FAA has determined that this change will neither significantly increase the economic burden on any operator, nor increase the scope of the AD.

It is estimated that 56 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. The required parts will be supplied to the operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $15,400.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, 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 final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91–14–17. SAAB-Scania: Amendment 39–7058. Docket No. 91–NM–35–AD.

Applicability: Model SF–340A series airplanes, Serial Numbers 079 through 159; and Model SAAB 340B series airplanes, Serial Numbers 160 through 199; certificated in any category.

Compliance: Required within 180 days after the effective date of this AD, unless previously accomplished.

To prevent an electrical fire and smoke in the cockpit, accomplish the following:

A. Replace the FD 574–24 wire from terminal block 301VT BH:C to connector 203VU P33:A1 in the autopilot electrical system with a 20 AWG size wire, in accordance with SAAB Service Bulletin 340–34–068, dated November 9, 1990.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Avionics Inspector, who may concur or comment then send it to the Manager, Standardization Branch, ANM–113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

D. The replacement requirements shall be done in accordance with SAAB Service Bulletin 340–34–068, dated November 9, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SAAB-Scania AB, Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment becomes effective August 6, 1991.

Issued in Renton, Washington, on June 18, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–15642 Filed 7–1–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–60–AD; Amdt. 39–7063; AD 91–14–23]

Airworthiness Directives; Boeing Model 747–400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–400 series airplanes delivered with crew rest stations located above the main deck in the upper aft area of airplane section 46 (Door 5 Crew Rest Station). This AD requires that the crew rest bunk reading lights be deactivated by disconnecting the reading light wiring at the circuit breaker. This amendment is prompted by a report of bedding that ignited after contacting a hot reading light bulb. This condition, if not corrected, could result in fire and smoke in the Door 5 Crew Rest Station.

EFFECTIVE DATE: August 9, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen S. Oshiro, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM–130S; telephone (206) 227–2793. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 747–400 series airplanes, which requires that the Door 5 Crew Rest Station bunk reading lights be deactivated, was published in the **Federal Register** on April 24, 1991 (56 FR 18785).

Interested person shave been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters expressed no objections to the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 36 Model 747–400 series airplanes of the affected design in the worldwide fleet. It is estimated that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,100.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, 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 final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983 ; and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91–14–23 Boeing: Amendment 39–7063. Docket No. 91–NM–60–AD.

Applicability: Model 747-400 series airplanes delivered with Door 5 Crew Rest Stations, certificated in any category.

Compliance: Required within 60 days after the effective date of this AD, unless previously accomplished.

To prevent the occurrence of smoke and fire in the Door 5 Crew Rest Station, accomplish the following:

A. Disconnect, cap, and stow the wires connected to circuit breakers C8823 and C8824 at the P84 circuit breaker panel, which provides electrical power to the crew rest bunk reading lights, Grimes Part Number 15–0175–9. Circuit breakers C8823 and C8824 must be collared in the open position and labeled INOPERATIVE.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

This amendment (39–7063, AD 91–14–23) becomes effective August 9, 1991.

Issued in Renton, Washington, on June 24, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–15679 Filed 7–1–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 26581; Amdt. No. 1455]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: Effective: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, 8260–5. Materials incorporated by reference are available for examination or purchase as stated above

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce. I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and

contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment 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 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on June 21, 1991.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

September 19, 1991

Aspen, CO—Aspen Pitkin CO/Sardy Field, VOR/DME-C, Amdt. 4
Venice, FL—Venice Muni, NDB RWY 31, Amdt. 1
Rome, GA—Richard B. Russell, VOR/DME RWY 1, Amdt. 8
Rome, GA—Richard B. Russell, VOR/DME RWY 19, Amdt. 7
Rome, GA—Richard B. Russell, LOC/DME RWY 1, Amdt. 3
Rome, GA—Richard B. Russell, LOC/DME RWY 19, Amdt. 1
Rome, GA—Richard B. Russell, NDB-A, Amdt. 6
Henderson, KY—Henderson City-County, NDB RWY 9, Amdt. 3
Fosston, MN—Fosston Muni, NDB RWY 34, Amdt. 2
Gulfport, MS—Gulfport-Biloxi RGNL, VOR RWY 13, Amdt. 20
Gulfport, MS—Gulfport-Biloxi RGNL, VOR RWY 31, Amdt. 19
Gulfport, MS—Gulfport-Biloxi RGNL, VOR/DME or TACAN RWY 13, Amdt. 1
Gulfport, MS—Gulfport-Biloxi RGNL, VOR/DME or TACAN RWY 31, Amdt. 1
Gulfport, MS—Gulfport-Biloxi RGNL, NDB RWY 13, Amdt. 10
Gulfport, MS—Gulfport-Biloxi RGNL, ILS RWY 13, Amdt. 12
Gulfport, MS—Gulfport-Biloxi RGNL, ILS RWY 31, Amdt. 2
Gulfport, MS—Gulfport-Biloxi RGNL, RADAR-1, Amdt. 4
Oxford, MS—University-Oxford, VOR/DME-A, Amdt. 4
Pasco, WA—Tri-Cities, VOR RWY 21R, Amdt. 4
Pasco, WA—Tri-Cities, VOR/DME RWY 30, Amdt. 1
Pasco, WA—Tri-Cities, ILS RWY 21R, Amdt. 10
Pullman/Moscow, ID, WA—Pullman/Moscow Regional, VOR/DME-A, Orig.

Effective August 22, 1991

Winona, MN—Winona Muni-Max Conrad FLD, VOR RWY 29, Admt. 14

Effective July 25, 1991

Anniston, AL—Anniston Metropolitan, NDB RWY 5, Orig.
Anniston, AL—Anniston Metropolitan, ILS RWY 5, Orig.
Anniston, AL—Anniston Metropolitan, LOC RWY 5, Amdt. 9 CANCELLED
Deadhorse, AK—Deadhorse, LOC/DME BC RWY 22, Amdt. 7
Deadhorse, AK—Deadhorse, ILS/DME RWY 4, Amdt. 7
Kipnuk, AK—Kipnuk, VOR RWY 15, Amdt. 2 CANCELLED
Kipnuk, AK—Kipnuk, VOR RWY 33, Amdt. 2 CANCELLED
Unalakleet, AK—Unalakleet, LOC RWY 14, Amdt. 2
Little Rock, AR—Adams Field, VOR-A, Orig.
Little Rock, AR—Adams Field, ILS RWY 22L, Orig.
Little Rock, AR—Adams Field, RADAR-1, Amdt. 15
Rogers, AR—Rogers Municipal-Carter Field, VOR RWY 1, Amdt. 11
Rogers, AR—Rogers Municipal-Carter Field, VOR/DME RWY 19, Amdt. 8
Rogers, AR—Rogers Municipal-Carter Field, LOC RWY 19, Orig.
Rogers, AR—Rogers Municipal-Carter Field, NDB RWY 19, Amdt. 2 CANCELLED
Rogers, AR—Rogers Municipal-Carter Field, NDB RWY 19, Orig.
Madison, CT—Griswold, VOR-A, Amdt. 5
Dwight, IL—Dwight, NDB 1 RWY 27, Amdt. 3
Jackson, KY—Julian Carroll, VOR/DME RWY 1, Amdt. 1
Frenchville, ME—Northern Aroostook Regional, NDB RWY 32, Amdt. 3
Orr, MN—Orr Regional, NDB RWY 13, Amdt. 6
Ruidoso, NM—Sierra Blanca Regional, NDB RWY 24, Amdt. 1
Cambridge, OH—Cambridge Muni, VOR-A, Amdt. 2
Cambridge, OH—Cambridge Muni, NDB RWY 4, Amdt. 6
Chillicothe, OH—Ross County, VOR RWY 22, Amdt. 2
Chillicothe, OH—Ross County, NDB RWY 22, Amdt. 6
Gallipolis, OH—Gallia-Meigs Regional, NDB-A, Amdt. 2
London, OH—Madison County, NDB RWY 8, Amdt. 5
Urbana, OH—Grimes Field, VOR-A, Amdt. 3
Versailles, OH—Darke County, NDB RWY 9, Amdt. 7
Weno Island, Federated States of Micronesia—Chuuk Intl, NDB-A, Admt. 1 CANCELLED
Weno Island, Federated States of Micronesia—Chuuk Intl, NDB-A, Orig.
Weno Island, Federated States of Micronesia—Chuuk Intl, NDB-B, Admt. 4
Weno Island, Federated States of Micronesia—Chuuk Intl, NDB/DME RWY 4, Admt. 1 CANCELLED
Weno Island, Federated States of Micronesia—Chuuk Intl, NDB/DME RWY 4, Orig.
Waller, TX—Skylake, VOR/DME RWY 17, Amdt. 1 CANCELLED
Marion/Wytheville, VA—Mountain Empire, LOC RWY 26, Orig.
Hayward, WI—Hayward Muni, VOR RWY 2, Amdt. 4, CANCELLED
Hayward, WI—Hayward Muni, VOR/DME RWY 2, Orig.
Hayward, WI—Hayward Muni, VOR RWY 20, Amdt. 5
Hayward, WI—Hayward Muni, NDB RWY 20, Amdt. 11

Effective June 19, 1991

Morganton, NC—Morganton-Lenoir, SDF RWY 3, Amdt. 5

Effective June 18, 1991

Silver City, NM—Grant County, VOR-A, Amdt. 7
Silver City, NM—Grant County, VOR/DME-B, Amdt. 3
Silver City, NM—Grant County, LOC/DME RWY 26, Amdt. 3
Silver City, NM—Grant County, NDB RWY 26, Amdt. 3

Effective June 14, 1991

Stuttgart, AR—Stuttgart Muni, NDB RWY 18, Amdt. 8

Effective June 13, 1991

New Haven, CT—Tweed-New Haven, VOR RWY 2, Amdt. 21
New Haven, CT—Tweed-New Haven, ILS RWY 2, Amdt. 14

Effective June 12, 1991

Batesville, AR—Batesville Regional, SDF RWY 7, Amdt. 7

Effective June 11, 1991

Walnut Ridge, AR—Walnut Ridge Regional, VOR-A, Amdt. 15
Walnut Ridge, AR—Walnut Ridge Regional, VOR-DME RWY 22, Amdt. 12
Walnut Ridge, AR—Walnut Ridge Regional, LOC RWY 17, Amdt. 2

Walnut Ridge, AR—Walnut Ridge Regional, NDB RWY 17, Amdt. 3
Robstown, TX—Nueces County, VOR/DME-A, Amdt. 2

Effective June 10, 1991

Milton, WV—Ona Airpark, VOR-A, Amdt. 1

Effective June 7, 1991

Bentonville, AR—Bentonville Muni/Louise M Thadden Field, VOR-A, Amdt. 9
Bentonville, AR—Bentonville Muni/Louise M Thadden Field, VOR/DME-B, Amdt. 2
Alamogordo, NM—Alamogordo-White Sands Regional, VOR/DME RWY 3, Amdt. 1
Alamogordo, NM—Alamogordo-White Sands Regional, NDB RWY 3, Amdt. 2

[FR Doc. 91-15685 Filed 7-1-91; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-36-AD; Amdt 39-7051; AD 91-14-10]

Airworthiness Directives; British Aerospace Model BAe 146-300A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146-300A series airplanes, which requires the installation of modified signal summing units (SSU). This amendment is prompted by reports which indicate that certain SSU's were found to have incorrect airspeed law calibration. This condition, if not corrected, could result in the stall identification (stick push) occurring at a higher angle of attack than the angle called for in the design specification; this would adversely affect the controllability of the airplane.

DATES: Effective August 6, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 6, 1991.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain British Aerospace Model BAe 146-300A series airplanes, which requires the installation of modified signal summing units (SSU), was published in the Federal Register on April 5, 1991 (56 FR 14031).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 5 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. The required parts will be exchanged by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,100.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, 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 final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-14-10. British Aerospace: Amendment 39-7051, Docket No. 91-NM-36-AD.

Applicability: Model BAe 146-300A series airplanes; Serial numbers E3118 through E3161, E3163, E3165, and E3169; certificated in any category.

Compliance: Required within 180 days after the effective date of this AD, unless previously accomplished.

To prevent the stall identification (stick push) from occurring at a higher angle of attack than the angle called for in the design specification which could adversely affect the controllability of the airplane, accomplish the following:

A. Install two signal summing units, part Number C81606-6, in accordance with British Aerospace Service Bulletin 27-114-01028B, dated September 26, 1990.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

D. The installation requirements shall be done in accordance with British Aerospace Service Bulletin 27-114-01028B, dated September 26, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. Copies may be inspected at the FAA, Transport Airplane Directorate, Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment becomes effective August 6, 1991.

Issued in Renton, Washington, on June 17, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-15680 Filed 7-1-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-37-AD; Amdt. 39-7052; AD 91-14-11]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model ATP series airplanes, which requires the installation of a new axle washer and a new axle nut on all main landing gears (MLG). This amendment is prompted by reports of wheel bearing failure, which resulted in the MLG wheel separating from the axle. This condition, if not corrected, could result in loss of a main landing gear wheel from the axle and reduced controllability of the airplane on takeoff or landing.

DATES: Effective August 6, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 6, 1991.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain British Aerospace Model ATP series airplanes, which requires the installation of a new axle washer and a new axle nut on all main landing gears, was published in the Federal Register on March 26, 1991 (56 FR 12488).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 6 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. The estimated cost for required parts is $2,866 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $17,526.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, 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 final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-14-11. British Aerospace: Amendment 39-7052. Docket No. 91-NM-37-AD.

Applicability: Model ATP series airplanes, on which Modification (c)AC11431 has not been accomplished, certificated in any category.

Compliance: Required within 60 days after the effective date of this AD, unless previously accomplished.

To prevent loss of the main landing gear (MLG) wheel from the axle and reduced controllability of the airplane on takeoff or landing, accomplish the following:

A. Install a new axle washer and a new axle nut on all MLG's [Modification (c)AC11431], in accordance with Dowty Aerospace Service Bulletin 200-32-137, dated November 6, 1990.

Note: British Aerospace Service Bulletin ATP-32-28, dated November 6, 1990, references the Dowty Aerospace Service Bulletin for modification instructions.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

D. The installation requirements shall be done in accordance with Dowty Aerospace Service Bulletin 200-32-137, dated November 6, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. Copies may be inspected at the FAA, Transport Airplane Directorate, Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

This amendment (39-7052, AD 91-14-11) becomes effective August 6, 1991.

Issued in Renton, Washington, on June 17, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-15681 Filed 7-1-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-44-AD; Amdt. 39-7053; AD 91-14-12]

Airworthiness Directives; British Aerospace Model HS.125-600A and BH.125-600A Series Airplanes (Post Modification 252475) and Model HS.125-700A Series Airplanes (Post Modification 252509)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model HS.125-600A, BH.125-600A, and HS.125-700A series airplanes, which requires the installation of a cover above the standby inverter "TF" located between frames 22 and 23. This amendment is prompted by reports of contamination of the standby inverter due to the accumulation of condensation. This condition, if not corrected, could result in loss of the standby constant frequency power system which provides the necessary back-up capability when the primary power system fails.

DATES: Effective August 6, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 6, 1991.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain British Aerospace Model HS.125-600A and BH.125-600A series airplanes (Post Modification 252475), and Model HS.125-700A series airplanes (Post Modification 252509), which requires the installation of a cover above the standby inverter "TF" located between frames 22 and 23, was published in the Federal Register on March 20, 1991 (56 FR 11703).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry. The FAA has determined that this change will neither significantly increase the economic burden on any operator, nor increase the scope of the AD.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 154 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. The estimated cost for required parts is $625 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $113,190.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, 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 final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-14-12. British Aerospace: Amendment 39-7053. Docket No. 91-NM-44-AD.

Applicability: Model HS.125-600A and BH.125-600A series airplanes (Post Modification 252475) and Model HS.125-700A series airplanes (Post Modification 252509); as listed in British Aerospace Service Bulletin 24-279-3255A, dated November 16, 1990; certificated in any category.

Compliance: Required within 160 days after the effective date of this AD, unless previously accomplished.

To prevent loss of the standby constant frequency power system which provides the necessary back-up capability when the primary power system fails, accomplish the following:

A. Install a partial cover above the standby inverter "TF" located between frames 22 and 23 LH if the converter is installed as depicted on pages 5-6 of the service bulletin, in accordance with British Aerospace Service Bulletin 24-279-3255A, dated November 16, 1990.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

D. The installation requirements shall be done in accordance with British Aerospace Service Bulletin 24-279-3255A, dated November 16, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. Copies may be inspected at the FAA, Transport Airplane Directorate, Renton, Washington; or at the

Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

This amendment (39-7053, AD 91-14-12) becomes effective August 6, 1991.

Issued in Renton, Washington, on June 17, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-15682 Filed 7-1-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-57-AD; Amdt. 39-7050; AD 91-14-09]

Airworthiness Directives; Fokker Model F-28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F-28 Mark 0100 series airplanes, which requires the installation of four rivets in the shear plate on Frame Station 20320 at Stringer 59. This amendment is prompted by reports that, during production, the rivets which attach the flange of the shear plate to Frame Station 20320 were not installed. This condition, if not corrected, could result in reduced structural integrity of the fuselage.

DATES: Effective August 6, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 6, 1991.

ADDRESSES: The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 227-2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Fokker Model F-28 Mark 0100 series airplanes, which requires the installation of four rivets in the shear plate on Frame Station 20320 at Stringer 59, was published in the Federal Register on March 26, 1991 (56 FR 12489).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 3 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. The estimated cost for required parts is negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $990

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, 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 final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-14-09. Fokker: Amendment 39-7050. Docket No. 91-NM-57-AD.

Applicability: Model F-28 Mark 0100 series airplanes, Serial Numbers 11268 through 11273, 11276, 11278, and 11280, certificated in any category.

Compliance: Required prior to the accumulation of 6,000 landings or 3 years since new, whichever occurs first, unless previously accomplished.

To prevent reduced structural integrity of the fuselage, accomplish the following:

A. Install four rivets in the shear plate on Frame Station 20320 at Stringer 59, in accordance with Fokker Service Bulletin F100-53-048, dated November 29, 1990.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

D. The installation requirements shall be done in accordance with Fokker Service Bulletin F100-53-048, dated November 29, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39-7050, AD 91-14-09) becomes effective August 6, 1991.

Issued in Renton, Washington, on June 13, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-15683 Filed 7-1-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-48-AD; Amdt. 39-7048; AD 91-14-07]

Airworthiness Directives; SAAB-Scania Model SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain SAAB-Scania Model SAAB 340B series airplanes, which requires a onetime inspection for correct installation of the hinge locking pin, and repair, if necessary; replacement of latches; and reinforcement of the forward toilet service door. This amendment is prompted by a report of a forward service door that was lost during flight due either to a deformation of the door that allowed the latch to release, or to the hinge locking pin coming loose. This condition, if not corrected, could result in loss of the forward service door during flight, and subsequent damage to the propeller, wing, or empennage.

DATES: Effective August 6, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 6, 1991.

ADDRESSES: The applicable service information may be obtained from SAAB-Scania AB, Product Support, S-581.88, Linköping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 227-2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain SAAB-Scania Model SAAB 340B series airplanes, which requires a onetime inspection for correct installation of the hinge locking pin, and repair, if necessary; replacement of latches; and reinforcement of the forward toilet service door; was published in the **Federal Register** on March 22, 1991 (56 FR 12134).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry. The FAA has determined that this change will neither significantly increase the economic burden on any operator, nor increase the scope of the AD.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 32 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. The estimated cost for required parts is $427 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $17,184.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, 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 final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-14-07. Saab-Scania: Amendment 39-7048. Docket No. 91-NM-48-AD.

Applicability: Certain Model SAAB 340B series airplanes, as listed in SAAB Service Bulletin 340-52-013, Revision 1, dated December 18, 1990, certificated in any category.

Compliance: Required as indicated, unless previously accomplished. To prevent loss of the forward toilet service door during flight, and subsequent damage to the propeller, wing, or empennage, accomplish the following:

A. Within 500 hours time-in-service after the effective date of this AD, perform a one-time inspection for correct installation of the hinge pin, in accordance with SAAB Service Bulletin 340-52-013, Revision 1, December 18, 1990, and accomplish the following:

1. If the hinge pin is installed correctly, prior to further flight, replace the latches and reinforce the forward toilet service door in accordance with the service bulletin.

2. If the hinge pin is installed incorrectly, prior to further flight, replace the latches, reinforce the forward toilet service door, remove the hinge pin, and repair and re-install the hinge pin, in accordance with the service bulletin.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

D. The inspection, repair, replacement, and reinforcement requirements shall be done in accordance with SAAB Service Bulletin 340-52-013, Revision 1, dated December 18, 1990. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SAAB-Scania AB, Product Support, S-581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, Renton, Washington; or at the

Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39-7048, AD 91-14-07) becomes effective August 6, 1991.

Issued in Renton, Washington, on June 13, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-15684 Filed 7-1-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-123-AD; Amdt. 39-7064; AD 91-15-01]

Airworthiness Directives; Aerospatiale Model ATR42 and ATR72 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42 and ATR72 series airplanes; which requires a one-time visual inspection of the rudder pedal connection rod (captain side) to determine the rod vendor, and replacement of the rod, if necessary. This amendment is prompted by a recent report of a failure of a SARMA rudder pedal rod (captain side) on an airplane in production. This condition, if not corrected, could result in failure of the rudder pedal connection rod and subsequent reduced controllability of the airplane.

DATES: Effective July 17, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 17, 1991.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Woodford Boyce, Standardization Branch, ANM-113; telephone (206) 227-2137. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC) which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Aerospatiale Model ATR42 and ATR72 series airplanes. There has been a recent report of a failure of a SARMA rudder pedal connection rod (captain side) on an airplane in production. Further investigation revealed a reduction of thickness of the failed rod. This condition, if not corrected, could result in failure of the rudder pedal connection rod and subsequent reduced controllability of the airplane.

Aerospatiale has issued Revision 1 to Service Bulletins ATR42-27-0052 (for Model ATR42 series airplanes) and ATR72-27-1015 (for Model ATR72 series airplanes), both dated April 4, 1991, which describe procedures to perform a one-time visual inspection of the rudder pedal connection rod (captain side) to determine if the rod vendor is SARMA, and, if so, replacement of the rod, with a serviceable part. The French DGAC has classified these service bulletins as mandatory, and has issued French Airworthiness Directives 91-068-039(B) (for the Model ATR42) and 91-067-005(B) (for the Model ATR72) addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires a onetime visual inspection of the rudder pedal connection rod (captain side) to determine the rod vendor, and replacement of the rod, if necessary, in accordance with the service bulletins previously described.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, 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 final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-15-01 Aerospatiale: Amendment 39-7064. Docket No. 91-NM-123-AD.

Applicability: Model ATR42-200 and -300 series airplanes, serial numbers 003 to 208, 213, 214, 218, 221, 225, 226, and 228; and Model ATR72-100 and -200 series airplanes, serial numbers 126 to 189, 195, 198, and 210; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent failure of the rudder pedal connection rod and subsequent reduced controllability of the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD, perform a visual inspection of the rudder pedal connection rod (captain side) to determine the rod vendor, in accordance with Aerospatiale Service Bulletin ATR42-27-0052 (for Model ATR42 series airplanes), Revision 1, dated April 4, 1991; or Aerospatiale Service Bulletin ATR72-27-1015 (for Model ATR72

series airplanes), Revision 1, dated April 4, 1991; as applicable.

(1) If the rod is manufactured by TAC, no further action is required.

(2) If the rod is manufactured by SARMA, vendor P/N 14132B, prior to further flight, replace the rod with a TAC rod; or a SARMA rod, vendor P/N 14132–C; in accordance with the applicable service bulletin.

(b) As of the effective date of this AD, no SARMA rudder pedal connection rod, P/N 14132B, shall be installed on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(e) The inspection and replacement requirements shall be done in accordance with Aerospatiale Service Bulletin ATR42–27–0052 (for Model ATR42 series airplanes), Revision 1, dated April 4, 1991; or Aerospatiale Service Bulletin ATR72–27–1015 (for Model ATR72 series airplanes), Revision 1, dated April 4, 1991; which include the following list of affected pages:

Service bulletin	Page No.	Revision level	Date
ATR42–27–0052.	1, 3, 4, 7	1	April 4, 1991.
	2, 5–6, 8 through 17.	(original)	March 7, 1991.
ATR72–27–1015.	1, 2, 5	1	April 4, 1991.
	3, 4, 6 through 15.	(Original)	March 7, 1991.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39–7064, AD 91–15–01) becomes effective July 17, 1991.

Issued in Renton, Washington, on June 24, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–15748 Filed 7–1–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 50 and 58

[Docket No. R–91–1546; FR–3050–F–01]

Protection and Enhancement of Environmental Quality; Coastal Barrier Resources System

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule amends the Department's regulations on the protection, restoration and enhancement of environmental quality to include the requirements of the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 (Pub. L. 101–591, approved November 16, 1990).

EFFECTIVE DATE: August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Richard Broun, Office of Environment and Energy, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; (202) 708–2894 or, for hearing- and speech-impaired, (202) 708–2565. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Coastal Barrier Resources Act (Pub. L. 97–348, approved October 18, 1982) (the Act) was enacted to discourage any development of designated coastal barriers by prohibiting Federal expenditures and financial assistance for activities that would encourage development, with some specified exceptions. Coastal barriers are fragile and environmentally significant features of certain coastal areas. They are produced by nature and are subject to natural changes, without a high degree of predictability. The areas affected, known as the Coastal Barrier Resources System (System), are identified in the statute.

With respect to those Federal expenditures that are not prohibited entirely, the Act imposes certain requirements to consult with the Secretary of Interior upon agencies that may approve expenditures or the use of Federal assistance. The Department of the Interior issued Advisory Guidelines regarding these consultations at 48 FR 45864 (Oct. 6, 1983). The Act was implemented by HUD through administrative direction to Regional Administrators of affected areas, and all HUD programs have been administered in compliance with the Act since 1982.

On November 16, 1990, President Bush signed into law the Coastal Barrier Improvement Act of 1990 (Pub. L. 101–591) (CBI Act), which expands the System and the amends the constraints imposed on Federal assistance and support within the System. The CBI Act also requires affected agencies of the Federal Government to promulgate regulations within 12 months.

This rule amends 24 CFR parts 50 and 58, the Department's regulations under the National Environmental Policy Act (NEPA) and other environmental statutes, Executive Orders, and HUD standards, to include the requirements of the Act, as amended by the CBI Act. Because this rule does not represent any change from current Departmental policy and practice, it is, in effect, a technical amendment to the regulations. Therefore, the Department has determined that good cause exists for amending its regulations by final rule.

Other Matters

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

The General Counsel, as the designated official under Executive Order 12606, The Family, has determined that this rule does not have a potential significant impact on the formation, maintenance, and general

well-being of the family and, thus, is not subject to review under that Order. The rule makes technical amendments to the Department's regulations governing assistance for activities within the Coastal Barrier Resources System.

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the policies contained in this rule do not have federalism implications. To the extent that the areas affected are within the jurisdiction of a State or local government, it is the clear intent of Congress to protect these areas from further activities that could cause harm to their ecologies, as expressed in the Coastal Barrier Resources Act and the Coastal Barrier Improvement Act of 1990.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The restrictions placed on Federal assistance under HUD programs apply equally to all affected recipients, and do not go beyond the intent of the Congress, as expressed in the Coastal Barrier Resources Act and the Coastal Barrier Improvement Act of 1990.

This rule was not listed in the Department's Semiannual Agenda of Regulations published at 56 FR 17360 on April 22, 1991, under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 50

Environmental assessments, Environmental impact statements, Environmental policies and review procedures.

24 CFR Part 58

Community development block grants, Environmental impact statements, Grant programs—housing and community development, Reporting and recordkeeping requirements.

Accordingly, parts 50 and 58 of title 24 of the Code of Federal Regulations are amended to read as follows:

PART 50—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

1. The authority citation for part 50 is revised to read as follows:

Authority: Sec. 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332); Executive Order 11514, 35 FR 4247 (March 5, 1970); Executive Order 11991, 42 FR 26967 (May 24, 1977); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 50.4 is amended by revising paragraph (c), to read as follows:

§ 50.4 Other environmental statutes, Executive orders and HUD standards.

* * * * *

(c) *Coastal areas protection and management.* (1) The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*), as amended.

(2) The Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*), as amended by the Coastal Barrier Improvement Act of 1990 (Pub. L. 101–591, approved Nov. 16, 1990).

* * * * *

PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT, RENTAL REHABILITATION AND HOUSING DEVELOPMENT GRANT PROGRAMS

3. The authority citation for part 58 is revised to read as follows:

Authority: Sec. 104(g) of title I, Housing and Community Development Act of 1974 (42 U.S.C. 5304(g)), as amended; sec. 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332), as amended; secs. 17(i) (1) and (2) of the United States Housing Act of 1937 (42 U.S.C. 1437o(i) (1) and (2)); Executive Order 11514, Protection and Enhancement of Environmental Quality, March 5, 1970, as amended by Executive Order 11991, May 24, 1977; sec. 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)).

4. Section 58.5 is amended by revising paragraph (c), to read as follows:

§ 58.5 Federal laws and authorities.

* * * * *

(c) *Coastal areas protection and management.* (1) The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*), as amended; particularly section 307 (c) and (d) (16 U.S.C. 1456 (c) and (c)).

(2) The Coastal Barrier Resources Act of 1982 (16 U.S.C. 3501 *et seq.*), particularly sections 5 and 6 (16 U.S.C. 3504 and 3505), as amended by the Coastal Barrier Improvement Act of 1990 (Pub. L. 101–591, approved Nov. 16, 1990).

* * * *

Dated: June 4, 1991.

Jack Kemp,

Secretary.

[FR Doc. 91–15707 Filed 7–1–91; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 500

Migrant and Seasonal Agricultural Worker Protection

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This rule amends the regulations to conform to the decision of the U.S. Supreme Court in *Adams Fruit Co.* v. *Barrett,* 110 S. Ct. 1384 (March 21, 1990), which held that the exclusive remedy provisions in State workers' compensation schemes do not preclude migrant workers from suing their employer for damages under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). This decision invalidates a Department of Labor regulation at 29 CFR 500.122(b) which had provided that State workers' compensation benefits, where applicable, would provide the exclusive remedy for injuries under MSPA.

EFFECTIVE DATE: This rule is effective July 2, 1991.

FOR FURTHER INFORMATION CONTACT: Solomon Sugarman, Chief, Branch of Farm Labor Programs, Division of Farm Labor, Child Labor, and Polygraph Standards, Office of Program Operations, Wage and Hour Division, Employment Standards Administration; Telephone (202) 523–7605. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This rule imposes no reporting or recordkeeping requirements on the public.

II. Background

This rule amends the regulations in accordance with the decision of the U.S. Supreme Court in *Adams Fruit Co.* v. *Barrett,* 110 S. Ct. 1384, decided March 21, 1990. The Court held that migrant farm workers were not precluded from recovering damages under the private right of action provided in the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1801 *et seq.*, for injuries which were also subject to the remedies provided in State workers' compensation laws. The Court concluded that the regulations of the Department of Labor at 29 CFR, part 500—which provide that State workers' compensation law would be the exclusive remedy where both the

Federal Act and State workers' compensation law are applicable, (29 CFR 500.122(b))—were contrary to the intent of the statute.

III. Summary of Rule

As a result of the decision of the U.S. Supreme Court in *Adams Fruit Co.* v. *Barrett*, 110 S. Ct. 1384 (1990), § 500.122(b) of the Regulations, 29 CFR part 500 is amended to provide that the exclusivity provisions of State workers' compensation laws do not bar migrant and seasonal agricultural workers from a private right of action under the Migrant and Seasonal Agricultural Worker Protection Act in the case of bodily injury or death.

Executive Order 12291

This rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations because it will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for the rule under 5 U.S.C. 553(b), the requirements of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1165, 5 U.S.C. 601 *et seq.*, pertaining to regulatory flexibility analysis, do not apply to this rule. See 5 U.S.C. 601(2).

Administrative Procedure Act

The Secretary has determined that the public interest requires the immediate issuance of these regulations in final form without prior notice and comment in order to comply with the March 21, 1990 decision of the Supreme Court in *Adams Fruit Co.* v. *Barrett* regarding the recovery by migrant and seasonal agricultural workers for damages under the private right of action provided in the Migrant and Seasonal Agricultural Worker Protection Act. The changes made herein are necessitated by operation of law as a result of the decision of the Supreme Court in *Adams Fruit Co.*

Accordingly, the Secretary, for good cause, finds pursuant to 5 U.S.C. 553(b)(3)(B), that prior notice and public comment are impracticable and contrary to the public interest.

The Secretary also for good cause finds, pursuant to 5 U.S.C. 553(d)(3), that this rule cannot be published 30 days before its effective date.

This document was prepared under the direction and control of John R. Fraser, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 500

Administrative practice and procedure, Agricultural, Aliens, Carpools, Farmer, Farm labor contractor, Housing standards, Immigration, Insurance, Investigation, Labor, Manpower training programs, Migrant labor, Motor carriers, Motor vehicle safety, Occupational safety and health, Penalties, Reporting requirements, Safety, Seasonal agricultural workers, Transportation, Wages.

For the reasons set forth above, 29 CFR part 500 is amended as set forth below.

Signed at Washington, DC, on this 26th day of June 1991.

Lynn Martin,

Secretary of Labor.

Samuel D. Walker,

Acting Assistant Secretary For Employment Standards.

John R. Fraser,

Acting Administrator, Wage and Hour Division.

PART 500—MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION

1. The authority citation for part 500 is revised to read as follows:

Authority: Pub. L. 97–470, 96 Stat. 2583 (29 U.S.C. 1801–1872); Secretary's Order No. 6–84, 49 FR 32473; Sec. 210A(f), Pub. L. 99–603, 100 Stat. 3359 (8 U.S.C. 1161(f)).

2. Section 500.122, paragraph (b), is revised to read as follows:

§ 500.122 Adjustments in insurance requirements when workers' compensation coverage is provided under State law.

* * * * *

(b) Where a State workers' compensation law is applicable and coverage is provided for a migrant or a seasonal agricultural worker by the employer, the State workers' compensation benefits are not the exclusive remedy for loss under MSPA in the case of bodily injury or death. The exclusivity provisions in State workers' compensation laws do not bar migrant and seasonal agricultural workers from availing themselves of the private right of action provided under the Act at 29 U.S.C. 1854(c)(1). *Adams Fruit Co.* v. *Barrett*, 110 S. Ct. 1384 (March 21, 1990).

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[FR Doc. 91–15615 Filed 7–1–91; 8:45 am]
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DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 861

Department of Defense Commercial Air Carrier Quality and Safety Review Program

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule.

SUMMARY: The National Defense Authorization Act created the Department of Defense (DOD) Commercial Airlift Review Board (CARB) and required the establishment of inspection standards for use when evaluating air carriers providing DOD airlift. This part describes DOD quality and safety criteria for air carriers providing or seeking to provide airlift services to the DOD. Also included are the operating procedures of the DOD CARB. The CARB has the authority to suspend air carriers from DOD use or take other actions when issues of air safety arise. This part provides the criteria to evaluate air carriers wishing to serve the DOD.

EFFECTIVE DATE: August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Colonel Robert S. Wells, Jr., Director, DOD Air Carrier Survey and Analysis Directorate, DCS/Operations and Transportation, Headquarters Military Airlift Command (HQ MAC/XOB), Scott AFB, IL 62225–5001, telephone (618) 256–4801/4806.

SUPPLEMENTARY INFORMATION: This part is published as a final rule because it adopts and implements Public Law 99–661 (FY 87 National Defense Authorization Act, section 1204, Requirements Concerning Transportation of Members of the Armed Forces by Chartered Aircraft) and DOD Directive 4500.53 (Commercial Passenger Airlift Management and Quality Control). Additionally, and as part of the final rule determination, this part is related to public contracts and to provisions for agency management.

The Department of the Air Force has determined that this regulation is not a major rule as defined by Executive Order 12291, is not subject to the

relevant provisions of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–611), does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980 (44 U.S.C. ch 35), and poses no negative environmental impact as defined in the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

List of Subjects in 32 CFR Part 861

Air carriers, Aviation safety.

Therefore, 32 CFR is amended by revising part 861 to read as follows:

PART 861—DEPARTMENT OF DEFENSE COMMERCIAL AIR CARRIER QUALITY AND SAFETY REVIEW PROGRAM

Sec.

Authority: 10 U.S.C. 8013; 10 U.S.C. 2640.

§ 861.1 References.

(a) Section 1204, Public Law 99–661; 10 U.S.C. 2640, Charter Air Transportation of Members of the Armed Forces.

(b) DOD Directive 4500.53, Commercial Passenger Airlift Management and Quality Control.

(c) MACR 76–8, Contract Airlift Management, Civil Air Carriers.

(d) MTMCR 15–1, Procedure for Disqualifying and Placing Carriers in Nonuse.

§ 861.2 Purpose.

Department of Defense Directive 4500.53, Commercial Passenger Airlift Management and Quality Control, charges Military Airlift Command (MAC), with establishing safety standards and criteria for commercial passenger airlift service used by the Department of Defense. It also charges MAC, jointly with Military Traffic Management Command (MTMC), with establishing the Commercial Airlift Review Board and providing policy guidance and direction for its operation. This part establishes Department of Defense (DOD) quality and safety criteria for commercial air carriers providing or seeking to provide airlift services to the DOD. Included are the operating procedures of the Commercial Airlift Review Board (CARB). The CARB has the authority to suspend air carriers from DOD use or take other action when issues of air safety arise.

§ 861.3 DOD commercial air carrier quality and safety requirements.

(a) DOD, as a customer of airlift services, expects an air carrier or operator soliciting for or doing business with the DOD to engage in quality programs and business practices that not only ensure good service but enhance the safety, operational, and maintenance standards established by the applicable Civil Aviation Agency Regulations (CARs). Accordingly, and as required by U.S. Public Law 99–661, the DOD has established a set of air carrier quality and safety requirements that reflect the type programs and practices the DOD seeks from air carriers or operators airlifting DOD resources.

(b) A DOD survey team will use the following requirements, the specifics of the applicable DOD contract or agreement, the CARs, and the experienced judgment of DOD personnel to evaluate an air carrier's capability to perform for the DOD. The survey will also include, with the carrier's coordination, observation of cockpit crew performance, as well as ramp inspections of selected company aircraft. A satisfactory on-site survey (audit) conducted by DOD personnel is prerequisite to participation in the DOD air transportation program. Surveys are conducted prior to an air carrier's acceptance into the program; thereafter, surveys will be completed on a biennial basis and when otherwise required to validate adherence to DOD quality and safety requirements. DOD personnel will also assess these quality and safety requirements when conducting periodic commercial air carrier table-top performance evaluations.

(c) The size of an air carrier, along with the type and scope of operations, will be considered during the on-site survey. For example, while an air taxi/FAA part 135 air carrier may not have a formal flight control function, such as a 24-hour dispatch organization, that same air taxi is expected to demonstrate some kind of effective flight following capability. On the other hand, a major carrier/FAA part 121 air carrier is expected to have a formal flight control or dispatch function. Both, however, will be evaluated based on the effectiveness and quality of whatever flight following function they do maintain.

(d) The air carrier requirements stated in this part provide the criteria against which would-be DOD air carrier contractors may be subjectively evaluated by the DOD. These requirements are neither all-inclusive nor are they inflexible in nature. They are not replacements for the certification criteria and other regulations established by civil aviation agencies; rather, these requirements are customer-developed and describe enhanced air carrier activities sought by the DOD.

Note: The term "Civil Aviation Agency (CAA)" is used throughout this part since these requirements are applicable to U.S. and international air carriers doing business with DOD. CAA includes the United States Federal Aviation Administration.

(1) Quality and safety requirements—prior experience. U.S. certified air carriers or operators applying to conduct business for the United States Department of Defense are required to possess 12 months of continuous service equivalent to the service sought by DOD. If the air carrier or operator is applying to airlift passengers on domestic U.S. routes, then the air carrier or operator must have conducted passenger service equivalent to what the DOD is seeking for the 12 continuous months immediately prior to applying for DOD business. In order to provide international passenger airlift for DOD, the same criteria applies. The air carrier must have conducted international passenger operations comparable to the service DOD is seeking for the 12 continuous months immediately prior to applying for business with the Department of Defense. Prior experience must be equivalent in difficulty and complexity in regard to distance, weather systems, international or national procedures, similar aircraft, schedule demands, aircrew experience, and management required.

(2) Quality and safety requirements—air carrier management. Management has clearly defined safety as the number one company priority, and safety is never sacrificed to satisfy passenger concern, convenience, or cost. Policies, procedures, and goals that enhance the CAA's minimum operations and maintenance standards have been established and implemented. A cooperative response to CAA inspections, critiques, or comments is demonstrated. Proper support infrastructure, including facilities, equipment, parts, and qualified personnel, is provided at the certificate holder's primary facility and en route stations. Personnel with aviation credentials and experience fill key management positions. An internal quality audit program or other method capable of identifying in-house deficiencies and measuring the company's compliance with their stated policies and standards has been implemented. Audit results are analyzed in order to determine the cause, not just the symptom, of any deficiency. The

result of sound fiscal policy is evident throughout the company.

(3) Quality and safety requirements—operations:

(i) Flight safety. Establish policies that promote flight safety. These policies are infused among all aircrew and operational personnel who translate the policies into practice. New or revised safety-related data are promptly disseminated to affected personnel who understand that deviation from any established safety policy is unacceptable. An audit system that detects unsafe practices is in place and a feedback structure informs management of safety policy results including possible safety problems. Management ensures that corrective actions resolve every unsafe condition.

(ii) Flight operations. Established flight operations policies and procedures are up-to-date, reflect the current scope of operations, and are clearly defined to aviation department employees. These adhered-to procedures are further supported by a flow of current, management-generated safety and operational communications. Managers are in touch with mission requirements, supervise crew selection, and ensure the risk associated with all flight operations is reduced to the lowest acceptable level. Flight crews are free from undue management pressure and are comfortable with exercising their professional judgement during flight activities, even if such actions do not support the flight schedule. Effective lines of communication permit feedback from line crews to operations managers. Personnel records are maintained and reflect such data as experience, qualifications, and medical status.

(iii) Flight crew hiring. Established procedures ensure that applicants are carefully screened, including a review of the individual's health and suitability to perform flight crew duties. Consideration is given to the applicant's total aviation background, appropriate experience, and the individual's potential to perform safely. Freedom from alcohol abuse and illegal drugs is required. If new-hire cockpit crewmembers do not meet industry standards for experience and qualification, then increased training and management attention to properly qualify these personnel are required.

(iv) Aircrew training. Training, including recurrent training, that develops and refines skills designed to eliminate mishaps and improve safety is essential to a quality operation. Crew coordination training that facilitates full cockpit crews training and interacting together using standardized procedures and including the principles of cockpit Resource Management (CRM) is required. Programs involving the use of simulators or other devices that can provide realistic training scenarios are desired. Captain and first officer training objectives cultivate similar levels of proficiency. Appropriate emergency procedures training (e.g., evacuation procedures) is provided to flight deck and flight attendant personnel as a total crew whenever possible; such training focuses on cockpit and cabin crews functioning as a coordinated team during emergencies. Crew training—be it pilot, engineer, or flight attendant—is appropriate to the level of risk and circumstances anticipated for the trainee. Training programs have the flexibility to incorporate and resolve recurring problem areas associated with day-to-day flight operations. Trainers are highly skilled in both subject matter and training techniques. Training received is documented, and that documentation is maintained in a current status.

(v) Captain upgrade training. A selection and training process that considers proven experience, decision making, cockpit resource management, and response to unusual situations, including stress and pressure, is required. Also important is emphasis on captain responsibility and authority.

(vi) Aircrew scheduling. A closely monitored system that evaluates operational risks, experience levels of crewmembers, and ensures the proper pairing of aircrews on all flights is required. New captains are scheduled with highly experienced first officers, and new or low-time first officers are scheduled with experienced captains. Except for aircraft new to the company, captains and first officers assigned to DOD charter passenger missions possess at least 250 hours combined experience in the type aircraft being operated. The scheduling system involves an established flight duty time program for aircrews, including flight attendants, carefully managed so as to ensure proper crew rest and considers quality-of-life factors. Attention is given to the stress on aircrews during strikes, mergers, or periods of labor-management difficulties.

(vii) In-flight performance. Aircrews, including flight attendants, are fit for flight duties and trained to handle normal, abnormal, and emergency situations. They demonstrate crew discipline and a knowledge of aviation rules; use company-developed standardized procedures; adhere to checklists; and emphasize safety, including security considerations, throughout all preflight, in-flight, and postflight operations. Qualified company personnel evaluate aircrews and analyze results; known performance deficiencies are eliminated. Evaluations ensure aircrews demonstrate aircraft proficiency in accordance with company established standards. Flight crews are able to determine an aircraft's maintenance condition prior to flight and use standardized methods to accurately report aircraft deficiencies to the maintenance activity.

(viii) Operational control/support. Effective mission control includes communications with aircrews and the capability to respond to irregularities or difficulties. Clear written procedures for mission preparation and flight following aircraft and aircrews are provided. There is access to weather, flight planning, and aircraft maintenance data. There are personnel available who are knowledgeable in aircraft performance and mission requirements and that can correctly respond to emergency situations. There is close interface between operations and maintenance, ensuring a mutual awareness of aircraft operational and maintenance status. Procedures to notify DOD in case of an accident or serious incident have been established. Flight crews involved in such accidents or incidents report the situation to company personnel who, in turn, have procedures to evaluate the flight crew's capability to continue the mission. Aircraft involved in accidents or incidents are inspected in accordance with Civil Aviation Regulations and a determination made as to whether or not the aircraft is safe for continued operations.

(ix) DOD charter procedures. Detailed procedures addressing military charter requirements are expected. The level of risk associated with DOD charter missions does not exceed the risks inherent in the carrier's non-DOD daily flight operations. Complete route planning and airport analyses are accomplished, and actual passenger and cargo weights are used in computing aircraft weight and balance.

(4) Quality and safety requirements—maintenance. Maintenance supervisors ensure all personnel understand that in spite of scheduling pressure, peer pressure, supervisory pressure, or other factors, the airplane must be airworthy prior to flight. Passenger and employee safety is a paramount management concern. Quality, completeness, and integrity of work are trademarks of the maintenance manager and maintenance department. Nonconformance to established maintenance practices is not tolerated. Management ensures that contracted maintenance, including repair and overhaul facilities, is

performed by maintenance organizations acceptable to the CAA.

(i) Maintenance personnel. Air carriers are expected to hire and train the number of employees required to safely maintain the company aircraft and support the scope of the maintenance operation both at home station (the company's primary facility) and at en route locations. These personnel ensure that all maintenance tasks, including required inspections and airworthiness directives, are performed; that maintenance actions are properly documented; and that the discrepancies identified between inspections are corrected. Mechanics are fit for duty, properly certificated, the company verifies certification, and these personnel possess the knowledge and the necessary aircraft-specific experience to accomplish the maintenance tasks. Noncertified and inexperienced personnel receive proper supervision. Freedom from alcohol abuse and illegal drugs is required.

(ii) Quality assurance (continuing analysis and surveillance program). A system that continuously analyzes the performance and effectiveness of maintenance activities and maintenance inspection programs is required. This system evaluates such functions as reliability reports, audits, component tear-down reports, inspection procedures and results, tool calibration programs, real-time aircraft maintenance actions, warranty programs, and other maintenance functions. The extent of this program is directly related to the air carrier's size and scope of operation. The cause of any recurring discrepancy or negative trend is researched and eliminated. Action is taken to prevent recurrence of these discrepancies and preventive actions are monitored to ensure effectiveness. The results of preventive actions are provided to appropriate maintenance technicians.

(iii) Maintenance inspection activity. A process to ensure required aircraft inspections are completed and the results properly documented is required. Also required is a system to evaluate contract vendors, suppliers, and their products. Inspection personnel are identified, trained (initial and recurrent), and provided guidance regarding inspector responsibility and authority. The inspection activity is normally a separate entity within the maintenance department.

(iv) Maintenance training. Training is conducted commensurate with the size and type of maintenance function being performed. Continuing education and progressive experience are provided for all maintenance personnel. Orientation, familiarization, on-the-job, and appropriate recurrent training for all full and part-time personnel is expected. The use of such training aids as mockups, simulators, and computer-based training enhances maintenance training efforts and is desired. Training documentation is required; it is current, complete, well-maintained, and correctly identifies any special authorizations such as inspection and airworthiness release. Trainers are fully qualified in the subject matter.

(v) Maintenance control. A method to control maintenance activities and track aircraft status is required. Qualified personnel monitor maintenance preplanning, ensure completion of maintenance actions, and track deferred discrepancies. Deferred maintenance actions are identified to supervisory personnel and corrected in accordance with the criteria provided by the manufacturer or regulatory agency. Constant and effective communications between maintenance and flight operations ensure an exchange of critical information.

(vi) Aircraft maintenance program. Aircraft are properly certified and maintained in a manner that ensures they are airworthy and safe. The program includes the use of manufacturer's and CAA information, as well as company policies and procedures. Airworthiness directives are complied with in the prescribed time frame, and service bulletins are evaluated for applicable action. Approved reliability programs are proactive, providing management with visibility on the effectiveness of the maintenance program; attention is given to initial component and older aircraft inspection intervals and to deferred maintenance actions. Special tools and equipment are calibrated.

(vii) Maintenance records. Maintenance actions are well documented and provide a complete record of maintenance accomplished and, for repetitive actions, maintenance required. Such records as aircraft log books and maintenance documentation are legibly prepared, dated, clean, readily identifiable, and maintained in an orderly fashion. Inspection compliance, airworthiness release, and maintenance release records, etc., are complete and signed by approved personnel.

(viii) Aircraft appearance (in-service aircraft). Aircraft exteriors, including all visible surfaces and components, are clean and well maintained. Interiors are also clean and orderly. Required safety equipment and systems are available and operable.

(ix) Fueling and servicing. Aircraft fuel is free from contamination, and company fuel facilities (farms) are inspected and results documented. Procedures and instructions pertaining to servicing, handling, and storing fuel and oil meet established safety standards. Procedures for monitoring and verifying vendor servicing practices are included in this program.

(x) Maintenance manuals. Company policy manuals and manufacturer's maintenance manuals are current, available, clear, complete, and adhered to by maintenance personnel. These manuals provide maintenance personnel with standardized procedures for maintaining company aircraft. Management policies, lines of authority, and company maintenance procedures are documented in company manuals and kept in a current status.

(xi) Maintenance facilities. Well maintained, clean maintenance facilities adequate for the level of aircraft repair authorized in the company's CAA certificate are expected. Safety equipment is available in hangars, shops, etc., and is serviceable. Shipping, receiving, and stores areas are likewise clean and orderly. Parts are correctly packaged, tagged, segregated, and shelf life properly monitored.

(5) Quality and safety requirements—security. Company personnel are schooled in security responsibilities and practice applicable procedures during ground and in-flight operations. Compliance with provisions of the appropriate standard security program, established by the CAA, is required for all DOD missions.

(6) Quality and safety requirements—specific equipment requirements. Air carriers satisfy DOD equipment and other requirements as specified in Military Airlift Command contracts or Military Traffic Management Command Military Air Transportation Agreements.

§ 861.4 DOD Commercial Airlift Review Board procedures.

(a) This part establishes the procedures to be used by the United States Air Force Military Airlift Command (MAC) and the United States Army Military Traffic Management Command (MTMC) when, in accordance with references § 861.1 (a) through (d);

(1) A commercial air carrier is subject to review or other action by the DOD Commercial Airlift Review Board (hereinafter referred to as the CARB),

(2) A warning, suspension, or reinstatement action is taken against a carrier by the CARB, or

(3) Review or other CARB action is escalated to a higher authority.

These procedures apply to all commercial air carriers providing DOD passenger or cargo airlift through charter, individual ticket movements, contracts, tariffs, or other transportation agreements. They also apply to carriers providing air transportation purchased by DOD individuals for which government reimbursement will be made in whole or in part.

(b) Safety or airworthiness issues, per reference § 861.1(b) must be referred to the CARB. MAC and MTMC may each take independent corrective action in accordance with their respective procedures on standards of service issues when safety and airworthiness issues are not involved. The DOD Air Carrier Survey and Analysis Directorate will be informed of all actions taken independently by MAC or MTMC.

(c) Except as otherwise provided herein, the rights and remedies of the government and commercial air carriers outlined in these procedures are not exclusive and are in addition to any other rights and remedies provided for by law, regulation, contract, or agreement.

(d) Definitions.

(1) Letter of warning is a notice to a carrier of a failure to satisfy safety or airworthiness requirements which, if not remedied, may result in temporary nonuse or suspension. The issuance of a letter of warning is not a prerequisite to a suspension or other action.

(2) Temporary nonuse is the immediate exclusion of a carrier from any flight activities in the DOD airlift transportation program, pending a decision on suspension, taken under the conditions outlined in paragraph (h)(1) of this section.

(3) Suspension is the exclusion of an air carrier from participating in the DOD airlift transportation program. The period of suspension will normally:

(i) Remain in effect until the carrier furnishes satisfactory evidence that the conditions causing the suspension have been remedied or

(ii) Be for a fixed period of time as determined at the discretion of the CARB.

(4) The procedures for commercial airlift safety review include five possible levels with increasing authority:

(i) DOD Air Carrier Survey and Analysis Directorate.

(ii) DOD Air Carrier Review Committee.

(iii) DOD Commercial Airlift Review Board.

(iv) Commanders MTMC and MAC.

(v) DOD Commercial Airlift Review Authority.

These levels are described in reference § 861.1(b), with the exception of the DOD Air Carrier Review Committee, which is described in reference § 861.1(c). The Committee provides multifunctional review of the efforts of the DOD Air Carrier Survey and Analysis Directorate, including approval or disapproval of carriers initially seeking DOD business, and offers advice to the higher authorities when appropriate.

(e) Causes and conditions for suspension.

(1) Carrier shall be subject to suspension for good cause, including:

(i) Failing to comply with generally accepted standards of airmanship, training, and maintenance practices and procedures.

(ii) Failing to satisfy DOD quality and safety requirements as described in § 861.3.

(iii) Failing to comply with all provisions of applicable statutes, agreements, and contract terms, as such may affect flight safety, as well as with all applicable Federal Aviation Administration regulations, airworthiness directives, orders, rules, and standards promulgated under the Federal Aviation Act of 1958 as amended.

(iv) Involvement of one of the carrier's aircraft in a serious or fatal accident, incident, or operational occurrence (regardless of whether or not such aircraft is being used in the performance of government procured transportation).

(v) Any other condition which affects the safe operation of the carrier's flights hereunder.

(vi) Compliance with published standards does not, standing alone, constitute compliance with generally accepted standards of airmanship, training, or maintenance practices.

(f) Reinstatement considerations. In no event shall reinstatement occur unless and until the carrier shows to the satisfaction of the CARB that deficiencies that led to suspension have been corrected and that actions have been implemented to preclude the recurrence of similar deficiencies.

(g) CARB membership.

(1) The CARB shall be composed of:

(i) Chief of Staff, HQ MAC—senior member and voting member.

(ii) Senior Transportation Advisor, HQ MTMC—senior member and voting member.

(iii) Assistant Deputy Chief of Staff for Force Development, DCS/Operations and Transportation, HQ MAC—voting member.

(iv) Director of Passenger Traffic, HQ MTMC—voting member.

(v) Director of Maintenance Engineering, HQ MAC—voting member.

(vi) Deputy Commander, HQ MTMC—voting member.

(vii) Legal Representative—nonvoting advisor.

(viii) Director, DOD Air Carrier Survey and Analysis Directorate, HQ MAC—nonvoting advisor/recorder.

(ix) Director of Aerial Port operations, HQ MAC—nonvoting advisor.

(x) Chief, Standardization Division, HQ MAC—nonvoting advisor.

(xi) Federal Aviation Administration (FAA) Liaison, HQ MAC-nonvoting advisor.

(xii) Contract Representative, HQ MAC—nonvoting advisor.

(xiii) Other additional advisors necessary to the CARB's deliberation process—nonvoting members.

(2) The presiding member at a meeting of the CARB shall be the senior voting member or alternate present. A voting member, who will not be present at any meeting of the CARB, may be represented by an alternate recognized in the normal course as authorized to act on behalf of the absent official, who will attend in his stead and will have power to vote. Four voting members present shall constitute a quorum. Decisions shall be by majority vote.

(3) The meeting date, time, and site of the CARB will be determined at the time of the decision to convene the CARB.

(4) Minutes of CARB hearings may be recorded or summarized and will be maintained with all other records pertaining to the CARB proceeding.

(5) The CARB recorder shall ensure that the air carrier and appropriate DOD agencies are notified of the CARB's decision and reasons therefor.

(h) CARB operating procedures:

(1) Temporary nonuse:

(i) In case of a fatal aircraft accident or for other good cause, the two senior members of the CARB (see paragraph (g)(1) of this section) will jointly make an immediate determination whether to place the carrier involved in a temporary nonuse status pending suspension proceedings. Prior notice to the carrier is not required.

(ii) Such determination shall include consideration of the advice of the DOD Air Carrier Review Committee, if reasonably available, but will not await such advice.

(iii) The carrier shall be promptly notified of the temporary nonuse determination and the basis therefore.

(iv) Temporary nonuse status terminates automatically if suspension proceedings are not commenced, as set out in § 861.3(h)(2)(ii), within 30 days of inception.

(2) Suspension:

(i) On a recommendation of the DOD Air Carrier Survey and Analysis Directorate, the DOD Air Carrier Review Committee, or any individual member of the CARB, the CARB shall consider whether or not to suspend a carrier.

(ii) If the CARB determines that suspension may be appropriate, it shall notify the carrier that suspension action is under consideration and of the basis for such consideration and offer the carrier a hearing thereon within 15 days of the date of the notice, or such other period as granted by the CARB, at which the carrier may be present and may offer evidence. The presiding member of the CARB shall establish procedures for such hearing as may be appropriate which shall be as informal as practicable, consistent with administrative due process.

(iii) Types of evidence which may be considered, if appropriate, shall include, but not be limited to, the following:

(A) Information and analysis provided by the DOD Air Carrier Survey and Analysis Directorate.

(B) Carrier's written/oral evidence.

(C) Corrective actions that may have been taken by the carrier to:

(*1*) Correct the specific deficiencies that led the CARB to consider suspension, and

(*2*) Preclude recurring similar deficiencies.

(D) Such other matters as the CARB deems relevant.

(E) The CARB's decisions on the reception or exclusion of evidence shall be final.

(iv) Carriers shall have the burden of proving their suitability to safely perform DOD airlift services by clear and convincing evidence.

(v) After the conclusion of such hearing, or if no hearing is requested and attended by the carrier within the time specified by the CARB, the CARB shall consider the matter and make a final decision whether or not to suspend the carrier or to impose such lesser sanction as is appropriate. The carrier shall be notified of the CARB's decision.

(3) Reinstatement:

(i) The CARB may consider reinstating a suspended carrier on either CARB motion or carrier motion, unless such carrier has become ineligible in the interim.

(ii) The carrier has the burden of proving by clear and convincing evidence that the reinstatement considerations in paragraph (f) of this section have been satisfied.

(iii) Carrier evidence in support of reinstatement will be provided in a timely manner to the CARB for its review. The CARB may independently corroborate the carrier-provided evidence and may, at its option, convene a hearing and request the participation of the carrier.

(i) Decision by others. In the event the CARB is unable to decide an issue properly before it, or if the issue in the judgement of the CARB requires review at a DOD organizational level higher than the CARB, the issue will be referred to the Commander-in-Chief, MAC (CINCMAC) and Commander, MTMC, for appropriate disposition. In such event, the decision will be made upon the written record only, no hearing will be held.

(j) Appeal of a determination.

(1) A carrier placed in suspension may administratively appeal this action to the authorities shown in paragraph (j)(3) of this section. An appeal, if any, must be filed within 15 work days after receipt of the decision of the CARB or CINCMAC and Commander, MTMC. The suspension will not be stayed pending appeal unless for good cause, as determined by the CARB. The decision of the appellate authority designated herein is final and is not subject to further administrative review or appeal.

(2) An appeal will be in writing only and carriers shall not be entitled to a de novo hearing before the administrative appellate authorities.

(3) The following administrative appellate authorities will review and make decisions on appeals:

(i) When the decision being appealed was made by the CARB, the appellate authorities are CINCMAC and Commander, MTMC. They will jointly decide the appeal.

(ii) When CINCMAC and Commander, MTMC, are unable to jointly agree on an appeal, they shall refer the matter to the DOD Commercial Airlift Review Authority (CARA) for its decision.

(iii) When the decision being appealed was made by CINCMAC and Commander, MTMC, the appellate authority is the DOD CARA.

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BILLING CODE 3910–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5–91–014]

Drawbridge Operation Regulations; Kent Island Narrows, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Temporary deviation from the regulations with request for comments.

SUMMARY: In order to further evaluate requested changes to the regulations governing operation of the old Kent Island Narrows drawbridge, now carrying local traffic on Rt. 18 across Kent Narrows, mile 1.0, near Crasonville, Maryland, the Coast Guard is issuing a second 60-day temporary deviation from the permanent regulations for this bridge. This temporary deviation will further increase the number of opening opportunities for vessel traffic, but should not have a significant adverse impact on highway traffic across the bridge. The purpose of this deviation is to evaluate the impacts of this schedule on both marine and highway traffic during the period.

DATES: This temporary deviation is effective from July 1, 1991, through August 31, 1991. Comments must be received on or before August 15, 1991.

ADDRESSES: Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004. The comments received will be available for inspection and copying at room 507 at the above address between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398–6222.

SUPPLEMENTARY INFORMATION: On May 3, 1991, the Commander Fifth Coast Guard District, published a Temporary Deviation from the Regulations with request for comments (56 FR 20350) on proposed changes to operation of this bridge. On May 22, 1991, the Commander, Fifth Coast Guard District published a Final Rule; correction to the temporary deviation (56 FR 23518). The Coast Guard also published the temporary deviation and the correction as Public Notices dated April 29, 1991, and May 7, 1991, respectively. In all notices, interested parties were given until June 15, 1991, to submit comments.

Interested persons are invited to participate in this rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for any recommended changes to the temporary deviation. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope. The rules may be changed in light of comments received. All comments received before the expiration of the

comment period will be considered if final action is taken to change the rules. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Ann B. Deaton, Project Officer, and LT Monica L. Lombardi, Project Attorney.

Discussion of Temporary Deviation

This temporary deviation is being issued to evaluate a change to the existing permanent regulations for the Kent Narrows drawbridge published in 33 CFR 117.561. This change would increase the number of openings available for boats wishing to transit the bridge. The previous temporary deviation from the regulations which expires on June 30, 1991, was issued to evaluate a proposal by the Maryland Department of Transportation to relax the existing permanent regulations by placing the bridge on a scheduled hourly opening basis during daylight hours seven days a week. The correction to that deviation eliminated the need for the bridge to the manned 24 hours a day as opposed to during daylight hours. The public notices on these actions merely summarized the temporary changes and solicited public comments. The published notices drew considerable response from the public, the majority of whom are members of the boating community. Most of these responses asked for more frequent openings, stating that scheduled hourly openings are unnecessary now that the drawbridge carries relatively low-level local traffic. Many respondents pointed out the safety hazard of numerous boats accumulating and circling in a relatively narrow and shallow channel with heavy currents while awaiting the next scheduled hourly opening. They feel more frequent openings would reduce the safety hazards for them, but would also benefit highway traffic since smaller numbers of boats would accumulate for each opening, thereby decreasing the duration of each opening. Boaters also requested that openings begin earlier than 7 a.m., so they could get an earlier start on their trips in the morning. A recreational boating association, as well as several boaters, recommended that an emergency procedure be established whereby vessels of the United States, state or local vessels on public safety missions or vessels in distress will know how to get the bridge opened after regular hours in the event of an emergency. A commercial scheduled ferry service asked for an exemption from the scheduled openings on Sundays to allow two (2) unscheduled openings for the ferry to accommodate their schedule in the Rock Hall to St. Michaels area which requires passage through the bridge. The Queen Annes County Chamber of Commerce supported an exception to allow use of Kent Narrows by this "scheduled marine passenger carrier."

A review of highway and marine traffic data collected during the period from May 1, 1991, through June 15, 1991, revealed that the number of boats transiting the narrows during that period was far greater on Saturdays, Sundays, and Federal Holidays than on weekdays. It also showed that the average number of cars stopped in each direction by each bridge opening ranged from 14 to 45, the latter which occurred on the Saturday before Memorial Day. The most frequent number of cars in each direction stopped by each bridge opening was 20. The duration of the longest openings in terms of minutes occurred on Saturdays, Sundays and Memorial Day during this period. The Coast Guard feels that since the number of boats transiting the narrows during the summer months is very high particularly on weekends, and the number of cars being stopped by each opening is relatively low, half-hourly openings rather than hourly openings would be beneficial to both boaters and highway traffic. Boat traffic will benefit in that the safety risk of great numbers of boats maneuvering and circling in a narrow channel with congestion and strong currents to contend with will be reduced. Highway traffic, although not excessive, will benefit in that the duration of openings every half-hour will be much shorter than that of hourly openings, thereby reducing delay time for those cars stopped. We also feel that having the bridge manned at 6 a.m. during the boating season as opposed to 7 a.m. is not unreasonable, and we agree that a 24-hour emergency number for vessels requiring an opening after hours should be published. Having the bridge open every half-hour on weekends as opposed to hourly openings should allow any scheduled marine passenger carrier much more flexibility in meeting their ferry schedules in the area. The schedule proposed in the current temporary deviation from the regulations for the period from November 1 through April 30 will remain unchanged. It is emphasized that these temporary deviations from the regulations are for evaluation purposes only. The impact of this proposal on highway and marine traffic during this period will be evaluated to determine if it will result in improvements in vehicular and marine traffic flow. The Maryland Department of Transportation will compile data on vehicle counts, boat counts, times of actual drawbridge openings, duration of openings, and the length of any vehicle backups. This data will be used to determine if permanent adoption of this proposal is warranted, or if a different opening schedule should be considered. Since this temporary deviation serves the immediate interests of both highway and marine traffic, and the information compiled will provide meaningful input, I find that good cause exists for publishing this temporary deviation without publication of a notice of proposed rulemaking and for making it effective in less than 30 days.

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 temporary deviation does not raise sufficient federalism implications to warrant preparation of a Federalism Assessment.

Regulatory Evaluation

This temporary deviation is considered to be non-major under Executive Order 12291 and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that these regulations are not expected to have any substantial affect on commercial navigation or on any businesses that depend on waterborne transportation for successful operations. The Coast Guard will accept comments on this impact, and will consider them when issuing new drawbridge regulations after the Maryland Department of Transportation study is completed.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the U.S. Coast Guard must consider whether proposed rules will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). This temporary deviation is being implemented specifically to

discover the impact of a more relaxed opening schedule, and it is anticipated that this impact will be beneficial to the fishing and charter boats in the area. The Coast Guard will accept comments on the economic impact on small entities, and will consider them when developing new drawbridge regulations, should that prove necessary.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.(5) of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is temporarily amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); 33 CFR 117.43.

2. Section 117.561 is temporarily revised to read as follows:

§ 117.561 Kent Island Narrows

The draw of the State Route 18 bridge, mile 1.0, Kent Island Narrows, operates as follows:

(a) From November 1 through April 30 the drawbridge shall open on signal from 6 a.m. to 6 p.m., but need not open at any other time.

(b) From May 1 through October 31 the drawbridge shall open on the hour and the half-hour for the passage of any waiting vessels from 6 a.m. to 9 p.m., and shall remain open for a period sufficient to allow passage of all waiting vessels. From 9 p.m. to 6 a.m., the drawbridge need not open.

(c) Shall open at any time with a one-hour advance notice for the passage of public vessels of the United States, State or local vessels on public safety missions, or vessels in distress. Notice shall be given to the State Highway Administration Division Communications Center at (301) 333–1215 which operates 24 hours a day.

(d) In the event that the new bridge is closed due to an incident, the draw-span shall be closed until the roadway has been cleared and traffic resumes on the bridge. In the event that the duration of the incident exceeds two hours, the drawbridge shall open every two hours to permit the passage of waiting vessels.

(e) This temporary deviation is effective from July 1, 1991, through August 31, 1991.

Dated: June 25, 1991.

W.T. Leland,

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

[FR Doc. 91–15737 Filed 7–1–91; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR 165

[CGD 1 91–071]

Safety Zone Regulations: Burlington, Lake Champlain, VT

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone at Burlington, Lake Champlain, Vermont. This zone is needed to protect the maritime community from the possible dangers and hazards to navigation associated with a fireworks display. Entry into this zone, or movement within this zone, is prohibited unless authorized by the Captain of the Port, New York.

EFFECTIVE DATES: This regulation becomes effective at 4 p.m. local time 03 July 1991. It terminates at 11:30 p.m. local time 03 July 1991.

FOR FURTHER INFORMATION CONTACT: BM2 G. Gaffney of Captain of the Port, New York (212) 668–7934.

SUPPLEMENTARY INFORMATION: 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 after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards.

Drafting Information

The drafters of this regulation are LTJG C.W. Jennings, project officer, Captain of the Port New York, and LT R.E. Korroch, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the possible dangers and hazards to navigation associated with a fireworks display. This regulation is effective from 4 p.m., 03 July 1991 to 11:30 p.m. 03 July 1991. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

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

Regulation

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

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

Authority: 33 USC 1225 and 1231; 50 USC 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 33 CFR 160.5.

2. A new 165.T1071 is added to read as follows:

§ 165.T1071 Safety Zone: Burlington, Lake Champlain, Vermont.

(a) *Location.* The following area has been declared A Safety Zone: All waters of Burlington Harbor within a 300 yard radius of the fireworks barge located in approximate position 44°-28'-31"N and 073°-13'-30"W

(b) *Effective date.* This regulation becomes effective at 4 p.m. local time 03 July 1991. It terminates at 11:30 p.m. local time 03 July 1991.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part entry into or movement within this zone is prohibited unless authorized by the Captain of the Port.

Dated: May 29, 1991.

R.M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 91–15738 Filed 7–1–91; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Buffalo Regulation 91–001]

Safety Zone Regulations: Sodus Bay, NY

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone inside Sodus Bay approximately 1400 feet south of Sand Point. The zone is needed to protect the barge anchored in the center of the safety zone and functioning as a platform for launching fireworks from a safety hazard associated with vessels transiting the area. It is also needed to protect spectator craft and other vessels from falling, burning debris. Entry into

this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective at 8:30 p.m. on 06 July 1991. It terminates on 06 July 1991 at 11:30 p.m. unless otherwise terminated by Captain of the Port.

FOR FURTHER INFORMATION CONTACT: Lt. Cumming at (716) 846–4168.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent potential danger to the vessels involved.

Drafting Information

The drafters of this regulation are LT Cumming, project officer for the Captain of the Port, and LCDR Reeves, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation will begin at 8:30 p.m., 06 July 1991 and will conclude at 11:30 p.m., 06 July 1991. The event is a fireworks display from an anchored barge. A safety zone is needed to protect spectator craft and other vessels from falling, burning debris. It is also needed to ensure that the safety of the fireworks launching operation is not compromised by wakes and other hazards associated with transiting vessels.

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

Federalism

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

List of Subjects in 33 CFR Part 165

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

Regulation

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

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

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new temporary § 165T0929 is added to read as follows: 165T0929 Safety Zone: Sodus Bay, NY

(a) *Location.* The following area is a safety zone: A 500 foot radius around a barge anchored in position 43 deg 15.73 min N, 076 deg 58.23 min W.

(b) *Effective date.* This regulation becomes effective at 8:30 p.m., 06 July 1991. It terminates at 11:30 p.m., 06 July 1991 unless otherwise terminated by the Captain of the Port.

(c) *Regulations:* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: June 14, 1991.

G.S. Cope,

Captain of the Port.

[FR Doc. 91–15739 Filed 7–1–91; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3968–7]

Approval and Promulgation of Implementation Plans; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Nebraska Department of Natural Resources (NDEC) has submitted revised regulations to incorporate by reference the EPA revisions to 40 CFR 52.21 at 53 FR 40656, October 17, 1988, pertaining to PSD NO_x increments. EPA is taking final action to approve this revision to the Nebraska State Implementation Plan (SIP).

DATES: This action will be effective September 3, 1991, unless notice is received within 30 days of publication that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the state submittal for this action are available for public inspection during normal business hours at: The Environmental Protection Agency, region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; Environmental Protection Division, Nebraska Department of Environmental Control, 301 Centennial Mall South, Lincoln, Nebraska 65809.

FOR FURTHER INFORMATION CONTACT: Joshua A. Tapp at (913) 551–7606 (FTS 276–7606).

SUPPLEMENTARY INFORMATION: On October 17, 1988, EPA revised the prevention of significant deterioration (PSD) regulations at 40 CFR 52.21 (see 53 FR 40656) for nitrogen oxides. These regulations establish the maximum increase in ambient nitrogen dioxide concentrations allowed in an area above the baseline concentration; these maximum allowable increases are called increments. The intended effect of these regulations is to require all applicants for major new stationary sources and major modifications emitting nitrogen oxides to account for and, if necessary, restrict emissions so as not to cause or contribute to exceedances of the increment.

On March 8, 1991, NDEC submitted an amendment to the Nebraska state air rules in chapter 7 entitled "Prevention of Significant Deterioration of Air Quality." This amendment, which became effective February 20, 1991, incorporates by reference the revisions to 40 CFR part 52.21, effective November 19, 1988. The state also provided a demonstration that it meets the conditions for approval of adoption of the NO_x increment program as detailed in the EPA guidance memorandum on the subject dated August 17, 1990.

The above memorandum describes specific conditions for EPA approval of a state's adoption of the NO_x increment rule. Those conditions pertain to regulatory language, increment consumption analysis, increment consumption for the transition period, and legal authority. EPA has evaluated the state's submittal in accordance with the August 17, 1990, guidance and finds that the state submittal is acceptable.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective September 3, 1991, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that

this action will be effective September 3, 1991.

EPA Action

EPA is taking final action to approve a revision to chapter 7 of title 129, "Nebraska Air Pollution Control Rules and Regulations," which adopts by reference the PSD NO_x requirements of 40 CFR part 52.21 at 53 FR 40656 (October 17, 1988).

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

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 3, 1991. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, nor postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Sulfur oxides.

Dated: June 10, 1991.

Martha R. Steincamp,

Acting Regional Administrator.

PART 52—[AMENDED]

Accordingly, 40 CFR part 52, subpart CC, is amended as follows:

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

Authority: 42 U.S.C. 7401—7642

Subpart CC—Nebraska

2. Section 52.1420 is amended by adding paragraph (c)(38) to read as follows:

§ 52.1420 Identification of plan.

* * * * *

(c) * * *

(38) Plan revisions were submitted by the Nebraska Department of Environmental Control on March 8, 1991, which implement EPA's October 17, 1988, PSD NO_x requirements.

(i) Incorporation by reference.

(A) Revisions to title 129, chapter 7, entitled "Prevention of Significant Deterioration of Air Quality," were adopted by the Nebraska Enviromental Control Council on December 7, 1990, and became effective February 20, 1991.

(ii) Additional material.

(A) Letter from the state submitted March 8, 1991, pertaining to NO_x rules and analysis which certifies the material became effective on February 20, 1991.

[FR Doc. 91–15551 Filed 7–1–91; 8:45 am]

BILLING CODE 6560–50–M

40 CFR 271

[FRL–3964–7]

North Carolina; Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule; Correction.

SUMMARY: This notice amends the list of authorities previously published in the April 10, 1991, Federal Register, 56 FR 14474, for final authorization of revisions to North Carolina's Hazardous Waste Management Program. The following analogues were inadvertently included in the Federal Register announcement:

- Hazardous Waste Miscellaneous Units; Standards Applicable to Owners and Operators, 54 FR 615, January 9, 1988.
- Standards Applicable to Owners and Operators of Hazardous Waste Treatment Storage and Disposal Facilities; Closure/Post Closure and Financial Responsibility Requirements, 53 FR 7740, March 10, 1988.

DATES: Final authorization for North Carolina's program revision shall be effective June 9, 1991, unless EPA publishes a prior Federal Register action withdrawing the April 10, 1991, immediate final rule.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365, (404) 347–2234.

SUPPLEMENTARY INFORMATION:

In the April 10, 1991 issue of the Federal Register on page 14475 the chart of Federal requirements is revised to read as follows:

Federal requirements	FR notice	Promulgation	State authority
Identification and listing of hazardous waste	52 FR 26012	7/10/87	NCGS 13A–294(c)(1)(1a) & (15) 15A NCAC 13A.0006(d)
Listing of spent pickle liquor clarification	52 FR 28697	8/3/87	
Development of corrective action programs after permitting hazardous waste land disposal facilities; corrections.	52 FR 33938	9/9/87	
Liability requirements for hazardous waste facilities corporate guarantee	52 FR 44314	11/18/87	NCGS 13A–294(c)(10)(15) & (16) NCGS 130A–294(j) 15A NCAC 13A.0009(i) 15A NCAC 13A.0010(h)

Federal requirements	FR notice	Promulgation	State authority
Hazardous waste miscellaneous units	52 FR 46946	12/10/87	NCGS 130A-294(c) NCGS 130A-294(c)(7) & (15) NCES 130A-294(c)(8) & (15) NCGS 130A-294(c)(2) & (15) NCGS 130A-294(c)(10) & (15) NCGS 130A-294(c)(14) & (15) 15A NCAC 13A.0002(b) 15A NCAC 13A.0009(c) NCGS 130A-294(c)(11) & (15) 15A NCAC 13A.0009(f) 15A NCAC 13A.0009(g) 15A NCAC 13A.0009(h) 15A NCAC 13A.0009(i) 15A NCAC 13A.0013(b) 15A NCAC 13A.0009(s)
Technical correction identification and listing of hazardous waste	53 FR 13382	4/22/87	NCGS 130A-294(c)(1)(1a) & (15) NCGS 130A-294(c)(2)(1a) & (15) 15A NCAC 13A.0006(e) 15A NCAC 13A.0006(d)

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 91-14101 Filed 7-1-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-616; RM-7554]

Radio Broadcasting Services; Cold Spring and Litchfield, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 235C2 from Litchfield to Cold Spring, Minnesota, and modifies the license for Station KMXK-FM to specify Cold Spring as the community of license for Channel 235C2, in response to a petition filed by Litchfield Broadcasting Corp. See 55 FR 52851, December 24, 1990. The coordinates for Channel 235C2 at Cold Spring are 45-23-53 and 94-25-15. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 12, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 90-616, adopted June 17, 1991, and released June 26, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street NW., Washington, DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 235C2, Litchfield and adding Channel 235C2, Cold Spring.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-15670 Filed 7-1-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-529; RM-7440]

Radio Broadcasting Services; Waupun and Omro, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 258C2 from Waupun to Omro, Wisconsin, and modifies the construction permit for Station WPKR(FM) to specify Omro as the community of license for Channel 258C2, in response to a petition filed by Midwest Dimensions, Inc. See 55 FR 47495, November 14, 1990. The coordinates for Channel 258C2 at Omro are 43-50-51 and 88-51-31. With this action this proceeding is terminated.

EFFECTIVE DATE: August 12, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 90-529, adopted June 14, 1991, and released June 26, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street NW., Washington, DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by removing Channel 258C2, Waupun and adding Channel 258C2, Omro.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-15671 Filed 7-1-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 901078-0345]

Pacific Coast Groundfish Fishery

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

ACTION: Notice of closure; request for comments.

SUMMARY: NOAA announces closure of the commercial fishery for sablefish caught with nontrawl gear in the groundfish fishery off Washington, Oregon, and California, and requests public comment on this action. This closure is authorized by the regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), and is intended to keep landings as close as possible to the 1991 quota for the nontrawl harvest of sablefish.

DATES: Effective from 0001 hours, July 1, 1991, until 2400 hours, December 31, 1991 (local times), unless modified, superseded, or rescinded. Comments will be accepted until July 17, 1991.

ADDRESSES: Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., Bldg. 1, Seattle, Washington 98115; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

FOR FURTHER INFORMATION CONTACT: Joe Scordino at (206) 526-6140; or Rodney R. McInnis at (213) 514-6202.

SUPPLEMENTARY INFORMATION: Management measures for the 1991 sablefish fishery were designed to achieve the 8,900 metric tons (mt) harvest guideline by apportioning the harvest guideline between user groups (56 FR 645; January 8, 1991). After subtracting an estimated catch of 300 mt by treaty Indian tribes, the remaining 8,600 mt was allocated between gear types: 58 percent (4,988 mt) to the trawl fishery, and 42 percent (3,612 mt) to the nontrawl fishery. Nontrawl gear means all legal commercial groundfish gear other than trawl gear and includes set nets (gill and trammel nets), traps or pots, longlines, commercial vertical hook-and-line gear, and troll gear. The trawl and nontrawl allocations are quotas which, if reached, cause the fishery, defined by the respective gear type, to be closed. Following closure of a fishery, taking and retaining, possessing, or landing sablefish is prohibited. Because sablefish is managed with a harvest guideline, any harvest in excess of one fishery's quota is not automatically subtracted from the other fishery's quota.

The best available information as of June 18, 1991, indicated that the 3,612 mt nontrawl quota for sablefish had been reached on May 29, 1991. After consulting with the Washington Department of Fisheries; the Oregon Department of Fish and Wildlife, the California Department of Fish and Game, and the Pacific Fishery Management Council (Council), the Regional Director herein announces closure, on July 1, 1991, the earliest practicable date, of the fishery for sablefish caught with nontrawl gear. The closure will continue until January 1, 1992, when the 1992 fishing season begins. Therefore, taking and retaining, possessing, or landing nontrawl-caught sablefish after June 30, 1991, and before January 1, 1992, is prohibited. The states of Washington, Oregon, and California will close state ocean waters during the same period.

Secretarial Action. For the reasons stated above, the Secretary of Commerce announces that:

(1) From 0001 hours, July 1, 1991, through 2400 hours, December 31, 1991, (local times), it is unlawful to take and retain, possess, or land sablefish caught with nontrawl gear.

(2) This restriction applies to all sablefish caught with nontrawl gear between 3 and 200 nautical miles offshore of Washington, Oregon, and California. All sablefish caught with nontrawl gear and possessed between 0 and 200 nautical miles offshore or landed in Washington, Oregon, or California are presumed to have been taken and retained between 3 and 200 nautical miles offshore of Washington, Oregon, or California unless otherwise demonstrated by the person in possession of those fish.

Classification

The determination to close the nontrawl sablefish fishery is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see Addresses) during business hours until July 17, 1991.

Because of the immediate need to minimize harvest in excess of the nontrawl quota, the Secretary finds that advance notice and public comment on this closure are impracticable and not in the public interest, and that no delay should occur in its effective date. Public comments will be accepted for 15 days after publication of this notice in the **Federal Register**. The Secretary therefore finds good cause to waive the 30-day delayed effectiveness provision under the Administrative Procedure Act.

This action is taken under the authority of 50 CFR 663.21(a)(b) and the appendix to part 663, section III.B.(1), and is in compliance with Executive Order 12291. The action is covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing.

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

Dated: June 26, 1991.

David S. Crestin,

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

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Proposed Rules

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 235, 245

Meal Supplements in the National School Lunch Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: On November 10, 1989, Congress enacted Public Law 101–147, The Child Nutrition and WIC Reauthorization Act of 1989. One provision in this Act authorizes reimbursement under the National School Lunch Program (NSLP) for meal supplements served in schools participating in the Child and Adult Care Food Program (CACFP) as of May 15, 1989. This provision further defines the requirements that apply to the contents of the meal supplements and also defines eligible children. This proposed rule would implement these statutory provisions. This proposal would also incorporate the appropriate technical references to meal supplements in 7 CFR parts 210, 235 and 245. This rule would have the effect of reducing administrative burden on schools operating afterschool care programs.

DATES: To be assured of consideration, comments must be post marked on or before September 16, 1991.

ADDRESSES: Comments should be mailed to Mr. Robert Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302. All written submissions will be available for public inspection in room 1007, 3101 Park Center Drive, Alexandria, Virginia during regular business hours (8:30–5), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Eadie or Mr. Charles Heise at the above address or by phone at (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been reviewed under Executive Order 12291 and has been classified as not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Administrator of the Food and Nutrition Service has certified that this rule will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3520), the reporting and recordkeeping requirements that are included in §§ 210.5, 210.7, 210.8, and 210.18 of this proposed rule will be submitted to the Office of Management and Budget (OMB) for approval. The OMB control number assigned to the existing reporting and recordkeeping requirements of 7 CFR part 210 is OMB No. 0584–006. These requirements have been approved by OMB for use through June 30, 1991.

The NSLP is listed in the Catalog of Federal Domestic Assistance under No. 10.555 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR part 3015, subpart V and final rule related notice at 48 FR 29114, June 24, 1983.)

Background

Some schools currently participating in the NSLP also offer meal supplements to children enrolled in afterschool care programs through the CACFP. Under previous law, such schools had to submit separate applications and maintain separate records for participation in the two programs. This situation resulted in additional paperwork. To alleviate this burden, section 106(a) of Public Law 101–147 added section 17A tc the National School Lunch Act (NSLA) to allow schools operating afterschool care programs under the CACFP as of May 15, 1989 to be reimbursed for meal supplements as part of the NSLP if they meet the following requirements: They operate school lunch programs under the NSLA; they sponsor afterschool care programs; and they were participating in the CACFP as of May 15, 1989. Interested parties should be aware that the legislation makes this option available only for those schools which were participating in the CACFP as of May 15, 1989. Schools which participated in the CACFP under nonschool sponsors would be eligible to switch into the NSLP, under a school food authority (SFA) if they wish. It should also be noted that nonschool sites sponsored by SFAs would not be allowed to switch into the NSLP. Moreover, schools which were not participating in the CACFP as of May 15, 1989 would not be eligible for this option even though other schools in the same SFA might be. Such schools, of course, could still participate in the CACFP. Section 8 of this rule would incorporate these requirements. The Department is interested in receiving information from commenters on the number of schools offering afterschool care programs that are sponsored in the CACFP by nonschool organizations.

Pursuant to section 17A(c), the reimbursement rates for the meal supplements provided under the NSLP shall be the same as those under the CACFP, as established under section 17(c)(3) (as adjusted pursuant to section 11(a)(3)) of the NSLA). This requirement is contianed in Section 5 of this proposed rule. Interested parties should note that the rates incorporated in this regulation are the base rates for the CACFP, which were established in August 1981, and do not represent the current rates under the CACFP. Actual reimbursement rates for meal supplements from July 1, 1990, through June 30, 1991 are: Paid—4.00 cents; Reduced—22.00 cents and Free—44.25 cents. The rates for reimbursement are adjusted annually each July 1.

Furthermore, section 17A(d) specifies that the content of the meal supplements served under the CACFP shall apply to the meal supplements served under the NSLP, and section 17A(b) stipulates that an eligible child must be 12 years of age or under, or, in the case of children of migrant workers and children with handicaps, not more than 15 years of age. Therefore, for purposes of implementing the afterschool care program, section 2 of this rule would amend the current definition of "child" in § 210.2 to include individuals enrolled in an afterschool care program operated by an eligible school who meet the above age requirements.

This rulemaking also includes provisions that are not stipulated in section 17A as amended by section 106 of Public Law 101–147. Section 17A did not specify the number of meal supplements that may be reimbursed. The Department is proposing in section 7 of this rule that reimbursable meal supplements served in the NSLP shall be limited to one per child per day. This limitation is appropriate given the time constraints for children participating in afterschool care programs.

Congress also did not stipulate any specific monitoring requirements for these programs in the new section 17A. However, in discussing similar sites participating in the CACFP during the Senate's debate on this measure, Senator Leahy indicated that the Senate Agriculture Committee was of the opinion that the monitoring requirement for school food authorities acting as sponsors of afterschool care programs should be reduced to no more than three times a year (as noted in the October 24, 1989 Congressional Record, page S14021). In view of this direction, the Department felt a reduction of monitoring for the afterschool hours part of the NSLP could be permitted without compromising program accountability. Therefore, the Department is proposing in section 7 of this rule that school food authorities be required to visit each of their afterschool care sites two times each school year. The first visit would be required to be made within the first four weeks of the school year. The Department stresses that at least this much monitoring is still needed in afterschool care situations because in many schools, meal supplements may be served by persons other than food service personnel (e.g., counselors, recreation directors, etc. who may not be familiar with food service operations under the NSLP). In addition, meal service for afterschool care situations will frequently not be operated in school cafeterias. For these reasons, the Department believes the SFAs must continue to monitor these programs, especially early in the year, although the level of monitoring need not be as high as that required of other sponsors of afterschool care programs in the CACFP. Moreover, section 2 of this rule would define afterschool care programs to be "a program providing organized child care services to enrolled school-age children afterschool hours for the purpose of care and supervision of children. Those programs shall be distinct from any extracurricular programs organized primarily for scholastic, cultural or athletic purposes." This definition will help ensure that meal supplements are served only in these programs and are not served to children participating in extracurricular activities.

Under section 3 of this proposed rule, meal supplements would be reimbursed according to the eligibility of the child served. Schools could not be reimbursed according to claiming percentages or blended rates. While this a change from the CACFP requirements, it would make the meal supplement counting and claiming procedures consistent with those used in the lunch and breakfast service. While most of the requirements associated with providing lunches under the NSLP will also apply to the service of meal supplements, the Department recognizes the difficulty of making point of service counts in the afterschool care program. Accordingly, section 7 of this proposed rule would specifically exempt afterschool care programs from point of service count obligations. However, the school would still be responsible for making accurate counts of the number of free, reduced price and paid meal supplements served to children.

The Department is also proposing to limit the price which a school may charge a child for a reduced price meal supplement in the NSLP. In the CACFP, this maximum charge is currently 15 cents, and this proposal would extend this maximum charge to supplements served under NSLP, in order to maintain consistency between the two programs.

Finally, this rulemaking includes serveral technical amendments to 7 CFR part 210 that will incorporate the words "meal supplements" in various parts throughout this regulation. This rulemaking also includes a technical amendments to § 235.4(a) to include reimbursement for meal supplements in the calculation of State Administrative Expense funding for the NSLP, and a technical amendment to include meal supplements in the definition of meal in § 245.2(f).

The Department will address the issue of State agencies' monitoring of meal supplements in a separate rulemaking to implement the Unified Accountability System mandated by section 110 of Public Law 101–147.

List of Subjects

7 CFR Part 210

Food assistance programs, National School Lunch Program, Commodity School Program, Grant programs-social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 235

Food assistance programs, National School Lunch Program, School Breakfast Program, Special Milk Program, Child and Adult Care Food Program, Food Distribution Program, Grants administration, Intergovernmental relations, Reporting and recordkeeping requirements, Administrative practice and procedure.

7 CFR Part 245

Food Assistance programs, Grant programs-social programs, National School Lunch Program, School Breakfast Program, Special Milk Program, Reporting and recordkeeping requirements.

Accordingly, 7 CFR parts 210, 235 and 245 are proposed to be amended as follows:

PART 210–NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for part 210 continues to read as follows:

Authority: The provisions of part 210 issued under Sec. 2–12, 60 Stat. 230, as amended; Sec. 10, 80 Stat. 889, as amended; 84 Stat. 270; 42 U.S.C. 1751–1760, 1779.

2. In § 210.2:

a. A new definition, "afterschool care program" is added;

b. the definition of "child" is amended by removing the period at the end of the current definition, adding a semicolon and the word "or" in its place and adding a new paragraph (c).

The additions read as follows:

§ 210.2 Definitions.

* * * * *

Afterschool care program means a program providing organized child care services to enrolled school-age children afterschool hours for the purpose of care and supervision of children. Those programs shall be distinct from any extracurricular programs organized

primarily for scholastic, cultural or athletic purposes.

* * * * *

Child * * * (c) For purposes of reimbursement for meal supplements served in afterschool care programs, an individual enrolled in an afterschool care program operated by an eligible school who is 12 years of age or under, or in the case of children of migrant workers and children with handicaps, not more than 15 years of age.

* * * * *

§ 210.4 [Amended]

3. In § 210.4:

a. Paragraph (a) is amended by adding the words "and meal supplements" after the word "lunches" in the first sentence.

b. The title of paragraph (b)(1) is amended by adding the words "for lunches" at the end of the current title, and;

c. New paragraphs (b)(3) and (b)(4) are added to read as follows:

§ 210.4 Cash and donated food assistance to States.

* * * * *

(b) * * *

(3) *Cash assistance for meal supplements.* For those eligible schools (as defined in § 210.10(j)(1) of this part) operating afterschool care programs and electing to serve meal supplements to enrolled children, funds shall be made available to each State agency, each school year in an amount no less than the sum of the products obtained by multiplying:

(i) The number of meal supplements served in the afterschool care program within the State to children from families that do not satisfy the income standards for free and reduced price school meals by 2.75 cents;

(ii) The number of meal supplements served in the afterschool care program within the State to children from families that satisfy the income standard for free school meals by 30 cents;

(iii) The number of meal supplements served in the afterschool care program within the State to children from families that satisfy the income standard for reduced price school meals by 15 cents.

(4) The rates in paragraph (b)(3) are the base rates established in August, 1981 for the CACFP. FNS shall prescribe annual adjustments in the same Notice as the National Average Payment Rates for lunches. These adjustments shall ensure that the reimbursement rates for meal supplements served under this part are the same as those implemented for meal supplements in the CACFP.

* * * * *

§ 210.6 [Amended]

4. In Section 210.6, the first sentence is amended by adding the words "and meal supplements" after the word "lunches".

5. In § 210.7:

a. Paragraph (a) is amended by adding the words "and meal supplements" after the word "lunches" in the second sentence and by adding a new sentence after the third sentence.

b. Paragraph (c) is amended by adding the words "and meal supplements" after the word "lunches" wherever they appear, except in the second sentence, and by adding the words "or for more than one meal supplement per child per day" at the end of the second sentence.

c. A new paragraph (d) is added.

The additions read as follows:

§ 210.7 Reimbursement for school food authorities.

(a) * * * Reimbursement payments shall also be made for meal supplements served to eligible children in afterschool care programs in accordance with the rates established in § 210.4(b)(3). * * *

* * * * *

(d) The State agency shall reimburse the school food authority for meal supplements served in eligible schools (as defined in § 210.10(j)(1) of this part) operating afterschool care programs under the NSLP in accordance with the rates established in § 210.4(b).

§ 210.8 [Amended]

6. In § 210.8:

a. Paragraph (c) is amended by adding the words "and meal supplements" after the word "lunches" wherever it appears in the text.

b. Paragraph (d) is amended by adding the words "and meal supplements" after the word "lunches" wherever it appears in the text.

§ 210.9 [Amended]

7. In § 210.9:

a. Paragraph (b)(19) is amended by adding the words "and meal supplements" after the word "lunches".

b. A new paragraph (c) is added to read as follows:

§ 210.9 Agreement with State agency.

* * * * *

(c) Those school foood authorities with eligible schools (as defined in § 210.10(j)(1) of this part) that elect to serve meal supplements during afterschool care programs, shall agree to:

(1) Serve meal supplements which meet the minimum requirements prescribed in § 210.10;

(2) Price the meal supplement as a unit;

(3) Serve meal supplements free or at a reduced price to all children who are determined by the school food authority to be eligible for free or reduced price school meals under 7 CFR part 245;

(4) If charging for meals, the charge for a reduced price meal supplement shall not exceed 15 cents;

(5) Claim reimbursement at the assigned rates only for meal supplements served in accordance with the agreement;

(6) Serve no more than one meal supplement per child per day;

(7) Review each afterschool care program two times a year, the first review shall be made during the first four weeks of the school year, and;

(8) Comply with all requirements of this part, except that claims for reimbursement need not be based on "point of service" meal supplement counts (as required by § 210.9(b)(9)).

8. In § 210.10:

a. The section title is revised.

b. Paragraph (b) is amended by adding a new sentence at the end of the paragraph.

c. A new paragraph (j) is added;

The additions read as follows:

§ 210.10 Meal components and quantities.

* * * * *

(b) * * * The component requirements for meal supplements served under the CACFP shall also apply to meal supplements served by eligible school food authorities in afterschool care programs under the NSLP.

* * * * *

(j) *Supplemental food.* Eligible schools operating afterschool care programs may be reimbursed for one meal supplement served to an eligible child (as defined in § 210.2) per day.

(1) Eligible schools mean schools that:

(i) operate school lunch programs under the National School Lunch Act;

(ii) sponsor afterschool care programs as defined in § 210.2(b); and

(iii) were participating in the CACFP as of May 15, 1989.

(2) Meal supplements shall contain two of the following four components:

(i) A serving of fluid milk as a beverage, or on cereal, or used in part for each purpose;

(ii) A serving of meat or meat alternate. Nuts and seeds and their butters listed in program guidance are nutritionally comparable to meat or other meat alternates based on available nutritional data. Acorns, chestnuts, and coconuts are excluded and shall not be used as meat alternates due to their low protein content. Nut or seed meals or flours shall not be used as a meat alternate except as defined in

this part under appendix A: Alternate Foods for Meals;

(iii) A serving of vegetable(s) or fruit(s) or full-strength vegetable or fruit juice, or an equivalent quantity of any combination of these foods. Jucie may not be served when milk is served as the only other component;

(iv) A serving of whole-grain or enriched bread; or an equivalent serving of cornbread, biscuits, rolls, muffins, etc., made with whole-grain or enriched meal or flour; or a serving of cooked whole-gain or enriched pasta or noodle products such as macaroni, or cereal grains such as rice, bulgur, or corn grits; or an equivalent quantity of any combination of these foods.

(3) Infant supplements shall contain the following:

(i) Birth through 3 months: 4–6 fluid onces of infant formula.

(ii) 4 through 7 months: 4–6 fluid ounces of infant formula.

(iii) 8 through 11 months: 2–4 fluid onces of infant formula or whole fluid milk or full strength fruit juice; 0–½ slice of crusty bread or 0–2 cracker type products made from whole-grain or enriched meal or flour that are suitable for an infant for use as a finger food when appropriate. To improve the nutrition of participating children over one year of age, additional foods may be served with the meal supplements as desired.

The minimum amounts of food components to be served as meal supplements as set forth in paragraph (j)(3) of this section are as follows. Select two of the following four components. (Juice may not be served when milk is served as the only other component.)

Meal supplement chart for children and infants

Snack (supplement) for children	Children 1 and 2	Children 3 through 5	Children 6 through 12
(Select 2 of these 4 components)			
Milk, fluid	½ cup	½ cup	1 cup.
Meat or meat alternate [4]	½ ounce	½ ounce	1 ounce.
Juice or fruit or vegetable	½ cup	½ cup	¾ cup.
Bread and/or cereal			
Enriched or whole grain bread or	½ slice	½ slice	1 slice.
Cereal: Cold dry or	¼ cut [1]	½ cup [2]	¾ cup.
Hot cooked	¼ cup	¼ cup	½ cup.

[1] ¼ cup (volume) or ½ ounce (weight), whichever is less.
[2] ½ cup (volume) or ½ ounce (weight), whichever is less.
[3] ¾ cup (volume) or 1 ounce (weight), whichever is less.
[4] Yogurt may be used as a meat/meat alternate in the snack only. You may serve 4 ounces (weight) or ½ cup (volume) of plain, or sweetened and flavored yogurt to fulfil the equivalent of 1 ounce of the meat/meat alternate component. For younger children, 2 ounces (weight) or ¼ cup (volume) may fulfill the equivalent of ½ ounce of the meat/meat alternate requirement.

Caution: Children under five years of age are at the highest risk of choking. USDA recommends that nuts and/or seeds be served to them ground or finely chapped in a prepared food.

Supplement for infants

Birth through 3 mons.	4 through 7 mons.	8 through 11 mons
4–6 fl. oz. formula [1]	4–6 fl. oz. formula [1]	2–4 fl. oz. formula [1] breast milk, [5] whole milk or fruit juice [3]. 0–½ slice bread or 0–2 crackers (optional).[4]

[1] Shall be iron-fortified infant formula.
[2] Shall be iron-fortified dry infant cereal.
[3] Shall be full-strength fruit juice.
[4] Shall be from whole-grain or enriched meal or flour.
[5] Breast milk provided by the infant's mother may be served in place of formula from birth through 11 mos. Meals containing only breast milk are not reimbursable. Meals containing breast milk served to infants 4 mos. or older may be claimed when the other meal component(s) is supplied by the child care facility

§ 210.23 [Amended]

9. In § 210.23:

Paragraph (a) is amended by adding the words "and meal supplements" after the word "lunches" wherever they appear in the text.

PART 235—STATE ADMINISTRATIVE EXPENSE FUND

1. The authority citation for part 235 continues to read as follows:

Authority: Secs. 7 and 10, Child Nutrition Act of 1966, as amended (42 U.S.C. 1776, 1779).

§ 235.4 [Amended]

2. In § 235.4, paragraph (a) is amended by removing the words "sections 3 and 4" in the first sentence and by adding the words "sections 3, 4 and 17A" in their place.

PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

1. The authority citation for part 245 continues to read as follows:

Authority: Secs. 3, 4, and 10, 80 Stat. 885, 886, 889, as amended (42 U.S.C. 1772, 1773, 1779); Secs. 2–12, 60 Stat. 230, as amended (42 U.S.C. 1751–60).

§ 245.2 [Amended]

2. In § 245.2, paragraph (f) is amended by adding the words "or meal supplement" after the word "lunch".

Dated: June 24, 1991.

Betty Jo Nelsen,

Administrator, Food and Nutrition Service.

[FR Doc. 91–15647 Filed 7–1–91; 8:45 am]

BILLING CODE 3410–30–M

Federal Grain Inspection Service

7 CFR Parts 800 and 810

RIN 0580–AAI4

United States Standards for Soybeans

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed Rule.

SUMMARY: In compliance with the requirements for periodic review of existing regulations, the Federal Grain Inspection Service (FGIS) proposes to

amend the United States Standards for Soybeans as follows: (1) Change minimum test weight per bushel from a grade determining factor to a nongrade determining factor; (2) reduce the foreign material limits for grades U.S. Nos. 1 and 2 to 0.5 and 1.0 percent, respectively; (3) reduce the grade limits for splits to 5.0, 10.0, 15.0, and 20.0 percent for U.S. Nos. 1, 2, 3, and 4 soybeans, respectively; (4) report the percentage of splits in tenths percent; (5) reduce the tolerance for stones from 8 to 4 and eliminate the aggregate weight option; (6) reduce the tolerance for pieces of glass from two to zero; (7) eliminate the grade limitation on purple mottled or stained soybeans and establish a special grade, Purple Mottled or Stained, in the standards; (8) eliminate the grade limitation on soybeans that are materially weathered; (9) create a new grade and associated grade limits for U.S. Choice soybeans; (10) clarify the reference to Mixed soybeans in the standards; (11) establish a cumulative total for factors which may cause a sample to grade U.S. Sample grade; and (12) report the oil and protein content on all official lot inspection certificates for export soybean shipments. FGIS further proposes to revise inspection plan tolerances for soybeans based on the proposed changes.

DATES: Comments must be submitted on or before September 3, 1991.

ADDRESSES: Written comments must be submitted to Allen Atwood, FGIS, USDA, Room 0628–S, Box 96454, Washington, DC, 20090–6454; telemail users may respond to (IRSTAFF/FGIS/USDA) telemail; telex users may respond to Allen Atwood, TLX: 7607351, ANS:FGIS UC; and telecopy users may send responses to the automatic telecopy machine at (202) 447–4628.

All comments received will be made available for public inspection at Room 0628 South Building, 1400 Independence Avenue SW., Washington, DC, during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: Allen Atwood address as above, telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

John C. Foltz, Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities because those persons that apply the standards and most users of the inspection service do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et eq.*). Further, the standards are applied equally to all entities.

Information Collection and Recordkeeping Requirements

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the collection and recordkeeping requirements contained in this proposal are included under control number 0580–0013 now being reviewed by the Office of Management and Budget (OMB). Comments concerning these requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Department of Agriculture, room 3201, NEOB, Washington, DC 20503.

Background

FGIS published an advanced notice of proposed rulemaking in the **Federal Register** on March 9, 1990 (55 FR 8956) to provide public notice that FGIS would conduct a periodic review of the United States Standards for Soybeans (7 CFR part 810). The notice requested interested persons to provide written comments.

FGIS received a total of 15 comments during the 90-day comment period: 2 from grain marketing and/or processing firms, 9 from foreign firms and associations, 3 from producer and trade associations, and 1 from a university researcher. Comments included information and background regarding specific standards changes, such as creating a special grade for edible soybeans, revising U.S. Sample grade criteria tolerances, and revising the grade limits for foreign material and splits. Other comments received included more general information regarding the principles and structure of standards, such as developing more objective tests, and expressing results as a percentage by weight instead of by count. In addition to these comments, FGIS reviewed the soybean standards with the FGIS Advisory Committee, participants at the Grain Quality Workshops, and representatives from soybean-related associations.

On the basis of these comments and other available information, FGIS is proposing 12 changes to the soybean standards. Further, the proposal revises inspection plan tolerances for soybeans based on the proposed revisions to the standards.

Minimum Test Weight Per Bushel

Since USDA established soybean standards in 1940, minimum test weight per bushel (TW) has been a general indicator of overall soybean quality. TW provides a quick determination of the overall soundness of soybeans. However, research indicates that TW is not a good indicator of the oil and meal yield of processed soybeans (Refs. 1,2). A study conducted at the University of Illinois shows that the simple correlation coefficients between TW and protein and oil content are as low as .077 and .016, respectively (Ref. 3). FGIS believes that the measurement of damaged and split soybeans, in addition to the percent of FM, adequately reflects the quality of soybeans for grade purposes. FGIS recognizes that soybean handlers and processors often rely on TW for volume determinations and as a rough indicator of overall soybean quality. To satisfy the needs of the soybean industry, FGIS proposes that TW be eliminated as a grade determination factor, but be retained as a nongrade determination factor, much like moisture content.

Foreign Material (FM)

For many years, representatives of the grain industry have debated acceptable FM levels in U.S. soybeans. More recently, the debate has intensified due to the reported export quality of Brazilian soybeans, discussions at the Grain Quality Workshops (GQW), and statements by major foreign purchasers of U.S. soybeans.

Representatives of Japan and European purchasers of U.S. soybeans have requested that FGIS tighten or lower the FM grade limits. In a statement before the Senate Subcommittee on Agricultural Research and General Legislation, a representative of the EEC Seed Crushers' and Oil Processors' Federation (FEDIOL) stated the following:

> • • • every one percent of added foreign material reduces the oil content with 0.20% and the protein content with 0.4%. So this definitely proves the relation between FM and oil/protein content (Ref. 4).

At the December 1990 session of the GQW, another representative of FEDIOL stated the following when asked if the EEC would guarantee to purchase more soybeans from the U.S. if the quality of U.S. soybeans improves:

> The only guarantee is that the EEC will buy fewer soybeans from the U.S. if FM content remains at current levels.

Data from major foreign purchasers of U.S. soybeans indicate that Brazilian soybean exports contain 1.0 percent or

less FM compared to U.S. shipments that typically contain close to 2.0 percent FM. A recent Agricultural Research Service (ARS) study further supported the case that Brazilian soybean exports contain less FM. The study concluded that U.S. farmers and exporters must continue their efforts to improve the physical characteristics of soybean export shipments (Ref. 5).

In consideration of the preceding, FGIS proposes to revise soybean FM grade limits for grades U.S. Nos. 1 and 2 soybeans to 0.5 and 1.0 percent, respectively. Currently, the standards provide for grade U.S. Nos. 1 and 2 soybeans, 1.0 and 2.0 percent, respectively, for soybean FM grade standards. By proposing tighter FM grade limits, the standards would provide the framework necessary for the soybean market to establish soybean quality improvement incentives and improve grain quality.

FGIS 1988 U.S. soybean quality data indicate that approximately 12 and 34 percent of the domestically inspected soybeans had 0.5 and 1.0 percent or less FM, respectively. In 1989, the corresponding values were 20 and 54 percent containing 0.5 and 1.0 percent or less FM, respectively. Consequently, if the grade limit had been 1.0 percent FM, 34 and 54 percent of the domestically inspected soybeans in 1988 and 1989, respectively, would have met the limit for grade U.S. No. 2 or better soybeans.

Currently, the domestic soybean market relies on 1.0 percent FM as a benchmark for assessing weight adjustments. For every tenth of a percent of FM exceeding the 1.0 percent level, an equivalent amount is deducted from the gross weight for settlement purposes. This market practice may vary among areas and between companies but generally typifies the market standard. As a result, a market incentive exists for soybeans entering the market to contain 1.0 percent.

Market reaction to a lower FM grade limit will vary. It is likely that market disincentives in the domestic soybean market based on 0.5 percent rather than 1.0 percent FM will evolve. Conversely, some members of the industry may begin trading a lower quality of soybeans such as U.S. No. 3. FGIS believes that actual lower FM grade limits will result in greater percentages of U.S. soybeans with lower levels of FM.

Splits

Attendees of the International Workshop on Maize and Soybean Quality held in Urbana, Illinois, during September 23–27, 1990, claim that higher levels of splits has a negative impact on soybean storability and quality. Information presented by H.B.W. Patterson, a soybean researcher, supports this claim. He states:

> Split and otherwise damaged beans are more liable to deteriorate during handling and storage since, like other oilseeds, they are more vulnerable to attack chemically and biologically (Ref. 6).

In addition, USDA data show that higher levels of splits results in increased oxidation of soybean oil and increased levels of free fatty acids. These conditions result in lower oil quality. The study states:

> The data on oil from split beans, however, clearly show that improved methods of handling to minimize bean breakage could contribute to improved oil quality and lower refining losses to the processor (Ref. 7).

In an effort to enhance soybean storability and oil quality, FGIS proposes that grade limits for splits be reduced to 5.0, 10.0, 15.0, and 20.0 percent for U.S. Nos. 1, 2, 3, and 4 soybeans respectively. Currently, the standards provide grade limits for splits at 10.0, 20.0, 30.0, and 40.0 percent for U.S. Nos. 1, 2, 3, and 4 soybeans respectively.

FGIS' data from its 1988 and 1989 U.S. Soybean Crop Quality Reports indicates that approximately 60 and 45 percent of the soybean samples inspected in 1988 and 1989 had 5 percent or less splits, respectively. In 1988 and 1989, 90 and 78 percent of the domestic inspections had 10 percent or less splits. In 1988 and 1989, 97 and 91 percent of the samples had 15 percent or less splits, and in the same years, 99 and 96 percent of the samples had 20 percent or less splits. As a result, U.S. producers should have little difficulty with production and marketing of soybeans under the proposed tighter grade limits.

Finally, the percentage of splits in soybeans has traditionally been reported in whole percents with fractions of a percent being disregarded. Consequently, a soybean sample with 10.99 percent splits would be reported as 10.0 percent. FGIS proposes that the percentage of splits in soybeans be reported to the nearest tenth percent in accordance with procedures set forth in § 810.104 of the Standards to better reflect normal rounding procedures. For example, soybeans with 10.99 percent splits would be reported as 11.0 percent, and 10.04 percent splits would be reported as 10.0 percent.

Stones

Stones have a harmful effect on soybean quality and processing. Therefore, FGIS proposes to reduce the Sample grade tolerance from 8 to 4 or more stones. FGIS also proposes to eliminate the aggregate weight option for stones. As currently stated in the soybean standards, U.S. Sample grade soybeans are soybeans that "contain 8 or more stones which have an aggregate weight in excess of 0.2 percent of the sample weight (7 CFR § 810.1604)." The elimination of the aggregate weight option would serve to further tighten the tolerance of stones by restricting their number regardless of size.

Glass

FGIS also proposes to reduce the Sample grade tolerance for glass from two or more pieces in a representative sample to zero. FGIS proposes this action because pieces of glass are rarely found in soybeans and rarely cause a sample to grade U.S. Sample grade. Therefore, this change would create an incentive to maintain the current quality of soybeans in the future while having minimal economic impact on the current market.

Purple Mottled or Stained Soybeans

Currently, soybeans that are purple mottled or stained are graded not higher than U.S. No. 3. Recently, information has become available which indicates that the fungus that causes purple mottling or staining colonizes only the seed coat of the soybean. Neither the fungus nor the resultant discoloration reduce kernel, oil, or feed quality (Refs. 8, 9). As a result of this information, FGIS proposes that the grade tolerance for purple mottled or stained soybeans be eliminated.

FGIS recognizes that aesthetic factors, such as purple mottled or stained, are important to some customers and, therefore, have an associated economic value. Therefore, to satisfy the needs of these specific customers, FGIS proposes that a special grade, Purple Mottled or Stained, be included in the soybean standards.

Materially Weathered Soybeans

Currently, soybeans that are materially weathered are graded not higher than U.S. No. 4. The determination of materially weathered soybeans is rarely necessary. Factor limits for the other damages adequately convey quality, and, therefore, this criterion is rarely used. FGIS proposes that the grade limitation for materially weathered soybeans be eliminated.

Edible Grade Soybeans

A small portion of U.S. soybean exports go to the edible soybean market. Sufficient interest exists to warrant the establishment of a separate grade to satisfy the needs of this segment of the

market. Typically, the edible soybean purchaser desires very low amounts of FM, splits, damage, and soybeans of other colors. FGIS proposes that a new grade, U.S. Choice, be inserted in the soybean grade chart. U.S. Choice soybeans would not contain soybeans of other colors or heat-damaged kernels, 0.5 percent or less damaged kernels (total), 0.3 percent or less FM, and 4.0 percent or less splits. Further, any special grade will prevent soybeans from grading U.S. Choice.

Mixed Soybeans

FGIS proposes to amend § 810.1604, Grades and grade requirements for soybeans, to include a reference to Mixed soybeans. "Soybeans of other colors" have been and would continue to be disregarded as a factor in Mixed soybeans. The reference to Mixed soybeans is proposed simply to clarify the soybean standards.

Cumulative Sample Grade Factors

FGIS proposes to establish a cumulative total for factors which may cause a sample to grade U.S. Sample grade. Any combination of stones, crotalaria seeds, castor beans, particles of an unknown foreign substance(s) or commonly recognized harmful or toxic substances, or rodent pellets, bird droppings, or other animal filth would cause the soybeans to be graded U.S. Sample grade if the cumulative total exceeds a count of ten. A cumulative total limit would better identify quality by designating a combination of deleterious foreign material, animal filth, and toxic substances as U.S. Sample grade.

Oil and Protein

FGIS recognizes the importance of tests for intrinsic properties, such as soybean oil and protein. FGIS had previously proposed requiring the reporting of soybean oil and protein on official soybean inspection certificates for grade (54 FR 7778; February 23, 1989). That proposal was withdrawn August 16, 1989 (54 FR 33702). At that time, FGIS intended that FGIS would monitor the number of requests for soybean oil and protein testing and, at a later date, might again request public comment. Since September 4, 1989, FGIS has included oil and protein tests under the USGSA as official criteria (54 FR 33702). Between September 4, 1989, and the end of the 1989/90 soybean marketing year, FGIS inspected approximately 46 percent of export soybeans for oil and protein content. For the first quarter of the 1990/91 marketing year, FGIS inspected 63 percent of export soybeans for oil and protein content.

Such data indicates the importance and acceptance of soybean oil and protein test services in the export market. Accordingly, FGIS proposes to report the oil and protein content on all official lot inspection certificates for export soybean shipments. FGIS proposes this action because oil and protein tests provide important information regarding soybean quality. Soybeans are grown almost exclusively for the value of their oil and protein content. Consequently, a description of export soybean quality should include oil and protein content.

FGIS also recognizes the importance of soybean oil and protein test services in the domestic market. FGIS will continue to respond to requests for oil and protein tests as received and to monitor the number of requests. At a later date, FGIS may solicit public comments on the need and feasibility of soybean oil and protein test services in the domestic market.

Miscellaneous Changes

FGIS proposes to revise the format of the grade chart in § 810.1604, Grades and grade requirements for soybeans, to improve the readability of the grade chart. Also, the authority citation for part 810 would be revised.

Inspection Plan Tolerances

Shiplots, unit trains, and lash barge lots are inspected by a statistically based inspection plan (55 FR 24030; June 13, 1990). Inspection tolerances, commonly referred to as breakpoints, are used to determine acceptable quality. The proposed changes to the soybean standards require changes to some breakpoints. Therefore, FGIS proposes to revise the breakpoints for specific factors.

FGIS proposes to revise the foreign material breakpoint for U.S. No. 2 soybeans from 0.3 to 0.2. FGIS also proposes to revise the breakpoints for splits from 1.6, 2.2, 2.5, and 2.7 for U.S. Nos. 1, 2, 3, and 4 soybeans to 1.3, 1.6, 1.9, and 2.2, respectively.

To reflect the proposed inclusion of a new grade, U.S. Choice, for soybeans, FGIS proposes to revise table 17 of § 800.86 of the regulations. The proposed breakpoints for U.S. Choice soybeans are as follows: 0.0 for heat-damaged kernels, 0.3 for damaged kernels (total), 0.1 for FM, 1.2 for splits, and 0.0 for soybeans of other colors.

Comments including data, views, and arguments are solicited from interested persons. Pursuant to section 4(b)(1) of the United States Grain Standards Act, as amended (7 U.S.C. 76(b)(1)), upon request, such information concerning changes to the standards may be orally presented in an informal manner. Also, pursuant to this section, no standards established or amendments or revocations of standards are to become effective less than 1 calendar year after promulgation unless, in the judgement of the Administrator, the public health, interest, or safety require that they become effective sooner.

Proposed Action

FGIS proposes to revise § 810.102, Definition of other terms, by adding sections (c) oil and (d) protein and redesignating sections (c), (d), and (e) as (e), (f), and (g).

FGIS proposes to revise § 810.104, Percentages, by revising section (b), Recording. It is proposed that the percentage of splits be reported to the nearest tenth percent. Currently, the percentage of splits is recorded in whole percents with fractions of a percent being disregarded.

FGIS proposes to revise § 810.1604, Grades and grade requirements for soybeans, by adding a new grade, U.S. Choice, and associated grade limits to the grade chart. Additionally, FGIS proposes to add footnotes regarding U.S. Choice and soybeans of other colors and to revise the format of the grade chart to improve readability. FGIS also proposes to eliminate minimum test weight per bushel from the grade chart and to lower the grading limits for FM to 0.5 and 1.0 percent for U.S. Nos. 1 and 2 soybeans, respectively. It is also proposed that the grade limits for splits be lowered to 5.0, 10.0, 15.0, and 20.0 percent for U.S. Nos. 1, 2, 3, and 4 soybeans, respectively. It is proposed that the definition of U.S. Sample grade be revised by the elimination of the grade tolerances for purple mottled or stained and materially weathered soybeans. FGIS also proposes to revise the definition of U.S. Sample Grade by reduction of the tolerance for stones from 8 to 4 and the elimination of the aggregate weight provision. Furthermore, FGIS proposes to reduce the tolerance for pieces of glass from 2 to 0 and to include a cumulative total for factors which may cause U.S. Sample grade.

FGIS proposes to revise § 810.1605, Special grades and special grade requirements, by designating Garlicky soybeans as section (a) and adding a new section (b) Purple Mottled or Stained.

FGIS also proposes to revise § 800.86, Inspection of shiplot, unit train, and lash barge grain in single lots, paragraph (c)(2), tables 17 to 18 by: (1) A revision to some of the breakpoints for splits and FM, (2) moving TW from table 17 to table 18, and (3) adding the grade, U.S.

Choice, and associated grade limits and breakpoints.

Finally, FGIS proposes to revise § 800.162, Certification of grade; special requirements, section (a) of the regulations by adding a new section (4) mandatory tests of export soybeans for oil and protein content, and redesignating sections 4 through 7 to 5 through 8.

References

(1) Hill, L.D., "Changes in the Grain Standards Act," Grain Grades and Standards, 113–184.

(2) West, V.I., "How Good Are Soybean Grades?," Illinois Farm Economics, No. 192, Extension Service in Agriculture and Home Economics, College of Agriculture, University of Illinois, May 1951, p. 1166.

(3) Hill, L.D., "Improving Grades and Standards for Soybeans," p. 829.

(4) Vervaeke, P., Statement before the Senate Subcommittee on Agricultural Research and General Legislation, in Washington, DC on February 8, 1990.

(5) Mounts, T.L., J.M. Snyder, R.T. Hinsch, A.J. Bongers, and A.R. Class, "Quality of Soybeans in Export," JAOCS, November 1990.

(6) Patterson, H.B.W., "Quality Standards for Oils, Fats, Seeds and Meal," Handling and Storage of Oilseeds, Oils, Fats and Meal, 87–180.

(7) Mounts, T.L., "Raw Material and Soybean Oil Quality," World Soybean Research Conference II, 659–665.

(8) Sinclair, J.B., Statement before the Subcommittee on Wheat, Soybeans, and Feed Grains and Department Operations, Research and Foreign Agriculture, U.S. House of Representatives Committee on Agriculture Related to Grain Standards, at the University of Illinois on July 21, 1986.

(9) Sinclair, J.B., "Soybean Seed Pathology," Presentation to Uniformity by 2000: An International Workshop on Maize and Soybean Quality, in Urbana, Illinois, on September 25, 1990.

List of Subjects

7 CFR Part 800

Administrative practice and procedure, Grain.

7 CFR Part 810

Exports, Grain.

For reasons set out in the preamble, 7 CFR parts 800 and 810 are proposed to be amended as follows:

PART 800— GENERAL REGULATIONS

1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Subpart A—General Provisions

2. In § 800.86, paragraph (c)(2), tables 17 and 18 are revised to read as follows:

§ 800.86 Inspection of shiplot, unit train, and lash barge grain in single lots.

* * * * *

(c) Inspection procedures.

* * *

(2) Tolerances.

* * *

TABLE 17.—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR SOYBEANS

Grade	Maximum limits of—											
	Damaged kernels				Foreign material (percent)		Splits (percent)		Soybeans of [2] other colors (percent)			
	Heat-damaged (percent)		Total (percent)									
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP		
U.S. Choice [1]	0.0	0.0	0.5	0.3	0.3	0.1	4.0	1.2	0.0	0.0		
U.S. No. 1	0.2	0.2	2.0	0.8	0.5	0.2	5.0	1.3	1.0	0.7		
U.S. No. 2	0.5	0.3	3.0	0.9	1.0	0.2	10.0	1.6	2.0	1.0		
U.S. No. 3	1.0	0.5	5.0	1.2	3.0	0.4	15.0	1.9	5.0	1.6		
U.S. No. 4	3.0	0.9	8.0	1.5	5.0	0.5	20.0	2.2	10.0	2.3		

[1] Soybeans that are garlicky, infested, or purple mottled or stained are graded not higher than U.S. No. 1.
[2] Disregard for mixed soybeans.

TABLE 18—BREAKPOINTS FOR SOYBEAN SPECIAL GRADES AND FACTORS

Special grade or factor	Grade limit	Breakpoint
Garlicky	5 or more per 1,000 grams.	2
Infested	Same as in § 810.107.	0
Soybeans of other colors.	Not more than 10.0%.	2.3
Moisture	As specified by contract or load order grade.	0.3
Test weight	As specified by contract of load order.	0.4

3. In § 800.162 paragraphs (a) (4) through (7) are revised and paragraph (a)(8) is added to read as follows:

§ 800.162 Certification of grade; special requirements.

(a) *General.* Each official certificate for grade shall show

* * * * *

(4) The oil and protein content of soybeans exported from the United States and inspected in accordance with section 5 of the Act;

(5) The results of each official factor for which a determination was made;

(6) The result for each official factor that determined the grade when the grain is graded other than U.S. No. 1;

(7) Any other factor information considered necessary to describe the grain; and

(8) Any additional factor results requested by the applicant for official factors defined in the Official U.S. Standards for Grain.

PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

4. The authority citation for part 810 is revised to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2067 as amended (7 U.S.C. 71 *et seq.*)

Subpart I—United States Standards for Soybeans

5. In § 810.102 paragraphs (c), (d), and (e) are redesignated as paragraphs (e), (f), and (g), respectively, and new paragraphs (c) and (d) are added tc read as follows:

§ 810.102 Definition of other terms.

* * * * *

(c) *Oil.* Oil consists of esters of glycerol and fatty acid. These are normally referred to as lipids. Lipids (oils and fats) that are liquid at room temperature are called oils. Oil content in grain is determined by using an approved device according to

procedures prescribed in FGIS instructions.

(d) *Protein.* A naturally occurring complex combination of amino acids joined by peptide bonds that contain the elements carbon, hydrogen, nitrogen, oxygen, sulphur, and, to a lesser degree, other elements. Protein content in grain is determined by using an approved device according to procedures prescribed in FGIS instructions.

* * * * *

6. In § 810.104 the first sentence of paragraph (b) is revised to read as follows:

§ 810.104 Percentages.

* * * * *

(b) *Recording.* The percentage of dockage in barley, flaxseed, rye, and sorghum are reported in whole percents with fractions of a percent being disregarded.* * *

* * * * *

7. Section 810.1604 is revised to read as follows:

§ 810.1604 Grades and grade requirements for soybeans.

Grades factors	Grades U.S. Nos.[1]				
	Choice	1	2	3	4
Maximum percent limits of:					
Damaged kernels: Heat (part of total)	0.0	0.2	0.5	1.0	3.0
Total	0.5	2.0	3.0	5.0	8.0
Foreign material	0.3	0.5	1.0	3.0	5.0
Splits	4.0	5.0	10.0	15.0	20.0
Soybeans of other colors [2]	0.0	1.0	2.0	5.0	10.0
Maximum count limits of:					
Other material: Animal filth	0	9	9	9	9
Castor beans	0	1	1	1	1
Crotalaria seeds	0	2	2	2	2
Glass	0	0	0	0	0
Stones	0	3	3	3	3
Unknown foreign substance	0	3	3	3	3
Total [3]	0	10	10	10	10

[1] The grade U.S. Choice does not include soybeans that are garlicky, infested, or purple mottled or stained, or Mixed soybeans.
[2] Disregard for Mixed soybeans.
[3] Includes any combination of animal filth, castor beans, crotalana seeds, glass, stones, and unknown foreign substances.

U.S. Sample grade Soybeans that

(a) Do not meet the requirements for U.S. Choice or U.S. Nos. 1, 2, 3, or 4; or

(b) Have a musty, sour or commercially objectionable foreign odor (except garlic odor); or

(c) Are heating or of distinctly low quality.

8. In § 810.1605 the existing text is designated as paragraph (a) and paragraph (b) is added to read as follows:

§ 810.1605 Special grades and special grade requirements.

* * * * *

(b) *Purple Mottled or Stained soybeans.* Soybeans with pink or purple seed coats as determined on a portion of approximately 400 grams with the use of a FGIS Interpretive Line Photograph.

Dated: May 30, 1991.

John C. Foltz,

Administrator.

[FR Doc. 91–15596 Filed 7–1–91; 8:45 am]

BILLING CODE 3410-EN-M

Farmers Home Administration

7 CFR Parts 1943, 1951 and 1980

Revisions to the Insured and Guaranteed Soil and Water Loan Instructions, and Related Instructions, To Implement the Requirements of Section 1802 of the Food, Agriculture, Conservation, and Trade Act of 1990

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend the insured and guaranteed soil and water regulations to implement section 1851 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Act) which amended sections 304 and 310D of the Consolidated Farm and Rural Development Act (7 U.S.C. 1924 and 1934). The agency also proposes to amend these regulations to implement section 1851 of the Act which repealed the Emergency Agricultural Credit Adjustment Act of 1978 (7 U.S.C. prec. 1961 note). Present Soil and Water (SW) loan regulations do not permit the use of limited resource interest rates, give priority to specific loan purposes, or restrict the dollar amount of individual loans to less than the individual loan entitlement of $200,000 total insured principal indebtedness or $300,000 for a combination of insured and guaranteed principal loan indebtedness. This proposed rule addresses these issues.

DATES: Written comments must be submitted on or before August 1, 1991.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, USDA, room 6348, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. All written comments will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: David R. Smith, Senior Loan Officer, Farmer Programs Loan Making Division, Farmers Home Administration, USDA, South Agriculture Building, room 5430, 14th and Independence Avenue SW., Washington, DC 20250, telephone (202) 382–1645.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12991, and has been determined to be nonmajor because it will not result in an annual effect on the economy of $100 million or more.

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to notice 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Farm Ownership Loans are excluded with the exception of nonfarm enterprise activity from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loans Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Programs Affected

These changes affect the following FmHA program as listed in the Catalog of Federal Domestic Assistance: 10.416—Soil and Water Loans.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Discussion of the Proposed Rule

Farm loans made to FmHA applicants are governed mainly by the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1921 et. seq.). Present Soil and Water (SW) loan regulations do not permit the use of limited resource interest rates, give priority to specific loan purposes, or restrict the dollar amount of individual loans to less than the individual loan entitlement of $200,000 total insured principal indebtedness or $300,000 for a combination of insured and guaranteed principal loan indebtedness.

Statutory changes made by section 1802 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Act) to sections 304 and 310D for the CONACT (7 U.S.C 1924 and 1934) necessitate amendment of these SW regulations. The Senate Committee Report for the Act, 101–357, 101st Cong., 2d Sess. (1990), indicates that while the SW Loan Program has become smaller in recent years, the committee expected the need for conservation loans to increase during the next 5 years as the deadline approached for implementation of conservation plans. The intent was for existing SW funds to be stretched as far as possible to serve present credit needs. The committee intended SW loans to continue to be modest in size, with priority given to loans for building conservation structures and for establishing conservation practices to comply with section 1212 of the Food Security Act of 1985 (FSA).

The agency proposes to revise subpart B of part 1943 and subpart B of part 1980 of title 7 of the CFR to incorporate provisions of section 1802 of the Act. The following is a discussion of the major items common to both subparts. A new subsection has been added under loan purposes to denote soil and water conservation and protection purposes. The current list of SW loan purposes was revised to avoid overlapping with the new soil and water conservation and protection purposes. A new section has been added indicating that priority will be given to applicants requesting assistance for soil and water conservation and protection purposes who use loan funds to build conservation structures or establish conservation practices on highly erodible land to comply with section 1212 of the FSA. The section on loan limitations has been revised to reflect that a loan will not be approved if it exceeds the lesser of the value of the farm or other security for the loan, or $50,000. This does not prohibit an individual applicant from receiving more than one SW loan in a year as long as the combined loan amounts do not exceed the security value and each individual loan does not exceed $50,000. The section on rates and terms in subpart B of part 1943 also has been amended to state that limited resource interest rates are authorized when loan funds are being used for soil and water conservation and protection purposes. The agency has not extended the limited resource rate authorization to guaranteed SW loans because the interest rate assistance program already provides similar relief in such cases, where appropriate. The section on definitions in subpart B of part 1943 also has been amended to add a definition for "Limited resource applicant."

The agency proposes to revise subpart A of part 1951 of title 7 of the CFR to include SW loans under the limited resource review. Limited resource loans are reviewed each year at the time of the annual analysis and any time a servicing action, such as reamortization or deferral is taken.

The agency proposes to revise subpart B of part 1943 and subpart B of part 1980 of title 7 of the CPR to comply with section 1851 of the Act. This statutory provision repealed the Emergency Agriculture Credit Adjustment Act of 1987 (7 U.S.C. prec. 1961 note) which prohibited the making of an insured or guaranteed economic emergency or farm loan to an existing farm borrower if such loan would exceed the cap of $650,000 in total outstanding principal indebtedness for insured and guaranteed economic emergency (EE), farm ownership (FO), recreation loan (RL), operating (OL), and soil and water (SW) loans. This proposed rule would delete the $650,000 cap from the above referenced subparts. The individual total unpaid principal balance loan limitation of $300,000 for insured and guaranteed FO, SW, and RL loan types, providing the portion representing the insured indebtedness does not exceed $200,000, is statutory and remains the same.

Other clarifying changes unrelated to the recently enacted statutory provisions are also included in this proposed rule.

List of Subjects

7 CFR Part 1943

Credit, Loan programs—Agriculture, Recreation, Water resources.

7 CFR Part 1951

Account servicing, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing, Debt restructuring.

7 CFR Part 1980

Agriculture Loan programs—Business and industry—Rural development assistance, Loan programs—Housing and community development.

Therefore, as proposed, chapter III, title 7, Code of Federal Regulations is proposed to be amended as follows:

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

1. The authority citation for part 1943 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Insured Soil and Water Loan Policies, Procedures and Authorizations

2. Section 1943.54 is amended by adding in alphabetical order the definition of "Limited resource applicant" to read as follows:

§ 1943.54 Definitions.

* * * * *

Limited resource applicant. An applicant who is a farmer or rancher and is an owner or operator of a farm, including a new owner or operator, with a low income who demonstrates a need to maximize farm or ranch income. A limited resource applicant must meet the eligibility requirements for a soil and water loan, but due to low income, cannot pay the regular interest rate on such loans. Due to the complex nature of the problems facing this applicant, special help will be needed and more supervisory assistance will be required to assure reasonable prospects for success. The applicant may face such problems as underdeveloped managerial ability, limited education, low-producing farm due to lack of development or improved production practices and other related factors. The applicant cannot develop a feasible plan at regular interest rates and at the maximum loan terms. The use of limited resource interest rates is restricted to those loan purposes denoted in § 1943.66 (a)(1) through (a)(5) of this subpart.

* * * * *

3. Section 1943.57 has been added to read as follows:

§ 1943.57 Preference.

Priority will be given to otherwise qualified applicants requesting assistance for soil and water conservation and protection purposes denoted in § 1943.66(a) of this subpart who use loan funds to build conservation structures or establish conservation practices on highly erodible land to comply with part 12 of

this title (see attachment 1 of exhibit M of subpart G of part 1940 of this chapter).

4. Section 1943.66 is amended by redesignating paragraphs (a) through (h) as (b) through (i), removing newly designated paragraphs (b)(5) and (b)(6), redesignating paragraphs (b)(7) through (b)(10) as (b)(5) through (b)(8), adding a new paragraph (a) and revising newly designated paragraphs (b)(1) and (b)(5) to read as follows:

§ 1943.66 Loan purposes.

* * * * *

(a) Pay costs for construction, materials, supplies, equipment, and services related to soil and water conservation and protection purposes, such as:

(1) Installation of conservation structures, including terraces, sod waterways, permanently vegetated stream borders and filter strips, windbreaks (tree or grass), shelterbelts, and living snow fences.

(2) Establishment of forest cover for sustained yield timber management, erosion control, or shelterbelt purposes.

(3) Establishment or improvement of permanent pasture.

(4) The conversion to and maintenance of sustainable agriculture production systems, as described by Department technical guides and handbooks.

(5) Payment of costs to build conservation structures or establish conservation practices on highly erodible land to comply with a conservation plan in accordance with part 12 of this title (see attachment 1 exhibit M of subpart G of part 1940 of this chapter).

(6) Other purposes consistent with plans for soil and water conservation, integrated farm management, water quality protection and enhancement, and wildlife habitat improvement.

(b) * * *

(1) Dikes, reservoirs, ponds, tanks, cisterns, liquid and solid waste disposal facilities, wells, pipelines, pumping and irrigation equipment, and ditches and canals for drainage.

* * * * *

(5) Equipment rental or hire connected with establishing or completing the development.

* * * * *

5. Section 1943.67 is amended by redesignating paragraphs (a)(b) and (c) as paragraphs (c), (d) and (e), respectively and by adding new paragraphs (a) and (b) to read as follows:

§ 1943.67 Loan limitations.

* * * * *

(a) The loan being made exceeds the lesser of the value of the farm or other security for the loan, or $50,000.

(b) The total outstanding insured SW, Farm Ownership (FO) or Recreation (RL) loan principal balance including the new loan owed by the applicant will exceed the lesser of $200,000 or the market value of the farm or other security.

* * * * *

6. Section 1943.68 is amended by revising paragraph (c) to read as follows:

§ 1943.68 Rates and terms.

* * * * *

(c) *Interest rate.* Upon request of the applicant, the interest rate charged by FMHA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If an applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type assistance involved. A lower rate may be established in this exhibit for a limited resource applicant when loan funds are being used for soil and water conservation and protection purposes denoted in § 1943.66 (a)(1) through (a)(5) of this subpart, subject to the following:

(1) The applicant meets the conditions of the definition for a limited resource applicant set forth in § 1943.54 of this subpart.

(2) The Farm and Home Plan and Business Analysis—Nonagricultural Enterprise form, when appropriate, indicates that installments at the higher rate, along with other debts, cannot be paid during the period of the plan.

7. Section 1943.79 is amended by removing paragraph (b) and redesignating paragraphs (c) and (d) as (b) and (c), and amending newly designated paragraph (b)(1) to read as follows:

§ 1943.79 Relationship with other FmHA loans, insured and guaranteed.

* * * * *

(b) * * *

(1) The total insured and guaranteed FO, SW and RL principal balance, including the new loan, owed by the loan applicant does not exceed $300,000 at either loan approval or loan closing.

PART 1951—SERVICING AND COLLECTIONS

8. The authority citation for part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Account Servicing Policies

9. Section 1951.25 is amended by revising the heading, paragraph (a) and the third and last sentences of paragraph (b)(3) to read as follows:

§ 1951.25 Review of limited resource FO, OL, and SW loans.

(a) *Frequency of reviews.* OL, FO, and SW loans will be reviewed each year at the time the analysis is conducted in accordance with subpart B of part 1924 of this chapter and any time a servicing action such as consolidation, rescheduling, reamortization or deferral is taken. The interest rate may not be changed more often than quarterly.

(b) * * *

(3) * * * Borrowers that fail to provide the County Supervisor with the information needed to conduct the analysis required in subpart B of part 1924 of this chapter will have their interest rate on their loan increased to the current rate for the OL, FO, or SW loan as applicable. * * * Whenever it appears that the borrower has a substantial increase in income and repayment ability or ceases farming, either the interest rate may be increased to the current rate for FO, OL or SW loans, as applicable, or the borrower will be graduated from the program as provided in subpart F of this part.

* * * * *

PART 1980—GENERAL

10. The authority citation for part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70

Subpart B—Farmer Programs Loans

11. Section 1980.108 is amended by adding a new paragraph (b)(4) and revising paragraph (d) to read as follows:

1980.108 General provisions.

* * * * *

(b) * * *

(4) Priority will be given to otherwise qualified applicants requesting assistance for soil and water conservation and protection purposes denoted in § 1980.185 (c)(l) of this subpart, who use loan funds to build conservation structures or establish conservation practices on highly erodible land to comply with part 12 of this title (see Attachment 1 of Exhibit M of subpart G of part 1940 of this chapter).

* * * * *

(d) Relationship between FmHA loans, insured and guaranteed. A

guaranteed FO or OL loan may be made to an insured borrower with the same type of loan provided:

(1) The outstanding combined insured and guaranteed FP or OL principal balance owed by the loan applicant or owed by anyone who will sign the note as cosignor may not exceed the authorized guaranteed loan limit for that type of loan.

(2) Chattel and/or real estate security must be separate and identifiable from the security pledged to FmHA for an insured loan. Different lien positions on real estate are considered separate and identifiable collateral.

12. Section 1980.185 is amended by removing paragraphs (c)(1)(v) and (c)(1)(vi), redesignating paragraphs (c)(1)(vii) through (c)(1)(ix) as (c)(1)(v) through (c)(1)(vii), redesignating paragraphs (c)(1) through (c)(9) as (c)(2) through (c)(10), adding a new paragraph (c)(1), revising newly designated paragraphs (c)(2)(i) and (c)(2)(v), and redesignating paragraphs (d)(1) through (d)(3) as (d)(2) through (d)(4), and adding a new paragraph (d)(1) to read as follows:

§ 1980.185 Soil and water loans.

* * * * *

(c) *Loan purposes.* Loan purposes must be consistent with all Federal, State, and local environmental quality standards and funds may be used to:

(1) Pay costs for construction, materials, supplies, equipment, and services related to soil and water conservation and protection purposes, such as:

(i) Installation of conservation structures, including terraces, sod waterways, permanently vegetated stream borders and filter strips, windbreaks (tree or grass), shelterbelts, and living snow fences.

(ii) Establishment of forest cover for sustained yield timber management, erosion control, or shelterbelt purposes.

(iii) Establishment or improvement of permanent pasture.

(iv) The conversion to and maintenance of sustainable agriculture production systems, as described by Department technical guides and handbooks.

(v) Payment of costs to build conservation structures or establish conservation practices on highly erodible land to comply with a conservation plan in accordance with part 12 of this title (see Attachment 1 of Exhibit M of subpart G of part 1940 of this chapter).

(vi) Other purposes consistent with plans for soil and water conservation, integrated farm management, water quality protection and enhancement, and wildlife habitat improvement.

(2) * * *

(i) Dikes, reservoirs, ponds, tanks, cisterns, liquid and solid waste disposal facilities, wells, pipelines, pumping and irrigation equipment, and ditches and canals for drainage.

* * * * *

(v) Equipment rental or hire connected with establishing or completing the development.

* * * * *

(d) * * *

(1) The loan being made exceeds the lesser of the value of the farm or other security for such loan, or $50,000.

* * * * *

Dated: April 25, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91-15449 Filed 7-1-91; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-114-AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which would require inspection for cracks and web separation of the body station (BS) 870 terminal fitting, cold working certain fastener holes, and repair or replacement of the fitting, if necessary. This proposal is prompted by reports of cracks and web separations of the BS 870 terminal fitting. This condition, if not corrected, could result in failure of the fitting and depressurization of the airplane.

DATES: Comments must be received no later than August 21, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, attention: Airworthiness Rules Docket No. 91-NM-114-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Kathi N. Ishimaru, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2778. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-114-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

There have been several reports by operators of Boeing Model 727 series airplanes of cracks and web separation in the BS 870 terminal fitting between stringers 9 and 11. The cracks and separations are attributed to stress corrosion in terminal fittings manufactured from 7079-T6 aluminum. This condition, if not corrected, could result in failure of the fitting and depressurization of the aircraft.

The FAA has reviewed and approved Boeing Service Bulletin 727-53-0194, dated November 8, 1990, which

describes procedures for inspection, modification (cold working of the fastener holes), repair, and replacement of the BS 870 terminal fitting.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection for cracks and web separation, cold working of certain fastener holes, and repair, if necessary, of the BS 870 terminal fitting between stringers 9 and 13, in accordance with the service bulletin previously described.

There are approximately 800 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 640 airplanes of U.S. registry would be affected by this AD, that it would take approximately 76 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,675,200.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, 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 proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket No. 91–NM–114–AD.

Applicability: Model 727 series airplanes, line number 001 through 875, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent failure of the body station (BS) 870 terminal fitting and depressurization of the airplane, accomplish the following:

(a) Prior to the accumulation of 25,000 total flight cycles or within the next 3,000 flight cycles after the effective date of this AD, whichever occurs later, conduct visual, eddy current, ultrasonic, and dye penetrant inspections of the body station (BS) 870 terminal fitting for cracks and web separations, in accordance with Figure 1 of Boeing Service Bulletin 727–53–0194, dated November 8, 1990. During the initial inspection, also accomplish the following:

(1) Rework uncracked fastener holes and install oversized fasteners, in accordance with Figure 1 of the service bulletin.

(2) Remove and replace the external weather caulking material from the fuselage skin butt splice cavity in accordance with Figure 1 of the service bulletin.

(b) If cracks or separations are found, prior to further flight, repair the body station (BS) 870 terminal fitting in accordance with Boeing Service Bulletin 727–53–0194, dated November 8, 1990. After repairs, repeat the inspection requirements of paragraph (a) of this AD at intervals not to exceed 3,000 flight cycles or 18 months, whichever occurs first.

(c) If no cracks or separations are found, repeat the inspection requirements of paragraph (a) of this AD at intervals not to exceed 6,000 flight cycles or three years, whichever occurs first.

(d) The partial replacement of the body station (BS) 870 terminal fitting in accordance with Boeing Service Bulletin 727–53–0194, dated November 8, 1990, constitutes terminating action for the inspection requirements of this AD, for the replaced portion of the fitting. Unreplaced portions must continue to be inspected in accordance with this AD.

(e) The complete replacement of the body station (BS) 870 terminal fitting in accordance with Boeing Service Bulletin 727–53–0194, dated November 8, 1990, constitutes terminating action for the inspection requirements of this AD.

(f) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on June 21, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–15687 Filed 7–1–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–113–AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which currently requires inspection for cracks and repair, if necessary, of the main landing gear (MLG) wheel well pressure floor. This action would require additional inspections of airplanes on which the terminating modification had been installed in accordance with the existing AD, require inspections of additional airplanes on which the terminating modification was incorporated in production, require an expanded inspection area for unmodified airplanes, reduce the initial inspection threshold, and limit the time that blind rivets may be used. This proposal is prompted by several reports of cracking in areas adjacent to the modification and in areas not required to be inspected by the existing AD. This condition, if not corrected, could result in loss of cabin-pressure.

DATES: Comments must be received no later than August 21, 1991.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–113–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Boeing Commercial Airplane

Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Kathi N. Ishimaru, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2778. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-113-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On September 20, 1974, the FAA issued AD 74-21-01, Amendment 39-1982 (39 FR 35332, October 1, 1974), applicable to Boeing Model 727 series airplanes, to require inspection for cracks and repair of the main landing gear (MLG) wheel well pressure floor at Body Station (BS) 910. That action was prompted by several reports of cracks in the MLG wheel well pressure floor. This condition, if not corrected, could result in loss of cabin pressure.

AD 74-21-01 includes an optional modification that, if incorporated, terminates the repetitive inspection requirement. Airplanes with line numbers 1103 through 1832 had this modification installed during manufacture and are not affected by the requirements of that AD.

Since issuance of that AD, there have been several reports of cracking in areas adjacent to the modification and in areas where inspection is not required by AD 74-21-01. Cracking is attributed to fatigue. This condition, if not corrected, could result in loss of cabin pressure.

In addition, the FAA has determined that:

a. Blind fasteners have a limited fatigue life; therefore, they must be inspected at regular intervals for loose or missing fasteners, and replaced with solid fasteners prior to the accumulation of 10,000 landings.

b. The inspection threshold should be reduced from 15,000 flight cycles to 12,000 flight cycles, because cracks have been found on airplanes with as few as 12,600 flight cycles.

The FAA has reviewed and approved Boeing Alert Service Bulletin 727-53A0124, Revision 3, dated November 30, 1989, which describes procedures for inspections and repair of the MLG wheel well pressure floor.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 74-21-01 with a new airworthiness directive that would also require the following actions to be accomplished in accordance with the service bulletin previously described:

a. Repetitive inspections of airplanes (modified either in accordance with previous revisions of the service bulletin or in production);

b. Repetitive inspections of an enlarged area;

c. Reduction of the inspection threshold; and

d. Repetitive inspections and replacement of blind fasteners.

There are approximately 1,710 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 1,143 airplanes of U.S. registry would be affected by this AD, that it would take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $754,380.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, 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 proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-1982 and by adding the following new airworthiness directive:

Boeing: Docket No. 91-NM-113-AD. Supersedes AD 74-21-01.

Applicability: Model 727 series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished. To detect cracking in the main landing gear (MLG) wheel well pressure floor, accomplish the following:

(a) For airplanes with line numbers 001 through 1102, except those modified in accordance with Boeing Alert Service Bulletin 727-53A0124, original release, dated May 3, 1974; Revision 1, dated September 27, 1974; or Revision 2, dated May 2, 1975: Prior to the compliance time specified in paragraph (a)(1) or (a)(2) of this AD, whichever occurs earlier, perform a detailed visual, high frequency eddy current (HFEC), or dye penetrant inspection for cracks in the pressure floor at body station (BS) 910, in accordance with Boeing Alert Service Bulletin 727-53A0124, Revision 3, dated November 30, 1989, or earlier FAA-approved revisions.

(1) Prior to the accumulation of 15,000 landings or within 800 landings after November 2, 1974 (effective date of AD 74–21–01), whichever occurs later; or

(2) Prior to the accumulation of 12,000 landings or within 2,000 landings after the effective date of this AD, whichever occurs later.

(b) For airplanes with line numbers 001 through 1102, except those modified in accordance with Boeing Alert Service Bulletin 727–53A0124, original release, dated May 3, 1974; Revision 1, dated September 27, 1974; or Revision 2, dated May 2, 1975: Prior to the accumulation of 12,000 landings or within 2,000 landings after the effective date of this AD, whichever occurs later, perform a detailed visual, HFEC, or dye penetrant inspection for cracks in the pressure floor at BS 900 and BS 920, in accordance with Boeing Alert Service Bulletin 727–53A0124, Revision 3, dated November 30, 1989, or earlier FAA-approved revisions.

(c) For airplanes with line number 1103 and subsequent and earlier airplanes that have been modified in accordance with Boeing Alert Service Bulletin 727–53A0124, original release, dated May 3, 1974; Revision 1, dated September 27, 1974; or Revision 2, dated May 2, 1975: Prior to the accumulation of 12,000 landings since manufacture or within the next 2,000 landings after the effective date of this AD, whichever occurs later, perform a detailed visual, HFEC, or dye penetrant inspection to detect cracks in the pressure floor at BS 910, and BS 920 between buttock line (BL) 00 and right BL 10, in accordance with Boeing Alert Service Bulletin 727–53AO124, Revision 3, dated November 30, 1989.

(d) Repeat the inspections required by paragraphs (a), (b), or (c) of this AD at intervals not to exceed 2,000 landings.

(e) If cracks are detected that do not exceed the limits listed in the Accomplishment Instructions of Boeing Alert Service Bulletin 727–53A0124, Revision 3, dated November 30, 1989, prior to further flight, repair in accordance with the interim repair described in part I of the Accomplishment Instructions, or the permanent repair described in part II of the Accomplishment Instructions of that service bulletin. The interim repair must be replaced, within 600 landings after accomplishment, with the permanent repair.

(f) If cracks are found that exceed the limits listed in the Accomplishments Instructions of Boeing Alert Service Bulletin 727–53A0124, Revision 3, dated November 30, 1989, prior to further flight, accomplish the permanent repair described in part II of the Accomplishment Instructions of that service bulletin.

(g) Blind fasteners installed in accordance with part II of Boeing Alert Service Bulletin 727–53A0124, Revision 3, dated November 30, 1989, may be used as an interim repair only. The blind fasteners have a life limit of 10,000 landings before they must be replaced with solid fasteners in accordance with Part II of that service bulletin. The blind fasteners must be inspected for loose or missing fasteners after accumulating 3,000 landings since installation or within 1,000 landings after the effective date of this AD, whichever occurs later, and thereafter must be inspected at intervals not to exceed 2,500 landings until replaced. Blind fasteners installed prior to the effective date of this AD must be replaced prior to the accumulation of 10,000 landings since installation or within 3,000 landings after the effective date of this AD, whichever occurs later.

(h) Incorporation of the permanent repairs in accordance with paragraph (e) or (f) of this AD constitutes terminating action for the repetitive inspection requirements of paragraph (d) of this AD for that area. Incorporation of the preventative modification described in part III or part IV, as applicable, of the Accomplishment Instructions of Boeing Alert Service Bulletin 727–53A0124, Revision 3, dated November 30, 1989, constitutes terminating action for the repetitive inspection requirement of paragraph (d) of this AD.

(i) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(j) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on June 21, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–15686 Filed 7–1–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–ASW–09]

Proposed Revision of Transition Area: Muleshoe, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the transition area located at Muleshoe, TX. A new airport has been constructed serving the Muleshoe, TX, area in place of Edward Warren Field which has been closed. The new airport has been named Muleshoe Municipal Airport. The development of a new VHF omni-directional radio range/distance measuring equipment, Alpha (VOR/DME–A) standard instrument approach procedure (SIAP) to the Muleshoe Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the new VOR/DME–A SIAP. If adopted, this proposal would change the status of the Muleshoe Municipal Airport from visual flight rules (VFR) to instrument flight rules (IFR).

DATES: Comments must be received on or before July 25, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 91–ASW–09, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Mark F. Kennedy, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: (817) 624–5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91–ASW–09" The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

All comments submitted will be available for examination in the office of the Assistant Chief Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM'S

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR part 71) to revise the transition area located at Muleshoe, TX. The construction of a new Muleshoe Municipal Airport after the closure of Edward Warren Field and the development of a new VOR/DME–A SIAP to the new airport, has made this proposal necessary. The intended effect of this proposal would provide adequate controlled airspace for all aircraft executing the new VOR/DME–A SIAP. If this proposal is adopted, the status of the Muleshoe Municipal Airport would change from VFR to IFR. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

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

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Muleshoe, TX [Revised]

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of the Muleshoe Municipal Airport (latitude 34° 11'15" N., longitude 102°39'00" W.)

Issued in Fort Worth, TX on June 14, 1991.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 91–15690 Filed 7–1–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–ANM–8]

Proposed Establishment of Transition Area; Albany, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a transition area to provide controlled airspace environment for the new VHF Omnidirectional Range (VOR)–A approach to the Albany Municipal Airport, Albany, Oregon. The transition area would segregate aircraft operating in visual flight rules (VFR) conditions from those operating under instrument flight rules (IFR). The area would be depicted on aeronautical charts to provide references for pilots.

DATES: Comments must be received on or before August 16, 1991.

ADDRESSES: Send comments on the proposal to: Robert Brown, ANM–535, Federal Aviation Administration, Docket No. 91–ANM–8, 1601 Lind Avenue SW., Renton, WA 98055–4056. The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the: Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98055–4056.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM–535, Federal Aviation Administration, Docket No. 91–ANM–8, 1601 Lind Avenue SW., Renton, WA 98055–4056, telephone (206) 227–2535.

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 aspects of the proposal. Communications should identify the airspace docket and be submitted 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. 91–ANM–8." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA proposes an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to provide controlled airspace for instrument flight rules procedures for the new VOR-A approach to the Albany Municipal Airport. The intent is to segregate aircraft operating in visual flight rules conditions from those operating under instrument flight rules. This area would be depicted on appropriate aeronautical charts so that pilots may circumnavigate the areas or comply with instrument flight rules procedures. Section(s) 71.181 of part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6G dated September 4, 1990.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

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—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

2. Section 71.181 is amended as follows:

§ 71.181 [Amended]

Albany, Oregon, Transition Area (New). That airspace extending upward from 700 feet above the surface within a 7 mile radius of the Albany, OR Airport (lat. 44°38'17" N., long. 123°03'30" W.), and within 2 miles either side of the Corvalis, OR VOR/DME (lat. 44°29'59" N., long. 123°17'33" W.) 048° radial; excluding that airspace within the Eugene, and the Corvalis, Oregon, 700 foot transition areas.

Issued in Seattle, Washington, on June 7, 1991.

Helen M. Parke,

Assistant Manager, Air Traffic Division.

[FR Doc. 91-15689 Filed 7-1-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 89-ASO-37]

Proposed Establishment of Restricted Area R-2937; FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This notice withdraws the notice of proposed rulemaking (NPRM), Airspace Docket No. 89-ASO-37, which was published in the **Federal Register** on September 29, 1989. That NPRM proposed to establish Restricted Area R-2937, in the vicinity of Venice, FL, to contain a tethered aerostat-borne radar surveillance system. This action is being withdrawn at the request of the U.S. Customs Service (USCS).

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-9250.

SUPPLEMENTARY INFORMATION:

The Proposed Rule

On September 29, 1989, a notice of proposed rulemaking was published in the **Federal Register** (54 FR 40126) to establish Restricted Area R-2937 in the vicinity of Venice, FL. The proposed restricted area would have provided airspace for the operation of a tethered aerostat-borne radar system. The system would have provided surveillance of airspace to detect low-altitude aircraft attempting to penetrate U.S. airspace undetected.

The U.S. Customs Service has been unable to purchase the property necessary to contain the aerostat balloon for which Restricted Area R-2937 was requested, and has withdrawn its request for the rule proposed in Airspace Docket No. 89-ASO-37.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Withdrawal of the NPRM

Accordingly, pursuant to the authority delegated to me, the notice of proposed rulemaking, Airspace Docket No. 89-ASO-37, as published in the **Federal Register** on September 29, 1989 (54 FR 40126) is hereby withdrawn.

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69).

Issued in Washington, DC, on June 13, 1991.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 91-15688 Filed 7-1-91; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Requirements for Child-Resistant Packaging; Proposed Requirement for Ibuprofen Preparations

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: Under the Poison Prevention Packaging Act of 1970, the Commission is proposing to require child-resistant packaging for oral ibuprofen preparations containing one gram (1,000 mg) or more of ibuprofen in a single package. These requirements are proposed because the Commission has preliminarily determined that child-resistant packaging is required to protect children under five years of age from serious personal injury and serious illness resulting from ingesting such substances.

DATES: Comments on the proposal should be submitted not later than September 16, 1991.

ADDRESSES: Comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC. 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, room 528, 5401 Westbard Avenue, Bethesda, Maryland 20816, telephone (301) 492-6800.

FOR FURTHER INFORMATION CONTACT: Virginia White, Project Manager for Poison Prevention, Directorate for

Health Sciences, Consumer Product Safety Commission, Washington, DC. 20207, telephone (301)492–6477.

SUPPLEMENTARY INFORMATION:

A. Background

The Poison Prevention Packaging Act of 1970 (the "PPPA"), 15 U.S.C. 1471–1476, authorizes the Commission to establish standards for the "special packaging" of any household substance if (1) the degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance and (2) the special packaging is technically feasible, practicable, and appropriate for such substance. Special packaging, also referred to as "child-resistant packaging," is defined as packaging that is (1) designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and (2) not difficult for normal adults to use properly. (It does not mean, however, packaging which all such children cannot open, or obtain a toxic or harmful amount from, within a reasonable time.) Under the PPPA, effectiveness standards have been established for special packaging (16 CFR 1700.15), as has a procedure for evaluating the effectiveness (§ 1700.20). Regulations have been issued requiring special packaging for a number of household products (§ 1700.14).

The Commission administers a regulation issued under the PPPA that requires, with specified exceptions, that all oral human prescription drugs be in child resistant packaging. Whether a drug is required to be issued by prescription is determined by the Food and Drug Administration. When the FDA releases a drug from prescription requirements, so that the drug can be bought "over the counter" ("OTC"), the drug is no longer subject to the child-resistant packaging requirement that applies to prescription drugs.

Ibuprofen is a nonsteroidal anti-inflammatory and analgesic drug used to treat such wide-ranging ailments as arthritis, menstrual pain, toothache, backache, the common cold, and fever. Ibuprofen was first introduced as a prescription drug in the 1970s. In 1984, the FDA approved it for OTC use at lower dosage strengths. Its primary uses as an oral OTC drug are for temporary relief of minor aches and pains, relief of menstrual pain, and reduction of fever.

In 1984, the Commission's staff reviewed toxicity data and the limited human experience data that were available to assess whether child-resistant packaging was needed for OTC ibuprofen products. The information available at that time indicated that ibuprofen had not been involved in serious injury to young children. [8] [1] In addition, the two major manufacturers of OTC ibuprofen formulations were voluntarily packaging their products in child-resistant containers. *Id.* The staff decided, therefore, not to recommend that the Commission issue a special packaging standard for ibuprofen at that time. The staff, however, continued to monitor ingestion data associated with this drug.

Since 1984, ibuprofen has gained popularity as an alternative analgesic to aspirin and acetaminophen, and many additional companies are now marketing OTC ibuprofen products. Accidental ingestions of ibuprofen by young children have also increased, and substantial human experience data are now available on the effects of ibuprofen ingestion and overdose. A review of these data by the staff indicates that exposure of young children to OTC products containing ibuprofen may present a risk of serious illness to young children.

Ibuprofen sold OTC is formulated in tablets containing 200 mg of ibuprofen per tablet. Ibuprofen is also available OTC in combination with pseudoephedrine (a decongestant). This combination is in tablet form, each tablet containing 200 mg of ibuprofen. The recommended adult dose for either ibuprofen product is one tablet every four to six hours, with the maximum daily dose not to exceed 1,200 mg per 24 hours. The package labels on both products state: "Do not give this product to children under 12 except under the advice and supervision of a doctor."

B. Toxicity Data [1, 2]

(Except where indicated otherwise, the statements in section B are based on reference no. 1 in appendix 1.) The toxicity of ibuprofen has been demonstrated in animals and humans. Extrapolation of animal data to humans indicates that the lethal dose in a 10-kilogram (kg) child would be 8,000 to 16,000 mg (800 to 1,600 mg/kg). A case reported in the literature, however, involved a 16-month-old child who died after ingesting 469 mg/kg of ibuprofen. This amount is equivalent to 4,690 mg in a 10-kg child.

[1] Numbers in brackets indicate the number of a relevant document as listed in appendix 1 to this notice.

Most cases of ibuprofen overdosage result either in no symptoms or in mild gastrointestinal or neurological symptoms. The most common adverse effects observed from the therapeutic use of ibuprofen are gastrointestinal in nature, including abdominal discomfort, nausea, indigestion, and heartburn. Less common reactions include skin rashes, headaches, dizziness, and blurred vision. Hepatic toxicity also has been documented. Although life-threatening toxicity is rare, overdosage has resulted in the following very serious conditions: Coma, seizures, apnea (transient cessation of breathing), slowness of heartbeat, hypotension, gastrointestinal bleeding, liver dysfunction, and acute kidney function failure.

For the period of 1978 through 1989, the CPSC's Children and Poisoning (CAP) data base shows 164 ibuprofen ingestions by children under age five that were treated in hospital emergency rooms participating in the National Electronic Injury Surveillance System (NEISS). Of the 164 cases, 66 were known to involve OTC products. Eleven of the 164 cases resulted in hospitalization. Two of the hospitalizations involved OTC preparations.

The American Association of Poison Control Centers' (AAPCC's) National Data Collection System shows a total of approximately 39,900 ibuprofen ingestions by children under age five that were reported to participating poison centers during the five-year period of 1985 to 1989. Of the 39,900 ingestions, approximately 29,000 involved OTC products. Of those 29,000 cases, there were 89 that AAPCC classified as having significant symptoms, ten of which were life-threatening. Information is not available on the amounts of ibuprofen ingested in these incidents.

There are two known deaths of children under age five associated with ibuprofen. One case, from the CPSC's Death Certificate File, was a 19-month-old child who died in 1982. The immediate cause of death was severe acidosis and heart failure due to an overdose of ibuprofen. The second death, which was reported in the literature, involved a 16-month-old child who ingested 469 mg/kg of ibuprofen. This child had episodes of apnea (transient breathing cessation), developed pneumonia, sepsis, and seizures, and died on the seventh day of hospitalization.

Poisoning episodes reported in the literature also indicate a high level of exposure of young children to ibuprofen preparations. Since the OTC marketing

of ibuprofen and the increase in popularity and usage of this drug, several studies of ibuprofen overdosage in children have been reported. Results of these studies show that ibuprofen overdosage appears to be less toxic than overdosage involving other common analgesics, such as aspirin and acetaminophen. In the majority of cases, the children experience either no symptoms or only mild intoxication. In some cases, however, accidental ingestion of ibuprofen has resulted in severe and life-threatening effects, as well as death.

The following cases are examples of the serious risk and the severe trauma to young children that can occur following ingestion of amounts of ibuprofen that are available in OTC packages:

1. A 19-month-old child, weighing 12 kg, was apneic (transient cessation of breathing) and cyanotic (blue from lack of oxygen) after ingesting seven to ten 400-mg tablets (equivalent to 14–20 200 mg. tablets and 233 to 333 mg/kg of ibuprofen). The child was hospitalized and recovered after intensive medical treatment.

2. A child (age not reported) developed serious symptoms after ingesting 1,600 to 4,800 mg of ibuprofen. The symptoms included pinpoint pupils, diminished tone of the skeletal muscles, coma, depressed reflexes, hypotension, rapid heart action, and respiratory depression.

3. A two-year-old child became seriously ill (metabolic acidosis) after ingesting 40 200-mg tablets of ibuprofen (8000 mg, equivalent to 667 mg/kg). One and one-half hours after ingestion, the child was responsive only to pain and was flaccid and pale. The child was lavaged and given activated charcoal and intravenous dextrose. The child later developed periods of breathing cessation. The child eventually recovered after intensive treatment in the hospital.

4. Two similar cases of serious illness are documented. A 15-month-old child developed metabolic acidosis after ingesting an estimated 560 mg/kg of ibuprofen. The second child developed metabolic acidosis after ingesting 666 mg/kg of ibuprofen. Both children recovered after brief intensive treatment in the hospital.

5. A five-year-old child developed seizures after ingesting an unknown amount of ibuprofen. The child recovered. No additional information was provided on this case.

C. Level for Regulation [1]

The product labels for OTC ibuprofen preparations caution that the drug should not be given to children under age 12 unless under a doctor's supervision. Ibuprofen in prescription form is used, however, to treat juvenile arthritis at dosages of 20 to 50 mg/kg/day. This total amount is much lower than the dosages recommended for adults and lower than the amounts involved in the accidental ingestion incidents cited above.

The guidelines for treatment of ibuprofen overdosage in children reported in the literature are based on the correlation of the amount of ibuprofen ingested and the development of toxicity. According to these guidelines, ingestion of doses greater than 400 mg/kg can result in serious toxicity. [3] (One of the deaths described above occurred after the child ingested 467 mg/kg of ibuprofen. These guidelines also recommend that ibuprofen ingestions greater than 200 mg/kg should be treated at a health care facility and monitored for potential serious toxicity. For ingestions of 100–200 mg/kg of ibuprofen, the guidelines recommend that emesis (vomiting) be induced and the patient monitored at home for any symptoms. For a ten-kg child, 100 mg/kg is equivalent to 1,000 mg (one gram), or five 200-mg tablets. Because ingestions of this amount require emesis, an emergency room visit may be necessary if syrup of ipecac is not available in the home to induce vomiting.

Based on these guidelines and the toxicity data and human experience data discussed above, the Commission is proposing that the level for regulation of ibuprofen should be any oral preparation containing one gram (1,000 mg) or more of ibuprofen in a single package. This rule, if issued, will have no effect on any prescription oral human drug containing ibuprofen that is already subject to a special packaging requirement under the current standard (16 CFR 1700.14(a)(10)).

D. Technical Feasibility, Practicability, and Appropriateness

General. In issuing a standard for special packaging under the PPPA, the Commission is required by section 3(a)(2) of the PPPA, 15 U.S.C. 1472(a)(2), to find that the special packaging is "technically feasible, practicable, and appropriate."

Some manufacturers of OTC ibuprofen products are currently using child-resistant packaging and have implemented assemblyline and mass production techniques for those products. Child-resistant packaging is readily available at low cost for those manufacturers currently using conventional packaging. The manufacturers of child-resistant packaging anticipate no problems supplying the OTC ibuprofen market. In most cases, manufacturers can incorporate child-resistant packaging into existing packaging lines. If there is a problem modifying existing equipment or obtaining new equipment, contract packers can be used in the interim to package ibuprofen products.

a. *Technical feasibility.* Because some ibuprofen preparations are already on the market in child-resistant packaging, the Commission concludes that special packaging for ibuprofen is technically feasible because there are package designs that meet the requirements of 16 CFR 1700.15(b) that are suitable for use with the form of this product.

b. *Practicability.* Special packaging for this product seems practicable in that it is adaptable to modern mass production and assembly line techniques. The Commission anticipates no major supply or procurement problems for the packagers of ibuprofen preparations or the manufacturers of child-resistant closure and capping equipment. In addition, there should be no serious problems experienced by manufacturers of the products in incorporating the child-resistant packaging features into their existing packaging lines.

c. *Appropriateness.* Furthermore, special packaging is appropriate since it is available in forms that are not detrimental to the integrity of the substance and that do not interfere with its storage or use.

Accordingly, the Commission preliminarily finds that special packaging for ibuprofen preparations is technically feasible, practicable, and appropriate.

E. Economic Information [4]

The market. The OTC internal analgesic market centers around aspirin, acetaminophen, and ibuprofen. OTC ibuprofen preparations are advertised primarily for general pain and relief of menstrual discomfort. OTC ibuprofen preparations are available only in solid form and only in adult dosages. Aspirin and acetaminophen are available in solid and liquid forms and in both adult and child dosages. Aspirin and acetaminophen products are subject to PPPA special packaging standards, whereas special packaging for OTC ibuprofen products currently is at the option of the manufacturer.

Sales of internal analgesics amounted to $2.1 billion in 1989, with sales of ibuprofen products estimated at $448 million, representing a market share of 21 percent. Companies that manufacture OTC ibuprofen typically have a broad

pharmaceutical product line. OTC ibuprofen is available in brand, generic, and private label preparations. Five large brand name manufacturers account for about 84 percent of the ibuprofen market; generic and private label preparations account for the remaining 16 percent. The Commission's staff has identified 28 generic manufacturers and distributors. Advertising expenditures among the brand name manufacturers were an estimated $100 million per year during 1987 through 1989.

Although several OTC ibuprofen preparations that would be affected by the proposed rule are currently marketed in child-resistant packaging, some are readily available in non-child-resistant packaging. The PPPA allows the manufacturers of a nonprescription product subject to a special packaging standard to market one size of the product without child-resistant packaging if they also market the product in child-resistant packaging and if the product is labeled conspicuously with the statement "this package for households without young children." Some of the non-child-resistant ibuprofen preparations on the market would not be allowed by that exemption.

Effects on Consumers. The Commission's Directorate for Economic Analysis states that the likely effect on consumers of a child-resistant packaging standard for OTC ibuprofen would be a reduction in the number of accidental ingestions by children under age five, based on reduced exposure to the drug in non-child-resistant containers.

From 1985 to 1989, the ibuprofen share of the internal analgesic market increased from an estimated 8.5 percent to an estimated 21 percent. During the same period, emergency room visits associated with ibuprofen ingestions increased from an estimated 695 to an estimated 1,501. There are no data on the proportion of these ingestions that may have involved child-resistant packages.

OTC ibuprofen preparations and OTC aspirin preparations are approved for the same indications and are available in the same types of retail outlets. Based on 1989 injury and sales data, the rate of accidental ingestions per million packages for ibuprofen was 15.5, which is five times greater than the corresponding rate of 3.1 for aspirin. It is reasonable to expect that this difference is due, in part, to the fact that aspirin preparations are subject to PPPA special packaging requirements and that a similar requirement for ibuprofen preparations would reduce the rate of ibuprofen ingestions. If the current rate of ibuprofen ingestions were reduced to the current rate of aspirin ingestions, the staff estimates that the potential savings to consumers would be about $3 million per year.

Effects on Manufacturers. As noted above, the PPPA provides that manufacturers of nonprescription products subject to child-resistant packaging requirements can market one package size of each regulated product in labeled non-child-resistant packaging, provided they also market the product in child-resistant packaging. Therefore, a special packaging requirement for OTC ibuprofen preparations would not have an economic impact on manufacturers that already voluntarily use child-resistant packaging and that also do not offer more than one size of non-child-resistant package for each regulated product. Manufacturers that currently use child-resistant packaging, but offer more than one non-child-resistant package size, would incur the cost to add child-resistant packaging to some portion of their production. Manufacturers that currently are not using child-resistant packaging would incur the additional cost of child-resistant packaging for all except one size of each OTC ibuprofen product.

The staff estimates that about 97 million packages of OTC ibuprofen preparations were sold in 1989, with some unknown proportion sold in child-resistant packages. The incremental cost of child-resistant closures averages one to two cents per package. The Directorate for Economic Analysis estimates that the industry cost to add child-resistant closures to the entire production of 97 million packages would not exceed $1.2 million. Because of the widespread current use of child-resistant packaging, this cost could be substantially less.

A special packaging regulation for OTC ibuprofen preparations would provide equal packaging requirements for all OTC internal analgesics with similar therapeutic indications. This would relieve any existing competitive disadvantage regarding child-resistant packaging for OTC aspirin and acetaminophen preparations.

F. Effective Date [4]

The PPPA provides that, except for good cause, no regulation shall take effect sooner than 180 days or later than one year from the date such regulation is issued. Based on the available information, the Commission believes that 180 days will provide an adequate period of time for manufacturers to obtain suitable child-resistant packaging and incorporate its use into their packaging lines. Therefore, the special packaging requirement is proposed to become effective 180 days after issuance of a final rule and will apply to all products subject to the rule that are packaged after that date.

G. Regulatory Flexibility Act Certification [6]

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 et seq.) generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. The purpose of the Regulatory Flexibility Act, as stated in section 2(b) (5 U.S.C. 602 note), is to require agencies, consistent with their objectives, to fit the requirements of regulations to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulations. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Commission's Directorate for Economic Analysis has prepared an Initial Regulatory Flexibility Act Analysis to examine the effect of the proposed rule on small entities. The findings of that analysis are repeated below.

The staff has identified 28 generic manufacturers and distributors, some portion of which can be classified as small businesses. These generic companies account for 20% of the ibuprofen preparations market, or an estimated 20 million packages of OTC ibuprofen preparations. The estimated cost to add child-resistant packaging to the entire generic production is low. In addition, because of the current widespread availability of child-resistant packaging and the fact that one package size would be exempt from the proposed rule, it appears likely that the burden on any one manufacturer would be minimal.

The requirements of the proposed rule have been explained previously. There appear to be no reasonable alternatives to the proposal to require PPPA requirements for ibuprofen preparations containing one gram (1,000 mg) or more of ibuprofen in a single package that would adequately reduce the risk of serious personal illness or serious illness to children.

For the reasons mentioned above, the Consumer Product Safety Commission concludes that the proposal to require

special packaging for ibuprofen preparations containing one gram (1,000 mg) or more of ibuprofen in a single package, if issued, will not have any significant economic effect on a substantial number of small entities.

H. Environmental Considerations [5]

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has assessed the possible environmental effects associated with Poison Prevention Packaging Act (PPPA) packaging requirements for ibuprofen preparations.

The Commission's regulations, at 16 CFR § 1021.5(c)(3), state that rules requiring special packaging for consumer products normally have little or no potential for affecting the human environment. Analysis of the impact of this proposed rule indicates that child-resistant packaging requirements for these ibuprofen products will have no significant effects on the environment. This is because non-child-resistant package inventories. will be depleted by the time the rule becomes effective and will not need to be disposed of in bulk. The rule will not significantly increase the number of child-resistant packages in use; in any event, the manufacture, use, and disposal of the child-resistant packages present the same potential environmental effects as do the currently used non-child-resistant packages. Therefore, because this proposed rule has no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required.

I. Conclusion

The Commission has considered the information described above concerning the possible need for a special packaging standard for ibuprofen preparations. The Commission has also considered:

1. The reasonableness of such a standard,
2. Available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances,
3. The manufacturing practices of industries affected by the PPPA, and
4. The nature and use of ibuprofen.

After considering all of the information described above, the Commission preliminarily determines that:

1. The degree or nature of the hazard to children in the availability of ibuprofen preparations, by reason of their packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting ibuprofen preparations containing one gram (1,000 mg) or more of the drug in a single package and
2. A special packaging standard for such substances is technically feasible, practicable, and appropriate.

List of Subjects in 16 CFR Part 1700

Consumer protection, Drug, Infants and children. Packaging and containers, Poison prevention, Toxic substances.

For the reasons given above, the Commission proposes to amend 16 CFR part 1700 as follows:

PART 1700—[AMENDED]

1. The authority citation for part 1700 continues to read as follows:

Authority: Pub. L. 91–601, secs. 1–9, 84 Stat. 1670–74, 15 U.S.C. 1471–76. Secs 1700.1 and 1700.14 also issued under Pub. L. 92–573, sect. 30(a), 88 Stat. 1231, 15 U.S.C. 2079(a).

2. Section 1700.14(a) is amended by adding new paragraph (a)(20), reading as follows (although unchanged, the introductory text of paragraph (a) is republished below for context):

§ 1700.14 Substances requiring special packaging.

(a) *Substances.* The Commission has determined that the degree or nature of the hazard to children in the availability of the following substances, by reason of their packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances, and the special packaging herein required is technically feasible, practicable, and appropriate for these substances:

* * * * *

(20) *Ibuprofen.* Ibuprofen preparations for human use in a dosage form intended for oral administration and containing one gram (1,000 mg) or more of ibuprofen in a single package.

* * * * *

Dated: June 27, 1991.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Appendix 1—List of References

Note: This appendix will not be printed in the Code of Federal Regulations.

1. Memorandum from CPSC's Directorate for Health Sciences, dated November 7, 1989, on toxicity of OTC ibuprofen.

2. Memorandum from CPSC's Directorate for Health Sciences, dated November 15, 1989, containing additional information on the toxicity of OTC ibuprofen.

3. Hall, A.G., Smolinske, S.C., Conrad, F.L., Wruk, K.M., Kulig, K.W., Dwelle, T.L., and Rumack, B.G., Ibuprofen Overdose: 126 Cases. Ann Emer Med, 15:1308–1313, 1986.

4. Memorandum from CPSC's Directorate for Economic Analysis, dated April 4, 1991, on economic effects of the proposal.

5. Memorandum from CPSC's Directorate for Economic Analysis, dated April 4, 1991, on environmental considerations.

6. Memorandum from CPSC's Directorate for Economic Analysis, dated April 15, 1991, on impact on small entities.

7. Memorandum from CPSC's Directorate for Health Sciences, dated March 13, 1991, concerning statutory findings.

8. Memorandum from CPSC's Directorate for Health Sciences, dated May 23, 1991, with attached briefing package.

9. Memorandum from CPSC's Directorate for Health Sciences, dated June 6, 1991, with updated ingestion data.

10. Memorandum from CPSC's Office of the General Counsel, dated June 12, 1991, with revised page 6 of the draft Federal Register notice incorporating updated ingestion data.

[FR Doc. 91–15742 Filed 7–1–91; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[PS–093–88]

RIN 1545–AO59

Proposed Regulations Amending the Gasohol Regulations to Modify the Tolerance Allowed to the 10 Percent Alcohol Requirement and the Later Blending Rule; Public Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing relating to the modification of the tolerance rule for determining the percentage of alcohol required for gasohol to qualify for a reduced rate of tax and the elimination of the later blending rule applicable to gasohol pursuant to regulations under section 4081 of the Code.

DATES: The public hearing will be held on August 16, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by August 2, 1991.

ADDRESSES: The public hearing will be in the Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments

should be submitted to the Commissioner of Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, attn: CC:CORP:T:R (PS–093–88), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Felicia A. Daniels of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–566–3935 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 4081(c) of the Internal Revenue Code. The proposed regulations appeared in the Federal Register on Monday, February 25, 1991, at page 7627 (56 FR 7627).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who desire to present oral comments at the hearing on the proposed regulations should submit not later than August 2, 1991, an outline of oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:15 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By the direction of the Commissioner of the Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91–15632 Filed 7–1–91; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Mental Health Services

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish a mandatory preadmission authorization program for mental health services under CHAMPUS. Such a program is needed to promote quality assurance and contain rapidly increasing costs in inpatient psychiatric care under CHAMPUS. By maintaining most of the procedures of the current voluntary preadmission authorization program, the proposed rule minimizes inconveniences for providers.

DATES: Written comments must be received on or before August 1, 1991.

ADDRESSES: Forward to Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Program Initiatives Branch, Mental Health Unit, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: Mary K. Wert, OCHAMPUS, (303) 361–8336.

SUPPLEMENTARY INFORMATION:

A. Regulatory and Statutory Background

In 1989, the Office of the Assistant Secretary of Defense (Health Affairs) announced plans to establish a national utilization review and quality assurance program for inpatient mental health admissions under CHAMPUS. Initial implementation of these plans focused on establishment of a voluntary, comprehensive program for authorization and concurrent review of mental health care delivered in psychiatric hospitals and residential treatment facilities. Extension of this program to psychiatric admissions in general hospitals was deferred until the basic system was firmly established. This system became operational in January of 1990, primarily through a contract with Health Management Strategies International, Inc. (HMS) of Alexandria, Virginia.

Several months later, an outside consultant's report on the alarming increases in mental health costs under CHAMPUS recommended that DoD proceed expeditiously with mandatory preauthorization for all mental health inpatient care, as well as make a number of other program changes. Aware of these alarming cost increases, Congress took action in the National Defense Authorization Act for Fiscal Year 1991, Public Law 101–510, and the Defense Appropriations Act for 1991, Public Law 101–511. In these statutes, Congress directed that the mandatory preauthorization program be implemented by February 15, 1991. Further, Congress enacted certain benefit changes concerning authorized days of inpatient mental health services (also to take effect February 15) and required a report to Congress on DoD's plan to bring mental health costs under control.

To implement these new statutory requirements, DoD issued an interim final rule on February 15, 1991, 56 Federal Register 6268, which solicited public comments and put into place rules and procedures that would apply during the interim period. However, subsequent to that, Congress enacted the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991, Public Law 102–25 (April 6, 1991), which, in section 316, delayed the effective date of the new statutory requirements until October 1, 1991. This provision restored, for the time being, all prior statutory authority to its status prior to February I5. The reason for this Congressional action was a desire to avoid changes in mental health benefits—i.e., the new day limits—while family stresses associated with the Persian Gulf conflict were still proximate.

Based on this Congressional action, in early April, DoD restored the CHAMPUS regulation to its state prior to February 15, 56 Federal Register 13,758. We are now beginning the rulemaking process anew and intend to proceed in three steps. First, we are returning to the original plan of proceeding expeditiously with expansion of our current voluntary preauthorization program into a mandatory preadmission program. This is, of course, based on our prior statutory authority and independent of any of the statutory requirements postponed until October 1. Preadmission authorization is a procedure to effect longstanding medical and psychological necessity requirements of law, including 10 U.S.C. 1079(a)(13).

We have carefully examined the legislative history of these new statutes to assure that we are acting in conformity with Congressional intent. According to the Senate Armed Services Committee, the March 1991 postponement action was to "delay the effective date of the reduction in CHAMPUS mental health benefits required by" the late–I990 Authorization and Appropriations Acts (S.Rept. No.102–18. pg. 6). The Committee further explained: "The Committee believes that these benefits should not be reduced during a period when the requirement for dependent mental health care is increasing because of the stresses of Operation Desert Storm" (*Id.*, p.7). It is apparent that the reference to "the reduction in CHAMPUS mental health benefits" was understood by Congress as a reference primarily to the new day limits and not to

preauthorization procedures. This is clear from the Conference Report on the Appropriations Act, which said the new statutory language "restricts CHAMPUS mental health benefits for eligible beneficiaries and requires preadmission authorization" [H. Conf. Rept. No. 101–938, p.128 (emphasis added)]. This summary description of the provision shows that Congress understood the benefit revisions and the preadmission authorization requirement to be two separate elements.

The purpose of the postponement legislation was to delay the benefit revisions in order to be responsive to military family needs affected by the conflict. Consistent with this intent, since Operation Desert Shield began last August, we have been especially attentive to beneficiary needs for mental health services to deal with resulting family pressures. Therefore, confident that we are acting in accord with Congressional intent, we are proceeding with this proposed rule as step one. We anticipate a final rule taking effect in August, slightly in advance of the new October 1 statutory deadline for the mandatory preadmission authorization program to be operational.

As step two, we intend to issue a second proposed rule in the near future to deal with benefit issues, including the new statutory day limits that take effect October 1. That proposed rule will also address the new statutory protection against improper economic interests by professional providers (which takes effect October 1) and may address other issues. Finally, as step three, we expect to issue a proposed rule this Summer concerning reimbursement system revisions for mental health services.

B. The Need for Mandatory Preadmission Review

Since 1966, when CHAMPUS benefits were legislatively expanded to include mental health services, the cost and utilization of these benefits have grown steadily—and at rates exceeding those for all other types of care. Between fiscal years 1986 and 1989, the cost of CHAMPUS inpatient mental health care a[l]most doubled. During this same period, inpatient medical, surgical and obstetrical costs rose by only 6.1 percent, and actually decreased from FY87 to FY89. In FY89, mental health expenditures totaled more than $600 million, approximately one quarter of the cost of the entire program. An important characteristic of the increased cost for mental health services has been the dramatic increase in inpatient utilization rates for children and adolescents.

Between FY86 and FY89, the entire cost increase for CHAMPUS inpatient care can be explained by increased admissions and bed-days for beneficiaries between the ages of 1 and 19 for inpatient care. This means that if the costs for this age group were excluded, the cost for all CHAMPUS inpatient care would have remained constant over this period (FY86 to FY89).

An analysis of utilization characteristics for adolescents (ages 10-19) reveals a number important changes during the FY86 to FY89 period:

1. Admissions increased by over 7,500 to 19,228—an increase of 64 percent,
2. Hospital days increased by over 440,000 days to 952.085—an increase of 86 percent,
3. Benefit costs increased by over $207 million to $342 million—an increase of 154 percent.

Preliminary data from the National Mental Health Utilization Management Program, administered by Health Management Strategies International, Inc. (HMS) of Alexandria, Virginia, indicate that the voluntary preauthorization, concurrent review and waiver procedures instituted in 1990 have begun to result in a reduction in both numbers of RTC admissions and lengths of stay among adolescents. This has been accomplished with a focus on providing necessary and appropriate care, and the contractor has no financial incentive to deny needed care. The effect in FY90, based on part-year results, shows a slowing of cost increases.

The experience under this program, especially during the second half of FY90, has reinforced our conclusion that strengthened utilization management tools can assure access for necessary and appropriate high quality care for our beneficiaries and still have the potential to contain costs. Even though preauthorization has been voluntary, a substantial proportion of RTC admissions have been submitted for preadmission review, with only about 3 percent being denied for clinical reasons and another 3 percent for administrative deficiencies. Similarly, the acute care denial rate was only about 5 percent. This is a strong indicator that the process is within the capability of providers, and that it has not resulted in wholesale denial of admissions.

This proposed rule seeks to ensure routine early clinical review of the necessity and appropriateness of care without imposing an onerous burden on responsible providers.

C. Provisions of Proposed Rule

This proposed rule is similar to the provisions of the February 15 interim rule concerning preadmission authorization. However, after considering comments we received on the interim rule, we have made a number of revisions. Because this is a proposed rule, we did not make an effort to deal with all specific points raised in comments on the interim rule. However, the discussion below notes some revisions made based on those comments. In addition, there are some provisions that did not appear in the interim rule, including a proposal on payment reduction in cases in which providers fail to comply with preadmission certification requirements. A summary of the key provisions of the proposed rule follows.

1. Incorporation of Peer Review Organization Procedures

Like the interim rule, this proposed rule (proposed § 199.4(a)(12)(i)) generally incorporates for purposes of the mental health utilization review program procedures similar to those in place for the CHAMPUS utilization review program for other medical services—the Peer Review Organization program. This does not mean that the peer review organization contractors used by CHAMPUS (the same PROs that perform similar services for Medicare) will be used for mental health services reviews. In fact, different contractors, are being used (the current major contractor is HMSI, referenced above).

This provision simply means that basic review processes for mental health, concerning matters such as hospital cooperation, confidentiality of records, appeals and hearings, limitations on beneficiary liability, and the like, will be comparable to those in place for the rest of the CHAMPUS program. Adoption of such procedures is already provided for in the CHAMPUS regulation at § 199.15(f) and our underlying statutory authority, including section 8074 of Public Law 101–511, which authorizes the Secretary of Defense to adopt for CHAMPUS requirements similar to the utilization and quality review rules and procedures of the Medicare program.

2. Payment Reduction for Noncompliance With Preadmission Authorization Requirements

The proposed rule (proposed § 199.6(a)(12)(ii)) would establish a reduction in payment in cases wherein institutional providers fail to comply with the mandatory preadmission authorization requirements. The reduction would be to exclude payment for each day of care provided before the effective date of the authorization, up to

a maximum of five days of care. In cases for which payment is on a per-discharge (rather than a per-diem) basis, a $500 per day amount will be used. Patients may not be billed for any payment reductions.

This reduction would apply only in connection with days of care provided before the effective date of an authorization. As explained below, authorizations will typically be considered effective on the date of receipt of the request for authorization, or, in the case of acute hospital emergency admissions occurring prior to the date of the request, the date of the admission. Thus, providers who follow the simple rule of requesting authorization prior to admission (except for bona fide emergencies) will not have to worry about payment reductions for noncompliance.

3. Criteria for Determining Medical or Psychological Necessity for RTC Admissions

The proposed rule (proposed § 199.4(b)(4)(vii) is essentially unchanged from the provision in the interim rule on this point. This provision restates the basic clinical circumstances that represent a need for inpatient RTC services.

4. Preauthorization Requirement for RTC Admissions.

The proposed rule (proposed § 199.4(b)(4)(viii)) would establish mandatory preadmission authorization for all RTC admissions. Like the interim rule, the proposed rule emphasizes the development of a diagnosis/treatment plan for the patient that addresses the need for the admission, the possibility of services at a less intensive level of care, a comprehensive patient assessment, specific treatment plans, family involvement, and discharge planning. The reason for this emphasis is to prevent the possibility of inpatient admissions and prolonged stays without significant therapeutic attention.

We hold to this position, but we have made a significant change from the interim rule with respect to clarification of our expectations regarding the timetable for the treatment plan, a matter addressed by several commenters on the interim rule. Under the proposed rule, the timetable for development of the plan is as follows: Development of the plan must have begun at the time of admission; a preliminary plan must be developed in writing within 24 hours of the admission; and a master plan must be established within seven days of the admission. This timetable conforms to that suggested in a CHAMPUS proposed rule of November 28, 1990, 55 **Federal Register** 49091, regarding medical documentation.

We have also clarified the timing for requests for preadmission authorization for RTC care. Requests should be made not less than two business days prior to the planned admission. This restates current practice for RTC admissions, all of which are elective.

5. Concurrent Review of RTC Care

Like the interim rule, the proposed rule (proposed § 199.4(b)(4)(ix)) would restate in the regulation current practice for concurrent reviews of RTC care.

6. Criteria for Determining Medical or Psychological Necessity for Acute Care

Like the interim rule, the proposed rule (proposed § 199.4(b)(6)(i)) would restate currently applicable criteria for determining medical or psychological necessity for acute inpatient mental health services. The criteria focus on the severity of the patient's condition and the intensity of the treatment needed.

7. Preauthorization Requirements for Acute Care

The proposed rule (proposed § 199.4(b)(6)(iii)) would establish the general requirement for preadmission authorization for all non-emergency acute hospital admissions for mental health services. As in the interim rule, emphasis is placed on the development of an individual diagnosis/treatment plan. The plan must address the necessity for the admission, the needed level of intensity of care, a comprehensive patient assessment, a specific treatment plan, family involvement, and discharge planning. The importance of this is to assure that actions and plans of the providers responsible are based on appropriate therapeutic considerations.

Responding to a number of comments with respect to the interim rule, the proposed rule clarifies the timetable for development of the diagnosis/treatment plan. Under the proposed rule: The plan must be under development at the time of admission; a preliminary plan must be established within 24 hours of the admission; and a master treatment plan must be developed within 72 hours of the admission. This timetable is similar to that included in the CHAMPUS proposed rule on medical documentation referenced above, and conforms to some of the suggestions in the comments objecting to the interim rule.

We have also significantly changed the proposal concerning the timing of the request for preadmission authorization by eliminating the requirement for a request 48 hours in advance of the proposed non-emergency admission. Under the proposed rule, the request may be at any time prior to the admission. In general, the decision regarding preauthorization will be made within one business day following receipt of the request. If authorization is granted in response to the request, even if that granting takes place after the admission, the effective date of the preadmission authorization will be the date the request was received. Thus, the authorization will apply from the first day of the admission. If, however, that request is denied and the provider has already admitted the patient, neither CHAMPUS nor the patient may be billed for the services rendered.

In emergency cases, preauthorization is not mandatory. However, notification of the admission must be made within 24 hours or the next business day. If the admission was a bona fide emergency, the effective date of the preauthorization will be the date of the admission. However, if it was not an emergency (but the admission can be authorized as medically or psychologically necessary), the effective date will be the date the request was received. Under the payment reduction provision, discussed above, days of care prior to the effective date of the authorization will not be reimbursed (up to a maximum payment reduction of five days of services).

8. Limitations on Liability

The proposed rule (proposed §§ 199.4(h)(5)(vi) and 199.6(a)(6)) would reinforce current regulatory requirements (applicable to both institutional and individual providers regarding limitations on liability for services excluded because they were not medically or psychologically necessary. The current regulation provides that potentially excludable services may be reimbursed if the provider could not reasonably have known of the exclusion. The proposed rule would make it explicit that this possibility will not be available to any provider who fails to follow available preadmission authorization procedures that would have provided the definitive answer. Also, the proposed rule would make it an explicit requirement for provider authorization to adhere to CHAMPUS rules which disallow billing the patient for excluded services unless the patient specifically understood that the services would likely not be covered and agreed to pay.

D. Rulemaking Procedures

Executive Order 12291 requires that a regulatory impact analysis be performed on any major rule. A "major rule" is

defined as one which would result in an annual effect on the national economy of $100 million or more or have other substantial impacts. Section 605(b) of the Regulatory Flexibility Act requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This proposed rule is not a major rule under Executive Order 12291. Also, we certify that this proposed rule will not significantly affect a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

In addition, this proposed rule would not impose information collection requirements. Therefore, it does not need to be reviewed by the Executive Office of Management and Budget under authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

Finally, regarding rulemaking procedures, we note again that this is a proposed rule. We invite public comment on all aspects of this proposal.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.2 (b) is proposed to be amended by adding a definition for "psychiatric emergency" in alphabetical order as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Psychiatric emergency. A psychiatric inpatient admission is an emergency when, based on a psychiatric evaluation performed by a physician (or other qualified mental health care professional practicing within the scope of his or her state license), the patient is at immediate risk of serious harm to self or others as a result of a mental disorder and requires immediate continuous skilled observation at the acute level of care.

* * * * *

3. Section 199.4 is proposed to be amended by redesignating the current paragraph (a)(12) as (a)(13); by adding a new paragraph (a)(12); by adding new paragraphs (b)(4)(vii), (b)(4)(viii), and (b)(4)(ix); by redesignating paragraphs (b)(6) as paragraph (b)(7); by redesignating paragraph (b)(5)(ix) introductory text as paragraph (b)(6) introductory text and paragraph (b)(5)(ix)(A) and (B) as paragraphs (b)(6)(v) and (vi); by redesignating paragraph (b)(6)(vi)(*1*) and (*2*) as paragraph (b)(6)(vi)(A) and (B); and by adding new paragraphs (b)(6)(i) through (iv) and paragraph (h)(5)(vi), as follows:

§ 199.4 Basic program benefits.

(a) * * *

(12) *Utilization review, quality assurance and preauthorization for inpatient mental health services.* (i) *In general.* The Director, OCHAMPUS shall provide, either directly or through contract, a program of utilization and quality review for all mental health care services. Among other things, this program shall include mandatory preadmission authorization before nonemergency inpatient mental health services may be provided and mandatory approval of continuation of inpatient services within 72 hours of emergency admissions. This program shall also include requirements for other pretreatment authorization procedures, concurrent review of continuing inpatient and outpatient care, retrospective review, and other such procedures as determined appropriate by the Director, OCHAMPUS. The provisions of paragraph (h) of this section and § 199.15(f) shall apply to this program. The Director, OCHAMPUS, shall establish, pursuant to that section, procedures substantially comparable to requirements of paragraph (h) of this section and § 199.15. If the utilization and quality review program for mental health care services is provided by contract, the contractor(s) need not be the same contractor(s) as are engaged under § 199.15 in connection with other services.

(ii) *Preadmission authorization.* (A) This section generally requires preadmission authorization for all nonemergency inpatient mental health services and prompt continued stay authorization after emergency admissions. Institutional services for which payment would otherwise be authorized, but which were provided without compliance with preadmission authorization requirements, do not qualify for the same payment that would be provided if the preadmission requirements had been met.

(B) In cases of noncompliance with preadmission authorization requirements, institutional payment will be reduced by the amount attributable to the days of services without the appropriate certification up to a maximum of five days of services. In cases in which payment is determined on a prospectively set per-discharge basis (such as the DRG-based payment system), the reduction shall be $500 for each day of services provided without the appropriate preauthorization, up to a maximum of five days of services.

(C) For purposes of paragraph (a)(12)(ii)(B) of this section, a day of services without the appropriate preauthorization is any day of services provided prior to:

(*1*) The receipt of an authorization; or

(*2*) The effective date of an authorization subsequently received.

(D) Services for which payment is disallowed under paragraph (a)(12)(ii)(B) of this section may not be billed to the patient.

* * * * *

(b) * * *

(4) * * *

(vii) *Criteria for determining medical or psychological necessity.* In determining the medical or psychological necessity of services and supplies provided by RTCs, the evaluation conducted by the Director, OCHAMPUS (or designee) shall consider the appropriate level of care for the patient, the intensity of services required by the patient, and the availability of that care. In addition to the criteria set forth in this paragraph (b)(4) of this section, additional evaluation standards, consistent with such criteria, may be adopted by the Director, OCHAMPUS (or designee). RTC services and supplies shall not be considered medically or psychologically necessary unless, at a minimum, all the following criteria are clinically determined in the evaluation to be fully met:

(A) Patient has a diagnosable psychiatric disorder.

(B) Patient exhibits patterns of disruptive behavior with evidence of disturbances in family functioning or social relationships and persistent psychological and/or emotional disturbances.

(C) RTC services involve active clinical treatment under an individualized treatment plan that provides for:

(*1*) Specific goals/objectives relevant to the problems identified;

(*2*) Skilled interventions by qualified mental health professionals to assist the patient and/or family;

(*3*) Time frames for achieving proposed outcomes; and

(*4*) Evaluation of treatment progress, including an explanation of any failure to achieve the treatment goals/objectives defined and appropriate revisions in planning for treatment

based on updated assessments of the patient's response to treatment.

(D) Unless therapeutically contraindicated, the family and/or guardian must actively participate in the continuing care of the patient either through direct involvement at the facility or geographically distant family therapy. (In the latter case, the treatment center must document that there has been collaboration with the family and (or guardian in all reviews.)

(viii) *Preauthorization requirement.* (A) All admissions to RTC care are elective and must be certified as medically/psychologically necessary prior to admission. The criteria for preauthorization shall be those set forth in paragraph (b)(4)(vii) of this section. In applying those criteria in the context of preadmission preauthorization review, special emphasis is placed on the development of a specific diagnosis/treatment plan, consistent with those criteria and reasonably expected to be effective, for that individual patient.

(B) The timetable for development of the individualized diagnosis/treatment plan shall be as follows:

(*1*) The plan must be under development at the time of the admission.

(*2*) A preliminary treatment plan must be established within 24 hours of the admission.

(*3*) A master treatment plan must be established within seven days of the admission.

(C) The elements of the individualized diagnosis/treatment plan must include:

(*1*) The diagnostic evaluation that establishes the necessity for the admission;

(*2*) An assessment regarding the inappropriateness of services at a less intensive level of care;

(*3*) A comprehensive, biopsychosocial assessment and diagnostic formulation;

(*4*) A specific individualized treatment plan;

(*5*) A specific plan for involvement of family members, unless therapeutically contraindicated; and

(*6*) A discharge plan, including an objective of referring the patient to further services, if needed, at less intensive levels of care within the benefit limit period.

(D) Preauthorization requests should be made not less than two business days prior to the planned admission. In general, the decision regarding preauthorization shall be made within one business day of receipt of a request for preauthorization. Preauthorizations are valid for 90 days.

(ix) *Concurrent review.* Concurrent review of the necessity for continued stay will be conducted no less frequently than every 30 days. The criteria for concurrent review shall be those set forth in paragraph (b)(4)(vii) of this section. In applying those criteria in the context of concurrent review, special emphasis is placed on evaluating the progress being made in the active individualized clinical treatment being provided and on developing appropriate discharge plans.

* * * * *

(6) * * *

(i) *Criteria for determining medical or psychological necessity.* In determining the medical or psychological necessity of acute inpatient mental health services, the evaluation conducted by the Director, OCHAMPUS (or designee) shall consider the appropriate level of care for the patient, the intensity of services required by the patient, and the availability of that care. The purpose of such acute inpatient care is to stabilize a life-threatening or severely disabling condition within the context of a brief, intensive model of inpatient care in order to permit management of the patient's condition at a less intensive level of care. Such care is appropriate only if the patient requires services of an intensity and nature that are generally recognized as being effectively and safely provided only in an acute inpatient hospital setting. In addition to the criteria set forth in this paragraph (b)(6) of this section, additional evaluation standards, consistent with such criteria, may be adopted by the Director, OCHAMPUS (or designee). Acute inpatient care shall not be considered necessary unless at least one of the following criteria is determined to be met:

(A) Patient poses a serious risk of harm to self and/or others.

(B) Patient is in need of high dosage, unusual medication, or somatic and/or psychological treatment, with potentially serious side effects.

(C) Patient has acute disturbances of mood, behavior, or thinking which required initial admission.

(D) Patient needs to be observed and assessed on a 24-hour basis by skilled nursing staff, and/or requires continued intervention by a multidisciplinary treatment team.

(ii) *Emergency admissions.* Admission to an acute inpatient hospital setting may be on an emergency or on a non-emergency basis. In order for an admission to qualify as an emergency, the following criteria, in addition to those in paragraph (b)(6)(i) of this section, must be met:

(A) the patient must be at immediate risk of serious harm to self and or others based on a psychiatric evaluation performed by a physician (or other qualified mental health professional with hospital admission authority); and

(B) the patient requires immediate continuous skilled observation and treatment at the acute psychiatric level of care.

(iii) *Preauthorization requirements.* (A) All non-emergency admissions to an acute inpatient hospital level of care must be authorized prior to the admission. The criteria for preauthorization shall be those set forth in paragraph (b)(6)(i) of this section. In applying those criteria in the context of preauthorization review, special emphasis is placed on the development of a specific diagnosis/treatment plan, consistent with those criteria and reasonably expected to be effective, for that individual patient.

(B) The timetable for development of the diagnosis/treatment plan shall be as follows:

(*1*) The plan must be under development at the time of admission.

(*2*) A preliminary treatment plan must be established within 24 hours of the admission.

(*3*) A master treatment plan must be established within 72 hours of the admission.

(C) The elements of the diagnosis/treatment plan must include:

(*1*) The diagnostic evaluation that establishes the necessity for the admission;

(*2*) An assessment regarding the inappropriateness of services at a less intensive level of care;

(*3*) A comprehensive biopsychosocial assessment and diagnostic formulation;

(*4*) A specific individualized treatment plan;

(*5*) A specific plan for involvement of family members, unless therapeutically contraindicated; and

(*6*) A discharge plan, including an objective of referring the patient to further services, if needed, at less intensive levels of care within the benefit limit period.

(D) The request for preauthorization must be received by the reviewer designated by the Director, OCHAMPUS prior to the planned admission. In general, the decision regarding preauthorization shall be made within one business day of receipt of a request for preauthorization. In the case of an authorization issued after an admission resulting from approval of a request made prior to the admission, the effective date of the certification shall be the date of the receipt of the request. However, if the request on which the approved authorization is based was made after the admission (and the case

was not an emergency admission), the effective date of the authorization shall be the date of approval.

(E) Authorization prior to admission is not required in the case of a psychiatric emergency requiring an inpatient acute level of care, but authorization for a continuation of services must be obtained promptly. Admissions resulting from a bona fide psychiatric emergency should be reported within 24 hours of the admission or the next business day after the admission, but must be reported to the Director, OCHAMPUS or a designee, within 72 hours of the admission. In the case of an emergency admission authorization resulting from approval of a request made within 72 hours of the admission, the effective date of the authorization shall be the date of the admission. However, if it is determined that the case was not a bona fide psychiatric emergency admission (but the admission can be authorized as medically or psychologically necessary), the effective date of the authorization shall be the date of the receipt of the request.

(iv) *Concurrent review.* Concurrent review of the necessity for continued stay will be conducted. The criteria for concurrent review shall be those set forth in paragraph(b)(6)(i) of this section. In applying those criteria in the context of concurrent review, special emphasis is placed on evaluating the progress being made in the active clinical treatment being provided and on developing/refining appropriate discharge plans.

* * * * *

(h) * * *

(5) * * *

(vi) Preadmission authorization was available but not requested.

* * * * *

4. Section 199.6 is proposed to be amended by redesignating paragraphs (a)(6) through (a)(9) as paragraphs (a)(7) through (a)(10) respectively, and by adding a new paragraph (a)(6), as follows:

§ 199.6 Authorized providers.

* * * * *

(a) * * *

(6) *Exclusion of beneficiary liability.* In connection with certain utilization review, quality assurance and preauthorization requirements of § 199.4 of this part, providers may not hold patients liable for payment for certain services for which CHAMPUS payment is disallowed. With respect to such services, providers may not seek payment from the patient or the patient's family. Any such effort to seek payment is a basis for termination of the provider's authorized status.

* * * * *

Dated: June 26, 1991.

L.M. Bynum,

Alternate Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-15646 Filed 7-1-91; 8:45 am]

BILLING CODE 3810-01-M

National Security Agency; Security Protection Force

32 CFR Part 228

AGENCY: National Security Agency, DOD.

ACTION: Proposed rule.

SUMMARY: The National Security Agency (NSA) has promulgated regulations which protect its foreign intelligence facilities within the United States. The classified and highly sensitive worldwide activities of the Agency are directed and supervised from these various facilities. Furthermore, all intelligence support functions for the conduct of the various foreign intelligence missions of the National Security Agency are managed from these facilities. Pursuant to a Delegation of Authority to the Director, NSA from the Administrator of General Services effective 1 October 1986, the NSA was empowered to promulgate this part, which has the force of law. Pursuant to the Delegation, the NSA has the authority to carry out the protective police functions set forth above with respect to property under its charge and control, and has promulgated this part pursuant thereto.

DATES: Comments must be received by August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Cary Dier, Office of General Counsel, National Security Agency. (301) 688 6054.

SUPPLEMENTARY INFORMATION: On 6 August 1986, the Administrator of General Services signed a Delegation of Authority, effective 1 October 1986, which delegated to the Director, NSA the authorities vested in the Administrator by, inter alia, the Act of June 1, 1948, 62 Stat. 281, sections 1 through 4 (40 U.S.C. 318–318c), to perform functions with respect to the protection of the buildings and grounds occupied by the Agency. 40 U.S.C. 318 empowers the Administrator of General Services to appoint special policemen to protect property under his charge and control. In furtherance of this purpose, such special policemen are granted the same powers as sheriffs and constables, and are authorized to enforce laws enacted for the protection of persons and property, to prevent breaches of the peace, to suppress affrays (brawls) or unlawful assemblies, and to enforce with criminal penalties any rules and regulations made and promulgated by the Administrator. Section 318a provides specific authority to promulgate regulations to be enforced by such special policemen.

List of Subjects in 32 CFR Part 228

Security measures.

Accordingly, title 32, chapter I, subchapter M is proposed to be amended to add a new part 228 to read as follows:

PART 228—SECURITY PROTECTIVE FORCE

Sec.

Authority: 40 U.S.C. 318–318C.

§ 228.1 Applicability.

This part applies to all property under the charge and control of the Director, National Security Agency, and to all persons entering in or on such property (hereinafter referred to as "protected property"). Employees of the National Security Agency and any other persons entering upon protected property shall be subject to these regulations.

§ 228.2 Control of activities on protected property.

Persons in and on protected property shall at all times comply with official signs of a prohibitory, regulatory, or directory nature and with the direction of Security Protective Officers and any other duly authorized personnel.

§ 228.3 Restrictions on admission to protected property.

Access to protected property shall be restricted to ensure the orderly and secure conduct of Agency business. Admission to protected property will be restricted to employees and other persons with proper authorization who shall, when requested, display government or other identifying credentials to the Security Protective Officers or other duly authorized personnel when entering, leaving, or while on the property.

§ 228.4 Control of vehicles on protected property.

Drivers of all vehicles entering or while on protected property shall comply with the signals and directions of Security Protective Officers or other duly authorized personnel and any posted traffic instructions. All vehicles shall be driven in a safe and careful manner at all times, in compliance with applicable motor vehicle laws.

§ 228.5 Enforcement of parking regulations.

For reasons of security, parking regulations shall be strictly enforced. Except with proper authorization, parking on protected property is not allowed without a permit. Parking without a permit or other authorization, parking in unauthorized locations or in locations reserved for other persons, or parking contrary to the direction of posted signs or applicable state or federal laws and regulations is prohibited. Vehicles parked in violation, where warning signs are posted, shall be subject to removal at the owner's risk, which shall be in addition to any penalties assessed pursuant to § 228.18. The Agency assumes no responsibility for the payment of any fees or costs related to such removal which may be charged to the owner of the vehicle by the towing organization. This paragraph may be supplemented from time to time with the approval of the NSA Director of Security or his designee by the issuance and posting of such specific traffic directives as may be required, and when so issued and posted such directives shall have the same force and effect as if made a part hereof. Proof that a vehicle was parked in violation of these regulations or directives may be taken as prima facie evidence that the registered owner was responsible for the violation.

§ 228.6 Security inspection.

Any personal property, including but not limited to any packages, briefcases, containers or vehicles brought into, while on, or being removed from protected property are subject to inspection. A search of a person may accompany an investigative stop or an arrest.

§ 228.7 Prohibition on weapons and explosives.

No persons entering or while on protected property shall carry or possess, either openly or concealed, firearms, any illegal or legally controlled weapon (e.g., throwing stars, switchblades), explosives, or items intended to be used to fabricate an explosive or incendiary device, except as authorized by the NSA Director of Security or his designee at each Agency facility. The use of chemical agents (Mace, tear gas, etc.) on protected property in circumstances that do not include an immediate and unlawful threat of physical harm to person or persons is prohibited; however, this prohibition does not apply to use by law enforcement personnel in the performance of their duties.

§ 228.8 Prohibition on photographic, transmitting and recording equipment, and "Walkman-type" radios.

No persons entering or while on protected property shall bring or possess any kind, except as specially authorized by the NSA Director of Security or his designee at each Agency facility.

§ 228.9 Prohibition on narcotics and illegal substances.

Entering or being on protected property under the influence of, or while using or possessing, any narcotic drug, hallucinogen, marijuana, barbiturate or amphetamine is prohibited. Operation of a motor vehicle entering or while on protected property by a person under the influence of narcotic drugs, hallucinogens, marijuana, barbiturates or amphetamines is also prohibited. The above prohibitions shall not apply in cases where the drug is being used as prescribed for a patient by a licensed physician.

§ 228.10 Prohibition on alcohol.

Entering or being on protected property under the influence of alcoholic beverages is prohibited. Operation of a motor vehicle entering or while on protected property by a person under the influence of alcoholic beverages is prohibited. The use of alcoholic beverages on protected property is also prohibited, except on occasions and on protected property for which the NSA Deputy Director for Administration or his designee has granted approval for such use.

§ 228.11 Restrictions on the taking of photographs.

In order to protect the security of the Agency s facilities, photographs may be taken on protected property only with the consent of the NSA Director of Security or his designee. The taking of photographs includes the use of television cameras, video taping equipment, and still or motion picture cameras.

§ 228.12 Physical protection of facilities.

The willful destruction of, or damage to any protected property, or any buildings or personal property thereon, is prohibited. The theft of any personal property, the creation of any hazard on protected property to persons or things, and the throwing of articles of any kind at buildings or persons on protected property is prohibited. The improper disposal of trash or rubbish, or any unauthorized or hazardous materials on protected property is also prohibited.

§ 228.13 Disturbances on protected property.

Any conduct which impedes or threatens the security of protected property, or any buildings or persons thereon, or which disrupts the performance of official duties by Agency employees, or which interferes with ingress to or egress from protected property is prohibited. Also prohibited is any disorderly conduct, any failure to obey an order to depart the premises, any unwarranted loitering, any behavior which creates loud or unusual noise or nuisance, or any conduct which obstructs the usual use of entrances, foyers, lobbies, corridors, offices, elevators, stairways or parking lots.

§ 228.14 Prohibition on gambling.

Participating in games for money or other personal property, or the operating of gambling devices, the conduct of a lottery, or the selling or purchasing of numbers tickets, in or on protected property is prohibited. This prohibition shall not apply to the vending or exchange of chances by licensed blind operators of vending facilities for any lottery set forth in a State law and conducted by an agency of a State as authorized by section 2(a)(5) of the Randolph-Sheppard Act, as amended (20 U.S.C. 107(a)(5)).

§ 228.15 Restriction regarding animals.

No animals except guide dogs for the blind or hearing impaired, or guard or search dogs used by authorized state or federal officials, shall be brought upon protected property, except as authorized by the NSA Director of Security or his designee at each Agency facility.

§ 228.16 Soliciting, vending, and debt collection.

Commercial or political soliciting, vending of all kinds, displaying or distributing commercial advertising, collecting private debts or soliciting alms on protected property is prohibited. This does not apply to:

(a) National or local drives for welfare, health, or other purposes as authorized by the "Manual on Fund Raising Within the Federal Service," issued by the U.S. Office of Personnel Management under Executive Order 10927 of March 18, 1961, or by other federal laws or regulations; and

(b) Authorized employee notices posted on Agency bulletin boards.

§ 228.17 Distribution of unauthorized materials.

Distributing, posting or affixing materials, such as pamphlets, handbills, or flyers, on protected property is prohibited, except as provided by § 228.16, as authorized by the NSA Director of Security or his designee at each Agency facility, or when conducted as part of authorized Government activities.

§ 228.18 Penalties and the effect on other laws.

Whoever shall be found guilty of violating any provision of these regulations is subject to a fine of not more than $50 or imprisonment of not more than 30 days, or both. In the case of traffic and parking violations, fines assessed shall be in accordance with the schedule(s) of fines adopted by the United States District Court for the District where the offense occurred. Nothing in these regulations shall be construed to abrogate or supersede any other Federal laws or any State or local laws or regulations applicable to any area in which the protected property is situated.

Dated: June 24, 1991.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 91-15386 Filed 7-1-91, 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF THE INTERIOR

43 CFR Part 11

RIN 1090-AA22

Natural Resource Damage Assessments

AGENCY: Department of the Interior.

ACTION: Notice of proposed rulemaking: extension of comment period.

SUMMARY: On April 29, 1991, (56 FR 19752) the Department of the Interior (Department) proposed a rule to revise the natural resource damage assessment rule, codified at 43 CFR part 11, to conform with a court ruling. The Department is extending the period of comment from June 28, 1991, to July 16, 1991.

DATES: Comments will be accepted through July 16, 1991.

ADDRESSES: Office of Environmental Affairs, Attn: *NRDA Rule,* room 2340, Department of the Interior, 1849 C Street, NW., Washington, DC 20240 (regular business hours 7:45 a.m. to 4:15 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Cecil Hoffmann or David Rosenberger at (202) 208-3301.

SUPPLEMENTARY INFORMATION: On April 29, 1991, The Department proposed revisions to the natural resource damage assessment rule, codified at 43 CFR part 11, to conform with a court ruling. In that ruling, the court held that: (1) Restoration costs are the preferred measure of natural resource damages under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601, *et seq.*; and (2) all reliably calculated lost use values of injured natural resources should also be recoverable, with no specific hierarchy of methodologies required of natural resource trustees in conducting those valuations. The court also requested clarification as to the extent to which privately owned natural resources might be subject to the natural resource damage assessment rule.

The Department has received requests from the public for additional time to comment on this proposed rule. The comment period is being extended in response to these requests to assure that all members of the public have adequate time to comment fully on the proposed rule.

Jonathan P. Deason,

Director, Office of Environmental Affairs Policy, Management, and Budget.

[FR Doc. 91-15778 Filed 6-28-91; 9:59 am]

BILLING CODE 4310-RG-M

Bureau of Land Management

43 CFR 3810 and 3820

RIN 1004-AB52

[WO-680-4130-02 24 1A]

Mining on Military Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish procedures for locatable mineral exploration and development on public and certain acquired lands located in six military withdrawals and allow for the safe, uninterrupted, and unimpeded use of such lands for military purposes. The Military Lands Withdrawal Act of 1986 (Pub. L. 99-606, 100 Stat. 3457) specifically provides for certain lands withdrawn for military purposes to be considered for opening to the operation of the Mining Law of 1872, as amended, with special restrictions. The suitability of these areas for mining claim location, exploration, development, and mining would be determined through the Bureau of Land Management's (BLM) planning system, with the concurrence of the military department concerned. Suitability determinations would be based on military uses of the lands, public health and safety concerns, and consideration of environmental values. A list of those lands determined to be suitable for opening would be published in the Federal Register.

DATES: Comments should be submitted by September 3, 1991. Comments received or postmarked after this date may not be considered in the decisionmaking process on the issuance of the final rule.

ADDRESSES: Comments should be submitted to: Director (140), Bureau of Land Management, Room 5555, Main Interior Building, 1849 C Street, NW., Washington, DC 20240.

Comments will be available for public review in room 555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Reginald Reid, (202) 343-8537.

SUPPLEMENTARY INFORMATION: The BLM proposes to amend the regulations at 43 CFR 3810 and 3820 to implement the Military Lands Withdrawal Act of 1986 (Act). The proposed rule would establish procedures for location of mining claims and mill sites, exploration, development, and mining activities, and issuance of mineral patents in certain military

withdrawals that may be opened to the operation of the Mining Law of 1872, as amended (Mining Law), pursuant to the provisions of the Act. These withdrawals include the McGregor Range in New Mexico, the Bravo-20 Bombing Range in Nevada, the Nellis Air Force Base in Nevada, the Fort Greely Maneuver Area and the Fort Greely Air Drop Zone in Alaska, and the Fort Wainwright Maneuver Area in Alaska.

The subject military withdrawals have been closed to exploration, development, and mining under the Mining Law. These areas comprise many thousands of acres of public and acquired lands, some of which may have potential for the discovery of valuable mineral deposits, including critical and strategic minerals. However, because of past closures to exploration, little is known about the geology and mineralization of these areas.

No regulations presently exist to provide for mineral exploration, development, and mining on military lands previously withdrawn from application of the Mining Law. As required by section 12(d) of the Act, this proposed rule was developed to: (1) Set forth the operational requirements for conducting exploration, development, and mining activities on military lands deemed suitable for entry; (2) allow for the safe, uninterrupted, and unimpeded use of the military lands by the military; and (3) assist mining claimants in determining how much, if any, of the surface of any lands opened under the Military Lands Withdrawal Act may be used for mining purposes. The proposed rule also incorporates provisions to ensure the safety of mining claimants, patentees, and operators from military operations to the extent possible.

The existing regulations in 43 CFR 3830, 3840, and 3870 will apply to the location of mining claims and other mining activities on military withdrawals determined to be suitable for entry. The existing regulations in 43 CFR parts 3809, 3810, 3850, and 3860 will also apply except as provided in this proposed rule. These exceptions are as follows:

Minerals Subject to Location

The minerals subject to location on the aforementioned military withdrawals are those described in 43 CFR 3812.1. However, no deposit of common varieties of sand, stone, gravel, pumice, pumicite, or cinders and no deposit of petrified wood and block pumice, regardless as to whether or not the deposit has some property giving it distinct and special value, shall be subject to location and mining under the Mining Law.

Suitability Determination

The suitability of the subject withdrawals for mineral exploration, development, and mining would be determined at least every 5 years through a management plan developed by the BLM and with the concurrence of the military department concerned. If such lands are determined to be suitable, they would be opened on the effective date of an opening order published in the Federal Register. The proposed rule would only be applicable to lands determined suitable under this process.

Casual Use

A notification to the authorized BLM and military officers would be required for all casual use operations. All persons would be required to notify both officers at least 20 working days prior to conducting casual use activities, and contact the authorized military officer in person on the day of and prior to entry. The notification requirements would include, among other things, a description of the operations proposed, scheduling and duration of activities, location of the project area and access routes, and the type of transportation to be used for personnel and equipment. These requirements are necessary for monitoring purposes to ensure that such operations do not interfere with military uses and, to the extent possible, to eliminate any hazards that persons entering a military withdrawal might be exposed to as a result of military operations.

Plan of Operations

The proposed rule requires that a plan of operations be submitted for all operations in excess of casual use. The plan would be required to conform with the approved BLM management plan and would require the concurrence of the authorized military officer. Key elements of the plan would consist of: A description of the operations proposed, location of the project area, residence or temporary storage structures, access routes, and any other facilities or equipment needed in support of mining operations, acreage estimates for the amount of surface disturbance involved, reclamation measures, and provisions regarding financial responsibility and liability. Once the plan has been approved, all persons would be required to notify the authorized BLM and military officers prior to entry in accordance with the same requirements described under casual use.

Access

Access would only be permitted on those routes specified in the notice of entry or plan of operations. In addition, the authorized military officer may establish a system for monitoring ingress to and egress from the military withdrawal for purposes of military security and public safety.

Inspection

The mining claimant, patentee, or operator would be required to permit the authorized BLM or military officer to enter the project area for periodic inspections of casual use or operations under an approved plan.

Noncompliance

The provisions of 43 CFR 3809.3–2 would apply in the event that the mining claimant, patentee, or operator fails to comply with subpart 3828 of this proposed rule. The authorized BLM officer would defer to the authorized military officer for any violations that threaten national security.

Mineral Patents

All mineral patents issued would: (1) Convey title to the locatable minerals only; (2) convey the right to use so much of the surface as may be necessary for purposes incident to mining; (3) contain a provision that the surface use rights are subject to any conditions on use and access as specified in the management plan and in the approval of any plan of operations for the area; (4) contain a reservation to the United States of the surface of all lands patented and of all nonlocatable minerals on those lands; and (5) contain a provision reflecting the right of the United States to close the lands as provided by law and implemented by § 3828.6–6(b) of the proposed rule.

Closure of Lands and Closure to Public Uses

The proposed rule provides that in the event of a national emergency or for purposes of national defense or security, public safety, or military operations, the authorized BLM officer shall, at the request of the authorized military officer, close all or any portion of the military lands that have been opened to mineral activity. This closure would be subject to valid existing rights.

If the authorized military officer determines that public safety, national security, or military operations require temporary closure of the lands to public uses, the BLM officer shall order that all or any portion of the lands be closed to mineral activity. Such closure shall be limited to minimum areas and periods as

deemed necessary by the authorized military officer. All locations of mining claims made or patents issued shall be subject to this closure authority. If such closure occurs, any right that has vested in the claimant or patentee shall continue except that physical entry upon the claim or patent shall be prohibited for the duration of the closure. The application of this provision to activities on a located claim or patent is not a taking of property requiring payment of just compensation. The United States shall not be held liable for any loss incurred by the mining claimant, patentee, or operator as a result of the closure.

A notice specifying that date, time, and duration of the closure would be published in the **Federal Register** and sent to the mining claimants, patentees, and operators conducting mineral exploration or development activities on military lands. A deferment of assessment work would, in appropriate circumstances, be granted if the lands are closed.

The principal author of this proposed rule is Reginald Reid, Division of Mining Law and Salable Minerals, with assistance from Richard Deery, Division of Mining Law and Salable Minerals, and Mike Pool, Division of Legislation and Regulatory Management, BLM, Washington Office.

It has been determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Additionally, this proposed rule would not cause a taking of private property under Executive Order 12630.

The provisions at 43 CFR part 3811 of this proposed rule do not contain collection of information which requires approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* The provisions for collection of information contained at 43 CFR 3828 of this rule have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of information will not be required until it has been approved by the Office of Management and Budget.

Public reporting burden for this collection of information is estimated to average 11 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, should be sent to the Division of Information Resources Management, BLM, 1849 C Street, NW., Premier Building, room 208, Washington, DC 20240; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 43 CFR 3810

Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

List of Subjects in 43 CFR 3820

Mines, Monuments and memorials, National forests, National parks, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

Under the authority of the Military Lands Withdrawal Act of 1986 (Pub. L. 99–606, 100 Stat. 3457–68), parts 3810 and 3820, Group 3800, subchapter C, Chapter II of title 43 of the Code of Federal Regulations are proposed to be amended as follows:

PART 3810—LANDS AND MINERALS SUBJECT TO LOCATION

1. Part 3810 is amended by adding an authority citation to read as follows:

Authority: 16 U.S.C. 473, 478–482; 25 U.S.C. 280a; 48 U.S.C. 119, 120, 381–383; 16 U.S.C. 447; 16 U.S.C. 347–354; 48 U.S.C. 364a–364e; 30 U.S.C. 122; 43 U.S.C. 299; 30 U.S.C. 54; 43 U.S.C. 300; 43 U.S.C. 154; Pub. L. 99–606, 100 Stat. 3457–68; 30 U.S.C. 22 *et seq.*; 43 U.S.C. 1701 *et seq.*

Subpart 3811—Lands Subject to Location and Purchase

2. Subpart 3811 is amended by adding §§ 3811.3, 3811.3–1, and 3811.3–2 to read as follows:

Subpart 3811—Lands Subject to Location and Purchase

Sec.
3811.3 Military Lands.
3811.3–1 General.

Lands withdrawn for military purposes are not subject to mining location, except where specifically authorized by law.

§ 3811.3–2 Lands under Military Lands Withdrawal Act.

Pursuant to the Military Lands Withdrawal Act of 1986 (Pub. Law 99–606, 100 Stat. 3457–68), the Secretary of the Interior, with the advice and concurrence of the Secretary of the military department concerned, shall determine the suitability for opening to the operation of the Mining Law of 1872, as amended, public and acquired lands located in the McGregor Range in New Mexico, the Bravo-20 Bombing Range in Nevada, the Nellis Air Force Range in Nevada, the Fort Greely Maneuver Area and the Fort Greely Air Drop Zone in Alaska, and the Fort Wainwright Maneuver Area in Alaska. The suitability determination and the operational requirements for conducting mineral exploration, development, and mining activities on military withdrawals are contained in subpart 3828 of this chapter.

PART 3820—AREAS SUBJECT TO SPECIAL MINING LAWS

3. Part 3820 is amended by adding an authority citation to read as follows:

Authority: Pub. L. 80–477, 62 Stat. 162; 48 U.S.C. 364a–364e; 16 U.S.C. 1133; 16 U.S.C. 482a; 25 U.S.C. 461–479; 16 U.S.C. 251–255; 16 U.S.C. 447; Pub. L. 74–750, 49 Stat. 1817; 16 U.S.C. 450z; 16 U.S.C. 460y; 30 U.S.C. 611; Pub. L. 99–606, 100 Stat. 3457–68; 30 U.S.C. 22 *et seq.*; 43 U.S.C. 1701 *et seq.*

4. Part 3820 is amended by adding subpart 3828 to read as follows:

Subpart 3828—Mining on Military Lands

Sec.
3828.0–1 Purpose.
3828.0–2 Objectives.
3828.0–3 Authority.
3828.0–5 Definitions.
3828.0–7 Cross references.
3828.1 Lands and minerals subject to location and mining.
3828.2 Suitability determination.
3828.3 Location, recordation and maintenance of mining claims.
3828.4 Activity levels.
3828.4–1 Casual use.
3828.4–2 Noncasual use.
3828.5 Operational procedures.
3828.5–1 Approval of plans of operation.
3828.5–2 Notice of entry required for all activities.
3828.6 General provisions.
3828.6–1 Access.
3828.6–2 Inspection.
3828.6–3 Noncompliance.
3828.6–4 Mineral patents.
3828.6–5 Mining operations after issuance of patent.
3828.6–6 Closure of lands.

Subpart 3828—Mining on Military Lands

§ 3828.0–1 Purpose.

This subpart sets forth procedures for conducting mineral exploration, development, and mining operations on certain military lands determined to be suitable for opening to the operation of the Mining Law of 1872, as amended.

§ 3828.0–2 Objectives.

The objectives of this subpart are to provide regulations for entry, exploration, development, and mining on certain military lands so that they will be conducted in a manner that will not interfere with military operations and will assure, to the extent possible, the safety of mining claimants and operators from military operations.

§ 3828.0–3 Authority.

The Military Lands Withdrawal Act of 1986 (Pub. L. 99–606, 100 Stat. 3457–68); the Mining Law of 1872, as amended (30 U.S.C. 22 *et seq.*); and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*). In the event of a conflict between the Mining Law of 1872, as amended, and the Military Lands Withdrawal Act, the latter Act shall prevail.

§ 3828.0–5 Definitions.

As used in this subpart:

(a) *Authorized BLM officer* means any employee of the Bureau of Land Mangement to whom authority has been delegated to perform the duties described in this subpart.

(b) *Authorized military officer* means the commander of the particular military installation involved or his designee.

(c) "Casual use," "mining claim," "mining laws," "operations," "operator," "person," "project area," "unnecessary or undue degradation" and "reclamation" are defined in § 3809.0–5 of this title.

(d) *Exploration* means any activity that may involve the use of mechanized equipment to search for and discover valuable mineral deposits including, but not limited to, prospecting, geologic mapping, geophysical and geochemical surveys, sampling, drilling, and trenching.

(e) *Military lands* means public and certain acquired lands located in military withdrawals.

(f) *Suitable land* means military lands that have been determined to be suitable for mining claim location, exploration, development, and mining under the Mining Law of 1872, as amended, pursuant to the procedures set out in § 3828.2 of this subpart.

§ 3828.0–7 Cross references.

(a) The regulations in 43 CFR parts 3830, 3840, and 3870 apply to the location, recordation and maintenance of mining claims, and other mining activities and procedures on suitable lands.

(b) The regualtions in 43 CFR part 3809 apply to surface use incident to mining activities on suitable lands except as provided in this subpart.

(c) The regulations in 43 CFR part 3810 apply to lands and minerals subject to location on suitable lands except as provided in this subpart.

(d) The regulations in 43 CFR part 3850 apply to the performance of annual assessment work on mining claims except as provided in this subpart.

(e) The regulations in 43 CFR part 3860 apply to the mineral patent applications on suitable lands except as provided in this subpart.

§ 3828.1 Lands and minerals subject to location and mining.

(a) Mining claims may be located on suitable lands in the McGregor Range in New Mexico, the Bravo-20 Bombing Range in Nevada, the Nellis Air Force Base in Nevada, the Fort Greely Maneuver Area and the Fort Greely Air Drop Zone in Alaska, and the Fort Wainwright Maneuver Area in Alaska.

(b) The provisions of this subpart apply to those acquired lands where only the surface was acquired and the mineral estate has never been out of Federal ownership.

(c) The minerals subject to location on the military withdrawals listed in paragraph (a) of this section are those described in § 3812.1 of this title, except that no deposit of common varieties of sand, stone, gravel, pumice, pumicite, or cinders and no deposit of petrified wood and block pumice, regardless as to whether or not the deposit has some property giving it distinct and special value, shall be subject to location and mining under the Mining Law of 1872, as amended.

§ 3828.2 Suitability determination.

(a) The suitability of military lands for mineral location and mining shall be determined at least every 5 years through a management plan developed by the Bureau of Land Management under part 1600 of this title and with the advice and concurrence of the authorized military officer. Suitability determinations shall be based on military uses of the lands, public health and safety concerns, and consideration of environmental values. The plan shall set forth general management objectives and standards, as deemed necessary by the authorized BLM and military officers.

(b) Mining location governed by these regulations shall be subject to the condition that the United States will be held harmless as a result of changes to the character of the land resulting from temporary closure as provided under § 3828.6–6(b) of this subpart.

(c) The authorized BLM officer shall publish in the Federal Register a notice listing those military lands determined suitable for entry and specifying the date and time of opening. The notice shall specify that such lands may be subject to closure as provided under § 3828.6–6(b) of this subpart, and shall contain any other terms and conditions of entry for exploration and location activities. The notice shall also contain a provision protecting the United States in accordance with paragraph (b) of this section.

§ 3828.3 Location, recordation and maintenance of mining claims.

(a) Beginning on the date and time specified in the Federal Register notice, as required under § 3828.2(b) of this subpart, mining claims may be lcoated on suitable lands. All claims shall be located, recorded, and maintained in the manner prescribed in parts 3830, 3840 and 3850 of this title.

(b) In addition to the conditions set forth in § 3852.1 of this title, a deferment of assessment work may be granted if the lands are temporarily closed pursuant to the provisions set forth in § 3828.6–6 of this subpart.

§ 3828.4 Activity levels.

§ 3828.4–1 Casual use.

(a) All persons shall notify the authorized BLM and military officers prior to conducting casual use activities in accordance with the requirements set forth in § 3828.5–2 of this subpart.

(b) Persons conducting casual use activities shall not be exempt from any legal or financial responsibilities with respect to surface use of the land.

§ 3828.4–2 Noncasual use.

(a) An approved plan of operations shall be required for all exploration, development, and mining activities other than casual use. The plan shall be filed in the BLM and military offices having jurisdiction over the suitable lands on which the mining claim(s) or project area is located. No special form is required for filing a plan.

(b) The plan of operations shall conform with the management objectives and standards contined in the approved BLM management plan

required under § 3828.2 of this subpart and include:

(1) Name, mailing address, and telephone number of the mining claimant, patentee, and operator. Any change of claimant, patentee, operator, mailing address or telephone number shall be reported promptly to the authorized BLM and military officer;

(2) When applicable, the name of the mining claim and the serial number assigned to it when recorded pursuant to subpart 3833 of this title on which disturbance will likely take place as a result of the operations;

(3) Information sufficient to describe or identify the type of operations proposed, how they will be conducted, and the period of time during which the operations will take place;

(4) A topographic map of sufficient scale to indicate the project area, areas of anticipated surface disturbance, access routes, aircraft landing site(s), temporary or permanent residence or equipment storage structures, and any other support facilities or equipment to be used in connection with mining operations. The authorized BLM or military officer may request that a specific type of map be submitted, including but not limited to U.S. Geological Survey topographic map(s) or BLM Surface Management map(s);

(5) Acreage estimates for the amount of surface disturbance of each activity and the total amount of surface disturbance anticipated for the project area;

(6) Measures set forth in § 3809.1–5(c)(5) and (6) of this title to prevent unnecessary or undue degradation, reclaim disturbed areas, and maintain the project area in a safe and clean manner during extended periods of nonoperation. The authorized military officer may also assist in developing measures and additional stipulations to prevent any conflicts with the military use of the lands involved and, to the extent possible, assure the safety of mining claimants and operators from military operations;

(7) A statement accepting financial responsiblity for the repair or resolution of any damages to existing access routes, or other unnecessary or unauthorized surface disturbances; and

(8) A statement relieving the United States of any liability and agreeing to hold the United States harmless from liability for personal injury or damage to equipment or other real or personal property, including liability for damages related to hazardous substances, caused by mining activities conducted within military lands.

§ 3828.5 Operational procedures.

§ 3828.5–1 Approval of plans of operation.

(a) Approvals of plans and plan modifications under §§ 3809.1–6 and 3809.1–7 of this title, respectively, require the concurrence of the authorized military officer within the specified timeframe.

(b) Upon concurrence of the authorized BLM officer, the authorized military officer may request a plan modification because of a change in military operations. The authorized military officer may also assist the operator in developing mitigating measures to be incorporated into the plan.

§ 3828.5–2 Notice of entry required for all activities.

The mining claimant, patentee, or operator shall provide written notification to the authorized BLM and military officers at least 20 working days prior to conducting either casual use activities or operations under an approved plan, and shall contact the authorized military officer in person on the day of a prior to entry onto military lands. Approval of a notice of entry by the authorized BLM or military officer is not required. The notice shall include:

(a) Name, mailing address, and telephone number of the mining claimant, patentee, and operator. Any change of claimant, patentee, operator, mailing address, or telephone number shall be reported promptly to the authorized BLM and military officers;

(b) When applicable, the name of the mining claim and the serial number assigned to it when recorded pursuant to subpart 3833 of this title on which disturbance will likely take place as a result of the operations;

(c) A statement describing the operations proposed, when said activities will begin, and how long the mining claimant or operator will occupy the project area; and

(d) Type of transportation for personnel and equipment to be used to and from the project area; and

(e) A map, as prescribed in § 3828.4–2(b)(4) of this subpart, to indicate the location of the project area and access routes.

§ 3828.6 General provisions.

§ 3828.6–1 Access.

(a) Access shall only be permitted on those routes specified in §§ 3828.4–2(b)(4) and 3828.5–2(e) of this subpart.

(b) The authorized military officer may establish a system for monitoring ingress to and egress from the withdrawal for purposes of military security and public safety.

§ 3828.6–2 Inspection.

The mining claimant, patentee, or operator shall permit the authorized BLM or military officer to enter the project area for periodic inspections of casual use or operations under an approved plan to determine compliance with these regulations. The authorized military officer shall provide a copy of any inspection report, including photographs, to the authorized BLM officer.

§ 3828.6–3 Noncompliance.

Failure to comply with the regulations in this subpart will subject the mining claimant, patentee, or operator to the provisions of § 3809.3–2 of this title. For any violations determined by the military department concerned to threaten national security, the authorized BLM officer will defer to the authorized military officer.

§ 3828.6–4 Mineral patents.

Mineral patent procedures provided in 43 CFR part 3860 apply to the regulations in this subpart, except that all patents issued shall:

(a) Convey title to the locatable minerals only;

(b) Convey the right to use so much of the surface as may be necessary for purposes incident to mining under the provisions established by these regulations;

(c) Contain a provision that the surface use rights are subject to any conditions on use and access as specified in the management plan and in the approval of any plan of operations for the area, as of the time the patent issues;

(d) Contain a reservation to the United States of the surface of all lands patented and of all nonlocatable minerals on those lands; and

(e) Contain a provision reflecting the right of the United States to close the lands as provided by law and implemented by § 3828.6–6(b) of this part.

§ 3828.6–5 Mining operations after issuance of patent.

After issuance of a mineral patent, the patentee shall continue to conduct all mineral exploration and mining activities in accordance with the regulations in this subpart and subpart 3809, notwithstanding any provision of

subpart 3809 to the contrary.

§ 3828.6–6 Closure of lands.

(a) In the event of a national emergency or for the purposes of national defense or security, the authorized BLM officer, at the request of the authorized military officer, shall order all or any portion of the military lands that have been opened to mineral activity to be closed to exploration, development, and mining. This closure is subject to valid existing rights.

(b) If the authorized military officer determines that public safety, national security, or military operations require temporary closure of the lands to public uses, the authorized BLM officer shall order all or any portion of the military lands that have been opened to mineral activity to be closed to exploration, development, and mining, and shall order the suspension of mining that has begun on a mining claim. Any such closure shall be limited to minimum areas and periods as deemed necessary by the authorized military officer. All valid existing rights obtained by location of a mining claim or through receipt of a patent issued under the regulations in this subpart on lands closed under this paragraph shall be subject to this provision. If such closure occurs, any right that has vested in the claimant or patentee shall continue except that physical entry upon the claim or patent shall be prohibited for the duration of the closure. The United States shall not be held liable for any loss incurred by the mining claimant, patentee, or operator as a result of the closure.

(c) A notice shall be published in the **Federal Register** specifying the date and time of the closure and the period during which it will remain in effect. Copies of the notice shall be sent to all mining claimants, patentees, and operators conducting mineral exploration, development, or mining activities on military lands. The authorized military officer shall also post and maintain appropriate warning signs.

(d) A deferment of assessment work may be granted if the lands are closed pursuant to this section. The deferment shall remain in effect for the duration of the closure.

Dated: October 18, 1990.

James M. Hughes,

Deputy Assistant Secretary of the Interior.

[FR Doc. 91–15710 Filed 7–1–91; 8:45 am]

BILLING CODE 4310–84–M

43 CFR Part 4700

[WO–250–4370–02–241A]

RIN 1004–AB87

Protection, Management, and Control of Wild Free-Roaming Horses and Burros; Prohibited Acts, Administrative Remedies, and Penalties; Administrative Remedies

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would allow the authorized officer of the Bureau of Land Management (BLM) to place in full force and effect, pending appeal, decisions to remove excess wild free-roaming horses or burros from public or private land. The timely removal of excess animals will maintain appropriate management levels, prevent injury to, or death of, wild horses and burros, reduce damage to public land resources, and reduce future costs associated with removal and disposition.

DATES: Comments should be submitted by August 1, 1991. Comments received or postmarked after the above date may not be considered in the decisionmaking process on the final rule.

ADDRESSES: Comments should be sent to Director (140), BLM, room 5555, Main Interior Building, 1849 C Street, NW., Washington, DC 20240.

Comments will be available for public review in room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John S. Boyles or Vernon R. Schulze, (202) 653–9215.

SUPPLEMENTARY INFORMATION: The provisions of 43 CFR 4770.3 allow any person who is adversely affected by a decision of the authorized officer to file an appeal. Under the current regulations contained in 43 CFR 4.21, decisions of the authorized officer of the BLM are, with some exceptions, stayed pending resolution of an appeal to the Interior Board of Land Appeals (IBLA). Because the regulations in 43 CFR Part 4700 do not provide an exception, an appeal may delay implementation of wild horse and burro removal decisions for up to 2 years pending the IBLA ruling.

It is the policy of the BLM to conduct monitoring studies on wild horse and burro herd areas to measure changes in populations and habitat conditions. When monitoring data indicate that the number of wild horses or burros is in excess of the appropriate management level, it is essential that the excess animals be removed expeditiously so as to maintain a thriving ecological balance on the herd area.

However, when a decision of the authorized officer to remove excess animals is appealed to IBLA, normally at least 1 year passes before IBLA issues a ruling as to whether the excess animals should be removed. Beyond that, additional delays can occur depending on the timing of an IBLA ruling because removal operations are suspended immediately before and during the peak foaling period to protect the health of pregnant horses and newly born foals. This policy, combined with adverse weather conditions in winter, often limits the capture operations to a period of 5 to 7 months annually. Consequently, the removal of excess animals and the reestablishment of a thriving ecological balance may be delayed for 2 years beyond the initial date of the decision to remove.

During these delays, wild horses and burro populations can expand at an annual rate of 15 to 25 percent. The population growth, in turn, increases the difficulty of maintaining a thriving ecological balance on the herd area and increases the costs of reducing the population and disposing of the excess animals when removal decisions are eventually upheld. Additionally, failure to remove the animals at the time it is determined to be necessary increases government costs because removal contracts and capture plans must be rewritten to account for the additional animals resulting from reproduction in the herd during the appeal period.

On several previous occasions, wild horse and burro herds have been endangered by the lack of forage or water caused by weather conditions or other emergencies such as fire or deep snow. To prevent further stress or death, the BLM removed the animals. However, if such removal decisions are appealed, the present regulations provide no expeditious means for removing the animals even where there is an imminent danger to the herd's health and welfare.

The proposed rule would allow the authorized officer to place removal decisions in full force and effect, without affecting the right to appeal. The timely removal of animals would maintain appropriate management levels, prevent injury to, or death of, wild horses and burros, and reduce damage to public land resources. In addition, timely removal of excess animals would substantially reduce future costs associated with removal and disposition. The amount saved would depend on the number of removal actions that is appealed and the total

number of animals involved. With an annual increase of 15 to 25 percent and an average cost of $1,000 for removal and disposal of an animal through the adoption program, preventing a 1-year delay in removal of 5,000 animals could save the Federal Government at least $1,000,000.

The principal author of this proposed rule is Vernon R. Schulze, wild horse and burro program specialist, assisted by the Staff of the Division of Legislation and Regulatory Management, BLM.

It has been determined that this proposed rule does not constitute a major Federal action sigificantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior (DOI) has determined under Executive Order 12291 that this document is not a major rule and under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) that it will not have a significant economic impact on a substantial number of small entities. Additionally, as required by Executive Order 12630, the DOI has determined that the rule would not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.* However, the collections of information contained in Group 4700 have been approved by the OMB under 44 U.S.C. 3501, *et seq.* and assigned clearance number 1004–0042.

List of Subjects in 43 CFR Part 4700

Advisory committees, Aircraft, Intergovernmental relations, Penalties, Public lands, Range management, Wild horses and burros, Wildlife.

Under the authorities cited below, part 4700, subchapter D, chapter II, title 43 of the Code of Federal Regulations is amended as set forth below.

PART 4700—PROTECTION, MANAGEMENT, AND CONTROL OF WILD FREE-ROAMING HORSES AND BURROS

1. The authority citation for part 4700 is revised to read as follows:

Authority: 16 U.S.C. 1331–1340, 43 U.S.C. 1701 *et seq.*, 18 U.S.C. 47, 43 U.S.C. 315.

2. Section 4770.3 is amended by adding paragraph (c) to read as follows:

§ 4770.3 Administrative remedies.

* * * * *

(c) The authorized officer may place in full force and effect decisions to remove wild horses or burros from public or private lands if required by applicable law or to preserve or maintain a thriving ecological balance and multiple use relationship. Full force and effect decisions shall take effect on the date specified, regardless of an appeal. Appeals and petitions for stay of decisions shall be filed with the Interior Board of Land Appeals as specified in this part.

Dated: May 6, 1991.

Dave O'Neal,

Assistant Secretaqry of the Interior.

[FR Doc. 91–15709 Filed 7–1–91; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 91–22]

Actions To Adjust or Meet Conditions Unfavorable to Shipping in the United States/Venezuela Trade

AGENCY: Federal Maritime Commission.

ACTION: Proposed rulemaking; enlargement of time to comment.

SUMMARY: The Federal Maritime Commission, in response to a petition alleging the existence of conditions unfavorable to shipping in the foreign oceanborne trade between the United States and Venezuela, initiated a proceeding pursuant to section 19 of the Merchant Marine Act, 1920, through publication of a proposed rule (May 16, 1991; 56 FR 22685). The proposed rule would adjust or meet the apparent unfavorable conditions by imposing a per voyage fee in the amount of $100,000 upon certain named Venezuelan-flag carriers, with failure to pay the fee resulting in suspension of that carrier's tariffs, or denial of access to or clearance from U.S. ports. Upon consideration of requests for a 90-day enlargement of time to comment filed by King Ocean Service de Venezuela and Compania Anonima Venezolana de Navigacion, S.A., the Commission has determined to grant a limited extension of 30 days.

DATES: Comments (original and 15 copies) due on or before July 31, 1991.

ADDRESSES: Send comments to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001, (202) 523–5740.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–15661 Filed 7–1–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter 1

[CC Docket No. 91–115; DA No. 91–756]

Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Extension of time.

SUMMARY: This action extends the dates for comments and reply comments that were established in the notice of proposed rulemaking, which was adopted by the Commission on April 9, 1991, in the proceeding concerning joint use calling cards (56 FR 26644, June 10, 1991). The intent of the notice is to allow the parties additional time to address issues that will have a significant impact on carriers' calling card operations.

DATES: Comments must be filed on or before August 15, 1991, and reply comments on or before September 16, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Roxanne McElvane, Tariff Division, Common Carrier Bureau, (202) 632–6917

SUPPLEMENTARY INFORMATION:

Order

Adopted: June 18, 1991;

Released: June 18, 1991

Chief, Common Carrier Bureau:

1. On June 11, 1991, MCI Telecommunications Corporation (MCI) filed a motion for an extension of time of 30 days, from June 24, 1991, to July 24, 1991, to file comments in the above-captioned proceeding and a corresponding 30-day extension until August 14, 1991 to file reply comments. MCI requests additional time to interact with key company personnel to develop comments on issues concerning joint use calling card billing and validation. The motion is unopposed.

2. MCI contends that these issues are extremely complex and their resolution will have a significant impact on

carriers' calling card operations. Motion at 1. MCI also argues that this proceeding may be affected by the Commission's decision in its pending proceeding concerning access to operator services.[1] *Id.*

3. The Common Carrier Bureau has reviewed MCI's motion and we conclude that the public interest would be served by its grant. We also conclude that all interested parties should be afforded a similar extension of time. Therefore, all comments pertaining to CC Docket No. 91–115 must be filed not later than August 15, 1991. Replies must be filed not later than September 16, 1991.

4. Accordingly, it is ordered That the motion for extension of time filed by the MCI Telecommunications Corporation with regard to the above-captioned proceeding is granted.

Federal Communications Commission.

Richard M. Firestone,

Chief, Common Carrier Bureau.

[FR Doc. 91–15632 Filed 7–1–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 91–179, RM–7734]

Radio Broadcasting Services; Bixby, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by John M. Singer proposing the substitution of Channel 287C3 for Channel 287A at Bixby, Oklahoma, and the modification of Station KBXT's construction permit to specify the higher powered channel. Channel 287C3 can be allotted to Bixby in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 35–56–30 and West Longitude 95–52–48. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 287C3 at Bixby or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

[1] Policy and Rules Concerning Operator Service Access and Pay Telephone Compensation; Notice of Proposed Rulemaking, CC Docket No. 91–35, 6 FCC Rcd 1448 (1991).

DATES: Comments must be filed on or before August 19, 1991, and reply comments on or before September 3, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Cary S. Tepper, Esq., Putbrese, Hunsaker & Ruddy, 6800 Fleetwood Road, suite 100, P.O. Box 539, McLean, Virginia 22101 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–179, adopted June 17, 1991, and released June 26, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–15672 Filed 7–1–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 91–174, RM–7728]

Radio Broadcasting Services; Goliad, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Alco Communications seeking the allotment of Channel 240A to Goliad, Texas, as the community's first local FM service. Channel 240A can be allotted to Goliad in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.7 kilometers (2.3 miles) west to avoid a short-spacing to the proposed Class C1 upgrade of Station KXGJ(FM), Channel 241C2, Bay City, Texas. The coordinates for Channel 240A at Goliad are North Latitude 28–40–23 and West Longitude 97–25–40.

DATES: Comments must be filed on or before August 19, 1991, and reply comments on or before September 3, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mark Fields, Esq., Miller & Fields, Post Office Box 33003, Washington, DC 20033 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 632–6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–174, adopted June 14, 1991, and released June 26, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-15673 Filed 7-1-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-180 , RM-7699]

Radio Broadcasting Services; Seabrook, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by KRTS, Inc., seeking the substitution of Channel 221C1 for Channel 221C2 at Seabrook, Texas, and the modification of its license for Station KRTS(FM) at Seabrook to specify operation on the higher powered channel. Channel 221C1 can be allotted to Seabrook in compliance with the Commission's minimum distance separation requirements with a site restriction of 40 kilometers (24.8 miles) southwest at the petitioner's requested site. The coordinates for Channel 221C1 at Seabrook are North Latitude 29-19-11 and West Longitude 95-19-44. In accordance with section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 221C1 at Seabrook or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before August 19, 1991, and reply comments on or before September 3, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Michael R. Gardner, Esq., The Law Offices of Michael R. Gardner, P.C., Suite 710, 1150 Connecticut Ave., NW., Washington, DC 20036 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-180, adopted June 17, 1991, and released June 26, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-15674 Filed 7-1-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-175, RM-7720]

Radio Broadcasting Services; Ravenswood and Williamstown, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mediacom, Inc., seeking the reallotment of Station WRZZ, Channel 291A, Ravenswood, West Virginia to Williamstown, West Virginia, as the community's first local aural transmission service and the modification of its license to specify Williamstown as its community of license. Channel 291A can be allotted to Williamstown in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.6 kilometers (4.7 miles) southwest to accommodate petitioner's desired transmitter site. The coordinates for Channel 291A at Williamstown are North Latitude 39-20-38 and West Longitude 81-29-48. See Supplemental Information, *infra.*

DATES: Comments must be filed on or before August 19, 1991, and reply comments on or before September 3, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert L. Olender, Esq., Baraff, Koerner, Olender & Hochberg, P.C., suite 300, 5335 Wisconsin Avenue NW., Washington, DC 20025-2003 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-175, adopted June 14, 1991, and released June 26, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

In accordance with § 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 291A at Williamstown or require the petitioner to demonstrate the availability of an additional equivalent class channel. In addition, since Williamstown is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-15675 Filed 7-1-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 685

Pelagic Fisheries of the Western Pacific Region

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

ACTION: Notice of availability of a fishery management plan amendment and request for comments.

SUMMARY: NOAA issues this notice that the Western Pacific Fishery Management Council (Council) has submitted Amendment 3 to its Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP) for Secretarial review, and is requesting comments from the public. Copies of Amendment 3 may be obtained from the Council (see **ADDRESSES**).

DATES: Comments on the amendment should be submitted on or before August 23, 1991.

ADDRESSES: All comments should be sent to, E.C. Fullerton, Regional Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731. Copies of the amendment and the environmental assessment are available from the Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813 (808) 523-1368.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Fisheries Management Division, Southwest Region, NMFS, Terminal Island, California (213) 514-6660 or Alvin Katekaru, NMFS, Pacific Area Office, Honolulu, Hawaii, (808) 955-8831.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*) requires that each Regional Fishery Management Council submit any fishery management plan or amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon receiving a plan or amendment, immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider all public comments in determining whether to approve the plan or amendment.

Amendment 3 proposes to permanently close the pelagic longline fishery within the protected species zone around the Northwestern Hawaiian Islands that was established by Amendment 2 to the FMP. This closure was first implemented by an emergency interim rule on April 15, 1991 (56 FR 15842, April 18, 1991). Amendment 3 also establishes a process by which the Regional Director may adopt other management measures to ensure the protection of endangered or threatened species from fishing operations. The protected species zone was established following evidence that Hawaiian monk seals (*Monachus schauinslandi*), an endangered species, are being hooked or snagged by gear from longline vessels. The Council intends to request extension of the emergency rule with an expected expiration date of October 15, 1991, and the Council proposes that the effective date of Amendment 3 coincide with the expiration of those regulations.

An environmental assessment and a regulatory impact review/initial regulatory flexibility analysis are incorporated in Amendment 3 which can be obtained from the Council (see **ADDRESSES**).

Proposed regulations to implement Amendment 3 are scheduled to be filed at the Office of the Federal Register within 15 days.

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

Dated: June 26, 1991.

David S. Crestin,

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

[FR Doc. 91-15626 Filed 7-1-91; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 56, No. 127
Tuesday, July 2, 1991

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 COMMERCE

Bureau of the Census

[Docket No. 910652-1152]

Service Annual Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of consideration.

SUMMARY: The Bureau of the Census is proposing to expand, for 1991, the Service Annual Survey. This ongoing survey is conducted on a sample basis under authority of title 13, United States Code, sections 131, 182, 224, and 225. The survey provides national estimates of the total dollar volume of receipts for selected personal, business, social, health, and other professional services.

Effective with the 1991 survey, the Census Bureau will begin collecting data on major sources of receipts for computer and data processing services, management and consulting services, equipment rental and leasing, automotive rental and leasing, amusement parks, and offices of health practitioners. In addition, we will begin collecting total expenses from tax exempt organizations in selected kinds of businesses.

DATES: Comments must be submitted on or before July 31, 1991.

ADDRESSES: Director, Bureau of the Census, Washington, DC 20233.

FOR FURTHER INFORMATION CONTACT: Howard N. Hamilton on (301) 763-7564.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to take surveys necessary to furnish current data on subjects covered by the major censuses authorized by title 13, United States Code. This survey provides continuing and timely national statistical data on service industries for the period between economic censuses. The next economic censuses will be conducted for 1992. The data collected in this survey will be within the general scope and of the type and character of those inquiries covered in the economic censuses. Preliminary information and recommendations received by the Bureau of the Census indicate that these data have significant application to the information needs of government agencies, the public, and the service industries, and that the data are not publicly available from other sources on a continuing basis.

The Bureau of the Census needs reports only from a limited sample of service firms in the United States, with probability of selection based on receipts size. This sample is being revised for the 1991 survey year. Revising our sample allows us to relieve most small- and medium-sized firms from the burden of continuing to report (these firms will be replaced by new panel members), introduce 1987 SIC definitions (our current data reflect 1972 SIC classifications), and maintain acceptable levels of sampling variability. The sample will provide with measurable reliability, statistics on the aforementioned service industries.

Copies of the proposed forms and a description of the collection methods are available upon request to the Director, Bureau of the Census, Washington, DC 20233.

Dated: June 25, 1991.

Barbara Everitt Bryant,

Director, Bureau of the Census.

[FR Doc. 91-15713 Filed 7-1-91; 8:45 am]
BILLING CODE 3510-07-M

International Trade Administration

Short-Supply Determination: Certain Stainless Steel Wire Rod

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of short-supply determination on certain stainless steel rod.

SHORT-SUPPLY REVIEW NUMBER: 52.

SUMMARY: The Secretary of Commerce ("Secretary") hereby denies a short-supply allowance for 250 metric tons of certain Type 409 CB welding quality stainless steel rod for June-December 1991 under the U.S.-EC, and U.S.-Japan steel arrangements.

FOR FURTHER INFORMATION CONTACT: Marissa Rauch or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230 (202) 377-1382 or (202) 377-0159.

SUPPLEMENTARY INFORMATION: On May 22, 1991, the Secretary received an adequate petition from ECD, Inc., ("ECD"), requesting a short-supply allowance for 250 metric tons of this product for June-December 1991 under Paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States of America in Certain Steel Products, and article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community and the Government of the United States of America Concerning Trade in Certain Steel Products. ECD requested short supply because it alleges that the only domestic producer has been unwilling to supply this product to ECD and its potential foreign suppliers have insufficient quota available.

The requested stainless wire rod meets the following specifications:

1. Scope

This specification covers general requirements for AISI 409 CB stainless steel wire rod to be drawn to wire suitable for cold heading.

2. Diameters and quantity sought per size

0.7870 inch—125 metric tons
0.8125 inch—125 metric tons

3. Method of Manufacture

The stainless steel shall be made by electric furnace, or equivalent steel making process.

4. Chemical Composition

a. Heat cast or ladle:	
Carbon	0.05 max.
Manganese	1.00 max.
Silicon	1.00 max.
Phosphorous	0.04 max.
Sulphur	0.025 max.
Chromium	10.50–11.75 max.
Nickel	0.50 max.
Molybdenum	0.50 max.
Nitrogen	0.03 max.
Copper	0.50 max.
Columbium	0.50 min.–0.80 max.
b. Permissible variation in product analysis:	
Carbon	0.01 percent.
Manganese	0.03 percent.
Silicon	0.05 percent.

Phosphorous	0.01 percent.
Sulphur	0.01 percent.
Chromium	0.20 percent.
Nickel	0.03 percent.
Molybdenum	0.01 percent.
Copper	0.01 percent.

5. Physical Properties

a. Tensile of any coil in the shipment not to exceed 75,000 PSI max. (aim 70,000 PSI max.).

b. Minimum reduction of area measured during tensile test 60 percent, and elongation minimum 20 percent on 10 foot gauge length.

c. The steel be fine grained from 5–8, according to ASTM classification.

d. Wire rods having defects like pipes, slivers, bursts, surface pits, nicks, tangles and sharp kinks and excessive porosity will be rejected.

e. No cracks will be tolerated. Maximum seam depth allowed 0.003 inch.

6. Tolerances

The dimension and out of roundness of the stainless steel wire rods shall not vary from that specified below:

Permissible variation in diameter = +/− .008 inch.

Permissible out of round = +/− .010 inch.

7. Packing

Coils should be bundled weighing 4,000–5,000 pounds. Minimum weight of coil = 500 pounds. Maximum weight of coil = 4,000 pounds. Each coil and bundle shall be strapped, banded or wired in four (4) places approximately 90 degrees apart.

8. Microstructure

1. Micro structure should reveal fine equaxed ferrite grains. No presence of continuous grain boundary or carbide precipitation will be accepted. Carbides should be uniformly dispersed in ferrite matrix.

2. The material should be fully annealed. No presence of Martensite is acceptable.

The Secretary conducted this short-supply review pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101–221, 103 Stat. 1886 (1989) ("the Act"), and § 357.102 of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.102 ("Commerce's Short-Supply Procedures").

Action

On May 22, 1991, the Secretary established an official record on this short-supply request (Case Number 52) in the Central Records Unit, room B–099, Import Administration, U.S. Department of Commerce at the above address. On June 3, 1991, the Secretary published a notice in the **Federal Register** announcing a review of this request and soliciting comments from interested parties. All comments were required to be received no later than June 10, 1991 and replies to comments no later than 5 days after that date. In order to determine whether this product could be supplied to ECD during June-December 1991, the Secretary sent questionnaires to Capenter Technology Corporation ("CarTech"), Al Tech Specialty Steel Corporation ("Al Tech"), Republic Engineered Steels ("RES"), Talley Metals Technology Inc. ("Talley") and Baltimore Specialty Steels Corporation ("BSSC"). The Secretary received adequate questionnaire responses from CarTech, Al Tech, BSSC, and RES in a timely fashion.

Questionnaire Responses

BSSC states that it "will not be in a position to supply the requested tonnage during the June-December 1991 time period to ECD." Al Tech states that it does nct currently produce the requested material. CarTech states that it is able to produce Type 409 CB stainless steel wire rod in the noted sizes and has price quoted ECD on this product. CarTech did take exception to some of the specifications. CarTech states that it currently produces Type 409 CB stainless steel wire rod for domestic use and has the ability to produce and supply the full amount of the request, with the noted exceptions, within 90 days. RES states that it currently produces Type 409 CB stainless steel wire rod but notes that its product will have a columbium level 10 times the carbon level, which will be 0.08 max. RES states that it is willing to supply the full amount of the requested product within 10 to 12 weeks. RES also notes that ECD has not contacted RES concerning the requested product and RES has been supplying Type 409 CB wire rod to a domestic customer for the past 12 months.

On June 13, 1991, the Department received rebuttal comments from ECD to both RES's and CarTech's questionnaire responses. ECD alleges that neither CarTech nor RES have the capability to produce a product meeting ECD's exact specifications. ECD alleges that CarTech cannot produce the product without further processing because of the seam depth specification and that the extra processing would make the material costly. ECD also stated that it is "highly unlikely" that RES could produce a product within its columbium and carbon limitations.

Analysis

The key issue in this review is whether the material offered by CarTech and/or RES can meet ECD's short supply needs. RES and CarTech, both of which note that they are currently producing Type 409 CB stainless steel wire rod and are supplying the rod to domestic customers, have both offered to supply the full amount of acceptable material meeting ECD's needs within the specified time period.

Because RES and CarTech have taken certain exceptions to the requested specifications, ECD suggests that neither producer should be considered legitimate suppliers for ECD's specific Type 409 CB stainless steel wire rod needs. With respect to RES, ECD notes that it will be "highly unlikely" that RES will be able to meet ECD's specifications. ECD, however, has had no experience purchasing the requested material from RES. In fact, RES's questionnaire response notes that ECD has never contacted RES regarding the requested product. ECD provided no evidence to support its request of these exact specifications. Given ECD's lack of experience with RES as a supplier, there is no evidence on the record to suggest that the material offered by RES would be considered unacceptable.

ECD notes that CarTech will require additional processing procedures in order to meet the seam depth specifications and that these additional procedures will add "additional and unnecessary cost to the price of the material." ECD does not, however, dispute CarTech's ability to meet the seam depth requirements. In addition, ECD states that its specifications "are prepared in accordance with those of its customer's and cannot be altered", but has provided nothing from its customer in support of its request. Further, ECD did not demonstrate that the price offered by CarTech was an aberration from prevailing domestic market prices.

Based on the inability of ECD to provide evidence that CarTech and RES do not have the capability to supply acceptable material meeting ECD's needs during the required time period, the Secretary can only conclude that CarTech and RES are legitimate domestic suppliers of the requested product.

Conclusion

The two potential domestic suppliers of the requested product, RES and CarTech, have indicated an ability and

willingness to supply acceptable material meeting ECD's needs during the requested time period. Therefore, the Secretary hereby denies, pursuant to section 4(b)(4)(A) of the Act and § 357.102 of Commerce's Short-Supply Procedures, the short-supply request for 250 metric tons of the requested Type 409 CB stainless steel wire rod for June–December 1991 under the U.S.-EC and U.S.-Japan steel arrangements.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91–15735 Filed 7–1–91; 8:45 am]

BILLING CODE 3510–DS–M

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award's Panel of Judges

AGENCY: National Institute of Standards and Technology Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app., notice is hereby given that there will be a closed meeting of the Panel of Judges of the Malcolm Baldrige National Quality Award from Thursday, July 25, 1991, through Friday, July 26, 1991. The Panel of Judges is composed of nine members prominent in the field of quality management and appointed by the Director of the National Institute of Standards and Technology. The purpose of this meeting is to review the 1991 Award applications and to select applications to be considered in the site visit stage of the evaluation. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene July 25, 1991, at 8:30 a.m. and adjourn at 3 p.m. on July 26, 1991. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Curt W. Reimann, Associate Director for Quality Programs, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2036.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on May 11, 1990, that the meeting of the Panel of Judges will be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by section 5(c) of the Government in the Sunshine Act, Public Law 94–409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with section 552b(c)(4) of title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Dated: June 26, 1991.

John Lyons,

Director.

[FR Doc. 91–15704 Filed 7–1–91; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[Docket No. 901231–1156]

Taking and Importing of Marine Mammals Incidental to Commercial Fishing Operations

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

ACTION: Notice to importers.

SUMMARY: NMFS issues a notice to importers concerning intermediary nations trading in yellowfin tuna or products derived from yellowfin tuna harvested by purse seine in the eastern tropical Pacific Ocean (ETP) by flag vessels of Venezuela and Vanuatu.

EFFECTIVE DATE: June 25, 1991.

ADDRESSES: E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

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

SUPPLEMENTARY INFORMATION: A U.S. embargo on imports of yellowfin tuna and products derived from yellowfin tuna caught by Venezuelan and Vanuatuan purse seine vessels operating in the ETP went into effect on March 26, 1991. The embargo was imposed as a result of a Federal Court order issued by the U.S. District Court for the Northern District of California.

On March 25, 1991 (56 FR 12367), NMFS notified intermediary nations of the effective dates and the scope of the intermediary nation embargo provisions that NMFS will apply under section 101(a)(2)(C) of the Marine Mammal Protection Act. That announcement specified that NMFS will adhere to the terms of a court-ordered embargo with respect to any embargoes applied to intermediary nations as a result of that embargo, and will limit any intermediary nation embargoes to yellowfin tuna or products derived from yellowfin tuna harvested with purse seines in the ETP by the embargoed harvesting nation.

Since the countries listed below are believed to have recently imported yellowfin tuna or tuna products from Venezuela and/or Vanuatu, importers are hereby notified that imports of yellowfin tuna and tuna products from the following nations must be accompanied by a statement declaring that the imported merchandise was not harvested with purse seines in the ETP by Venezuelan or Vanuatuan vessels. This declaration is in addition to the Yellowfin Tuna Certificate of Origin, SF 370–1, also required at the time of entry. The countries from which this declaration is required are Costa Rica, France, and Italy.

The declaration must be provided at the time of entry, and in substantially the following format:

Declaration of Compliance With Court Order

The undersigned declares that, having made appropriate inquiry, and based on written evidence in his possession, no yellowfin tuna or yellowfin tuna product included in this shipment were harvested with purse seines in the eastern tropical Pacific Ocean by vessels from Venezuela or Vanuatu.

Signature
Name of importer
Printed name and title of individual signing

Importations without the declaration will be refused entry into the United States.

Authority: 16 U.S.C. 1361 et seq.

Dated: June 26, 1991.

Samuel W. McKeen,

Program Management Officer.

[FR Doc. 91–15660 Filed 7–1–91; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of the Meeting: 22 July 1991.

Time: 0800–1600.

Place: Atlanta, Georgia.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup on Initiatives to Improve

HBCU/MIs Infrastructure will meet to receive briefings at the university level on how to best support the infrastructure of the HBCU/MIS. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91–15717 Filed 7–1–91; 8:45 am]

BILLING CODE 3710–08–M

Proposed Change in Procurement Policy, International One-Time-Only Program

AGENCY: Military Tarffic Management Command (MTMC), DOD.

ACTION: Notice of proposed change in procurement policy, International One-Time-Only (OTO) Program.

SUMMARY: The Military Traffic Management Command (MTMC) is proposing changes to carrier approval qualifications to participate in the International One-Time-Only (OTO) Program. The program is used to move household goods and unaccompanied baggage shipments for Department of Defense sponsored military and civilian personnel.

DATES: Comments must be received on or before September 3, 1991.

FOR FURTHER INFORMATION CONTACT: Mrs. Gail Collier, Headquarters, Military Traffic Management Command, ATTN: MTPP–CI, 5611 Columbia Pike, Falls Church, VA 22041–5050 (703) 756–2397. Comments will also be mailed to this address.

SUPPLEMENTARY INFORMATION: The Military Traffic Management Command's procedures for the international OTO household goods and unaccompanied baggage shipment program are outlined in the International Personal Property Rate Solicitation I–1, chapter VII, and Personal Property Traffic Management Regulation (PPTMR), DOD 4500.34–R, chapter 2, subparagraph H. 4i, page 2–69. The OTO program is primarily used for moving household goods and unaccompanied baggage shipments when: The origin-to-destination channels are uncontrolled rate areas; when no carrier has a Letter of Intent (LOI) on file at the military installation controlling the shipment; when a shipment requires conversion, i.e., from Code 4 to Code 5 service or from Code 7 to Code 8 service, due to strike or other conditions which impede timely service, and the carrier to which the shipment was tendered does not offer alternative rates in the converted service; when a shipment requires reshipment under conditions specified in chapter V of the International Rate Solicitation; when a carrier inadvertently accepts shipment on a channel where it has no effective rate on file. Chapter II of the PPTMR, and chapter VII, of the International Personal Property Rate Solicitation contain a complete listing of OTO procedures. The Military Traffic Management Command solicits rates for these type shipments from approved MTMC ITGBL carriers that have submitted a written request to participate in the International OTO Program.

Proposed Changes

Presently, as contained in the PPTMR and the International Personal Property Rate Solicitation, the only prerequisite for carrier participation in the OTO program is that the carrier must be an MTMC-approved ITGBL carrier. There are no additional approval requirements for carriers that wish to participate in this program. MTMC considers revising the OTO carrier approvals for shipments moving to and from uncontrolled rate areas necessary because these shipments are: Of a sensitive nature, are frequently consigned to American embassies in overseas locations, are often destined for or picked up in remote locations, and require immediate and continuing traffic management oversight and intransit visibility to ensure that shipments are moved expeditiously to destination. Therefore, MTMC proposes to implement the following qualification requirements for carriers that wish to participate in the international OTO program. These procedures apply only to shipments being moved where there is no origin-to-destination rate(s) listed on the MTMC volume rate print out. The remaining conditions under which OTO rates are solicited from MTMC approved ITGBL carriers are not affected by the revised procedures.

Action—Proposed Rule

The DOD 4500.34–R PPTMR, chapter 2, paragraph B.1.d. (page 2–9), is changed as follows: Uncontrolled-rate areas specific country approval is required by Headquarters, MTMC for a uncontrolled-rate areas. Carriers seeking to participate in the OTO program for movements involving uncontrolled-rate areas must provide the following with their requests for MTMC approval:

1. A statement, with supporting documentation, that the carrier has completed 12 months of continuous service as a DOD-approved international through Government Bill of Lading (ITGBL) carrier, with evidence of satisfactory performance. Satisfactory (ITGBL) performance is defined as an 85 percent ICERS score for the most recent 6-month performance cycle (1 Apr/1 Oct) at no less than 90 percent of total installations serviced. This must be evidenced by a summary of ICERS scores for the last performance cycle for all installations served.

2. A list of codes of service for which the carrier is requesting approval.

3. A list of countries in which the carrier would like to participate, and name(s) and location of agent(s) for which country. Agents located outside of the continental United States, Alaska, Hawaii, and controlled rate areas listed in paragraph B.1.c., need not be DOD approved.

4. A copy of the carrier's standard operating procedures used to process international OTO shipments, to include shipment tracing procedures.

5. Telephone numbers at which key employees can be reached during nonwork hours in case of an emergency.

6. To minimize the Government's administrative costs in the operation of the OTO program, such as costs associated with electronic transmission of requests for bids to carriers, and to remain active on the bidders' mailing list, approved carriers must submit a minimum of three bids each 90 days. This three-bid rule only applies to areas in the OTO program where the carrier has agreed to serve, and where there have been rates solicited.

Carriers presently participating in the OTO program will be required to comply with the above qualification requirements within 12 months of implementation of proposed requirements. Failure to provide the required information will result in the reevaluation of the carrier's approval to participate in this program.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91–15307 Filed 7–1–91; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Intent to Repay to the Illinois State Board of Education Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education

ACTION: Notice of intent to award grantback funds.

SUMMARY: Under section 456 of the General Education Provisions Act (GEPA), 20 U.S.C. 1234e (1982), the U.S. Secretary of Education (Secretary) intends to repay to the Illinois State Board of Education, the State educational agency (SEA), an amount equal to 75 percent of the principal amount of funds recovered by the U.S. Department of Education (Department) as a result of a final audit determination. This notice describes the SEA's plan for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. The notice invites comments on the proposed grantback.

DATES: All comments must be received on or before August 1, 1991.

ADDRESSES: Comments concerning the grantback should be addressed to Dr. Bruce Gaarder, Director, Division of Program Support, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW (room 2047)., Washington, DC 20202–6132.

FOR FURTHER INFORMATION CONTACT: Dr. Bruce Gaarder, Telephone: (202) 401–1682. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION:

A. Background

The Department has recovered $200,000, plus accrued interest, from the SEA in partial satisfaction of claims arising from an audit conducted by the Office of Inspector General of the Department covering the period September 1, 1978 through September 30, 1980.

The claims involved the SEA's administration of title I of the Elementary and Secondary Education Act of 1965 (title I), a program that addressed the special educational needs of educationally deprived children in areas with high concentrations of children from low-income families. Specifically, the April 2, 1984 final audit determination of the Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) found that the SEA had failed to implement necessary procedures to allocate joint administrative costs to title I. The cost principles found in 45 CFR part 74, appendix C (1979) describe the procedures that must be followed to allocate joint administrative costs. The SEA appealed the determination of the Assistant Secretary to the Education Appeal Board. On August 25, 1988, while the case was pending, the parties in the case entered into a settlement agreement under which the SEA was to repay $300,000 to the Department in three annual installment payments of $100,000, plus accrued interest. (The settlement agreement actually resolved two separate appeals—the administrative cost claim that is the subject of this notice and an unrelated claim involving Federal contributions to the Illinois Teachers' Retirement System, Audit Control Number: 05–80003.) The SEA submitted the first two payments in August 1989 and August 1990, respectively. The remaining payment is due in August 1991.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA, 20 U.S.C. 1234e(a), provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the SEA or local educational agency (LEA) affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that the—

(1) Practices and procedures of the SEA or LEA that resulted in the audit determination have been corrected, and the SEA or LEA is, in all other respects, in compliance with the requirements of the applicable program;

(2) The SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the program, and, to the extent the program, and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) Use of funds to be awarded under the grantback arrangement in accordance with the SEA's plan would serve to achieve the purposes of the program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 456(a)(2) of GEPA, the SEA has applied for a grantback totaling $225,000—$150,000 to be awarded now and $75,000 to be awarded after the SEA makes its final settlement payment in August 1991. The SEA has submitted a plan for use of the grantback funds to carry out administrative responsibilities for programs administered under chapter 1 of title I of the Elementary and Secondary Education Act of 1965, as amended (chapter 1). The final audit determination against the SEA resulted from improper expenditures of title I funds. Since chapter 1 has superseded title I, the SEA's proposal reflects the requirements for administering chapter 1—a program, similar to title I, designed to serve educationally deprived children in low-income areas.

The SEA's plan proposes that the SEA would use the grantback funds to design and implement an automated management information system to improve the administration of the chapter 1 program. Currently, data are collected on a variety of paper forms that are stored in separate files after being reviewed and key punched. An automated data system would expedite the collection of data, increase the accuracy of the information, reduce redundant data collection, ensure consistent definition and coding, and promote a more timely analysis of data, thereby improving the efficiency and effectiveness of the chapter 1 program. The SEA would use the first payment of $150,000 for the general design of the system based on an analysis of system requirements and interviews with SEA staff members to determine specific needs, identification of the database software, design of the physical database, program coding, and system testing. The second payment of $75,000 would be used to purchase hardware, implement the system, and train the staff.

D. The Secretary's Determinations

The Secretary has carefully reviewed the plan submitted by the SEA. Based upon that review, the Secretary has determined that the conditions under section 456 of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action. In finding that the conditions of section 456 of GEPA have been met, the Secretary makes no determination concerning any pending audit recommendations or final audit determinations.

E. Notice of the Secretary's Intent to Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a

grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the Illinois SEA under a grantback arrangement. The grantback award would be in the amount of $150,000, which is 75 percent—the maximum percentage authorized by statute—of the funds recovered to date as a result of the audit. An additional payment of $75,000 would be made when the SEA submits the third installment of $100,000 in August of 1991.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

The SEA agrees to comply with the following terms and conditions under which payments under a grantback arrangement would be made:

(1) The funds awarded under the grantbacks must be spent in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and any amendments to the plan that are approved in advance by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be obligated by September 30, 1991, in accordance with section 456(c) of GEPA;

(3) The SEA will, not later than January 1, 1992, submit a report to the Secretary that—

(a) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budget, and

(b) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

(5) Before funds will be repaid pursuant to this notice, the SEA must repay to the Department any debts that become overdue, or enter into a repayment agreement for those debts.

(Catalog of Federal Domestic Assistance Number 84.012, Educationally Deprived Children—State Administration)

Dated: June 25, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91-15644 Filed 7-1-91; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.003H]

Bilingual Education: Evaluation Assistance Centers; Applications for New Awards for Fiscal Year (FY) 1991

Purpose of Program: Provides grants to establish and operate two regional centers to furnish technical assistance to State and local educational agencies (LEAs) regarding methods and techniques for identifying the educational needs and competencies of limited English proficient (LEP) persons and for assessing the educational progress achieved through programs of bilingual education. The service area of one Evaluation Assistance Center (EAC-East) includes all States east of the Mississippi River, Texas, Puerto Rico, and the District of Columbia. The service area of the second Evaluation Assistance Center (EAC-West) includes all States west of the Mississippi River, except Texas, and also includes American Samoa, Guam, Wake Island, Northern Marianas, Marshall Islands, Palau, and Micronesia.

Eligible Applicants: Institutions of higher education.

Deadline for Transmittal of Applications: August 2, 1991.

Deadline for Intergovernmental Review: September 27, 1991.

Applications Available: July 2, 1991.

Available Funds: $1,324,000.

Estimated Range of Awards: $550,000–$750,000.

Estimated Average Size of Awards: $650,000.

Estimated Number of Awards: 2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department Genera1 Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 85, and 86.

Selection Criteria: In evaluating applications for grants under this program competition, the Secretary uses the EDGAR selection criteria in 34 CFR 75.210.

The regulations in 34 CFR 75.210 provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the additional 15 points as follows:

Plan of operation (34 CFR 75.210(b)(3)). Five (5) additional) points are added to this criterion for a possible total of 20 points.

Quality of key personnel (34 CFR 75.210(b)(4)). Eight (8) additional points are added to this criterion for a possible tota1 of 15 points.

Adequacy of resources (34 CFR 75.210(b)(7)). Two (2) additional points are added to this criterion for a possible total of 5 points.

FOR APPLICATIONS OR INFORMATION CONTACT: Harry G. Logel, U.S. Department of Education, 400 Maryland Avenue, SW., room 5086, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 732–5063. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 3304.

Dated: June 6, 1991.

Rita Esquivel,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 91-15645 Filed 7-1-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 91-33-NG]

Northern Natural Gas Co.; Application To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on May 10, and as supplemented on May 30, 1991, of an application filed by Northern Natural Gas Company (Northern) to import from Canada up to 20,000 Mcf of natural gas per day on a firm basis from Mobil Gas Canada (Mobil Canada), commencing on the effective date of the requested authorization through October 31, 2000. The gas would be imported at the international border near Emerson, Manitoba, Canada, using existing pipeline facilities. Northern would use the proposed imports for its system supply.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed in Washington, DC, at the address listed below no later than 4:30 p.m., August 1, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Thomas Dukes, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–070, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9590.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–0503.

SUPPLEMENTARY INFORMATION:

Northern, a Delaware corporation with it principal place of business in Omaha, Nebraska, is an interstate natural gas pipeline company. Northern seeks authorization to import up to 20,000 Mcf of natural gas per day starting on the effective date of DOE's authorization and extending through October 31, 2000. Mobil Canada will transport the gas in Canada on the systems of NOVA Corporation of Alberta, TransGas, and TransCanada PipeLines Limited for delivery to the border near Emerson, Manitoba. The gas will be transported to Northern in the U.S. on Great Lakes Gas Transmission's facilities.

Northern and Mobil Canada entered into a long-term gas purchase agreement on August 24, 1990, that would have a primary term of November 1, 1990, through October 31, 1995, which would be extended for a secondary term until October 31, 2000, if both parties can agree, on or befoe October 31, 1994, that the terms and conditons of the agreement are mutually satisfactory for its continuance.

Pursuant to the purchase agreement, the gas price at the Canadian border would consist of a commodity charge, a transportation charge, and a reservation charge. The commodity charge would be the commodity price times the daily volumes nominated by Northern. Mobil Canada would provide Northern notice of its estimated commodity price on a monthly basis. Northern could either accept or reject the estimated commodity price. If Northern rejects the estimated price, the commodity price would be determined pursuant to a provision of the purchase agreement which adjusts a base price of $1.46 (U.S.) per Mcf upward or downward by the change in a composite index of certain domestic spot gas prices and the average Alberta border price. The transportation charge would consist of all demand charges and tolls for transportation in Canada times the maximum daily volumes (MDV) of 20,000 Mcf. Northern's gas cost would also include a reservation charge equal to 16 percent of the MDV (possibly 10 percent during summer except for April) times the commodity price. Northern stated that the price of the gas at the Canadian border at a 100% load factor would have been $2.17 (U.S.) per Mcf as of January 1991 using the U.S./Canadian currency conversion factor then in effect. That price would have consisted of a transportation charge of $.41, a commodity price of $1.50, and a reservation charge of $.26.

Also, the purchase agreement includes an "Opinion 256" credit to compensate Northern if the Federal Energy Regulatory Commission (FERC) does not allow it to pass through all of Mobil Canada's demand charges "as-billed" under FERC's modified fixed-variable (MFV) rate structure. Where total demand charges are not permitted to be recovered under FERC's MFV methodology, Northern would receive a credit from Mobil Canada reducing its commodity price of gas. The credit would be equal to 70 percent of the difference (as-billed deficiency) between the demand charges approved in Northern's purchased gas adjustment (PGA) filing with FERC and the actual demand charges paid to Mobil Canada.

In addition, Northern would have to pay an annual deficiency payment if it takes less than sixty percent of the maximum annual volumes in any contract year. The deficiency payment would consist of the difference between sixty percent of the maximum annual volumes and the actual volumes taken during the year, times twenty-five percent of the weighted average commodity price for the year.

Further, Mobil Canada would set a minimum price applicable to each contract year. If, with respect to the summer months, the commodity price is less than the minimum price, Mobil may cease or curtail deliveries to Northern. However, Northern would be deemed to have taken a volume of gas equal to the MDV for the purpose of calculating the annual deficiency payment and would not be liable for transportation charges or the reservation fee with regard to the non-delivered volumes.

Finally, the purchased agreement may be renegotiated at the request of either party at any time during the first three years of either the primary or secondary terms. Also, Northern can unilaterally reduce its annual maximum volumes obligation if it determines that it is experiencing a significant reduction in its gas sales. Northern urges that the gas supply is competitive, needed and secure. Northern states that the purchase agreement ensures that the price will remain competitive with prices of major competing energy sources available to Northern. Further, Northern states that the supplies are needed to meet its general system demand and that receiving the gas in its traditional north-end market area will provide the most operationally efficient supply source to meet the requirements of customers served from the northernmost portions of its system. Finally, Northern submits that Mobil Canada has secured the necessary gas supplies to fulfill its obligations, in addition to the historical reliability of Canadian gas generally.

The decision on the application for import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Other matters to be considered in making a public interest determination in a long-term import proposal such as this include the need for the gas and the security of the long-term supply. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines. The applicant asserts that import arrangement would be in the public interest because it is competitive, needed and secure. Parties opposing the arrangement bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for

any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto.

Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trail-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final option and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Northern's application is available for inspection and copying in the Office of Fuels Programs' Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 26, 1991.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs.

[FR Doc. 91–15734 Filed 7–1–91; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL ENERGY REGULATORY COMMISSION

[Docket Nos. ER91–165–000, et al.]

Entergy Services, Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 25, 1991

Take notice that the following filings have been made with the Commission:

1. Entergy Services, Inc.

[Docket No. ER91–165–000]

Take notice that Entergy Services, Inc., as agent for Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc., on June 21, 1991, tendered for filing amendments to the Interchange Agreement with Oglethorpe Power Corporation which it filed in this proceeding on December 19, 1990, as supplemented on May 17, 1991.

Comment date: July 9, 1991 in accordance with Standard Paragraph E at the end of this notice.

2. Southern Company Services, Inc.

[Docket No. ER91–150–002]

Take notice that on June 3, 1991, Southern Company Services, Inc. tendered for filing its compliance filing in this docket pursuant to the Commission's order issued May 2, 1991.

Comment date: July 9, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Western Area Power Administration

[Docket No. EF91–5091–C00]

Take notice that on June 10, 1991, the Secretary of the Department of Energy, by Rate Order No. WAPA–49, did confirm and approve on an interim basis, to be effective on the first day of the first full billing period beginning July 1, 1991, Western Area Power Administration's (Western) Rate Schedule BCP–F3 for power from the Boulder Canyon Project (BCP).

Rate Schedule BCP–F3 will be in effect pending the Federal Energy Regulatory Commission's (FERC) approval of it or of substitute rates on a final basis for a 5-year period.

The fiscal year (FY) 1990 current power repayment study (PRS) indicated that the existing rates do not yield sufficient revenue to satisfy the cost recovery criteria through the study period. The revised rates schedule based on the FY 1990 PRS will yield adequate revenue to satisfy these criteria.

The following is a comparison of the existing rates to the proposed rates for the BCP:

	Existing rate	Provisional rate	Change	Change percent
Capacity, $/kW-month	0.75	1.05	0.30	40.0
Energy, mills/kWh	3.410	5.11	1 70	49.9
Composite, mills/kWh	6.813	10.21	3.397	49.9

The Administrator of Western certifies that the rates are consistent with applicable laws and that they are the lowest possible rates to customers consistent with sound business principles. The Deputy Secretary of the Department of Energy states that the rate schedule is submitted for confirmation and approval on a final basis for a 5-year period beginning July 1, 1991, and ending June 30, 1996, pursuant to authority vested in the FERC by Delegation Order No. 0204–108, as amended.

Comment date: July 12, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of

Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15649 Filed 7-1-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-435-003, et al.]

Northern Natural Gas Company, et al. Natural Gas Certificate Filings

June 25, 1991.

Take notice that the following filings have been made with the Commission:

1. Northern Natural Gas Company

[Docket No. CP86-435-003]

Take notice that on June 12, 1991, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed in Docket No. CP86-435-003 pursuant to Section 7(c) of the Natural Gas Act a petition to amend the order of December 22, 1986, 37 FERC ¶ 61,268, issuing to Northern a blanket certificate of public convenience and necessity for certain transportation of natural gas pursuant to Order Nos. 436 and 500. Northern states that the amendment requested herein would authorize Northern to directly assign to third parties certain firm capacity rights on upstream pipelines and, in some instances, the related supply and the brokering of any unassigned capacity, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Northern proposes to directly assign to third parties capacity on upstream pipelines. Northern states that beginning on July 1, 1991, Northern will make the contracts for the upstream capacity and related gas supply available for review on Northern's premises. Northern states that commencing on July 15, 1991, and continuing through July 31, 1991, Northern will hold an open season during which time it will accept requests for the direct assignment of upstream capacity and related gas supply obligations where applicable. Northern states that to the extent it still has firm gas supply obligations associated with the upstream capacity, Northern will only be able to assign the capacity if the requestor is also willing to accept assignment of the supply obligation as well. Northern states that priority for assignments will be given first to Northern's converting sales customers, then to parties who will be utilizing the volumes for deliveries on Northern's system, particularly in Northern's market area, and then to any other party. Northern further states that assignments may be conditioned on the assignee being required to further transport the volumes on Northern's system and delivering them to Northern's market area. Northern also requests pre-granted authority to make future assignments of firm capacity rights subject to subsequent notification to the Commission of the assignment.

Northern states that it will make any remaining firm capacity rights under the upstream contracts available to shippers on a firm or interruptible basis pursuant to the Off-System Throughput Rate Schedules OT-F and OT-I. Northern states that shippers may request brokering service during a second open season to be announced at a later date. Northern states that firm capacity would be allocated first to Northern's converting customers, then to shippers who will be utilizing the volumes for deliveries on Northern's system, particularly in Northern's market area. Northern further states that any remaining capacity would then be allocated to any remaining parties on a pro rata basis. Northern states that after the open season, capacity would be allocated on a first-come first-served basis. Northern states that it will continue to be responsible for nominations and payments to the upstream pipelines and that the operational and payment provisions of the underlying contracts between Northern and the transporting pipeline, as well as the corresponding certificate provisions, will remain in full force and effect. Northern states that a shipper contracting to utilize Northern's firm transportation rights on a third-party pipeline may not reassign or broker those capacity rights to another party.

Northern proposes that the maximum rate for capacity rights brokered on a firm basis be equivalent to the as-billed rates, including take-or-pay surcharges, billed Northern by the upstream pipeline. Northern further proposes to charge a one or two-part rate different from the as-billed rates provided that the total revenues generated do not exceed those revenues that would be produced at Northern's system-wide load factor using the rates the upstream pipeline charges Northern. Northern states that the minimum rates for firm service shall be zero for the reservation charge and one cent for the commodity charge. Northern proposes that the maximum rate for interruptible service be a one-part rate derived by applying Northern's system wide load factor to the firm rate of the third-party pipeline. Northern states that the minimum rate for interruptible service would be the commodity rate charge to Northern. Northern further states that shipper would pay Northern any other charges billed to Northern by the upstream pipeline including, but not limited to, penalties caused by shipper.

Comment date: July 16, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. ANR Pipeline Company, ANR Pipeline Company, Tennessee Gas Pipeline Company

[Docket Nos. CP91-2316-000, CP91-2317-000, CP91-2318-000]

Take notice that on June 20, 1991, ANR Pipeline Company, 500 Renaissance Center, Detroit, Michigan 48243, and Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued in Docket No. CP88-532-000 and Docket No. CP87-115-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: August 9, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Dth	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2316-000 (6-20-91)	Elf Exploration, Inc. (Marketer).	75,000 75,000 27,375,000	OLA, LA, OTX, TX	OLA, LA	6-6-90, ITS, Interruptible.	ST91-8763-000, 4-27-91.
CP91-2317-000 (6-20-91)	Entrade Corp. (Marketer).	100,000 100,000 36,500,000	System	Various	1-14-91, ITS, Interruptible.	ST91-8761-000, 4-27-91
CP91-2318-000 (6-20-91)	Virginia Electric & Power Company (End-User).	50,000 50,000 18,250,000	LA, OLA	OH, PA, WV	4-17-91,[2] IT, Interruptible.	ST91-8679-000, 4-19-91.

[1]Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2]As amended.

3. Trunkline Gas Company, Columbia Gulf Transmission Company

[Docket Nos. CP91-2325-000, CP91-2328-000]

Take notice that on June 21, 1991, Trunkline Gas Company, P.O. Box 1642, Houston, Texas 77251-1642, and Columbia Gulf Transmission Company, P.O. Box 683, Houston, Texas 77001, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued in Docket No. CP86-586-000 and Docket No. CP86-239-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: August 9, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2325-000 (6-21-91)	Citizens Gas Supply Corporation (Marketer).	120,000 120,000 [2] 43,800,000	OLA, OTX, IL, TX, LA, TN.	LA	6-6-88, PT, Interruptible.	ST91-9050-000 4-23-91.
CP91-2328-000 (6-21-91)	Superior Natural Gas Corporation (Shipper).	30,000 24,000 8,760,000	LA	LA	5-10-91, ITS-2, Interruptible.	ST91-8736-000 5-10-91

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] Trunkline's quantities are in Mcf.

4. Natural Gas Pipeline Company of America

[Docket No. CP91-2309-000]

Take notice that on June 19, 1991, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP91-2309-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new delivery point, and associated delivery facilities, to provide jurisdictional services, including transportation services under subpart G of part 284 of the Commission's Regulations for Phillips 66 Natural Gas Company (Phillips), an end-user, under Natural's blanket certificate issued in Docket No. CP82-402-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Natural is requesting authorization to install 1100 feet of 6-inch lateral, a 6-inch meter facility and a 6-inch tap on its 30-inch Amarillo Mainline in Hutchinson County, Texas, to deliver 30,000 Mcf per day of natural gas to Phillips. Natural estimates the cost of the facilities to be $286,000.

Natural asserts that it has sufficient capacity to provide these services at the proposed delivery point without detriment or disadvantage to Natural's peak day and annual delivery capability.

Comment date: August 9, 1991, in accordance with Standard Paragraph G at the end of this notice.

5. Tennessee Gas Pipeline Company

[Docket No. CP91-2310-000

Take notice that on June 19, 1991, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP91-2310-000 a request pursuant to § 157.205 of the Commission's Regulations Under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new delivery point for Altresco Pittsfield, L.P. (Altresco) under Tennessee's blanket certificate issued in Docket No. CP82-413-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee states that by Commission order issued May 2, 1990, in Docket Nos. CP88-171-000 and CP88-171-001,*et al.*, Tennessee was authorized, *inter alia*, to transport up to 31,500 Dth of natural gas

per day for Altresco. The gas is to be received by Tennessee from TransCanada PipeLine Limited at the Niagara import point and transported and delivered by Tennessee to Berkshire Gas Company (Berkshire) for further transportation and delivery by Berkshire to the Altresco congeneration project in Pittsfield, Massachusetts, it is stated.

Specifically, Tennessee seeks authorization to add an additional delivery point for the delivery of gas by Tennessee to Berkshire for the account of Altresco. Tennessee states that the second delivery point, to be designated as the Bousquet delivery point, is to be at a new interconnection with Berkshire on Tennessee's Adams Lateral Line in Pittsfield, Massachusetts (M.P. 256A–l01 + 4.53 and M.P. 256C–l0l + 4.58). Tennessee asserts that the proposed facilities will have a delivery capability of 31,500 dt of natural gas per day and that Altresco will reimburse Tennessee for the cost of the facilities.

Tennessee further states that the total quantities of Jatural gas to be delivered to Berkshire would not exceed presently authorized quantities and the change is not prohibited by Tennessee's existing tariff. Tennessee asserts that it has sufficient capacity in its system to accomplish delivery of gas to the Bousquet delivery point without detriment or disadvantage to any other customer.

Comment date: August 9, 1991, in accordance with Standard Paragraph G at the end of this notice.

Questar Pipeline Company

[Docket No. CP91–2308–000]

Take notice that on June 19, 1991, Questar Pipeline Company (Questar Pipeline), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP9l–2308–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for John Brown E & C, Inc. under the blanket certificate issued in Docket No. CP88–650–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Questar Pipeline states that, pursuant to an agreement dated May 31, 1991, under its Rate Schedule T–2, it proposes to transport up to 8,000 MMBtu per day equivalent of natural gas. Questar Pipeline indicates that the gas would be transported from Colorado, and would be redelivered in Wyoming. Questar Pipeline further indicates that it would transport 2,500 MMBtu on an average day and 300,000 MMBtu annually.

Questar Pipeline advises that service under § 284.223(a) commenced June 1, 1991, as reported in Docket No. 5T91–9020–000.

Comment date: August 9, 1991, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to 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 therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91–15650 Filed 7–1–91; 8:45 am]

BILLING CODE 6717–01–M

Federal Energy Regulatory Commission

[Docket No. RP91–103–004]

Alabama-Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 25, 1991.

Take notice that Alabama-Tennessee Natural Gas Company ("Alabama-Tennessee") on June 19, 1991, tendered for filing a third amendment to its February 28, 1991 filing in this proceeding proposing changes to its FERC Gas Tariff, First Revised Volume No. 1 concerning the implementation of a new take-or-pay cost recovery mechanism in compliance with Order Nos. 528 and 528–A. Alabama-Tennessee has requested that the June 19, 1991 filing become effective September 1, 1991 instead of July 1, 1991 as it requested in its second amendment to this filing which it submitted on April 23, 1991. Alabama-Tennessee states that it has achieved a settlement in principle with all of its affected jurisdictional sales customers and that this additional time is required in order for Alabama-Tennessee and the parties to complete their discussions and review the final settlement agreement prior to its filing. Alabama-Tennessee proposes no other changes to either its earlier amended filings or its February 28, 1991 filing.

Alabama-Tennessee states that this third amendment is being made contingent upon the Commission's approval of the request sought in its filing. In the event the Commission issues an order accepting Alabama-Tennessee's April 23, 1991 filing, Alabama-Tennessee states that its third amendment should be deemed withdrawn and no action should be taken on the revised tariff sheets submitted therewith. In such case, Alabama-Tennessee requests that its April 23, 1991 filing be accepted and made effective July 1, 1991, as proposed therein.

Alabama-Tennessee requests that the Commission grant it any waiver of the

Commission's Regulations which may be required in order to accept its revised tariff sheets as requested.

Alabama-Tennessee states that copies of this amendment have been mailed to its jurisdictional customers, interested public bodies and all persons on the Commission's official service list in the captioned docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before July 2, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–15651 Filed 7–1–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91–5–32–000]

Colorado Interstate Gas Co.; Compliance Filing

June 25, 1991.

Take notice that Colorado Interstate Gas Company ("CIG"), on June 20, 1991, tendered for filing the following tariff sheets to revise its FERC Gas Tariff, Original Volume No. 1, with a proposed effective date of July 1, 1991:

Fourth Revised Sheet No. 61G11.1
Seventh Revised Sheet No. 61G12
Third Revised Sheet No. 61G12–D
Third Revised Sheet No. 61G12–E
Second Revised Sheet No. 61G12–F

CIG states that the above-referenced tariff sheets are being filed in compliance with the Commission's Orders issued in these dockets and that the filing constitutes a semiannual adjustment filing as defined by CIG's FERC Gas Tariff. Specifically, the filing reflects the final payment status of CIG's affected customers and includes work papers detailing these payments as well as accrued interest payments made by CIG to its affected customers.

CIG states that copies of the filing were served upon all of the parties to these proceedings and affected state commissions as well as all of CIG's firm sales customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 2, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–15652 Filed 7–1–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–40–006]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 25, 1991.

Take notice that on June 21, 1991, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, the following tariff sheets, with a proposed effective date of June 1, 1991:

Third Revised Volume No. 1

Second Revised Sixtieth Revised Sheet No. 4A
Sixth Revised Ninetieth Revised Sheet No. 4B
Sixth Revised Fifty-eighth Revised Sheet No. 4B.1
Seventeenth Revised Sheet No. 4G
Seventeenth Revised Sheet No. 4G.1
First Revised Eighteenth Revised Sheet No. 4G.2
Seventh Revised Tenth Revised Sheet No. 4H
Fifth Revised Sheet No. 53
Second Revised Sheet No. 74P
Second Revised Sheet No. 74Q
Second Revised Sheet No. 74R
First Revised Original Sheet No. 74S

Original Volume No. 2

Sixth Revised Ninety-seventh Revised Sheet No. 1C
First Revised Fifth Revised Sheet No. 1C.a
First Revised Original Sheet No. 1Z.2
First Revised Original Sheet No. 1Z.3
First Revised Original Sheet No. 1Z.4
First Revised Original Sheet No. 1Z.5

Northern states that such tariff sheets are being submitted in compliance with the Commission's Order dated June 19, 1991, in Docket No. RP91–40–002. Such Order approved an uncontested settlement and allows Northern, effective June 1, 1991, to recover approximately $77 million in take-or-pay buyout, buydown, contract reformation and settlement costs (transition costs).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before July 2, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–15653 Filed 7–1–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ91–6–59–002]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 25, 1991.

Take notice that Northern Natural Gas Company, (Northern), on June 21, 1991, tendered for filing, changes in its FERC Gas Tariff, Third Revised Volume No. 1 (Volume No. 1 Tariff) and Original Volume No. 2 (Volume No. 2 Tariff).

Northern is filing revised tariff sheets to reflect its TCR Demand Surcharge of $.199 and TCR Volumetric Surcharge of $.0078 in its third quarter PGA rate adjustment filing filed on May 31, 1991 and amended on June 13, 1991.

Northern requests an effective date of July 1, 1991, for the revised tariff sheets.

Northern states that a copy of the filing were served upon Northern's jurisdicational sales customers, and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before July 2, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parites to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter Copies of this

filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–15654 Filed 7–1–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP85–60–004 and CP89–2062–002

Overthrust Pipeline Co.; Tariff Filing

June 25, 1991.

Take notice that Overthrust Pipeline Company, on June 20, 1991, tendered for filing and acceptance Eleventh Revised Sheet No. 6 to Original Volume No. 1 of its FERC Gas Tariff. This tariff sheet implements transportation rates that conform to the findings of the Commission's May 21, 1991, Order Approving Settlement with Modifications issued in Docket Nos. RP85–60–000, –002.

Overthrust states that this filing is made pursuant to 18 CFR 154.63(a)(1) and in compliance with the Commission's May 21, 1991, order.

Overthrust requests an effective date of June 1, 1991, for the proposed tariff sheet.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before July 2, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–15655 Filed 7–1–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91–8–17–000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 25, 1991.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on June 20, 1991 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheet:

Proposed to be Effective May 1, 1991

Thirty-fourth Revised Sheet No. 50.2.

Texas Eastern states that this sheet is being filed pursuant to section 4.F of Texas Eastern's Rate Schedules SS–2 and SS–3 to flow through changes in CNG Transmission Corporation's (CNG) Rate Schedule GSS rates which underlie Texas Eastern's Rate Schedules SS–2 and SS–3.

Texas Eastern states that CNG filed tariff sheets on March 28, 1991 in Docket Nos. RP91–125–00, *et al.*, revising Rate Schedule GSS rates to become effective May 1, 1991.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisidictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 2, 1991. Protests will be considered by the Commission in determing the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–15656 Filed 7–1–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP89–48– 014 and RP91– 176–000]

Transwestern Pipeline Co.; Proposed Changes

June 25, 1991.

Take notice that Transwestern Pipeline Company ("Transwestern"), on June 19, 1991, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Effective August 1, 1991:

5th Revised Sheet No. 4
Original Sheet No. 4A
Original Sheet No. 4B
Original Sheet No. 4C
Original Sheet No. 4D
86th Revised Sheet No. 5
49th Revised Sheet No. 6
Original Sheet No. 6B
Original Sheet No. 6C
4th Revised Sheet No. 24
6th Revised Sheet No. 25
3rd Revised Sheet No. 25A
2nd Revised Sheet No. 25B
1st Revised Sheet No. 25B.1
1st Revised Sheet No. 25C
1st Revised Sheet No. 25D
3rd Revised Sheet No. 28
6th Revised Sheet No. 29
Original Sheet No. 29.1
4th Revised Sheet No. 29A
2nd Revised Sheet No. 29B
2nd Revised Sheet No. 29C
2nd Revised Sheet No. 29D
2nd Revised Sheet No. 29E
2nd Revised Sheet No. 29F
2nd Revised Sheet No. 29G
9th Revised Sheet No. 30
3rd Revised Sheet No. 30J
Original Sheet No. 30K
Original Sheet No. 30K.1
Original Sheet No. 30L
5th Revised Sheet No. 31
1st Revised Sheet No. 31A
8th Revised Sheet No. 32
5th Revised Sheet No. 32A
2nd Revised Sheet No. 32B
2nd Revised Sheet No. 32C
2nd Revised Sheet No. 32D
7th Revised Sheet No. 33
4th Revised Sheet No. 33A
1st Revised Sheet No. 33A.1
2nd Revised Sheet No. 33B
3rd Revised Sheet No. 34D
4th Revised Sheet No. 34E
5th Revised Sheet No. 48
Original Sheet No. 51A
2nd Revised Sheet No. 52
2nd Revised Sheet No. 53
2nd Revised Sheet No. 54
2nd Revised Sheet No. 55
1st Revised Sheet No. 57
1st Revised Sheet No. 58
3rd Revised Sheet No. 68A
1st Revised Sheet No. 68B
2nd Revised Sheet No. 79
7th Revised Sheet No. 80
6th Revised Sheet No. 81
2nd Revised Sheet No. 81A
1st Revised Sheet No. 81B
1st Revised Sheet No. 82
7th Revised Sheet No. 90A
2nd Revised Sheet No. 91
1st Revised Sheet No. 92
Original Sheet No. 92A
Original Sheet No. 92B
Original Sheet No. 92C
Original Sheet No. 92D
Original Sheet No. 92E
Original Sheet No. 92F
6th Revised Sheet Nos. 93–104
5th Revised Sheet No. 128
2nd Revised Sheet No. 129
2nd Revised Sheet No. 140
1st Revised Sheet No. 141
Original Sheet No. 142A
1st Revised Sheet No. 143
1st Revised Sheet No. 144
5th Revised Sheet No. 146
7th Revised Sheet No. 147

The above-referenced tariff sheets are being filed, Transwestern states, in order to implement, effective August 1, 1991 on an interim basis, the Stipulation and Agreement ("Settlement") filed on June 22, 1990 in its rate proceeding at Docket No. RP89–48, et al., as modified

by the Commission's initial order approving the Settlement.[1] Such implementation, Transwestern states, will result in a rate decrease for Transwestern's customers

Transwestern states, however, that it will not implement the provisions of the Settlement, nor the rate decrease resulting therefrom, unless the Commission issues an order within thirty days of the filing which specifically provides that: (1) The provisions and rates of the Settlement are being made effective on an interim basis only and (2) in the event that the Settlement, for any reason, does not become effective following issuance by the Commission of its order on rehearing, then Transwestern's existing rates and terms of service will be placed into effect, without suspension, prospectively within thirty days of the filing of revised tariff sheets by Transwestern.

This proceeding commenced on December 30, 1988, with the filing by Transwestern of tariff sheets reflecting a proposed rate decrease. On January 31, 1989, the Commission accepted Transwestern's filing, subject to certain conditions, to become effective on February 1, 1989, and rehearing was denied. On June 22, 1990, Transwestern filed a Stipulation and Agreement ("Settlement") by which it proposed to resolve the issues in several related dockets. On March 20, 1991, the Commission issued its "Order Modifying and Approving Contested Settlement, Rejecting Alternate Settlement, Granting Abandonment, and Amending Blanket Certificate" ("Order") in which it generally approved the Settlement, with certain modifications. On April 19, 1991, several parties filed requests for rehearing and/or clarification of the Order, which is currently pending.

Transwestern states that the tariff sheets submitted by it contain the same provisions as the *pro forma* sheets submitted previously to the Commission (as an attachment to the Settlement), with the exception of those requiring revisions as a result of the Commission's Order herein modifying the Settlement, and subsequent orders in other proceedings: Docket Nos. RP90–105, RP90–191, RP91–104, RP91–106, and RP91–109.[2]

Transwestern requests that the Commission grant any and all waivers of its rules, regulations, and orders as may be necessary so as to permit the tariff sheets submitted by it to become effective August 1, 1991.

[1] 1/54 FERC ¶ 61,319 (1991).

[2] 51 FERC ¶ 61,252 (1990); 53 FERC ¶ 61,153 (1990); 54 FERC ¶ 61,356 (1991); and 55 FERC ¶ 61,157 (1991).

Copies of the filing were served upon all parties entitled to service in this proceeding under Rule 2010 of the Commission's Rules of Practice and Procedure, as well as all of Transwestern's gas utility customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 2, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–15657 Filed 7–1–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–177–000]

Wyoming Interstate Company, LTD.; Tariff Filing

June 25, 1991.

Take Notice that Wyoming Interstate Company, Ltd. ("WIC"), on June 20, 1991, tendered for filing its FERC Gas Tariff, Original Volume No. 2, to be effective July 1, 1991.

WIC states that this tariff volume provides for transportation service pursuant to section 311 of the Natural Gas Policy Act. Incorporated therein are certain changes filed in partial compliance with the Commission's November 21, 1990, Order in Docket No. CP90–706–000 (53 FERC ¶61,229). WIC states that because it has requested rehearing of certain conditions in the November 21, 1990, Order, those conditioned issues have not been incorporated into the subject filing.

WIC states that copies of this filing were served upon all parties to WIC's recently settled and approved rate case in Docket No. RP85–39 (55 FERC ¶61,229) as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 2, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–15658 Filed 7–1–91; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3970–1]

Transfer of Data to Contractors

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) will transfer to its contractor ICF, information which has been, submitted to EPA under the authority of the Resource Conservation and Recovery Act (RCRA). This firm will assist the Office of Solid Waste, Waste Management Division, Capacity Programs Branch, in developing land disposal restriction (LDR) regulations for F037 and F038 petroleum refining listed wastes. These wastes are primary and secondary oil, water and solid separation sludges. Some of the information has been claimed as Confidential Business Information.

DATES: Transfer of confidential data submitted to EPA will occur no sooner than July 9, 1991.

ADDRESSES: Comments should be sent to Margaret Lee, Document Control Officer, Office of Solid Waste (OS–312), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–3410.

FOR FURTHER INFORMATION CONTACT: Margaret Lee, Document Control Officer, Office of Solid Waste (OS–312), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–3410.

SUPPLEMENTARY INFORMATION:

I. Transfer of Data

The U.S. Environmental Protection Agency is collecting information to conduct an analysis of the petroleum refinery's database in order to develop land disposal restriction (LDR)

regulations for F037 and F038 petroleum refining listed wastes.

Under EPA Contract 68–W9–0081, ICF will assist the Office of Solid Waste, Waste Management Division, Capacity Programs Branch, to conduct the analysis by reviewing the petroleum refinery industries data base. The information being transferred to ICF was previously collected by other agency contractors who conducted, or are currently conducting, waste characterization studies within the petroleum industry. Some of the information has been claimed as RCRA Confidential Business Information.

In accordance with 40 CFR 2.305(h), EPA has determined that ICF employees require access to Confidential Business Information (CBI) submitted to EPA under the authority of RCRA to perform work satisfactorily under the above noted contract. EPA is issuing this notice to inform all submitters of Confidential Business Information that EPA will transfer to ICF on a need-to-know basis CBI collected under the authority of RCRA. Upon completing their review of materials submitted, ICF will return all such materials to EPA.

ICF has been authorized to have access to RCRA CBI according to the EPA "Contractor Requirements Manual" and the "RCRA Confidential Business Information Security Manual". EPA will approve the security plans of the contractor and will reinspect their facility prior to RCRA CBI being transmitted to the contractor. Personnel from these firms will be required to sign non-disclosure agreements and be informed of appropriate security procedures before they are permitted access to confidential information.

Dated: June 23, 1991.

Richard J. Guimond,

Acting Assistant Administrator.

[FR Doc. 91–15587 Filed 7–1–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3970–6]

Acid Rain Advisory Committee; Open Meeting

SUMMARY: In August of 1990, the U.S. Environmental Protectional Agency gave notice of the establishment of an Acid Rain Advisory Committee (ARAC) which would provide advice to the Agency on issues related to the development and implementation of the requirements of the acid deposition control title of the Clean Air Act Amendments of 1990.

OPEN MEETING DATES AND ADDITIONAL INFORMATION: Notice is hereby given that the Acid Rain Advisory Committee will hold its sixth open meeting July 15–16 at the Ramada Renaissance Hotel, Washington, Dulles, 13869 Park Center Road, Herndon, VA 22071 (703) 478–2900.

At its first meeting, ARAC established four subcomittees. These subcommittees will meet on July 15 concurrently in different rooms to review progress toward the development of proposed regulations. Seating in these rooms will be limited and publicly available on a first come, first serve basis. The subcommittee schedule for July 15 is as follows: Allowance Trading and Tracking from 9 a.m. to 4 p.m.; Permits and Technology from 12 noon to 5 p.m. Emissions Monitoring from 9 a.m. to 4 p.m.; and Energy Conservation and Renewables from 2 p.m. to 4 p.m. The full committee will meet on July 16 from 8:30 a.m. to 3:30 p.m. to discuss issues identified by the subcomittees and to consider future activities of ARAC.

INSPECTION OF COMMITTEE DOCUMENTS: All documents for this meeting, including a more detailed meeting agenda will be publicly available in limited numbers at the meeting. Thereafter, these doucments together with related documents prepared for previous ARAC meetings will be available in EPA Air Docket Number A–90–39 in room 1500 of EPA headquarters, 401 M Street SW., Washington, DC. Hours of inspection are 8:30 to 12 noon and 1:30 to 3:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION: Concerning ARAC or its activities, please contact Mr. Paul Horwitz, Designated Federal Official to the Committee at (202) 475–9400; fax (202) 252–0892 or by mail at USEPA, Acid Rain Division (ANR 445), Office of Air and Radiation, Washington, DC 20460.

Dated: June 26, 1991.

Eileen B. Claussen,

Director, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation.

[FR Doc. 91–15723 Filed 7–1–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3970–5]

Science Advisory Board; Executive Committee

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Science Advisory Board's (SAB's) Executive Committee, will conduct a meeting on Tuesday and Wednesday, July 23rd and 24th, 1991. The meeting will be held at the Holiday Inn—Capital, 550 C Street SW., Washington, DC 20024. It will begin at 8:30 a.m. and adjourn no later than 5 p.m. on July 23rd and on the 24th it begins at 8:30 a.m. and adjourns no later than 4 p.m.

At this meeting, the Executive Committee will review approximately a dozen separate reports from the following Committees of the Board: The Drinking Water Committee, the Ecological Processes and Effects Committee, the Environmental Engineering Committee, the Environmental Health Committee, and the Radiation Advisory Committee.

A number of Agency officials will brief the Executive Committee on activities and plans. These will include a discussion of enviornmental indicators being developed by EPA that can serve as measures of progress in environmental protection and an examination of SAB interactions with the Superfund program.

Among the administrative matters being considered by the Executive Committee is a list of proposed SAB projects for FY92.

On the afternoon of the second day of the meeting the Executive Committee will conduct a consultation on the Agency's efforts to update the cancer risk assessment guidelines. A consultation is a public meeting between the SAB and the Agency in which technical issues are discussed prior to the Agency's taking a formal position. The goal is for the Board to stimulate new thinking, ideas, and options for consideration as the Agency proceeds with its work. No SAB consensus is sought nor will any SAB report be written at this stage. Such Board reports would be a part of a subsequent review of a developed Agency position.

The meeting is open to the public. Any member of the public wishing further information concerning the meeting or who wish to submit comments should contact Dr. Donald G. Barnes, Staff Director of the Science Advisory Board (A–101), U.S. Environmental Protection Agency, Washington, DC 20460, at (202) 382–4126 or by Fax at (202) 755–9232. Limited unreserved seating will be available at the meeting.

Dated: June 26, 1991.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 91–15724 Filed 7–1–91 8:45 am]

BILLING CODE 6560–50–M

[OPP-30320; FRL 3928-7]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by August 1, 1991.

ADDRESSES: By mail submit comments identified by the document control number [OPP-30320] and the registration/file number to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Attention PM 21, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, In person, bring comments to: Rm. 246, Attention PM 21, Registration Division (H7505C), Environmental Protection Agency, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: PM 21, Susan Lewis, rm. 227, CM #2, (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 64137-E. Applicant: Kemira Oy, Porkkalankatu 3, PO Box 330, 00101 Helsinki, Finland. Product name: Mycostop Biofungicide. Fungicide. Active ingredient: Dried spores and mycelium of ray fungus (*Streptomyces griseoviridis*) at 30 percent. Proposed classification/Use: General. To be used on vegetable crops grown in greenhouses or fields. (PM 21)

2. File Symbol: 64137-G. Applicant: Kemira Oy. Product name: Mycostop Biofungicide. Fungicide. Active ingredient: Dried spores and mycelium of ray fungus (*Streptomyces griseoviridis*) at 30 percent. Proposed classification/Use: General. For Repackaging use only. (PM 21)

3. File Symbol: 64137-R. Applicant: Kemira Oy. Product name: Mycostop Biofungicide. Fungicide. Active ingredient: Dried spores and mycelium of ray fungus (*Streptomyces griseoviridis*) at 30 percent. Proposed classification/Use: General. For the control of seed rot, root and stem, and wilt diseases caused by *fusarium* in agronomic crops such as cotton, corn, soybeans, wheat, sorghum, beans, and peas. (PM 21)

4. File Symbol: 64137-U. Applicant: Kemira Oy, Porkkalankatu 3, PO Box 330, 00101 Helsinki, Finland. Product name: Mycostop Biofungicide. Fungicide. Active ingredient: Dried spores and mycelium of ray fungus (*Streptomyces griseoviridis*) at 30 percent. Proposed classification/Use: General. For the control of seed rot, root and stem rot, and wilt diseases of ornamental crops caused by *fusarium* and *alternaria*, and also controls *botrytis* on certain greenhouse ornamentals. (PM 21)

5. File Symbol: 7501-RUU. Applicant: Gustafson, Inc., PO Box 660065, Dallas, TX 75266-0065. Product name: Gus 2000 Concentrate. Biological Fungicide. Active ingredient: *Bacillus subtilis* (not less than 5.5×10^{10} viable spores per gram) at 2.75 percent. Proposed classification/Use: General. For seed treatment on all crops. (PM 21)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703-557-3262), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: June 25, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91-15720 Filed 7-1-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Executive Resources and Performance Review Board; Appointment of Members

As required by the Civil Service Reform Act of 1978 (Public Law 95-454), Chairman Alfred C. Sikes appointed the following executives to the Executive Resources and Performance Review Board: Andrew S. Fishel, Richard M. Smith, Richard C. Firestone, Robert L. Pettit, Roy J. Stewart, Walda W. Roseman.

Donna R. Searcy,

Secretary, Federal Communications Commission.

[FR Doc. 91-15624 Filed 7-1-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Maryland Port Administration/Trans-Port Services, Inc. et al; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations.

Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200536.

Title: Maryland Port Administration/ Trans-Port Services, Inc. Terminal Agreement.

Parties: Maryland Port Administration (MPA)

Trans-Port Services, Inc.

Synopsis: The Agreement, filed June 21, 1991, provides for a 5-year lease of certain shed space at the Dundalk Marine Terminal to be used for the receiving handling and storing of tractors transported over MPA piers.

Agreement No: 224–200535.

Title: City and County of San Francisco/South Pacific Interline Ltd. Marine Terminal Agreement

Parties: City and County of San Francisco (Port)

South Pacific Interline Ltd. (PIL)

Synopsis: The Agreement, filed June 20, 1991, provides a non-exclusive right for PIL to use the Port's North Container Terminal as its published regularly scheduled Northern California port of call for the berthing of its vessels and the loading and discharging of cargoes, and operations ancillary thereto. The Port's Tariff No. 3–C shall apply to PIL's use of the facilities. PIL shall pay 60% of the applicable tariff charges on dockage and wharfage shall be paid in accordance to the rate schedule set forth in this agreement.

By Order of the Federal Maritime Commission.

Dated: June 27, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–15711 Filed 7–1–91; 8:45 am]

BILLING CODE 6730–01–M

Tampa Port Authority (TPA) Seagull Terminal and Stevedoring Co., Inc. et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200537

Title: Tampa Port Authority/Seagull Terminal and Stevedoring Co., Inc. Terminal Agreement.

Parties:

Tampa Port Authority (TPA)

Seagull Terminal and Stevedoring Co., Inc. (Seagull)

Filing Party: W.E. Welch, Director of Traffic, Tampa Port Authority, P.O. Box 2192, 811 Wynkoop Road, Tampa, FL 33601.

Synopsis: The Agreement, filed June 24, 1991, provides for Seagull's month-to-month lease of approximately 69,519 square feet of paved open storage at a monthly rental of $1,450 and approximately 328.85 square feet of office space at a monthly rental of $137.

By Order of the Federal Maritime Commission.

Dated: June 27, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–15712 Filed 7–11–91; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Announcement Number 136]

Health Studies of Priority Health Conditions

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces that grant applications will be accepted to conduct health studies investigating health conditions prioritized by ATSDR, with emphasis on lung and respiratory diseases. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of Healthy People 2000, see section "Where To Obtain Additional Information")

Authority

This program is authorized in seciton 104(i) (7), (9), and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended by the Superfund Amendments and Reauthorization Act (SARA) (42 U.S.C. 9604 (i) (7), (9), and (15)).

Eligible Applicants

Eligible applicants are States and the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Repubic of Palau, the Northern Mariana Islands, American Samoa, and political subdivisions thereof, which may include state universities, state colleges, and state research institutions, and federally-recognized Indian Tribes.

Availabiiity of Funds

Approxiamtely $1.5 million is available in Fiscal Year 1991 to fund 1 to 5 new awards. It is expected that awards will range from $75,000 to $500,000 for the first year. It is anticipated that awards will be for a 12-month budget period with a proposed project period of 1 to 3 years. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds. ATSDAR anticipates that funds will be available in Fiscal Year 1992 to continue approved projects, and may be available to fund a limited number of new projects. Funding estimates may vary and are subject to change.

Background

Under CERCLA, as amended by SARA, ATSDR promotes activities to determine the relationship between exposure to hazardous substances and adverse health effects.

ATSDR developed a list of the 250 priority hazardous substances at the National Priorities List (NPL) sites and produced Toxicological Profiles for 130 of these substances. These profiles include data related to specific adverse health outcomes identified as the ATSDR Priority Health Conditions.

Further exploration of the interaction between the health outcomes and exposures common to the Superfund sites is the reason for this initiative. The Priority Health Conditions to be addressed in this initiative will emphasize lung and respiratory diseases

because (1) they are a frequent concern voiced by residents living near hazardous waste sites and (2) during 1990, they have been the most frequently occurring adverse health outcomes identified by the emergency events surveillance.

This initiative will support health studies to fill the gap in knowledge regarding the occurrence and risk factors for the Priority Health Conditions with emphasis on lung and respiratory diseases caused by hazardous substances identified during the conduct of ATSDR's health studies. The ATSDR Priority Health Conditions are (in alphabetical order):

—Birth Defects and Reproductive Disorders
—Immune Function Disorders
—Kidney Dysfunction
—Liver Dysfunction
—Lung and Respiratory Diseases
—Neurotoxic Disorders
—Selected Cancers

Purpose

The purpose of this announcement is to solicit scientific proposals designed to study the occurrence of/and risk factors for the ATSDR Priority Health Conditions, with emphasis on lung and respiratory diseases, at Superfund sites. This will improve the recipients' ability to address potential public health problems related to exposure to hazardous substances.

Program Requirements

ATSDR will provide financial assistance to applicants in developing methods and technologies to explore the relationship between exposure to hazardous substances and occurrence and risk factors for the Priority Health Conditions with emphasis on lung and respiratory diseases. ATSDR is also interested in funding applicant programs that identify human populations at higher risk of lung and respiratory disease resulting from exposure or toxicity caused by hazardous substances in their environment.

The program requirements include, but are not limited to, studies designed to:

1. Evaluate the occurrence of adverse health effects in a population. This will include the evaluation of the incidence or prevalence of a disease, disease symptoms, self-reported health concerns, or biological markers of disease, susceptibility, or exposure.

2. Develop methods to diagnose adverse health effects in populations. This will include medical research to evaluate currently available biological tests (biomarkers) and disease occurrence in potentially impacted populations.

3. Identify risk factors for adverse health effects in populations. This will include hypothesis generated cohort or case-control studies on potentially impacted populations to identify linkages between exposure and adverse health effects and those risk factors which may be impacted by prevention actions.

Evaluation Criteria

The review for scientific and technical merit by an objective review group will be based on the following criteria:

1. Proposed Program 50%

The extent to which the applicant's proposal addresses (a) the scientific merit of the proposed project, including the originality and feasibility of the approach, adequacy, and rationale of the design; (b) the technical merit of the proposed project, including the degree to which the project can be expected to yield or demonstrate results that meet the program objective as described in the "**PURPOSE**" section of this announcement; (c) the proposed project schedule, including clearly established and obtainable project objectives for which progress toward attainment can and will be measured.

2. Program Personnel 30%

The extent to which the proposal has described (a) the qualifications, experience, and commitment of the principal investigator, and his/her ability to devote adequate time and effort to provide effective leadership and (b) the competence of associate investigators to accomplish the proposed study, their commitment, and the time they will devote to the project.

3. Applicant Capability 20%

Description of the adequacy and commitment of institutional resources to administer the program and the adequacy of the facilities as they impact on performance of the proposed study.

4. Program Budget—(Not Scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of grant funds.

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.

Other Requirements

A. Objective Review

Applications will be reviewed by an objective review group established in accordance with the Public Health Service Grants Policy Statement.

B. 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.

C. Protection of Human Subjects

This program requires research on human subjects, therefore, all applicants must comply with Public Law 93–148 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.

D. Animal Welfare

If the proposal involves research on animals, the applicant must comply with PHS Policy Statement on Humane Care on Use of Laboratory Animals. Assurances must be provided that demonstrate that the project/activity will be subject to initial and continuing review by an appropriate Institutional Animal Care and Use Committee. The applicant will be responsible for providing evidence of this assurance.

Executive Order 12372 Review

Applications are not subject to review as governed by Executive Order 12372, entitled "Intergovernmental Review of Federal Programs."

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.161, Health Programs for Toxic Substances and Disease Registry.

Application and Submission Deadline

The original and two copies of the application Form PHS 5161–1 must be submitted to Henry S. Cassell III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail Stop E–14, Atlanta, Georgia 30305, on or before August 16, 1991. By formal agreement, the CDC Grants Office will act on behalf of and for ATSDR on this matter.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the 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).

2. Late Applications

Applications which do not meet the criteria in 1.a. or 1.b. 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

Additional information on application procedures, copies of application forms, other material, and business management technical assistance may be obtained from Mr. Van Malone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Mail Stop E–14, Atlanta, Georgia 30305; telephone (404) 842–6630 or FTS 236–6630.

Programmatic Technical Assistance may be obtained from Dr. Jeffrey A. Lybarger, Director, Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mail Stop E–31, Atlanta, Georgia 30333; telephone (404) 639–0550 or FTS 236–0550.

Please refer to announcement number 136 when requesting information and submitting an application.

Potential Applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone (202) 783–3238).

Dated: June 26, 1991.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 91–15667 Filed 7–1–91, 8:45 am]

BILLING CODE 4160–70–M

Workshop on Health Assessments: Meeting

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the following meeting.

Name: Workshop on Health Assessments.

Time and Date: 8 a.m.–5 p.m., July 25, 1991; 8 a.m.–2:30 p.m., July 26, 1991.

Place: Mark Hopkins Intercontinental Hotel, Number One Nob Hill, San Francisco, California 94108.

Status: Open to the public for observation and participation, limited only by the space available. The meeting room accommodates approximately 100 people.

Matters to be Considered: The meeting will convene a group of interested parties to discuss the ATSDR Health Assessment process. The ATSDR Health Assessment is the evaluation of data and information on the release of hazardous substances into the environment in order to assess any current or future impact on public health, develop health advisories or other recommendations, and identify studies or actions needed to evaluate and mitigate or prevent human health effects. The group will consider such areas as the Health Assessment definition and purpose, scope and limitations, initiation, roles of ATSDR staff, ATSDR-public interaction, steps and activities in a health assessment, and possible follow-up health activities.

Oral comments will be scheduled at the discretion of the meeting facilitator and as time permits.

Contact Person for More Information: Chris Schmidt, Division of Health Assessment and Consultation, ATSDR, (MS E32), 1600 Clifton Road NE., Atlanta, Georgia 30333, telephone 404/639–0609 or FTS 236–0609.

Dated: June 26, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination.

[FR Doc. 91–15705 Filed 7–1–91; 8:45 am]

BILLING CODE 4160–70–M

Alcohol, Drug Abuse, and Mental Health Administration

Homelessness and Severe Mental Illness

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, PHS, HHS.

INSTITUTE: National Institute of Mental Health.

ACTION: Request for Written Comments.

SUMMARY: Louis W. Sullivan, M.D., Secretary, Department of Health and Human Services (DHHS), has established an interdepartmental Task Force on Homelessness and Severe Mental Illness which is chaired by the Director of the National Institute of Mental Health. The Task Force consists of representatives from relevant components of DHHS including the Office of the Secretary, the Social Security Administration, the Health Care Financing Administration, and within the Public Health Service, the National Institute of Mental Health and the National Institute of Alcohol Abuse and Alcoholism, components of the Alcohol, Drug Abuse, and Mental Health Administation. Other Federal participants include representative from the Department of Housing and Urban Development, the Department of Veterans Affairs, the Department of Labor, the Department of Justice, the Interagency Council on the Homeless, and the White House Office of Policy Development.

The Task Force meets regularly and is assisted by a 16-member national Advisory Committee, appointed by the Secretary, and includes State and local government officials, researchers, and service providers in housing, mental health, and financing, and concerned consumers and family members.

The Task Force is asking the field for advice on the following topics:

- Effective methods for providing treatment and coordinating appropriate services to severely mentally ill persons, who are homeless or at risk of becoming homeless;
- The prevalence, causes, and approaches to preventing homeless among severely mentally ill people;
- The prevalence, causes, and treatment of major mental illnesses among the homeless population; and
- Factors that impede access of severely mentally ill persons, particularly those who are homeless or at high risk of becoming homeless, to housing, mental health, income support, and human service programs.

The advice from the field will inform the Task Force report to the Interagency Council on the Homeless outlining an appropriate course of action (including legislative proposals, regulations, and/or administrative actions) so that the Executive Branch can assist States and localities in better meeting the housing, treatment, and support needs of homeless and severely mentally ill persons. The Task Force will also consider recommendations aimed directly at State and local organizations, both public and private.

This is an exciting and timely opportunity to address a tragic issue of increasing proportions. Over the past several years, philanthropic, Federal, State, and local initiatives have emerged across the Nation in response to the extensive needs of homeless, severely mentally ill individuals. These efforts have been insufficient to meet the growing needs of this population, thus the Task Force is eager to garner this experience through written comments to assist in promoting systemic change that will abate and help end homelessness among severely mentally ill persons. Comments should be sent to the address listed below by August 15, 1991.

DATES: August 15, 1991.

ADDRESSES: Homelessness/NIMH, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Dated: June 24, 1991.

Joseph R. Leone,

Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91-15616 Filed 7-1-91; 8:45 am]

BILLING CODE 4160-20-M

Health Resources and Services Administration

Final Funding Priority for Advanced Nurse Education Grants

The Health Resources and Services Administration (HRSA) announces the final funding priority for fiscal year (FY) 1992, for Grants for Advanced Nurse Education presently authorized under section 821(a), title VIII, of the Public Health Service (PHS) Act, as amended by Public Law 100-607. This authority will expire on September 30, 1991. This program announcement is subject to reauthorization of this legislative authority and the appropriations of funds.

The Administration's budget request for FY 1992 does not include funding for this program. Applicants are advised that this program announcement is a contingency action being taken to assure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Section 821(a) of the Public Health Service Act, as implemented by 42 CFR part 57, subpart Z presently authorizes assistance to meet the costs of projects to:

(1) Plan, develop and operate;

(2) Expand; or

(3) Maintain programs which lead to master's and doctoral degrees and which prepare nurses to serve as nurse educators, administrators, or researchers or to serve in clinical nurse specialties determined by the Secretary to require advanced education.

To be eligible to receive a grant, a school must be a public or private nonprofit collegiate school of nursing and be located in a state.

The period of Federal support should not exceed 3 years.

National Health Objectives for the Year 2000

The Public Health Service (PHS) urges applicants to submit work plans that address specific objectives of Healthy People 2000. 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. 017-001-0473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (telephone (202) 783-3238.)

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service supported education and service programs which provide comprehensive primary care services to the underserved.

Review Criteria

The review of applications will take into consideration the following criteria:

(1) The need for the proposed project including, with respect to projects to provide education in professional nursing specialties determined by the Secretary to require advanced education:

(a) The current or anticipated need for professional nurses educated in the specialty; and

(b) The relative number of programs offering advanced education in the specialty;

(2) The need for nurses in the specialty in which education is to be provided in the State in which the education program is located, as compared with the need for these nurses in other States;

(3) The degree to which the applicant proposes to recruit students from States in need of nurses in the specialty in which the education is to be provided, and to promote their return to these States following education;

(4) The degree to which the applicant proposes to encourage graduates to practice in States in need of nurses in the specialty in which education is to be provided;

(5) The potential effectiveness of the proposed project in carrying out the educational purposes of Section 821 of the Act and 42 CFR 57.2506;

(6) The capability of the applicant to carry out the proposed project;

(7) The soundness of the fiscal plan for assuring effective utilization of grant funds;

(8) The potential of the project to continue on a self-sustaining basis after the period of grant support; and

(9) The degree to which the applicant proposes to attract, retain and graduate minority and financially needy students.

In addition, the following mechanism may be applied in determining the funding of approved applications: Funding priorities—favorable adjustment of aggregate review scores when applications meet specified objective criteria.

Statutory Funding Priority

Section 821(a) of the statute requires that the Secretary give priority to geriatric and gerontological nursing.

Funding Priorities for Fiscal Year 1992

The following funding priorities were established in FY 1989 after public comment and the Administration is extending these priorities in FY 1992.

In determining the order of funding of approved applications a funding priority will be given to:

(1) Applicant institutions that have either a 3-year average enrollment of minority students in graduate nursing education in excess of the national average or demonstrate an increase in minority enrollment in the graduate program which exceeds the program's prior 3-year average. Applicant institutions submitting applications to establish the first master's level nursing program in that institution may qualify for a funding priority if they can demonstrate an enrollment of minority students in their undergraduate program

in excess of the national average for undergraduate nursing programs.

(2) Applications which develop, expand or implement courses concerning ambulatory, home health care and/or inpatient case management of those with HIV infection-related diseases including AIDS patients.

A proposed funding priority was published in the Federal Register on March 25, 1991 (56 FR 12377) for public comment. One comment was received from one respondent concerning the proposed funding priority. This respondent also commented on aspects of the notice for which public comment was not requested.

The comment was in support of the proposed funding priority for fiscal year 1992 which will be retained as follows:

A funding priority will be given to applicant institutions, where applicable, that have formal linkages between the education program for which the applicant is seeking funding and service programs which provide comprehensive primary care services to the underserved. This priority is designed to increase the delivery of health care services to underserved populations and to foster the interest of health professionals to serve in underserved areas following graduation.

For information regarding this program contact: Dr. Thomas Phillips, Chief, Advanced Nursing Education Branch, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 5C–26, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–6333.

This program is listed at 93.299 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR part 100).

Dated: June 26, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91–15743 Filed 7–1–91; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

Advisory Committee to the Director, NIH; Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Advisory Committee to the Director, NIH on July 18, 1991, at the National Institutes of Health, Bethesda, Maryland 20892. The meeting will take place from 8:30 a.m. to 5 p.m. in Building 31, C-Wing, Conference Room 10. The meeting will be open to the public.

The meeting will be devoted to discussion of: (1) The NIH plan for managing the costs of biomedical research; (2) women's health research; and (3) minority health programs.

The Executive Secretary, Jay Moskowitz, Ph.D., National Institutes of Health, Shannon Building, room 103, Bethesda, Maryland 20892, 301/496–3152, will furnish the meeting agenda, rosters of Committee members and consultants and substantive program information.

Dated: June 25, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–15664 Filed 7–1–91; 8:45 am]

BILLING CODE 4140–01–M

Meeting (President's Cancer Plan)

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Presidents's Cancer Plan, National Cancer Institute, September 20, 1991, at Morehouse School of Medicine, Basic Medical Science Building, room 104, 720 Westview Drive, SW., Atlanta, GA 30310.

The meeting will be open to the public on September 20, 1991, 8:30 a.m. Attendance will be limited to space available. Agenda items will include reports by the Chairman, President's Cancer Panel, the Director, NCI, members of the staff of the College and other participants.

Dr. Elliott Stonehill, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, room 4A32, National Institutes of Health, Bethesda, Maryland 20892, (301/496–1148) will provide a roster of the Panel members and substantive program information upon request.

Dated: June 25, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–15666 Filed 7–1–91; 8:45 am]

BILLING CODE 4140–01–M

Meeting of Clinical Research Subcommittee of the AIDS Research Advisory Committee, NIAID

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Clinical Research Subcommittee of the AIDS Research Advisory Committee, National Institute of Allergy and Infectious Diseases, on August 12–13, 1991, at the National Institutes of Health, Building 31C, Conference Room 6, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9 a.m.-5 p.m. on August 12 and from 8:30 a.m. to adjournment on August 13. The Subcommittee will examine the involvement of public and private agencies in the dissemination of HIV/AIDS treatment and research information on a basis for future recommendations on effective approaches to providing this information. The Subcommittee will also consider guidelines for its role in the assessment of alternative and complementary therapies and will make recommendations for improving patient participation of the clinical trials process. Attendance by the public will be limited to space available.

Ms. Patricia Randall, Office of Communciations, National Institute of Allergy and Infectious Diseases, Building 31, room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717) will provide a summary of the meeting and a roster of the committee members upon request.

Ms. Jean S. Noe, Executive Secretary, AIDS Research Advisory Committee, Division of Acquired Immunodeficiency Syndrome, NIAID, NIH, Control Data Building, room 201N, telephone (301–496–0545) will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health).

Dated: June 25, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–15665 Filed 7–1–91; 8:45 am]

BILLING CODE 4140–01–M

Notice of "The Epidemiology of Alzheimer's Disease: The International Search for Environmental Risk Factors"

Notice is hereby given of the National Institute on Aging (NIA) and World Health Organization (WHO) sponsored conference, "The Epidemiology of Alzheimer's Disease: The International Search for Environmental Risk Factors" to be held July 10–12, 1991 on the campus of the National Institutes of Health (NIH), Building 31C, room 10 (6th Floor), 9000 Rockville Pike, Bethesda, Maryland.

The objectives of this meeting are (1) to assist in the construction of a worldwide network of scientists committed to research in the epidemiology of Alzheimer's disease, (2) to speed the pace of research on the age-

specific incidence rates of Alzheimer's disease, and (3) to foster research on selective risk factors and protective factors for Alzheimer's disease—the purpose is no less than to hasten the search for the cause(s).

For additional information, please contact: Ms. Chally L. Tate, Neuroscience and Neuropsychology of Aging Program, National Institute on Aging, National Institutes of Health, Building 31, room 5C35, 9000 Rockville Pike, Bethesda, Maryland 20892, Telephone: (301) 496–9350, FAX: (301) 496–1494.

Dated: June 26, 1991.

Bernadine Healy,

Director, National Institutes of Health.

[FR Doc. 91–15777 Filed 7–1–91; 8:45 am]

BILLING CODE 4140–01–M

Human Gene Therapy Subcommittee; Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Human Gene Therapy Subcommittee (a subcommittee of the Recombinant DNA Advisory Committee) on July 29–30, 1991. The meeting will be held at the National Institutes of Health (NIH), Building 31, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892, starting on July 29 at approximately 9 a.m. to adjournment on July 30 at approximately 5 p.m.

The meeting will be open to the public to discuss the following proposed actions under the *NIH Guidelines for Research Involving Recombinant DNA Molecules* (51 FR 16958):

I. Addition to Appendix D of the "NIH Guidelines" Regarding a Human Gene Transfer Protocol/Dr. Freeman

In a letter dated May 10, 1991, Dr. Scott M. Freeman of the University of Rochester School of Medicine indicated his intention to submit a human gene transfer protocol to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: "Gene Transfer for the Treatment of Cancer."

II. Addition to Appendix D of the "NIH Guidelines" Regarding a Human Gene Therapy Protocol/Dr. Lotze

In a letter dated June 4, 1991, Dr. Michael T. Lotze of the University of Pittsburgh School of Medicine indicated his intention to submit a human gene therapy protocol to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: "Immunization of Cancer Patients with Autologous Tumor Transduced with IL–2 Retroviral Vectors: *In Vivo* Sensitivity to Tumor Antigens (VISTA)."

III. Additions to Appendix D of the "NIH Guidelines" Regarding Human Gene Therapy Protocols/Dr. Rosenberg

In a letter dated June 6, 1991, Dr. Steven A. Rosenberg of the National Institutes of Health indicated his intention to submit two human gene therapy protocols to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee for formal review and approval.

The first protocol is entitled: "Immunization of Cancer Patients Using Autologous Cancer Cells Modified by Insertion of the Gene for Tumor Necrosis Factor."

The second protocol is entitled: "Immunization of Cancer Patients Using Autologous Cancer Cells Modified by Insertion of the Gene for Interleukin-2."

IV. Addition to Appendix D of the "NIH Guidelines" Regarding a Human Gene Therapy Protocol/Dr. Wilson

In a letter dated June 7, 1991, Dr. James M. Wilson of the University of Michigan Medical Center indicated his intention to submit a human gene therapy protocol to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: "Gene Therapy of Familial Hypercholesterolemia."

V. Addition to Appendix D of the "NIH Guidelines" Regarding a Human Gene Therapy Protocol/Dr. Nabel

In a letter dated June 7, 1991, Dr. Gary J. Nabel of the University of Michigan Medical Center indicated his intention to submit a human gene therapy protocol to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: "Gene Therapy as Related to the Immunotherapy of Cancer."

V. Other Matters To Be Considered by the Committee.

Protocols which are approved by the Human Gene Therapy Subcommittee will be forwarded to the Recombinant DNA Advisory Committee for consideration during their October 7–8, 1991, meeting.

Attendance by the public will be limited to space available. Members of the public wishing to speak at this meeting may be given such opportunity at the discretion of the Chair.

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, telephone (301) 496–9838, fax (301) 496–9839, will provide materials to be discussed at this meeting, roster of committee members, and substantive program information. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 1, 1980) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance.* Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the *NIH Guidelines.* In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: June 25, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–15663 Filed 7–1–91; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–920–91–4120–10]

Utah and Colorado: Uinta Southwestern Utah Regional Coal Team Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of regional coal team meeting.

SUMMARY: In accordance with the responsibility outlined in the Federal Coal Management Regulations (43 CFR part 3400), the Regional Coal Team (RCT) for the presently decertified Uinta Southwestern Utah Federal Coal

Production Region will hold a meeting to discuss and make recommendations concerning coal leasing and development in the region. The RCT will review pending coal lease applications under the "leasing by application" (LBA) program and discuss any additional coal-related activities appropriate at this time.

SUPPLEMENTARY INFORMATION: A total of six coal lease applications are pending in the region, including five in Utah and one in Colorado. The RCT will be reviewing the applications and making recommendations to the BLM on processing the applications. The Utah applications include the following: Mining and Energy Resources, Inc. has applied for a 3,431-acre tract in the Crandall Canyon Area of Emery County; Coastal States Energy Co. has applied for a 2,020-acre tract in the Winter Quarters Canyon area of Carbon County; Sage Point Coal Co. has applied for a 1,104-acre tract in the Soldier Creek Area of Carbon County; PacifiCorp Electric Operations has filed for a 7,865-acre tract in the Cottonwood Creek area of Emery County; and Genwal Coal Co. has applied for a 1,880-acre tract in the Crandall Canyon Area of Emery County, Utah. In Colorado Lillylands Inc. has applied for a 200-acre tract in the Naturita Canyon Area of Montrose County.

DATES: The Regional Coal Team will meet on August 8, 1991, at 1 p.m.

ADDRESSES: The meeting will be held in the Quality Inn Convention Center, Continental Room, 154 West 600 South, Salt Lake City, Utah.

FOR FURTHER INFORMATION CONTACT: Max Nielson, Uinta Southwestern Utah Coal Project Manager, Utah State Office, 324 South State Street, suite 301, P.O. Box 45155, Salt Lake City, Utah, 84145–0155, Telephone 801–539–4038.

Dated: June 25, 1991.

Joseph L. Jewkes,

Acting State Director.

[FR Doc. 91–15716 Filed 7–1–91; 8:45 am]

BILLING CODE 4310–DQ–M

[MT–930–4214–10; NDM 7913]

Proposed Withdrawal and Opportunity for Public Meeting; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service proposes to withdraw 4,988.84 acres of public land to protect waterfowl production areas. This notice closes the lands for up to 2 years from the general land laws and minig. The lands will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by September 30, 1991.

ADDRESSES: Comments and meeting requests should be sent to the Montana State Director, BLM, P.O. Box 36800, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, (406) 255–2935.

SUPPLEMENTARY INFORMATION: On May 16, 1991, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public lands from location and entry under the general land laws, including the mining laws, subject to valid existing rights:

5th Principal Meridian

T. 151 N., R. 62 W.,
  Sec. 34, SW¼NE¼ and S½NW¼.
T. 129 N., R. 68 W.,
  Sec. 12, NW¼NE¼.
T. 136 N., R. 68 W.,
  Sec. 30, NW¼NE¼.
T. 134 N., R. 69 W.,
  Sec. 14, NW¼NW¼ and W½SW¼;
  Sec. 34, NE¼NW¼ and NW¼NE¼.
T. 135 N., R. 69 W.,
  Sec. 32, NE¼
T. 140 N., R. 71 W.,
  Sec. 6, SE¼NE¼ and SE¼.
T. 138 N., R. 72 W.,
  Sec. 4, lots 1 and 2, S½N½, and SW¼;
  Sec. 8, NE¼NE¼;
  Sec. 18, lots 1 and 2, and E½NW¼.
T. 140 N., R. 72 W.,
  Sec. 14, lots 1 and 2;
  Sec. 22, SE¼NE¼ and SE¼.
T. 138 N., R. 73 W.,
  Sec. 12, SE¼SE¼ and NW¼NE¼;
  Sec. 14, S½N½.
T. 136 N., R. 74 W.,
  Sec. 32, S½N½ and S½.
T. 145 N., R. 74 W.,
  Sec. 26, SE¼NE¼ and NE¼SE¼.
T. 155 N., R. 75 W.,
Sec. 23, S½NW¼, NE¼SW¼, and NW¼ SE¼.
T. 144 N., R. 77 W.,
  Sec. 22, NE¼.
T. 150 N., R. 77 W.,
Sec. 17, SW¼SW¼.
T. 151 N., R. 78 W.,
  Sec. 23, NE¼SE¼;
  Sec. 24, NW¼NW¼.
T. 152 N., R. 78 W.,
  Sec. 15, SE¼SW¼ and SW¼SE¼;
  Sec. 22, N½ and N½SE¼.
T. 149 N., R. 84 W.,
  Sec. 11, E½SW¼.
T. 150 N., R. 84 W.,
  Sec. 27, NW¼SE¼.
T. 150 N., R. 86 W.,
  Sec. 22, S½NW¼ and NW¼SW¼.
T. 152 N., R. 87 W.,
  Sec. 4, SE¼SW¼;
  Sec. 9, NE¼NW¼.
T. 156 N., R. 90 W.,
  Sec. 20, SE¼SW¼ and SW¼SE¼.
T. 158 N., R. 90 W.,
  Sec. 18, SE¼NE¼.
T. 156 N., R. 91 W.,
  Sec. 13, W½NE¼.
T. 159 N., R. 100 W.,
  Sec. 22, SE¼NE¼, SE¼NW¼, NE¼SW¼ S½SW¼, N½SE¼, and SW¼SE¼.
T. 162 N., R. 102 W.,
  Sec. 20, SW¼NE¼, S½NW¼, and SW¼;
  Sec. 29, NW¼;
  Sec. 30, SE¼NE¼ and NE¼SE¼.
T. 163 N., R. 102 W.,
  Sec. 26, SE¼NE¼ and SW¼NW¼.
T. 162 N., R. 103 W.,
  Sec. 3, lots 1, 2, 3, and 4, and S½NE¼.

The areas described aggregate 4,988.84 acres in Benson, Burleigh, Divide, Emmons, Kidder, Logan, McHenry, McIntosh, McLean, Mountrail, Sheridan, Ward, and Williams Counties.

The purpose of the proposed withdrawal is to protect waterfowl production areas.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Montana State Director of the Bureau of Land Management at the address specified above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Montana State Director at the address specified above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Temporary uses which are compatible with the intended use of the proposed withdrawal will be permitted during this segregative period.

The temporary segregation of the lands in connection with a withdrawal application or proposal shall not affect administrative jurisdiction over the lands, and the segregration shall not have the effect of authorizing any use of

the lands by the Fish and Wildlife Service.

Dated: June 21, 1991.

Loren Cabe,

Acting Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 91-15719 Filed 7-1-91; 8:45 am]

BILLING CODE 4310-DQ-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Request for comments.

SUMMARY: The Minerals Management Service (MMS) is investigating alternative strategies to promote safety and environmental protection during the performance of oil and gas and sulphur operations on the Outer Continental Shelf (OCS). One concept that MMS is considering would require OCS lessees and/or operators to develop, maintain, and implement a safety and environmental management program (SEMP), similar to the United Kingdom's Formal Safety Assessment or Norway's Concept Safety Evaluation programs used to promote the safety of offshore operations. A SEMP plan would describe the lessee's/operator's policies and procedures that would assure safety and environmental protection while conducting oil and gas and sulphur operations on the OCS. The program would also require that an internal review or control system be developed and implemented. Lessees and operators already have full responsibility to plan and prepare for the overall safety and reliability of OCS operations and this program would help to enhance offshore safety and environmental protection. It is recognized that many lessees and operators may already have a similar management control program in place that would essentially fulfill the requirements of such a regulation. The MMS seeks to determine the degree to which such programs exist and to draw upon that experience in establishing the requirements for a management control program. This program is in its conceptual stage and MMS invites public comments and recommendations pertaining to SEMP.

DATES: Comments must be received or postmarked by September 3, 1991.

FOR FURTHER INFORMATION CONTACT: M.L. Courtois; Chief, Offshore Inspection, Compliance, and Training Division; Minerals Management Service; Mail Stop 4800; 381 Elden Street; Herndon, Virginia 22070-4817, or telephone (703) 787-1576 or (FTS) 393-1576.

SUPPLEMENTARY INFORMATION: The MMS formed a task force in October 1989 to assess its current OCS inspection and enforcement program. The task force was directed to identify and recommend measures that would enhance the effectiveness of the program and to increase the safety of OCS operations. The MMS inspection program is mandated by the OCS Lands Act (43 U.S.C. 1348) to conduct yearly onsite inspections at all OCS facilities, as well as periodic unannounced inspections, to assure compliance with environmental and safety regulations. This workload presently includes annual inspections on over 3,800 OCS oil and gas drilling rigs and platforms as well as unannounced periodic inspections of those production facilities and drilling rigs. Additionally, MMS conducts production measurement and verification, pipeline, well completion and workover, site security, and environmental inspections at hundreds of OCS facilities. The MMS conducted over 11,900 inspections during 1990.

The task force's assessment of the inspection program found that the inspection program is generally meeting, and in some instances, exceeding its mandate and that the program should share some of the credit for the offshore oil and gas industry's good safety and environmental record in recent years. The task force determined that although the inspection program is operating effectively and efficiently, the program may not be able to meet the anticipated inspection demands during the next decade. Inspection demands will likely increase as operations move into deeper waters further from shore, and platforms are equipped with more wells and more elaborate operating systems.

The task force also determined that the present inspection strategy relies heavily on checking the operation of devices and not enough on stimulating safety consciousness among offshore operators. This is essentially the same finding of a recent Marine Board study of the MMS inspection program (Marine Board, National Research Council, Alternatives for Inspecting Outer Continental Shelf Operations, 1990).

The Marine Board stated that this inspection strategy could lead some operators to develop an attitude to conduct operations in a manner simply to pass MMS inspection requirements; or what is called a "compliance mentality." In the extreme, an operator with this mentality may abandon its responsibility for safety to MMS inspectors. The task force recognized the potential for a lapse in safety on the OCS due to this attitude and recommended that operators be required to accept greater responsibility for OCS safety.

As a result of the task force's recommendation, MMS is contemplating the promulgation of regulations that would require each offshore lessee/operator to develop, maintain, and operate under the control of SEMP, similar to the United Kingdom's Formal Safety Assessment or Norway's Concept Safety Evaluation programs used to promote the safety of offshore operations. The program would be designed to promote lessee/operator responsibility for safety and environmental protection during operations conducted on the OCS. A SEMP plan would describe policies and procedures to assure safety and environmental protection while conducting exploration, development, and production operations on the OCS (including those operations conducted by contractor and subcontractor personnel). These proposed policies and procedures would address the following categories:

—Management safety and environmental protection policy;
—Organizational components related to safety and environmental protection;
—Policies and procedures affecting the responsibilities of company officials, representatives, employees, and contractors with regards to safety and environmental protection;
—Training for offshore personnel to assure safety and environmental protection;
—Inspection, testing, and maintenance program for OCS facilities;
—Corrective action;
—Accident prevention and investigation;
—Internal review or audit of SEMP policies and procedures;
—Procurement; and
—Documentation of program activities.

The SEMP plan proposal being considered would contain the categories mentioned above which are described in greater detail below:

Management Policy—A short written policy statement signed by an appropriate management official indicating a commitment to personnel safety, safe operations of equipment, and offshore operations conducted in an environmentally sound manner in full compliance with all regulatory requirements.

Organizational Structure—Definition and description of functional responsibilities, levels of authority, and

lines of communication for activities affecting the safety and environmental management program.

Policies and Procedures—Clear statements defining the responsibilities of company officials, representatives, employees, and contractors necessary to assure safety and environmental protection while conducting OCS operations including criteria for determining the effectiveness of the program.

Training Program—A program designed to familiarize employees with potential hazards; describe and demonstrate safe and unsafe methods to conduct activities; inform employees of applicable laws and regulatory requirements; and explain the company's SEMP plan.

In addition, a systematic process for assuring that contractor or service company personnel are informed about applicable safety and environmental protection policies and are adequately trained.

Inspection, Testing, and Maintenance (ITM) Program—A program to assure safe and proper operation of equipment in accordance with manufacturer's recommendations, and applicable regulations and policies including ITM policies and procedures.

Corrective Action—A process for identifying, evaluating, reporting, documenting, and instituting actions necessary to correct the nonconformance of a program element, activity, piece of equipment, or safety device.

Accident Prevention and Investigation Program—Procedures to identify, report, and correct unsafe operations and/or conditions; including near misses or operational upsets (those conditions, circumstances, or practices which could lead to or contribute to an accident), and a management system to review and analyze related information.

Internal Review—A process for subjecting a SEMP plan to a formal, documented, systematic, annual internal review, to identify potential problem areas, deficiencies, and recommend corrective actions, assess the overall effectiveness of the program, and provide specific recommendations for improvement of programs.

Procurement—Policies and procedures that address the procurement of materials, components, and services.

Documentation—All policies, procedures, and schedules should be written and incorporated into the SEMP plan and an up-to-date copy of the plan maintained at all facilities.

The MMS does not want the SEMP plan to become a paperwork exercise conducted solely to meet regulatory requirements. Such an effort would defeat the purpose of the proposed program, which is to promote an attitude, or "performance" mentality, that helps achieve operational safety and environmental protection through awareness and planning. The MMS knows that many lessees/operators have already instituted similar programs into their operations and expects that most of the remaining operators have some type of informal, or undocumented, management program that addresses safety and environmental policies and procedures. The MMS understands that the development and implementation of this type of program would place an additional burden on all operators, some more than others. However, MMS believes that a safety and environmental management program would benefit all lessees/operators and lead to improved operations on the OCS.

Comments on the SEMP concept and proposed plan requirements are requested. Commenters are encouraged to submit detailed comments with justifications or background information supporting their responses. In addition, MMS requests responses to the following questions concerning such a program:

1. Question 1 is addressed primarily to OCS operators or other entities that have implemented management programs similar to the program described in this notice. Briefly describe the management program that has been implemented. How are actions or functions of the program documented? How much recordkeeping is involved with the program? Are internal audits an integral part of the program and how are they conducted? How long was the program implementation period? What resources were necessary to develop and implement the program? Has the program produced noticeable improvements in overall activities or operations?

2. Are there other methods, procedures, or alternative forms of management programs that essentially accomplish the same goals and objectives as SEMP? Please describe these alternatives.

3. Is the establishment of formal training and inspection, testing, and maintenance programs critical to success of this program? Should a program of industry-wide, standardized safety training courses, similar to well-control training, be established to meet minimum training requirements that would be described in the SEMP plan?

4. Should SEMP plans be developed for each individual facility? Could SEMP plans be developed on a regional basis and still promote safety and environmental protection on individual facilities?

5. How long would it take to develop and implement a program similar to SEMP?

6. How can MMS and industry avoid the SEMP plan becoming just a paperwork exercise?

7. What are the estimated costs to implement, develop, and maintain this type of program?

Dated May 20, 1991.

Barry Williamson,

Director, Minerals Management Service.

[FR Doc. 91-15583 Filed 7-1-91; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

Dynamic Concepts, Inc.; Copying Fees

July 1, 1991.

Effective July 25, 1991, copying cost for Commission records provided by Dynamic Concepts, Inc., will increase in accordance with Order 3-88-2-2011/ICC-88-C-0001.

Charges will be as follows:

Sidney L. Strickland, Jr.,

Secretary.

DCI Schedule of Prices

Total Package

Standing Order for orders requiring one or more copies of every document released by ICC—$.26 per page.

Partial Package

Standing Order for orders requiring a specified individual docket prefix as desired by the customer for documents released by the ICC—$.26 per page.

Individual Document Orders

All orders placed for documents serviced during the last 1 year on an ad hoc basis

A. On site services:

Orders other than *standing* processed on contractor machines on documents served during last 1 year—$.27 per page.

B. On site self-service:

All orders produced on self-service photocopy machines—$.22 per page.

C. Expedited Services:

Orders requesting 4-hour service—$.32 per page.

Other Charges

Postage Charges:

All orders sent 1st Class, priced as applies based on U.S. Postage rates:

Handling Charges:

Charged for all documents mailed in flat envelopes—$.75 per order.

Charged for all documents mailed in Jiffy Bags/Boxes—$1.00 per order.

Sales Tax:

Charged to all orders sold in DC or mailed to a DC address—6%.

Outside Copy Request (where DCI does the copying)—$.30.

[FR Doc. 91-15726 Filed 7-1-91; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 89-48]

John T. Flanigan, D.D.S.; Partial Revocation of Registration Granting of Modified Registration

On June 5, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to John T. Flanigan, D.D.S. (Respondent), 14825 North Florida Avenue, Tampa, Florida 33612, proposing to revoke his DEA Certificate of Registration, AF1043429, and to deny any pending application for registration as a practitioner under 21 U.S.C. 823(f). The statutory predicate for the Order to Show Cause was Respondent's conviction of a controlled substance related felony in the Thirteenth Judicial Circuit Court for the County of Hillsborough, Florida.

By letter dated June 23, 1989, Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in Tampa, Florida on January 16, 1990.

On March 22, 1991, Judge Bittner issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. No exceptions were filed and on May 6, 1991, the administrative law judge transmitted the record of these proceedings to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that Respondent is a dentist practicing in Tampa, Florida. In 1974, during Respondent's second year of dental school, he was hospitalized with the Guillain-Barre Syndrome. As a consequence, Respondent was paralyzed from the waist down for several weeks, and since that time he has suffered from chronic lower back pain. For a number of years, Respondent attempted to manage the pain with only over-the-counter medicines, such as aspirin and Tylenol. However, according to Respondent in January 1986, he severely aggravated his back pain by working excessively long hours on his feet and performing extractions.

Respondent testified that as a result of his increased pain, he wrote prescriptions for Empirin No. 3, Acetaminophen No. 3, and Fiorinal No. 3. Respondent knew that it was outside of the scope of legitimate practice for him to issue prescriptions in his own name, so he issued the prescriptions in the name of one of his employees. The employee would have the prescriptions filled, and then would return the controlled substances to Respondent for his personal use. Respondent engaged in this practice for approximately eighteen months, writing prescriptions in the names of at least six of his employees. In this manner, Respondent prescribed a total of 1,801 dosage units between 1985 and 1987.

The administrative law judge also found that on March 10, 1988, the Florida Department of Professional Regulation and the Hillsborough County, Florida, Sheriff's office executed a search warrant at Respondent's office and discovered in his shower a trash bag containing empty prescription bottles. In March 1988, the Florida Department of Professional Regulation directed Respondent to undergo an evaluation for chemical dependency at Glenbeigh Hospital, a drug rehabilitation center. Dr. Zfaz, who is in charge of Glenbeigh Hospital, diagnosed Respondent as having a "substance abuse disorder" with respect to alcohol and opiates (codeine).

On May 4, 1988, Respondent was arrested and on November 22, 1988, in the Circuit Court for the Thirteenth Judicial Circuit of Florida, he pled nolo contendere to the felony charge of obtaining controlled substances by fraud. As a result of this plea, Respondent was sentenced to: Serve eighteen months probation, serve eighty community service hours, pay approximately $600.00 in court costs, make a $1,000.00 contribution to the Hillsborough County Drug Education Trust Fund, and undergo drug and alcohol evaluation, counseling and urine screens at the outpatient facility. In October 1989, Respondent's probation was terminated at the request of his probation officer.

Following Respondent's trial, the court ordered him to undergo a drug evaluation. As part of the evaluation, Respondent was interviewed by a rehabilitation counselor. Respondent also took the Minnesota Multi-phasic Personality Inventory (MMPI) examination and underwent random urine tests. The results of both the random urine screen and the MMPI indicated that Respondent was not then chemically dependent and did not require rehabilitation. The rehabilitation counselor testified that Respondent's use of controlled substances for significantly longer than one month did not, standing alone, indicate chemical dependency.

Respondent testified that he took prescription medication only when in pain. Respondent's usual dosage was two or three tablets per day when necessary, he never consumed more than six per day, and he only took the latter amount when he was in extreme pain.

Respondent also testified that the last prescription that he issued for controlled substances for his own use was dated September 21, 1987. He stated that the controlled substances never completely alleviated his constant back pain, and after seriously exacerbating his condition by working in his garden, he decided to seek treatment. Consequently, Respondent saw Dr. Allan Miller, a board-certified orthopedist. Respondent also alleviated the strain on his back by shortening his long office hours and by employing an associate.

The administrative law judge concluded that it is undisputed that Respondent has been convicted of a felony relating to controlled substances. This alone is sufficient basis to revoke Respondent's registration. However, based on the fact that Respondent stopped self-prescribing controlled substances more than seven months before he was arrested, that there is no evidence that he has used controlled substances since that time, or that Respondent took controlled substances for any other purpose other than relieving his lower back pain, the administrative law judge recommended that Respondent's DEA registration should not be revoked, but should be subject to restrictions. The Administrator adopts the recommended ruling, findings of fact, conclusions of law and decision of the administrative

law judge in its entirety. The Administrator concludes that there is sufficient evidence in the record to believe that Respondent will utilize a DEA registration in a responsible and professional manner.

The Administrator does, however, impose the following restrictions upon Respondent's DEA registration:

1. Respondent shall be authorized only to prescribe controlled substances in schedules III, IV and V; he shall not handle Schedule II controlled substances in any manner.

2. Respondent shall not possess or store any controlled substance in his office or home or dispense any controlled substance from his office or home.

3. Respondent shall not write any prescription for any controlled substance for himself or any member of his family, and shall not obtain or possess for his own use any controlled substance except upon the written prescription of a licensed physician, unless such substance is legitimately available without prescription. In the event another physician prescribes a controlled substance for Respondent, Respondent shall notify the Special Agent in Charge of the nearest DEA office, or his designee, that he is about to obtain a controlled substance for his own use, and the reasons for which the controlled substance is being prescribed.

4. Each calendar quarter, for at least two years from the date of the entry of this final order, Respondent shall submit to the Special Agent in Charge of the nearest DEA office, or his designee, a log listing all the controlled substances Respondent has prescribed during the previous quarter.

Accordingly, the Administrator of the DEA, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AF1043429, previously issued to John T. Flanigan, D.D.S., be, and it hereby is, revoked as to schedule II controlled substances. The Administrator further orders that Dr. Flanigan's renewal application be granted as to schedule III, IV and V substances only, subject to the conditions enumerated above. This order is effective August 1, 1991.

Dated: June 25, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91-15627 Filed 7-1-91; 8:45 am]

BILLING CODE 4410-09-M

Vincent J. Rodriguez, M.D.; Revocation of Registration

On May 2, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Vincent J. Rodriguez, M.D. (Respondent) of 9950 W. 80th Avenue, suite 16, Arvada, Colorado 80005, proposing to revoke his DEA Certificate of Registration, BR1110802, and to deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f). The statutory predicate for the proposed action was Respondent's lack of authorization to handle controlled substances in the State of Colorado. 21 U.S.C. 824(a)(3).

By letter dated May 30, 1991, Respondent waived his opportunity for a hearing and instead submitted a written statement regarding his position on the matters of fact and law involved pursuant to 21 CFR 1301.54(c). The Administrator hereby enters his final order in this matter based upon the investigative file and Respondent's written statement. 21 CFR 1301.57.

The Administrator finds that on April 10, 1991, the Colorado State Board of Medical Examiners revoked Respondent's license to practice medicine. As a result, Respondent is not currently authorized to handle controlled substances in the State of Colorado, where he is registered with the Drug Enforcement Administration.

The Administrator and his predecessors have consistently held that DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances. 21 U.S.C. 823(f). See, Richard J. Lanham, M.D., Docket No. 90-49, 56 FR 13489 (1991); Edward L. McIver, M.D., 53 FR 16477 (1988); Howard J. Reuben, M.D., 52 FR. 8375 (1987); Ramon Pla, M.D., Docket No. 86-54, 51 FR 41168 (1986).

Respondent, in his written statement, does not dispute the fact that he is not currently authorized to handle controlled substances in the State of Colorado. Rather, Respondent contends that the action of the Colorado State Board of Medical Examiners was based on the Florida Department of Professional Regulation's emergency suspension of his license to practice medicine in the State of Florida on or about February 6, 1990. Respondent submitted documentation that on May 6, 1991, Respondent and the Florida Department of Professional Regulation entered into a Stipulation which permitted Respondent to seek reinstatement of his Florida medical license. In addition, Respondent submitted a letter dated May 30, 1991, from the Medical Director of the La Hacienda Treatment Center in Hunt, Texas, outlining Respondent's drug rehabilitative efforts.

The Administrator has considered the facts before him and concludes that Respondent's DEA Certificate of Registration in Colorado must be revoked. The action taken by the Florida Department of Professional Regulation, as well as Respondent's rehabilitative efforts, is irrelevant to this matter. What is relevant is whether or not Respondent is authorized to handle controlled substances in the state in which he is registered with the Drug Enforcement Administration—Colorado. Respondent does not dispute the fact that he is not so authorized.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, BR1110802, previously issued to Vincent J. Rodriguez, M.D., be, and it hereby is, revoked, and any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective August 1, 1991.

Dated: June 25, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91-15628 Filed 7-1-91; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement for Assessments of the Readiness of Advancement Applicants

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement for the design and implementation of a process for conducting independent assessments of the readiness of approximately 125 arts organizations which have applied to the Endowment to participate in the Advancement Program. The recipient of the Cooperative Agreement through one-day, on site or telephone interviews

with key staff and board members, and an analysis of application materials, will prepare written reports which will provide professional judgment on each organization's financial and organizational status and capacity to develop through the period of technical assistance services provided by the program. The recipient will also identify principal areas of need in order to assist in the selection of appropriate consultants and to permit planning for supplementary workshops or specialized assistance. Those interested in receiving the Solicitation package should reference Program Solicitation PS 91–13 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 91–13 will be available approximately July 26, 1991 with proposals due August 26, 1991.

ADDRESSES: Requests for the Solicitation should be addressed to National Endowment for the Arts, Contracts Division, room 217, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: William Hummel or Anna Mott, Contracts Division, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506 (202/682–5482).

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 91–15718 Filed 7–1–91; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Experimental Program to Stimulate Competitive Research (EPSCoR)

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Advisory Panel for Experimental Program to Stimulate Competitive Research (EPSCoR).

Dotes: July 17–19, 1991.

Times: 3:30 p.m.–5:30 p.m., July 17, 1991; 8 a.m.–5 p.m., July 18, 1991; 8 a.m.–12 p.m., July 19, 1991.

Place: New Hampshire Suites, 1121 New Hampshire Avenue, NW., Washington, DC 20037.

Type of Meeting: Closed.

Agenda: Review and evaluate Science Proposals submitted to the EPSCoR Advanced Development Competition.

Contact Person: Dr. Richard J. Anderson, Program Manager, Office of Experimental Programs, National Science Foundation, room 1228, Washington, DC 20550 (202) 357–7560.

Dated: June 26, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–15638 Filed 7–1–91; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Physics; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Physics.

Dates: July 17–19, 1991.

Times: 8:30 a.m.–9 a.m., July 17, 1991; 8 a.m.–4 p.m., July 18, 1991; 8 a.m.–5 p.m., July 19, 1991.

Place: Cornell University.

Type of Meeting: Closed.

Agenda: To review the technical feasibility and estimated cost of a proposed upgrade of the Cornell Electron Storage Ring.

Contact Person: David Berley, Program Director for Elementary Particle Physics, National Science Foundation, room 341, Washington, DC 20550, 202–357–9575.

Dated: June 26, 1991.

M. Rebecca Winkler,

Committee Monogement Officer.

[FR Doc. 91–15639 Filed 7–1–91; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* NRC form 4, "Occupational External Radiation Exposure History". NRC form 5, "Current Occupational External Radiation Exposure".

3. *The form number if applicable:* NRC forms 4 and 5.

4. *How often collection is required:* NRC form 4 is maintained by the licensee. It is not submitted to the NRC. NRC form 5 is updated at least quarterly and maintained by the licensees. Upon termination, form 5 is transmited to the NRC and the employee.

5. *Who will be required to ask to report:* NRC licensees.

6. *An estimate of the number of responses:*

NRC Form 4–40,000.
NRC Form 5–40,800,000.

7. *An estimate of the number of hours annually needed to complete the requirement or request:*

NRC Form 4—10,000 hours (40,000 forms × 0.25 hr/form) or about 1.2 hours per licensee.

NRC Form 5—166,320 hours (400,000 × 0.034 hr/form × 12) or about 20 hours per licensee.

8. *An indication of whether section 3504(h), Public Law 96–511 applies:* Not applicable.

9. *Abstract:* NRC Form 4 is used to record the previous occupational exposures of individuals to ensure that the accumulated exposure does not exceed regulatory limits.

NRC Form 5 is used to record the current occupational exposures of individuals on at least a quarterly basis to ensure that the regulatory limits are not exceeded.

Copies of the submittal may be inspected or obtained for a fee from the

NRC Public Document Room, 2120 L Street, NW., Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150–0005, 3150–0006), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo Shelton (301) 492–8132.

Dated at Bethesda, Maryland, this 24th day of June 1991.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 91–15730 Filed 7–1–91; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. *Type of submission, new, revision, or extension:* New.

2. *The title of the information collection:* Emergency Telecommunications System Implementation.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* One time.

5. *Who will be required or asked to report:* NRC nuclear power reactor licensees.

6. *An estimate of the number of responses:* 116.

7. *An estimate of the total number of hours needed to complete requirement or request:* 3,712 (32 hours per response).

8. *An indication of whether section 350(h), Public Law 96–511 applies:* Not applicable.

9. *Abstract:* Licensees will be requested to provide information on site communication capabilities and environmental characteristics in order for the NRC to design and implement a satellite and terrestrial communications network.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reeviewer: Ronald Minsk, Office of Information and Regulatory Affairs, NEOB–3109, 3150–, Office of Management and Budget; Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton (301) 492–8132.

Dated at Bethesda, Maryland, this 24th day of June 1991.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 91–15731 Filed 7–1–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–341]

Detroit Edison Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPF–43 issued to Detroit Edison Company (the licensee) for operation of Fermi-2 located in Monroe County, Michigan.

The proposed amendment would revise the Technical Specifications (TS) by adding a second Fuel Storage Pool Area Criticality Monitor to Table 3.3.7.1–1 of the TS.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed change against the above standards as required by 10 CFR 50.92.

The proposed change would not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed change does not change or affect any accident or transient analysis, does not physically modify the plant and does not introduce a new mode of plant operation. The proposed change adds a second Area Criticality Monitor to the Technical Specifications to ensure that the redundancy requirement of 10 CFR 70.24 is maintained. The addition of this monitor to Technical Specification does not require a plant modification or new mode of plant operations because the subject monitor is currently installed and fully functional. The proposed ACTION statement more accurately represents the LCO by requiring continuous monitoring of the subject area if both criticality monitors are inoperable and fuel movement is in progress.

The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change does not introduce a new mode of plant operation or involve a physical modification to the plant.

The proposed change would not involve a significant reduction in a margin of safety because, as previously mentioned above, the change does not physically modify the plant and does not introduce a new mode of plant operation. The proposed change does not change any safety limit or limiting safety system setpoint, or modify any safety related system. The proposed change will increase the margin of safety because the reliability of the spent fuel pool area criticality monitoring system has been increased by requiring two monitors as compared to one. Additionally, the proposed ACTION statement more accurately represents the LCO by requiring continuous monitoring of the subject area if both criticality monitors are inoperable and fuel movement is in progress.

Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final

determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 1, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commisison or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitoner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participte as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves a signficant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Ledyard Marsh: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226, attorney for the licensee.

Nontimely filing of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 18, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 25th day of June 1991.

For the Nuclear Regulatory Commission.

William O. Long,

Acting Director, Project Directorate III–1, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91–15732 Filed 7–1–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–322–OLA; ASLBP No. 91–621–01–OLA (Confirmatory Order Modification, Security Plan Amendment and Emergency Preparedness Amendment)]

Atomic Safety and Licensing Board; Before Administrative Judges: Morton B. Margulies, Chairman, Dr. George A. Ferguson, Dr. Jerry R. Kline

June 25, 1991.

Order—(Changing Location of Prehearing Conference)

In the Matter of Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1).

Shoreham-Wading River Central School District's and Scientists and Engineers for Secure Energy, Inc.'s unposed joint motion to change the location of the prehearing conference in the subject proceeding from Hauppauge, New York to the Washington, DC area, for good cause shown, is hereby granted.

The prehearing conference scheduled for July 23, 1991, at Hauppauge, New York is cancelled. Instead, the prehearing conference will be held on July 23, 1991 beginning at 9:30 a.m., in the Nuclear Regulatory Commission Hearing Room, 5th Floor, 4350 East West Highway, Bethesda, Maryland.

It is *ordered.*

For the Atomic Safety and Licensing Board.

Bethesda, Maryland.

Morton B. Margulies,

Chairman, Administrative Law Judge.

[FR Doc. 91–15733 Filed 7–1–91; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed 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: John Daley, (202) 606–0950.

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 213 on June 4, 1991 (55 FR 12973). Individual authorities established or revoked under Schedules A and B and established under Schedule C between May 1 and May 31, 1991, 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 will be published as of June 30, 1991.

Schedule A

No Schedule authorities were established or revoked during May.

Schedule B

The following exception was established:

Armed Forces Retirement Home

One Resource Management Officer position and one Public Works Officer position, GS/GM–15 and below, with the Naval Home, Armed Forces Retirement Home, in Gulfport, Mississippi. Effective May 28, 1991.

Schedule C

Department of Agriculture

One Special Assistant to the Deputy Administrator, Program Operations, Farmers Home Administration. Effective May 27, 1991.

One Special Assistant to the Secretary. Effective May 31, 1991.

One Confidential Assistant to the Administrator, Farmers Home Administration. Effective May 31, 1991.

One Private Secretary to the Deputy Assistant Secretary, Natural Resources and Environment. Effective May 31, 1991.

One Private Secretary to the Director, Office of Consumer Affairs. Effective May 31, 1991.

Department of Commerce

One Special Assistant to the Director, Office of Space Commerce, Office of the Secretary. Effective May 10, 1991.

One Confidential Assitant to the Special Assistant to the Secretary and Director of Operations. Effective May 10, 1991.

One Special Assistant to the Deputy Secretary, Office of the Secretary. Effective May 10, 1991.

One Confidential Assistant to the Deputy Assistant Secretary for Africa, Near East and South Asia, International Trade Administration. Effective May 10, 1991.

Department of Defense

One Assistant to the Secretary. Effective May 16, 1991.

One Special Assistant to the Director, Strategic Defense Initiative Organization. Effective May 31, 1991.

Department of Energy

One Confidential Assistant to the Commissioner, Federal Energy Regulatory Commission. Effective May 7, 1991.

Department of Transportation

One Congressional Liaison Officer to the Assistant Administrator for Government and Industrial Affairs, Federal Aviation Administration. Effective May 13, 1991

Environmental Protection Agency

One Director, Executive Secretariat to the Chief of Staff. Effective May 15, 1991.

One Director, Division of Congressional Liaison to the Associate Administrator, Office of Congressional and Legislative Affairs. Effective may 16, 1991.

One Special Assistant to the Associate Administrator, Office of Congressional and Legislative Affairs. Effective May 31, 1991.

Federal Emergency Management Agency

One Deputy to the General Counsel. Effective May 9, 1991.

One Assistant Associate Director for Public Affairs to the Associate Director, External Affairs Directorate. Effective May 27, 1991.

One Confidential Assistant to the Director of Congressional Affairs, External Affairs Directorate. Effective May 31, 1991.

Federal Moritime Commission

One Assistant for International Affairs and Policy to the Chairman. Effective May 31, 1991.

General Services Administration

One Deputy to the Associate Administrator for Congressional and Intergovernmental Affairs. Effective May 21, 1991.

One Special Assistant to the Associate Administrator for Public Affairs. Effective May 27, 1991.

Department of Heolth ond Humon Services

One Director of Advance to the Executive Secretary, Office of the Secretary. Effective May 10, 1991.

Department of Housing ond Urban Development

One Special Assistant to the President, Governmental National Mortgage Association. Effective May 23, 1991.

Inter-Americon Foundotion

One Special Assistant to the President. Effective May 7, 1991.

Interstote Commerce Commission

One Special Assistant to the Chairman. Effective May 30, 1991.

Department of the Interior

One Staff Assistant to the Director, External Affairs Office, Bureau of Reclamation. Effective May 15, 1991.

One Special Assistant to the Assistant to the Secretary and Director, External Affairs. Effective May 23, 1991.

Department of Justice

One Staff Assistant to the Attorney General. Effective May 15, 1991.

One Attorney-Advisor to the Director, Office of Policy Development. Effective May 23, 1991.

One Director, Missing Children's Programs to the Administrator, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs. Effective May 29, 1991.

Department of Labor

One Special Assistant to the Assistant Secretary, Office of Congressional and Intergovernmental Affairs. Effective May 20, 1991.

One Deputy Legislative Officer to the Assistant Secretary, Office of Congressional and Intergovernmental Affairs. Effective May 20, 1991.

One Special Assistant to the Assistant Secretary, Office of Public Affairs. Effective May 20, 1991.

One Staff Assistant to the Secretary. Effective May 31, 1991.

Notional Endowment for the Arts

One Special Assistant to the Director, Office of Policy, Planning and Research. Effective May 22, 1991.

One Congressional Liaison Officer to the Chairman. Effective May 31, 1991.

National Endowment for the Humonities

One Special Assistant to the Chairman. Effective May 15, 1991.

Office of Notionol Drug Control Policy

One Executive Assistant to the Director. Effective May 15, 1991.

Pension Benefit Guoronty Corporation

One Assistant Executive Director for Legislative Affairs to the Executive Director. Effective May 31, 1991.

Deportment of Stote

One Supervisory Public Affairs Specialist to the Director, Office of Public Liaison. Effective May 15, 1991.

One Special Assistant to the Ambassador-at-Large, Coordinator for Refugee Affairs. Effective May 16, 1991.

One Correspondence Office to the Principal Deputy Assistant Secretary. Effective May 17, 1991.

One Deputy to the U.S. Negotiator for Defense and Space, Office of the U.S. Delegation to Geneva for Arms Reduction Negotiation. Effective May 24, 1991.

One Staff Assistant to the Director of Policy Planning Staff, Office of the Secretary. Effective May 31, 1991.

Deportment of the Treosury

One Special Assistant (Banking Policy) to the Secretary. Effective May 30, 1991.

One Special Assistant (Banking Legislation) to the Secretary. Effective May 30, 1991.

Authority: 5 U.S.C. 3301; E.O. 10555, 3 CFR 1954–1958 Comp, P. 218.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91–15703 Filed 7–1–91; 8:45 am]

BILLING CODE 6325–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Agency Report Forms Under OMB Review

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit information collection requests to OMB for review and approval, and to publish a notice in the **FEDERAL REGISTER** notifying the public that the Agency has made such a submission. The proposed form under review is summarized below.

DATES: Comments must be received within 14 calendar days of this notice. If you anticipate commenting on the form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer

Valerie Settles, Office of Management Services, Overseas Private Investment Corporation, suite 461, 1615 "M" Street, NW, Washington, DC 20527; Telephone (202) 457–7142.

OMB Reviewer

C. Marshall Mills, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; Telephone (202) 395–7340.

Summary of Form Under Review

Type of Request: Extension.
Title: Application for Political Risk Insurance for Hydrocarbons Projects.
Form Number: OPIC–77.
Frequency of Use: Other—once per investor per project.
Type of Respondent: Business or other institutions (except farms).
Reporting Hours: 12.
Federal Cost: $3,750.
Authority for Informotion Collection: Section 234(d) of the Foreign Assistance Act of 1961, as amended.
Abstract (Needs ond Uses):

The hydrocarbon application is used to collect from eligible international petroleum companies data on proposed oil and gas projects, which is used in drafting political risk insurance contracts.

Dated: June 21, 1991.
James P. Offutt,
Office of the General Counsel.
[FR Doc. 91-15631 Filed 7-1-91; 8:45 am]
BILLING CODE 3210-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-18213; 812-7609]

Panther Partners, L.P. et al.; Application

June 25, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Panther Partners, L.P. (the "Partnership") and Panther Management Corporation (the "Corporate General Partner"). RELEVANT 1940 ACT SECTIONS: Application under section 6(c) for a conditional order exempting applicants from the provisions of sections 2(a)(19) and 2(a)(3)(D).

SUMMARY OF APPLICATION: Applicants seek a conditional order determining that (a) the Independent General Partners (as described in the application) will not be deemed to be "interested persons" of the Partnership within the meaning of section 2(a)(19) of the 1940 Act solely because of their status as general partners, and (b) limited partners of the Partnership who own less than five percent of the voting interests in the Partnership will not be deemed to be "affiliated persons" as defined by section 2(a)(3)(D) of the 1940 Act solely by reason of their status as partners of the Partnership.

FILING DATE: The application was filed on October 5, 1990, and amended on January 28, 1991, March 18, 1991, and June 19, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interesting 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 July 22, 1991, 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 5th Street, NW., Washington, DC 20549. Applicants; 101 Park Avenue, New York, New York 10178.

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, Staff Attorney, at (202) 272-3022, or Stephanie M. Monaco, Branch Chief, at (202) 272-3030 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained at the SEC's Public Reference Branch.

Applicants' Representations

1. The Partnership is a Delaware limited partnership and proposes to register as a closed-end diversified investment company under the 1940 Act. It will file with the Commission a notification of registration on Form N-8A pursuant to section 8(a) of the 1940 Act and a registration statement on Form N-2 under the 1940 Act.

2. Units representing limited partnership interests in the Partnership will be sold in private placement transactions pursuant to Regulation D under the Securities Act of 1933, as amended, exclusively to individuals and companies (as defined in rule 205-3 under the Investment Advisers Act of 1940 (the "Advisers Act")) each of whom or which is believed to have a net worth in excess of $1 million. Units will be offered and sold to limited partners directly by the Partnership and may also be sold through brokers who will receive selling commissions. The Partnership expects to raise a minimum of $50 million in the initial offering of the units. The Partnership currently anticipates that the minimum initial investment in the Partnership by limited partners will be $1 million but in no event less than $100,000. The Partnership will terminate on December 31, 2050, unless dissolved earlier as provided in the limited partnership agreement (the "Partnership Agreement").

3. The Partnership's investment objective is to maximize total return. The Partnership will seek to achieve its objective primarily through purchases and sales, including short sales, of domestic and foreign common and preferred stocks, and options and warrants on such securities. The Partnership also expects to purchase and sell debt securities and money market instruments. The Partnership also may enter into transactions involving options on stock indices, stock index futures contracts, other financial futures, and options on futures contracts.[1] The Corporate General Partner, a Delaware corporation registered as an investment adviser under the Advisers Act will provide advisory services to the Partnership and will be primarily responsible for selecting investments.

4. The Partnership is structured as a limited partnership, rather than as a corporation or business trust, because that form permits more investment flexibility while enabling the Partnership and its partners to receive "conduit" tax treatment for income tax purposes comparable to the tax treatment of registered investment companies and their shareholders.[2] The availability of this conduit tax treatment is conditioned on a number of requirements; for example, that a RIC earn less than 30 percent of its gross income from the disposition of securities held for less than three months. This 30 percent test could severely restrict the Partnership's trading strategies, such as purchasing or writing options expiring in less than three months. In addition, a RIC must meet certain diversification requirements, which, if applicable to the Partnership, would also restrict the Partnership's investment strategies. Moreover, the Partnership's structure will enable it to provide certain tax benefits to investors which are not available to RICs. For example, short-term capital gains earned by the Partnership will be passed-through to investors as such, rather than being characterized as dividend income. Investors with capital losses would be entitled to offset such losses against any short-term capital gains derived from the Partnership. Finally, the Partnership's structure allows the Corporate General Partner to receive

[1] Inasmuch as trading in options and futures contracts raise leveraging concerns under section 18 of the 1940 Act, the Partnership will at all times cover such transactions with matched portfolio holdings or offsetting positions, or will maintain cash in a segregated account in an amount equal to all open positions involving short sales, options on stock indices, stock index futures, and other financial futures or options on financial futures. The Partnership expects that its general partners will be exempt from registering as commodity pool operators ("CPOs") on the basis of section 4.5 of the regulations of the Commodity Exchange Act under which the Partnership may enter into certain futures and options contracts if the aggregate initial margin and premiums do not exceed five percent of the fair market value of the Partnership's assets.

[2] A registered investment company typically seeks to qualify as a regulated investment company ("RIC") under subchapter M of the Internal Revenue Code of 1986, as amended (the "Code"). A RIC need not pay federal income taxes to the extent that the company's earnings are distributed in accordance with certain provisions of the Code. The shareholders, however, are subject to federal income taxation on the distributions they receive.

allocations of Partnership income based on the profitability of the Partnership. If paid by a RIC, such fees usually are treated as an "investment expense" subject to the two percent floor on miscellaneous itemized deductions under the Code.

5. The general partners, except for the Corporate General Partner, will be natural persons (the "Individual General Partners"). A majority of the Individual General Partners, of whom there will be at least five, will not be "interested persons" (the "Independent General Partners") of the Partnership. The Individual General Partners will perform the same functions as directors of a registered investment company organized as a corporation, and they will have complete and exclusive control over the management, conduct, and operation of the Partnership's business. The Independent General Partners will perform the same functions as non-interested directors of a registered investment company organized as a corporation. Under the terms of the Partnership Agreement, the Corporate General Partner can participate in the management of the Partnership only if no Individual General Partner remains to continue its business and then only for a period not to exceed 60 days in order to convene a meeting of the Partners for the purpose of electing new Individual General Partners.

6. The limited partners will not have the right to control the Partnership's business, but they will have the right to vote on all matters requiring a shareholder vote under the 1940 Act, including the right to elect and remove general partners, to approve advisory services by the Corporate General Partner, to approve a new or amended investment advisory contract with any other person, to approve proposed changes in the Partnership's fundamental policies or basic structure, and to ratify or reject the appointment of the Partnership's auditors. Each partner will be entitled to vote an amount equal to his Partnership percentage which is determined by dividing the balance of the partner's capital account by the sum of all capital accounts. Prior to the initial sale of units, the Partnership will obtain an opinion of counsel stating that the voting rights do not subject the limited partners to liability as general partners of the Partnership under Delaware law. At the initial meeting of partners, to be held within one year of the initial sale of units, the partners will elect Individual General Partners. Partners holding more than ten percent of the total number of eligible votes may call a meeting of partners to take any action permitted under the Partnership Agreement or the 1940 Act.

7. If the number of the Independent General Partners is ever less than a majority of all Individual General Partners, then the remaining Individual General Partners will elect such a number of additional or successor Independent General Partners to bring the number of the Independent General Partners to a majority, so long as immediately after such election at least two-thirds of the Individual General Partners then serving have been approved by partners holding a majority of voting interests in the Partnership. If at any time less than a majority of the Individual General Partners have been approved by a majority of voting interests in the Partnership, the remaining Individual General Partners shall, within 60 days of such date, call a meeting of partners to approve and elect additional Individual General Partners to fill any existing vacancies. Each Individual General Partner elected at the Initial Meeting, and any successor or additional Individual General Partner, will serve until the dissolution of the Partnership unless he earlier withdraws or resigns or is removed.

8. Limited partners will not be liable for obligations of the Partnership except to the extent that a limited partner participates in the control of the business of the Partnership. Such a partner may be liable to persons reasonably believing that the limited partner is a general partner of the Partnership. The general partners will take such actions as they consider necessary or appropriate to protect the limited liability of the limited partners, including a periodic review of the appropriateness of obtaining errors and omissions insurance for the Partnership.

9. The Partnership Agreement provides that an Individual General Partner's status as a general partner shall terminate if such partner (a) dies, (b) is adjudicated incompetent, (c) voluntarily withdraws as a general partner (upon at least 90 days notice, (d) is removed, (e) is certified by a physician to be mentally or physically unable to perform his duties, (f) is declared bankrupt by a court with appropriate jurisdiction, files a petition commencing a voluntary case under any bankruptcy law or makes an assignment for the benefit of creditors, (g) has a receiver appointed to administer the property or affairs of such partner, or (h) otherwise ceases to be a general partner of the Partnership under Delaware law.

10. The Partnership Agreement provides that the status of the Corporate General Partner shall terminate if it (a) is dissolved or otherwise terminates its existence, (b) voluntarily withdraws as Corporate General Partner, (c) is removed, (d) is declared bankrupt by a court with appropriate jurisdiction, files a petition commencing a voluntary case under any bankruptcy law, or makes an assignment for the benefit of creditors, (e) has a receiver for its property or affairs appointed, or (f) otherwise ceases to be a general partner of the Partnership under Delaware law other than in conjunction with any transfer of its interest in the Partnership as the Corporate General Partner authorized under the Partnership Agreement. The Corporate General Partner may voluntarily withdraw as such provided that (a) its gives the partners written notice of its intent to withdraw at least two years prior to the intended date of withdrawal, or (b) a successor Corporate General Partner has been appointed in accordance with the Partnership Agreement and sections 15(a), 15(c), and 15(f) of the 1940 Act.

11. Under the Partnership Agreement, any general partner may be removed either by (a) the vote or written consent of at least two-thirds of the Individual General Partners not subject to the removal vote, or (b) the vote or written consent of partners holding at least two-thirds of the total number of eligible votes.

12. Under the Partnership Agreement, the authority of the Corporate General Partner to provide advisory services to the Partnership will terminate unless approved at the initial meeting of partners by a majority of the total number of eligible votes and annually thereafter either by a majority of the Individual General Partners (including a majority of Independent General Partners) or by partners holding a majority of the total number of eligible votes. The Partnership or the Corporate General Partner each may terminate the advisory arrangement upon not less than 60 days prior written notice. Under the Partnership Agreement, the authority of the Corporate General Partner to provide advisory services will be terminated automatically in the event of its assignment within the meaning of the 1940 Act.

13. If the Partnership terminates its investment advisory agreement with the Corporate General Partner, the Corporate General Partner may withdraw as such, subject to the limitation that, upon request the Corporate General Partner will remain as a non-advisory Corporate General Partner until the earlier of 180 days following such termination or the date

on which a successor Corporate General Partner is appointed in accordance with the Partnership Agreement and the provisions of sections 15(a), 15(c) and 15(f) of the 1940 Act.

14. The Corporate General Partner initially will receive a maximum annual advisory fee of .75% of the total net assets of the Partnership. In addition, the Corporate General Partner will be entitled to performance-based investment advisory compensation in the form of allocations not to exceed 20% of each limited partner's share of the Partnership profit in excess of losses carried forward from prior years.[3] The allocation will comply with rule 205–3 under the Advisers Act in that it will be based on a formula that includes realized capital losses and unrealized capital depreciation and each limited partner will be required to have a net worth in excess of $1 million. For purposes of determining the amount subject to the performance allocation, each limited partner's share of the Partnership profits will be reduced by the aggregate amount of all prior allocations to the limited partners of losses not previously recovered out of subsequent allocations of profit.

15. To the extent necessary to preserve the Partnership's tax status, the general partners as a group will own at all times Partnership interests equal to not less than one percent of the total (or lesser amounts if total Partnership interests exceed $50 million). The Corporate General Partner will be obligated to make capital contributions to the Partnership in an amount sufficient to meet the general partners' ownership requirement. The Corporate General Partner may not redeem or assign its Partnership interests or otherwise accept distributions in cash or property if such action would reduce the general partners' required interest in the Partnership.

16. Partnership units are not transferable without the written consent of the Individual General Partners and the Corporate General Partner. Transfers occurring by operation of law may result in the repurchase of units by the Partnership. The Partnership will seek an exemptive order or a no-action letter from the staff of the Commission before effecting any such repurchase if no statutory exemption or rule under the 1940 Act applies. If a Limited Partner transfers his units in a manner which is effective under the Partnership Agreement, the Individual General Partners will promptly take all necessary actions to ensure that such transferee or successor becomes a substituted limited partner.

17. Under the Partnership Agreement, the Corporate General Partner may not transfer its interest except in a transaction not constituting an assignment of its authority to provide advisory services to the Partnership within the meaning of section 15(a)(4) of the 1940 Act, and then only (a) to a person controlling, controlled by or under common control with such Corporate General Partner or to a successor to the business and assets of the Corporate General Partner, or (b) with the approval of the Individual General Partners or partners holding more than a majority of the total number of eligible votes.

18. Under the Partnership Agreement, the Individual General Partners may, but are not required to, authorize repurchases of units pursuant to tenders by partners. The Individual General Partners will have sole and complete discretion to determine whether the Partnership should repurchase units and will rely on the recommendation of the Corporate General Partner and consider the following factors: (a) The liquidity of the Partnership's assets, (b) the investment plans and working capital requirements of the Partnership, (c) the relative economies of scale with respect to the size of the Partnership, (d) the history of the Partnership's repurchase of units, (e) the economic condition of the securities markets, and (f) the anticipated tax consequences of any repurchase. The Partnership Agreement limits repurchases to twice a year. The Partnership will repurchase units only on terms determined by the Individual General Partners to be fair to the Partnership and to all partners, and in compliance with section 23(c)(2) of the 1940 Act.

19. The Partnership will be dissolved (a) on December 31, 2050, unless both a majority of the Individual General Partners and partners holding a majority of Partnership voting interests elect within 60 days of such date to continue the Partnership business, (b) upon the affirmative vote to dissolve the Partnership by a majority of Individual General Partners and partners holding at least two-thirds of the total number of eligible votes, (c) upon an election by the Corporate General Partner or upon the termination of the Corporate General Partner's status as such, unless as to either event a majority of the Individual General Partners and partners holding not less than two-thirds of the total number of eligible votes elect within 60 days to continue the Partnership business and a successor Corporate General Partner has been admitted or one or more general partners have agreed to make capital contributions that would otherwise be required under the Partnership Agreement, (d) upon the failure of partners to elect successor Individual General Partners at a meeting called by the Corporate General Partner when no Individual General Partner remains to continue the business of the Partnership, (e) upon the expiration of any three-year period after any limited partner has unsuccessfully submitted a written notice to the Partnership requesting to tender his entire interest for repurchase by the Partnership, or (f) as required by operation of law.

Applicants' Legal Conclusions

20. Each of the Individual General Partners is a partner of the Partnership and a co-partner of the Corporate General Partner and, thus, under section 2(a)(3)(D) of the 1940 Act, each may be deemed an "affiliated person" of the Partnership and of the Corporate General Partner. As an "affiliated person" of the Partnership or the Corporate General Partner, each of the Individual General Partners, including each Independent General Partner, is deemed an "interested person" of the Partnership and the Corporate General Partner under sections 2(a)(19)(A) and 2(a)(19)(B) of the 1940 Act.

21. Applicants believe that granting the requested exemption would be consistent with the policies of section 2(a)(19) of the 1940 Act as reflected in the express language of the section. Section 2(a)(19)(A) provides that a director of a registered investment company should not be deemed an "interested person" of the company solely by virtue of being a member of its board of directors. The Individual General Partners will perform the same functions for the Partnership as directors of an investment company organized as a corporation. Applicants believe that, as a result, the Individual General Partners generally should be viewed the same way, as directors of investment companies organized as corporations, and, therefore, should be not considered "interested persons" of the Partnership solely by virtue of being general partners.

[3] Under the Partnership Agreement, the Partnership profit is calculated for each year as the sum of (a) the dividends and interest income earned by the Partnership, minus (b) all expenses incurred by the Partnership (including fees paid to the general partners but not the performance allocation), plus (c) the Partnership's net realized gains for the year, minus (d) the Partnership's net realized losses for the year, plus or minus (e) the net increase or net decrease in the Partnership's net unrealized appreciation or depreciation for the year.

22. Each limited partner could be deemed to be an affiliated person of the Partnership as well as of each other limited partner and of the general partners merely by virtue of having purchased units and having been admitted to the Partnership as a limited partner. In contrast, a shareholder of a registered investment company organized as a corporation would not be deemed to be an affiliated person of such investment company unless the shareholder owned or controlled five percent or more of the outstanding voting securities of such investment company. For purposes of the 1940 Act, limited partners who hold less than five percent of the Partnership's voting securities should generally be accorded the same treatment as shareholders of an investment company organized as a corporation.

Applicants' Conditions

If the exemptive order requested by applicants is granted, applicants agree to the conditions set forth below.

1. The general partners of the Partnership, except the Corporate General Partner, will be natural persons, and a majority of the Individual General Partners will not be interested persons of the Partnership.

2. The Individual General Partners will assume the responsibilities and obligations imposed on directors of an incorporated investment company registered under the 1940 Act. The Independent General Partners, all of whom will be Individual General Partners, will assume the responsibilities and obligations imposed on non-interested directors of an incorporated investment company registered under the 1940 Act.

3. The Corporate General Partner will not resign or withdraw as the Corporate General Partner of the Partnership without two years prior notice unless (a) a successor Corporate General Partner has been appointed in accordance with the Partnership Agreement and the provisions of sections 15(a), 15(c) and 15(f) of the 1940 Act, or (b) the Partnership terminates its investment advisory agreement with the Corporate General Partner.

4. The limited partners will have the right to vote on all matters which would require their approval under the 1940 Act if they were shareholders of an incorporated registered investment company, including the right to elect or remove general partners, the right to approve any new or amended investment advisory contract, the right to approve proposed changes in the Partnership's fundamental policies, and the right to ratify or reject the appointment of auditors.

5. If a limited partner transfers his units in a manner which is effective under the Partnership Agreement, the general partners will promptly take all necessary actions to ensure that such transferee or successor becomes a substitute limited partner.

6. The Partnership will obtain an opinion of counsel stating that the voting rights provided the limited partners do not subject the limited partners to liability as general partners under Delaware Law.

7. The Partnership will obtain an opinion of counsel that the Partnership should be classified and treated as a partnership for federal income tax purposes.

8. The Partnership will obtain an opinion of counsel that the distributions and allocations provided for in the Partnership Agreement are permissible under section 205 and rule 205-3 under the Advisers Act and under section 15(a) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-15648 Filed 7-1-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Airports District Office at Houston, TX; Closing

Notice is hereby given that on or about July 1, 1991, the Airports District Office at Houston, Texas, will be closed. Services to the general aviation public of Houston, formerly provided by this office, will be provided by the Airports Division Regional Office in Fort Worth, Texas. This information will be reflected in the FAA Organization Statement the next time it is reissued.

Authority: (Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.)

Issued in Fort Worth, Texas, on June 14, 1991.

John M. Dempsey,

Manager, Airports Division.

[FR Doc. 91-15691 Filed 7-1-91; 8:45 am]

BILLING CODE 4910-13-M

Research and Special Programs Administration

[Docket No. P-91-2W; Notice 1]

Transportation of Natural and Other Gas by Pipeline; Petition for Waiver; ANR Pipeline Co.

ANR Pipeline Company (ANR) has petitioned the Research and Special Programs Administration for a waiver from compliance with 49 CFR 192.611(c), which requires confirmation or revision of the maximum allowable operating pressure (MAOP) within 18 months of a change in class location. ANR determined that, effective June 14, 1990, the class location for the 22-inch Southwest Mainline and 30-inch Southwest Mainline Loop between mileposts 883.35 and 884.55, Porter County, Indiana, changed from Class Location 2 to Class Location 3. Such class location change determination was made pursuant to a study required by § 192.609 due to an increase in population density. Absent a waiver, ANR would be required, on December 14, 1991, to either (1) reduce MAOP on the lines from 850 psig to 709 psig and 715 psig for the 22-inch and 30-inch lines, respectively, or (2) replace the lines with pipe designed and constructed according to Class 3 standards. ANR seeks a waiver of this requirement for a 10½ month period ending November 1, 1992.

The waiver would allow ANR to maintain throughput pending replacement of both the 22-inch and 30-inch pipelines concurrent with the installation of a new 42-inch Second Mainline loop of the same segment of their pipeline system. ANR filed a certificate application with the Federal Energy Regulatory Commission (FERC) on March 21, 1991, seeking approval to construct the Second Mainline Loop (Docket No. CP91-1616). ANR estimates construction of the 3 pipelines should be complete by November 1, 1992, assuming timely receipt of FERC approval. Further, ANR states that, without the waiver, they must complete construction replacement of the 2 existing lines in September, 1991, to avoid disruption of service to customers.

The 2 lines were inspected by electromagnetic inspection tool in 1985 and 1986, and showed no anomalies requiring maintenance. Both lines are scheduled to be electromagnetically inspected again this year as part of ANR's ongoing in-line inspection program. ANR states that both lines are in good operating condition, have not had any leaks or failures, and have been cathodically protected to required

levels. The pipelines are patrolled every two weeks.

ANR estimates an additional cost of $700,000 to replace the existing pipelines in 1991, and install the new 42-inch Mainline Loop in 1992, when compared to concurrent construction. They also state that simultaneous construction of pipelines will minimize the extent and duration of disturbance to the environment and ecology of the area. This statement seems reasonable.

Because of the previous safe and reliable history of the pipeline, and the additional cost and disruption that 2 construction periods would cause, it seems reasonable to waive the requirements of § 192.611(c) for a 10½ month period, and allow the operator sufficient time to install new pipelines in a single construction period. There is no reason to anticipate a lesser level of safe performance for the existing lines than the previous record shows, or any additional risks to the population in proximity to the line. In view of these reasons and those stated in the foregoing discussion, it appears that a waiver of compliance with § 192.611(c) is not inconsistent with gas pipeline safety, and as a consequence, RSPA proposes to grant the waiver.

Interested parties are invited to comment on the proposed waiver by submitting in duplicate such data, views, or arguments as they may desire. Comments should identify the Docket and Notice numbers, and be submitted to the Dockets Unit, room 8417, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590.

All comments received before August 1, 1991 will be considered before final action is taken. Late filed comments will be considered so far as practicable. All comments and other docketed material will be available for inspection and copying in room 8419 between the hours of 8:30 a.m. and 5 p.m. before and after the closing date. No public hearing is contemplated, but one may be held at a time and place set in a Notice in the **Federal Register** if requested by an interested person desiring to comment at a public hearing and raising a genuine issue.

Issued in Washington, DC on June 26, 1991.

Richard L. Beam,

Acting Associate Administrator for Pipeline Safety.

[FR Doc. 91-15694 Filed 7-1-91; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

June 26, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: None.
Type of Review: New.
Title: Taxpayer Service Toll-Free Assistance Focus Groups.
Description: The focus group interviews are necessary to obtain executives' perceptions of how society benefits from the Service's telephone assistance program and to obtain their ideas for quantifying these benefits. This qualitative information will be used by the Service in developing an approach to establish an optimal level of service.
Respondents: Individuals or households.
Estimated Number of Respondents: 20.
Estimated Burden Hours Per Respondent: 2 minutes.
Frequency of Response: Other (One-Time Interview).
Estimated Total Reporting Burden: 40 hours.

OMB Number: 1545-0162.
Form Number: IRS Form 4136.
Type of Review: Revision.
Title: Credit for Federal Tax on Fuels.
Description: Internal Revenue Code Section 34 allows a credit for Federal excise tax for certain fuels uses. This form is used to figure the amount of income tax credit. Data is used to verify the validity of the claims for the type of use.
Respondents: Individuals or households, farms, businesses or other for-profit, small businesses or organizations.
Estimated Number of Respondents/Recordkeepers: 910,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—7 hrs., 10 min.
Learning about the law or the form—6 min.
Preparing and sending the form to IRS—13 min.
Frequency of Response: Other (One-Time Interviews).
Estimated Total Reporting Burden: 40 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91-15706 Filed 7-1-91; 8:45 am]

BILLING CODE 4830-01-M

Fiscal Service

Renegotiation Board Interest Rate Prompt Payment Interest Rate Contracts Disputes Act

Although the Renegotiation Board is no longer in existence, other Federal Agencies are required to use interest rates computed under the criteria established by the Renegotiation Act of 1971 (Pub. L. 92-41). For example, the Contracts Disputes Act of 1978 (Pub. L. 95-563) and the Prompt Payment Act (Pub. L. 97-177) are required to calculate interest due on claims "* * * at a rate established by the Secretary of the Treasury pursuant to Public Law 92-41 (85 Stat. 97) for the Renegotiation Board."

Therefore, notice is hereby given that, pursuant to the above mentioned sections, the Secretary of the Treasury has determined that the rate of interest applicable for the purpose of said sections, for the period beginning July 1, 1991 and ending on December 31, 1991, is 8½% per centum per annum.

Dated: June 27, 1991.

Marcus W. Page,

Deputy Fiscal Assistant Secretary.

[FR Doc. 91-15708 Filed 7-1-91; 8:45 am]

BILLING CODE 4810-35-M

Internal Revenue Service

[Project No. IRS-91-064]

Proposed Establishment of a Federally Funded Research and Development Center

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of intent.

SUMMARY: The Internal Revenue Service (IRS) announces its intention to sponsor and establish a Federally Funded Research and Development Center (FFRDC) to conduct research and advise IRS officials on technical aspects of Tax Systems Modernization (TSM). TSM is a long-term initiative of major importance involving the modernization and redesign of the tax processing and administrative systems and methods employed by the IRS. The FFRDC will be established under the authority of 48 CFR subpart 35.017 and the Office of Federal Procurement Policy (OFPP) Policy Letter 84–1. This is the second of three announcements under the authority of 48 CFR 5.205(b).

Of paramount importance in fulfilling this requirement will be the absence of actual or potential conflicts of interest (whether personal or organizational, real or apparent, or financial or non-financial) in recommendations that may be made to IRS officials. The scope of work of the FFRDC will be governed by a Sponsoring Agreement encompassing technology assessment, strategic planning, and acquisition support. These three major areas of support are described below. (1) Technology Assessment—The FFRDC will conduct continuing laboratory research and experimentation to evaluate new and emerging data processing and telecommunications technologies, concepts, and methodologies for potential use in TSM including recommendations on how the technologies, concepts, and methodologies may be timely applied to improving tax processing and taxpayer services. (2) Strategic Planning—The FFRDC will combine technical expertise with knowledge gained from research to provide ongoing advice to IRS officials on strategic plans and designs for TSM. Activities will include the review, critical assessment, verification of, as well as general participation in the development of, high level plans, processes, and strategies for the timely delivery of systems that will meet TSM objectives. (3) Acquisition Support—The FFRDC will support and assist the acquisition of TSM components to ensure conformity with architectural standards and designs as well as the achievement of TSM goals and objectives. This will be accomplished through the review and evaluation of, and general participation in, the development of technical requirements and specifications for critical TSM acquisitions. The FFRDC will participate in the development of technical evaluation criteria and, as an observer on technical evaluation panels, in the evaluation of proposals. In addition, the FFRDC will conduct periodic reviews of the effectiveness and efficiency of operational TSM systems. This notice is not a request for competitive proposals, however, expressions of interest and qualification or capability statements from entities interested and capable of fulfilling this requirement in the Washington, DC, metropolitan area will be considered. The qualification or capability statements received will be used to select potentially qualified entities, which at a later date may be requested to submit more detailed cost and technical proposals.

DATES: The final date for receipt of comments on this action, expressions of interest and qualification or capability statements, in order to be considered, is hereby extended to August 12, 1991.

ADDRESSES: Responses to this notice must be mailed to the Internal Revenue Service, A/C Procurement, Office of End User Acquisitions, 1111 Constitution Avenue, NW., room 6418/ICC Building, P:HR:C:E, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Michelle Faseru, Contracting Officer, (202) 401–4198 or Veronica Fernandez, Contract Specialist, (202) 401–4253.

SUPPLEMENTARY INFORMATION: Upon request, copies of a detailed scope of work for the intended FFRDC will be mailed to any interested party. Requests must be sent to the address stated above and must make reference to "Project no. IRS–91–064".

Gregory D. Rothwell,

Assistant Commissioner (Procurement).

[FR Doc. 91–15633 Filed 7–1–91; 8:45 am]

BILLING CODE 4830–01–M

Office of Thrift Supervision

Guardian Savings & Loan Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Guardian Savings and Loan Association, Huntington Beach, California, on June 21, 1991.

Dated: June 27, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–15699 Filed 7–1–91; 8:45 am]

BILLING CODE 6720–01–M

Ambassador Federal Savings & Loan Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Ambassador Federal Savings and Loan Association, Tamarac, Florida ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 21, 1991.

Dated: June 27, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–15695 Filed 7–1–91; 8:45 am]

BILLING CODE 6720–01–M

Capitol-Union Federal Savings Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Capitol-Union Federal Savings Association, Baton Rouge, Louisiana ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 21, 1991.

Dated: June 27, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–15696 Filed 7–1–91; 8:45 am]

BILLING CODE 6720–01–M

Charter Federal Savings Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Charter Federal Savings Association, Stamford, Connecticut ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 21, 1991.

Dated: June 27, 1991.

By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91-15697 Filed 7-1-91; 8:45 am]
BILLING CODE 6720-01-M

Coral Savings & Loan Association, F.A.; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Coral Savings and Loan Association, F.A., Coral Springs, Florida ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 21, 1991.

Dated: June 27, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91-15698 Filed 7-1-91; 8:45 am]
BILLING CODE 6720-01-M

Financial Savings of Hartford, F.S.B.; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Financial Savings of Hartford, F.S.B., Hartford, Connecticut ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association of June 19, 1991.

Dated: June 27, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91-15700 Filed 7-1-91; 8:45 am]
BILLING CODE 6720-01-M

First Federal Savings Association of Breaux Bridge; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for First Federal Savings Association of Breaux Bridge, Breaux Bridge, Louisiana ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 21, 1991.

Dated: June 27, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91-15701 Filed 7-1-91; 8:45 am]
BILLING CODE 6720-01-M

Great Life Federal Savings Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Great Life Federal Savings Association, Sunrise, Florida ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 21, 1991.

Dated: June 27, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91-15702 Filed 7-1-91; 8:45 am]
BILLING CODE 6720-01-M

UNITED STATES INFORMATION AGENCY

Public and Private Non-Profit Organizations In Support of International Educational and Cultural Activities; Request for Proposals

AGENCY: United States Information Agency.
ACTION: Notice.

SUMMARY: The Office of Citizen Exchanges (E/P) announces a discretionary grants program for private, non-profit organizations in support of projects that link their international exchange interests with counterpart institutions/groups in other countries in ways supportive of the aims of the Bureau of Educational and Cultural Affairs. Interested applicants are urged to read the complete **Federal Register** announcement before addressing inquiries to the Office or submitting their proposals.

DATES: This action is effective from the publication date of this notice through August 30, 1991, for projects whose activities will begin between January 1, 1992, and June 30, 1992.

APPLICATION DEADLINES: Proposals must be received at the U.S. Informational Agency by 5 p.m. e.d.t. on August 30, 1991. Proposals received by the Agency after this deadline will not be eligible for consideration. Faxed documents will not be accepted, nor will documents postmarked August 30, 1991 but received at a later date.

ADDRESSES: Institutions must submit 16 copies of the final proposal and attachments. Proposals must fully accord with the terms of this Request for Proposals (RFP), as well as with Project Proposals Information Requirements (OMB #3116-0175—provided in application packet). (See "Technical Requirements.") Proposals should be delivered or mailed to: U.S. Information Agency, Office of Executive Director (E/X), ATTN: Citizen Exchanges—Discretionary Grants, room 336, 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: The Office of Citizen Exchanges, Bureau of Educational and Cultural Affairs, United States Information Agency, 301 4th Street SW., Washington, DC 20547, (202/619-5348).

SUPPLEMENTARY INFORMATION: The Office of Citizen Exchanges of the United States Information Agency announces a program to encourage, through limited awards to non-profit institutions, increased private sector commitment to and involvement in international exchanges. Awarding of any and all grants is contingent upon the availability of funds.

The Office of Citizen Exchanges works with U.S. private sector non-profit organizations on cooperative international group projects that introduce American and foreign participants to each others' cultural and artistic traditions; social, economic, and political structures; and international interests. The Office supports international projects in the United States or overseas involving leaders or potential leaders in the following fields and professions: Leaders of cultural institutions, urban planners, jurists, specialized journalists (specialists in economics, business, culture, political analysis, international affairs), business professionals, environmental specialists, parliamentarians, educators, economic planning and other government officials.

The Office of Citizen Exchanges strongly encourages the coordination of these activities with respected universities, professional associations, and major cultural institutions in the U.S. and aboard, but particularly in the U.S. Projects should be intellectual and cultural, not technical. Vocational training (an occupation other than one requiring a baccalaureate or higher academic degree; i.e., clerical work, auto maintenance, etc. and other occupations

requiring less than two years of higher education) and technical training (special and practical knowledge of a mechanical or a scientific subject which enhances mechanical, narrowly scientific, or semi-skilled capabilities) are ineligible for support. In addition, scholarship programs are ineligible for support. Each private sector activity must maintain a non-political character, should maintain its scholarly integrity, meet the highest professional standards, and reflect the balance and diversity of American society.

Proposals for projects taking place in the United States or overseas are welcome for topics that involve any area of the world. However, the Office strongly encourages those that involve Africa, Latin America, the Middle East, and South Asia (including Indonesia, Malaysia, Thailand, and the Philippines).

The Office does not support proposals limited to conferences or seminars (i.e., one to fourteen-day programs with plenary sessions, main speakers, panels, and a passive audience). It will support conferences only insofar as they are part of a larger project in duration and scope which is receiving USIA funding from this competition. USIA-supported projects may include internships; study tours; short-term, non-technical training; and extended, intensive workshops taking place in the United States or overseas.

The participation of a respected university or scholarly organization in Office of Citizen Exchanges programs is decidedly advantageous. Further, the themes addressed in these exchange programs must be of long-term importance rather than focused exclusively on current events or short-term issues. In every case, a substantial rationale must be presented as part of the proposal, one that clearly indicates the distinctive and important contribution of the overall project, including where applicable the expected yield of any associated conference.

No funding is available exclusively to send U.S. citizens to conferences or conference-type seminars overseas; neither is funding available for bringing foreign nationals to conferences or to routine professional association meetings in the United States.

Projects that duplicate what is routinely carried out by private sector and/or public sector operations will not be considered. USIS post consultation by applicants, prior to submission of proposals, is strongly recommended for all programs.

Creative Arts Grant Program

The Creative Arts Division (E/PA), Office of Citizen Exchanges, encourages proposals from U.S. non-profit organizations for exchanges of professionals in the following fields: Music, dance, theater, literature, visual arts, architecture, folk arts, crafts and folklore, museum exchanges, and historical/cultural conservation/preservation.

Proposals must include an international exchange of persons component involving cultural leaders and commentators, critics, administrators and professionals in the above mentioned fields. Priority consideration will be accorded to institutionally-based projects involving artists in the creation of their particular art forms. Proposed projects may operate either to or from the United States, preferably in both directions. Proposals potentially leading to institutional linkages will receive priority consideration in the review process.

E/PA projects should utilize and support the cultural network of USIS posts around the world by providing international linkages for the highest quality arts endeavors of American non-profit organizations.

The combined interests of quality and prudent use of limited resources make it necessary to operate through competitive processes in which U.S. Information Service posts retain the prerogative to nominate foreign arts professionals for projects taking place in the United States, while the American non-profit organizations retain the prerogative to select award-winners from among USIS-post nominees. E/PA seeks professionalism, fairness and balance in the distribution of awards among nominees. Projects to send American professionals to other countries should assure similar guarantees of quality, fairness and balance in the selection of participants.

Creative Arts Program Exclusions

E/PA does not accept proposals for the support of performing arts productions or tours, film festivals, independently-operating international competitions, community-level arts presentations for general audiences, exhibits, or academic arts programs. E/PA does not support conferences or seminars except insofar as they are integral parts of larger projects leading to institutional linkages. Conditions for such support are the same as for those defined above under General Information.

Funding and Budget Requirements for All Submissions

The Office of Citizen Exchanges requires co-funding with grantees in all projects. Proposals with cost sharing of less than 33 percent of the total project cost must provide exceptionally strong and convincing justification even to receive consideration and in any event would stand a low chance of being funded. Since USIA grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of support. Grant applications should demonstrate substantial financial and in-kind support using a three-column format that clearly displays cost-sharing support of proposed projects. The required format follows:

Line item travel, per diem, etc.	USIA support	Cost sharing	Total
Total	$	$	$

Funding assistance is limited to participant travel and per diem requirements with modest contributions to defray administrative costs (salaries, benefits, other direct and indirect costs), which for this year may not exceed 20 percent of the total funds requested. The grantee institution may wish to cost-share any of these expenses. Organizations with less than four years' experience in conducting international exchange programs are limited to $60,000 of USIA support, and their budget submissions should not exceed this amount. In most cases, grant proposals may not exceed a limit of $150,000 in the amount requested from the USIA.

Additional Guidelines and Restrictions

Office of Citizen Exchanges grants are not given to support projects whose focus is limited to technical or vocational subjects, or for research projects, for youth or youth-related activities (participants' age under 25), for publications funding, for student and/or teacher/faculty exchanges, for film festivals and exhibits. Nor does this office provide scholarships or support for long-term (a semester or more) academic studies. Competitions sponsored by other Bureau offices are also announced in the **Federal Register.**

For projects that would begin after June 30, 1992, competition details will be announced in the **Federal Register** on or about December 1, 1991. Inquiries concerning technical requirements are

welcome prior to submission of applications.

Application Requirements

Proposals must contain a narrative which includes a complete and detailed description of the proposed program activity as follows:

1. A brief statement of what the project is designed to accomplish, how it is consistent with the purposes of the USIA award program, and how it relates to USIA's mission.

2. A concise description of the project, spelling out complete program schedules and proposed itineraries, who the participants will be, where they will come from, and how they will be selected.

3. A statement of what follow-up activities are proposed, how the project will be evaluated, what groups, beyond the direct participants, will benefit from the project and how they will benefit.

4. A detailed three-column budget.

Review Criteria

USIA will consider proposals based on the following criteria:

1. *Quality of Program Idea*: Proposals should exhibit originality, substance, rigor, and relevance to Agency mission.

2. *Institution Reputation/Ability/Evaluations*: Institutional grant recipients should demonstrate potential for program excellence and/or track record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG). Relevant evaluation results of previous projects are part of this assessment.

3. *Project Personnel*: Personnel's thematic and logistical expertise should be relevant to the proposed program:

4. *Program Planning*: Detailed agenda and relevant work plan should demonstrate substantive rigor and logistical capacity.

5. *Thematic Expertise*: Proposal should demonstrate expertise in the subject area which guarantees an effective sharing of information.

6. *Cross-Cultural Sensitivity/Area Expertise*: Evidence of sensitivity to historical, linguistic, and other cross-cultural factors; relevant knowledge of geographic area should be evident.

7. *Ability to Achieve Program Objectives*: Objectives should be reasonable, feasible, and flexible. Proposal should clearly demonstrate how the grantee institution will meet the program's objectives.

8. *Multiplier Effect*: Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional ties.

9. *Cost-Effectiveness*: The overhead and administrative components should be kept as low as possible. All other items should be necessary and appropriate to achieve the program's objectives.

10. *Cost-Sharing*: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

11. *Follow-on Activities*: Proposals should provide a plan for continued exchange activity (without USIA support) which insures that USIA supported programs are not isolated events.

12. *Project Evaluation*: Proposals should include a plan to evaluate the activity's success.

Technical Requirements

Proposals can only be accepted for review when they are fully in accord with the terms of this RFP as well as with Project Proposal Information Requirements (OMB #3116–0175) as follows:

1. Bureau of Educational and Cultural Affairs Grant Application Cover Sheet (OMB #3116–0173).

2. Assurance of Compliance with U.S. Information Agency Regulations under title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and title IX of the Education Amendments of 1972 (OMB #3116–0191).

3. Certification Regarding Drug-Free Workplace Requirements for Grantees Other Than Individuals.

4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion, Primary Covered and Lower Tier Covered Transactions, Forms IA–1279 and IA–1280.

5. Compliance with Office of Citizen Exchanges Additional Guidelines for Conferences (if applicable).

6. Compliance with Travel Guidelines for Organizations Inside and Outside Washington, DC (if and as applicable).

7. For proposals requesting $100,000 orr more in grant monies, Certification for Contracts Grants and Cooperative Agreements, Form M/KG–13.

8. For proposals requesting $100,000 or more in grant monies, Disclosure of Lobbying Activities (OMB #0348–0046).

Forms may be obtained by writing to the Office of Citizen Exchanges (E/P), USIA, 301 4th Street SW., Washington, DC 20547.

Additional Guidance

The Office of Citizen Exchanges offers the following additional guidance to prospective applicants:

1. The Office of Citizen Exchanges encourages project proposals involving more than one country. However, single-country projects that are clearly defined and possess the potential for creating and strengthening continuing linkages between foreign and U.S. institutions are also welcome.

2. Proposals for bilaterial programs are subject to review and comment by the USIS post in the relevant country, and pre-selected participants will also be subject to USIS post review.

3. Bilateral programs should clearly identify the counterpart organization and provide evidence of the organization's participation.

4. The Office of Citizen Exchanges will consider proposals for activities in other countries when USIS posts are consulted in the design of the proposed program and in the choice of the most suitable venues for such programs.

Notification

All applicants will be notified of the results of the review process on or about December 1, 1991. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: June 21, 1991.

William P. Glade,

Association Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91–15736 Filed 7–1–91; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Commission on the Future Structure of Veterans Health Care; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that a meeting of the Commission on the Future Structure of Veterans Health Care will be held on Thursday, July 18, 1991. The session will be held between 9 a.m. and 3 p.m. at 650 Massachusetts Avenue NW., Washington, DC, 2nd floor conference room. The Commission's purpose is to review the missions and programs of the VA's health care facilities to determine whether changes in services, programs, or missions at individual facilities are needed, with a focus on providing care to eligible veterans in 2010. The agenda for the meeting will include presentations to the Commission by various VA and non-VA

officials as well as working sessions for the Commissioners to discuss, study, and analyze specific critical VA health care issues. The meeting will open to the public up to the seating capacity of the room. Interested persons may file written statements with the Commission before or within 10 days after the close of the meeting.

Persons wanting to file written statements or wanting additional information regarding the meeting should contact Mr. Robert Moran, Commission on the Future Structure of Veterans Health Care, Techworld Plaza, 800 K Street NW., P.O. Box 88, Washington, DC, 20001, telephone (202) 633–7079.

Dated: June 24, 1991.

By Direction of the Secretary.

Sylvania Chavez Long,

Committee Management Officer.

[FR Doc. 91–15740 Filed 7–1–91; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 127
Tuesday, July 2, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 P.M. (Eastern Time) Tuesday, July 9, 1991.

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street, NW., Washington, DC 20507.

STATUS: Part of the Meeting will be Open to the Public and Part will be Closed to the Public.

MATTERS TO BE CONSIDERED:

Open Sessian

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations

Closed Sessian

1. Litigation Authorization: General Counsel Recommendations
2. Agency Adjudication and Determination on the Record of Federal Agency Discrimination Complaint Appeals

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 663-7100 (voice) and (202) 663-4494 (TTD) at any time for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663-7100.

Dated: June 25, 1991.

Frances M. Hart,

Executive Officer, Executive Secretariat.

This Notice Issued June 25, 1991.

[FR Doc. 91-15763 Filed 6-27-91; 4:50 pm]

BILLING CODE 6750-06-M

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, July 8, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 28, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-15886 Filed 6-28-91; 3:36 am]

BILLING CODE 6210-01-M

INTERSTATE COMMERCE COMMISSION

Commission Conference

TIME AND DATE: 10:00 a.m., Tuesday, July 9, 1991.

PLACE: Hearing Room A, Interstate Commerce Commission 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Docket No. AB-1 (Sub-No. 212), *Chicago and North Western Transportatian Company—Abandonment—Between Palmer and Laurens in Pacahontas Caunty, IA.*

Docket No. 40423, *Increased Switching Charges at Laurel, MS, SauthRail.*

Finance Docket No. 31377, *Wyaming Calarada Railroad, Inc.—Feeder Line Acquisition—Union Pacific Railroad Company—Line Between Ontaria and Burns, OR.*

Finance Docket No. 31545, *Clyde S. and Saundra Forbes and CSF Acquisition, Inc.—Cantrol Exemption—Lamoille Valley Railroad Campany and Twin State Railroad Corporation.*

Ex Parte No. MC-195, *Petitian af Regular Camman Carrier Canference for Establishment af Minimum Rate Standard and Other Relief.*

Ex Parte No. MC-198, *Cantracts far Transportation af Property.*

CONTACT PERSON FOR MORE INFORMATION: A. Dennis Watson, Office of External Affairs, Telephone: (202) 275-7252, TDD: (202) 275-1721.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-15828 Filed 6-28-91; 1:50 pm]

BILLING CODE 7035-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 1, 8, 15, and 22, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of July 1

Wednesday, July 3

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 8—Tentative

Thursday, July 11

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Rules Regarding Revisions to Procedures to Issue Orders and Deliberate Misconduct by Unlicensed Persons (Tentative)

Week of July 15—Tentative

Tuesday, July 16

10:00 a.m.
Periodic Briefing on EEO Program (Public Meeting)

Friday, July 19

10:00 a.m.
Briefing on Generic Environmental Impact Statement for License Renewal and Proposed Part 51 Rule (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 22—Tentative

Thursday, July 25

1:30 p.m.
Periodic Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting)
3:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that

no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

William M. Hill, Jr.,
Office of the Secretary.

[FR Doc. 91–15870 Filed 6–28–91; 3:15 pm]
BILLING CODE 7590–01–M

POSTAL SERVICE BOARD OF GOVERNORS

Amendment to Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 56 FR 28794, June 24, 1991.

PREVIOUSLY ANNOUNCED DATE OF MEETING: July 2, 1991.

CHANGE: Delete the following item from the open meeting agenda:

7. Capital Investments.
b. Memphis, Tennessee, Southern Region Office and Services Centers.

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, (202) 268–4800.

David F. Harris,
Secretary.
Neva R. Watson,
Alternate Certifying Officer.
[FR Doc. 91–15867 Filed 6–28–91; 2:19 pm]
BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Agency 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 meeting during the week of July 1, 1991:

A closed meeting will be held on Tuesday, July 2, 1991, at 2:30 p.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 a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, July 2, 1991, at 2:30 p.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.
Formal orders of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Walter Stahr at (202) 272–2000.

Dated: June 26, 1991.
Jonathan G. Katz,
Secretary.
[FR Doc. 91–15898 Filed 6–28–91; 3:55 pm]
BILLING CODE 8010–01–M

federal register

Tuesday
July 2, 1991

Part II

Department of State

Bureau of Consular Affairs

22 CFR Parts 40, 41, 42, 43, and 44

Visas: Regulations Pertaining to Both Nonimmigrants and Immigrants Under the Immigration and Nationality Act, as Amended; Rule

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Parts 40, 41, 42, 43 and 44

[Public Notice 1418]

Visas: Regulations Pertaining to Both Nonimmigrants and Immigrants Under the Immigration and Nationality Act, as Amended

AGENCY: Bureau of Consular Affairs, (DOS).

ACTION: Final rule.

SUMMARY: This rule amends the Department's visa regulations at part 40, title 22, Code of Federal Regulations, to implement the provisions of section 601 of the Immigration Act of 1990, Public Law 101–649. Section 601 revises the grounds of ineligibility under section 212(a) of the Immigration and Nationality Act (INA) applicable to all aliens applying for visas to enter the United States. This section restructures INA 212(a) by consolidating related grounds, repeals certain outmoded grounds, revises the grounds of ineligibility relating to health and security, and expands certain waiver provisions. Conforming changes are also made to the references to this part contained in parts 41, 42, 43, and 44 to title 22, Code of Federal Regulations to reflect the new grounds of ineligibility of the Immigration and Nationality Act, as amended by the Imigration Act of 1990.

EFFECTIVE DATE: June 1, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Division of Legislation and Regulations, Visa Office, Department of State, 202–663–1204.

SUPPLEMENTARY INFORMATION: On May 7, 1991, the Department published regulations at 56, FR 21206 which proposed to amend title 22, part 40 of the Code of Federal Regulations in order to implement the provisions of section 601 of the Immigration Act of 1990. Interested parties were invited to submit comments on the proposal. The Department received only one comment during the comment period. The commenter asserted that a time gap created by Public Law 101–649 exists regarding the application of INA 212(a)(5) which can not be corrected by regulations. According to the commenter, the difference in the effective dates, June 1 for 212(a)(5) and October 1, for 203(b), creates a time period during which the labor certification provisions of section 212(a)(5) fail to apply to any immigrant. It is true as the commenter points out that section 161(a) of Public Law 101–649 sets October 1, 1991 as the effective date for the new employment-based provisions under INA 203(b) and that section 601(e) designates June 1, 1991 as the effective date for the 212(a) grounds of exclusion. But it should also be noted that in spite of the different effective dates, section (C) of the new 212(a)(5) applies by specific reference to current employment-based provisions under INA 203(a)(3), (6), and (7). Effective October 1, 1991, section 161(e)(1) of the Immigration Act of 1990 amends subsections (A) and (B) of 212(a)(5) to apply to INA 203(b), as amended, and additionally repeals subsection (C). Thus, the labor certification ground of ineligibility under INA 212(a)(5) applies to the pertinent employment based provisions without interruption. Consequently, the Department perceives no need to change the regulations.

Accordingly, the amendments to part 40 provided in public notice 1389, 56 FR 21206, are adopted as proposed. In addition, conforming references in parts 41, 42, 43, and 44 are amended to reflect changes made in part 40.

This rule is not considered to be a major rule for purposes of E.O. 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 22 CFR Parts 40, 41, 42, 43 and 44

Aliens, Ineligible classes, Nonimmigrants, Immigrants, Visas, Waivers of grounds of ineligibility.

In view of the foregoing, title 22 of the Code of Federal Regulations, Subchapter E-Visas, part 40, is revised and parts 41, 42, 43, and 44 are amended as indicated below.

1. Part 40 is revised to read as follows:

SUBCHAPTER E—VISAS

PART 40—REGULATIONS PERTAINING TO BOTH NONIMMIGRANTS AND IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

Subpart A—General Provisions

Sec.

Subpart B—Medical Grounds of Ineligibility

Subpart C—Criminal and Related Grounds—Conviction of Certain Crimes

Subpart D—Security and Related Grounds

Subpart E—Public Charge

Subpart F—Labor Certification and Qualification for Certain Immigrants

Subpart G—Illegal Entrants and Immigration Violators

Subpart H—Documentation Requirements

Subpart I—Ineligible for Citizenship

Subpart J—Miscellaneous

Subpart K—Failure to Comply with INA; Certain Former Exchange Visitors; Alien Entitled to A, E, or G Nonimmigrant Classification

Subpart L—Waiver of Ground of Ineligibility

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; sec. 109(b)(1), 91 Stat. 847; sec. 601, 104 Stat. 5067; 8 U.S.C. 1182.

Subpart A—General Provisions

§ 40.1 Definitions.

The following definitions supplement definitions contained in the Immigration and Nationality Act (INA). As used in these regulations, the term:

(a) *Accompanying or accompanied by* means not only an alien in the physical company of a principal alien but also an alien who is issued an immigrant visa within 4 months of either the date of issuance of a visa to, or the date of adjustment of status in the United States of, the principal alien, or the date on which the principal alien personally appears and registers before a consular officer abroad to confer alternate foreign state chargeability or immigrant status upon a spouse or child. An "accompanying" relative may not precede the principal alien to the United States.

(b) *Act* means the Immigration and Nationality Act (or INA), as amended.

(c) *Competent officer*, as used in INA 101(a)(26), means a "consular officer" as defined in INA 101(a)(9).

(d) *Consular officer*, as defined in INA 101(a)(9), includes commissioned consular officers and the Director of the Visa Office of the Department and such other officers as the Director may designate for the purpose of issuing nonimmigrant visas only, but does not include a consular agent, an attaché or an assistant attaché. The assignment by the Department of any Foreign Service Officer to a diplomatic or consular office abroad in a position administratively designated as requiring, solely, partially, or principally, the performance of consular functions, and the initiation of a request for a consular commission, constitutes designation of the officer as a "consular officer" within the meaning of INA 101(a)(9).

(e) *Department* means the Department of State of the United States of America.

(f) *Dependent area* means a colony or other component or dependent area overseas from the governing foreign state, natives of which are subject to the limitation prescribed by INA 202(c).

(g) *Documentarily qualified* means that the alien has reported that all the documents specified by the consular officer as sufficient to meet the requirements of INA 222(b) have been obtained, and that necessary clearance procedures of the consular office have been completed. This term shall be used only with respect to the alien's qualification to apply formally for an immigrant visa; it bears no connotation that the alien is eligible to receive a visa.

(h) *Entitled to immigrant classification* means that the alien:

(1) Is the beneficiary of an approved petition granting immediate relative or preference status;

(2) Has satisfied the consular officer as to entitlement to special immigrant status under INA 101(a)(27); or

(3) Has obtained an individual labor certification, or is within one of the professional or occupational groups listed in Schedule A of the Department of Labor regulations, or is within one of the classes described in § 40.51(c) and is therefore not within the purview of INA 212(a)(5)(A).

(i) With respect to alternate chargeability pursuant to INA 202(b), the term "foreign state" is not restricted to those areas to which the numerical limitation prescribed by INA 202(a) applies but includes dependent areas, as defined in this section.

(j) *INA* means the Immigration and Nationality Act, as amended.

(k) *INS* means the Immigration and Naturalization Service.

(l) *Not subject to numerical limitation* means that the alien is entitled to immigrant status as an immediate relative within the meaning of INA 201(b) or INA 201(b)(2)(A)(i) after September 30, 1991, or as a special immigrant within the meaning of INA 101(a)(27) or INA 101(a)(27) (A) and (B) after September 30, 1991, unless specifically subject to a limitation other than under INA 201 (a), (b), or (c).

(m) *Parent, father, and mother*, as defined in INA 101(b)(2), are terms which are not changed in meaning if the child becomes 21 years of age or marries.

(n) *Port of entry* means a port or place designated by the Commissioner of Immigration and Naturalization at which an alien may apply to INS for admission into the United States.

(o) *Principal alien* means an alien from whom another alien derives a privilege or status under the law or regulations.

(p) *Regulation* means a rule which is established under the provisions of INA 104(a) and is duly published in the Federal Register.

(q) *Son or daughter* includes only a person who would have qualified as a "child" under INA 101(b)(1) if the person were under 21 and unmarried.

(r) *Western Hemisphere* means North America (including Central America), South America and the islands immediately adjacent thereto including the places named in INA 101(b)(5).

§ 40.2 Documentation of nationals.

(a) *Nationals of the United States.* A national of the United States shall not be issued a visa or other documentation as an alien for entry into the United States.

(b) *Former Nationals of the United States.* A former national of the United States who seeks to enter the United States must comply with the documentary requirements applicable to aliens under the INA.

§ 40.3 Entry into areas under U.S. administration.

An immigrant or nonimmigrant seeking to enter an area which is under U.S. administration but which is not within the "United States", as defined in INA 101(a)(38), is not required by the INA to be documented with a visa unless the authority contained in INA 215 has been invoked.

§ 40.4 Furnishing records and information from visa files for court proceedings.

Upon receipt of a request for information from a visa file or record for use in court proceedings, as contemplated in INA 222(f), the consular officer must, prior to the release of the information, submit the request together with a full report to the Department.

§ 40.5 [Reserved]

§ 40.6 Basis for refusal.

A visa can be refused only upon a ground specifically set out in the law or implementing regulations. The term "reason to believe", as used in INA 221(g), shall be considered to require a determination based upon facts or circumstances which would lead a reasonable person to conclude that the applicant is ineligible to receive a visa as provided in the INA and as implemented by the regulations. Consideration shall be given to any evidence submitted indicating that the ground for a prior refusal of a visa may no longer exist. The burden of proof is upon the applicant to establish eligibility to receive a visa under INA 212 or any other provision of law or regulation.

§§ 40.7–40.8 [Reserved]

§ 40.9 Classes of excludable aliens.

Subparts (B) through (K) describe classes of excludable aliens who are ineligible to receive visas and who shall be excluded from admission into the United States, except as otherwise provided in the Immigration and Nationality Act, as amended.

Subpart B—Medical Grounds of Ineligibility

§ 40.11 Medical grounds of ineligibility.

(a) *Decision on eligibility based on findings of medical doctor.* A finding of

a panel physician designated by the post in whose jurisdiction the examination is performed pursuant to INA 212(a)(1) shall be binding on the consular officer, except that the officer may refer a panel physician finding in an individual case to USPHS for review.

(b) *Waiver of ineligibility—INA 212(g).* If an immigrant visa applicant is ineligible under INA 212(a)(1)(A) (i) or (ii) but is qualified to seek the benefits of INA 212(g), the consular officer shall inform the alien of the procedure for applying to INS for relief under that provision of law. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(g).

Subpart C—Criminal and Related Grounds—Conviction of Certain Crimes

§ 40.21 Crimes involving moral turpitude and controlled substance violators.

(a) *Crimes involving moral turpitude.* (1) *Acts must constitute a crime under criminal law of jurisdiction where they occurred.* Before a finding of ineligibility under INA 212(a)(2)(A)(i)(I) may be made because of an admission of the commission of acts which constitute the essential elements of a crime involving moral turpitude, it must first be established that the acts constitute a crime under the criminal law of the jurisdiction where they occurred. A determination that a crime involves moral turpitude shall be based upon the moral standards generally prevailing in the United States.

(2) *Conviction for crime committed under age 18.* An alien shall not be ineligible to receive a visa under INA 212(a)(2)(A)(i)(I) by reason of any offense committed prior to the alien's fifteenth birthday. Nor shall an alien be ineligible to receive a visa under INA 212(a)(2)(A)(i)(I) by reason of any offense committed between the alien's fifteenth and eighteenth birthdays unless such alien was tried and convicted as an adult for a felony involving violence as defined in section 1(l) and section 16 of title 18 of the United States Code. An alien tried and convicted as an adult for a violent felony offense, as so defined, committed after having attained the age of fifteen years, shall be subject to the provisions of INA 212(a)(2)(A)(i)(I) regardless of whether at that time juvenile courts existed within the jurisdiction of the convictions.

(3) *Two or more crimes committed under age 18.* An alien convicted of a crime involving moral turpitude or admitting the commission of acts which constitute the essential elements of such a crime and who has committed an additional crime involving moral turpitude shall be ineligible under INA 212(a)(2)(A)(i)(I), even though the crimes were committed while the alien was under the age of 18 years.

(4) *Conviction in absentia.* A conviction in absentia of a crime involving moral turpitude does not constitute a conviction within the meaning of INA 212(a)(2)(A)(i)(I).

(5) *Effect of pardon by appropriate U.S. authorities/foreign states.* An alien shall not be considered ineligible under INA 212(a)(2)(A)(i)(I) by reason of a conviction of a crime involving moral turpitude for which a full and unconditional pardon has been granted by the President of the United States, by the Governor of a State of the United States, by the former High Commissioner for Germany acting pursuant to Executive Order 10062, or by the United States Ambassador to the Federal Republic of Germany acting pursuant to Executive Order 10608. A legislative pardon or a pardon, amnesty, expungement of penal record or any other act of clemency granted by a foreign state shall not serve to remove a ground of ineligibility under INA 212(a)(2)(A)(i)(I).

(6) *Political offenses.* The term "purely political offense", as used in INA 212(a)(2)(A)(i)(I), includes offenses that resulted in convictions obviously based on fabricated charges or predicated upon repressive measures against racial, religious, or political minorities.

(7) *Waiver of ineligibility—INA 212(h).* If an immigrant visa applicant is ineligible under INA 212(a)(2)(A)(i)(I) but is qualified to seek the benefits of INA 212(h), the consular officer shall inform the alien of the procedure for applying to INS for relief under that provision of law. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(h).

(b) *Controlled substance violators.* (1) *Date of conviction not pertinent.* An alien shall be ineligible under INA 212(a)(2)(A)(i)(II) irrespective of whether the conviction for a violation of or for conspiracy to violate any law or regulation relating to a controlled substance, as defined in the Controlled Substance Act (21 U.S.C. 802), occurred before, on, or after October 27, 1986.

(2) *Waiver of ineligibility—INA 212(h).* If an immigrant visa applicant is ineligible under INA 212(a)(2)(A)(i)(II) but is qualified to seek the benefits of INA 212(h), the consular officer shall inform the alien of the procedure for applying to INS for relief under that provision of law. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(h).

§ 40.22 Multiple criminal convictions.

(a) *Conviction(s) for crime(s) committed under age 18.* An alien shall not be ineligible to receive a visa under INA 212(a)(2)(B) by reason of any offense committed prior to the alien's fifteenth birthday. Nor shall an alien be ineligible under INA 212(a)(2)(B) by reason of any offense committed between the alien's fifteenth and eighteenth birthdays unless such alien was tried and convicted as an adult for a felony involving violence as defined in section 1(l) and section 16 of Title 18 of the United States Code. An alien, tried and convicted as an adult for a violent felony offense, as so defined, committed after having attained the age of fifteen years, and who has also been convicted of at least one other such offense or any other offense committed as an adult, shall be subject to the provisions of INA 212(a)(2)(B) regardless of whether at that time juvenile courts existed within the jurisdiction of the conviction.

(b) *Suspended sentence.* A sentence to confinement that has been suspended by a court of competent jurisdiction is not one which has been "actually imposed" within the meaning of INA 212(a)(2)(B).

(c) *Conviction in absentia.* A conviction in absentia shall not constitute a conviction within the meaning of INA 212(a)(2)(B).

(d) *Effect of pardon by appropriate U.S. authorities/foreign states.* An alien shall not be considered ineligible under INA 212(a)(2)(B) by reason in part of having been convicted of an offense for which a full and unconditional pardon has been granted by the President of the United States, by the Governor of a State of the United States, by the former High Commissioner for Germany acting pursuant to Executive Order 10062, or by the United States Ambassador to the Federal Republic of Germany acting pursuant to Executive Order 10608. A legislative pardon or a pardon, amnesty, expungement of penal record or any other act of clemency granted by a foreign state shall not serve to remove a ground of ineligibility under INA 212(a)(2)(B).

(e) *Political offense.* The term "purely political offense", as used in INA 212(a)(2)(B), includes offenses that resulted in convictions obviously based on fabricated charges or predicated upon repressive measures against racial, religious, or political minorities.

(f) *Waiver of ineligibility—INA 212(h).* If an immigrant visa applicant is ineligible under INA 212(a)(2)(B) but is qualified to seek the benefits of INA 212(h), the consular officer shall inform the alien of the procedure for applying to INS for relief under that provision of law. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(h).

§ 40.23 Controlled substance traffickers. [Reserved]

§ 40.24 Prostitution and commercialized vice.

(a) *Activities within 10 years preceding visa application.* An alien shall be ineligible under INA 212(a)(2)(D) only if—

(1) The alien is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution, or the alien directly or indirectly procures or attempts to procure, or procured or attempted to procure or to import prostitutes or persons for the purposes of prostitution, or receives or received, in whole or in part, the proceeds of prostitution; and

(2) The alien has performed one of the activities listed in § 40.24(a)(1) within the last ten years.

(b) *Prostitution defined.* The term "prostitution" means engaging in promiscuous sexual intercourse for hire. A finding that an alien has "engaged" in prostitution must be based on elements of continuity and regularity, indicating a pattern of behavior or deliberate course of conduct entered into primarily for financial gain or for other considerations of material value as distinguished from the commission of casual or isolated acts.

(c) *Where prostitution not illegal.* An alien who is within one or more of the classes described in INA 212(a)(2)(D) is ineligible to receive a visa under that section even if the acts engaged in are not prohibited under the laws of the foreign country where the acts occurred.

(d) *Waiver of ineligibility—INA 212(h).* If an immigrant visa applicant is ineligible under INA 212(a)(2)(D) but is qualified to seek the benefits of INA 212(h), the consular officer shall inform the alien of the procedure for applying to INS for relief under that provision of law. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(h).

§ 40.25 Certain aliens involved in serious criminal activity who have asserted immunity from prosecution. [Reserved]

Subpart D—Security and Related Grounds

§ 40.31 General. [Reserved]

§ 40.32 Terrorist activities. [Reserved]

§ 40.33 Foreign policy. [Reserved]

§ 40.34 Immigrant membership in totalitarian party.

(a) *Definition of affiliate.* The term *affiliate*, as used in INA 212(a)(3)(D), means an oganization which is related to, or identified with, a proscribed association or party, including any section, subsidiary, branch, or subdivision thereof, in such close association as to evidence an adherence to or a furtherance of the purposes and objectives of such association or party, or as to indicate a working alliance to bring to fruition the purposes and objectives of the proscribed association or party. An organization which gives, loans, or promises support, money, or other thing of value for any purpose to any proscribed association or party is presumed to be an *affiliate* of such association or party, but nothing contained in this paragraph shall be construed as an exclusive definition of the term *affiliate*.

(b) *Service in Armed Forces.* Service, whether voluntary or not, in the armed forces of any country shall not be regarded, of itself, as constituting or establishing an alien's membership in, or affiliation with, any proscribed party or organization, and shall not, of itself, constitute a ground of ineligibility to receive a visa.

(c) *Voluntary Service in a Political Capacity.* Voluntary service in a political capacity shall constitute affiliation with the political party or organization in power at the time of such service.

(d) *Voluntary Membership After Age 16.* If an alien continues or continued membership in or affiliation with a proscribed organization on or after reaching 16 years of age, only the alien's activities after reaching that age shall be pertinent to a determination of whether the continuation of membership or affiliation is or was voluntary.

(e) *Operation of Law Defined.* The term *operation of law*, as used in INA 212(a)(3)(D), includes any case wherein the alien automatically, and without personal acquiescence, became a member of or affiliated with a proscribed party or organization by official act, proclamation, order, edict, or decree.

(f) *Membership in Organization Advocating Totalitarian Dictatorship in the United States.* In accordance with the definition of *totalitarian party* contained in INA 101(a)(37), a former or present voluntary member of, or an alien who was, or is, voluntarily affiliated with a noncommunist party, organization, or group, or of any section, subsidiary, branch, affiliate or subdivision thereof, which during the time of its existence did not or does not advocate the establishment in the United States of a totalitarian dictatorship, is not considered ineligible under INA 212(a)(3)(D) to receive a visa.

(g) *Waiver of ineligibility—212(a)(3)(D)(iv).* If an immigrant visa applicant is ineligible under INA 212(a)(3)(D) but is qualified to seek the benefits of INA 212(a)(3)(D)(iv), the consular officer shall inform the alien of the procedure for applying to INS for relief under that provision of law. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(a)(3)(D)(iv).

§ 40.35 Participants in Nazi persecutions or genocide.

(a) *Participation in Nazi persecutions.* [Reserved]

(b) *Participation in genocide.* [Reserved]

Subpart E—Public Charge

§ 40.41 Public charge.

(a) *Basis for determination of ineligibility.* Any determination that an alien is ineligible under INA 212(a)(4) must be predicated upon circumstances indicating that the alien will probably become a public charge after admission.

(b) *Posting of bond.* A consular officer may issue a visa to an alien who is within the purview of INA 212(a)(4) upon receipt of notice from INS of the giving of a bond or undertaking in accordance with INA 213 and INA 221(g), provided the officer is satisfied that the giving of such bond or undertaking removes the likelihood that the alien might become a public charge within the meaning of this section of the law and that the alien is otherwise eligible in all respects.

(c) *Prearranged employment.* An immigrant visa applicant relying on an offer of prearranged employment to establish eligibility under INA 212(a)(4), other than an offer of employment certified by the Department of Labor pursuant to INA 212(a)(5)(A), must establish the offer of employment by a document that confirms the essential

elements of the employment offer. Any document presented to confirm the employment offer must be sworn and subscribed to before a notary public by the employer or an authorized employee or agent of the employer. The signer's printed name and position or other relationship with the employer must accompany the signature.

(d) *Significance of income poverty guidelines.* An immigrant visa applicant relying solely on personal income to establish eligibility under INA 212(a)(4), who does not demonstrate an annual income above the income poverty guidelines published by the Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, and who is without other adequate financial resources, shall be presumed ineligible under INA 212(a)(4).

Subpart F—Labor Certification and Qualification for Certain Immigrants

§ 40.51 Labor certification.

(a) *INA 212(a)(5) applicable only to certain immigrant aliens.* INA 212(a)(5)(A) applies,

(1) Through September 30, 1991, only to immigrant aliens described in INA 203(a) (3) or (6) who are seeking to enter the United States for the purpose of engaging in gainful employment; or,

(2) On or after October 1, 1991, only to immigrant aliens described in INA 203(b) (2) or (3) who are seeking to enter the United States for the purpose of engaging in gainful employment.

(b) *Determination of need for alien's labor skills.* An alien within one of the classes to which INA 212(a)(5) applies as described in § 40.51(a) who seeks to enter the United States for the purpose of engaging in gainful employment, shall be ineligible under INA 212(a)(5)(A) to receive a visa unless the Secretary of Labor has certified to the Attorney General and the Secretary of State, that

(1) There are not sufficient workers in the United States who are able, willing, qualified, (or equally qualified in the case of aliens who are members of the teaching profession or who have exceptional ability in the sciences or the arts) and available at the time of application for a visa and at the place to which the alien is destined to perform such skilled or unskilled labor, and

(2) The employment of such alien will not adversely affect the wages and working conditions of the workers in the United States similarly employed.

(c) *Labor certification not required in certain cases.* A spouse or child accompanying or following to join an alien spouse or parent who prior to October 1, 1991 is or was a beneficiary of a petition approved pursuant to INA 203(a) (3) or (6) or an alien spouse or parent who on or after September 30, 1991 is a beneficiary of a petition approved pursuant to INA 203(b) (2) or (3) is not considered to be within the purview of INA 212(a)(5).

§ 40.52 Unqualified physicians.

INA 212(a)(5)(B) applies only to immigrant aliens described in INA 203(a) (3) or (6) through September 30, 1991 or to immigrant aliens described in INA 203(b)(2) or (3) on or after October 1, 1991.

Subpart G—Illegal Entrants and Immigration Violators

§ 40.61 Aliens previously deported under INA 212(a)(6)(A).

An alien who was excluded and deported from the United States under INA 212(a)(6)(A) shall not be issued a visa within one year from the date of deportation unless the alien has obtained permission from INS to reapply for admission.

§ 40.62 Certain aliens previously removed from the United States under INA 212(a)(6)(B).

An alien who was arrested and deported from the United States under INA 212(a)(6)(B) shall not be issued a visa unless the alien has remained outside the United States for at least five successive years (or twenty years in the case of an alien convicted of an aggravated felony) following the last deportation or removal, or has obtained permission from the Immigration and Naturalization Service to reapply for admission to the United States.

§ 40.63 Misrepresentation.

(a) *Fraud and misrepresentation and INA 212(a)(6)(C) applicability to certain refugees.* An alien who seeks to procure, or has sought to procure, or has procured a visa, other documentation, or entry into the United States or other benefit provided under the INA by fraud or by willfully misrepresenting a material fact at any time shall be ineligible under INA 212(a)(6)(C): *Provided,* That the provisions of this paragraph are not applicable if the fraud or misrepresentation was committed by an alien at the time the alien sought entry into a country other than the United States or obtained travel documents as a bona fide refugee and the refugee was in fear of being repatriated to a former homeland if the facts were disclosed in connection with an application for a visa to enter the United States: *Provided further,* That the fraud or misrepresentation was not committed by such refugee for the purpose of evading the quota or numerical restrictions of the U.S. immigration laws, or investigation of the alien's record at the place of former residence or elsewhere in connection with an application for a visa.

(b) *Misrepresentation in application under Displaced Persons Act or Refugee Relief Act.* Subject to the conditions stated in paragraph (a)(6)(C)(i) of this section, an alien who is found by the consular officer to have made a willful misrepresentation within the meaning of section 10 of the Displaced Persons Act of 1948, as amended, for the purpose of gaining admission into the United States as an eligible displaced person, or to have made a material misrepresentation within the meaning of section 11(e) of the Refugee Relief Act of 1953, as amended, for the purpose of gaining admission into the United States as an alien eligible, hereunder, shall be considered ineligible under the provisions of INA 212(a)(6)(C).

(c) *Waiver of ineligibility—INA 212(i).* If an immigrant applicant is ineligible under INA 212(a)(6)(C) but is qualified to seek the benefits of INA 212(i), the consular officer shall inform the alien of the procedure for applying to INS for relief under that provision of law. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(i).

§ 40.64 Stowaways.

INA 212(a)(6)(D) is not applicable at the time of visa application.

§ 40.65 Smugglers.

(a) *General.* A visa shall not be issued to an alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law.

(b) *Waiver of ineligibility—INA 212(d)(11).* If an immigrant applicant is ineligible under INA 212(a)(6)(E) but is qualified to seek the benefits of INA 212(d)(11), the consular officer shall inform the alien of the procedure for applying to INS for relief under that provision of law. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(d)(11).

§ 40.66 Subject of civil penalty.

[Reserved]

Subpart H—Documentation Requirements

§ 40.71 Documentation requirements for immigrants.

INA 212(a)(7)(A) is not applicable at the time of visa application. (For waiver of documentary requirements for immigrants see 22 CFR 42.1 and 42.2.)

§ 40.72 Documentation requirements for nonimmigrants.

A passport which is valid indefinitely for the return of the bearer to the country whose government issued such passport shall be deemed to have the required minimum period of validity as specified in INA 212(a)(7)(B).

Subpart I—Ineligible for Citizenship.

§ 40.81 Ineligible for citizenship.

An alien shall be ineligible to receive an immigrant visa under INA 212(a)(8)(A) if the applicant is ineligible for citizenship.

§ 40.82 Alien who departed the United States to avoid service in the armed forces.

(a) *Applicability to immigrants.* INA 212(a)(8)(A) applies to immigrant visa applicants who have departed from or remained outside the United States between September 8, 1939 and September 24, 1978, to avoid or evade training or service in the United States Armed Forces.

(b) *Applicability to nonimmigrants.* INA 212(a)(8)(B) applies to nonimmigrant visa applicants who have departed from or remained outside the United States between September 8, 1939 and September 24, 1978 to avoid or evade training or service in the U.S. Armed Forces except an alien who held nonimmigrant status at the time of such departure.

Subpart J—Miscellaneous

§ 40.91 Practicing polygamists.

An immigrant alien shall be ineligible under INA 212(a)(9)(A) only if the alien is coming to the United States to practice polygamy.

§ 40.92 Guardian required to accompany excluded alien.

INA 212(a)(9)(B) is not applicable at the time of visa application.

§ 40.93 International child abduction.

(a) *Foreign state signatory to the Hague Convention.* For purposes of INA 212(a)(9)(C) a foreign state shall not be deemed signatory unless it has become a party to such convention. A foreign state becomes a party to the Hague Convention on the Civil Aspects of International Child Abduction if it has both signed and has assumed full legal responsibility for its implementation.

(b) *Exception when child located in certain foreign state.* An alien who would otherwise be ineligible under INA 212(a)(9)(C)(i) shall not be ineligible under such paragraph if the U.S. citizen child in question is physically located in a foreign state which is party to the Hague Convention on the Civil Aspects of International Child Abduction.

Subpart K—Failure to Comply with INA; Certain Former Exchange Visitors; Alien Entitled to A, E, or G Nonimmigrant Classification

§ 40.101 Failure of application to comply with INA.

(a) *Refusal under INA 221(g).* The consular officer shall refuse an alien's visa application under INA 221(g)(2) as failing to comply with the provisions of INA or the implementing regulations if:

(1) The applicant fails to furnish information as required by law or regulations;

(2) The application contains a false or incorrect statement other than one which would constitute a ground of ineligibility under INA 212(a)(6)(C);

(3) The application is not supported by the documents required by law or regulations;

(4) The applicant refuses to be fingerprinted as required by regulations;

(5) The necessary fee is not paid for the issuance of the visa or, in the case of an immigrant visa, for the application therefore;

(6) In the case of an immigrant visa application, the alien fails to swear to, or affirm, the application before the consular officer; or

(7) The application otherwise fails to meet specific requirements of law or regulations for reasons for which the alien is responsible.

(b) *Reconsideration of refusals.* A refusal of a visa application under paragraph (a)(1) of this section does not bar reconsideration of the application upon compliance by the applicant with the requirements of INA and the implementing regulations or consideration of a subsequent application submitted by the same applicant.

§ 40.102 Certain former exchange visitors.

An alien who was admitted into the United States as an exchange visitor, or who acquired such status after admission, and who is within the purview of INA 212(e) as amended by the Act of April 7, 1970, (84 Stat. 116) and by the Act of October 12, 1976, (90 Stat. 2301), is not eligible to apply for or receive an immigrant visa or a nonimmigrant visa under INA 101(a)(15)(H), (K), or (L), notwithstanding the approval of a petition on the alien's behalf, unless:

(a) It has been established that the alien has resided and has been physically present in the country of the alien's nationality or last residence for an aggregate of at least 2 years following the termination of the alien's exchange visitor status as required by INA 212(e), or

(b) The foreign residence requirement of INA 212(e) has been waived by the Attorney General in the alien's behalf.

§ 40.103 Alien entitled to A, E, or G nonimmigrant classification.

An alien entitled to nonimmigrant classification under INA 101(a)(15)(A), (E), or (G) who is applying for an immigrant visa and who intends to continue the activities required for such nonimmigrant classification in the United States is not eligible to receive an immigrant visa until the alien executes a written waiver of all rights, privileges, exemptions and immunities which would accrue by reason of such occupational status.

Subpart L—Waiver of Ground of Ineligibility

§ 40.111 Waiver for ineligible nonimmigrants under INA 212(d)(3)(A).

(a) *Report or recommendation to Department.* Except as provided in paragraph (b) of this section, consular officers may, upon their own initiative, and shall, upon the request of the Secretary of State or upon the request of the alien, submit a report to the Department for possible transmission to the Attorney General pursuant to the provisions of INA 212(d)(3)(A) in the case of an alien who is classifiable as a nonimmigrant but who is known or believed by the consular officer to be ineligible to receive a nonimmigrant visa under the provisions of INA 212(a), other than INA 212(a)(3)(A), (3)(C) or (3)(E).

(b) *Recommendation to designated INS officer abroad.* A consular officer may, in certain categories defined by the Secretary of State, recommend directly to designated INS officers that the temporary admission of an alien ineligible to receive a visa be authorized under INA 212(d)(3)(A).

(c) *Attorney General may impose conditions.* When the Attorney General authorizes the temporary admission of an ineligible alien as a nonimmigrant and the consular officer is so informed, the consular officer may proceed with the issuance of a nonimmigrant visa to the alien, subject to the conditions, if any, imposed by the Attorney General.

2. The authority citation for part 41 is revised to read as follows:

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Sec. 109(b)(1), 91 Stat. 847; Sec. 313, 100 Stat. 3435, 8 U.S.C. 1187 and 1182; Sec. 601, 104 Stat. 5067; 8 U.S.C. 1182.

§ 41.1 [Amended]

3. In § 41.1, third and fourth lines of the introductory text, change "INA 212(a)(26) to read "INA 212(a), (i)(I), (i)(II)."

§ 41.2 [Amended]

4. In § 41.2, fourth and fifth lines of the introductory text, change the reference to "INA 212(a)(26)" to read "INA 212(a)(7)(B)(i)(I), (i)(II)."

§ 41.3 [Amended]

5. In § 41.3, in the introductory text change "INA 212(a)(26) to read "INA 212(a)(7)(B) (i)(I), (i)(II)" and in paragraphs (b) and (c) change "212(a)(26)" to read "212(a)(7)(B)(i)(I).".

§ 41.21 [Amended]

6. In § 41.21, introductory paragraph (b), change "INA 212(a)(26)" to read "INA 212(a)(7)(B)(i)(I)".

7. In § 41.21, paragraphs (d) (2) and (3) are amended to read as follows:

§ 41.21 General.

* * * * *

(d) Grounds for refusal of visa applicable to certain A, C, G, and NATO classes. * * *

(2) Only the provisions of INA 212(a) cited below apply to the indicated classes of nonimmigrant visa applicants:

(i) Class A–1: INA 212(a) (3)(A), (3)(B), and (3)(C) * * *

(ii) Class A–2: INA 212(a) (3)(A), (3)(B), and (3)(C);

(iii) Classes C–2 and C–3: INA 212(a) (3)(A), (3)(B), (3)(C), and (7)(B);

(iv) Classes G–1, G–2, G–3, and G–4: INA 212(a) (3)(A), (3)(B), and (3)(C);

(v) Classes NATO–1, NATO–2, NATO–3, NATO–4, and NATO–6: INA 212(a) (3)(A), (3)(B), and (3)(C);

(3) An alien within class A–3 or G–5 is subject to all grounds of refusal specified in INA 212 which are applicable to nonimmigrants in general.

* * * * *

§ 41.42 [Amended]

8. In § 41.42 paragraph (a), second sentence, change the reference "212(a)(26)(B)" to read "212(a)(7)(B)(i)(II)."

§ 41.81 [Amended]

9. In § 41.81 paragraph (c), second sentence, change the reference "212(a)(14)" to read "212(a)(5)."

§ 41.104 [Amended]

10. In § 41.104 paragraph (b) and (d) change the reference "212(a)(26)" to read "212(a)(7)(B)(i)(I)."

§ 41.113 [Amended]

11. In § 41.113, paragraph (k)(2) change the reference "212(a)(26)" to read "212(a)(7)(B)(i)(I)."

§ 41.121 [Amended]

12. In § 41.121 paragraph (a), second sentence, delete the reference "INA 212(d)(1), INA 212(d)(2)."

13. The authority citation for part 42 is revised to read as follows:

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Sec. 109(b)(1), 91 Stat. 847; Sec. 601, 104 Stat. 5067; 8 U.S.C. 1182.

§ 42.22 [Amended]

14. In § 42.22 paragraph (c) change the reference "INA 212(a) (26), (27), (28), and (29)" to read "INA 212(a)(7)(B), INA 212(a) (3)(A), (3)(B), (3)(C), or (3)(E)."

§ 42.35 [Amended]

15. In § 42.35 paragraph (a) change the reference "212(a)(14)" to read "212(a)(5) and in paragraph (b) change the reference "40.7(a)(14)(iii)" to read "40.51(c)".

§ 42.52 [Amended]

16. In § 42.52, paragraph (b)(3)(iii), change the reference to "40.7(a)(14)(iii)" and "212(a)(14)" to read "40.51(c)" and "212(a)(5)(A)" respectively.

§ 42.53 [Amended]

17. In § 42.53 paragraph (b)(1) change the reference to "INA 212(a)(14)" to read "212(a)(5), and in paragraph (b)(2)(ii) change the reference to "40.7(a)(iii)" and "INA 212(a)(14)" to read "40.51(c)" and "INA 212(a)(5)" respectively.

18. The authority citation for part 43 is revised to read as follows:

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Sec. 109(b)(1), 91 Stat. 847; Sec. 314, 100 Stat. 3359, 8 U.S.C. 1153 Note; Sec. 2, 102 Stat. 3359; Sec. 601, 104 Stat. 5067; 8 U.S.C. 1182.

§ 43.5 [Amended]

19. In § 43.5 change the reference to 212(a)(14) to read "212(a)(5)."

20. The authority citation for part 44 is revised to read as follows:

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Sec. 109(b)(1), 91 Stat. 847; Sec. 314, 100 Stat. 3359, 8 U.S.C. 1153 Note; Sec. 3, 102 Stat. 3908, 8 U.S.C. 1101 note; Sec. 601, 104 Stat. 5067; 8 U.S.C. 1182.

§ 44.6 [Amended]

21. In § 44.6 change the reference to "212(a)(14)" to read "212(a)(5)."

Dated: June 5, 1991.

James Ward,

Acting Assistant Secretary for Consular Affairs.

[FR Doc. 91–15514 Filed 7–1–91; 8:45 am]

BILLING CODE 4710–06–M

federal register

Tuesday
July 2, 1991

Part III

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 86

Requirements Governing the Lobbying of HUD Personnel; Section 112 of the Reform Act; Announcement of OMB Approval Numbers; Availability of Forms; Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 86

[Docket No. R-91-1481; FR-2732-0-03]

RIN 2501-AA93

Requirements Governing the Lobbying of HUD Personnel; Section 112 of the Reform Act; Announcement of OMB Approval Numbers; Availability of Forms

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule; announcement of OMB approval numbers; availability of forms.

SUMMARY: On May 17, 1991 (56 FR 22912), the Department published in the Federal Register, a final rule that implemented section 112 of the Department of Housing and Urban Development Reform Act of 1989, Public Law 101-235, approved December 15, 1989. Section 112 added a new section 13 to the Department of Housing and Urban Development Act, 42 U.S.C. 3531, *et seq.*, and contained two principal features. The first established the standards under which:

—Persons that make expenditures to influence a HUD officer or employee in the award of financial assistance or the taking of a management action by the Department must keep records, and report to HUD, on the expenditures; and

—Persons that are engaged to influence a HUD officer or employee in the award of financial assistance or the taking of a management action by the Department must register with HUD, and report to HUD on their lobbying activities.

The second feature imposed limitations on the fees that may be paid to consultants who are engaged to influence the award or allocation of the Department's financial assistance.

The final rule stated that §§ 86.20 and 86.25 contain information collection requirements that would not become effective until the Office of Management and Budget (OMB) has approved the requirements. The purpose of this document is to publish the OMB approval number for those sections and to notify the public of the availability of the forms for compliance with part 86. Forms may be obtained from HUD's Regional and Field Offices. Sample copies of the forms are appended to this notice.

EFFECTIVE DATE: July 2, 1991.

FOR FURTHER INFORMATION CONTACT: Arnold J. Haiman, Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 708-3815; TDD (202) 708-1112. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in §§ 86.20 and 86.25 of the final rule published on May 17, 1991, at 56 FR 22912, have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and assigned OMB control number 2501-0012.

Availability of Forms

The required forms under § 86.20(c) and §§ 86.25 (b) and (c) may be obtained from HUD's Regional and Field Offices. Sample copies of the forms are appended to this notice.

Form HUD-2883 is required from persons complying with the annual reporting requirements of § 86.20(c). Form HUD-2881-A and form HUD-2881-B are required from individuals and entities, respectively, complying with the registration requirements of § 86.25(b). Form HUD-2882-B is required from persons complying with the annual reporting requirements of § 86.25(c).

List of Subjects in 24 CFR Part 86

Lobbying (Government agencies), Administrative practice and procedure, Reporting and recordkeeping requirements.

Text of the Amendment

Accordingly, part 86 of title 24 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 86 continues to read as follows:

PART 86—[AMENDED]

Authority: Secs. 7(d) and 13(g), Departmen of Housing and Urban Development Act (42 U.S.C. 3535(d) and 3537b(g)).

§ 86.20 [Amended]

2. The OMB approval number set forth at the end of § 86.20 is revised to read as follows:

(Approved by the Office of Management and Budget under OMB control number 2501-0012).

§ 86.25 [Amended]

3. Section 86.25 is amended by adding at the end of that section, the following statements:

(Approved by the Office of Management and Budget under OMB control number 2501-0012)

Dated: June 25, 1991.

Grady J. Norris,

Assistant General Counsel for Regulations.

BILLING CODE 4210-32-M

Lobbyist & Consultant Activity Registration (Individual)

U.S. Department of Housing and Urban Development
Office of Ethics

Section 112, HUD Reform Act

See detailed instructions on back.

OMB Approval No. 2501-0012 (exp.6/30/94)

1. Is this an updated form ? Yes ☐ No ☐

Registration Number (HUD use only)

2. Registrant's Name :

3. Social Security Number / or EIN :

4. Registrant's Business Address:

5. Are you Self-Employed? Yes ☐ No ☐ If "Yes," skip Blocks 6 and 7.

6a. Registrant's Employer :

6b. Employer's Identification Number (EIN)

7. Employer's Business Address :

8. Name of Person who has retained the Registrant for Lobbying Activities :

9. Business Address of Person or Entity listed in Block 8 :

10. Federal Action Number:

11. Was the Registrant Employed by the Federal Government During the 2-Year Period Ending on the Date of Submision of this form? Yes ☐ No ☐
If "Yes," in what Capacity?

12. Is the Registrant Exempt from the Annual Reporting requirements? Yes ☐ No ☐

13. Certification Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802; 42 USC 3537)

I certify that this information is true and complete.

a. Name

b. Position / Title:

c. Signature

X

Date:

form HUD-2881-A (6/91)

Instructions

Introduction: Section 13 of the Department of Housing and Urban Development Act, USC 3537b, requires registration with HUD by any person who is retained for the purpose of influencing the decision of any officer or employee of the Department of Housing and Urban Development (HUD) through direct communication with such officer or employee, with respect to: 1) the award of any financial assistance within the jurisdiction of HUD; or 2) any management action involving a change in the terms and conditions or status of financial assistance awarded to any person. This form should be used only by individuals subject to the registration requirements.

This requirement does not apply:

- To any agreement or payment involving any communication that is wholly and expressly limited to complying with conditions, requirements, or procedures imposed by HUD in connection with any financial assistance or management action. In order for this exception to apply, the conditions, requirements, or procedures must be imposed (or reasonably be believed by the person to be imposed) by law, regulation, or written directive (such as a HUD handbook, notice, or application document), or imposed by an officer or employee of the Department;
- To any agreement, or to the receipt or expenditure of money or any other thing of value in connection with litigation to which the person is a party;
- To the elected officials of a State or local government; to the political appointees who comprise their personal staffs; or to the full-time, appointed officials who serve in State or local government in policy level positions, while engaged in the official business of the government;
- To a person who attempts to influence the Department on his or her own behalf, without being retained by another person; and
- To the employment relationship between an entity and a partner, associate, officer or employee, where the entity is retained for lobbying services. In this case only the entity need register (See entity registration form HUD-2881-B)

Definition:

Person means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority (including an Indian Housing Authority); firm; partnership; society; State, unit of general local government, or other governmental entity (including a public housing agency); and any other organization or group of people. The term does not include an Indian tribe.

Who Must File:

Except as provided above, an individual retained, pursuant to an agreement to make an expenditure, to influence a decision of the Department with respect to the award of any financial assistance or the taking of any management action.

When to File: The form must be received by the Department not later than 14 days after you have been retained for the purpose of influencing a decision of any officer or employee of HUD.

Where to File: The form must be submitted to the Department of Housing and Urban Development, Office of Ethics (AE), 451 Seventh Street, S.W., Washington, D.C. 20410.

How to File: You must use this form to register with the Department. All information must be typed or block printed and legible. Do not abbreviate any text.

Note: If any changes or additions in the information submitted on this form occur before December 31, an updated copy must be submitted.

Block 1 Check "yes" if this form is an update of a previous submitted form.

Block 2: Provide the Registrant's full name (last name first, first name, middle name).

Block 3 Provide your Social Security Number (SSN) or your Employer Identification Number (EIN), or both if both numbers are used in connection with the Federal action number (see block 10).

Block 4: Provide the Registrant's business address, (street, city, State, and zip code)

Block 5 Check the appropriate box.

Block 6 a. Provide the full name of the registrant's employer.

b. Provide the Employer's Identification Number (EIN).

Block 7. Provide the employer's full address, (street, city, State, and zip code)

Block 8. Provide the full name of the person who has retained the Registrant to influence a decision of the Department with respect to the award of any financial assistance or the taking of any management action. If you are providing lobbying services on behalf of someone other than the person who retained you, also provide the name and address of the person on who's behalf you are acting.

Block 9. Provide the full street address, city, State, and zip code of the person listed in block 8.

Block 10. Enter the Federal identifying number available for the Federal action for which the Registrant has been retained (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant or loan number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001." If Registrant is being retained for more than one Federal action, a separate form should be filed for each action. Registration is incomplete until this Federal Action Number is provided.

Block 11. Check the appropriate box. If "Yes", list all positions and respective agencies in which the Registrant has been employed within the 2-year period ending on the date of submission of this form.

Block 12 Check the appropriate box. The annual reporting requirements do not apply to receipt of reasonable compensation by a regularly employed officer or employee of the person that requests or receives financial assistance, or that is involved in any management action. Check box "yes" if at the time of registration you know with certainity that you will fully qualify for this exception. Any officer or employee asserting the exception must demonstrate, upon the Department's request and to the Department's satisfaction, that he/she qualifies for the exception, including that he/she received reasonable compensation and that he/she was a regularly employed officer or employee. Therefore, if you are unable to make this determination at this time do not check either box.

Block 13. Registrant's signature and date.

Lobbyist & Consultant Activity
Registration (Entity)

U.S. Department of Housing and Urban Development
Office of Ethics

Section 112, HUD Reform Act

See detailed instructions on back.

OMB Approval No. 2501-0012 (exp.6/30/94)

1. Is this an updated form ? ☐ Yes ☐ No

Registration Number :(HUD use only)

2. Registrant's Name and Business Address: (street, city, State, & zip code)

3. Employer Identification Number:

4. Name & Address of Person who has retained the Registrant for lobbying activites

5. Federal Action Number :

6a. Registrant Representative's Name :

6b. Registrant Representative's Social Security No.:

6c. Registrant Representative's Address :

6d Was the Registrant's Representative Employed by the Federal Government During the 2-Year Period Ending on the Date of Submision of this form? Yes ☐ No ☐
If "Yes," in v hat Capacity?

7. Certification Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802; 42 USC 3537)

I certify that this information is true and complete.

a. Name: (print or type)

b. Position / Title:

c. Signature :

X

Date:

form HUD-2881-B (6/91)

Instructions

Introduction: Section 13 of the Department of Housing and Urban Development Act, USC 3537b, requires registration with HUD by any person who is retained for the purpose of influencing the decision of any officer or employee of the Department of Housing and Urban Development (HUD) through direct communication with such officer or employee, with respect to: 1) the award of any financial assistance within the jurisdiction of HUD; or 2) any management action involving a change in the terms and conditions or status of financial assistance awarded to any person. This form should be used only by entities subject to the registration requirements.

This requirement does not apply:

- To any agreement or payment involving any communication that is wholly and expressly limited to complying with conditions, requirements, or procedures imposed by HUD in connection with any financial assistance or management action. In order for this exception to apply, the conditions, requirements, or procedures must be imposed, (or must reasonably be believed by the person to be imposed) by law, regulation, or written directive (such as a HUD handbook, notice, or application document), or imposed by an officer or employee of the Department;
- To any agreement, or to the receipt or expenditure of money or any other thing of value in connection with litigation to which the person is a party; and
- To the employment relationship between an entity and a partner, associate, officer or employee, where the entity is retained for lobbying services.

Definition:

- Person means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority (including an Indian Housing Authority); firm; partnership; society; State, unit of general local government, or other governmental entity (including a public housing agency); and any other organization or group of people. The term does not include an Indian tribe.

Who Must File:

Except as provided above, any entity, pursuant to an agreement to make an expenditure, to influence a decision of the Department with respect to the award of any financial assistance or the taking of any management action.

When to File: The form must be received by the Department not later than 14 days after you have been retained for the purpose of influencing a decision of any officer or employee of HUD.

Where to File: The form must be submitted to the Department of Housing and Urban Development, Office of Ethics (AE), 451 Seventh Street, S.W., Washington, D.C. 20410.

How to File: You must use this form to register with the Department. All information must be typed or block printed and legible. Do not abbreviate any text.

Note: If any changes (additions) in the information submitted on this form occur before December 31, an updated copy must be submitted.

Block 1 Check "yes" if this form is an update of a previous submitted form.

Block 2: Provide the Registrant's full name (name of entity) and business address, (street, city, State, and zip code).

Block 3 Provide the Registrant's Employer Identification Number (EIN).

Block 4: Provide the full name and the full street address (city, State, and zip code) of the person who has retained the Registrant pursuant to an agreement to make an expenditure to influence a decision of the Department with respect to the award of any financial assistance or the taking of any management action. If the Registrant is providing lobbying services on behalf of someone other than the person who retained it, also provide the name and address of the person on who's behalf it is acting.

Block 5. Enter the Federal identifying number available for the Federal action for which the Registrant has been retained [e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant or loan number; the application/proposal control number assigned by the Federal agency]. Include prefixes, e.g., "RFP-DE-90-001." If Registrant is being retained for more than one Federal action, a separate form should be filed for each action. Registration is incomplete until this Federal action number is provided.

Block 6a. Provide the name of Registrant's partner, associate or other officer or employee of the Registrant who will make the actual contact with HUD.

Block 6b. Provide the SSN of the person listed in block 6a.

Block 6c. Provide the address of the person listed in block 6a.

Block 6d. Check the appropriate box. If "Yes", list all positions and respective agencies in which the Representative of the Registrant has been employed within the 2-year period ending on the date of submission of this form. Use the attached continuation sheet if more than one representative will be contacting HUD officials or employees regarding this Federal action number (see block 5).

Block 7a. Print or type the name of the person filling out this form, as authorized representative of Registrant.

Block 7b. State the position or title of the person in block 7a.

Block 7c. Sign and date.

Lobbyist & Consultant Activity Registration (Entity)

Continuation Sheet

Registrant's Name:

6a. Registrant Representative's Name | 6b. Registrant Representative's SSN

6c. Registrant Representative's Address

6d. Was the Registrant's Representative employed by the Federal Government during the last 2-year period ending on the Date of Submission of this form? Yes ☐ No ☐

If "Yes," in what capacity?

6a. Registrant Representative's Name | 6b. Registrant Representative's SSN

6c. Registrant Representative's Address

6d. Was the Registrant's Representative employed by the Federal Government during the last 2-year period ending on the Date of Submission of this form? Yes ☐ No ☐

If "Yes," in what capacity?

6a. Registrant Representative's Name | 6b. Registrant Representative's SSN

6c. Registrant Representative's Address

6d. Was the Registrant's Representative employed by the Federal Government during the last 2-year period ending on the Date of Submission of this form? Yes ☐ No ☐

If "Yes," in what capacity?

6a. Registrant Representative's Name | 6b. Registrant Representative's SSN

6c. Registrant Representative's Address

6d. Was the Registrant's Representative employed by the Federal Government during the last 2-year period ending on the Date of Submission of this form? Yes ☐ No ☐

If "Yes," in what capacity?

Page ____ of ____

form HUD-2881-B

Lobbyist & Consultant Activity

Annual Report

of "Persons" Receiving Payment for Lobbying Activities

Section 112, HUD Reform Act

U.S. Department of Housing and Urban Development
Office of Ethics

See detailed instructions on the back.

OMB Approval No. 2501-0012 (exp. 6/30/94)

1. Name: (see instructions)	2. Social Security Number: (or EIN)	Registration Number: (HUD use only)

3. Business Address of Person/Entity listed in item 1:

4. Report of Money, or Other Thing of Value, Received for Lobbying Activities

a. Person or Entity in whose interests You Appeared (from Whom Paid)	b. Federal Action Number	c. Purpose	d. Amount/Estimated Valuation

form HUD-2882-B (6/91)

5. Report of Money, or Other Thing of Value, Expended for Lobbying Activities

a. Name & Address (to whom Paid)	b. SSN or EIN	c. Federal Action Number	d. Purpose	e. Amount/Estimated Valuation

6. Certification **Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802; 42 USC 3537)**

I certify that this information is true and complete.

a. Name: (print or type)	b. Position / Title:

c. Signature:	Date:
X	

Instructions

Introduction: Section 13 of the Department of Housing and Urban Development Act, USC 3537b, requires any person who is retained for the purpose of influencing the decision of any officer or employee of the Department of Housing and Urban Development (HUD) through direct communication with such officer or employee, with respect to: 1) the award of any financial assistance within the jurisdiction of HUD; or 2) any management action involving a change in the terms and conditions or status of financial assistance awarded to any person, to file with HUD a detailed report of all money or other thing of value received, and of all money or other thing of value expended in connection with the lobbying activity. This form is to be used to report all money or things of value received during the previous reporting year.

This requirement does not apply:

- If the sum of the amounts of all reportable receipts is less than $10,000 in the reporting year;
- To receipt of reasonable compensation by a regularly employed officer or employee of the person that requests or receives financial assistance, or that is involved in any management action; (Any officer or employee asserting the exception must demonstrate, upon the Department's request and to the Department's satisfaction, that he/she qualifies for the exception, including that he/she received reasonable compensation and that he/she was a regularly employed officer or employee.)
- To any agreement that is wholly and expressly limited to complying with conditions, requirements or procedures imposed by HUD in connection with any financial assistance or management action. In order for this exception to apply, the conditions, requirements or procedures must be imposed, or reasonably believed by the person to be imposed, by law, regulation, written directive (such as a HUD handbook, notice, or application document) or imposed by an officer or employee of the Department;
- To any agreement, or to the receipt or expenditure of money or any other thing of value in connection with litigation to which the person is a party;
- To the elected officials of a State or local government; to the political appointees who comprise their personal staffs; or to the full-time, appointed officials who serve in the State or local government in policy level positions, while engaged in the official business of the government;
- To a person who attempts to influence the Department on his or her own behalf, without retaining another person; and
- To receipt of compensation under an employment relationship between an entity and its partners, associates, officers or employees, where the entity is retained for lobbying services.

Definitions:

- Person means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority (including an Indian Housing Authority); firm; partnership; society; State, unit of general local government, or other governmental entity (including a public housing agency); and any other organization or group of people. The term does not include an Indian tribe.
- Regularly employed means, with respect to an officer or employee of a person requesting or receiving financial assistance or who is involved in a management action, an officer or employee who is employed by the person for at least 130 working days within one year immediately before the date of the submission that initiates the Department's consideration of the person for receipt of such assistance, or the date of initiation of any management action. For purposes of the preceding sentence, a management action undertaken by the Department is initiated on the date on which the action is first communicated to the public. To be regularly employed, the officer or employee must:

(1) Be employed on a full-time basis, or on a part-time basis under a program offered by the person to officers or employees of similar rank and responsibilities for specific purposes, such as to permit participation in a work-study program or to permit employees to provide child care for their children;

(2) Have meaningful responsibilities; and

(3) Have duty hours not less than individuals of similar rank and responsibilities.

When to File: The form must be filed with the Department between the 1st and 10th day of January of each year. The form is considered properly filed when deposited in a post office between the 1st and 10th day of January of each year, and is sent by certified or registered mail, postage prepaid and return receipt requested, to the Office of Ethics.

Who Must File: Any person who receives money or other things of value during the reporting year in carrying out activities pursuant to a covered agreement.

Where to File: The form must be submitted to the Department of Housing and Urban Development, Office of Ethics (AE), 451 Seventh Street, S.W., Washington, D.C. 20410.

How to File: You must use this form to report to the Department. All information must be typed or block printed and legible. Do not abbreviate any text.

Block 1: In the case of an individual, provide the full name (last name, first name and middle initital) and in the case of an entity, provide the full business name.

Block 2 Provide your Social Security Number (SSN) or your Employer Identification number (EIN), or both if both numbers are used in connection with the Federal action number listed in block 4b.

Block 3: Provide the full address, (street, city, State, and zip code) of the person listed in block 1.

Block 4. For each payment or other thing of value received:

a. Provide the full name, street address, city, State, and zip code of the "person" who retained you, or in whose interest you appear, to influence a decision of the Department;

b. Enter the most appropriate Federal identifying number available for the Federal action for which a payment was received (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant or loan number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001;"

c. State the action you wanted the Department to take or not take; and

d. Provide the amount or estimated valuation of payment.

Block 5: If applicable, for each expenditure:

a. Provide the full name, street address, city, State, and zip code of the persons to whom monies or other things of value are paid;

b. Provide the Social Security Number (SSN) or Employer Identification Number (EIN), as appropriate, of persons to whom monies or other things of value have been paid;

c. Enter the most appropriate Federal identifying number available for the Federal action for which a payment was made (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant or loan number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001;"

d. State the purpose of the payment. This should include money or other things of value you retained for your remuneration; and

e. Provide the amount/estimated valuation paid.

Block 6 a. Print or type name of person filling out this form, as authorized representative of person listed in block 1.

b. State position or title of person listed in block 6a.

c. Sign and date.

Lobbyist & Consultant Activity

Annual Report

of "Persons" making Expenditures for Lobbying Activities

Section 112, HUD Reform Act

U.S. Department of Housing and Urban Development
Office of Ethics

See detailed instructions on the back.

OMB Approval No. 2501-0012 (exp. 6/30/94)

1a. Name: (see instructions)	1b. Social Security Number: (SSN or EIN)	Registration Number: (HUD use only)

2. Address:

3. Report of Agreements and Expenditures

a. Name and Address (see instructions)	b. Social Security Number (or EIN)	c. Federal Action No.	d. Date of Agreement	e. Amount	f. Date of Expenditure	g. Amount

4. Certification Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802; 42 USC 3537)

I certify that this information is true and complete.

a. Name: (print or type)	b. Position / Title

c. Signature:

X

Date :

form HUD-2883 (6/91)

Instructions

Introduction: Section 13 of the Department of Housing and Urban Development Act, USC 3537b, requires any person who enters into an agreement to make, or makes an expenditure for the purpose of influencing the decision of any officer or employee of the Department of Housing and Urban Development (HUD) through direct communication with such officer or employee, with respect to: 1) the award of any financial assistance within the jurisdiction of HUD; or 2) any management action involving a change in the terms and conditions or status of financial assistance awarded to any person, to file a report with HUD. This form is to be used for all agreements and expenditures made during the previous reporting year.

This requirement does not apply:

- In the case of a payment of reasonable compensation made to any "regularly employed officer" or employee of the person who requests or receives assistance within the jurisdiction of HUD, or who is involved in any management action with respect to such assistance; (Any person asserting the exception must demonstrate, upon the Department's request and to the Department's satisfaction, that he or she qualifies for the exception.)
- If the sum of the amounts of all reportable expenditures and agreements is less than $10,000 in the reporting year. **Note:** see 24 CFR 86.20(g)(1) for further instructions on counting expenditures;
- To any expenditure or part of an agreement that is wholly and expressly limited to complying with the conditions, requirements or procedures imposed by HUD in connection with any financial assistance or management action. In order for this exception to apply, the conditions, requirements or procedures must be imposed, or reasonably believed by the person to be imposed, by law, regulation, written directive (such as a HUD handbook, notice, or application document) or imposed by an officer or employee of the Department;
- To any agreement to make an expenditure, or any expenditure made, in connection with litigation to which the person is a party;
- To State and local governments that make expenditures to the elected officials of a State or local government; to the political appointees who comprise their personal staffs; or to the full-time, appointed officials who serve in State or local government in policy level positions, while engaged in the official business of the government;
- To a person who attempts to influence the Department on his or her own behalf without retaining another person; and
- To expenditures made under an employment relationship between an entity and its partners, associates, officers or employees where the entity is retained for lobbying services.

Definitions:

- Agreement means all or part of a contract, agreement, promise, or any other arrangement, whether or not it is in writing or is legally enforceable, that involves an undertaking of any kind to make an expenditure. The term includes an arrangement under which a person has a financial involvement in the transaction, such as where contingent liability to make an expenditure is assumed by, or on behalf of, a person, or where the expenditure is provided by, or on behalf of, a person, but only if the person has an interest in the effort to influence the Department under this part. The term also includes any employment arrangement between a person and an officer or employee of the person. An agreement is considered to have been made when the contract or agreement is entered into, or the promise or other arrangement is made, even though a person receiving the expenditure may not receive it at that time.
- Expenditure means a payment, distribution, loan, advance, deposit, gift of money, or the provision of anything else of value. An expenditure may have either monetary or non-monetary value. The term includes an expenditure made by a person to an officer or employee of the person as part of an employment relationship. However, where the person is an entity (such as a firm or an association) and is retained, the term does not include an expenditure made by the person to its partners, associates, or other officers and employees, where the partner, associate, or officer or employee works on a full-time basis, or on a part-time basis under a program offered by the person to officers or employees of similar rank and responsibilities for specific purposes, such as to permit participation in a work-study program or to permit employees to provide child care for their children. An expenditure is considered to have been made when the person makes it available to another person without restriction.
- Person means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority (including an Indian Housing Authority); firm; partnership; society; State, unit of general local government, or other governmental entity (including a public housing agency); and any other organization or group of people. The term does not include an Indian tribe.
- Regularly employed means, with respect to an officer or employee of a person requesting or receiving financial assistance or who is involved in a management action, an officer or employee who is employed by the person for at least 130 working days within one year immediately before the date of the submission that initiates the Department's consideration of the person for receipt of such assistance, or the date of initiation of any management action. For purposes of the preceding sentence, a management action undertaken by the Department is initiated on the date on which the action is first communicated to the public. To be regularly employed, the officer or employee must:

  (1) Be employed on a full-time basis, or on a part-time basis under a program offered by the person to officers or employees of similar rank and responsibilities for specific purposes, such as to permit participation in a work-study program or to permit employees to provide child care for their children;

  (2) Have meaningful responsibilities; and

  (3) Have duty hours not less than individuals of similar rank and responsibilities.

Who Must File: Each person:

- That makes, or that enters into an agreement to make, an expenditure to a person;
- That makes, or that enters into an agreement to make, an expenditure to a person on behalf of another person; or
- On whose behalf an expenditure is made to a person, or an agreement to make an expenditure to a person is entered into.

If the expenditure is intended to influence, or should reasonably be expected to have the effect of influencing, a decision of the Department with respect to the award of any financial assistance or the taking of any management action, through direct communication with any officer or employee of the Department.

When to File: The form must be filed with the Department between the 1st and 10th day of January of each year. The form is considered properly filed when deposited in a post office between the 1st and 10th day of January of each year, and is sent by certified or registered mail, postage prepaid and return receipt requested, to the Office of Ethics.

Where to File: The form must be submitted to the Department of Housing and Urban Development, Office of Ethics (AE), 451 Seventh Street, S W., Washington, D.C. 20410.

How to File: You must use this form to report to the Department. Enter information on all agreements or expenditures made during the reporting year. Agreement information should be included even if no expenditures have been made relevant to the agreement. All information must be typed or block printed and legible. Do not abbreviate any text.

Block 1. a. In the case of an **individual**, provide the full name (last name, first name and middle initial). In the case of an entity, provide the full business name;

b. Provide your Social Security Number (SSN) or your Employer Identification number (EIN), or both if both numbers are used in connection with the Federal action number listed in block 3c.

Block 2. Provide the full address (street, city, State, and zip code) of the person in block 1

Block 3. For each agreement or expenditure:

a. Provide the full name, street address, city, State, and zip code of the person with which an agreement was made or to whom an expenditure was made;

b. Provide the person's Social Security Number (SSN) or Employer Identification Number (EIN), whichever one is applicable;

c. Enter the most appropriate Federal identifying number available for the Federal action for which the agreement or expenditure was made regarding lobbying activity (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant or loan number; the application or proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

d. Provide the date of the agreement (month, day, and year); and

e. Provide the amount of the agreement.

f. Provide the date of the expenditure (month, day, and year); and

g. Provide the amount of the expenditure (see 24 CFR 86.20(g)(1) for instructions on counting expenditures.

Block 4 a. Print or type name of person filling out this form, as authorized representative of person listed in block 1.

b. State position or title of person listed in block 4a.

c. Sign and date.

federal register

Tuesday
July 2, 1991

Part IV

Environmental Protection Agency

An Invitation for Preproposals for the Environmental Education and Training Program; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3970-2]

An Invitation for Preproposals for The Environmental Education and Training Program

The Environmental Protection Agency (EPA) will be funding an Environmental Education and Training Program (EETP) in Fiscal Year 1992, which begins October 1, 1991. The requirement for this program is found in section 5 of the National Environmental Education Act (NEEA), Public Law 101–619. This notice applies only to the Environmental Education and Training Program which is administratively separate from the NEEA Environmental Education Grants Program covered under section 6 of the Act.

Under section 5 of the Act, EPA intends to award one major grant or cooperative agreement per year to an institution of higher education or other institution (or consortia of such institutions) which is a not-for-profit organization. The award will establish a nation-wide program to stimulate improvements in environmental education and training.

This program is new and EPA wants to learn and incorporate the views and opinions of the environmental education community. The ideas in the preproposals will be evaluated and used to both qualify potential participants in the program and develop program specifications.

If you plan to submit a preproposal, please send a brief, no more than two page, letter of intent postmarked by August 1, 1991. EETP–LI, Office of Environmental Education (A107), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Background

On November 16, 1990, President Bush signed into law the National Environmental Education Act (NEEA), Public Law 101–619. The Act calls for the establishment of an Office of Environmental Education (OEE) within the Environmental Protection Agency (EPA) to develop and support environmental education seminars, training programs, teleconferences, and workshops for environmental education professionals through an Environmental Education and Training Program.

Funding

The EPA is seeking to establish a national program to train educational professionals in the development and delivery of environmental education and training programs and studies. The Agency expects to provide $1,750,000 in Fiscal Year 1992 for the program in the form of one annual cooperative agreement. This is the first year for the program, and it is hoped that the ideas generated in the preproposals will start an ongoing collaborative process with the interested institutions.

Deadline and Content

The preproposals must be postmarked by September 3, 1991, for EPA to evaluate. They should be no more than 10 (8½" × 11") pages not including a table of contents, cover letter and appendices. Appendices may include one page resumes, letters of support, and a one or two page table or matrix of proposed activities.

This evaluation will be the first step in selecting an institution to operate the education and training program. EPA expects funding to be appropriated annually for this program over the next several years. Therefore, preproposals should include a general three year project plan in the introduction, but since funding will be awarded annually, the heart of the preproposal should focus on the first year workplan.

I. Who may submit preproposals?

An institution of higher education or other institution (or a consortium of such institutions) which is a not-for-profit organization may submit preproposals. Collaboration between institutions, Federal, state, and local agencies, and the private sector are encouraged for the establishment and attainment of the goals and objectives for the program. This may be accomplished through a consortium or by other mechanisms.

II. What is the preproposal for?

The preproposal will describe your approach for the operation of a national environmental education and training program.

III. What will be the required functions and activities of the training and education program?

The functions and activities of the program, as specified in the Act, shall include, at a minimum:

1. Classroom training in environmental education and studies including environmental sciences and theory, educational methods and practices, environmental career or occupational education, and topical environmental issues and problems;

2. Demonstration of the design and conduct of environmental field studies and assessments;

3. Development of environmental education programs and curriculum, including programs and curriculum to meet the needs of diverse ethnic and cultural groups;

4. Sponsorship and management of international exchanges of teachers and other educational professionals between the United States, Canada, and Mexico involved in environmental programs and issues;

5. Maintenance of support of a library of environmental education materials, information, literature, and technologies, with electronic as well as hard copy accessibility;

6. Evaluation and dissemination of environmental education materials, training methods, and related programs;

7. Sponsorship of conferences, seminars, and related forums for the advancement and development of environmental education and training curricula and materials, including international conferences, seminars, and forums;

8. Supporting effective partnerships and networks and the use of distant learning technologies; and

9. Such other activities as the Administrator determines to be consistent with the policies of this Act.

Special emphasis should be placed on developing environmental education programs, workshops, and training tools that are portable and can be broadly disseminated.

IV. What will be the basis for selection and award?

Preproposals shall be evaluated, as specified in the Act, on the basis of:

1. The capability to develop environmental education and training programs;

Include in your preproposal evidence that proposed activities and functions can be done by the institutions and individuals involved in the program.

2. The capability to deliver training to a range of participants and in a range of settings;

Include institutional and individual "track records" in outreach to:

- Different levels of education, from preschool through college to adult education.
- Various elements of society from urban to rural, rich, poor, minorities, and senior citizens.
- Different geographical regions, nationwide.

3. The expertise of the staff in a range of appropriate disciplines;

Credentials of primary staff must be included. This may be done by appending resumes, not to exceed one page, and taking time to describe who will be doing what.

4. The relative economic effectiveness of the program in terms of the ratio of overhead costs to direct services;

The preproposal must identify the ratio and briefly justify how funds will

be used. The proposed budgets will be evaluated as to effectiveness in meeting program objectives.

5. The capability to make effective use of existing national environmental education resources and programs;

A method of networking and cooperating with parent and external institutions and organizations which perform existing programs should be described. Also, clearly describe available physical facilities to be used for the program.

6. Criteria, milestones, and deadlines that facilitiate careful and detailed quality reviews and evaluations as prescribed in NEEA [paragraph (5), subsection (c) section 5].

An effective evaluation starts with a preproposal which includes clear, explicit, and measurable criteria against which to judge the effectiveness of the activities with milestones and deadlines from which performance can be measured. A matrix or table should be appended with some of the proposed milestones and deadlines.

7. Such other factors as EPA deems appropriate.

a. The program should establish a goal of self-sustainability, and demonstrate the method of achieving it.

b. If other environmental programs are funded or funding is requested from EPA or other Federal Agencies, identify them and explain how this program will relate.

c. No. funds shall be used for the acquisition of real property (including buildings) or the construction or substantial modification of any building.

V. Who is eligible to participate in grant funded activities?

Individuals eligible to participate in the program are teachers, faculty, administrators, and related support staff associated with local education agencies, colleges, and universities, employees of State education, environmental protection, and natural resource departments. and employees of not-for-profit organizations involved in environmental activities and issues.

VI. What must (or should not) be included in the preproposal?

To qualify for review the preproposal must include:

1. A cover letter.

The individual authorized to accept a Federal cooperative agreement or grant must sign this one or two page letter.

2. A table of contents, referencing numbered pages.

Even though the proposal is only 8 pages, a table of contents will assist reviewers.

3. Functions and activities.

Briefly explain how each function and activity previously referred to in section III will be fulfilled. A matrix or table may be used to depict the schedule for carrying out activities. Also, estimate with realistic and verifiable numbers how many students and teachers will be trained by proposed functions and activities.

4. Basis for evaluation of proposal and award.

Clearly describe why you should be selected by addressing each of the 7 bases of selection previously referred to in section IV with sufficient detail to allow a thorough review and evaluation.

5. Program Director and Staff.

Describe the technical and administrative qualifications of the program director and key staff personnel, and any plans for developing an administrative structure which will enable the program to operate effectively. Resumes must be attached for key staff.

6. Budget information.

Your estimates must include the allocation of funding for any major activities. The estimate for the Federal share of the grant is $1,750,000, and a matching share by the recipient of $584,000 (25%) would then be required. This match cannot be from a Federal source, unless specifically authorized by statute. The budget estimates are for planning and evaluation purposes and neither EPA nor the proposer is held to the exact amounts. Minor deviations from these amounts are expected. Include estimates of overhead and/or indirect costs, plus any major shifts expenditures for activities which you foresee during FY93 and FY94.

Note: Budget information, definitions and explanations, can be found in OMB Circular A–21 for educational institutes and in OMB Circular A–122 for other non-profit organizations.

7. A description of how consideration will be given to including education training programs for minorities.

8. Do not include formal assistance application forms with the preproposal.

VII. When should proposed activities start?

Proposed activities should not begin before funds are awarded. Therefore, start dates should not be scheduled before January 1, 1992.

VIII. How will the selection be made?

Preproposals will be carefully reviewed by an EPA panel to select the best preproposals. The top contenders will be asked to submit full proposals for a final panel review before final selection. The Environmental Education Advisory Council will evaluate the panel's recommendations and advise the Associate Administrator regarding the best qualified candidate to receive a grant. Based on the guidance of the two advisory groups and other factors that he considers important, the Associate Administrator will make a selection.

IX. If selected, how much time will I have to complete the activities in my grant?

You may, for planning purposes, describe multi-year projects up to three years, but you will have a year to complete funded activities proposed in the work plan. Level of funding will be decided annually.

X. What must I do to receive funding in subsequent years?

Continued funding will depend upon availability of funds, your performance, and goals of the program.

XI. Where should the preproposal be submitted, and who can I contact about additional information?

The original preproposal and six copies may be submitted to: EETP–PP, Office of Environmental Education (A107), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

A copy should also be sent to the Environmental Education Coordinator in the corresponding EPA Regional Office. EPA Regional Coordinators, names and addresses, are attached. Please include the EETP–PP code with Regional correspondence also.

If you need additional information, you may write to the address above or call George Walker, EPA, (202) 382–4484

Lewis S.W. Crampton,

Associate Administrator, Office of Communications and Public Affairs.

[FR Doc. 91–15585 Filed 7–1–91; 8:45 am]

BILLING CODE 6560–50–M

federal register

Tuesday
July 2, 1991

Part V

Environmental Protection Agency

Interagency Policy on Beneficial use of Municipal Sewage Sludge on Federal Land; Notice

ENVIRONMENTAL PROTECTION AGENCY

[WH-FRL-3970-8]

Interagency Policy on Beneficial Use of Municipal Sewage Sludge on Federal Land

AGENCY: Environmental Protection Agency.

ACTION: Notice of interagency policy on beneficial use of municipal sewage sludge on Federal land.

SUMMARY: The Office of Management and Budget (OMB) convened an Interagency Task Force in 1990 to develop a consistent policy regarding the beneficial use of municipal sewage sludge and to resolve any technical concerns over the scientific information available in this area. The policy announced today by EPA, on behalf of all the participating agencies, is a product of that Interagency Task Force effort. It is intended to clarify for the public the Federal government's policy and will guide the Federal land management agencies with respect to the beneficial use of municipal sewage sludge on Federal land. The statement reaffirms and supplements the existing Federal policy to advocate those municipal sludge management practices that provide for the beneficial use of sludges while maintaining environmental quality and protecting public health.

Dated June 26, 1991.

William K. Reilly,

Administrator.

FOR FURTHER INFORMATION CONTACT:

U.S. Department of Agriculture: Mr. Larry Schmidt, Forest Service, Watershed and Air, 201 14th Street, SW., Auditors room 3 So., Washington, DC 20250, (202) 453-9475.

U.S. Department of Defense: Mr. Ed Miller, Environmental Support Office, 206 N. Washington Street, suite 100, Alexandria, VA 22314, (703) 325-2215.

U.S. Department of Energy: Mr. Jerry Coalgate, RCRA/CERCLA Division, Office of Environmental Guidance, GA-076 (Mailstop EH-23), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6075.

U.S. Department of the Interior: Mr. Larry Finfer, Mailstop 4412, Office of Program Analysis, 1849 C Street, NW., Washington, DC 20240, (202) 208-7786.

U.S. Environmental Protection Agency: Mr. Robert K. Bastian, Office of Wastewater Enforcement & Compliance (WH-547), 401 M Street, SW., Washington, DC 20460, (202) 382-7378.

U.S. Food and Drug Administration: Mr. Thomas Fazio, Office of Physical Sciences (HFF-400), 200 C Street, SW., Washington, DC 20204.

Tennessee Valley Authority: Mr. Paul Giordano, F-137 NFERC, Muscle Shoals, AL 35660, (205) 386-3490.

Statement of Policy

Interagency Policy on Beneficial Use of Municipal Sewage Sludge on Federal Land

I. Purpose and Need

The Federal government seeks to promote the cost-effective use of recycled materials in American society. One such material, municipal sewage sludge, has been used extensively as a fertilizer and soil conditioner in this nation and elsewhere over a number of years. Municipal sewage sludge is any residue removed during the treatment of municipal wastewater and domestic sewage. Recently, there has been some uncertainty about the policy of the Federal government toward the beneficial use of municipal sewage sludge. This statement is intended to clarify for the public the Federal government's policy. It also provides guidance to Federal land management agencies, with respect to the beneficial use of municipal sewage sludge on Federal lands. These agencies may choose to elaborate on this policy by developing and publishing additional agency-specific guidance.

This statement relates solely to the beneficial use of municipal sewage sludge on land. "Beneficial use" means any application of sludge to land specifically designed to take advantage of the nutrient and other characteristics of this material to improve soil fertility or structure and thereby further some natural resource management objective. Disposal of sludge, which is characterized by an emphasis on isolating, incinerating, or otherwise placing sludge without an associated natural resource management objective, is treated elsewhere in applicable law and regulation. Sludge treatment practices in advance of final use are also not considered to be beneficial uses.

This statement was developed by an interagency task force, facilitated by the Office of Management and Budget, and comprised of representatives of the Departments of Agriculture, Defense, Energy, and Interior, as well as the Environmental Protection Agency, Food and Drug Administration, and the Tennessee Valley Authority. These agencies concur in this document, and will seek to implement it as is appropriate in their respective cases.

II. Beneficial Use Policy

It is the policy of the Federal government that Federal land management agencies will consider beneficial use of municipal sewage sludge for fertilizer, soil conditioner, or other uses, when such uses enhance resources on the Federal lands, and are cost-effective, as determined by the appropriate Federal land management agency.

Where the agency determines that a proposal to apply sludge to Federal lands constitutes a beneficial use that is consistent with the agency's resource management objectives, it is expected that the agency can take advantage of the proposal to beneficially use municipal sewage sludge, unless the agency's analysis reveals (1) legal or programmatic obstacles, (2) evidence indicating significant adverse environmental effects, or (3) excessive agency costs relative to the natural resource benefits and the applicant's opportunity cost.

III. Relationship to Existing Policy

This statement of policy reaffirms and supplements existing Federal policy with regard to sewage sludge (i.e.: "Land Application of Municipal Sewage Sludge for the Production of Fruits and Vegetables, a Statement of Federal Policy and Guidance", adopted by the Environmental Protection Agency, Food and Drug Administration, and the Department of Agriculture, 1981; and "Policy on Municipal Sludge Management", adopted by the Environmental Protection Agency on June 12, 1984, 49 FR 24358).

This statement is not intended to conflict with any statutory or regulatory requirement which guides the programs of the agencies concurring in this document.

IV. Findings Regarding the Beneficial Use of Sewage Sludge

Several decades of experience with municipal sewage sludge has demonstrated that this material can be a valuable resource. Recycling it through beneficial use projects can serve natural resource management and other societal objectives.

The weight of scientific evidence supports the presumption that beneficial use of sludge that is permitted by EPA or the States and is of such quality to ensure compliance with the permit does not present a significant risk to the environment when appropriately applied to land. However, given the wide variety of physiographic and biological conditions in the United States, the final determination as to the

environmental effects of a specific project must take into consideration the particular characteristics of the sludge, the resources, and the land to which it is proposed to be applied.

1. Human Health and Safety. There is no existing scientific evidence of significant human health risk from municipal sewage sludge that is produced and applied to land in compliance with applicable sludge permits and regulations.

2. Biological considerations. Municipal sewage sludge that meets all applicable state and federal standards, which is applied consistent with permit conditions, and which is applied to land in amounts intended to meet the soil fertility requirements of vegetation, can generally be presumed to be safe for biota. However, the Federal land manager who is considering beneficial use of municipal sewage sludge may wish to investigate the specific characteristics of both the sludge and the site to which it may be applied. There is always the possibility that unique local conditions or sludge characteristics may make sludge application more or less appropriate than would otherwise be the case.

An extensive literature review has not revealed any scientific evidence suggesting that beneficial use of sewage sludge has not been demonstrated to cause harmful physical, physiological, or behavioral effects on animals and plants when sludge is applied to land in compliance with applicable permits and regulations. Under some conditions, certain species of plants and animals have been found to concentrate metals or organic chemicals present in sludge within certain of their tissues. This has typically happened when sludge application rates were high and the sludge was relatively highly contaminated. However, contaminants found in the tissues of those plants and animals exposed to sewage sluge have not been demonstrated to have had any harmful effect on those organisms, and the tissue contaminant levels found in those organisms are generally within the range of values that can be found in members of those species inhabiting areas without sludge-amended soils.

Organisms relatively low on the food chain have been the subject of most of the relevant investigations. More scientific information is needed with respect to bioaccumulation of contaminants found in sewage sludge by predators in various ecosystems. Better information on sewage sludge contaminants in predators will be particularly helpful when management of such species is receiving emphasis in applicable land use or resource management plans.

3. Ecological considerations. Beneficial use is intended to improve soil conditions. At the ecological level these changes are likely to be expressed in increased overall productivity, and may be reflected in potentially significant changes in the structure, diversity, or richness of the pre-existing plant and animal community. The nature and rate of these changes may be affected not only by the physical and chemical nature of the sludge, but also by the method of application. Since certain common methods of application could create significant adverse impacts on ecosystems, managers are advised to consult with appropriate technical experts to gain a better understanding of the implications of these considerations.

Certain species can be expected to be relatively advantaged or disadvantaged by the higher levels of soil macro and micro-nutrients and organic material resulting from sewage sludge application., They will out-compete, or be out-competed by, species better adapted to the new conditions.

Whether these changes are positive or adverse can only be evaluated in a programmatic context. If the land management objective is to re-vegetate a heavily mined or otherwise disturbed area, improve forage for livestock or wildlife, reseed after a floral pest removal, or accomplish some similar objective, then the changes are more likely to be considered positive. On the other hand, if the land management objective is to maintain the ecological *status quo,* or to enhance a population of a species that would be disadvantaged by the sludge application, then the land manager may choose to reject the beneficial use proposal as not being consistent with the land management objectives.

4. Water Quality Considerations. Federal land and facility managers are responsible for controlling non-point source pollution that may arise from land disturbing activities or the use of materials such as fertilizer on Federal land.

Federal sludge regulations protect water quality under a wide range of conditions of sludge application. Applying properly treated sewage sludge to well vegetated sites and where tillage is a standard practice further minimizes the potential for adverse water quality impacts of such applications. Where such conditions or tillage practices are not typically the case, land managers should consider possible short term adverse water quality effects. For example, sludge application on undisturbed arid and semi-arid lands may need further research or pilot studies regarding suitable measures or practices to control possible contamination from flash floods and other high intensity storm events.

5. Risk Assessment and Innovation. Beneficial use of municipal sewage sludge has not previously been a common practice of Federal land management agencies. When it has occurred, it has typically been on the initiative of local managers. Adopting non-traditional practices always poses risks to some degree. However, failing to adopt a new practice may also pose risks if it precludes an opportunity to make progress toward fulfilling the agency's land management objectives. Consequently, the risk of foregoing possible land management benefits which may result from innovative land management practices, needs to be weighed against the risks associated with such practices.

V. Agency Implementation Guidance

Federal actions that involve the beneficial use of municipal sewage sludge on Federal lands must comply with National Environmental Policy Act (NEPA) review. Federal agencies will follow their own NEPA guidelines.

The following five factors illustrate the preferred analytical approach for Federal land management agencies to use in evaluating beneficial use proposals. This is not a prescribed process, but guidelines which agencies should seek to satisfy in substance. Each agency will use its own applicable internal procedures for evaluating beneficial use proposals; these procedures are expected to vary among agencies.

In evaluating beneficial use proposals, the Federal land management agency needs to:

—Determine whether adoption of the proposal would comply with applicable law and regulation, would be consistent with the agency's long-term land management objectives, and conforms to the agency's approved land management plans for the specific lands identified in the proposal.

—Determine whether the proposal's predicted effects, assuming it is successfully implemented as proposed, will actually promote the agency's resource management objectives (e.g.: silviculture, forage enhancement, and land reclamation).

—Assess the proposal based on existing credible scientific information. In the absence of sufficient scientific information to make a reasonable

decision, the agency will consider a pilot project designed to produce the necessary information to make an informed decision.

—Determine whether the anticipated costs to the agency of implementing the proposal appear justifiable when compared to the anticipated natural resource management benefits that would result from the adoption of the proposal. In evaluating a beneficial use proposal, Federal land managers should consider any information provided by the applicant (or otherwise obtained) concerning: (1) The applicant's opportunity cost (relative to the next best sewage sludge management option reasonably available to the applicant) should the proposal be rejected, (2) modifications to the original proposal that could further enhance the beneficial use aspects or control any adverse effects of the project as originally proposed, and (3) ways to reduce the agency's costs, such as, cost reimbursement and applicant auditing or monitoring of the project.

—Recognize that, as the land manager, the agency may have an important role in developing permits issued by States or the Environmental Protection Agency which govern the use of sludge, whether or not the agency is a signatory to the permit. In this capacity, Federal land managers may help to develop permit conditions which (1) provide needed management information, through activities such as sludge sampling and site monitoring, (2) determine the rate, frequency, timing, and method of sludge application, (3) incorporate appropriate best management practices to control non-point source pollution of surface waters that might otherwise result from surface runoff during storm events, and (4) provide for any necessary safety practices during the actual application of sludge.

VI. Judicial Review

This statement is intended only to provide policy guidance to agencies in the exercise of their discretion concerning the management of Federal lands. This statement is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers or any person. Thus, this statement is not intended to create any substantive or procedural basis on which to challenge any agency action or inaction on the ground that such action or inaction was not in accordance with this statement.

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July 2, 1991

Part VI

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 101 and 102

Food Labeling; Declaration of Ingredients; Common or Usual Name for Nonstandardized Foods; Diluted Juice Beverages; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 101 and 102

[Docket No. 80N-0140]

RIN 0095-AC48

Food Labeling; Declaration of Ingredients; Common or Usual Name for Nonstandardized Foods; Diluted Juice Beverages

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its food labeling regulations to set out the requirements for the declaration of the percentage of juice in foods that purport to be beverages containing fruit or vegetable juice. The agency is also proposing to revise the existing common or usual name regulation for diluted fruit or vegetable juice beverages to delete the percentage juice declaration provisions and to revise other requirements pertaining to the product name. FDA is also proposing to revoke the common or usual name regulations for noncarbonated beverage products that contain no fruit or vegetable juice and for diluted orange juice beverages. In addition, the agency is withdrawing its 1987 proposal to revoke the existing regulation on common or usual names for diluted fruit or vegetable juice beverages. The current proposals respond to the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) and are part of FDA's ongoing rulemaking on juices and juice beverages.

DATES: Written comments by August 1, 1991. The agency is proposing that any final rule that may issue based on this proposal become effective on the effective date of any nutrition labeling final rule based on the proposal issued in the Federal Register of July 19, 1990 (55 FR 29487), and on the supplementary proposal on nutrition labeling that FDA intends to publish in the Federal Register in the near future.

ADDRESSES: Written comments on this proposal are to be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 1-23, 12420 Parkiawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Elizabeth Campbell, Center for Food Safety and Applied Nutrition (HFF-312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0229.

SUPPLEMENTARY INFORMATION:

I. Background

A. Regulatory History

The controversy over percentage juice declaration on diluted fruit and vegetable juice beverages is almost 25 years old. On September 2, 1966, FDA received a petition to adopt a standard of identity for cranberry juice cocktail that would have required that the product contain not less than 25 percent cranberry juice. The suggested standard of identity would not have required declaration of the amount of cranberry juice in the product.

FDA proposed in the Federal Register of March 2, 1967 (32 FR 3469) to adopt this standard and issued a final order adopting the standard in the Federal Register of April 11, 1968 (33 FR 5617). The final order, however, required that the name of the food (cranberry juice cocktail) also include the words "contains not less than 25 percent cranberry juice."

On May 9, 1968, an objection to the juice content labeling requirement of the standard was filed along with a request for a public hearing. As a result, the juice content labeling requirement was stayed pending the requested hearing (33 FR 10088, July 13, 1968).

In the Federal Register of June 14, 1974 (39 FR 20908), FDA proposed to adopt a regulation for diluted fruit or vegetable juice beverages that would require declaration of the percentage juice content as part of the common or usual name of the beverage. In the Federal Register of June 10, 1980 (45 FR 39251), FDA published an order revoking the stayed standard of identity for cranberry juice cocktail. In the same issue of the Federal Register (45 FR 39247), it also published the final rule adopting the June 1974 proposal (21 CFR 102.33, hereinafter referred to as "current § 102.33"), effective July 1, 1981. The regulation required that all diluted juice beverages, other than diluted orange juice beverages, be labeled with a descriptive name identifying the beverage and with a percentage declaration of the amount of juice contained in the beverage. (A regulation, 21 CFR 102.32, requiring declaration of percentage juice in diluted orange juice beverages was already in effect.)

In the Federal Register of December 5, 1980 (45 FR 80499), after receiving objections to the order revoking the stayed standard of identity for cranberry juice cocktail, FDA published an order staying the effective date of the revocation of the stayed standard of identity pending a determination of whether a hearing was justified. FDA also reaffirmed the common or usual name regulation for diluted fruit or vegetable juice beverages (current § 101.33) but delayed the effective date of that regulation until July 1, 1982. In the Federal Register of March 26, 1982 (47 FR 13003), FDA extended the effective date of the regulation again until July 1, 1984.

In the Federal Register of June 1, 1984 (49 FR 22831), FDA published a proposal to amend the common or usual name regulation for diluted juice beverages to exempt cranberry juice beverages. The notice also proposed to allow the manufacturers of other diluted high-acid juice beverages to petition for a similar exemption, to eliminate the requirement that the percentage of individual juices in diluted multiple-juice beverages be declared on the label, and to permit declaration of the percentage of juice in a product in 1 percent increments rather than in 5 percent increments as provided by the regulation. In a separate notice, on the same day (49 FR 22834), FDA proposed to extend the effective date for the regulation until final rulemaking was complete. The agency finalized this extension on June 27, 1984 (49 FR 26541).

In the Federal Register of July 16, 1987 (52 FR 26690), FDA published a proposal to revoke the regulation on common or usual names for diluted juice beverages. This notice also announced FDA's decision to withdraw the June 1, 1984, proposal to amend the regulation. Comments received on the 1987 notice overwhelmingly opposed revoking the regulation on common or usual names for diluted juice beverages.

In the Federal Register of January 31, 1990 (55 FR 3266), FDA published a notice stating that it had received a petition from the National Food Processors' Association (NFPA) requesting that the agency initiate rulemaking to replace the common or usual name regulation for diluted fruit or vegetable juice beverages, other than diluted orange juice beverages, with a new regulation that required declaration of the percent of the product that is juice on the information panel. FDA requested comments on this petition and on several additional issues regarding percent juice labeling. These included: (1) Methods for calculating the juice percentage; (2) how to represent accurately the contents of juice blends and diluted multiple-juice beverages containing one or more characterizing flavors; (3) whether the percentage of characterizing juices should be labeled; (4) whether modified juices should be included in the calculation of the juice

percentage, and how these juices should be identified on the label; and (5) other general issues regarding the common or usual name regulation for diluted juice beverages.

After this petition was submitted, FDA received a comment on it from the National Juice Products Association (NJPA). NJPA stated that its members had agreed on a method of juice content labeling for diluted juice beverages with which they and others in the juice beverage industry could voluntarily comply. NJPA suggested that for all noncarbonated, diluted fruit or vegetable juice beverages (containing less than 100 percent and more than 0 percent juice), the percentage of total juice contained in the beverage should be expressed as a whole number not greater than the actual percentage of juice contained in the beverage and should be declared prominently on either the information panel or the principal display panel. To achieve a uniform declaration of the juice percentage, NJPA suggested minimum Brix levels for a wide variety of single-strength juices. It suggested that manufacturers calculate the percentage of juice in their beverages using the specified minimum Brix levels as 100 percent juice.

FDA received approximately 35 comments on the January 31, 1990 notice, including the comment already discussed above. The comments were divided primarily among manufacturers, trade associations, and State governments, with one comment from a consumer advocacy group, and a few comments from consumers. One comment was also received from 21 members of Congress.

Virtually all of the comments supported the concept of declaring the total percentage of juice in juices and diluted juice beverages. Comments from a wide variety of sources also generally favored the thrust of the NFPA petition. A few comments, most from States and a consumer advocacy group, wanted FDA to deny the petition. Some of these comments stated that FDA should enforce the current provision and set a new effective date for all or part of the regulation. Many of the comments on the January 1990 notice also addressed the NJPA Brix recommendation. This proposal addresses all issues raised in the NFPA petition and therefore constitutes the agency's response to the petition.

B. The Nutrition Labeling and Education Act of 1990, Public Law 101–535

Section 7 of the 1990 amendments, enacted on November 8, 1990, amended section 403(i) of the act to provide that:

> * * * a food, (including a standardized food) shall be deemed to be misbranded unless its label bears (1) The common or usual name of the food * * * and if the food purports to be a beverage containing vegetable or fruit juice, a statement with appropriate prominence on the information panel of the total percentage of such fruit or vegetable juice contained in the food * * *.

The 1990 amendments have, therefore, settled the question of whether, and where, a declaration of the percentage of juice in a fruit or vegetable juice beverage must be included on the product's label. However, questions about the exact meaning and the implementation of this provision remain.

II. Percentage Juice Labeling

A. Applicability

1. General

Section 403(i) of the Federal Food, Drug, and Cosmetic Act (the act) as amended by the 1990 amendments states that any food that purports to be a beverage containing fruit or vegetable juice is required to have a percentage juice declaration on the information panel of its label. This requirement for percentage juice declaration applies to full-strength juices and to various other types of fruit and vegetable beverage food products, as well as to the diluted fruit or vegetable juice products to which FDA's original rulemaking applied. Because section 7 of the 1990 amendments also eliminated any exemption from section 403(i) of the act (21 U.S.C. 343(i)) for standardized foods, the statute also requires that the labels of standardized juice and juice beverages, as well as nonstandardized products, declare the percentage of juice in the products.

The marketplace has exploded with a variety of carbonated and noncarbonated beverages purporting to contain fruit or vegetable juice that were not available when the original juice percentage rulemaking began. Carbonated beverages that purport to contain fruit or vegetable juice include fruit sparklers, sparkling ciders, lightly carbonated fruit beverages, soft drinks (sodas) containing juice, and carbonated waters containing fruit juice. These and similar carbonated products are required to bear a percentage juice declaration under the 1990 amendments.

Noncarbonated beverages purporting to contain fruit or vegetable juice include products of varying fruit concentrations. Concentrates of single- and multiple-juice products for reconstitution by the consumer into full-strength (100 percent) juice or diluted juice beverages; full-strength, single-fruit juices and juice blends; nectars; diluted juice beverages and diluted multiple-juice beverages; and bottled waters containing fruit juice are included among these products.

The agency has also considered the applicability of the percent juice declaration requirements to products that contain no fruit or vegetable juice. FDA currently has in effect a regulation, § 102.30, that addresses the labeling requirements for those noncarbonated products that appear to contain fruit or vegetable juice but that actually contain none. The regulation states that when the labeling or the color and flavor of the beverage represents, suggests, or implies that fruit or vegetable juice may be present (e.g., the product label bears the name or a variation of the name, or any pictorial representation, of any fruit or vegetable, or the product contains color and flavor that give the beverage the appearance and taste of containing a fruit or vegetable juice), then the product shall be labeled to state that it contains no fruit or vegetable juice.

The 1990 amendments require that any food that purports to be a beverage containing juice bear a percent juice declaration. Thus, under the 1990 amendments, as under § 102.30, products whose label or labeling represents, suggests, or implies that they contain juice, even though they do not, must bear a percentage declaration, "0 percent juice." FDA believes that the phrasing provided for in § 102.30 (e.g., "contains no juice") also meets the intent and the letter of the statute. Because the declaration of the juice content of these types of beverages will be covered under the ingredient labeling provisions, FDA finds no continuing need for § 102.30, which is a common or usual name regulation.

The agency, therefore, is proposing: (1) To revoke § 102.30 and (2) to provide in new § 101.30(f) for declaration on the information panel of beverages previously described in § 102.30 that they contain "0 percent juice" or "no juice."

Further, FDA believes that the statute applies to similar products that are carbonated. Consequently, the proposed regulations also apply to carbonated beverage products that appear to contain fruit or vegetable juice but that actually contain no juice (§ 101.30(a)).

However, there is a long-standing tradition of marketing carbonated, fruit-flavored soft drinks (sodas), such as cherry cola and orange soda, that generally do not contain fruit juice. (Soft drinks (sodas) that do contain fruit or vegetable juice are discussed elsewhere.) FDA tentatively concludes that these products do not purport to

contain fruit or vegetable juice. This tentative conclusion is based on the label and labeling of these traditional products that generally do not give the impression, either through words or explicit vignettes, that these traditional soft drinks (sodas) contain juice. Generally, the abstract nature of their vignette, if any, and labeling that says they contain natural or artificial flavor plus the absence of a more specific claim that the soda contains juice, do not, in FDA's tentative view, leave the consumer with the impression that these traditional soft drinks (sodas) contain juice. Most soft drinks (sodas) that do contain juice already make that factor known. Accordingly, if a soft drink (soda) does not represent or suggest in the name, labeling statement, or ingredient statement that it contains fruit or vegetable juice, there is no basis to find that it purports to contain juice. Thus, there is no basis to find that a percentage juice declaration is required on the product.

However, FDA tentatively concludes that a similar finding cannot be made for products, including soft drinks, that use ingredients such as pulp to give the impression that they contain juice. Such products would purport to contain juice and thus would be required to bear a percentage juice declaration. FDA is also aware of the use of certain vignettes of specific fruits on the labels of carbonated beverage containing no fruit. FDA believes that the more the vignette gives the impression that the product contains juice, such as through lifelike, artistic renderings or the appearance of juice coming from the fruit, the more that the label creates the impression the juice of the depicted fruit is actually present.

The agency requests information on appropriate criteria for determining when soft drink products purport to contain juice. The agency also requests comments on whether it should consider such extra-label sources of information about a product such as advertising in deciding whether a product purports to contain juice.

FDA examined whether wine coolers and other similar products such as sangrias should be required to bear a percentage juice declaration. Because of: (1) The traditional (noncommercial) way to make flavored wine coolers or sangrias, i.e., with wine, soda, and juice; (2) the often explicit labels and labeling that give the impression through words or the use of vignettes that the products contain the juice of a fruit; plus (3) the absence of a long history of availability of, and of familiarity by the public with, commercial wine coolers and sangrias, FDA tentatively concludes that wine coolers or similar beverages containing less than 7 percent alcohol by volume that purport to contain unfermented fruit or vegetable juice are also required to bear a percentage juice declaration. In addition to labeling statements and vignettes that give the impression that these products contain juice, such products may use ingredients such as pulp which would also require that they bear a percentage juice declaration.

Therefore, wine coolers and similar beverages are covered by proposed § 101.30. The agency requests comment on its tentative conclusion that the percentage juice declaration requirement applies to such beverages.

This document also proposes to revoke 21 CFR 102.32, the common or usual name for diluted orange juice beverages. This regulation is no longer necessary because its pertinent provisions are included in the proposed new 21 CFR 102.33.

2. Exemption From Percentage Declaration

One comment on the January 31, 1990, notice requested that an exemption under section 403(i) of the act from percentage declaration be made for the labeling of juice beverages sold directly to institutions and not to consumers. While the comment recognized that the institutional food service industry should be required to provide percentage juice information, the comment requested that the agency make provision for an optional means of providing that information, such as by supplying it directly to the institution as permitted for nutrition labeling in § 101.9(h)(9) (21 CFR 101.9(h)(9)).

The comment, however, did not include information substantiating the need for the requested exemption or the possible benefit to the food service industry. Consequently, the agency is not proposing this exemption.

B. How Declarations Should be Made

1. Placement and Prominence

There has been considerable debate over the past several years as to where on the label the declaration of the percentage of juice in a product should be made, and how it should appear. FDA's traditional position, as evidenced by the common or usual name regulation, current § 102.33, is that the percentage juice declaration should be included as part of the common or usual name on the principal display panel. Section 102.5, the regulation that sets forth general principles for common or usual names, states that the percentage declaration should immediately follow the descriptive name, and except for principal display panels greater than 25 square inches, be in the same type size as required for the next quantity of contents. FDA's view has been that this presentation is most informative to consumers. Certain members of the industry, however, have argued that the percentage information should be on the information panel, where it could more easily be read in conjunction with, and used for comparison purposes with, the nutrition labeling. The regulations suggested by NFPA in its January 1989 petition, for example, would have placed the percentage juice declaration on the information panel.

Congress addressed this question in the 1990 amendments by designating the information panel as the location for the percentage juice declaration for a food purporting to be a beverage containing vegetable or fruit juice. Therefore, to be consistent with the statute, FDA is proposing in § 101.30(g), that if the beverage is sold in a package with an information panel, the declaration of the amount of juice shall be prominently placed on that panel.

In its petition, NFPA suggested that if a beverage package has an information panel as defined in § 101.2 (21 CFR 101.2), the statement of the percentage of total juice content should appear near the top of the information panel, with no other printed label information appearing above the statement. It also suggested that the percentage juice declaration on the information panel be in easily legible boldface print or type in distinct contrast to other printed or graphic matter, in a height not less than the height of the required declaration of the net quantity of contents on the label and in lines generally parallel to the base on which the package rests.

There was considerable discussion in the comments to the January 31, 1990, notice as to what "appropriate prominence on the information panel" is. The comments agreed that the percentage declaration should indeed be prominent. Comments urged that the declaration appear in boldface type, be equal in size to the net quantity of contents, be highly visible, be near the top of the information panel, and be not less than one-half of the largest type in the brand name.

FDA agrees that the percentage declaration must be presented with appropriate prominence on the information panel but notes that there is other required information, such as nutrition labeling, that also must be placed on the information panel. In examining a series of beverage labels, the agency has also noted, however, that

there are often several pieces of information on the information panel, sometimes quite prominent, that are not required. These items include the product or brand name and statements such as "glass recycles." FDA believes that the percentage juice declaration should be at least as prominent as any other information on the information panel, whether required or not, but recognizes that manufacturers also may desire to place the product name prominently on the information panel.

Therefore, to assure adequate prominence of the percentage juice declaration on the information panel, FDA is proposing in § 101.30(g)(1) to require that the declaration of the amount of juice be placed near the top of the information panel, with no other printed labeling information above the statement. Further, FDA is proposing in § 101.30(g)(2) that this declaration be in easily legible boldface print or type in distinct contrast to other printed or graphic matter, in a height not less than the largest type found on the information panel except that used for the product name, and in lines generally parallel to the base on which the package rests. Because of minimum type size requirements for nutrition labeling, this proposal would, therefore, require that the percentage juice declaration be at least one-sixteenth of an inch in height and be at least as large as any optional label statements such as "glass recycles." FDA believes that these proposed requirements will provide appropriate prominence for the percentage juice declaration and still allow room for other required information.

Congress, however, gave no direction for the placement of the percentage juice declaration on the labels of products that do not have information panels. FDA's general labeling regulations provide for use of the principal display panel in the absence of an information panel in § 101.2(b). There is no indication in the legislative history that Congress intended to exempt percent juice labeling from this regulatory provision. Therefore, FDA is proposing in § 101.30(i) to require that, in the event that there is no information panel on the package, the required percentage juice declaration be placed on the principal display panel.

To achieve adequate prominence on the principal display panel, which contains information in generally larger print than the information panel, FDA is proposing in § 101.30(i) that the percentage delcaration be in type size not less than that required for the declaration of the net quantity of contents statement, that it be located near the name of the food, and that it be in lines generally parallel to the base on which the package rests.

There were some comments to the January 31, 1990, notice that suggested that there should be no prohibition against placing percentage labeling on the principal display panel in addition to its placement on the information panel. FDA agrees with these comments. The statute does not prohibit placement of the percentage labeling on both the information panel and the principal display panel. Optional label statements are permitted as long as they are truthful and not misleading. Of course, percentage juice information anywhere else on the label or in labeling would need to be consistent with the percentage declaration required to be on the information panel. The proposed regulation includes, in § 101.30(h), a statement to this effect.

2. What Percentage Must be Declared

There has been considerable controversy over the years about declaring the percentage of individual juices in multiple-juice beverages. The juices in such beverages can be divided into two types: (1) Juices whose presence in the product is portrayed on the label or in labeling, either through the common or usual name, some variation on the name of the fruit or vegetable vignette, or some other means; and (2) juices whose presence is not disclosed except in the ingredient list. In this document, FDA refers to the former as "represented juices" and to the latter as "nonrepresented juice."

Current § 102.33 states that the common or usual names of beverages containing multiple juices with a label or labeling that makes any direct or indirect representation with respect to the characterizing juice or juices by word, vignette (i.e., depiction of a fruit or vegetable), or means other than the statement of ingredients must declare the total juice content followed by the percent of each juice represented. Beverages containing multiple juices with a label or labeling that does not make direct or indirect representations with respect to the individual characterizing juices need only declare the percent of the total juice content in the common or usual name.

The proposed 1984 amendment to this regulation would have permitted manufacturers of beverages containing multiple juices to have the option of declaring either the percentage of each individual juice in the beverage or the percentage of total juice content as part of the common or usual name. The agency reasoned that percent declaration for individual juices, as required by the regulation, could result in long common or usual names because each juice and percentage would have to be listed.

The 1989 NFPA petition suggested that percentage labeling not be required as part of the common or usual name for individual characterizing juices represented on the label. In the January 31, 1990, notice, FDA specifically solicited comments about percentage labeling for characterizing and noncharacterizing juices.

FDA received comments as to the necessity of labeling the percentage of each juice in a juice blend or multiple-juice beverage. Comments were divided between those received from consumers, agricultural interests, and State agencies and those received from industry. Industry comments expressed concern about such a requirement primarily because it would require disclosure of proprietary information. In addition, industry comments expressed concern about unwieldy labeling and not allowing for minor formula changes as a result of certain seasonal or other variations. Some industry comments expressed concern that percentage juice declaration of individual juices would confuse consumers. Others thought percentage labeling for juices not represented on the label, such as through the common or usual name or vignettes, was misleading. Still other industry comments thought that it was unnecessary, burdensome, or cluttering.

In contrast, other comments, most notably from a consumer organization, felt that percentage labeling of individual juices was necessary to show the juice present in small amounts. These comments asserted that the amount of each juice ingredient had a material bearing on the value and consumer acceptance of the juice product. They also stated that the appearance of the food might create an erroneous impression of the quantity of a particular juice ingredient.

FDA agrees that consumers should be given enough accurate information to easily ascertain the nature of the juices represented to be present in a multiple-juice beverage. Many multiple-juice beverages, for example, contain only a small amount of a highly flavored, expensive juice. Often the name or the vignette on the label suggests that the expensive juice, such as raspberry, is present in a substantial quantity, and that, therefore, the beverage is of good value, when in fact there is only a small amount of the juice present. In addition, although there may be sufficient juice present to impart a characteristic flavor,

that flavor may have been enhanced by the addition of a flavoring substance rather than a greater quantity of the juice. In such circumstances, the consumer could be led to believe that more of the juice is present than is actually the case.

The 1990 amendments bear on this issue. As stated above, they amend section 403(i) of the act to state that if a food purports to be a beverage containing fruit or vegetable juice, it must bear a statement of "* * * the total percentage of such fruit or vegetable juice contained in the food(.)" This statement can be read in two ways. The more narrow reading would be that the label of such a product must bear a statement of only the total percentage of juice in the product. The alternative reading is that, because of the reference to "such juice" in this provision, the percentage of each juice represented to be in the product must be declared. Under either reading, however, a material fact would not be disclosed.

Under the former reading, the label would declare the presence of one or more represented juices and declare the total percentage of juice in the product, but the percentage of each represented juice would be left undeclared. In this situation, the label may, as stated above, create an impression that overstates the amount of the represented juices in the beverage, if not all the juice in the beverage is supplied by the represented juices. Similarly, under the latter reading, the label would declare the presence of the represented juices and the percentage of these juices in the product but leave undeclared the total percentage of juice. Thus, the label could create an impression that understates the total amount of juice in the product if unrepresented juices are used.

If section 403(i) of the act is read together with sections 201(n) and 403(a) of the act (21 U.S.C. 321(n) and 343(a)), however, the answer to this problem becomes clear. Section 201(n) of the act states that a label or labeling is misleading if it fails to reveal a fact that is material in light of other representations made on the label or in labeling. Under section 403(a) of the act, a food is misbranded if its labeling is false or misleading in any particular. Under the authority of these sections and section 701(a) of the act (21 U.S.C. 371(a)) (which authorizes FDA to adopt regulations for the efficient enforcement of the act), FDA is proposing to require the declaration of the percentage of each represented juice in the former case referred to above, and of the total percentage of juice in the latter.

Therefore, FDA is proposing the following provisions: FDA is proposing in § 101.30(b) that if a beverage contains juice from only one fruit or vegetable, the percentage shall be declared by the words "Contains _____ percent (or %) _____ juice" or "_____ percent (or %) juice" or a similar phrase, with the first blank filled with the percentage expressed as a whole number not greater than the actual percentage of the juice and the second blank (if used) filled with the name of the particular fruit or vegetable (e.g., "Contains 50 percent apple juice" or "50% juice").

FDA is proposing in § 101.30(c) that if a beverage contains juice from more than one fruit or vegetable, but the label or labeling does not make any direct or indirect representations with respect to the individual juices, then only the percentage of total juice contained in the product is required to be declared on the information panel.

FDA is proposing in § 101.30(d) to require that if the label or labeling makes any direct or indirect representation with respect to any individual juice by word, vignette (i.e., depiction of the fruit), or other means, other than in the statement of ingredients, then the label shall declare, following the total juice content, the percentage of each juice so represented. For example, the label would state: "Contains 20 percent total fruit juice (15 percent apple juice and 5 percent cranberry juice)." As with total juice, FDA is proposing that this declaration be expressed as a whole number not greater than the actual percentage of the juice in the beverage.

FDA, however, believes that it is appropriate to exclude from the category of represented juice those juices whose presence in the product is disclosed only in the ingredient statement. Since all components of a product must be listed in the ingredient statement, if the criteria for represented juices included those juices listed there, all juices would be considered to be represented. FDA tentatively finds that it is more appropriate to exclude juices listed only in the ingredient statement from the category of represented juices, so that a distinction can be made between those juices represented as being present in the product, through word or vignette, and those not so represented. Further, the listing of juices in the ingredient statement does not present a misleading representation because all juices present are listed in descending order of predominance among all ingredients.

FDA, however, does not wish to preclude a manufacturer from providing a percentage declaration for a juice that is listed only in the ingredient statement and not otherwise represented either directly or indirectly on the label or labeling. If such a declaration is to be made, FDA is proposing in § 101.30(e) that the percentage declaration of the nonrepresented juice be made directly below or following the declarations for total juice and represented juice, e.g., "Contains 50 percent total fruit juice (10 percent raspberry juice, 40 percent white grape juice)." If there is no percentage declaration of the nonrepresented juice so that the percentages of the individual declared juices do not equal the total percentage of juice in the product, then FDA is also proposing in § 101.30(e) that the percentage declaration for the represented juices be preceded by the word "including," e.g., "Contains 50 percent total juice, including 10 percent raspberry juice."

3. Percentage Increments

There was considerable discussion in the comments on the January 31, 1990, notice as to whether the percentage juice declaration should be expressed in 1 or 5 percent increments. This matter has been an issue throughout the history of percentage juice labeling. Current § 102.33 states that the percent of juice shall be declared in 5 percent increments, expressed as a multiple of 5 not greater than the actual percentage of juice in the beverage, except that the percent of any juice in beverages containing more than 0 percent but less than 5 percent of that juice shall be declared by the statement as "less than 5 percent."

The June 1, 1984, proposed amendment to current § 102.33 would have required that declaration of the percentage of juice in a product be a whole number not greater than the actual percentage of juice contained in the beverage. The petition from the NFPA, published in the January 1990 notice, also suggested that the percentage should be expressed as a whole number not greater than the actual percentage of the juice.

This movement away from the declaration of the percentage of juice in 5 percent increments came about because of concerns that percentage juice declaration in 5 percent increments would be confusing and inaccurate. Comments on the 1980 final rule pointed out that under a 5-percent increment requirement, juice percentages such as 14 percent would have to be expressed as 10 percent, which is almost a 30-percent difference in declaration as compared to the actual juice content. Moreover, manufacturers of frozen concentrate for lemonade argued that

expressing juice content in 5 percent increments put them at a competitive disadvantage to manufacturers of ready-to-drink lemonade. They noted that their product must meet a 13-percent standard of identity, while there is no such requirement for ready-to-drink lemonade. They argued that because percent juice labeling would be expressed in 5 percent increments, the manufacturers of ready-to-drink lemonade could make a 10-percent product and label it as such, while their 13 percent product would also be labeled as "10 percent."

One comment stated that the problems with labeling in 5 percent increments are heightened when it is necessary to declare the percentage of individual juices in a multiple-juice product. For example, a juice having multiple juices in concentrations of 19 percent, 19 percent, 9 percent, and 9 percent would need to declare the percentage of these juices as 15 percent, 15 percent, 5 percent, and 5 percent. While the label would declare "contains 55 percent juice" for total juice, the individual juice percentages would add up to only 40 percent. The comments argued that this example showed that declaring juice content in 5 percent increments led to inaccurate representations of the actual amount of juice and was confusing to the consumer.

One comment said that the percentage declaration should be in 1 percent increments rounded to the next highest number, and another comment stated that 5 percent increments should be retained to eliminate consumer confusion caused by the small differences between juices differing by only single percentages.

FDA agrees that labeling in 5 percent increments discriminates against those juice products that contain juice in increments other than 5 percent. Therefore, as proposed in the 1984 amendment, and as suggested in the NFPA petition, FDA is proposing to require that the percentage declaration of juices be a whole number not more than the actual percentage of juice in the product. This percentage declaration increment is therefore specified in § 101.30(b), (c), (d), and (e).

4. Associated Label Statements

Some comments suggested that certain words such as "natural" on the label imply that a product is 100 percent juice. FDA agrees that use of words implying that a product is natural or pure could mislead the consumer into believing that the beverage was all juice.

FDA is also aware of declarations, particularly on the principal display panel, that use a percentage (usually 100) to describe a term other than juice, such as "100% pure" or "100% natural." These declarations have a great potential to mislead the consumer into believing that the product is 100 percent juice. FDA believes that the consumer is likely to confuse these statements with percentage juice declarations and thus conclude that the beverage is made up entirely of juice or entirely of the characterizing juice, when such is not the case. Therefore, such statements should not be used. FDA requests comments as to whether it should adopt regulations specifically finding declarations such as "100% pure" or "100% natural" to be misleading, particularly when used on the principal display panel of diluted juices. If comments support the need for such regulations, FDA may include a provision addressing this issue in the final regulation.

C. Calculation of Percentage Juice

1. Juice From Concentrate

The legislative history of the 1990 amendments states that FDA is to give industry guidance as to how the percentage of juice should be calculated. 136 Congressional Record H 5842 (July 30, 1990). There was considerable discussion in the comments on the January 31, 1990, notice about this issue. Some comments supported calculation of this percentage using the soluble solids of the original juice, while others supported using certain standardized (Brix) values.

Under current § 102.33, the percent of fruit or vegetable juice in a diluted juice beverage must be calculated on the basis of the soluble solids content of the single-strength (undiluted) juice used to prepare the diluted beverage and must be declared on a volume/volume basis. The agency considers this method to be applicable to products made from concentrate or from expressed juice.

However, even in 1980, when the final rule on current § 102.33 was published, this method was controversial. Several comments objected to the use of the soluble solids content of the original single-strength juice as the basis for determining the percent declaration, particularly for juice made from concentrate. They suggested that standards or average values for percent soluble solids content of each single-strength juice should be established as part of the regulation to provide an industry-wide basis for declaring percentage juice.

FDA agreed when current § 102.33 was finalized (45 FR 39247, June 10, 1980) that the publication of average values for the soluble solids content of each single-strength juice was desirable and would simplify enforcement of the regulation. The agency stated, however, that it did not consider the lack of such established average values to be a persuasive reason to delay the implementation of the regulation. The agency said that it would consider any data submitted to aid in establishing average soluble solids figures for use in setting values for single-strength juices. The preamble to the final regulation stated that until such data could be accumulated and reviewed, and values established, the percent declaration would be based on the soluble solids content of the single-strength juice used to prepare the final beverage.

As of 1987, no data on the soluble solids content of single-strength individual juices had been submitted to the agency. In fact, this lack of data was cited by the agency in its July 16, 1987, proposal as a basis for revoking the common or usual name regulation for diluted fruit or vegetable juice beverages (52 FR 26690).

In December of 1989, however, NJPA submitted to FDA a proposed method for calculating the juice content of diluted juice beverages. NJPA suggested that the percent of fruit or vegetable juices in a diluted juice beverage should be calculated on the basis of the soluble solids content (specified by certain Brix values or other criteria, e.g., anhydrous citric acid) as outlined in its document. The association provided Brix levels for the 100 percent juice for 49 fruits and vegetables and anhydrous citric acid levels for lemon and lime juice. The values and references provided were:

Juice	100 percent juice*
Acerola	[8]6.0
Apple	[6]11.0
Apricot	[7]14.0
Banana	[8]22.0
Blackberry	[1, 2, 4]10.0
Blueberry	[2, 6]10.0
Boysenberry	[1, 2, 4]10.0
Cantaloupe Melon	[5]9.6
Carambola	[5]7.8
Carrot	[8]9.0, *** [12]11.0
Casaba Melon	[5]7.5
Cashew (Caju)	12.0 [13]
Celery	*** [8]3.6, [12]4.5
Cherry	[7]14.0
Crabapple	[2, 4]15.4
Cranberry	[7]7.5
Currant (Black)	[7, 19]11.0
Currant (Red)	[2, 4]10.5
Date	[4]18.5
Dewberry	[2, 4]10.0
Elderberry	[4]11.0
Fig	[2, 4]18.2

Juice	100 percent juice*
Gooseberry	[2, 4]8.3
Grape	[7]13.0, ***, [20]16.0
Grapefruit	[2, 14]10.0
Guanabana (soursop)	[4]16.0
Guava	[1, 2, 4, 7]7.7
Honeydew melon	[5]9.6
Kiwi	[5]15.4
Lemon	**, [11, 13]4.5
Lime	**, [11, 13]4.5
Loganberry	[1, 2, 4]10.5
Mango	[1, 7]13.0
Nectarine	[1]11.8
Orange	[2, 15]11.8
Papaya	[1, 2, 5]11.5
Passion Fruit	[2, 9]12.0
Peach	[1, 2, 3, 4, 7]11.8
Pear	[7]11.0
Pineapple	[16]12.8
Plum	[1, 2, 3, 4]14.3
Prune	[17]18.5
Quince	[2, 3, 4]13.3
Raspberry (Black)	[6]11.1
Raspberry (Red)	[5]9.0
Rhubarb	****, [5]5.69
Strawberry	[2, 4, 7]8.0
Tangerine	[4, 10]11.8
Tomato	[18]5.0
Watermelon	[5]7.8
Youngberry	[2, 4]10.0

*Indicates Brix level unless other value specified.
**Indicates anhydrous citric acid percent by weight.
***Revised by NJPA.
****Rounded in § 101.30(j) to the nearest tenth.
[1]FDA Canned Fruit Nectar Standards, 21 CFR 146.113 (effective date stayed July 27, 1968).
[2]FDA Fruit Jelly Standards, 21 CFR 150.140.
[3]FDA Fruit Butter Standards, 21 CFR 150.110.
[4]U.S. Customs Service Regulations, 19 CFR 151.91.
[5]USDA Handbook 8–9 (1982).
[6]USDA Grade Standards.
[7]USDA File code 147–A–2 (March 1988), Inspection of 50% Juice Drinks and Juice Drink Products under the Child Nutrition Labeling Program (Food and Nutrition Service).
[8]Generally recognized by industry for this purpose.
[9]State of Hawaii Department of Agriculture Standards.
[10]Florida Citrus Industry.
[11]Anhydrous citric acid, percent by weight, derived from the fruit as present in the diluted beverage; cf 21 CFR 146.114.
[12]USDA Handbook 8–11.
[13]Anhydrous citric acid, percent by weight, derived from the fruit, calculated in the manner provided for lemon juice.
[14]Florida Single Strength Standard.
[15]FDA Standard of Identity, 21 CFR 146.132 (Grapefruit).
[16]FDA Standard of Identity, 21 CFR 146.145 (Orange Juice).
[17]FDA Standard of Identity, 21 CFR 146.185 (Pineapple Juice).
[18]FDA Standard of Identity, 21 CFR 146.187 (Prune Juice).
[19]FDA Standard of Identity, 21 CFR 156.145 (Tomato Juice).
[20]Codex Standard.
[21]Concord Grape Association.

In May 1990, NJPA revised its Brix levels for carrot, celery, and grape juices and the reference for lime juice but provided no basis for these revisions. The revised Brix values are noted in the table and are discussed below.

Because the NJPA document had been widely distributed throughout the industry, FDA received several comments about percentage calculation based on Brix, as well as about calculation of juice percentage using soluble solids as provided in current § 102.33. A majority of the comments received on the subject supported the Brix concept outlined by NJPA, saying that it would provide a consistent frame of reference and equity for producers.

One comment stated that calculation of percentage juice using Brix was reasonable and practical and would protect the consumer. Another felt that the NJPA guidelines were appropriate to use until rulemaking could establish minimum standards. Two of the comments specifically opposed, as unworkable, the method found in current § 102.33 of calculating juice percentage on the basis of the soluble solids in the original juice used to make the beverage. These comments said that because of the standard industry practices of using large foreign shipments of commingled juice whose original Brix is unknown and of further commingling this juice in large vessels, it is often impossible to determine the soluble solids of the juice from which the diluted beverage is made. One comment stated that without using Brix values, there would be variation in percentage calculation from manufacturer to manufacturer.

One comment suggested that fruit juice concentrate producers be required to disclose on each lot of concentrate the soluble solids content of the juice from which the concentrate was made. This information would be used in calculating the actual juice percentage. The comment said that while this method of calculating the percent juice is essentially the same as that proposed in the 1980 final rule, the problem with that system, namely that the soluble solids value of the original juice from which the concentrate is made is usually not available, would be corrected. This procedure, the comment stated, has been used successfully to disclose the soluble solid content of fruit juice intended for processing into wine.

FDA advises that while this suggestion of providing information on the soluble solids content of the original juice may be appealing at first glance, on closer evaluation it would seem to be unworkable given the industry practices, such as the commingling of large quantities of concentrated fruit juice.

FDA agrees that standardized criteria are needed to facilitate consistency in calculating percentage of juice. The NJPA recommendations are the only data that the agency has received that could serve this purpose. The agency has found no reason to object to most of the Brix values recommended by NJPA. Therefore, FDA is proposing that in enforcing the act and in ensuring that percentage juice declarations are truthful and not misleading, it will calculate the percentage of juice from concentrate in a juice or juice beverage using the minimum Brix levels listed in § 101.30(j)(1).

FDA strongly recommends that manufacturers also use this method, but the agency advises that if this proposal is adopted, manufacturers will be free to use any alternate method that they find appropriate. However, if FDA adopts the method that it has proposed, it will, as stated above, use this method as the basis for its enforcement actions, and this method will be the legally established method. Therefore, manufacturers would be advised to compare their method of choice to the Brix method to ensure that the alternate method produces similar results.

The listed levels represent the minimum Brix levels necessary for a product to be considered 100 percent single-strength juice. The Brix in the beverage or concentrate should be determined by using the methods found in the latest edition of "Official Methods of Analysis of the Association of Official Analytical Chemists" and supplements thereto (21 CFR 2.19).

The percentage of juice in a diluted juice beverage made from concentrate may be calculated from Standard Tables giving the weight per unit volume of sugar solutions. One such table may be found in the National Bureau of Standards (NBS) (now National Institute of Standards and Technology) Circular 457 as Table 1 (Ref. 4). Following is a general description of how this calculation is made as well as a specific calculation for a diluted blackberry juice drink. This sample calculation is meant to be an example of how to calculate the percentage of juice in a beverage made only from water and juice concentrate. It does not take into account other ingredients such as sugar which may also be added to juice beverages. To calculate the percentage of juice in a beverage:

1. Determine from standard tables, the total weight of the solution of soluble solids per unit volume for the Brix of the juice concentrate in question: (The weight of the solution of soluble solids per unit volume will be the same for any juice (or juice concentrate) of a certain Brix and may be determined from Standard Brix/Weight sugar solution tables, for example Table 1 of NBS Circular 457.) Multiply the number determined from the table by the degrees Brix of the solution to determine the weight of the fruit (or vegetable) soluble solids per unit volume in the concentrate.

2. Determine the weight of the fruit (or vegetable) soluble solids included in the finished product by multiplying the volume of the concentrate used in the product by the weight of the fruit soluble solids per unit volume of the concentrate as determined in step 1.

3. Determine from the standard tables, the weight per unit volume of a solution of soluble solids having the same Brix as specified by proposed 21 CFR 101.30(j)(1) for the single strength juice in question. Multiply this value, by its own degrees Brix (the Brix of the single strength juice). This new value will be the weight of the fruit soluble solids per unit volume for the single strength juice.

4. Calculate the volume of the single strength juice equivalent for the product by dividing the weight of the fruit soluble solids of the concentrate calculated in step 2 by the weight of the fruit soluble solids per unit volume for the single strength juice calculated in step 3.

5. Calculate the percentage of the juice in the finished product by dividing the volume of the single strength juice equivalent calculated in step 4 above by the volume of the finished product and multiplying by 100.

For example, to determine the juice percentage of 200 gallons of juice beverage made from 5 gallons of blackberry juice concentrate having a Brix of 65° proceed as follows:

1. Determine the weight per unit volume of the fruit soluble solids in a 65° Brix solution of blackberry juice concentrate.

0.65 [1] × 10.977 [2] lbs/gal = 7.135 lbs/gal

2. Determine the pounds of blackberry solids added.

5 gallons [3] × 7.135 lbs/gal [4] = 35.67 lbs

3. Determine the weight per unit volume of the blackberry soluble solids in the single strength juice.

8.655 [5] lbs/gal × 0.10 [6] = 0.866 lbs/gal

4. Determine the volume equivalent of single strength blackberry juice.

35.675 lbs [7] / 0.866 lbs/gal [8] = 41.2 gallons

5. Determine the percentage of blackberry juice in the finished product.

41.2 gallons [9] / 200 gallons [10] × 100 = 20.6 percent.

This calculation does not take into account any correction that may be necessary for acid content. FDA understands from comments received from the industry that some correction for acid content may be necessary for certain juices. However, to date, the agency has received no specific data to substantiate whether this is necessary for any or all juices. FDA, therefore, solicits comments on whether acid correction is necessary for any or all juices and how this correction should be made.

FDA recognizes that the "juice" of some of the fruits and vegetables in the NJPA list, such as banana, papaya, and guava, are composed partially, if not entirely, of pulp or puree. FDA also acknowledges that there might be more fiber in fruit or vegetable puree or pulp in these juices than in filtered fruit or vegetable juice. However, the Brix values listed above were calculated to take into consideration that some of the starting materials might be puree or pulp. Therefore, FDA tentatively concludes that these Brix values are appropriate for use in determining the percentage juice declaration for the covered juice products derived from a wide range of starting materials. FDA solicits comments on the applicability of the use of these Brix values for calculating the percentage juice declaration given the varying characteristics of the various types of juices.

FDA recognizes that while the Brix values suggested by NJPA are often very similar (varying by 0.3 or less), if not identical, to the Brix values for most canned fruit nectars covered by the stayed standard of identity (21 CFR 146.113) for these products, they are substantially different for apple (11.0 v. 13.3), passion fruit (12.0 v. 14.5), and pear (11.0 v. 15.4). FDA also recognizes that industry contended that some of the Brix levels that appeared in the stayed canned fruit nectar standard of identity were too high, and that these levels are among the issues regarding this standard. Although it is difficult to select between the two suggested Brix values for passion fruit and pear, since both the lower and higher values are from official government sources (a U.S. Department of Agriculture (USDA) data base and the stayed FDA standard of identity, respectively), FDA is tentatively selecting the two Brix values for passion fruit (14.5) and pear (15.4) found in the nectar standard. FDA believes that if there is justification for the lower values suggested by NJPA, it will be forthcoming in comments on this proposal.

FDA also recognizes that the Brix value for apple in the stayed nectar standard and the Brix valued recommended by NJPA are different (13.3 and 11.0, respectively). In addition, two comments opposed the Brix concept as it related to apple juice. Both comments stated that the NJPA Brix level of 11.0 for apples was too low. One comment put the normal Brix of apple juice from concentrate at 11.0 to 12.2 and cited the Brix value of 13.3 for apple in the stayed standard for fruit nectars. The other comment said that the Brix for the apples with which the commenters were familiar varied from 13.5 to 17.0. It said that allowing manufacturers of apple juice from concentrate to calculate their percentage juice based on a Brix of 11.0 would be unfair to manufacturers who made juice from squeezed apples.

FDA believes that the Brix level suggested by NJPA for apple juice is too low. The agency reviewed the data available to it and found mean Brix values for expressed apple juice of 12.60, 12.80, 12.83, and 12.74 (Ref. 2). However, FDA has tentatively decided not to base the apple juice criterion directly on these mean values. Instead, because one purpose for establishing the Brix values is to provide a minimum acceptable level for considering a juice to be full strength, FDA is using values that are in the lower portion of the range of Brix values available for this juice. Accordingly, the agency is proposing a Brix value of 12.5 for apple juice. While this value reflects the cluster of mean values just above 12.5, it also takes into account the range of values cited by the comments.

The agency solicits comments on whether 12.5 is the appropriate minimum Brix level for apple juice. Any suggestion of a different level should be accompanied by data substantiating that level.

NJPA also proposed a Brix value of 9.0 for 100 percent red raspberry juice based on current industry practice. In evaluating this Brix level, FDA found that the available data show that a single-strength red raspberry juice can range between 5.6 and 10.7 Brix (Ref. 3). Other reports show the Brix level to be 8.9, 11.3, and 10.8 (Ref. 3). These data are consistent with the standard of identity for red raspberry jelly (21 CFR 150.140), which, in § 150.140(d)(2), describes a method for calculating Brix. This

[1] Degrees Brix of the blackberry juice concentrate
[2] Obtained from standard Brix/weight sugar solution tables for a solution having a Brix of 65°
[3] Volume of the concentrate used in the product
[4] Value obtained in step 1
[5] Obtained from standard Brix/weight sugar solution tables for a solution having a Brix of 10°
[6] Degrees Brix of the single strength juice from proposed 21 CFR 101.30(j)
[7] Value obtained in step 2
[8] Value obtained in step 3
[9] Value obtained in step 4
[10] Volume of the finished product

calculation yields a Brix of 10.5 for red raspberry juice. Therefore, FDA is proposing that the minimum Brix level for single-strength red raspberry juice be 10.5.

In addition, FDA is proposing to use the levels originally suggested by NJPA for carrot and celery juice of 11.0 and 4.5, respectively, because they are based on government data rather than solely on industry practice. NJPA offered no justification for using the revised values that it submitted in May of 1990. FDA believes that if there is justification for the lower numbers, it will be forthcoming in comments on this proposal. Therefore, FDA solicits any data on the Brix levels for carrot and celery juice.

In addition, two values were submitted by NJPA for grape juice. The agency does not have data with which to choose between these two levels and therefore solicits information as to which is the appropriate level. The higher Brix level is listed in the proposal on the assumption that, if it is less appropriate than the lower level, substantiation of that fact will be forthcoming.

FDA has no data to support a specific Brix level for juice from coconut and requests comments on, and data for, an appropriate Brix level. In addition, FDA recognizes that there are two portions of the coconut that could conceivably be used to produce a juice, i.e., the coconut water (liquid from coconut) and the coconut meat. FDA asks for information on the feasibility of using both portions of the coconut to produce juice and requests comments on whether there should be one or two Brix levels for coconut.

In addition, FDA requests comments on, and data for, any additional fruits and vegetables whose Brix values should be added to the regulation.

FDA recognizes that there would be no other provision in the regulation for juices or juice beverages made from concentrate, that would specify how a firm should calculate, for purposes of percentage declaration, the percentage of juice in a juice or juice beverage if a fruit or vegetable juice did not have a Brix level specified by regulation. FDA can identify no basis on which to make such a calculation other than the method in the stayed regulation which is to use the soluble solids content of the single-strength (undiluted) juice used to prepare the concentrate.

Therefore, FDA is proposing in § 101.30(j)(2) that if there is no Brix level for a particular juice specified in § 101.30(j)(1), the labeled percentage of that juice from concentrate in a juice or juice beverage is to be calculated on the basis of the soluble solids content of the single-strength (unconcentrated) juice used to produce such concentrated juice.

2. Juice not From Concentrate

FDA is proposing in § 101.30(k) that juices expressed directly from a fruit or vegetable, i.e., not concentrated and reconstituted, will be considered to be 100 percent juice, and that they be declared as "100 percent juice." The agency recognizes that an inconsistency is created by requiring that manufacturers of juice products that consist solely of squeezed juice base their calculation of the juice percentage on the juice as expressed rather than on a Brix level. FDA recognizes that this requirement has the potential to put manufacturers of freshly squeezed juice at somewhat of a disadvantage because the expressed juice may have a higher Brix level than juice made from concentrate. FDA believes, however, that diluting expressed juice to a lower Brix, but still calling it 100 percent juice, would constitute adulteration and misbranding. Such a product sold as a full-strength juice would be misbranded under section 403(a) of the act because its labeling would be false and misleading in that it failed to reveal the material fact that the juice was diluted. It would also be adulterated under section 402(b) of the act because it had been diluted with water.

Likewise, FDA believes that to be consistent, and because the actual percentage of the source juice is known, the percentage of expressed juice, and not Brix level, should be used in calculating the percentage of juice in diluted juice products made directly from expressed juice. Therefore, FDA is proposing in § 101.30(l) to require that calculations of the percentage of juice in a juice product made directly from expressed juice (i.e., not from concentrate) be based on the percentage of the expressed juice in the product computed on a volume/volume basis. FDA requests comments on this proposed method of calculating the percentage of juice in a juice product made from expressed juice.

3. Modified Juices

In the January 31, 1990, notice, FDA discussed modified juices and asked for information as to what constituted a modified juice and which, if any, modified juices should be included in the percentage juice declaration. There was considerable discussion in the comments about the types of alteration that might make a juice a "modified juice."

Some comments made suggestions as to whether specific alterations made a product a modified juice. Other comments stated that it should not be the process used to alter a juice that determines whether the juice has been modified, but rather it is the qualities and characteristics of the resulting product, such as its nutritional components and organoleptic properties, that should be used to decide this question. They said that setting limits on, or specifications for, methods of manufacture of modified juice would only discourage the introduction of new and improved technologies and unnecessarily restrict the supply of affected juice products. Still other comments stated that any modification should preclude the resulting product from being considered to be a juice. Finally, some comments said that modifications to improve juice quality should not preclude the product from being considered a juice.

Although comments expressed views on a wide range of specific issues regarding modified juices, the general consensus of the comments was that the overall issue of modified juices was not ready for discussion. Many comments said that because it had just been raised by FDA, additional time was needed to sort out the issue. Many suggested that the specifications for individual juices needed to be worked out to provide a baseline for comparisons of unmodified juice with modified juice. Many wanted the rulemaking on this aspect to be delayed and suggested separating this issue from the whole issue of percentage juice labeling. Other comments, however, argued that because variously modified juices are so often used in juices to increase the percentage of "juice" in the beverage, the issue of modified juices had to be resolved at the same time as percentage juice declaration.

FDA believes that because of the potential impact that modified juices have on the percentage declaration and the name of the product, the issue of modified juices must be addressed now. FDA agrees that the nature of the modification, not the method by which the modification is achieved, should be the determining factor in deciding whether a product is a modified juice.

As demonstrated by the comments, there are a wide variety of modifications that can be made to juices. These range from minor modifications, such as the removal of naringin from certain naval orange juices to facilitate the production of a more uniform product despite seasonal variation, to the removal of acid from acidic juices like orange juice which may produce a more palatable product to some consumers, to major

modifications that remove all or most of the characteristics, such as color or flavor, by which the juice is recognized. Modifying these identifying characteristics may change the nutrition profile of the juice, and the resulting product may be little more than a sugar-water derived from a juice source.

FDA believes that if the percentage of any juice ingredient is declared as part of total juice percentage, then the label implies, and the consumer is led to believe, that the portion specified in the total juice percentage is recognizable as juice. Accordingly, if the color, taste, or other organoleptic properties of an individual juice (which is declared as part of the total juice percentage) have been modified to the extent that the juice is no longer recognizable, or to the extent that the nutrient profile for the juice has been diminished, the label that included that modified juice in the percentage declaration would be misleading.

Therefore, FDA is proposing in § 101.30(m) that if major modifications (i.e., changes in the color, taste, or other organoleptic properties) are made to a juice to the extent that the original juice is not recognizable, or if its nutrient profile has been diminished, then the juice may not be included in the total juice percentage declaration.

However, FDA is aware that there are certain products with minor modifications, such as acid-reduced orange juice, that are easily recognizable to consumers and that may actually be preferred by a segment of the consuming public. FDA believes that it is appropriate to include juices with such minor modifications in the total percentage juice declaration. The agency solicits comments on its approach to the declaration of percentage juice for juices that have been modified.

III. Common or Usual Name Regulation

A. Introduction

Until now, the percentage juice declaration requirements for diluted juices have been included in the common or usual name regulation for diluted fruit or vegetable juice beverages (current § 102.33). Because, as discussed above, the 1990 amendments require that the percent juice declaration be on the information panel, percentage juice labeling no longer need be a part of the common or usual name. Because of this development, the provisions concerning the requirements for percentage declaration no longer need be included in the common or usual name regulation in 21 CFR part 102. However, provisions dealing with how these products are to be named are still appropriately located in that part of FDA's regulations. Therefore, FDA is proposing to delete from the common or usual name regulation for diluted fruit or vegetable juice beverages the provisions that deal with percentage juice declaration and to amend current § 102.33 to pertain only to how the subject beverages should be named. FDA notes that nothing in this proposal would prevent manufacturers from continuing to use a fanciful name that is not misleading on their labels, so long as the labels bear appropriate statements of identity.

B. Identity of Beverages Labeled as Juice Beverages

Many comments on the 1990 notice expressed confusion regarding the use of the word "juice" either alone or in combination with other beverage terms. They said there was confusion about product names such as "juice," "juice beverage," "pure juice beverage," "juice cocktail," and "juice drink." One comment stated that consumers believed that products labeled as "juice" and others labeled as "juice cocktail beverage" are identical products. Comments stated that there needed to be descriptive names to identify the various beverages.

One comment said that it did not believe that there was sufficient information on the back label panel to counter the misinformation given on the front of the package of these types of products. Many comments stated that only 100 percent (single-strength) juice products should be labeled as "juice." Two comments, however, stated that products containing as little as 50 percent juice should still be called "juice."

One comment provided data from two studies designed to measure the extent to which various types of labeling inform, confuse, or mislead consumers as to the identity of various single-strength orange juice and diluted orange juice beverages. According to the comment, the study concluded that there was substantial consumer confusion, especially between single-strength juices and diluted juice drinks that looked like juice. The comment went on to say that there is a substantial price difference between the two types of products on a single-strength basis, and that this confusion has led to consumer deception.

FDA agrees that products bearing labeling that results in consumer confusion are misbranded under section 403(a) of the act because the labeling is misleading. There is a long history of attempts to resolve this problem. As early as 1964 (29 FR 11621, August 13, 1964), the agency tried to establish standards of identity for various beverage containing fruit juice, linking the beverage names to specific percentages of juice. Fruit juice drinks would have contained not less than 50 percent juice; fruit ades (except lemonade and limeade), 30 to 50 percent juice; fruit drinks, 10 to 30 percent juice; and fruit-flavored noncarbonated beverages, less than 10 percent juice. Citrus beverages would have had somewhat different names and percentage requirements. This scheme was eventually abandoned, for the most part, the favor of common or usual names with the declaration of percentage juice. However, as discussed above, confusion among consumers over beverage names persists.

While percentage labeling will provide information on the content of juice in a single-strength juice or diluted juice beverage, FDA believes that consistent use of terms in the common or usual names of juice beverages will help to reduce or remove consumer confusion. The agency has long held the opinion that the term "juice" used without a qualifying term that indicates dilution (e.g., drink, cocktail, beverage) implies that the product is 100 percent juice. Consequently, the agency is proposing to revise current § 102.33(a) to state that if a product contains less than 100 percent juice, and uses the word "juice" in the common or usual name, then the word "juice" must be qualified by a term that indicates dilution (e.g., drink, beverage, cocktail).

However, the declaration of percent juice will not be adjacent to the common or usual name of the product, and FDA is not certain that use of terms like "drink," "beverage," and "cocktail" will be sufficient to provide clarification to the consumer about whether a product is a full-strength juice or is diluted. The agency solicits information on whether the term "diluted," or some similar term, should be required as part of the common or usual name for juices that are less than full-strength (100 percent) juice. If comments indicate that the term "diluted" is necessary for consumers to distinguish between diluted and undiluted juice products, FDA will consider including such a requirement in the final regulation.

C. Declaration of Represented Juices in the Common or Usual Name of a Beverage

In the January 31, 1990, notice, FDA asked for comment on how to accurately describe on the label multiple-juice blends and diluted multiple-juice beverages that contain one or more

represented juices with or without nonrepresented juices. By "multiple-juice blends" FDA means those single-strength juice products made up of more than one unmodified, single-strength juice. A "diluted multiple-juice beverage" is a multiple-juice blend with an added diluent, such as water or a decharacterized (modified) juice.

There were only a few comments on the January 31, 1990, notice that addressed the label representation of juices present. Most of them stated that represented juices should be named on the label in the order of the predominance of the juice, i.e., the juice that is present in the largest amount should be listed first. Some said that it was misleading to imply that a minor juice was a major juice by naming that minor juice before other juices present in larger amounts. One comment, however, stated that represented juices should not have to be listed by predominance. It stated that consumers were concerned most about taste, and that they selected products on that basis. It stated that, therefore, represented juices should be listed by prominence, i.e., most apparent flavor.

FDA agrees with the comments that argued that represented juices should, wherever named, be in order of their predominance; that is, the juice that is present in the greatest quantity should be named first. The agency's approach to lists of ingredients on labels, whether as part of the ingredient list, part of the common or usual name, or elsewhere on the label, has consistently been that they are to be in descending order of predominance. Consequently, FDA is proposing in § 102.33(b) that if a product is a multiple-juice beverage or blend of single-strength juices, and declares, names, implies, or represents on the label, other than in the ingredient statement, one or more of the individual juices (represented juices), then the names of the juices so listed shall be included in the common or usual name in descending order of predominance by volume, unless the common or usual name specifically shows that the juice with the represented flavor is used as a flavor (e.g., raspberry-flavored apple and pear juice drink).

There were also several comments on how vignettes should be used to represent the juice in a product. Three general positions emerged. One group, comprised only of manufacturers, suggested that the flavor of the beverage was the most important characteristic in determining which juice should be pictured in greater amounts. One comment in this group said that the vignette should depict the flavor of the beverage even if the product only contained artificial fruit flavor. These comments argued that it was not necessary to depict all fruits in a product.

A second group of comments came from manufacturers and an industry trade association. These comments said that although the fruit that imparted the greatest flavor to the beverage should be depicted in the largest amount, all fruits in the beverage should be depicted. A third group of comments from State governments and a consumer organization stated that the vignette should accurately reflect the actual fruit content of the beverage.

Such label representations and vignettes may be misleading to consumers and should accurately reflect the nature of the product. While the agency believes that these vignettes should reflect the quantity of the fruit whose juice is present, it understands that this representation could be misleading to consumers who might expect a different taste than was reflected by such a vignette. FDA has, therefore, decided not to propose a specific requirement regarding the relative amounts of the various fruits depicted in a label vignette at this time. The agency solicits comments on whether it should require that the vignette accurately reflect the quantity of the fruit present or the taste of the product, or whether some other requirement is appropriate. The agency believes that consumer perception data would be most helpful in resolving this issue.

D. Reflecting Presence of Juices Not Declared by Name in the Common or Usual Name

In the January 31, 1990, notice, FDA also asked how a product that contained minor amounts of a characterizing juice in a mixture of other juices and diluted juices that were noncharacterizing should be named to reflect that juices other than the characterizing juices were in the product. FDA presented several options for such products.

FDA received a variety of comments on this subject. Generally, they stated that the name should accurately reflect the contents of the product and favored using the word "blend" for products that are mixtures of several juices. One comment specifically stated, however, that an exact labeling format for diluted juice beverages containing more than one juice should not be prescribed.

FDA agrees that the very nature of these "blends," mixtures of several juices, with only one or two minor juices giving them flavor, makes them difficult to label. The agency, therefore, is not establishing an exact labeling format for these products. However, a common or usual name that misleads consumers to believe that a minor juice, even though it may impart the prominent flavor to the beverage, is present in the greatest amount would be misleading.

Therefore, FDA is proposing in § 102.33(c) that if a diluted multiple-juice beverage or blend of single-strength juices contains a represented juice and one or more that is not represented, i.e., not named or implied through words or vignettes, other than in the ingredient statement, then the common or usual name for the product shall indicate that the nonrepresented juices are present (e.g., "Raspcranberry: raspberry and cranberry juice in a blend of two other fruit juices.")

This proposal is based on information provided in the comments on the January 31, 1990, notice and on informal advice that the agency provided in a March 16, 1988, letter from L. Robert Lake to NFPA (Ref. 1). It also takes into consideration the proposed requirement that the percentage of the represented juice be declared, along with the percentage of total juice, on the information panel. FDA requests comment on this proposed provision.

The agency did receive comments that were concerned about how such a regulation would affect the requirements in § 101.22(i) (21 CFR 101.22(i)) regarding flavors. FDA does not intend to make any revisions to the regulations that would change the requirements for labeling of foods containing characteristic flavors with or without added natural or artificial flavors. Any pertinent provisions in § 101.22(i) are applicable to the labeling of the various juice beverages.

E. Declaring Use of Modified Juices as Part of Common or Usual Name

In the January 31, 1990, notice, FDA asked how modified juice products should be labeled so as not to deceive consumers. A modified juice product, whether sold as a single-component beverage or as an ingredient in a multicomponent beverage, must be properly named to be informative to consumers, to comply with the labeling provisions of section 403 of the act (21 U.S.C. 343), and to not violate the economic adulteration provisions of section 402(b) of the act (21 U.S.C. 342(b)).

There were a variety of comments on how a modified juice should be properly identified on the label. Many comments stated that juice modifications must be adequately identified or described on the label. One comment stated that

improved juice quality was not a modification, and that the "improved" product should, therefore, be allowed to be considered a juice and labeled as such. Another comment stated that if a juice, modified to the extent that its name was required to reflect the modification, became a component of a multiple-juice beverage, then the name of the beverage to which the component juice was added should not also be required to reflect the modification unless the modified component juice was a characterizing juice. Under this principle, the common or usual name of a diluted juice beverage containing acid-reduced cranberry juice as a characterizing juice would be required to include the modification, for example, "acid-reduced cranberry raspberry juice cocktail," whereas a product containing deflavored grape juice that was not a characterizing juice could be labeled, for example, as "cranberry raspberry juice cocktail," with no reference to the use of a modified juice. Another comment, pointing out that extreme modifications can be made to a juice so that it becomes essentially a flavorless sugar solution, stated that perhaps such a product should be called a syrup, such as "apple syrup," "grape syrup," or "refined apple syrup."

The consumer must not be misled as to the nature of the juices used to make the juice or diluted juice beverage. FDA believes that the nature and the extent of the modification should determine what the appropriate common or usual name for a modified juice or a product containing a modified juice would be. For example, the common or usual name for frozen orange juice in which the acid content is reduced is "reduced acid frozen concentrated orange juice" (see 21 CFR 146.148). This type of product would be made so as to provide a product that is more palatable to a certain segment of the consuming population and, consequently, to be more desirable. Likewise, to describe a similar nonstandardized product, under the regulations for common or usual names for nonstandardized foods (§ 102.5), one would state the name of the original juice and the exact nature of the modification to that juice e.g., "acid-reduced pineapple juice."

However, it is FDA's understanding that beverages may sometimes contain modified juices that have been markedly altered and that are added to beverages just to increase the supposed juice content. FDA understands that such modified juices are sometimes stripped juices used as juice-derived, rather than sugar-derived, sweetening ingredients. FDA has tentatively concluded (see § 101.30(m)) that juices that have been so modified should not be included in calculating the percentage juice in the product. The question of whether the word "juice" is appropriately included in the common or usual name for these ingredients, however, is a different matter. Section 102.5(a) states that the common or usual name of a food shall describe, in as simple and direct terms as possible, the basic nature of the food. FDA tentatively finds that a common or usual name that fully describes the modifications made in the juice may include the word "juice." Such a name (e.g., "decolored, deflavored grape juice") complies with § 102.5 because it describes exactly what the product is.

Therefore, FDA is proposing in § 102.33(d) to permit a juice that has been significantly modified to be referred to by a common or usual name that includes the word "juice" so long as the exact nature of the modification is specified in the common or usual name. The description of the modification would therefore appear as part of the name wherever it is used. FDA solicits comments on this approach to naming juices that have been modified.

In the January 31, 1990, notice, FDA stated its concern about representation on the label, such as in vignettes, of the original fruits from which modified fruit juices have been derived. No comments were received on this issue. However, FDA believes that a product would be misbranded if a label vignette depicts the source fruit or vegetable of a juice whose color, taste, or other organoleptic properties have been modified to the extent that the original juice is no longer recognizable, or if its nutrient profile has been diminished. To be consistent with the other aspects of this proposal for modified juice, and to avoid misleading the consumer, FDA is proposing in § 102.33(e) to provide that for juice beverages containing such a modified juice, the source fruit from which the modified juice was derived may not be depicted on the label or labeling by vignette or other pictorial representation.

IV. Economic Impact

The food labeling reform initiative, taken as a whole, will have associated costs in excess of the $100 million threshold that defines a major rule. Therefore, in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354), FDA is developing one comprehensive regulatory impact analysis (RIA) that will present the costs and benefits of all of the food labeling provisions taken together. When this RIA is finalized, a notice of its availability will be published in the Federal Register, and it will be made available at the Dockets Management Branch (address above). The RIA will be made available to the public before publication of a final rule. FDA welcomes comments on the RIA. The costs of compliance with this proposal alone are discussed below.

In this document, FDA is proposing changes to the food label that will, for the most part, codify changes mandated by the 1990 amendments. Costs which will be incurred as a result of the provisions of the 1990 amendments covered by this proposed regulation are expected to be $40 million. If the proposed requirements (in addition to the requirements to label certified colors and mandatory standardized ingredients) were to become effective concurrently with the requirements for mandatory nutrition labeling, the incremental costs for this proposed regulation would be under $1 million.

A. Benefits

The proposed labeling changes will benefit consumers by giving them information to refine their food choices with respect to obtaining specific percentages of fruit and vegetable juices. While it is not possible to quantify the benefits of the particular requirements in this proposed regulation, FDA will estimate the benefits of the food labeling reform initiative as a whole. Those benefits include reduced coronary heart disease and cancer as a result of people making more informed food choices. Those benefits will be described in greater detail in the RIA.

B. Costs

The agency has estimated that approximately 750 firms will have to modify 3,000 labels. The direct costs of modifying these labels include administrative, analytical, printing and inventory costs. Some of the firms affected by this regulation are also affected by the proposed regulations requiring labeling of mandatory standardized ingredients and certified colors. Costs for those firms are estimated as a component of this regulation and are included in this analysis. Additionally, there may be reformulation and marketing costs, but it is questionable as to whether or not these indirect costs are solely attributable to the law.

The administrative costs associated with the law are the dollar value of the incremental administrative effort expended in order to comply. The administrative activities which are anticipated to be undertaken by firms in

response to a change in a regulation include: Identifying and interpreting the policy, determining the scope and coverage related to the firms' product labels, formulating a method for compliance, and management of the process of compliance. The agency estimates administrative costs to be $11 million.

Analytical costs arise from the technical efforts to analyze the Brix levels of the juices in juice products. Analytical cost are a function of the number of products affected and the type of test. FDA has estimated these costs to be $200,000.

Printing costs are the costs of changing the labels to reflect the new requirements. The amount of printing costs assigned to a mandated printing change depends on the number and type of labels, the complexity of the label change and the length of time allowed to make the change. FDA has estimated these costs to be $4 million.

Label inventory costs are the costs associated with discarding labels, which may include actual food containers. These costs vary with both the time given for firms to comply and with average inventories of labels and are estimated to be $24 million. The $24 million label loss is based on strict adherence to the statutory timeframes for compliance.

C. International Effects

In accordance with Executive Order 12291 and other guidance received from Office of Management and Budget (OMB), FDA has also evaluated the effects on international trade of this proposed regulation. Guidance received from OMB requires agencies to make no explicit distinction between domestic and foreign resources when calculating costs and benefits of regulations. All of the provisions are mandatory and, in general, are not mandatory provisions in Canada, the European Economic Community, or other trading partners of the United States.

Provisions of this proposed rule will cause foreign firms to have to change their English label in order to market their food products in the U.S. Also, because of different definitions for various macronutrients, additional analytical testing will be required to market across borders. These costs should be identical to those incurred by domestic firms to meet the requirements of this proposed regulation. Thus, as is generally true now, both importing and exporting firms must relabel in order to sell outside of their national boundary.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Executive Order 12630

Under Executive Order 12630 (53 FR 8859), FDA considered whether this proposed rule would affect the value, or constitute a taking, of private property (e.g., trade names for juice products that are consistent with law). FDA believes that this proposed rule, if adopted, will not interfere with the use of private property in any way. Therefore, the agency has tentatively concluded that no taking would occur. FDA requests comments on whether this regulation would have an impact on private property. The agency will consider all comments on this issue before issuing a final rule based on this proposal.

VII. Effective Date

FDA is proposing to make the common or usual name and percentage juice declaration regulations in the current proposal effective on the same date as the nutrition labeling and ingredient labeling rules. The effective date is 6 months following publication of a final rule in that proceeding, or, if no final rule was issued by November 8, 1992, 6 months following that date. These proposals are part of the Department of Health and Human Services' (DHHS) major initiative to reform the nation's food labeling system and part of DHHS' response to the 1990 amendments.

Although FDA is proposing that these percentage juice regulations become effective on the same date as the nutrition labeling and ingredient labeling rules, the agency points out that the 1990 amendments (section 10(c)) state that percentage juice labeling provisions shall take effect 1 year after enactment. Thus, on November 8, 1991, statutory requirements will become effective for listing on the information panel the percentage of fruit or vegetable juice in a food purporting to be a beverage containing vegetable or fruit juice. The agency expects firms to comply with this requirement.

After November 8, 1991, foods purporting to be beverages containing vegetable or fruit juice must bear, prominently on the information panel, the percentage of fruit or vegetable juice in the beverage. FDA will consider bringing regulatory action against foods whose labels fail to bear such declaration. FDA considers this proposed rule to provide an indication of the agency's views on the appropriate presentation of the percent juice declaration, contingent on review of any comments. While FDA will not be bound by the provisions of this proposed rule, labels that comply with it would less likely be the subject of enforcement action than labels that do not. There is a possibility that labels ordered before publication of these proposed regulations will bear a percent juice declaration but still be misleading. FDA will take into account the extent to which the label utilized by the manufacturer may be misleading to the consumer in determining whether to take legal action. For labels ordered after publication of this proposed rule, FDA is likely to judge labels on the basis of whether they present percent juice information, and whether that information is presented in a misleading manner. All labels ordered after the effective date of final regulations pertaining to section 7 requirements would be expected to be in full compliance with those regulations.

The agency is requesting comments on the appropriateness of the proposed effective date for the rulemaking actions for percentage juice labeling and the enforcement approach outlined above. All comments concerning the effective date should be accompanied by data to support or justify any change in the proposed effective date.

VIII. References

The following information has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Lake, L. Robert, letter to National Food Processors Association, March 16, 1988.

2. Mattick, Leonard R., Journal Association of Official Analytical Chemistry, Vol. 66, No. 5, pp. 1251–1255, 1983.

3. Wrolstad, Ronald E., "Detection of Adulteration in Several Fruit Berry Drinks and Concentrates," in "Adulteration of Fruit Juice Beverages," ed., S. Nagy, J. A. Attaway, M. E. Rhodes, Marcel Dekker, Inc., New York, P. 390, 1988.

4. Synder, Carl S., and Lester D. Hammond, "Weights per U.S. Gallons and Weights per Cubic Foot of Sugar Solution," National Bureau of Standards, Circular 457, Table 1 pp. 3–26, 1946.

IX. Comments

Interested persons may, on or before August 1, 1991, submit to the Dockets Management Branch (address above) written comments regarding this

proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The statutory requirements prescribing percentage juice declaration become effective on November 8, 1991, in accordance with section 10(c) of the 1990 amendments. FDA intends to issue final implementing regulations governing percentage juice labeling concurrent with the effective date for the statutory requirements. In order to meet this statutory timeframe, FDA must limit the comment period for this proposal to 30 days. Consequently, FDA believes that there is good cause under 21 CFR 10.40(b)(2) of its procedural regulations to limit the comment period to 30 days. The agency must shorten the comment period to ensure that it has sufficient time to develop a final rule based on this proposal and the comments it receives.

List of Subjects in 21 CFR

Part 101

Food labeling, Reporting and recordkeeping requirements.

Part 102

Beverages, Food grades and standards, Food labeling, Frozen foods, Fruit juices, Oils and fats, Onions, Potatoes, Seafood.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, FDA hereby withdraws the proposal to revoke § 102.33 Diluted fruit or vegetable juice beverages other than diluted orange juice beverages, that was published in the Federal Register of July 16, 1987 (52 FR 26690). Further, FDA proposes that 21 CFR parts 101 and 102 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.30 is added to subpart B to read as follows:

§ 101.30 Percentage juice declaration for foods purporting to be beverages that contain fruit or vegetable juice.

(a) This section applies to any food that purports to be a beverage that contains any fruit or vegetable juice (i.e., the product label or labeling bears the name or variation on the name or makes any other direct or indirect representations with respect to any fruit or vegetable juice), or the label or labeling bears any vignette (i.e., depiction of a fruit or vegetable) or other pictorial representation of any fruit or vegetable, or the product contains color and flavor that gives the beverage the appearance and taste of containing a fruit or vegetable juice. The beverage may be carbonated or noncarbonated, concentrated, full strength, diluted, or contain no juice.

(b) If the beverage contains juice from only one fruit or vegetable, the percentage shall be declared by the words "Contains _____ percent (or %) _____ juice" or "_____ percent (or %) juice", or a similar phrase, with the first blank filled in with the percentage expressed as a whole number not greater than the actual percentage of the juice and the second blank (if used) filled in with the name of the particular fruit or vegetable (e.g., "Contains 50 percent apple juice" or "50% juice").

(c) If the beverage contains juice from more than one fruit or vegetable, and the label or labeling does not make direct or indirect representations with respect to the individual juices by word, vignette (i.e., depiction of fruit or vegetable), or means other than the statement of ingredients, the percentage of total juice contained in the product shall be declared by the words "Contains _____ percent (or %) _____ juice" or "_____ percent (or %) _____ juice" or "_____ percent (or %) juice" with the first blank filled in with the percentage expressed as a whole number not greater than the actual percentage of juice and the second blank, if used, filled in with "fruit" or "vegetable" as appropriate (e.g., "Contains 50 percent fruit juice").

(d) If the beverage contains more than one juice and the label or labeling makes any direct or indirect representation with respect to any individual juice by word, vignette (i.e., depiction of a fruit or vegetable), or means other than the statement of ingredients, then the label shall declare the percent of the total juice content followed by a statement of the percent of each juice represented, declared directly below and in the same type size and prominence as the percentage of total juice, by the words "_____ percent (or %) _____ juice" with the first blank filled in with the percentage expressed as a whole number not greater than the actual percentage of the juice and the second blank filled in with the name of the juice (e.g., "Contains: 20% total fruit juice (15% apple juice and 5% cranberry juice)").

(e) If the beverage contains more than one juice, and the percentage of a juice that is not otherwise represented on the label or labeling by word, vignette, or other means is declared, this declaration shall be made prominently, and directly below or following the percentage declaration of total juice and represented juice by the words "_____ percent (or %) _____ juice" with the first blank filled in with the percentage expressed as a whole number not greater than the actual percentage of the juice and the second blank filled in with the name of the juice (e.g., "Contains 50 percent total fruit juice (10 percent raspberry juice, 40 percent white grape juice)"). If the nonrepresented juices are not declared, then the list of percentages of individual juices should be preceded by the word "including" (e.g., "Contains 50 percent total fruit juice including 10 percent raspberry juice").

(f) If a beverage contains no fruit or vegetable juice, but the labeling or color and flavor of the beverage represents, suggests, or implies that fruit or vegetable juice may be present (e.g., the product labeling bears the name, a variation of the name, or a pictorial representation of any fruit or vegetable, or the product contains color and flavor that give the beverage the appearance and taste of containing a fruit or vegetable juice), then the label shall declare "contains zero (or 0) percent (or %) juice". Alternatively, the label may declare "Containing (or contains) no _____ juice", or "no _____ juice", or "does not contain _____ juice", the blank to be filled in with the name of the fruits or vegetables represented, suggested, or implied. If no specific fruit or vegetable juice is represented, suggested, or implied, but there is a general suggestion that the product contains fruit or vegetable juice, the blank shall be filled in with the word "fruit" or "vegetable" as applicable (e.g., "contains no fruit juice", or "does not contain fruit juice").

(g) If the beverage is sold in a package with an information panel as defined in § 101.2, the declaration of amount of juice shall be prominently placed on the information panel, appearing:

(1) Near the top of the information panel, with no other printed label information appearing above the statement.

(2) In easily legible boldface print or type in distinct contrast to other printed or graphic matter, in a height not less than the largest type found on the information panel except that used for the product name, and in lines generally

parallel to the base on which the package rests.

(h) The percentage juice declaration may also be placed on the principal display panel if the declaration is consistent with that presented on the information panel.

(i) If the beverage is sold in a package that does not bear an information panel as defined in § 101.2, the percentage juice declaration shall be placed on the principal display panel, in type size not less than that required for the declaration of net quantity of contents statement, be located near the name of the food, and in lines generally parallel to the base on which the package rests.

(j)(1) In enforcing these regulations, the Food and Drug Administration will calculate the labeled percentage of juice from concentrate found in a juice or juice beverage using the minimum Brix levels listed below where single-strength (100 percent) juice has at least the specified minimum Brix listed below:

Juice	100 percent juice [1]
Acerola	6.0
Apple	12.5
Apricot	14.0
Banana	22.0
Blackberry	10.0
Blueberry	10.0
Boysenberry	10.0
Cantaloupe Melon	9.6
Carambola	7.8
Carrot	11.0
Casaba Melon	7.5
Cashew (Caju)	12.0
Celery	4.5
Cherry	14.0
Crabapple	15.4
Cranberry	7.5
Currant (Black)	11.0
Currant (Red)	10.5
Date	18.5
Dewberry	10.0
Elderberry	11.0
Fig	18.2
Gooseberry	8.3
Grape	16.0
Grapefruit	10.0
Guanabana (soursop)	16.0
Guava	7.7
Honeydew melon	9.6
Kiwi	15.4
Lemon	[2] 4.5
Lime	[2] 4.5
Loganberry	10.5
Mango	13.0
Nectarine	11.8
Orange	11.8
Papaya	11.5
Passion Fruit	14.5
Peach	11.8
Pear	15.4
Pineapple	12.8
Plum	14.3
Prune	18.5
Quince	13.3
Raspberry (Black)	11.1
Raspberry (Red)	10.5
Rhubarb	5.7
Strawberry	8.0
Tangerine	11.8
Tomato	5.0
Watermelon	7.8
Youngberry	10.0

[1] Indicates Brix unless other value specified.
[2] Indicates anhydrous citrus acid percent by weight.

(2) If there is no Brix level specified in paragraph (j)(1) of this section, the labeled percentage of that juice from concentrate in a juice or juice beverage will be calculated on the basis of the soluble solids content of the single-strength (unconcentrated) juice used to produce such concentrated juice.

(k) Juices directly expressed from a fruit or vegetable (i.e., not concentrated and reconstituted) shall be considered to be 100 percent juice and shall be declared as "100 percent juice".

(l) Calculations of the percentage of juice in a juice blend or a diluted juice product made directly from expressed juice (i.e., not from concentrate) shall be based on the percentage of the expressed juice in the product computed on a volume/volume basis.

(m) If the product is a beverage that contains a juice whose color, taste, or other organoleptic properties have been modified to the extent that the original juice is no longer recognizable, or if its nutrient profile has been diminished, then that juice to which such a major modification has been made shall not be included in the total percentage juice declaration.

PART 102—COMMON OR USUAL NAME FOR NONSTANDARDIZED FOODS

3. The authority citation for 21 CFR part 102 continues to read as follows:

Authority: Secs. 201, 403, 701, of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 343, 371).

§ 102.30 [Removed]

4. Section 102.30 *Noncarbonated beverage products containing no fruit or vegetable juice* is removed.

§ 102.32 [Removed]

5. Section 102.32 *Diluted orange juice beverages* is removed.

6. Section 102.33 is revised to read as follows:

§ 102.33 Beverages that contain fruit or vegetable juice.

(a) For a carbonated or noncarbonated beverage that contains less than 100 percent and more than 0 percent fruit or vegetable juice, the common or usual name shall be a descriptive name that meets the requirements of § 102.5(a) and if the common or usual name uses the word "juice," shall include a qualifying term such as beverage, cocktail, or drink appropriate to advise the consumer that the product is less than 100 percent juice (e.g., "diluted grape juice beverage" or "grape juice drink").

(b) If the product is a diluted, multiple-juice beverage or blend of single-strength juices, and declares, names, implies, or represents on the label, other than in the ingredient statement, more than one juice (represented juice), then the names of those represented juices, wherever so listed, shall be in descending order of predominance by volume unless the name specifically shows that the juice with the represented flavor is used as a flavor (e.g., raspberry-flavored apple and pear juice drink).

(c) If a multiple-juice beverage or blend of single-strength juices contains a juice that is named or implied on the label or labeling other than in the ingredient statement (represented juice), and also contains a juice other than the named or implied juice (nonrepresented juice), then the common or usual name for the product shall indicate that the represented juice is not the only juice present (e.g., "Raspcranberry; raspberry and cranberry juice in a blend of two other fruit juices.")

(d) The common or usual name of a juice that has been modified shall include a description of the exact nature of the modification (e.g., "acid-reduced pineapple juice," "deflavored, decolored grape juice").

(e) If the product is a beverage that contains a juice whose color, taste, or other organoleptic properties have been modified to the extent that the original juice is no longer recognizable, or if its nutrient profile has been diminished, then the source fruits or vegetables from which the modified juice was derived may not be depicted on the label by vignette or other pictorial representation.

Dated: May 28, 1991.

David A. Kessler,

Commissioner of Food and Drugs.

Louis W. Sullivan,

Secretary of Health and Human Services.

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July 2, 1991

Part VII

Department of Health and Human Services

Food and Drug Administration
21 CFR Part 101

21 CFR Part 101
Food Labeling; Nutrition Labeling of Raw Fruit, Vegetables, and Fish; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 91N-0122]

RIN 0905-AB68

Food Labeling; Nutrition Labeling of Raw Fruit, Vegetables, and Fish; Guidelines for Voluntary Nutrition Labeling of Raw Fruit, Vegetables, and Fish; Identification of the 20 Most Frequently Consumed Raw Fruit, Vegetables, and Fish; Definition of Substantial Compliance

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA), in response to the Nutrition Labeling and Education Act of 1990 (the 1990 amendments), is proposing: (1) To implement a different scheme than it presented in its July 19, 1990 proposal (55 FR 29487) for the nutrition labeling of raw fruit, vegetables, and fish; (2) to identify the 20 most frequently consumed raw fruit, raw vegetables, and raw fish in the United States; (3) to establish guidelines for the voluntary nutrition labeling of these foods; and (4) to define "substantial compliance" with respect to the adherence by food retailers to those guidelines. FDA is requesting comments on these proposed regulations and on the proposed guidelines.

DATES: Written comments by August 1, 1991. The agency intends to issue final guidelines and regulations pertaining to the nutrition labeling of raw fruit, vegetables, and fish by November 8, 1991, and is proposing that any final rule that may issue based upon this proposal become effective on that date in accordance with requirements of the 1990 amendments.

ADDRESSES: Written comments to Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, 301-443-1753.

FOR FURTHER INFORMATION CONTACT: Jean A. T. Pennington, Center for Food Safety and Applied Nutrition (HFF-260), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-1064.

SUPPLEMENTARY INFORMATION:

I. Background

A. Regulatory History

FDA established the current regulation on nutrition labeling in 1973 (38 FR 6951, March 14, 1973) as 21 CFR 1.17 (recodified in 1977 as 21 CFR 101.9 (42 FR 14302, March 15, 1977)). Under this regulation, nutrition labeling is voluntary for most foods. However, if a nutrient is added to a food, or if labeling or advertising for the food includes a claim (or other representation) about the food's nutritional properties or its usefulness in the daily diet, complete nutrition labeling is required.

FDA amended the nutrition labeling regulations in the Federal Register of November 28, 1973 (38 FR 32786), to provide an exemption for fresh fruit and vegetables, pending promulgation of specific labeling requirements for these foods. This exemption, which was intended to be temporary, was promulgated after the industry sued FDA in the U.S. District Court for the District of Columbia. The plaintiffs contended that the agency had not considered the statutory requirements in section 405 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 345), which mandate that the agency exempt "small open containers of fresh fruit and fresh vegetables" from any labeling requirements. The plaintiffs also contended that the nutrition labeling regulations failed to explain sufficiently the manner in which this fresh produce was to be labeled.

In response to these contentions, FDA attempted to establish specific requirements for fresh produce in a proposed rule that the agency published in the Federal Register of February 26, 1975 (40 FR 8214). However, the agency terminated this rulemaking because it concluded that the cost of the requirements for the use of nutrition labeling would outweigh any benefits that the consumer could receive (48 FR 27266, June 14, 1983).

In adopting the nutrition labeling requirement (38 FR 6951), the agency stated that the declaration of nutrients was to be based on analytical testing of a manufacturer's product. FDA stated that analyses of sufficient individual lots of a food was essential to give assurance that the labeled values adequately represented the food. The agency also encouraged industry to provide data for a nutrient data bank being established by the U.S. Department of Agriculture (USDA). At that time, data in food composition data bases were considered to be incomplete and, therefore, unsuitable as a basis for labeling claims. In many cases the data were outdated, of unknown methodology, or represented only a limited number of analyses.

Although FDA received numerous requests to make nutrition labeling mandatory before the 1973 rule, the agency did not do so because of the lack of information about the nutrient content of some foods and the inability of many manufacturers, processors, and distributors to analyze the nutrient content of their products. The agency stated that experience under the nutrition labeling regulations was necessary before it would consider requiring nutrition labeling on all foods (38 FR 2125, January 19, 1973).

Between August and October of 1978, FDA, USDA, and the Federal Trade Commission held a series of public hearings on several issues involving food labeling. Following the hearings, the agencies published an advance notice of proposed rulemaking (ANPRM) that included an analysis of comments and the three agencies' tentative positions on these issues (44 FR 75990, December 21, 1979).

One issue addressed in the 1979 ANPRM was whether food manufacturers and producers either should be required to ensure that their food labels accurately reflected the nutrient composition of their products, principally by analyzing individual lots of their products, or should be allowed to use composite data bases for nutrient values for labeling. In the ANPRM, FDA and USDA set forth a policy encouraging the food industry to develop and use nutrient data bases (44 FR 76003).

Several groups, principally trade associations, have developed nutrient data bases in response to this policy. FDA has worked with these groups by suggesting sampling procedures and data analysis and by reviewing collected data and draft nutrition labels that these groups submitted. At the request of the Produce Marketing Association (PMA), FDA has reviewed and evaluated nutrient data and draft nutrition labels for raw fruit and vegetables. Currently, the agency has under review and evaluation additional data and draft nutrition labels from PMA. No nutrient data or proposed nutrition labels for raw fish have been submitted to FDA for review.

In 1989, Dr. Louis W. Sullivan, Secretary of the Department of Health and Human Services, because of his concern that food labels had become confusing and did not allow consumers to take full advantage of the latest advances in nutrition science, asked FDA to consider changes in the way foods are labeled. In the Federal Register of August 8, 1989 (54 FR 32610), FDA published an ANPRM that solicited public comment on food labeling issues to help the agency determine what, if any, changes in food labeling requirements were necessary to make the food label more useful and

understandable to consumers. FDA asked for comments on whether nutrition labeling should be made mandatory for more foods, and on how any necessary changes could best be accomplished. To facilitate comments, FDA held four national public hearings on food labeling in the fall of 1989.

The overwhelming sentiment in the comments that FDA received was that nutrition labeling is important to the public health, and that if nutrition labeling is going to assist consumers in making appropriate dietary selections that will positively affect their total daily diet, it should be made mandatory on most foods. Although a number of comments from representatives of the fresh produce industry requested that this industry be permitted to provide nutrition information on a voluntary, rather than a mandatory basis, many other comments, from consumers, consumer representatives, and other segments of industry, urged that nutrition labeling of raw produce be made mandatory. Comments supporting mandatory labeling of raw produce argued that the nutritional significance of consumption of these foods is large, and that some of these products now bear labels that make nutrition claims.

On March 7, 1990, Secretary Sullivan publicly announced the Department's plan to improve the quality and quantity of information on the food label. He stated that improved mandatory nutrition labeling could yield a significant public health benefit by assisting consumers in making appropriate dietary selections.

B. Mandatory Nutrition Labeling Proposal and the 1990 Amendments

The agency issued a proposal on July 19, 1990 ("Food Labeling; Mandatory Status of Nutrition Labeling and Nutrient Content Revision" (the mandatory nutrition labeling proposal) (55 FR 29487)), to amend the food labeling regulations to require nutrition labeling on most food products that are meaningful sources of nutrients and to revise the list of required nutrients and the conditions for listing nutrients in nutrition labeling. FDA proposed that a food be classified as a "meaningful" source of calories or nutrients if it contains 2 percent or more of the Reference Daily Intake (RDI) for protein, vitamin A, vitamin C, iron, or calcium per serving (portion); more than 40 calories per serving (portion) or more than 0.4 calorie per gram (g) as consumed; or more than 35 milligrams (mg) of sodium per serving (portion). Using these criteria, most raw fruit, vegetables, and fish would be classified as "meaningful sources of nutrients."

The agency provided exemptions for those situations in which labeling was not practical, including nutrition labeling of foods sold by small business (e.g., roadside fruit and vegetable stands). Moreover, in accordance with section 405 of the act, FDA proposed a labeling exemption for small open containers of fresh fruit and vegetables of less than 1 dry quart. However, the agency proposed to require that any shipping container with more than one of these containers bear full nutrition labeling, and that small open containers bear full nutrition labeling if they also bear a nutrition claim.

In a separate document in the same issue of the Federal Register (55 FR 29476, July 19, 1990), FDA published a proposed rule addressing how serving sizes, which provide the basis for quantitative declarations within nutrition labeling, are to be determined. Proposed serving sizes for raw fruit, vegetables, and fish were included in this document.

The 1990 amendments (Pub. L. 101–535), which were signed into law by the President on November 8, 1990, amend the act by requiring in section 403(q)(4) (21 U.S.C. 343)) that FDA develop guidelines for food retailers for the voluntary nutrition labeling of raw fruit, vegetables, and fish; identify the 20 most frequently consumed raw fruit, vegetables, and fish in the United States; and define substantial compliance with respect to adherence by food retailers to guidelines for the voluntary nutrition labeling of these foods. This document presents, and request comments on, the regulations and guidelines that FDA is proposing in response to the 1990 amendments.

II. Nutrition Labeling of Raw Fruit, Vegetables, and Fish Under the 1990 Amendments

FDA is proposing in § 101.42 (21 CFR 101.42) to codify the requirements set forth in section 403(q)(4) of the act. As a result of the 1990 amendments, the act requires a different approach to the nutrition labeling of raw agricultural commodities and raw fish than FDA proposed in July 1990. Rather than requiring the nutrition labeling of these foods, the act provides for a period of voluntary compliance with guidelines established by FDA. At the end of that period, FDA will make a determination as to the level of compliance with those guidelines. If compliance is substantial, the voluntary program will continue. If, however, the agency cannot make a finding of substantial compliance, the act requires that the agency make nutrition labeling of raw agricultural commodities and raw fish mandatory.

Section 403(q)(4)(B)(i) of the act mandates that FDA issue by November 8, 1991, guidelines for the voluntary nutrition labeling of raw fruit, vegetables, and fish. It directs FDA to establish, by regulation, the 20 most frequently consumed varieties of raw fruit, raw vegetables, and raw fish to which the guidelines shall apply. Under the statute, the agency must identify these varieties of raw agricultural commodities and fish by the time it issues the guidelines. In developing the guidelines, FDA is to take into account the actions taken by food retailers before November 8, 1991, to provide nutrition information on raw agricultural commodities and raw fish to consumers.

At the same time that it issues the guidelines, that is, by November 8, 1991, FDA is also required, under section 403(q)(4)(B)(ii) of the act, to issue a final regulation defining the circumstances that constitute substantial compliance by food retailers with the guidelines. Section 403(q)(4)(B)(ii) of the act also states that this regulation shall provide that substantial compliance does not exist if a significant number of retailers have failed to comply with the guidelines. This section also provides that in deciding whether there is substantial compliance, FDA must consider the size of the retailers and the portions of the market served by retailers that do comply with guidelines.

Section 403(q)(4)(C)(i) of the act mandates that FDA issue by May 8, 1993, a report on the actions taken by food retailers to provide consumers with nutrition information on raw fruit, vegetables, and fish. This section stipulates that the report "include a determination of whether there is substantial compliance with the guidelines." If FDA determines that there is substantial compliance, the guidelines will remain in effect, and the agency is required by section 403(q)(C)(ii) of the act to reevaluate the marketplace for substantial compliance every 2 years.

If FDA determines that food retailers have not achieved substantial compliance with the guidelines, section 403(q)(4)(D)(i) of the act mandates that FDA issue, at the time that it makes that determination, proposed regulations for the mandatory nutrition labeling of raw fruit, vegetables, and fish. It also requires that FDA issue final regulations within 6 months, and that final regulations be effective 6 months after publication.

Section 403(q)(4)(D)(ii) of the act provides that those regulations shall permit food retailers to provide the nutrition labeling information in each

area of an establishment in which raw agricultural commodities and raw fish are offered for sale. It also provides that such regulations shall permit presentation of the required information by the use of signs, placards, consumer brochures, in-store notebooks, and video presentations (section 403(q)(4)(D)(iii) of this act).

Section 403(q)(5) of the act specifies several exemptions to the nutrition labeling requirements. The principal exemptions applicable to raw fruit, vegetables, and fish are section 403(q)(5)(C) of the act, which specifies that a simplified nutrition label shall be used when a food contains insignificant amounts of more than one-half of the nutrients required to be on the label, and section 403(q)(5)(D) of the act, which exempts certain small businesses.

In section 5 (Conforming Amendments) of the 1990 amendments, section 405 of the act is amended by the addition of the following sentence: "This section does not apply to the labeling requirements of sections 403(q) and 403(r)." Therefore, because these guidelines and regulations, if adopted, are promulgated under section 403(q) of the act, they will apply, as appropriate, to small open containers of fresh fruits and fresh vegetables, which would have been exempt from nutrition labeling requirements under the July 1990 proposals.

III. FDA's Proposed Guidelines and Regulations

A. Coverage of the Guidelines and Regulations

"Raw agricultural commodity" is defined in section 201(r) of the act as "any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing." Accordingly, FDA tentatively concludes that section 403(q)(4) of the act applies to fruit and vegetables that receive minimal or no processing and no heat treatment, whether or not such fruit and vegetables are packaged, and whether or not they are waxed. Consistent with this view, raw fruit and vegetables that are trimmed by the retailer (e.g., carrot sticks or broccoli stalks) are subject to section 403(q)(4) of the act. Dried (e.g., raisins, prunes, dates), canned, frozen, or otherwise processed fruit and vegetables are not covered by this section.

Section 403(q)(4)(E) of the act, as added by section 2 of the 1990 amendments, defines "fish" as freshwater or marine finfish, crustaceans, and mollusks, including shellfish, amphibians, and other forms of aquatic animal life. By analogy with section 201(r) of the act, "raw fish" means fish in the natural state that have received minimal or no processing. Consequently, FDA tentatively concludes that whole or filleted fish that are fresh (unpackaged or packaged by the retailer), fresh frozen (unpackaged or packaged by the retailer), or alive in the retail store (e.g., lobster, crab); shrimp that have been shelled and deveined; and lobster, crab, and shrimp that have been thermally processed or shelled, but not otherwise processed or prepared, are all subject to section 403(q)(4) of the act. FDA is proposing to allow thermally processed lobster, crab, and shrimp to come under these voluntary guidelines, rather than mandatory nutrition labeling, because they are often available for sale in the fresh fish sections of retail stores. Nutrition labeling is mandatory under section 403(q)(1) of the act for fish that are canned or smoked; have undergone processing such as breading, flaking, or pressing; or were packaged before reaching the retail level.

FDA advises that raw fish as described in this proposal are not necessarily entitled to be designated on the label (or in labeling) by the term "fresh." FDA's longstanding position has been that food that has been cooked or frozen may not bear the unqualified term "fresh" on its label (56 FR 5694, February 12, 1991). However, the terms "freshly frozen" and "frozen fresh" have been permitted for raw foods that have been quickly frozen while still fresh. As part of FDA's food labeling initiative, FDA will soon be proposing to establish formal requirements for the use of the terms "fresh," "freshly frozen" ("frozen fresh"), and "freshly _____" (e.g., made or prepared) on labels and in the labeling of foods. For raw foods, the proposed regulation would essentially formalize the agency's longstanding labeling policy. FDA has asked that the term "fresh" not be used on the food label pending the proposed rule (56 FR 5694, February 12, 1991).

B. Guidelines for the Voluntary Nutrition Labeling of Raw Fruit, Vegetables, and Fish

In developing nutrition labeling guidelines for raw fruit, vegetables, and fish, FDA is considering numerous issues, including: The presentation of nutrition information in retail stores; label content and format; serving sizes; sources of nutrient data; the use of composite nutrient values (i.e., data from different varieties, species, or cultivars; seasons; and geographic regions that are weighted to develop representative values); the statistical treatment of nutrient data; and the submission to FDA of the nutrient data and proposed label values. These issues are discussed below.

Section 403(q)(4)(B)(i) of the act requires that in developing these guidelines, the agency consider actions taken by food retailers during the 12-month period from November 8, 1990, to November 8, 1991, to provide to consumers nutrition information on raw agricultural commodities and raw fish. The agency requests that food retailers, trade associations, and other persons submit relevant information on current nutrition labeling and shelf labeling programs for raw fruit, vegetables, and fish. Such information will be considered during agency decisionmaking in developing a final set of guidelines within the statutory deadlines.

1. Presentation of the Nutrition Information in Retail Stores

Raw fruit, vegetables, and fish require special consideration with regard to nutrition labeling because, unlike other foods, they are usually wet, not always clean, and usually without packaging (other than paper or cellophane wraps). As a result, at the retail level, the nutrition labeling information for raw fruit, vegetables, and fish may not be attached to the food item but may be displayed at the retail level by individual food wrappers or stickers (e.g., paper wraps for apples or gummed stickers on bananas); large placards (e.g., wall posters, signs, aisle hangings); consumer pamphlets available near the raw fruit, vegetables, or fish; small placards; or books or binders which are easily accessible and in close proximity to the foods. Other means of displaying the nutrition information may also be used.

Section 403(q)(4)(D)(iii) of the act specifies that should the Secretary find that there has not been substantial compliance with voluntary guidelines and promulgate regulations that require retailers of raw fruit, vegetables, and fish to provide nutrition information, he shall permit retailers to make the required information available in brochures, notebooks, leaflets, or posters, and to supplement the information by videos, live demonstrations, or other media. FDA proposed the use of similar materials in § 101.9(a)(2) of its mandatory nutrition labeling proposal (55 FR 29487) and continues to believe that these point-of-purchase materials offer an acceptable method of presenting nutrition information to consumers for products

that do not bear labels or labeling. Therefore, FDA is proposing to adopt this policy in § 101.45(a) by incorporating the statutory language in section 403(q)(4)(D)(iii) of the act. The flexibility of the proposed guidelines will allow the supermarket industry the opportunity to be creative and to experiment with different methods of presenting the nutrition information.

FDA encourages experimentation with various presentations of nutrition labeling for raw fruit, vegetables, and fish and encourages retailers, trade associations, and other groups to conduct surveys to ascertain which types of presentation are most useful to consumers. FDA encourages organizations that conduct such surveys to submit their results to the agency.

In addition to nutrient content information, several trade associations have expressed interest in providing consumers with nutrition messages that are in accordance with the U.S. Dietary Guideline (Ref. 1). For example, the Dietary Guidelines encourage the increased consumption of fruit and vegetables, and a message of "5 a day," referring to five daily servings of fruit and vegetables, is currently being used in several States to promote adherence to the guidelines.

The agency believes that general messages of this type may be used along with nutrition labeling. However, FDA cautions that nutrient content claims, such as "low sodium," which might be used for certain fruit, vegetables, or fish, may be used only if the products bearing the claim meet the criteria established by FDA through regulation. Under the authority of the 1990 amendments, FDA will be promulgating regulations to define such terms to be used on food labels. Once regulations are in place, any nutrient content claim for a fruit, vegetable, or fish may only be made in accordance with those regulations. Similarly, as part of the agency's ongoing rulemaking on health claims, FDA will be promulgating regulations governing claims that relate the consumption of a nutrient to a disease or medical condition. Any health claim for a raw agricultural commodity or for a raw fish may only be made in accordance with FDA regulations. However, the issues of nutrient content claims and health claims are beyond the scope of this proceeding.

2. Label Content

Section 403(q)(4)(A) of the act states that the guidelines shall provide for furnishing the information required by subparagraphs (1) and (2) of section 403(q) for raw agricultural commodities and raw fish. The primary differences between the nutrition information required in those subparagraphs and current nutrition labeling regulations are that current regulations do not require declaration of the total number of calories derived from fat and amounts of saturated fat, cholesterol, complex carbohydrates, sugars, and dietary fiber. In the **Federal Register** of July 19, 1990 (55 FR 29487), FDA proposed to revise its nutrition labeling regulations to include these additional nutrients and food components. FDA intends to supplement that proposal shortly to conform to the 1990 amendments. Because that rulemaking is not yet completed, however, several issues remain unresolved, including what would be appropriate regulatory definitions for complex carbohydrates and sugars, and whether these food components should be included in the nutrition label. There are also unresolved issues involving serving sizes (55 FR 29517, July 19, 1990) and the revision of the U.S. Recommended Daily Allowances (RDA) to RDI's, which are used in nutrition labeling (55 FR 29476 at 29477, July 19, 1990). Therefore, it is difficult at this time to incorporate the proposed nutrition labeling provisions into the guidelines for the labeling of raw fruit, vegetables, and fish. Furthermore the agency recognizes that currently available data bases on these foods generally do not include information on complex carbohydrates and sugars and often also lack information on fatty acids, cholesterol, and dietary fiber.

Taking these factors into consideration, FDA is proposing in § 101.45(b) that nutrition labeling of raw fruit, vegetables, and fish should include the information in the current nutrition labeling regulation, § 101.9 (1990). However, the agency notes that certain additional information called for by the 1990 amendments may be of particular importance for the labeling of raw fruit, vegetables, and fish. For example, most fruit and vegetables are sources of dietary fiber, and declaration of its content, when such information exists, may be helpful. For fish, the additional dietary information that is of interest and benefit to consumers may include levels of saturated fat and cholesterol. Therefore, where information is available on additional nutrients and food components specified in the 1990 amendments, FDA strongly encourages retailers to include such information in nutrition labeling.

In a similar manner, and in accordance with FDA's mandatory nutrition labeling proposal (55 FR 29487), the agency acknowledges that the requirements to include information on the content of thiamin, riboflavin, and niacin do not add information that is particularly useful to consumers. Accordingly, FDA is proposing in § 101.45(b)(1) that thiamin, riboflavin, and niacin may be voluntarily declared on nutrition labeling of raw fruit, vegetables, and fish.

The agency advises that after the first report to Congress on actions taken by food retailers to provide consumers with nutrition information for raw fruit, vegetables, and fish in compliance with the guidelines being proposed herein, FDA intends either to amend the guidelines or to issue regulations, as appropriate, to bring nutrition labeling of raw fruit, vegetables, and fish into compliance with the revised nutrition labeling requirements of the 1990 amendments, including any changes in the format of the nutrition label, as implemented by new regulations, once those regulations become effective. By that time, rulemaking to make optional the labeling of some nutrients now mandatory and to require additional nutrients and food components in nutrition labeling should have been completed.

3. Label Format

Section 403(q)(5)(C) of the act states that "If a food contains insignificant amounts, as determined by the Secretary, of more than one-half the nutrients required by subparagraphs (1) and (2) to be in the label or labeling of the food, the Secretary shall require the amounts of such nutrients to be stated in a simplified form prescribed by the Secretary." In its upcoming supplementary proposal on nutrition labeling, the agency will propose regulations to implement this section of the act. In recognition of this fact, and the fact that many fruit, vegetables, and fish only have a small number of nutrients in significant amounts, the agency is providing for the use of a simplified label format in these guidelines for the voluntary nutrition labeling of raw fruit, vegetables, and fish. However, because nutrition labeling of raw agricultural commodities and fish is voluntary, and because FDA believes that these guidelines should encourage such labeling by providing as much flexibility as possible, FDA is not proposing to provide that the simplified format is the appropriate format in particular circumstances. To the extent possible, the decision to use the simplified nutrition label or the full nutrition label is, under the proposed guidelines, the decision of the retailer.

FDA is proposing in § 101.45(b)(2) that when more than one-half of the nine

specified nutrients and food components are present in insignificant amounts, a simplified format may be used. These nine nutrients and food components are calories, fat, carbohydrate, protein, sodium, vitamin A, vitamin C, calcium, and iron. Therefore, if five or more of these nutrients are present in the fruit, vegetable, or fish at insignificant amounts, a simplified nutrition label may be used.

For this purpose, the agency is interpreting "insignificant amount" as that amount per serving that generally may be rounded to zero in nutrition labeling. These amounts would be: Calories—less than 5; fat, carbohydrate, and protein—less than 0.5 g; sodium—less than 5 mg; vitamin A—less than 17.5 micrograms; vitamin C—less than 1.2 mg; calcium—less than 20 mg; and iron—less than 0.36 mg.

The agency is proposing in § 101.45(b)(2)(i) that the simplified nutrition label include, at a minimum, the quantitative amounts of calories, fat, carbohydrate, protein, and sodium present in raw fruit, vegetables, or fish. FDA explained in its mandatory nutrition labeling proposal (55 FR 29487 at 29502, July 19, 1990) its belief that this core of information is necessary to allow consumers to judge the consequences of the food selections that they make. In addition, the agency is proposing that the simplified nutrition label should include any of the other nutrients listed in § 101.45(b)(2) present in more than insignificant amounts. As long as the food retailer makes no other nutrient claims or quantitative declarations on the label or in labeling, the nutrition label would not need to identify any other nutrients or make any other statements. However, FDA is proposing in § 101.45(b)(2)(ii) that if the retailer makes a nutrient claim or declares the amount of additional nutrients present (e.g., potassium in iceberg lettuce), it should add a qualifying statement that the food is not a significant source of any of the nine nutrients or food components listed above that are not otherwise declared in the nutrition label (e.g., "Not a significant source of calcium or iron").

For example, a simplified nutrition label for iceberg lettuce would state as a minimum:

Nutrition Information Per Serving

Serving Size	2 oz (56 g).
Calories (energy)	10.
Protein	0 g.
Carbohydrate	2 g.
Fat	0 g.
Sodium	10 mg.
Percent of U.S. RDA:	
Vitamin A	2.
Vitamin C	4.

oz = ounce.

If the manufacturer elects to declare additional nutrients (e.g., potassium), the simplified nutrition label would state:

Nutrition Information Per Serving

Serving Size	2 oz (56 g).
Calories (energy)	10.
Protein	0 g.
Carbohydrate	2 g.
Fat	0 g.
Sodium	10 mg.
Potassium	90 mg.
Percent of U.S. RDA:	
Vitamin A	2.
Vitamin C	4.

Not a significant source of calcium or iron.

To save space and allow greater flexibility in presentation, FDA is proposing in § 101.45(b)(3) that the nutrition information for the full or simplified label format may be presented on individual labels or in charts in vertical columns (as above) or in lines. When a line presentation is used, any nutrients or food components that are subelements of a principal element (e.g., saturated fat is a subelement of total fat) should be put in parentheses in the proper order. Examples of a line presentation for iceberg lettuce are as follows:

Nutrition Information

Serving size: 2 oz (56 g).

Per Serving: 10 calories, 0 g protein; 2 g carbohydrate, 0 g fat, and 10 mg sodium. Percent of U.S. RDA: 2% vitamin A and 4% vitamin C.

or:

Nutrition Information

Serving size: 2 oz (56 g).

Per Serving: 10 calories, 0 g protein; 2 g carbohydrate, 0 g fat, and 10 mg sodium, and 90 mg potassium. Percent U.S. RDA: 2% vitamin A and 4% vitamin C. Not a significant source of calcium or iron.

An example for a fish might be:

Nutrition Information

Serving size: 4 oz (112 g) cooked.

Per Serving: 120 calories, 20 g protein; 0 g carbohydrate, 4 g fat (2 g saturated fat), 85 mg sodium. Percent of U.S. RDA: 2% calcium and 2% iron. Not a significant source of vitamins A or C.

4. Serving Sizes

Consistency and reasonableness of serving sizes are critical to the consumer's ability to understand and to compare nutrition labels. The agency has received many comments on the subject of serving size that have argued that there is need to establish standard serving sizes for use in nutrition labeling. Accordingly, in the Federal Register of July 19, 1990 (55 FR 29517), FDA proposed to amend its regulations to define serving and portion size. In the preamble to that document, the agency discussed five regulatory options: (1) That manufacturers establish serving size, (2) that FDA develop criteria for establishing serving size that manufacturers would apply in developing their own serving size, (3) that FDA adopt a single, uniform serving size such as 100 g or 1 oz, (4) that FDA establish standard serving sizes, which could be amended through a petition process, and (5) that FDA require dual declaration of nutrient content, based on a standard serving size and on a uniform unit such as 100 g. After carefully considering the alternatives, the agency selected the fourth option and proposed to establish standard serving sizes on the basis of the amount of food commonly consumed. FDA proposed that the standard serving size for most raw fruit would be 5 oz (142 g), except that the serving size for watermelon would be 12 oz (336 g), and for fruit used as a garnish or for flavor (e.g., lemon, lime), ¼ oz (7 g). The proposed standard serving sizes for raw vegetables would be 2 oz (56 g) for lettuce and other vegetables used primarily as ingredients (e.g., onion, mushroom, tomato) and 3½ oz (98 g) for other raw vegetables. The standard serving sizes proposed for fish and shellfish are 4 oz (112 g) for products cooked without sauce, 5 oz for products cooked with sauce, and 3 oz (84 g) for canned products.

Obviously, the gram weights of portions of various raw foods (e.g., one apple, one carrot, one perch fillet) vary considerably. In the serving size proposal, the agency acknowledged the difficulty of setting a serving size for fruit with variable sizes, stating:

> The agency recognizes that many fresh fruits (e.g., apples, oranges, and pears) are almost always consumed at a single eating occasion. These foods are analogous to single-serving containers. Thus, one category of fresh fruits that FDA is proposing to establish would include those fruits that, consistent with the agency's general treatment of single-serving containers, per piece weigh 50 percent or more, but less than or equal to 150 percent, of the standard serving size. Since the standard serving size

for fresh fruit is 5 oz, fresh fruit with an average edible portion weight of more than 2.5 oz but less than 7.5 oz would fit within this category. The nutrition label for those fresh fruits could state that the serving size is one piece of fruit.

The second category of fresh fruits would include those that generally weigh less than 50 percent of the standard serving size. Fifty percent appears to be a reasonable cutoff level because, for fruits with an edible portion weighing less than 2.5 oz per piece, consumers generally eat more than one piece per eating occasion. Although these smaller fruits would use the standard serving size (e.g., 5 oz (140 g) for blueberries), to enable consumers to visualize the serving size, the agency has provided for the additional voluntary declaration of the number of fruits or cups of fruit that approximate the standard serving size (e.g., 1 cup of blueberries or 3 apricots).

The third category would include those fresh fruits that as a whole piece exceed 150 percent of the standard serving size. These fruits generally are served in fractional pieces (e.g., ½ grapefruit). Thus, the serving size for this type of fruit would be a 5 oz piece of the fruit.

(55 FR 29517 at 29526)

FDA considers it likely that nutrition labeling of fresh fruit and vegetables will generally be based on data bases, and that the weights of average sizes of the various types of fruit and vegetables will be determined as a part of the process of developing the data base. Obviously, because the size of fruit and vegetables varies considerably, the nutritional values based on an average size may be over- or under-stated for raw produce that is larger or smaller, respectively, than the average. Unfortunately, there is no way to avoid this problem with a composite label for each type of produce. Consumer education programs will need to address this problem, and teach consumers to consider the size of the fruit or vegetable in determining the level of calories or nutrients consumed.

FDA received a large number of comments on its serving size proposal. The agency considered all comments received and held a public meeting on April 4, 1991, to gather additional information for arriving at a supplementary proposal on serving sizes (56 FR 8084, February 26, 1991). Until the serving size rulemaking is completed, the selection of serving sizes for raw fruit, vegetables, and fish should be based on the procedures outlined in current § 101.9(b)(1). That section specifies that "serving" means that reasonable quantity of food suited for, or practicable of, consumption as part of a meal by an adult male engaged in light physical activity. It also states that a label statement regarding a serving shall be in terms of a convenient unit of such food or a convenient unit of measure that can be easily identified as an average or usual serving and can be readily understood by purchasers of such food.

Another suggested method of declaring serving size is to do so based on one common reference value such as one ounce. This would be consistent with the method used widely in Europe which is based on 100 grams. FDA will request comments on this method of declaring serving size in the revised proposal on serving sizes that the agency intends to publish soon.

As stated above, many raw fruits are consumed in whole at a single eating occasion and are therefore analogous to single-serving containers. Because of this fact and because nutrition labeling for these commodities appears to be most easily based on average sizes or household measures, the agency does not consider the declaration of "servings per container" as useful to consumers. Therefore, FDA is proposing in § 101.45(b)(4) that nutrition labeling for raw fruit, vegetables, or fish need not include information on servings per container.

5. Raw versus cooked

Section 403(q)(4)(B)(i) of the act directs the agency to "take into account the actions taken by food retailers to provide consumers nutrition information on raw agricultural commodities and fish." The nutrient values and nutrition labeling values provided by PMA and accepted by FDA for fresh fruit and vegetables are on a raw edible portion basis. On the other hand, in its preliminary review of marketplace practices, FDA has determined that a currently used labeling program for fish provides data on the basis of the cooked product. Data for fish available from the Seafood Nutri-Facts program (Ref. 2), a marketplace nutrition labeling program developed by the Food Marketing Institute (FMI) and the National Fisheries Institute (NFI), are for a 3 oz edible portion, cooked weight (cooked without fat or skin). The 3 oz cooked weight is derived, in most cases, from a 4 oz raw weight. Therefore, the agency must address the issue of whether the guidelines for nutrition labeling of raw agricultural commodities and fish should call for nutrient values to be expressed on either a raw or a cooked basis.

For packaged foods, 21 CFR 101.9(b)(3) requires that "the declaration of nutrient quantities shall be on the basis of the food as packaged." In 1973, when nutrition labeling was established, comments raised the issue of providing nutrient values for the food "as prepared for consumption after cooking or other home preparation." After consideration, the agency determined that requiring nutrient declaration on the basis of the product as consumed was not feasible "because, for many products, there are numerous variations of cooking or other methods of preparation, and enforcement would not appear to be feasible" (38 FR 6953, March 14, 1973). However, in addition to the information on the basis of the food as packaged, 21 CFR 101.9(b)(3) permits optional declaration of nutrient quantities on the basis of the food as consumed after cooking or other preparation, provided the specific method of cooking or other preparation is prominently disclosed.

For consistency within product categories, FDA has tentatively concluded, in proposed § 101.45(b)(5), that for raw fruit and vegetables, nutrition labeling information should be declared on the basis of the raw edible portion. However, because of the statutory directive and the existing practices in the marketplace, the agency is proposing that values for fish be declared on a cooked edible portion basis. FDA recognizes that the FMI–NFI nutrition labeling information may not have been developed in accordance with FDA compliance calculations. However, FDA tentatively considers this effort to be significant enough that, in light of section 403(q)(4)(B)(i) of the act, it is incumbent on FDA to recognize it at this time. FDA will work with FMI and NFI to assure that the data are subjected to FDA compliance calculations.

FDA also recognizes that there is a question to whether to provide that all raw fish should be nutrition labeled on a cooked basis, or whether the agency should permit the information on a cooked or raw basis. It is proposing the former course for two reasons. First, FDA has tentatively concluded that nutrition labeling should be as consistent as possible for particular types of food. FDA believes that it would be too confusing for consumers if some fish were labeled with cooked values and others with raw. Second, FMI and NFI have assured FDA that they will make the data base that they are developing widely available and not restrict its availability to their members.

FDA is proposing to provide that the cooking method used to prepare the fish before nutrient analysis should not add fat, breading, or any seasoning. Such methods might include boiling, baking, pancooking, broiling, or microwave cooking. Inedible parts (e.g., bones) should be removed before assessing nutrient levels.

The listing of nutrient values for fish on a cooked basis precludes the possible

misconception that by reporting nutrient values for raw fish, the label is recommending consumption of fish raw. Also, values based on cooked products are consistent with USDA's tentative position as set forth in a recent ANPRM on nutrition labeling of meat and poultry products (56 FR 13564, April 2, 1991). However, as stated above, FDA recognizes that permitting nutrition labeling values based on cooked products is a departure from the agency's regulatory policy for packaged products. Moreover, FDA recognizes the paradox of permitting cooked values to represent compliance with a statutory provision that specifically addresses raw fish. Therefore, FDA is soliciting comment on this issue. The agency stresses that allowing for labeling on a cooked basis in these guidelines for raw fish in no way affects the existing regulation for packaged foods (21 CFR 101.9(b)(3)), nor does it represent a fundamental shift in the agency's enforcement policies for any foods other than fish.

6. Sources of Nutrient Data

The nutrient data that retail stores use for the voluntary nutrition labeling of raw fruit, vegetables, and fish should come from: (1) Analytical data previously generated by trade associations that were reviewed by FDA and found to be acceptable; (2) data that will be generated from analyses initiated by retailers, trade associations, or other groups and that may be submitted to FDA for review and evaluation; or (3) analytical data that have been previously generated by various groups and that are available in the literature, in data bases, or elsewhere, that retailers, trade associations, or other groups may gather (with appropriate documentation and statistical information) and may submit to FDA for review and evaluation.

FDA is proposing in § 101.45(c) that analytical data that have been reviewed and accepted by FDA are appropriate for use in nutrition labeling. An example of this type of data includes the fruit and vegetable nutrient data submitted to FDA by PMA. Data from PMA for 24 fruits and vegetables have been reviewed and accepted by FDA, data for 10 other fruits and vegetables are under FDA review, and PMA is planning to submit data for 7 more foods (Table 1). The data from PMA include calories, protein, carbohydrate, fat, dietary fiber, cholesterol, sodium, potassium, 10 vitamins, and 6 minerals, including calcium and iron. These data were the result of market basket sampling and analysis using analytical methods approved by the Association of Official Analytical Chemists (AOAC). PMA followed FDA guidance in calculating the values for nutrition labeling (Ref. 3). Of the 20 fruits and 20 vegetables identified in § 101.44 as being among the 20 most frequently consumed, PMA data and nutrition labeling are (or will be) available and FDA-accepted for all but 7 fruits and 3 vegetables.

The agency is also proposing in § 101.45(c) that analytical work that is done by retailers, trade associations, or other groups to determine the nutrients and food components in raw fruit, vegetables, and fish should include appropriate sampling, analytical methodologies, and statistical treatment. Market basket sampling that provides for year-round representative values, including the variables of variety, species, cultivar; season; or geographic region, may be used. If the data are for a specific variety, species, or cultivar; season; or geographic region, some other sampling technique may be more appropriate. FDA guidance should be used in developing values for nutrition labeling (Ref. 3). When requested, FDA will work with organizations to provide guidance and to assist in developing appropriate data for nutrition labeling.

The agency is also proposing in § 101.45(c) that previously developed nutrient data may be suitable for nutrition labeling. These data, accompanying information, and proposed nutrition labeling may be submitted to FDA for review and evaluation. An example of this type of data might include information available from the National Nutrient Data Bank, which is managed by the USDA Human Nutrition Information Service. To provide an adequate basis for determining the suitability of data for use in nutrition labeling, accompanying information should include information about numbers of samples; sources of data, including geographical location of samples and location of analytical laboratories; sampling strategies; dates of analyses; analytical methodology; and nutrient variability, including statistical treatment of data. Therefore, simply using average values from USDA's Agriculture Handbook No. 8, for example, or other similar data bases may not be appropriate.

Some of the data from the National Nutrient Data Bank have been incorporated into the Seafood Nutri-Facts program (Ref. 2) developed by FMI and NFL Seafood Nutri-Facts provides nutrient data graphs for 53 finfish and 12 shellfish. These listings include several types within a species (e.g., 6 types of salmon and 4 types of crab). The Nutri-Facts graphs present information on calories; total fat; saturated, monounsaturated, and polyunsaturated fatty acids; cholesterol; sodium; protein; and iron based on a 3 oz. cooked, edible portion of fish as prepared from a 4 oz. raw, edible, skinless portion of fish without added fat or seasoning. As stated above, these data need to be subjected to FDA compliance calculations and submitted to FDA for acceptance.

Thus, for the voluntary labeling of raw fruit, vegetables, and fish, FDA encourages the use of FDA-accepted nutrient data bases and nutrient values for nutrition labeling, where available, and promotes additional analyses to provide nutrient data where it is outdated or lacking. Any new data, accompanying information, and proposed nutrient values for nutrition labeling should be submitted to the Division of Nutrition, HFF–260, Center for Food Safety and Applied Nutrition (CFSAN), FDA, 200 C St. SW., Washington, DC 20204, for review and evaluation.

Until sufficient and appropriate data become available on which to base nutrition labels for all 20 of the most frequently consumed fruit, vegetables, and fish, retailers may attempt to use previously developed data (e.g., USDA data) to develop nutrition labeling. FDA guidance (Ref. 3) should be used to develop the nutrient values from such data; and all data, information, and proposed nutrient values for nutrition labeling should be submitted to FDA for review and evaluation. Because previously developed data may include some older values generated by outdated analytical methods, treatment of these data according to the guidance found in Reference 1 may result in conservative nutrition label values because of the wide ranges of the values. The agency believes that use of such data as an interim measure is appropriate to comply with the 1990 amendments. However, the agency encourages trade associations, retailers, and other groups to sponsor new or additional nutrient analyses to provide consumers with current nutrient information.

FDA encourages retailers to develop nutrient labeling information for fruit, vegetables, and fish in addition to the top 20 identified in each category (§ 101.44) and to follow the nutrient labeling guidelines described in § 101.45.

7. Use of Ranges to Express Nutrient Values

The agency recognizes that considerable nutrient variability is a common characteristic for most fruit and

vegetables. Since 1973, FDA has provided guidelines for deriving nutrition label values that are representative of the range of nutrients in a food (Ref. 3). Under these guidelines, the label values are established by statistical analyses of data gathered to account for seasonal effects, growing or harvesting regions, storage, and other variables that affect nutrient content. This procedure, together with FDA's policy, set forth in § 101.9(e)(4)(ii), of allowing a 20-percent deviation for naturally occurring nutrients, permits most foods to be represented by a single label value for each nutrient, even those that are quite variable. The agency believes that single values, calculated using this procedure, are more informative and are less confusing for consumers that are ranges of values, especially where the ranges may be quite large. This procedure may result in underdeclaration of others (e.g., sodium) when variability is high, but the values that it provides fairly represent the nutrient levels that the consumer can depend upon receiving from a product over time.

Although section 403(q)(4) of the act allows for the use of ranges in the nutrition labeling of raw fruit, vegetables, and fish, FDA is not proposing to permit such ranges because ranges, especially if they are large, will not be useful to consumers. FDA believes that the most useful nutrient values for nutrition labeling are those that are representative of what consumers are most likely to receive in the foods they buy in the store. However, FDA solicits comments on its tentative position to use single values rather than ranges. The agency also requests comments on whether the 20 percent deviation is appropriate, if it adopts singles values.

8. Use of Composite Nutrient Values

a. Nutrient variation. The nutrient content of fruit, vegetables, and fish may be affected by variety, species, and cultivar; season; geographic region; and storage or processing conditions. In addition to species, season, and geographic region, the nutrition profiles for fish will also vary by size, age, and sex, and whether the fish are caught wild or are cultured. There are several hundred species of fish and shellfish, and for many of these species, there are no established nutrition data. Information on the extent of "natural" variation of nutrients in raw fruit, vegetables, and fish is needed to develop appropriate nutrition labeling for these foods. FDA has recognized the problem of nutrient variation and has worked with various trade associations and other organizations to develop composite data bases that permit nutrition labeling for produce that takes into account such factors as variety, season, and geographic location. For example, as stated above, in 1981, PMA began work on the nutritional values of fresh fruit and vegetables (Table 1) according to a market basket methodology developed in cooperation with FDA. The produce is sampled from cities nationwide at different times of the year, so that such variables of variety, season, growing location, and effects of shipping are factored into the analysis.

The National Academy of Sciences' Report on Nutrition Labeling (NAS report) supports the use of composite data bases for the nutrition labeling of produce and fish (Ref. 7). Composite data takes into consideration the factors responsible for nutrient variation. The NAS report suggests that such data reduce the burden for retailers with regard to nutrition labeling and provide uniform and consistent data for consumers in the marketplace.

The disadvantage of composite nutrient values is that the variability gives rise to a nutrition label that may understate, or overstate, the nutritional value of a particular variety of produce or of produce from a particular region because of the need for the label to cover industry-wide variations. Composite data may also not be completely reflective of the nutrient content of specific cultivars or species. While a unique variety or species may be covered by the composite data base, if a grower or retailer wants to point to its uniqueness, it may develop a data base for the species. FDA encourages the development of nutrient values for those products that have unique nutritional characteristics.

b. Burden for food retailers. It is generally more difficult for individual growers and retailers of raw fruit, vegetables, and fish to produce and provide nutrient data than the larger producers of processed foods. The required nutrient analyses for nutrition labeling are expensive and may be cost prohibitive for most individual producers and retailers. Where cost is a factor, nutritient data bases could be compiled for common use by retailers of these foods, thereby eliminating the need for analyses by each retailer.

The use of composite data is more suitable for fresh or minimally processed foods than for processed or formulated products, which have precise ingredient formulations, production methods, and portion control. The use of composite data for raw fruit, vegetables, and fish would require continuous monitoring, but compliance costs for individual food retailers would be kept down. FDA expects that much of the nutrition information for these foods will be developed by the efforts of trade associations on behalf of their members.

c. Uniformity and consistency of values among stores. FDA believes that the development of a national list of the 20 most frequently consumed fruit, vegetables, and fish, and the development of FDA-accepted composite nutrient data bases and nutrient values for nutrition labeling for these foods, will help to ensure uniformity and consistency of information for these foods and, thus, will assist consumers. Use of the nutrition labeling compliance procedures (Ref. 3) developed by FDA will further help to standardize and unify the nutrition labeling procedures.

d. Proposed action. FDA believes that the advantages of composite data outweigh the costs of extensive analytical work and is proposing in § 101.45(d) to allow for the use of composite nutrient values for the nutrition labeling of raw fruits, vegetables, and fish. This proposal does not, however, preclude the development and use by retailers of data for more specific varieties, species, cultivars; seasons; and geographic regions for use in the nutritional labeling of raw fruit, vegetables, and fish. The nutrition labeling information should provide a name or description of the fruit, vegetable, or fish that appropriately reflects the samples analyzed (e.g., crab vs. blue crab or orange vs. valencia orange).

9. *Statistical Treatment of Nutrient Data*

To assist in the development of nutrition labels that comply with 21 CFR 101.9(e), which sets forth the general compliance standards for nutrition labeling, FDA prepared a booklet in 1973 entitled "Compliance Procedures for Nutrition Labeling" (Ref. 3). This booklet states that appropriate sampling, approved analytical methods, and specific statistical calculations should be used to develop nutrition labeling values. Label values based on the FDA procedures give 95 percent assurance that the nutrients contained in the samples are at least equal to, and no less than, 80 percent of the label values for protein, vitamins, and most minerals and at least equal to, and no more than, 120 percent of the label values for calories, cholesterol, fat, and sodium.

FDA is proposing in § 101.45(e) that nutrient data to be used for nutrition labeling should be subjected to the

statistical calculations found in "Compliance Procedures for Nutrition Labeling" (Ref. 3). The agency has announced its intention to update this manual as part of the current food labeling initiative (55 FR 29507, July 19, 1990). The revised booklet, entitled "FDA Nutrition Labeling Manual—A Guide for Using Data Bases," will provide a more comprehensive discussion of procedures for using data bases to develop nutrition labels and will discuss some suggested alternatives to current procedures. However, FDA does not anticipate the revision will be available until November 1992.

10. Submission of Data to FDA and Acceptance of Data by FDA

FDA is describing in proposed § 101.45(f) the way in which the agency will grant acceptance of nutrient data and proposed nutrient values for nutrition labeling if agency acceptance is sought. If the agency agrees to all aspects of the nutrient data and proposed nutrient values, it will notify the submitter in writing. FDA is proposing that its acceptance of nutrient data and nutrient values for nutrition labeling will be effective for a period of 10 years.

FDA encourages organizations that obtain FDA acceptance of a data base and the nutrient values for nutrition labeling to provide for continued maintenance of the data base. At the end of each 10-year period, FDA will reaccept properly managed data bases and the nutrient values for nutrition labeling unless there have been demonstrated changes in agricultural or industry practices. When agricultural or industry practices change (e.g., a change occurs in a predominant variety produced), or when FDA monitoring suggests that the data base is no longer representative of the produce item sold in this country, FDA will move to revoke its acceptance of the data base and the nutrient values for nutrition labeling. A revised data base and revised values for nutrient levels for nutrition labeling may be submitted to FDA for acceptance.

FDA is proposing in § 101.45(g) that nutrition labels for raw fruit, vegetables, and fish will not be subject to label compliance review by the agency under 21 CFR 101.9(e) if the nutrition information is in accordance with an FDA-accepted data base, the nutrient values for nutrition labeling have been computed following FDA guidelines, and the food has been handled in accordance with good manufacturing practices to prevent nutrient loss. Organizations may use other data bases for nutrition labeling that they believe validly reflect the nutrient content of fruit, vegetables, and fish. However, if the nutrient values for the nutrition labeling are computed from data bases not reviewed, evaluated, and accepted by the agency, FDA is proposing in § 101.45(h) that these data and values will be subject to the compliance procedures of 21 CFR 101.9(e).

C. Identification of the 20 Most Frequently Consumed Raw Fruit, Vegetables, and Fish in the U.S.

1. "Most Frequently Consumed"

Section 403(q)(4)(B)(i) of the act states that the guidelines on nutrition labeling of raw agricultural commodities and raw fish apply to the 20 "most frequently consumed" varieties of fruit, vegetables, and raw fish. The term "most frequently consumed" is not defined in the 1990 amendments. Information on frequency of consumption (i.e., number of times a given food is eaten in a given time period by a population group) does not always identify the foods that are consumed in the largest quantities.

Although information is available on the daily gram weight intake and frequency of consumption of individual foods in the U.S. population from the USDA Nationwide Food Consumption Survey (NFCS) (Ref. 8), this infomration is not specific enough for the 60 foods of concern in this proposal. The data base for the NFCS contains over 6,000 food items and reflects foods as prepared for consumption. Consumption levels for the individual raw fruit, vegetables, and fish in this data base are not easily determined because of the many and varied ways these foods are used. For example, NFCS data on the consumption of raw tomatoes do not include raw tomatoes that are prepared in different ways (e.g, boiled or fried) or tomatoes used in other dishes such as lasagna, pizza, spaghetti sauce, or tomato soup.

Therefore, the agency has tentatively decided to interpret the phrase "most frequently consumed" to mean those varieties consumed raw, as measured in the largest quantities by the U.S. population. FDA is proposing to use retail sales and production information to identify the 20 most frequently consumed fruit, vegetables, and fish in the U.S. FDA believes that it is reasonable to find that the foods with the highest sales or production (in terms of weight) are also the foods consumed in the largest amounts. While there may be some error introduced into the agency's reasoning because the weight of food sold or produced includes the weight of the inedible portion, FDA does not believe that any such error will affect the designation of the top 20 foods in each category. Comments are requested on other types of data that could be used in making this determination.

2. The 20 Most Frequently Consumed Raw Fruit and Vegetables

FDA has identified the 20 types of fruit and 20 vegetables (Table 2) that it tentatively concludes are most frequently consumed in the U.S. These fruits and vegetables are listed in proposed § 101.44 (a) and (b) as the 20 fruit and 20 vegetables most frequently consumed. FDA identified these foods based on information from PMA (Ref. 9), the United Fresh Fruit and Vegetable Association (UFFVA) (Ref. 10), the Economic Research Service (ERS) of USDA (Ref. 11), and the 1987–88 USDA NFCS (Ref. 8). FDA grouped the fruit and vegetables by common usage, rather than by botanical definition (e.g., tomatoes were placed in the vegetable group). However, the agency placed avacados, a food used both as a fruit and vegetable, in the fruit group.

Retail sales data (tonnage per year) from PMA provide information for 5 regions of the U.S. (northwest, north central, southeast, northeast, and southwest) for raw fruits and vegetables (Ref. 9). Nineteen fruits were among the top 20 in all 5 regions. In 3 regions, blueberries were among the top 20, in 1 region (northwest) papaya was, and in another region (southwest) mango was. Fifteen vegetables were among the top 20 for all 5 regions. Because the variability of sales data for fruit and vegetables among geographic regions was low, FDA has concluded that there is no need to propose separate lists by region as allowed for in section 403(q)(4)(B)(i) of the act.

PMA submitted to FDA lists of the 20 fruit and vegetables with the highest total annual sales for all regions combined (Ref. 9) as listed in tables 3 and 4. Information provided by UFFVA on average yearly supply (in millions of pounds) (Ref. 10), by ERS on average per capita consumption (in farm weight pounds) (Ref. 11), and from a Consumer Expenditure Study by Supermarket Business (money spent on 8 commodites) (Ref. 12) confirm (with some variation) the identity of the top 20+ fresh fruit and vegetables (Tables 3 and 4). Eighteen of the fruits were on the lists of PMA, UFFVA, and ERS as being among the top 20+ consumed (Table 3). Data from PMA, UFFVA, and ERS indicated that the same 19 vegetables were on all 3 lists (Table 4). Four additional vegetables were among the top 20+ for at least two of the three organizations (radish, green onion, leaf lettuce, and eggplant). Green peas were

among the top 20 for ERS, but these data included peas that are frozen as well as those that are sold fresh. Because green peas are generally purchased frozen or canned, and were not on the PMA or UFFVA top 20 lists, FDA is not including them in its list of vegetables. Green peas purchased frozen or canned will be required to bear nutrition labeling. Garlic was on the ERS list as number 20 but not on the other 2 lists. Because garlic is most commonly used as a seasoning and flavoring, rather than a vegetable, it was not included among the top 20.

The top 20 fruit and vegetables as determined by weighted daily gram intake from the 1987–88 USDA NFCS (Ref. 8) (Table 5) are basically the same as those determined from the PMA, UFFVA, and ERS information. The identification of the same 20 fruit and vegetables by these several different sources helps confirm the identity of these products as being among the fruit and vegetables most commonly consumed in the U.S. The NFCS list included 2 vegetables (green peas and lima beans) and 1 fruit (cranberries) that are more commonly purchased in processed (frozen or canned) form. Consequently, FDA tentatively concluded that these foods, although among the NFCS top 20, were not appropriate for inclusion among the top 20 raw fruit and vegetables listed in § 101.44.

3. The 20 Most Frequenlty Consumed Raw Fish

FDA's proposed selection of the 20 most frequently consumed raw fish in the U.S. is proposed in § 101.44(c). To identify the top 20 varieties, FDA used NFI data (Ref. 13) on raw fish supply and data from FMI on 1989 retail and wholesale sales of fish (Ref. 14), plus information from informal FMI telephone contact with retail stores about raw fish available for purchase (Ref. 15) (Table 7). These production and sales data include fish sold to restaurants and small fish markets.

FDA used the top 20 fish identified by NFI as the basis for table 6. The identity of these fish as being among the top 20 was confirmed by FMI data. The identification of 16 of the top 20 fish was further confirmed by information from the 1987–88 USDA NFCS (Ref. 8) on the fish consumed in largest quantities by the U.S. population (Table 5). There were not sufficient data for FDA to evaluate fish consumption regionally as allowed for in section 403(q)(4)(B)(i) of the act.

D. Substantial Compliance Determination

1. Requirements for Compliance

FDA proposes in § 101.43 (a)(1) through (a)(4) that individual stores that are selected for evaluation for compliance with the guidelines will be found to be in compliance if: (1) The store provides nutrition labeling for at least 90 percent of the raw fruit, vegetables, and fish that it usually offers for sale that are among those identified as the 20 most frequently consumed raw fruit, vegetables, and fish in the U.S. (§ 101.44); and (2) the nutrition labeling is in compliance with the guidelines given in § 101.45. These criteria represent a straightforward application of FDA's regulations.

2. Definition and Determination of Substantial Compliance

As required by section 403(q)(4)(B)(ii) of the act, FDA is proposing to define substantial compliance by retailers with the voluntary guidelines for the nutrition labeling of raw fruit, vegetables, and fish based on the number of retailers that are complying with the voluntary guidelines, the size of these retail operations, and the portions of the market that they serve.

The agency believes that several other factors need to be considered in arriving at a standard with which to judge whether there is substantial compliance, including how to judge compliance with the guidelines by the individual stores being evaluated; which types of retail outlets to include in any evaluation (e.g., chains, independents, stores with high sales volume); how to select a representative sampling of stores or chains; and what degree of compliance is "substantial."

For individual stores, the agency is proposing a criterion that the store display nutrition labeling for at least 90 percent of the raw fruit, vegetables, and fish that it sells. The agency arrived at 90 percent after considering the following factors: Given the statute's emphasis on the number of retailers and the portion of the market that they cover (see 21 U.S.C. 343(q)(4)(B)(ii)), there apparently was an implicit assumption by Congress that any retailer that provided nutrition labeling for raw fruit, vegetables, and fish would provide it for all the covered food that it sold. The agency recognizes, however, that placards may fall down or pages may fall out of books or binders. Therefore, a criterion that required that 100 percent of the covered foods be labeled seems unfair (see 21 U.S.C. 343(q)(4)(F)). The agency believes that 90 percent is an appropriate criterion because under it, only if there is a minor deviation from full nutrition labeling would the agency find compliance, and yet it takes into account the inadvertent problems that may occur in providing this information.

Table 8 provides information from Nielsen Marketing Research on the number of grocery stores that are of a particular size, percent of stores that are that size, and percent of food sales that are made annually in stores of that size (Ref. 16). In accordance with the small business exemption discussed below, independent stores with annual sales not exceeding $300,000 are separated from larger independents. (Although the small business exemption is for retailers with annual gross sales of not more than $500,000, the closest store size classification interval available in the Nielsen Marketing Research data is for stores with annual gross sales of not more than $300,000.) A chain is defined as 4 or more stores under common ownership.

Chain and independent grocery stores with annual sales of $2 million and over account for 81.5 percent of total U.S. grocery sales. Independents with annual store sales of $300,000 or less account for 42.6 percent of food stores but only 2.7 percent of total grocery sales, providing a lower bounds estimate of the percentage of stores and food sales excluded by the small business exemption of the 1990 amendments.

Assuming that headquarter's policy would govern the display of nutrition labeling materials in all stores within a chain organization, $2 million and over chain stores would also be representative for labeling purposes of a large percentage of the 31,072 chain grocery stores with sales of less than $2 million annually. According to Nielsen Marketing Research, this latter group accounts for 6.6 percent of U.S. grocery sales, and together with the $2 million and over sales group represents 88.1 percent of total U.S. grocery sales (Ref. 16). The distribution of grocery sales closely approximates the distribution of the population. Thus, approximately 88 percent of the U.S. population is served by all chain stores and by independent grocery stores with annual sales of $2 million and over (Ref. 16). Other data from Business Guides, Inc. (Ref. 17) indicate there are an estimated 8,005 multiple and single-unit operators (companies) of supermarket, grocery, and convenience food stores with annual company sales of $2 million dollars and over. These firms operate stores accounting for 86 percent of U.S. food sales and serve a corresponding proportion of the population.

FDA is proposing in § 101.43(b) to use a representative sample of 2,000 stores to obtain the information necessary to assess compliance with the guidelines for the voluntary nutrition labeling of raw fruit, vegetables, and fish (Ref. 18). The distribution of the sample of 2,000 stores would cover all chain companies and a representative sample of independent companies. Assuming simple random sampling, the combined sample of chains and independent stores will have a margin of error of approximately ± 4 percent around an observed compliance level of 50 percent of stores with .95 confidence. In other words, if the agency finds that 50 percent of the stores are in compliance, then it can be concluded with 95 percent confidence that 46 to 54 percent of stores are actually in compliance.

FDA is proposing in § 101.43(c) that it will find that substantial compliance with the guidelines by food retailers exists if at least 60 percent of the companies that are evaluated are in compliance with the guidelines. FDA has tentatively selected 60 percent as a cut-off value for substantial compliance because the agency believes that this value represents an appropriate balance among the factors that the act sets forth in section 403(g)(4)(B)(ii) for determining substantial compliance and is consistent with a general understanding of this term.

Black's Law Dictionary (5th ed.) defines "substantial compliance" as compliance with the essential requirements of the statute. In other words, substantial compliance means that while there is not compliance with all the provisions of a statute, there is compliance with its most important provisions. Here, FDA interprets substantial compliance to mean that while not all covered retailers are providing nutrition labeling, the most significant segment of the food retailing industry is. FDA believes that a 60 percent compliance level will ensure that substantial compliance, understood in this way, is achieved.

FDA believes that each of the factors for determining substantial compliance set forth in the act are satisfied by the 60 percent standard. Use of this specific numerical standard will limit the number of retailers that can be out of compliance with the guidelines and yet the agency would still be justified in finding that there is substantial compliance. Thus, it ensures that the agency will not find substantial compliance if a significant number of covered retailers are not following the guideline. In addition, given the large number of chain stores that are covered by section 403(q)(4) of the act (approximately 52 percent of the stores subject to this provision), substantial compliance will not be achieved unless there is significant participation by the chains. Thus, substantial compliance based on the 60 percent standard will mean that a significant number of large retailers that serve a large part of the retail food market will be in compliance with the guidelines. FDA requests comment on the standard for substantial compliance that it has tentatively chosen.

3. Exemptions

Section 403(q)(5) of the act, as added by the 1990 amendments, specifically exempts certain foods from the requirements of section 403 (q)(1), (q)(2), (q)(3), and (q)(4) of the act. Many of these exemptions are discussed in the agency's mandatory nutrition labeling proposal (55 FR 29487) and pertain primarily to processed foods. Those exemptions that bear on the type of businesses that might be expected to provide nutrition labeling of raw fruit, vegetables, and fish include:

Small business: Section 403(q)(5)(D) of the act mandates an exemption for foods sold by small businesses by providing that:

> If a person offers food for sale and has annual gross sales made or business done in sales to consumers which is not more than $500,000 or has annual gross sales made or business done in sales of food to consumers which is not more than $50,000, the requirements of subparagraphs (1), (2), (3), and (4) [of section 403(q)] shall not apply with respect to food sold by such persons to consumers unless the label or labeling of food offered by such person provides nutrition information or makes a nutrition claim.

The agency will not consider foods sold by small businesses that meet the above criteria when evaluating compliance with the guidelines. Among other small businesses, FDA anticipates that this action will exempt most roadside fruit and vegetable or fish stands from providing nutrition labeling.

Restaurant foods: Section 403(q)(5)(A)(i) and (ii) of the act exempt foods (including raw fruit, vegetables, and fish) served for immediate human consumption in both restaurants and similar food service establishments (such as delicatessens and self-service food bars) from nutrition labeling requirements. Section 403(q)(5)(F) of the act also adds that nutrition labeling requirements shall not apply to foods sold by food distributors who principally sell the food to restaurants or other food service establishments that serve the food for immediate consumption and do not manufacture, process, or repackage the food. Accordingly, FDA will not consider foods sold in restaurants or other similar food service establishments to consumers or foods sold by food distributors who sell principally to such establishments when evaluating substantial compliance with the guidelines.

Foods shipped in bulk form: Section 403(q)(5)(A)(v) of the act exempts food, including raw fruit, vegetables, and fish, described in section 405(2) of the act from nutrition labeling requirements. Section 405(2) of the act exempts from any labeling requirement food that is to be processed, labeled, or repacked at a site other than that where it was originally processed or packed. However, since the proposed guidelines direct that nutrition information for raw fruit, vegetables, and fish be available only at the point-of-purchase for consumers, but not during shipping, FDA does not believe a specific exemption that reflects section 403(q)(4)(A)(v) of the act is needed in the guidelines.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Economic Impact

The food labeling reform initiative, taken as a whole, will have associated costs in excess of the $100 million threshold that defines a major rule. Therefore, in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354), FDA is developing one comprehensive regulatory impact analysis (RIA) that will present the costs and benefits of all of the food labeling provisions taken together. When this RIA is finalized, a notice of its availability will be published in the Federal Register, and it will be made available at the Dockets Management Branch (address above). The RIA will be made available to the public before publication of a final rule. FDA welcomes comments on the RIA. The costs of compliance with this proposal alone are discussed below.

In this document, FDA is proposing changes to the food label that will, for the most part, codify changes mandated by the 1990 amendments. Costs that may be incurred as a result of the provisions of the 1990 amendments covered by this proposed regulation are likely to be between $100 million to $165 million.

A. Benefits

The proposed labeling changes will benefit consumers by giving them information to refine their food choices for health or other reasons. While it is not possible to quantify the benefits of the particular requirements in this proposed regulation, FDA will estimate the benefits of the food labeling reform initiative as a whole. Those benefits include reduced coronary heart disease and cancer as a result of people making more informed food choices.

B. Costs

The costs associated with this proposal would arise from voluntary compliance with the proposed guidelines to label the top 20 fresh fruits, vegetables, and fish in large grocery stores. The costs associated with this proposal would include laboratory testing, data base compilation, administrative costs, and printing the signs, posters, handouts, etc. Because compliance with the guidelines is "voluntary," it is impossible to predict the number of firms that will choose to comply. If a substantial number of firms are not found to be in compliance within 30 months of the date of enactment of the 1990 amendments, FDA must propose to require nutrition labeling on raw fruits, vegetables, and fish. In this document, FDA is proposing to define substantial compliance as 60 percent of companies. FDA estimates that no more than 99,000 grocery stores will be included under the voluntary guidelines. If, for example, the cost to each store of labeling 60 items were $500 per store, costs would be $30 million to $50 million, depending on the rate of compliance with the voluntary guidelines. The compliance costs per store will vary depending on the particular medium chosen to convey the nutrition information. The more elaborate the labeling, the higher the cost. FDA is requesting comments on the minimum cost of labeling these 60 items. These costs are not one-time costs, because the signs will wear out and need replacement. Assuming the signs are replaced every 5 years, the costs will be $100 million to $165 million (5 percent discount rate) over a 20-year period.

C. International Effects

In accordance with Executive Order 12291 and other guidance received from the Office of Management and Budget, FDA has also evaluated the effects on international trade of this proposed regulation. No international impacts on trade will occur as a result of this proposed regulation.

VI. Comments

Interested persons may, on or before August 1, 1991, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. to 4 p.m., Monday through Friday.

In accordance with section 403(q)(4) of the act FDA must issue by November 8, 1991, guidelines for the voluntary nutrition labeling of raw fruit, vegetables, and fish as well as a final regulation defining substantial compliance with the guidelines. In order to meet this statutory timeframe, FDA must limit, the comment period for this proposal to 30 days. Consequently, FDA believes that there is good cause under 21 CFR 10.40(b)(2) of its procedural regulations to limit the comment period to 30 days. The agency must shorten the comment period to assure sufficient time to develop a final rule based on this proposal and the comments it receives.

VII. Effective Date

The agency intends to issue final guidelines and regulations pertaining to the nutrition labeling of raw fruit, vegetables, and fish by November 8, 1991. The agency is proposing that any final rule that may issue based upon this proposal become effective November 8, 1991, in accordance with the requirements of the 1990 amendments.

VIII. References

The following information has been placed on file in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. USDA, and U.S. Department of Health and Human Services, "Nutrition and Your Health: Dietary Guidelines for Americans," 3d ed., Washington, DC, U.S. GPO 1990–273–930, 1990.

2. "Seafood Nutri-Facts," Fresh Seafood Nutrition Information Program, developed by the Food Marketing Institute and the National Fisheries Institute, Washington, DC, 1988.

3. Division of Mathematics, Center for Food Safety and Applied Nutrition, FDA, "Compliance Procedures for Nutrition Labeling," Washington, DC, 1973.

4. "Composition of Foods—Raw, Processed, Prepared, Fruits and Fruit Juices," Agriculture Handbook No. 8–9, USDA, Human Nutrition Information Service, Washington, DC, 1982.

5. "Composition of Foods—Raw, Processed, Prepared, Vegetables and Vegetable Products," Agriculture Handbook No. 8–11, USDA, Human Nutrition Information Service, Washington, DC, 1984.

6. "Composition of Foods—Raw, Processed, Prepared, Fish and Shellfish," Agriculture Handbook No. 8–15, USDA, Human Nutrition Information Service, Washington, DC, 1987.

7. Committee on the Nutrition Components of Food Labeling, Food and Nutrition Board, Institute of Medicine, National Academy of Sciences, Nutrition Labeling Issues and Directions for the 1990's, National Academy Press, Washington, DC, 1990.

8. Human Nutrition Information Service, USDA, 1987–88, "Nationwide Food Consumption Survey, Individual Intakes, 3 Days," computer tape PB 90–504044, National Technical Information Service, Springfield, VA, 1990.

9. Produce Marketing Association, Newark, DE, data on retail sales of fruits and vegetables, provided to FDA, Washington, DC, January 4, 1991.

10. United Fresh Fruit and Vegetable Association, Supply Guide, Monthly Availability of Fresh Fruit and Vegetables, 13th ed., Alexandria, VA, 1989.

11. Average per Capita Consumption, 1987–89, Economic Research Service, USDA, Washington, DC.

12. 43d Consumer Expenditure Study, Supermarket Business, September 1990.

13. National Fisheries Institute, data on fish production, provided to FDA, Washington, DC, letter dated January 4, 1991.

14. Food Marketing Institute Speaks, Table 144B, Washington, DC 1990.

15. Food Marketing Institute, phone survey data, provided to FDA, Washington, DC, January 4, 1991.

16. 1989/90 Food and Drug Store Count and Sales Estimates by Nielsen Territory and County Size, Nielsen Business Information Series, Nielsen Marketing Research, August 1990.

17. 1991 Directory of Supermarket, Grocery, and Convenience Store Chains, and 1990/91 Directory of Single-Unit Supermarket Operators, Business Guides, Inc., Tampa, Florida.

18. Memorandum of Need (MON) for Five Year Plan for Food Labeling and Package Survey (FLAPS)—FY 91–96, FDA, Washington, DC, January 7, 1991.

IX. Appendix

TABLE 1.—FRESH FRUIT AND VEGETABLES FOR WHICH NUTRITIONAL LABELING DATA HAVE BEEN DEVELOPED (OR ARE UNDER DEVELOPMENT) BY PMA [1]

Accepted by FDA	Under FDA review	Not yet submitted to FDA
Fruit:		
Cantaloupe	Apple	Blueberry
Date, California	Avocado, California	Lemon
Honeydew melon	Banana	
Kiwifruit	Cherry, sweet	
Papaya	Grapefruit	
Pineapple	Orange	
Strawberry	Raspberry	
Watermelon		

TABLE 1.—FRESH FRUIT AND VEGETABLES FOR WHICH NUTRITIONAL LABELING DATA HAVE BEEN DEVELOPED (OR ARE UNDER DEVELOPMENT) BY PMA [1]—Continued

Accepted by FDA	Under FDA review	Not yet submitted to FDA
Vegetables:		
Artichoke	Beet	Eggplant
Asparagus	Belgian endive	Green (snap) bean
Bell pepper	Spinach	Leaf lettuce
Broccoli		Romaine lettuce
Green cabbage		Summer squash
Carrot		
Cauliflower		
Celery		
Cucumber		
Iceberg lettuce		
Le Rouge Royal pepper		
Mushroom		
Onion		
Potato		
Radish		
Tomato		

[1] Partial research has been completed for snowpeas and swiss chard.

TABLE 2.—THE 20 MOST FREQUENTLY CONSUMED RAW FRUIT AND VEGETABLES [1]

Fruit:	Vegetables:
Banana	Potato
Apple	Iceberg lettuce
Watermelon	Tomato
Orange	Onion
Cantaloupe	Carrot
Grape [2]	Celery
Grapefruit	Sweet corn [2]
Strawberry	Broccoli
Peach [2]	Green cabbage
Pear [2]	Cucumber
Nectarine [2]	Bell pepper
Honeydew melon	Cauliflower
Plum [2]	Leaf lettuce
Avocado	Sweet potato [2]
Lemon	Mushroom
Pineapple	Green onion [2]
Tangerine [2]	Green (snap) bean
Sweet cherry	Radish
Kiwifruit	Summer squash
Lime [2]	Asparagus

[1] Ref. 9.
[2] FDA-approved data bases and labels are available from PMA for all but these fruits and vegetables.

TABLE 3.—THE FRUIT IN DECREASING ORDER BY SALES, PRODUCTION, OR CONSUMPTION

PMA [1]	UFFVA [2]	ERS, USDA [3]
Banana	Banana	Banana
Apple	Apple	Apple
Watermelon	Orange	Orange
	Watermelon	Watermelon
Cantaloupe	Cantaloupe	Cantaloupe
Grape	Grape, table	Grape
Grapefruit	Grapefruit	Grapefruit
Strawberry	Peach	Peach
Peach	Strawberry	Pear
Pear	Pear	Strawberry
Nectarine	Lemon	Honeydew melon
Honeydew melon	Honeydew melon	Lemon
Plum	Avocado	Pineapple
Avocado	Pineapple	Avocado
Lemon	Plum & prune	Plum & prune
Pineapple	Nectarine	Nectarine
Tangerine [4]	Lime	Tangerine [4]
Sweet cherry	Sweet cherry	Lime
Kiwifruit [4]	Tangelo [4]	Cherry
Lime	Mango [4]	Tangelo [4]
Mango [4]	Kiwifruit [4]	
Blueberry [4]	Papaya [4]	
Papaya [4]	Blueberry [4]	

[1] Ref. 9.
[2] Ref. 10.
[3] Ref. 11.
[4] On two lists only (tangerine, kiwifruit, papaya, blueberry, mango, tangelo).

TABLE 4.—VEGETABLES IN DECREASING ORDER BY SALES, PRODUCTION, OR CONSUMPTION

PMA [1]	UFFVA [2]	ERS, USDA [3]
Potato	Potato	Potato
Iceberg lettuce	All lettuce	Lettuce
Tomato	Tomato	Tomato
Onion	Onion	Onion
Carrot	Carrot	Carrot
Celery	Sweet corn	Celery
Sweet corn	Celery	Sweet corn
Broccoli	Cabbage	Cabbage
Green cabbage	Sweet potato	Bell pepper
Cucumber	Cucumber	Broccoli
Bell pepper	Bell pepper	Swee potato
Cauliflower	Broccoli	Cucumber
Leaf lettuce [4]	Cauliflower	Cauliflower
Sweet potato	All squash	Mushroom
Mushroom	Mushroom	Snap bean
Summer squash	Snap bean	Green pea [5]
Green onion [4]	Radish [4]	Squash
Green (snap) bean	Green onion [4]	Spinach
Radish [4]	Spinach	Artichoke
Asparagus	Eggplant [4]	Garlic [5]
Spinach	Asparagus	Eggplant [4]
Romaine lettuce [5]	Chinese cabbage	Asparagus
Artichoke	Artichoke	
Pumpkin	Leaf lettuce [4]	
Eggplant		

[1] Ref. 9.
[2] Ref. 10.
[3] Ref. 11.
[4] On 2 lists only (green onion, radish, leaf lettuce, eggplant).
[5] On 1 list only (romaine lettuce, green pea, garlic).

TABLE 5.—THE 20 FRUIT, VEGETABLES, AND FISH CONSUMED IN LARGEST QUANTITIES IN THE UNITED STATES ACCORDING TO THE 1987–88 USDA NFCS [1]

Vegetables	Fruit	Fish
White potato	Apple	Haddock
Lettuce	Banana	Cod
Green bean	Grapefruit	Shrimp
Tomato	Orange	Catfish
Broccoli	Apricot	Crab
Carrot	Avocado	Salmon
Cabbage	Cantaloupe	Perch
Green pea	Sweet cherry	Flounder
Summer squash	Grape	Clam
Onion	Peach	Lobster
Cucumber	Pear	Oyster
Green pepper	Pineapple	Ocean perch
Corn	Plum	Trout
Celery	Watermelon	Croaker
Cauliflower	Strawberry	Whiting
Spinach	Tangerine	Pompano
Collard	Nectarine	Swordfish
Sweet potato	Honeydew melon	Pollack
Lima bean	Cranberry	Scallop
Asparagus	Blueberry	Sole

[1] Ref. 8.

TABLE 6.—THE 20 MOST FREQUENTLY CONSUMED RAW FISH [1]

Shrimp
Cod
Pollack
Catfish
Scallop
Salmon
Flounder
Sole
Oyster
Orange roughy
Mackerel
Ocean perch
Rockfish [2]
Whiting
Clam
Haddock
Crab
Trout
Halibut
Lobster

[1] Ref. 13.
[2] Referred to as Pacific snapper in some areas (e.g., the United States northwest).

TABLE 7.—FISH MOST COMMONLY CONSUMED AS INDICATED BY NFI AND FMI

NFI data [1]	FMI 1989 data [2]	FMI phone contact [3] (plus NFI top 10)
Shrimp	Shrimp	Tuna
Cod	Salmon	Shrimp
Pollack	Catfish	Cod
Catfish	Orange roughy	Pollack
Scallop	Cod	Catfish
Salmon	Crab	Clam
Flounder	Ocean perch	Flounder
Sole	Haddock	Salmon
Oyster	Snapper	Scallop
Orange roughy	Flounder	Crab
Mackerel	Halibut	Snapper

TABLE 7.—FISH MOST COMMONLY CONSUMED AS INDICATED BY NFI AND FMI—Continued

NFI data[1]	FMI 1989 data[2]	FMI phone contact[3] (plus NFI top 10)
Ocean perch	Pollack	Perch
Rockfish (Pacific snapper)	Surimi products[4]	Trout
Whiting	Tuna	Halibut
Clam	Swordfish	Swordfish
Haddock	Whiting	Sole
Crab	Lobster	Lobster
Trout	Trout	Orange roughy
Halibut	Sole	Turbot
Lobster	Prawn	Surimi products[4]
Swordfish	Scallop	Haddock
Tuna	Whitefish	Mackerel
Shark & dogfish	Bass	Whitefish
Crayfish	Oyster	Bluefish
	Ohi	Mahi mahi
	Shark	Monkfish
	Croaker	
	Rockfish	

[1] Ref. 13; fish production data without canned fish; listed in decreasing order of availability (wholesale and retail). Squid (used primarily for bait) and spiny lobster (used primarily in restaurants) were removed from the top 20 list.

[2] Ref. 14; percentage of the most popular selling seafood items. Data were for stores featuring fresh seafood. Fish are listed in decreasing order of percentage.

[3] For this informal assessment, FMI used the top 10 fish as identified by 1989 data from NFI (which included fresh and canned fish); the other 16 fish were identified as "fresh fish available for sale at the retail level" from an FMI phone survey (1991) made to retail establishments (Ref. 15).

[4] As purchased, surimi refers to frozen surimi-based products such as imitation crab legs.

TABLE 8.—GROCERY STORE SALES IN THE UNITED STATES[1]

Annual sales (dollars)	Number of stores	Percent of all food stores	Percent of total U.S. grocery sales
2 million & over:			
Chains	20,150	11.7	64.7
Independents	101,841	6.3	16.8
All stores	30,991	18.0	81.5
Under 2 million:			
Chains	31,072	18.0	6.6
Independents (annual sales $0.3—2 million)	36,939	21.4	9.2
Independents (annual sales <$0.3 million)	73,391	42.6	2.7
All stores	141,402	82.0	18.5

[1] Ref. 16.

List of Subjects in 21 CFR Part 101

Food labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Sec. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Subpart C is added to read as follows:

Subpart C—Specific Nutrition Labeling Requirements and Guidelines

Sec.

Subpart C—Specific Nutrition Labeling Requirements and Guidelines

§ 101.42 Nutrition labeling of raw fruit, vegetables, and fish.

(a) The Food and Drug Administration (FDA) urges food retailers to provide nutrition information, as provided in § 101.9(c), for raw fruit, vegetables, and fish at the point-of-purchase. If retailers choose to provide such information, they should do so in a manner that conforms to the guidelines in § 101.45.

(b) In § 101.44, FDA has listed the 20 varieties of raw fruit, vegetables, and fish that are most frequently consumed during a year and to which the guidelines apply.

(c) FDA has also defined in § 101.43, the circumstances that constitute substantial compliance by food retailers with the guidelines.

(d) By May 8, 1993, FDA will issue a report on actions taken by food retailers to provide consumers with nutrition information for raw fruit, vegetables, and fish under the guidelines established in § 101.45.

(1) The report will include a determination of whether there is substantial compliance, as defined in § 101.43, with the guidelines.

(2) In evaluating substantial compliance, FDA will consider only the 20 varieties of raw fruit, vegetables, and fish most frequently consumed as identified in § 101.44.

(e) If FDA finds that there is substantial compliance with the guidelines, the agency will so state in the report, and the guidelines will remain in effect. FDA will reevaluate the market place for substantial compliance every 2 years.

(f) If FDA determines that there is not substantial compliance with the guidelines, the agency will at that time issue proposed regulations requiring that any person who offers raw fruit, vegetables, or fish to consumers provide in a manner prescribed by regulations, the nutrition information required by § 101.9. Final regulations would have to be issued 6 months after issuance of proposed regulations, and they would become effective 6 months after the date of their promulgation.

§ 101.43 Substantial compliance of food retailers with the guidelines for the voluntary nutrition labeling of raw fruit, vegetables, and fish.

(a) The Food and Drug Administration (FDA) will judge a food retailer who sells raw agricultural commodities or raw fish to be in compliance with the guidelines in § 101.45 if the retailer displays or provides nutrition labeling for at least 90 percent of the raw agricultural commodities or types of raw fish listed in § 101.44 that it sells, and if that nutrition labeling:

(1) Is presented in the store or other type of establishment in a manner that is consistent with § 101.45(a);

(2) Is presented in content and format that are consistent with § 101.45(b); and

(3) Includes data that have been accepted by FDA (see § 101.45 (c), (f), and (g)) or that are consistent with § 101.45 (d) and (e) and have not been found to be out of compliance after a review under § 101.9(e) (see § 101.45(h)).

(b) To determine whether there is substantial compliance by food retailers with the guidelines in § 101.45 for the voluntary nutrition labeling of raw fruit, vegetables, and fish, FDA will select a representative sample of 2,000 stores allocated by store type and size.

(c) FDA will find that there is substantial compliance with the guidelines in § 101.45 if it finds based on paragraph (a) of this section that: at least 60 percent of all companies that are evaluated are in compliance.

§ 101.44 Identification of the 20 most frequently consumed raw fruit, vegetables, and fish in the United States.

(a) The 20 most frequently consumed raw fruit are: banana, apple, watermelon, orange, cantaloupe, grape, grapefruit, strawberry, peach, pear, nectarine, honeydew melon, plum,

avocado, lemon, pineapple, tangerine, sweet cherry, kiwifruit, and lime.

(b) The 20 most frequently consumed raw vegetables are: potato, iceberg lettuce, tomato, onion, carrot, celery, sweet corn, broccoli, green cabbage, cucumber, bell pepper, cauliflower, leaf lettuce, sweet potato, mushroom, green onion, green (snap) bean, radish, summer squash, and asparagus.

(c) The 20 most frequently consumed raw fish are: Shrimp, cod, pollack, catfish, scallop, salmon, flounder, sole, oyster, orange roughy, mackerel, ocean perch, rockfish, whiting, clam, haddock, crab, trout, halibut, and lobster.

§ 101.45 Guidelines for the voluntary nutrition labeling of raw fruit, vegetables, and fish.

Nutrition labeling for raw fruit, vegetables, and fish listed in § 101.44 should be presented to the public in the following manner:

(a) Nutrition labeling information should be displayed at the point of purchase by an appropriate means, including by affixing it to the food, by posting a sign, or by making the information readily available in brochure, notebook, or leaflet form in close proximity to the foods. The nutrition labeling information may also be supplemented by a video, live demonstration, or other media.

(b) Nutrition information should be provided on the label or in labeling in accordance with § 101.9, as modified by the following guidelines:

(1) Thiamin, riboflavin, and niacin may be declared in the nutrition labeling.

(2) The declaration of nutrition information may be presented in the simplified format set forth herein when a raw fruit, vegetable, or fish contains insignificant amounts of five or more of the following: calories, fat, carbohydrate, protein, sodium, vitamin A, vitamin C, calcium, and iron. "Insignificant amount" is interpreted as that amount that may be rounded to zero in nutrition labeling.

(i) If the simplified format is used, for it to be considered in compliance, the nutrition labeling should include serving size, calories, fat, carbohydrate, protein, sodium, and any other nutrients or food components identified in paragraph (b)(2) of this section that are present in the food in more than insignificant amounts.

(ii) Additional vitamins and minerals listed in § 101.9(c)(7)(iv) may be declared if followed by the statement: "Not a significant source of _____" with the blank filled in by the nutrients and food components other than fat, carbohydrate, protein, and sodium identified in paragraph (b)(2) of this section that are present in insignificant amounts.

(3) Nutrition labeling information for the full or simplified formats may be presented on individual labels or in charts in vertical columns or in lines. When lines are used, any subcomponents declared should be listed parenthetically after principal components (e.g., saturated fat should be parenthetically listed after fat).

(4) Declaration of the number of servings per container need not be included in nutrition labeling of raw fruit, vegetables, and fish.

(5) The nutrition label data should be based on raw edible portion for fruit and vegetables and on a cooked edible portion for fish. The methods used to cook fish should be those which do not add fat, breading, or seasoning (e.g., salt or spices).

(c) Nutrient data and proposed nutrient values for nutrition labeling for raw fruit, vegetables, and fish may be submitted to the Division of Nutrition (HFF–260), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, for review and evaluation. The data and nutrient values for nutrition labeling are appropriate for use if they are accepted by the Food and Drug Administration (FDA). The submission to FDA should include information on the source of the data (names of investigators, name of organization, place of analysis, dates of analyses), number of samples, sampling scheme, analytical methods, statistical treatment of the data, and proposed quantitative label declarations. The nutrient values for the nutrition labeling should be determined in accordance with FDA guidance.

(d) Composite data that reflect representative nutrient levels for various varieties, species, cultivars; seasons; and geographic regions may be used to label raw fruit, vegetables, and fish. Alternatively, data that reflect a specific variety, species, cultivar; season; or geographic region may be used to label raw fruit, vegetables, and fish; the nutrition labeling information for such variety, etc., should provide food names and descriptions for the fruit, vegetables, and fish that appropriately reflect the samples analyzed for nutrient values.

(e) The FDA booklet "Compliance Procedures for Nutrition Labeling" should be used to develop nutrition label values from data base values. It is available from the Division of Nutrition.

(f) If the agency's Center for Food Safety and Applied Nutrition agrees to all aspects of the data base, FDA will notify a submitter in writing of its acceptance of the nutrient data and nutrient values for nutrition labeling. FDA's acceptance will be for a period of 10 years. Those obtaining data base and nutrient value acceptance from FDA are responsible for continued maintenance of the data base. FDA will renew its acceptance of a data base upon request after 10 years unless there have been demonstrated changes in agricultural or industry practices. When agricultural or industry practices change (e.g., a change occurs in a predominant variety produced), or when FDA monitoring suggests that the data base or nutrient values are no longer representative of the item sold in this country, FDA will take steps to revoke its acceptance of the data base and nutrient values. A revised data base and proposed nutrient values may be submitted to FDA for acceptance.

(g) If the nutrition information is in accordance with an FDA-accepted data base, the nutrient values have been computed following FDA guidelines, and the food has been handled in accordance with current good manufacturing practices to prevent nutrient loss, a nutrition label will not be subject to the agency compliance review under § 101.9(e).

(h) Organizations may use data bases that they believe validly reflect the nutrient content of fruit, vegetables, and fish; however, labeling computed from data bases not reviewed, evaluated, and accepted by the agency is subject to the compliance procedures of § 101 9(e).

Dated: May 28, 1991.

David A. Kessler,

Commissioner of Food ond Drugs.

Louis W. Sullivan,

Secretary of Health ond Humon Services.

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LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202-523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-275-3030).

S. 64/Pub. L. 102-62

Education Council Act of 1991. (June 27, 1991; 105 Stat. 305; 14 pages) Price: $1.00

S.J. Res. 159/Pub. L. 102-63

To designate the month of June 1991, as "National Forest Month". (June 28, 1991; 105 Stat. 319; 1 page) Price: $1.00

S. 909/Pub. L. 102-64

Semiconductor International Protection Extension Act of 1991. (June 28, 1991; 105 Stat. 320; 2 pages) Price: $1.00